



**Town Board of Trustees  
Tuesday, June 28, 2016  
Public Meeting Room / Eagle Town Hall  
200 Broadway  
Eagle, CO**

*This agenda and the meetings can be viewed at [www.townofeagle.org](http://www.townofeagle.org).  
Meetings are also aired online at <https://vimeo.com/channels/townofeagle/>.*

**6:00 PM – REGULAR MEETING CALLED TO ORDER**

**PUBLIC COMMENT**

*Citizens are invited to comment on any item not on the Agenda subject to a public hearing. Please limit your comments to five (5) minutes per person per topic, unless arrangements have been made for a presentation with the Town Clerk.*

**PRESENTATION**

1. Community Request – Red Ribbon Project
2. Community Request – Wild West Days

**LIQUOR LICENSE AUTHORITY**

1. Color Coffee Roasters – New Beer and Wine License at 717B Sylvan Lake Road

**CONSENT AGENDA** *Consent agenda items are routine town business, items which have received clear direction previously from the board, final land use file documents after the public hearing has been closed, or which do not require board deliberation.*

1. Minutes – June 14, 2016

**DISCUSSION, DECISIONS OR DIRECTION REQUESTED**

1. RESOLUTION NO. 31 (Series of 2016) A Resolution Of The Board Of Trustees Town Of Eagle, Colorado Approving A Lease Agreement Between The Town Of Eagle And Mean Streets Boxing For Space In The Town Of Eagle Old Town Hall; And Authorizing The Mayor To Execute Said Agreement
2. RESOLUTION NO. 32 (Series of 2016) A Resolution Of The Board Of Trustees Town Of Eagle, Colorado Approving A Lease Agreement Between The Town Of Eagle And Ute Springs Experiential Learning Center For Space In The Town Of Eagle Old Town Hall; And Authorizing The Mayor To Execute Said Agreement



3.	Mountain States Employers Council Membership ( <i>John Schneider</i> )
4.	Community Impact Award ( <i>Discussion regarding continuing the program started two years ago and any changes to format and process</i> )
5.	First Amendment To The Intergovernmental Agreement Between Town Of Eagle And Eagle County Regarding Design, Lease, And Use Of The Future Eagle River Park

**LAND USE**

1.	Project:	Sylvan Circle Development Plan
	File #:	DR16-03
	Applicant:	Jonathon Werner (Eagle Sylvan, LLC)
	Location:	58 Sylvan Lake Road
	Staff Contact:	Tom Boni (Town Planner)
	Request:	Development Review for a 42-unit townhome project on 4.67 acres.
		<b><i>Applicant requests to Continue this item to the July 12, 2016 Town Board Meeting</i></b>

2.	Project:	Boyz Toyz Snowmobile/ATV Store
	File #:	SU97 (Amended 2016)
	Applicant:	Gary Ratkowski
	Location:	432 Grand Avenue
	Staff Contact:	Tom Boni (Town Planner)
	Request:	Special Use Permit to allow continued operation of store/repair facility.

3.	Project:	Eagle Tubing and Photography
	File #:	TU16-01
	Applicant:	Ken Hoeve
	Location:	100 Fairgrounds Road / Chambers Park
	Staff Contact:	Matt Farrar (Assistant Town Planner)
	Request:	Temporary use permit for a mobile vendor at Chambers Park.

RESOLUTION NO. 29 (Series of 2016) A Resolution Of The Board Of Trustees Town Of Eagle, Colorado Approving A Lease Agreement With Eagle Tubing & Photography, LLC

4.	Project:	Colorado Slab & Tile - Outside Storage
	File #:	SU16-02
	Applicant:	Jason Kaples
	Location:	12 Eagle Park East
	Staff Contact:	Matt Farrar (Assistant Town Planner)
	Request:	Special Use Permit to allow for outside storage.



5.	Project:	Revisions to Section 4.03.040 - Definitions and Section 4.04 - Zoning of the Town of Eagle Land Use & Development Code
	File #:	LURA16-01
	Applicant:	Town of Eagle
	Location:	N/A
	Staff Contact:	Matt Farrar (Assistant Town Planner)
	Request:	<ol style="list-style-type: none"> <li>1. Revise Section 4.03.040 to define dog daycare facility.</li> <li>2. Revise Section 4.04.070 to define regulations for dog daycare facilities.</li> <li><del>3. Revise Section 4.04.070 to modify regulations for indoor recreation facilities.</del> <i>(Approved by Board of Trustees – April 26, 2016)</i></li> <li>4. Revise Section 4.04.070 to define regulations for marijuana testing facilities.</li> <li>5. Revise Section 4.04.100 to modify regulations regarding medical and retail marijuana cultivation facilities and infused-product manufacturing facilities and to expand the area in the Town of Eagle where these uses are permitted.</li> </ol>
		<b>Staff requests this item to be Continued to the July 26, 2016 Town Board Meeting</b>

EXECUTIVE SESSION – To hold a conference with the Town's attorney to receive legal advice on specific legal questions and items pertaining to negotiations, pursuant to C.R.S. § 24-6-402(4)(b)

1. Frost Creek PUD Amendment Water and Bike Path Discussion *(Mary Elizabeth Geiger via Phone after 8:00 p.m.)*

**STAFF UPDATES AND REQUESTS**

Manager's Report

Correspondence for Discussion if necessary:

- 4<sup>th</sup> of July Celebration at Lundgren Theater
- Continued Discussion of Coordinated Election

**BOARD DISCUSSION AND FUTURE AGENDA ITEMS**

Mayor's Update

**ADJOURN**

I hereby certify that the above Notice of Meeting was posted by me in the designated location at least 24 hours prior to said meeting.

\_\_\_\_\_  
Jenny Rakow, CMC Town Clerk



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

## COMMUNITY REQUEST APPLICATION

**Budget Year 2016    Date Request Submitted** June 15, 2016

**Name of Group or Organization:** \_\_Red Ribbon Project

**Mailing Address:** \_PO Box 6058, Avon, CO 81631

**Contact Name:** Denise Kipp or Heather Hower **Phone:** 970.827.5900

**Is organization a registered non-profit?**  Yes  No

**Amount Requested** \$700 (Preferred Sponsor Level)

**Describe request or event (Use an addendum as necessary):** **The complete sponsorship packet with donor levels, recognition and details is attached.**

The inaugural 'Eagle Music Festival' is RRP's largest fundraiser for the year. We decided to change our format from the past five years to make it more engaging, family friendly and targeted to a larger audience; expanding RRP's fundraising base and community reach. In the past, 150 to 200 people attended the fundraiser that was based at ETown – we've developed a strong following but it's time to expand and try something new. With this new format and new venue, we anticipate 400 to 500 people to participate. We have three well-known local bands that are donating their time free of charge to play throughout the afternoon, culminating in a jam at the end of the night. In addition, we will reach out to the local high school band to incorporate them into the day.

Our target audience is families, couples, and those with strong ties to the community. We believe by incorporating a variety of bands into the day, those who follow the bands will attend and learn about RRP and our mission to "promote healthier lives by empowering the community to reduce teen pregnancy, HIV/AIDS and other STIs". Through this mission the RRP impacts youth with powerful programming that inspires self-confidence and healthy decision making.

### **Eagle Music Festival Event Details (in progress)**

The Eagle Music Festival will take place September 3, 2016, from 4 p.m. until 10 p.m. at The Dusty Boot on Capitol Street in Eagle, Colorado. All proceeds will benefit the Red Ribbon Project. This is our largest fundraiser of the year.

4 p.m. – 5 p.m.	Band plays (Rewind)
5:30 – 6:30 p.m.	Second band plays (First Chair)
7 p.m. – 8 p.m.	Third band plays (Platonics)
8:30 p.m. – 9:30 p.m.	JAM band of three bands play (All-Stars)

Throughout the evening, we will host a silent auction, have a multi-media presentation running with sponsor logos and corporate banners placed around the perimeter of the event.

**Provide, as an addendum, this year's budget and next year's proposed budget listing all revenue sources and expenses by program**

See attached for 2016 budget, the 2017 budget is not determined yet. In 2015-16, RRP provided age-appropriate programming to 3,210 students in grades 5 through 12. Right in Eagle, we provide a strengths-based, positive-reinforcement Youth Skills Building class. We work with Brush Creek and Eagle Valley Elementary Schools and Red Canyon High School.

**What activity is the request primarily for?**

- Athletic or Recreation \_\_\_\_\_
- Environmental \_\_\_\_\_
- Cultural \_\_\_\_\_

X Educational: More than 3200 children in Eagle County take our classes – free of charge during the school day. We provide classes to many students at Red Canyon High School. In Eagle alone, we work with about 350 children.

X Other \_\_\_Free HIV testing

**What age group(s) are primary beneficiaries?** Kids grades 5 to 12.

**How many participants?** 3,210 in 2015-16

**How many Eagle residents are participants?** Approximately 350

## RED RIBBON PROJECT BOARD MEMBERS 2016

Board terms are one-year, with an opportunity for extension.

### **Monica White, President**

Steadman Philippon Research Institute Controller  
PO Box 699 Gypsum, CO 81637  
Phone: 720-260-2334  
[monicaswasey@yahoo.com](mailto:monicaswasey@yahoo.com)

### **Narda Reigel, Vice-President**

Eagle County Sheriff's Department  
2488 Garmisch Drive  
Vail, CO 81657  
[nardareigel@gmail.com](mailto:nardareigel@gmail.com)

### **Paula Palmateer, Secretary**

Non-profit Consultant  
PO Box 4265, Vail, CO 81658  
Phone: 970-827-5839  
[paulavail@hotmail.com](mailto:paulavail@hotmail.com)

### **Joel Barndt, Treasurer**

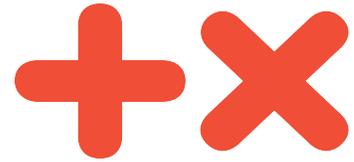
Banking Officer-FirstBank  
5064 Black Gore Dr.  
Vail, CO 81657  
Phone: 406-698-8586  
[Joel.barndt@efirstbank.com](mailto:Joel.barndt@efirstbank.com)

### **Barry Eckhaus**

Steadman Phillipon Research Institute  
PO Box 7702  
Avon, CO 81620  
Phone: 970-368-3074  
[barry.eckhaus@sprivail.org](mailto:barry.eckhaus@sprivail.org)

### **Roni Sheldon**

Youth Educator and Massage Therapist  
PO Box 4927 Eagle, CO 81631  
970-390-2133  
[ronirub@hotmail.com](mailto:ronirub@hotmail.com)



THE RED RIBBON  
**PROJECT**  
OF EAGLE COUNTY  

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**POSITIVE PREVENTION**

### **Key Staff:**

#### **Denise Kipp, Executive Director**

PO Box 3154 Eagle, CO 81631  
Phone: 970-827-5900  
[denise@redribbonproject.org](mailto:denise@redribbonproject.org)

#### **Robin Santoro, Contract Health Educator**

PO Box 218 Gypsum, CO 81637  
Phone: 970-471-4205  
[robinsantoro@yahoo.com](mailto:robinsantoro@yahoo.com)

#### **Alicia Gutierrez, Certified HIV Tester**

Program Coordinator for HIV Testing and  
Capacity-building effort through the AIDS  
Education and Training Center  
Western Slope Specialty Care Clinic- SBIRT  
Health Educator

#### **Narda Reigel, Contract Health Educator**

Eagle County Sheriff's Department  
2488 Garmisch Drive  
Vail, CO 81657  
[nardareigel@gmail.com](mailto:nardareigel@gmail.com)

<b>Red Ribbon Project BUDGET</b>	<b>2016</b>				
<b>PROGRAM INCOME</b>					
<b>Youth Skills Building Grants</b>					
Anschutz Family Foundation	5,000.00				
Vail Valley Cares	4,000.00				
Wells Fargo	1,000.00				
Gallegos Corporation	500.00				
Eagle River Foundation	1,500.00				
Alpine Bank	1,000.00				
United Way	4,000.00				
Holy Cross Foundation	750.00				
Eagle County Community Gra	-				
Vail Resorts Echo	3,000.00				
Eagle County School District	4,000.00				
Climax Community Investmer	3,000.00				
Town of Avon	750.00				
Town of Gypsum	-				
Edwards Rotary	500.00				
Other YSB Grants	2,000.00				
<b>Sub-total</b>	<b>26,000.00</b>				
<b>Cuidate! Grants</b>					
Temple Hoyne Buell Foundati	10,000.00				
Kent Richard Hofmann Found	-				
Burt Foundation	1,000.00				
ANB Bank	400.00				
The Women's Foundation	4,000.00				
Eagle River Foundation	1,500.00				
Other grants	700.00				
<b>Sub-total</b>	<b>17,600.00</b>				
<b>Testing Grants</b>					
First Bank of Vail	500.00				
Kaiser Permanente	500.00				
Kent Richard Hoffman Founda	-				
United Way	1,000.00				
Other testing grants	1,640.00				
<b>Sub-total</b>	<b>3,640.00</b>				
<b>GENERAL OPERATING</b>					
Eagle River Community Fund	4,500.00				
District Attorney Charitable Pro	2,500.00				
CoBiz Cares Foundation	-				
El Pomar	3,000.00				
Other G. O. grants	500.00				
<b>Sub-total</b>	<b>10,500.00</b>				
<b>Total Grants</b>	<b>57,740.00</b>				
<b>INDIVIDUAL CONTRIBUTIONS</b>					
Colorado Gives Day	8,000.00				
Appeal letter	2,500.00				
Board contributions	2,000.00				
<b>Sub-total</b>	<b>12,500.00</b>				
<b>FUND DEVELOPMENT</b>					
Events (20 <sup>th</sup> Anniversary)	15,000.00				
Sponsorships	6,500.00				
<b>Sub-total</b>	<b>21,500.00</b>				
<b>MISCELLANEOUS INCOME</b>					
Miscellaneous donations	500.00				
<b>Sub-total</b>	<b>500.00</b>				
<b>SUBTOTAL</b>	<b>92,240.00</b>				
<b>In Kind Contributions</b>					
St. Mary's/Ryan White (testing	900.00				
HIV Tests (\$20 test/160 per yr	3,000.00				
Colorado Mountain College (t	280.00				
Eagle Care Clinic (testing)	-				
Colorado Mtn Medical (testing	50.00				
ERYC (YSB)	100.00				
Eagle County H & HS (CUIDA	350.00				
Eagle County H & HS (YSB)	350.00				
Vail Daily (testing)	4,400.00				

Docs On Call (Testing)	600.00				
Eagle County Sheriff's Office	100.00				
Tax Prep	200.00				
Accounting	1,000.00				
Website hosting	600.00				
Technology Support	300.00				
Condoms Donated	500.00				
<b>Sub-total</b>	12,730.00				
<b>TOTAL INCOME</b>	104,970.00				

<b>EXPENSE</b>					
<b>PROGRAM EXPENSE</b>					
<b>Youth Skills Building</b>					
Health Educator Presentation	12,500.00				
Health Educator Prep	3,000.00				
Mileage	2,600.00				
Program Management	6,000.00				
Program Overhead	1,900.00				
<b>Sub-total</b>	<b>26,000.00</b>				
<b>CUIDATE!</b>					
Health Educator Teaching	10,200.00				
Health Educator Prep	900.00				
Mileage for Educators	800.00				
Materials for Teaching	500.00				
Snacks for Participants	2,600.00				
Program Management	2,000.00				
Program Overhead	600.00				
<b>Sub-total</b>	<b>17,600.00</b>				
<b>TESTING</b>					
HIV Tests	700.00				
Testing Lodging/Mileage	50.00				
Testing Advertising	400.00				
Condom Distribution	400.00				
Program Management	1,690.00				
Program Overhead	400.00				
<b>Sub-total</b>	<b>3,640.00</b>				
<b>AWARENESS/OUTREACH</b>					
Materials (New Banner, Outreach Materials)					
Condom distribution					
Program Management					
Program Overhead					
<b>Sub-total</b>					
<b>FUND DEVELOPMENT EXPENSE</b>					
Events	7,000.00				
Appeal	400.00				
Materials (New Banner, Outreach)	1,400.00				
Grant	200.00				
Miscellaneous	50.00				
Program Management	16,350.00				
Program Overhead	1,150.00				
<b>Sub-total</b>	<b>26,550.00</b>				
<b>FINANCIAL SUPPORT</b>	<b>800.00</b>				
<b>OVERHEAD EXPENSE</b>					
<b>Director</b>					
Salary/Contract Labor	32,550.00				
Payroll Tax	2,180.00				
Wellness Benefit	1,000.00				
<b>Staff Development</b>	<b>1,375.00</b>				
<b>Branding</b>	<b>500.00</b>				
<b>Administrative Support</b>	<b>50.00</b>				
<b>Telephone</b>	<b>1,060.00</b>				
<b>Membership (s)</b>	<b>700.00</b>				
<b>Accounting</b>	<b>1,100.00</b>				
<b>Insurance</b>	<b>2,500.00</b>				
<b>Website</b>	<b>700.00</b>				
<b>Board Development</b>	<b>100.00</b>				
<b>Community Relations</b>	<b>700.00</b>				
<b>Office Supplies</b>	<b>400.00</b>				
<b>Postage</b>	<b>325.00</b>				
<b>Printing and Copies</b>	<b>500.00</b>				
<b>Mileage</b>	<b>1,800.00</b>				
<b>Miscellaneous</b>	<b>200.00</b>				
<b>G.O. total expense</b>	<b>47,740.00</b>				
<b>Allocation/credit for Dir.'s time</b>	<b>(26,040.00)</b>				
<b>Allocation/credit for in-direct</b>	<b>(4,050.00)</b>				

<b>Sub-total</b>	17,650.00				
<b>In Kind Expense</b>					
Testing	9,230.00				
CUIDATE	350.00				
Youth Skills Building	550.00				
Technology Support	300.00				
Accounting	1,200.00				
Website Support	600.00				
Condoms Donated	500.00				
<b>Sub-total</b>	12,730.00				
<b>TOTAL EXPENSE</b>	104,970.00				
<b>Income/(Expense)</b>	-				

June 13, 2016

Dear Town of Eagle,



THE RED RIBBON  
**PROJECT**  
OF EAGLE COUNTY  
**POSITIVE PREVENTION**

**Board Members**

Joel Barndt  
Barry Eckhaus  
Paula Palmateer  
Narda Reigel  
Roni Sheldon  
Monica White

**Executive Director**

Denise Kipp

**Events & Marketing**

Heather Hower

**Mailing Address**

P.O. Box 6058  
Avon, Colorado  
81620

970.827.5900

Every year Red Ribbon Project offers age-appropriate Youth Skills Building and Teen Pregnancy Prevention programs to children in Eagle County. Additionally, Red Ribbon Project offers free HIV testing to more than 150 people annually. In the 2015-16 school year, RRP increased the number of hours spent with children and served 3,210 children in Eagle Schools, helping create a positive, safe place for open dialog related to sensitive youth issues. We are able to offer our programs free of charge thanks to our generous community.

We strive to continue our focus on sexual health and well-being, which has contributed to significant declines in substance use, dating violence, self harm, and a decrease in teen births in the community. Red Ribbon Project is kindly asking for your support for the inaugural Eagle Music Festival, to be held Saturday, September 3 at The Dusty Boot in Eagle. This will be a family-friendly event meant to celebrate RRP, the children we work with and their families. We already have several bands excited to donate their musical talents and we anticipate a significant crowd to help fund future programs. The sponsorship opportunities are outlined below.

**Elite Sponsor: \$1,500.00**

- ⤴ Recognition as *Elite Sponsor with premium placement* of corporate logo in printed marketing materials (ads, posters, press releases & social media).
- ⤴ Corporate logo displayed in multimedia during the event.
- ⤴ Premium placement of up to 2 corporate banners at the event (banners provided by sponsor).
- ⤴ Logo placed on 1,000 mini-cupcakes distributed to various businesses in Eagle County on World AIDS Day (Dec. 1) for awareness campaign.
- ⤴ Logo displayed on RRP homepage [www.redribbonproject.org](http://www.redribbonproject.org) throughout the 2016-2017 school year.

**Preferred Sponsor: \$700**

- ⤴ Recognition as Preferred Sponsor with corporate logo in all printed marketing materials (ads, posters, press releases).
- ⤴ Corporate logo displayed in multimedia during event.
- ⤴ 1 corporate banner at the event (banner provided by sponsor).
- ⤴ Logo displayed on RRP homepage [www.redribbonproject.org](http://www.redribbonproject.org) throughout the 2015-16 school year.

**Select Sponsor: \$300 +**

- ⤴ Recognition as Select Sponsor, company noted on publicity and marketing pieces, including: ads, posters and press releases.
- ⤴ Company noted in multimedia during event

Thank you for your support and invite you to be part of the Eagle Music Festival on September 3.

Sincerely,

Denise Kipp  
Executive Director  
[denise@redribbonproject.org](mailto:denise@redribbonproject.org)

**SPONSORSHIP COMMITMENT FORM**

The Red Ribbon Project is a 501(c)3; your donation is tax deductible. Tax id: 84-1343263



**Yes, we want to be there and help support the RED RIBBON PROJECT**

**THE RED RIBBON PROJECT**  
OF EAGLE COUNTY  
**POSITIVE PREVENTION**

\_\_\_\_\_ I/my company is interested in becoming a \$1,500 ELITE SPONSOR

\_\_\_\_\_ I/my company is interested in becoming a \$700 PREFERRED SPONSOR

\_\_\_\_\_ I/my company is interested in becoming a \$300 + Select Sponsor

\_\_\_\_\_ I/my company is interested in becoming a Sponsor, contributing \$\_\_\_\_\_

**Please list me/us in promotional materials as follows:  
Logos must be received by early July to be included on printed materials**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

Signature: \_\_\_\_\_

**Who is your contact for logo/ad benefit information?**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Please email or mail this form to:  
Red Ribbon Project, Attn: Denise Kipp, PO Box 6058, Avon, Colorado 81620  
denise@redribbonproject.org**



## COMMUNITY REQUEST APPLICATION

Budget Year 2016-17 Date Request Submitted June 24, 2016

Name of Group or Organization: 26<sup>th</sup> Annual Wild West Day Eagle County Elementary Schools

Mailing Address: Wild West Day, P.O. Box 18065, Avon, CO 81620

Contact Name: Andrea Arnhold Phone: 970-366-8060

Is organization a registered non-profit?  Yes  No

Amount Requested \$1000

Describe request or event (Use an addendum as necessary) please see attached letter

**Provide, as an addendum, this year's budget and next year's proposed budget listing all revenue sources and expenses by program**

Budgeted Total income \$65,00 PLUS \$75,000 in contributions income (grants)

Budgeted Total Costs \$30,000

Budgeted Total Income \$35,000 (PLUS the \$75,000)

**What activity is the request primarily for?**

- Athletic or Recreation \_\_\_\_\_
- Environmental \_\_\_\_\_
- Cultural \_\_\_\_\_
- Educational YES!!
- Other \_\_\_\_\_

What age group(s) are primary beneficiaries? Elementary students, K-5

**How many participants?** There are approximately 4000 participants at Wild West Days and over 3300 students that will benefit from this fundraiser

**How many Eagle residents are participants?** 816 students are Eagle residents

PO Box 609 • 200 Broadway • Eagle, CO 81631 • [www.townofeagle.org](http://www.townofeagle.org) • [info@townofeagle.org](mailto:info@townofeagle.org) • 970-328-6354



26<sup>th</sup> Annual Wild West Day  
Eagle County Elementary Schools

Avon, Brush Creek, Eagle Valley, Edwards, Gypsum,  
June Creek Homestake Peak, Red Hill & Red Sandstone

May 5, 2016

Dear Friend of Public Education:

According to Great Education Colorado, **the State of Colorado pays \$1,397 less per pupil** than the national average.

I am contacting you to ask for your help. You may have heard of WILD WEST DAY, this year scheduled for Sunday, September 25, 2016. It is a fun day with music, crafts, games, horseback and wagon rides and, for the adults, a silent auction. It is held at 4-Eagle Ranch in Wolcott and benefits all nine of our Eagle County Public Elementary Schools.

This one day event and **one time solicitation** has grown incredibly in the past 25 years to become the largest locals' event with **4,000+** attendees in 2015. Because this one event benefits **nine schools** and **3,314 children**, Wild West Day is the most far-reaching local placement for your charitable donation.

**Colorado ranks 47 out of 50 states in funding of public education.** Therefore, the funds raised from this event are much needed and, of course, greatly appreciated. The money raised is dispersed equally through the individual schools' PTA/PTO. The money is used for much needed supplies, activities and programs such as: Literature Books, Art Programs, Music Programs, Theater Programs and Math Programs, Computers, Desks, P.E. Equipment, Author Visits and Enriching Field Trips.

We hope you, the business community, will regard Wild West Day as a valuable placement for your charitable, tax-deductible donation. **Our sponsorship information is included on the back of this letter** for your review.

**We ask for your donation by August 1, 2016** to help all of our kids. Know that your kindness benefits not only the children of Eagle County, but the entire Eagle County community and our future.

Sincerely,

Amy Lewis, Solicitation Chairperson  
2016 Wild West Day  
Homestake Peak School  
(970) 376-2336



# WILD WEST DAY 2016

Presented by Avon, Brush Creek, Eagle, Edwards, Gypsum, June Creek, Homestake Peak, Red Hill, & Red Sandstone Elementary School PTA/PTO's in partnership with The Education Foundation of Eagle County.



## INVEST IN AN ADVERTISING & PUBLIC RELATIONS SPONSORSHIP

Wild West Day is a cooperative fund raising event to benefit the 3000+ students in the nine Eagle Valley Elementary Schools. The money is divided among the schools and is allocated for the enhancement of education for our youth.

Contact Name: _____	Phone: _____
Business Name: _____	Fax: _____
Address: _____	Email: _____
_____	Website: _____
Signature: _____	Date: _____

### CASH DONATIONS

- \$10,000 Exclusive Presenting Sponsor:** Includes your company name/logo on our website with a link to your website, your logo on all advertising materials, your logo on 4 WWD banners displayed throughout Eagle County, up to 10 of your company banners displayed at the event, **company name mentioned on radio and TV ads**, PA's at the event, and 10 admission tickets.
- \$7,500 Premier Presenting Sponsor:** Includes your company name/logo on our websites with a link to your website, your logo on all advertising materials, your logo on 4 banners displayed throughout Eagle County, 5 of your banners displayed at the event, PA's at the event and 10 admission tickets.
- \$5,000 Cowboy Sponsor:** Includes your company name/logo on our website with a link to your website, your logo on Advertising materials, your logo on 2 WWD banners displayed throughout Eagle County, 4 of your banners displayed at the event, PA's at the event and 10 admission tickets.
- \$2,500 Star Contributor:** Includes your company name on our website with a link to your website, your name/logo on advertising materials, 3 of your company banners displayed at the event, PA's at the event and 10 admission tickets.
- \$1,000 Silver Star:** Includes your company name on our website, listing on Advertising materials, 2 of your company banners displayed at the event and 5 admission tickets.
- \$500 Silver Spur:** Includes your company name on event poster, newspaper thank you ad, 1 banner & 5 admission tickets.
- \$300 Silver Dollar:** Includes your company name on event poster, newspaper thank you ad and 2 admission tickets.
- \$150+ Silver Buckle:** (\$150 - \$299) Please indicate amount \$ \_\_\_\_\_ Includes your business listing on event poster.
- \$1-149 Friend:** (Cash donation up to \$149) Please indicate amount \$ \_\_\_\_\_

### GIFT DONATIONS (for silent/online auctions and operations)

**Packages below include your business and donation listing in our Online Auction (if received by 8/1)**

- \$5,000 Golden Horseshoe:** Includes your company name/logo on our website and auction site with a link to your website, your logo on all Advertising materials, your logo on 4 banners displayed throughout Eagle County, 5 of your company banners displayed at the event, PA's at the event and 10 admission tickets.
- \$3,000 Diamond Horseshoe:** Includes your company name on our website with a link to your website, listing on advertising materials, 4 of your company banners displayed at the event, PA's at the event and 10 admission tickets.
- \$1,500 Emerald Horseshoe:** Includes your company name on our website, listing on advertising materials, 3 of your company banners displayed at event and 5 admission tickets.
- \$750 Ruby Horseshoe:** Includes listing on event poster, newspaper thank you ad, 2 banners & 5 admission tickets.
- \$500 Sapphire Horseshoe:** Includes listing on event poster and newspaper thank you ad, 1 banner and 2 admission tickets.
- \$300 Turquoise Horseshoe:** Includes listing on event poster and newspaper thank you ad.
- \$1-299 Friend:** (Gift donation up to \$299)

**Thank you for your support!!**

Please specify the gift you wish to donate below (be as accurate as possible regarding the value):

Value: \$ \_\_\_\_\_ Description: \_\_\_\_\_

If you are **donating a gift**, we would like to pick it up by **August 1, 2016** to be included in the online auction.

If you are **donating cash**, please make check payable to **Wild West Day** and return with this form to reserve your selected Public Relations Package above to:

**Wild West Day PO Box 18065 Avon, CO 81620**

For information call **Amy Lewis, Solicitation Chair (970) 376-2336** or email: [WWDsolicitations@gmail.com](mailto:WWDsolicitations@gmail.com)

Please check here if you would like to donate your free admission tickets to a needy family



Date: June 28, 2016  
To: Eagle Town Board of Trustees  
From: Jenny Rakow, Town Clerk  
Re: Color Coffee Roasters LLC – New Beer and Wine Liquor License  
Applicant: Charles Gundlach, Barry Gassman and Clark Gundlach

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APPLICATION DETAILS: Color Coffee Roasters LLC has applied for a new Beer and Wine Liquor License at 717B Sylvan Lake Road.

- A completed application was received on May 25, 2016.
- A Notice of Findings was completed regarding the location being eligible for a liquor license.
- This premises was previously petitioned and licensed (7 Hermits Brewing Company LLC), therefore a neighborhood petition was not required.
- The premises were posted on May 26, 2016 for a minimum of ten days preceding the public hearing.
- The notice of public hearing was published on May 28, 2016 in the Vail Daily.
- The character of the applicants have been investigated by the CBI with one incident for the Board to consider from 11 years ago. Charlie Gundlach has provided a letter describing the incident and outcome. The record does show the case was resolved and Satisfactory Discharge was obtained in October 2005. Mr. Gundlach is prepared to answer any questions.
- All appropriate fees have been collected and the application has been sent to the Colorado Department of Revenue Liquor Enforcement Office for concurrent review.

STATUTORY CONSIDERATIONS: As the local licensing authority, the Board shall consider approval or denial of this application based upon to the needs of the neighborhood, the desires of the adult inhabitants, and character of the applicant. The licensing authority shall consider the effect on competition of the granting or disapproval of additional licenses and no application for an additional license that would have the effect of restraining competition shall be approved.

***STAFF RECOMMENDATION: Based upon all the foregoing considerations and the Board's determination regarding the character of Charlie Gundlach being satisfactorily met, staff recommends approval of this license, pending State Concurrent Review Approval and signing the Order GRANTING a license at this location.***

## Colorado Liquor Retail License Application

New License   
  New-Concurrent   
  Transfer of Ownership

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor)
- Local License Fee \$ \_\_\_\_\_

1. Applicant is applying as a/an

<input type="checkbox"/> Corporation	<input type="checkbox"/> Individual
<input type="checkbox"/> Partnership (includes Limited Liability and Husband and Wife Partnerships)	<input checked="" type="checkbox"/> Limited Liability Company
	<input type="checkbox"/> Association or Other

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

Color Coffee Roasters LLC	FEIN Number 81-2382323
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2a. Trade Name of Establishment (DBA)	State Sales Tax Number 32017447	Business Telephone 802-324-7985
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3. Address of Premises (specify exact location of premises, include suite/unit numbers)  
 717B Sylvan Lake Road

City Eagle	County Eagle	State CO	ZIP Code 81631
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4. Mailing Address (Number and Street) PO Box 4806	City or Town Eagle	State CO	ZIP Code 81631
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5. Email Address  
 Charlie@colorroasters.com

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

Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date
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Section A Nonrefundable Application Fees	Section B (Cont.) Liquor License Fees
<input type="checkbox"/> Application Fee for New License..... \$ 600.00 <input checked="" type="checkbox"/> Application Fee for New License w/Concurrent Review .... \$ 700.00 <input type="checkbox"/> Application Fee for Transfer..... \$ 600.00	<input type="checkbox"/> Liquor Licensed Drugstore (City)..... \$227.50 <input type="checkbox"/> Liquor Licensed Drugstore (County) ..... \$312.50 <input type="checkbox"/> Manager Registration - H & R ..... \$ 75.00 <input type="checkbox"/> Manager Registration - Tavern ..... \$ 75.00 <input type="checkbox"/> Master File Location Fee ..... \$ 25.00 X _____ Total _____ <input type="checkbox"/> Master File Background ..... \$250.00 X _____ Total _____

Section B Liquor License Fees
<input type="checkbox"/> Add Optional Premises to H & R.....\$100.00 X _____ Total _____ <input type="checkbox"/> Add Related Facility to Resort Complex ....\$ 75.00 X _____ Total _____ <input type="checkbox"/> Arts License (City) ..... \$308.75 <input type="checkbox"/> Arts License (County) ..... \$308.75 <input checked="" type="checkbox"/> Beer and Wine License (City)..... \$351.25 <input type="checkbox"/> Beer and Wine License (County) ..... \$436.25 <input type="checkbox"/> Brew Pub License (City) ..... \$750.00 <input type="checkbox"/> Brew Pub License (County)..... \$750.00 <input type="checkbox"/> Club License (City) ..... \$308.75 <input type="checkbox"/> Club License (County) ..... \$308.75 <input type="checkbox"/> Distillery Pub License (City)..... \$750.00 <input type="checkbox"/> Distillery Pub License (County) ..... \$750.00 <input type="checkbox"/> Hotel and Restaurant License (City) ..... \$500.00 <input type="checkbox"/> Hotel and Restaurant License (County) ..... \$500.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City) ..... \$600.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises(County)..... \$600.00
<input type="checkbox"/> Optional Premises License (City)..... \$500.00 <input type="checkbox"/> Optional Premises License (County) ..... \$500.00 <input type="checkbox"/> Racetrack License (City)..... \$500.00 <input type="checkbox"/> Racetrack License (County) ..... \$500.00 <input type="checkbox"/> Resort Complex License (City)..... \$500.00 <input type="checkbox"/> Resort Complex License (County) ..... \$500.00 <input type="checkbox"/> Retail Gaming Tavern License (City) ..... \$500.00 <input type="checkbox"/> Retail Gaming Tavern License (County) ..... \$500.00 <input type="checkbox"/> Retail Liquor Store License (City)..... \$227.50 <input type="checkbox"/> Retail Liquor Store License (County) ..... \$312.50 <input type="checkbox"/> Tavern License (City) ..... \$500.00 <input type="checkbox"/> Tavern License (County) ..... \$500.00 <input type="checkbox"/> Vintners Restaurant License (City) ..... \$750.00 <input type="checkbox"/> Vintners Restaurant License (County) ..... \$750.00

**Questions? Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information**

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

**Liability Information**

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total \$
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## Application Documents Checklist and Worksheet

**Instructions:** This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable.

**Questions? Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information**

Items submitted, please check all appropriate boxes completed or documents submitted	
<b>I.</b>	<b>Applicant information</b> <input checked="" type="checkbox"/> A. Applicant/Licensee identified <input checked="" type="checkbox"/> B. State sales tax license number listed or applied for at time of application <input type="checkbox"/> C. License type or other transaction identified <input type="checkbox"/> D. Return originals to local authority <input type="checkbox"/> E. Additional information may be required by the local licensing authority
<b>II.</b>	<b>Diagram of the premises</b> <input checked="" type="checkbox"/> A. No larger than 8 1/2" X 11" <input type="checkbox"/> B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.) <input type="checkbox"/> C. Separate diagram for each floor (if multiple levels) <input type="checkbox"/> D. Kitchen - identified if Hotel and Restaurant <input type="checkbox"/> E. Bold/Outlined Licensed Premises
<b>III.</b>	<b>Proof of property possession (One Year Needed)</b> <input type="checkbox"/> A. Deed in name of the Applicant (or) (matching question #2) date stamped / filed with County Clerk <input checked="" type="checkbox"/> B. Lease in the name of the Applicant (or) (matching question #2) <input type="checkbox"/> C. Lease Assignment in the name of the Applicant with proper consent from the Landlord and acceptance by the Applicant <input type="checkbox"/> D. Other Agreement if not deed or lease. (matching question #2) (Attach prior lease to show right to assumption)
<b>IV.</b>	<b>Background information and financial documents</b> <input checked="" type="checkbox"/> A. Individual History Records(s) (Form DR 8404-I) <input checked="" type="checkbox"/> B. Fingerprints taken and submitted to local authority (State Authority for Master File applicants) <input type="checkbox"/> C. Purchase agreement, stock transfer agreement, and or authorization to transfer license <input checked="" type="checkbox"/> D. List of all notes and loans (Copies to also be attached)
<b>V.</b>	<b>Sole proprietor / husband and wife partnership</b> <input type="checkbox"/> A. Form DR4679 <input type="checkbox"/> B. Copy of State issued Driver's License or Colorado Identification Card for each applicant
<b>VI.</b>	<b>Corporate applicant information (if applicable)</b> <input type="checkbox"/> A. Certificate of Incorporation dated stamped by the Secretary of State <input type="checkbox"/> B. Certificate of Good Standing <input type="checkbox"/> C. Certificate of Authorization if foreign corporation <input type="checkbox"/> D. List of officers, directors and stockholders of Applying Corporation (If wholly owned, designate a minimum of one person as Principal Officer of Parent)
<b>VII.</b>	<b>Partnership applicant information (if applicable)</b> <input type="checkbox"/> A. Partnership Agreement (general or limited). Not needed if husband and wife <input type="checkbox"/> B. Certificate of Good Standing (If formed after 2009)
<b>VIII.</b>	<b>Limited Liability Company applicant information (if applicable)</b> <input checked="" type="checkbox"/> A. Copy of articles of organization (date stamped by Colorado Secretary of State's Office) <input type="checkbox"/> B. Certificate of Good Standing <input checked="" type="checkbox"/> C. Copy of operating agreement <input type="checkbox"/> D. Certificate of Authority if foreign company
<b>IX.</b>	<b>Manager registration for hotel and restaurant, tavern licenses when included with this application</b> <input type="checkbox"/> A. \$75.00 fee <input type="checkbox"/> B. Individual History Record (DR 8404-I) <input type="checkbox"/> C. If owner is managing, no fee required

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

8. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state):

(a) Been denied an alcohol beverage license?

(b) Had an alcohol beverage license suspended or revoked?

(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?

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

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

10. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?

Waiver by local ordinance?  or  
Other:

11. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.

12. Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?

Ownership  Lease  Other (Explain in Detail) \_\_\_\_\_

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

Landlord Brush Creek Market LLC	Tenant Color Coffee Roasters LLC	Expires May 31, 2018
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b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 13.

c. Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

13. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.

Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
See Attachment	Brush Creek Market LLC		76-0794281	6%
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage

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

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

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

15. Liquor Licensed Drug Store applicants, answer the following:  
(a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy?

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

16. Club Liquor License applicants answer the following: Attach a copy of applicable documentation

(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?

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

(c) How long has the club been incorporated?

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

17. Brew-Pub License or Vintner Restaurant Applicants answer the following:  
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)

18a. For all on-premises applicants.  
(If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an individual History Record - DR 8404-I)

Last Name of Manager	First Name of Manager	Date of Birth
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18b. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.

Name	Type of License	Account Number
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19. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?

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

20. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the Applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and submit fingerprint cards to the local licensing authority.

Name	Home Address, City & State	DOB	Position	% Owned
See attachment				
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned
Name	Home Address, City & State	DOB	Position	% Owned

\*\* If Applicant is owned 100% by a parent company, please list the designated principal officer on question #20  
 \*\* Corporations - The President, Vice-President, Secretary and Treasurer must be accounted for on question #20 (Include ownership percentage if applicable)  
 \*\* If total ownership percentage disclosed here does not total 100%, applicant must check this box:  
 Applicant affirms that no individual other than these disclosed herein, owns 10% or more of the applicant, and does not have ownership in a prohibited liquor license pursuant to Title 47 or 48, C.R.S.

**Oath Of Applicant**

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

Authorized Signature <i>Barry Gassman</i>	Printed Name and Title Barry GASSMAN, Manager	Date 5/25/16
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**Report and Approval of Local Licensing Authority (City/County)**

Date application filed with local authority May 25, 2016	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1) C.R.S.) June 28, 2016
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The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) has:

- Been fingerprinted
- Been subject to background investigation, including NCIC/CCIC check for outstanding warrants

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

(Check One)

- Date of inspection or anticipated date \_\_\_\_\_
- Will conduct inspection upon approval of state licensing authority

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S.

**Therefore, this application is approved.**

Local Licensing Authority for TOWN of Eagle		Telephone Number 9703289623	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County
Signature <i>Jenny Rakow</i>	Print Jenny Rakow	Title Town Clerk	Date 5/25/16
Signature (attest) <i>Angela Haskins</i>	Print Angela Haskins	Title Admin Tech	Date 5/25/16

ATTACHMENT TO  
COLORADO LIQUOR LICENSE RETAIL APPLICATION

Part IV, D. Color Coffee Roasters LLC has issued a note in the principal amount of \$25,000 to Clyde W. Gundlach. A copy of the Note is attached to this Attachment.

QUESTION 12a.

Commercial Lease between Brush Creek Market LLC, as Landlord, and Color Coffee Roasters LLC ("Color Roasters"), as Tenant. Assuming Color Roasters takes position of the leased Premises on June 1, 2016, the initial term of the Lease will expire on May 31, 2018. The relevant provisions of the Lease regarding Lease expiration are as follows:

1.9 Initial Term (Section 2.7): 2 years.

1.10 Option Period (Section 2.8): 1 Option Period of 3 years.

2.5 Term. The Term includes the Initial Term and any Option Period, as defined below.

2.6 Initial Term. The Initial Term shall begin on (i) June 1, 2016 or (ii) if later than June 1, 2016, the date that Landlord delivers possession of the Premises to Tenant, following the existing tenant's vacation of the Premises, and with all equipment and furniture removed (except the items listed on Schedule 1 attached hereto) (the "Commencement Date"). In the event the Premises are ready for occupancy, as determined by Landlord, prior to June 1, 2016, Landlord will allow Tenant to take early occupancy by giving 10 days prior written notice, and thereafter the date of Tenant's occupancy of the Premises as stated in Landlord's notice shall be the Commencement Date.

The Initial Term shall end the last day of the second Lease Year (hereinafter defined).

2.7 Lease Year. The term Lease Year is defined as follows:

2.7.1 For the first Lease Year, the period beginning on the Commencement Date and ending 12 months later, except that if the Commencement Date is other than the first day of a calendar month, the first Lease Year shall end 12 months from the first day of the calendar month next succeeding the Commencement Date.

2.7.2 For Lease Years after the first Lease Year, the 12-month period beginning the day after the expiration of the preceding Lease Year.

If the Term ends before the last day of a Lease Year, the final Lease Year shall be deemed to end when the Term ends.

ATTACHMENT TO  
COLORADO LIQUOR LICENSE RETAIL APPLICATION

2.8 Option Period. Tenant shall have the option to extend this Lease beyond the Initial Term for one (1) period of three (3) years, commencing the day immediately following the expiration of the Initial Term (if exercised, the "Option Period"). Tenant shall exercise this option by giving written notice to Landlord at least six months before the end of the Initial Term (the "Option Notice").

Tenant's right to extend the Term for the Option Period is subject to the following requirement: At the time Tenant notifies Landlord of Tenant's exercise of the option and at the commencement of the Option Period, an event of default, as defined in Section 26 below, shall not have occurred and be continuing.

During any Option Period, all of the terms, covenants and conditions of this Lease shall remain in full force and effect, except that (1) Tenant shall have no right to any further extension of the Term beyond the Option Period provided above, and (2) the Base Rent shall be set as provided in Section \_\_\_ below.

QUESTION 13

Brush Creek Market LLC, a Delaware limited liability company, is the Landlord of the retail premises that Applicant is leasing. As Landlord it will receive as rent after the first six months of the Lease 6% of gross sales generated by the Applicant on the Premises:

A copy of the Lease is attached. The relevant rent provision may be found in Section 1.11.1 of the Lease.

Landlord's Taxpayer ID will be provided upon request.

QUESTION 20

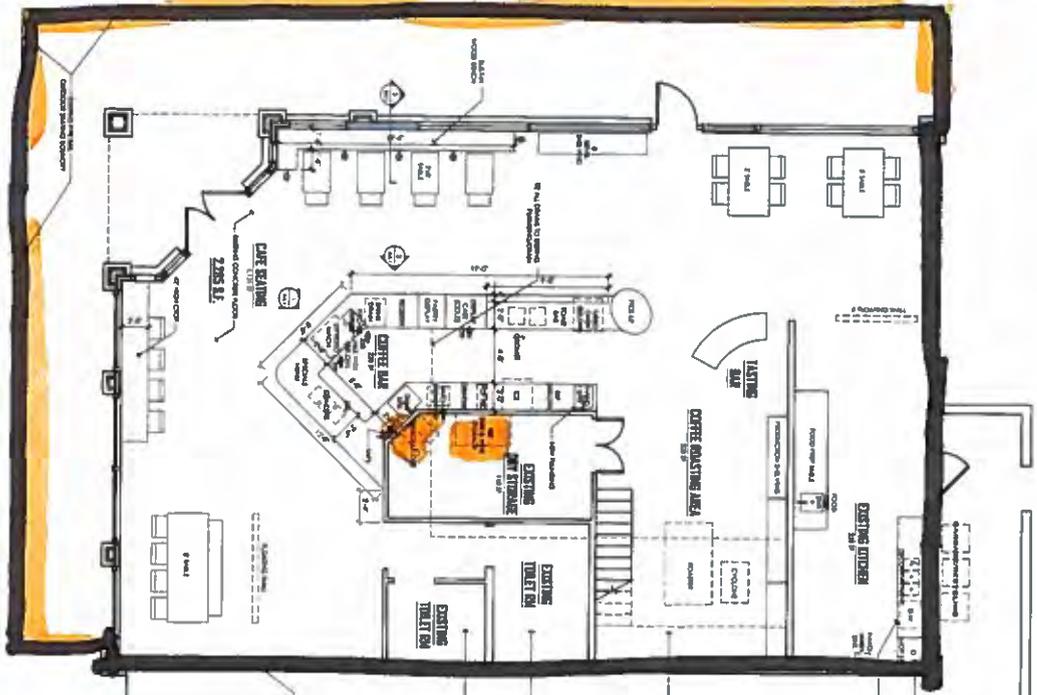
Applicant is a Colorado limited liability company ("the "Company"). The Managers of the Company are:

- (i) Clark Gundlach, 18 Poplar Place, Eagle CO 81631. His DOB is August 2, 1954 [REDACTED] 50%  
*Position is Founding Member*
- (ii) Barry Gassman, 1005 Cordillera Way Edwards, CO 81632. His DOB is September 6, 1946 and his social security number is [REDACTED] 50%  
*Position is Founding Member*
- (iii) Charlie Gundlach, 18 Poplar Place, Eagle, CO 81631. His DOB is May 2, 1987 and his social security number is [REDACTED]  
*Manager 0% owned*

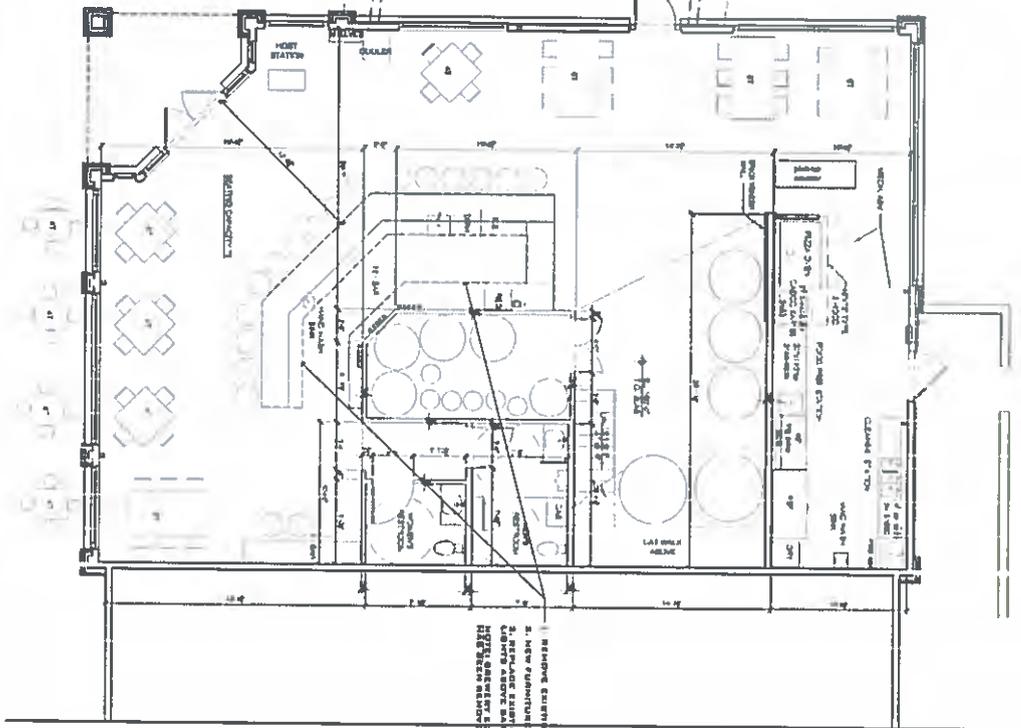
The membership interests (equity) in the Company will be owned as follows:

ATTACHMENT TO  
COLORADO LIQUOR LICENSE RETAIL APPLICATION

Color Holdings LLC is a Colorado limited liability company, the membership interests of which are owned equally by Barry Gasman and Clark Gundlach. The Managers of Color Holdings are Barry Gassman and Clark Gundlach. Color Holdings LLC owns 100% of the issued and outstanding Units of membership interest of the Company.



2 NEW FLOOR PLAN  
SCALE: 1/4" = 1'-0"



1 EXISTING FLOOR PLAN  
SCALE: 1/4" = 1'-0"

1. REMOVE SERVICE BAR  
2. NEW FURNITURE LAYOUT  
3. REPAIR AND REFINISH EXISTING FLOOR  
4. REPAIR AND REFINISH EXISTING WALLS  
5. REPAIR AND REFINISH EXISTING CEILING  
6. REPAIR AND REFINISH EXISTING LIGHT FIXTURES

A2  
FLOOR PLAN

ISSUE: PERMIT/NOI SET  
REVISED

DATE: 5-13-2016  
5-19-2016

**COFFEE SHOP  
TENANT FINISH**  
717 BYLVAN LAKE ROAD  
EAGLE RANCH  
EAGLE, CO 81631

**Maggie T. Fitzgerald, AIA**  
architect  
P.O. Box 1259 Eagle, Colorado 81631  
970-445-9488



**COMMERCIAL LEASE  
BETWEEN  
BRUSH CREEK MARKET LLC  
AND**

**Color Coffee Roasters LLC**

Date of Execution: April 19, 2016

Commercial Premises: Retail Space #B1-01 717B Sylvan Lake Road (Building B-1)

**COMMERCIAL LEASE**

This Lease, dated as of April 14, 2016, is executed by Landlord and Tenant named below, in consideration of the payments and agreements made in this Lease.

1. **Basic Lease Terms.** The following basic provisions and definitions are part of this Lease.

1.1 **Landlord:** Brush Creek Market LLC, a Delaware limited liability company.

Landlord's Address:  
126 Riverfront Lane, 5<sup>th</sup> Floor  
P.O. Box 7270  
Avon, Colorado 81620  
Telephone: (970) 949-6204  
Telecopy: (970) 845-7250  
Email: [wjwright@wrightandcompanyinc.com](mailto:wjwright@wrightandcompanyinc.com)  
[cglasson@wrightandcompanyinc.com](mailto:cglasson@wrightandcompanyinc.com)

1.2 **Tenant:** Color Coffee Roasters LLC, a Colorado limited liability company

**Tenant's Address:** P.O. Box 4505  
Eagle, CO 81631  
  
Telephone: 516-603-2598  
Email: [clarkgundlach@gmail.com](mailto:clarkgundlach@gmail.com)

1.3 **Building:** Building B-1  
717B Sylvan Lake Road  
Eagle, Colorado 81631

1.4 **Premises:** The individual air space unit of commercial space labeled "Retail Space 01" Building B1 depicted on the space plan attached hereto as Exhibit A. The area denoted on Exhibit A as "APPROXIMATE SPACE FOR OUTDOOR SEATING" is included within the Premises for all purposes, except that the area of that space is not included in the Rentable Area of the Premises. For purposes of clarity, "Premises" does not include any personal property, equipment or furnishings owned by Tenant and located on or about the Premises.

1.5 **Property:** The parcel on which the Project is located, legally described as Lot 3A, Eagle Ranch Subdivision, Filing No. 19, according to the plat recorded October 20, 2004, under Reception No. 895120, County of Eagle, Colorado.

1.6 **Rentable Area of the Premises (Section 2.4):** 2,297 sq. ft.

1.7 **Rentable Area of the Building (Section 2.4):** 11,649 sq. ft.

1.8 **Tenant's Share (Section 3.2.1):** 19.720 %

1.9 **Initial Term (Section 2.7):** 2 years.

1.10 **Option Period (Section 2.8):** 1 Option Period of 3 years.

1.11 Rent during Term (Section 2.10): From and after the Commencement Date set forth in Section 2.6, Tenant shall pay Landlord, as Rent, for the Premises, the fixed rates set forth below. Notwithstanding the foregoing, during the first 6 months of the Initial Term, Tenant shall have a "free rent" period and shall not be obligated to make payments of Base Rent or Operating Costs and Taxes.

1.11.1 First and Second Lease Years. During the first and second Lease Years, subject to Section 1.11 above, Tenant shall pay to Landlord Percentage Rent in the amount of six percent (6%) of Tenant's monthly Gross Sales derived from Tenant's business at the Premises, payable each month, all as provided in Section 2 herein below. The Percentage Rent paid in the first and second Lease years shall be gross and the Tenant shall not be obligated to pay any amounts on account of Taxes or Operating Costs in addition to Percentage Rent in the first and second Lease Years.

1.11.2 Option Period. In the event Tenant's exercises its right to extend the Term for the Option Period, then Tenant shall be responsible for Base Rent, Taxes and Operating Costs, and Percentage Rent, all as more particularly provided in Section 2.10.2 hereinbelow.

1.12 Hours of Operation (Section 7.2): 6:00 a.m. to 6:00 p.m. Monday through Sunday or such other hours as may be agreed upon by Landlord and Tenant.

1.13 Permitted Use (Section 7.1): (i) the sale of coffee, whole/ground coffee beans, espresso based drinks, brewed tea and/or other coffee-based beverages, (ii) the roasting of raw coffee on the Premises, (iii) the sale of beer and other beverages, if and only if Tenant shall obtain and maintain a proper and valid liquor license, (iv) the sale of food and household appliances and equipment related to the uses described in 1.13(i) above, and (v) subject to the prior written consent of the Landlord (which shall not be unreasonably withheld, conditioned or delayed), any other lawful use that does not conflict with the primary use of another tenant operating its business, or violate an exclusive use restriction then in effect, at the Building or within Eagle Ranch.

1.14 Security Deposit (Section 25): \$3,500.00 payable upon full execution of this Lease.

1.15 Maximum Rate: The annual rate of interest equal to lesser of (i) 10%, or (ii) the maximum rate of interest allowed by law.

1.16 Project: The project which includes the Building and common area. A Project association may be established and recorded under the Declaration for Building A & B1 (as amended from time to time the Project Declaration) and map (as amended from time to time, the Project Map) in the real property records of Eagle County, Colorado.

1.17 Project Association: The owner's association for the Project that may be established upon submitting the Project to a separate planned community regime by recording the Project Declaration.

1.18 Project Documents: The Project Declaration and the Project Map; and the articles of incorporation, bylaws and the rules and regulations of the Project Association, if any, each as amended from time to time. Any and all references in this Lease to the Project, the Project Association and/or the Project Documents shall be deemed to reference those terms if and only if the Project is created and the Project Association is formed, and unless and until that time, such references shall be of no force and effect under this Lease.

1.19 Commercial Center Declaration: The Declaration for Eagle Ranch Commercial Center, recorded November 13, 2000 at Reception No. 743935, County of Eagle, Colorado, as amended from time to time.

1.20 Commercial Center Association: The Eagle Ranch Commercial Center Association, a Colorado Association, a nonprofit corporation established to administer the Eagle Ranch Commercial Center.

1.21 Commercial Center Documents: The Commercial Center Declaration and any Commercial Center Map (as defined in the Commercial Center Declaration), as well as the articles of incorporation, bylaws and the rules and regulations of the Commercial Center Association, each as amended from time to time.

1.22 Eagle Ranch: The development known as Eagle Ranch, established by the Eagle Ranch Declaration.

1.23 Eagle Ranch Declaration: The Declaration for Eagle Ranch recorded June 23, 1999 under Reception No. 700815, County of Eagle, Colorado, as amended from time to time.

1.24 Eagle Ranch Association: The Eagle Ranch Association, a Colorado nonprofit corporation established to administer Eagle Ranch.

1.25 Eagle Ranch Documents: The Eagle Ranch Declaration and all other governing documents of the Eagle Ranch Association, as well as the articles of incorporation, bylaws and the rules and regulations of the Eagle Ranch Association, each as amended from time to time.

1.26 Common Areas: The areas and improvements made available for common use of the tenants in the Building and the Property, whether such areas are furnished (i) directly by Landlord and contained within the Building, or (ii) by virtue of the Project Documents, which specify General Common Elements for the use and benefit of occupants of commercial units in the Building, or (iii) by virtue of the Commercial Center Declaration, or (iv) by virtue of the Eagle Ranch Declaration. The Common Areas include (by way of example and not limitation) private pedestrian walkways and vehicle driveways surrounding the Building, Building loading areas, service areas, delivery areas and trash removal areas.

## 2. Lease of Premises.

2.1 Lease. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord. The Premises do not include, and Landlord reserves from the grant of this Lease, the exterior walls of the Premises, and the pipes, ducts, conduits, wires, fixtures and equipment above any suspended ceiling in the Premises, and the structural elements that serve the Premises or the Building. This reservation by Landlord includes the right of Landlord or the Project Association to install, inspect, maintain, use, repair and replace those components and to enter the Premises to do so as more fully detailed in Section 12 below, subject to the limitations in this Lease below.

Landlord also grants to Tenant and its servants, employees, contractors and agents (together, Tenant's Personnel) and Tenant's customers and invitees the nonexclusive right to use the Common Areas, in common with other owners, tenants and occupants of the Building entitled to use the Common Areas, subject to the terms of the Eagle Ranch Declaration, the Commercial Center Declaration and the Project Declaration.

The Lease shall not operate to transfer to Tenant any voting rights or other rights held by Landlord, as owner of the commercial unit in which the Premises are located, under the Eagle Ranch Documents, the Commercial Center Documents and the Project Documents.

Tenant hereby agrees and acknowledges that Landlord has made no representations or warranties and assumes no liability regarding the existence, condition or quantity of the Personal Property. Tenant further agrees and acknowledges that Tenant is solely responsible for its own due diligence to confirm the existence, condition and quantity of all of the Personal Property. An Inventory of Equipment and Furniture owned by Landlord is hereby attached as Schedule 1 (the "FF&E"). The FF&E is also leased to Tenant hereunder, without representation or warranty by Landlord whatsoever, and shall be considered part of the Premises for the purposes of this Lease.

Outside Seating. At no additional rental charge to Tenant, Landlord will permit Tenant outdoor seating within the area identified on Exhibit A as "APPROXIMATE SPACE FOR OUTDOOR SEATING", with umbrellas, and as permitted by any governmental or quasi-governmental authority having jurisdiction over the Building and as permitted by the Commercial Center Association. Tenant shall be responsible to obtain approval of the outside seating area from the Commercial Center Association, and for compliance with any conditions or terms of such approval if granted. Tenant shall be responsible to keep any outside seating area clean and in good order, and to remove snow from same. Tenant shall not be permitted to use the outside seating area for any other purpose than outdoor seating for Tenant's customers. If Tenant shall seek a liquor license, Tenant shall include the outside seating area within the Premises for purposes of the liquor license approval.

2.2 Project. The Building is located in Eagle Ranch. All of Eagle Ranch, including the Property, is administered by the Eagle Ranch Association, according to the Eagle Ranch Documents. The Property is also a part of the Eagle Ranch Commercial Center which is administered by the Commercial Center Association according to the Commercial Center Documents.

2.3 Reconfiguration of Building. As long as Landlord is owner of the entire Building or any commercial space within the Building, Landlord reserves the right to reconfigure the Building or Landlord's commercial space, as applicable, from time to time, on the condition that any such change shall not materially and adversely affect the access to or visibility of the Premises. If the Project is submitted to a Project Declaration as described in Section 1.17, such reconfiguration shall be in accordance with the Project Documents, and the rights of Landlord as the owner of commercial space within the Building.

The Eagle Ranch Documents, the Commercial Center Documents, and the Project Documents provide procedures for the review and approval of all plans affecting the exterior appearance of the Building and other improvements in Eagle Ranch.

2.4 Basic Rentable Area. For all purposes under this Lease, Basic Rentable Area of the Premises is defined and measured in accordance with the Building Owners and Managers Association International Standard Method for Measuring Floor Space in Office Buildings, ANSI/BOMA Z65.1-1996 (the "BOMA Standard"). A copy of the BOMA Standard is available by calling 1-800-426-6292. BOMA website is <http://www.boma.org>. The Rentable Area of the Premises and the Rentable Area of the Building are set forth in Sections 1.6 and 1.7. The determination by Landlord's Architect of the Rentable Area of the Premises, the Rentable Area of the Building (as the Building may be reconfigured from time to time), and the Common Areas shall be conclusive and binding on the parties. Tenant acknowledges that the BOMA Standard is not the only method for calculating square footage. For example, another method, typically used in condominium maps and recorded condominium declarations, varies from the BOMA Standard and, consequently, square footage measurements identified in the Project Documents will be different from measurements referenced in this Lease.

2.5 Term. The Term includes the Initial Term and any Option Period, as defined below.

2.6 Initial Term. The Initial Term shall begin on (i) June 1, 2016 or (ii) if later than June 1, 2016, the date that Landlord delivers possession of the Premises to Tenant, following the existing tenant's vacation of the Premises, and with all equipment and furniture removed (except the items listed on Schedule 1 attached hereto) (the "Commencement Date"). In the event the Premises are ready for occupancy, as determined by Landlord, prior to June 1, 2016, Landlord will allow Tenant to take early occupancy by giving 10 days prior written notice, and thereafter the date of Tenant's occupancy of the Premises as stated in Landlord's notice shall be the Commencement Date.

The Initial Term shall end the last day of the second Lease Year (hereinafter defined).

2.7 Lease Year. The term Lease Year is defined as follows:

2.7.1 For the first Lease Year, the period beginning on the Commencement Date and ending 12 months later, except that if the Commencement Date is other than the first day of a calendar month, the first Lease Year shall end 12 months from the first day of the calendar month next succeeding the Commencement Date.

2.7.2 For Lease Years after the first Lease Year, the 12-month period beginning the day after the expiration of the preceding Lease Year.

If the Term ends before the last day of a Lease Year, the final Lease Year shall be deemed to end when the Term ends.

2.8 Option Period. Tenant shall have the option to extend this Lease beyond the Initial Term for one (1) period of three (3) years, commencing the day immediately following the expiration of the Initial Term (if exercised, the "Option Period"). Tenant shall exercise this option by giving written notice to Landlord at least six months before the end of the Initial Term (the "Option Notice").

Tenant's right to extend the Term for the Option Period is subject to the following requirement: At the time Tenant notifies Landlord of Tenant's exercise of the option and at the commencement of the Option Period, an event of default, as defined in Section 26 below, shall not have occurred and be continuing.

During any Option Period, all of the terms, covenants and conditions of this Lease shall remain in full force and effect, except that (1) Tenant shall have no right to any further extension of the Term beyond the Option Period provided above, and (2) the Base Rent shall be set as provided in Section \_\_\_ below.

2.9 Opening Deadline. Tenant agrees that it shall be open for business in the Premises on or before seventy (70) calendar days after the Commencement Date (the "Opening Deadline"). However, if Tenant's opening is in fact delayed by (i) strikes, wars, acts of God, and other causes (except Tenant's failure to pay money) beyond Tenant's control, (ii) reasonably unforeseen conditions affecting completion of Tenant's work in the Premises or (iii) failure of subcontractors or third parties who have contracted with the Tenant or Tenant's general contractor to commence and/or perform services in a timely manner as indicated in a work schedule prepared by the Tenant and delivered to the Landlord, so long as Tenant gives Landlord notice of such unforeseen condition and the length of the delay caused thereby, then the Opening Deadline shall be extended by the number of days, not to exceed thirty (30) days total, that Tenant's opening is in fact delayed for such reasons. The postponement of the Opening Deadline as permitted above shall not operate to extend any free rent period or otherwise affect the performance of Tenant's other obligations for compliance with this Lease. If Tenant shall fail to open for

business in the Premises within 30 days after the Opening Deadline, then from that date until the date that Tenant does in fact open for business in the Premises, Tenant shall pay Base Rent to Landlord as provided in Section 2.10.2.1 below, but such failure shall not otherwise be a default under this Lease.

2.10 Rent. During the Term, Tenant shall pay Landlord, as Rent for the Premises, the following:

2.10.1 Initial Term. During the Initial Term, Tenant shall pay to Landlord Percentage Rent only in the amount of six percent (6%) of Tenant's monthly Gross Sales derived from Tenant's business at the Premises, payable each month, subject to the free rent period. During the Initial Term, Percentage Rent shall be due and payable not later than the 25th day of each month on account of the previous month.

2.10.1.1 For purposes of Sections 2.10.1 and 2.10.2, "Gross Sales" means the actual sales or rental price of all goods, wares, and merchandise sold, leased, licensed, or delivered, and the actual charges for all services performed by the Tenant or by any subtenant, licensee, or concessionaire in, at, from, or arising out of the use of the Premises, wholesale and retail, whether for cash, credit, exchange, or otherwise, using the same accounting method used to report sales to the State on the Tenant's sales tax report but in any event including all sales at wholesale or other sales described herein that may not be subject to sales tax. Gross Sales will include without limitation, sales and services (a) the orders for which originate in, at, from, or arising out of the use of the Premises, whether delivery or performance is made from the Premises or from some other place, (b) made or performed by mail, telephone, electronic, video, Internet or future technological means, (c) made or performed by means of mechanical or other vending devices in the Premises, (d) that Tenant or any subtenant, licensee, concessionaire, or other person in the normal and customary course of its business would credit or attribute to its operations in any part of the Premises. Any deposit that is not refunded will be included in Gross Sales. Each installment sale or credit sale will be treated as a sale for the full price in the month during which the sale is made, regardless of whether or when Tenant receives payment for it. Gross Sales will not be reduced by any franchise, occupancy, capital stock, income, or similar tax based on income or profits. Gross sales exclude sales and use taxes charged to Tenant's customers as a pass-through expense. Tenant's Gross Sales shall be recorded through accurate modern cash registers or computers which shall show, record and preserve, in complete detail all items making up Gross Sales. Tenant shall keep and preserve sales tax returns, sales reports, daily cash register slips or tapes, sales receipts, sales records and other supporting documentation, and such other full, complete and accurate books of account as are reasonably necessary to properly monitor or audit Gross Sales to verify any amounts due as Percentage Rent (hereinafter collectively the "Records"). The Records shall disclose in detail all information required to permit Landlord to verify Tenant's Gross Sales, and shall conform to and be in accordance with Tenant's accounting method for reporting sales and use taxes with respect to all operations of the business conducted at the Premises. The Records shall be kept for at least three (3) years after the end of the period(s) to which they pertain, notwithstanding occurrence of the Expiration Date.

2.10.1.2 Tenant shall submit to Landlord on or before the 20th day of each month a written statement consisting of its sales tax report to the Colorado Department of Revenue and other Records regarding non-taxable sales of goods showing in reasonable detail the Gross Sales for the preceding calendar month, which shall include: (i) a written statement certified by an authorized representative, executive officer or partner of Tenant (or the individuals comprising Tenant if Tenant is not a corporation, partnership or other similar entity) showing in reasonable detail the Gross Sales for such preceding month; (ii) a copy of the monthly Colorado Department of Revenue Sales Tax Return; and (iii) Tenant's calculation of monthly Percentage Rent payable on account of such Gross Sales.

2.10.1.3 Tenant shall remit monthly payments of Percentage Rent to Landlord in good funds concurrently with delivery of the statement described in Subsection 2.10.1.2 above.

2.10.2 Option Period. If Tenant exercises its option to extend the Term of this Lease for the Option Period, then from and after the first day of the Option Period, Tenant shall pay Rent as follows:

2.10.2.1 Base Rent: Tenant shall pay annual Base Rent in the amount of \$15.00 per square foot of Rentable Area in the Premises (\$34,455.00/year) in monthly installments of \$2,871.25 per month due and payable on the first business day of each calendar month during the Option Period.

2.10.2.2 Taxes and Operating Costs. Tenant shall pay Tenant's Share of all Taxes and Operating Costs as provided in Section 3 below.

2.10.2.3 Percentage Rent. Tenant shall pay to Landlord Percentage Rent for each Lease Year during the Option Period in the amount of 6% of Tenant's Gross Sales from the Premises in excess of \$574,250.00 (the "Annual Breakpoint"). Percentage Rent shall be due and payable within twenty-five (25) days after the end of (i) the first month in which Tenant's Gross Sales exceeds the Annual Breakpoint and (ii) each month during the Lease Year thereafter. If the Base Rent for any Lease Year during the Option Period shall be reduced or abated for any reason whatsoever, or if any Lease Year contains more or less than twelve (12) full calendar months, the Annual Breakpoint shall be proportionately increased or decreased, as the case may be, for any such Lease Year. The provisions of Sections 2.10.1.1, 2.10.1.2 and 2.10.1.3 of this Lease shall apply to the payment of Percentage Rent during the Option Period. Within thirty (30) days after the end of each Lease Year, including Lease Years 1 and 2, Tenant shall deliver to Landlord a written statement, certified to be complete and correct by Tenant, showing the amount of Gross Sales and the amount of Percentage Rent paid to Landlord for such Lease Year.

2.10.3 The acceptance by Landlord of payments of Rent shall be without prejudice to Landlord's right to examine Tenant's books and Records of its Gross Sales and inventories of merchandise on the Premises in order to verify the amount of Tenant's Gross Sales. Landlord shall have the right during business hours to examine and audit such books and Records preserved by Tenant. Upon 10 days' prior written notice to Tenant, Landlord may cause a special audit to be made of Tenant's Records relating to Gross Sales for the period covered by such statement. Except as provided below, the cost of such audit shall be paid by Landlord. Tenant shall have the opportunity to review and discuss the audit procedures and conclusions with the independent certified public accountant before the audit is finalized by the certified public accountant. Any such special audit performed by an independent certified public accountant selected by Landlord shall be binding upon the parties. If such audit shall determine that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable with interest at the Maximum Rate from the date when such payment should have been made. If such deficiency is in excess of 10% of the total Percentage Rent computed by Tenant for the period covered by the audit, Tenant shall also pay to Landlord the cost of the audit in addition to the rent.

2.11 Apportionment for Partial Month. Rent shall be apportioned for any fraction of a month at the beginning of the Initial Term or at the end of the Term.

3. Taxes and Operating Costs. This Section 3 shall apply only during the Option Period, if Tenant exercises its option to extend the Term of the Lease for the Option Period only. It shall not apply and shall be of no force and effect during the Initial Term, when Tenant's Percentage Rent payments shall be deemed to be gross rent, inclusive of all Taxes and Operating Costs.

3.1 Tenant's Obligation. Tenant shall promptly pay, when due, Tenant's Share of all Taxes and Operating Costs (both as defined below), whether billed to Tenant by Landlord, by the Project Association, the Commercial Center Association or the Eagle Ranch Association in accordance with the Project Documents, the Commercial Center Documents and the Eagle Ranch Documents. If Taxes and Operating Costs relating to the Premises are billed to Landlord, Tenant shall promptly pay or reimburse Landlord for the amount payable or paid therefor, upon Landlord's notification to Tenant of such amount due. Building A (Building A) also is located on the Property and is connected to the Building by a covered walkway. Ad valorem real estate taxes and assessments imposed by government entities and assessments by the Commercial Center Association and Eagle Ranch Association assessed to the Property as a whole and other costs in common with Building A shall be allocated equitably between Building A and the Building. Tenant shall be obligated to pay Tenant's Share of that portion of such taxes, assessments and other costs allocated to the Building.

3.2 Definitions. As used in this Lease:

3.2.1 Tenant's Share means the percentage specified in Section 1.8, which is the percentage derived by dividing the Rentable Area of the Premises by the Basic Rentable Area of all space leased or occupied in the Building. If Landlord makes any alterations to the Building that result in a change of the Rentable Area of the Building, Landlord shall recalculate Tenant's Share by substituting the revised Rentable Area of the Building in the formula above. The revision to Tenant's Share shall be effective upon delivery of notice from Landlord to Tenant setting forth the revised Tenant's Share.

3.2.2 Taxes shall mean all of the following imposed with respect to the Building by any governmental or quasi-governmental authority or other entity with taxing or assessment powers:

3.2.2.1 General and special real estate taxes and assessments, including, without limitation, special district or improvement assessments and any interest payable with respect to installment payments of such taxes and assessments, and assessments levied by the Eagle Ranch Association, the Commercial Center Association and the Project Association, to the extent those assessments are not included in Operating Costs (defined below) as other charges imposed on Tenant under this Lease;

3.2.2.2 Any business or other type of license fee, tax or assessment incurred by Landlord with respect to the Premises;

3.2.2.3 Any tax imposed upon this Lease transaction; and

3.2.2.4 All taxes specifically imposed in lieu of any such taxes, as provided below.

If due to a future change in the method of taxation, any franchise, income, profit or other tax shall be levied in whole or in part in substitution for or in lieu of any tax which would otherwise constitute one of the foregoing charges included in Taxes, or if there shall be levied against Landlord a tax or license fee measured by gross rents, then such franchise, income, profit or other tax or license fee shall be included in Taxes for the purposes of this Lease.

Taxes shall also include all of Landlord's expenses, including without limitation reasonable attorneys' fees, incurred by Landlord in any effort to minimize Taxes, whether by contesting proposed increases in assessments or by any other means or procedure appropriate in the circumstances. Landlord shall have the exclusive right to contest any assessments of Taxes.

In no event shall any income tax payable by Landlord be included in Taxes unless such income tax is in whole or in part in substitution for or in lieu of a tax or charge that is or would be included in Taxes.

3.2.3 Operating Costs shall mean all necessary, reasonable and competitively priced costs, charges and expenses payable by Landlord that are attributable to the ownership, operation, management, maintenance, repair and replacement of the Building, whether payable as assessments for expenses and reserves charged by the Project Association, the Commercial Center Association, the Eagle Ranch Association or otherwise incurred by Landlord.

3.2.3.1 Inclusions in Operating Costs. Operating Costs shall include (by way of example and not limitation) the following costs relating to the Building.

3.2.3.1.1 Building supplies.

3.2.3.1.2 All electricity, natural gas and other energy sources for the Building (except those billed to Tenant or any other tenant on an individual basis).

3.2.3.1.3 Water sanitary sewer and storm drainage services.

3.2.3.1.4 Janitorial services.

3.2.3.1.5 General maintenance and repair of the Building and replacement of its components, including the heating and air conditioning systems and the structural components of the Building;

3.2.3.1.6 Premiums and deductibles paid for insurance, including fire and extended coverage and commercial general liability insurance and rental insurance, with the understanding that Tenant shall have no interest in such insurance or its proceeds.

3.2.3.1.7 Labor costs incurred in the operation, maintenance and repair of the Building and its components, including wages and other payments and costs for worker's compensation and disability insurance, and payroll taxes and welfare fringe benefits.

3.2.3.1.8 Professional management fees, including without limitation fees for the collection of rent.

3.2.3.1.9 Legal, accounting, inspection and consultation fees incurred in connection with the Building, except such costs and expenses paid or incurred relating to the ownership, construction, leasing or sale of the Building (or any portion thereof).

3.2.3.1.10 Any expense attributable to costs incurred by Landlord for any capital improvements or structural repairs to the Building required by any laws, ordinances, rules, regulations or otherwise which were not in effect on the date the building permit was issued for construction of the Building, which costs shall be amortized over the useful life of the capital improvement or structural repair in question.

3.2.3.1.11 Any costs incurred by Landlord in making or contributing to capital improvements or other modifications to the Building which reduce capital expenses, amortized over the useful life of the improvement or modification in question, with the understanding that the annual amortization amount shall not exceed the reduction in Operating Costs as

projected by Landlord's accountant for the relevant year, and the amortization schedule shall be extended accordingly, if necessary.

3.2.3.1.12 Reasonable reserves for the maintenance and repair obligations of Landlord.

3.2.3.1.13 Any fee incurred by Landlord as the result of additional impact fees which may be charged as the result of a particular use of the Premises.

3.2.3.1.14 Any fee incurred by Landlord for obtaining building permit(s) either on Tenant or Landlord's behalf.

3.2.3.2 Exclusions from Operating Costs. Notwithstanding the foregoing, Operating Costs shall not include the following:

3.2.3.2.1 Any costs, charges or expenses already included in Taxes.

3.2.3.2.2 Brokerage commissions and other costs payable by Landlord for the solicitation of leases of space in the Building.

3.2.3.2.3 Costs of decorating, redecorating, alterations, or special cleaning or other services not provided to Building tenants.

3.2.3.2.4 Wages, salaries, fees, and fringe benefits paid to administrative or executive personnel or officers or partners of Landlord unless employed at competitive rates as independent contractors.

3.2.3.2.5 Any charge for depreciation of the Building or equipment and any interest or other financing charge.

3.2.3.2.6 Any charge for Landlord's income taxes, excess profit taxes, franchise taxes, or similar taxes on landlord's business.

3.2.3.2.7 All costs for which Tenant or any other tenant in the building is being charged other than pursuant to a lease clause similar to this Section on Operating Costs.

3.2.3.2.8 The cost of correcting defects in the construction of the Building or in the Building equipment, except that conditions (not occasioned by construction defects) resulting from ordinary wear and tear will not be deemed defects for the purpose of this category.

3.2.3.2.9 The cost of any repair (except repairs funded with insurance policy deductibles) made by Landlord because of the total or partial destruction of the Building or the condemnation of a portion of the Building.

3.2.3.2.10 Any insurance premium to the extent that Landlord is reimbursed for it by Tenant pursuant to this Lease, or by any other Building tenant by any payment other than pursuant to lease clauses comparable to this Section on Operating Costs.

3.2.3.2.11 The cost of any items for which Landlord is reimbursed by insurance or otherwise compensated by parties other than Building tenants pursuant to clauses similar to this Section on Operating Costs.

3.2.3.2.12 The cost of any repairs, alterations, additions changes, replacements, and other items that under generally accepted accounting principles are properly classified as capital expenditures, to the extent they upgrade or improve the Building.

3.2.3.2.13 The cost of overtime or other extraordinary expense to Landlord incurred in curing its defaults, and the cost of performing work expressly provided in this Lease to be borne at Landlord's expense.

3.2.3.2.14 Amounts paid (including interest and penalties) in order to comply with or cure violations of statutes, laws, codes, or ordinances by Landlord or any part of the Building.

3.3 Review of Taxes and Operating Costs Determination. If Tenant wishes to dispute Landlord's determination of Tenant's Share of Operating Costs and Taxes for any calendar year, Tenant shall give Landlord written notice of such dispute within 45 days after receipt of notice from Landlord of the matter giving rise to the dispute. If Tenant does not give Landlord such notice within that specified time, Tenant shall have waived its right to dispute such determination.

In the event Tenant disputes such determination, Tenant shall have the right to inspect Landlord's records regarding the measurement of the Building and Landlord's accounting records at Landlord's accounting office. If, after such inspection, Tenant still disputes such determination, a certification as to the proper amount made by Landlord's independent certified public accountant shall be final and conclusive. Tenant agrees to pay the cost of any copies of Landlord's records, and any other expenses related to Tenant's inspection. Tenant shall also pay the cost of any such certification by Landlord's certified public accountant unless it is determined that Landlord's original certification was in error (in Landlord's favor) by more than 5% of the final, audited charge to Tenant for Tenant's Share of Operating Costs and Taxes.

Notwithstanding the pendency of any dispute under this Section, Tenant shall make payments based upon Landlord's determination until determination has been established under this Section to be incorrect.

3.4 Estimated Payments and Adjustment. During each calendar year during the Option Period, Tenant shall pay to Landlord each month, with payments of Base Rent under Section 2.10.1, 1/12<sup>th</sup> of Landlord's estimate of Tenant's Share of Taxes and Operating Costs for the calendar year. Landlord shall summarize these estimated monthly payments in a budget for Tenant's information. Landlord shall use commercially reasonable efforts to provide that budget to Tenant within 30 days after all of the budgets for the Project Association, the Commercial Center Association and the Eagle Ranch Association are deemed final in accordance with the respective Declaration, and if possible, by January 31 in each calendar year. The estimated monthly payments shall be subject to adjustment as soon as Landlord determines the actual Taxes and Operating Costs for that calendar year, and Landlord shall provide Tenant with a reasonably detailed statement of any such adjustment (Landlord's Statement).

If the amount of Taxes and Operating Costs as shown on Landlord's Statement exceeds the sum earlier estimated and paid by Tenant pursuant to this Section, then within 30 days after receiving Landlord's Statement, Tenant shall pay the deficiency to Landlord. If Landlord's Statement indicates that Landlord has received more than Tenant's Share of Taxes and Operating Costs actually owed by Tenant, Landlord shall apply the excess first to reduce the amount payable by Tenant during the remaining Term for Taxes and Operating Costs. Landlord may return the balance, if any, to Tenant; or, if any obligation of Tenant under this Lease remains unsatisfied, then Landlord may apply such excess toward such obligation of Tenant.

3.5 Proration for Partial Calendar Year. If the Term commences after the beginning of or expires before the end of a calendar year, any amount payable by Tenant under this Section with respect to that calendar year shall be adjusted proportionately on a daily basis.

3.6 Payment After Lease Expiration or Termination. Landlord's and Tenant's obligation to reconcile any difference between (i) Tenant's Share of estimated Taxes and Operating Costs for the last calendar year of the Term, and (ii) Tenant's Share of actual Taxes and Operating Costs, determined after adjustment as provided in this Lease above, shall survive the expiration or earlier termination of this Lease. If any adjustment based on actual Taxes and Operating Costs for the final calendar year of the Term reflects amounts due and payable to Tenant, Landlord shall refund such amount to Tenant within a reasonable time after Landlord determines the amount owed to Tenant; or, if any obligations of Tenant remain unsatisfied under this Lease, Landlord may apply such amount toward payment of the obligation of Tenant.

4. Provisions Generally Applicable to Rent.

4.1 Payment of Rent. All sums due and payable by Tenant to Landlord under this Lease shall be considered Rent, and Landlord shall have all remedies available for the enforcement of Tenant's rental obligations in the event Tenant defaults in any such payment. In the event that any Rent payment by Tenant is not made within five (5) days of its due date, Landlord shall be entitled to charge Tenant an additional late fee equal to five percent (5%) of the late Rent amount to compensate Landlord for the additional administrative expense and inconvenience occasioned thereby. In addition, Landlord may assess a Fifty and No/100ths Dollar (\$50.00) charge for any check from Tenant returned to Landlord for insufficient funds.

4.2 No Offset. Tenant shall pay all Rent without notice or demand (except as specifically required by this Lease), and without set-off or deduction, in lawful money of the United States, at Landlord's Address or such other place as Landlord may direct in writing.

4.3 No Advance Payment. Tenant shall not make any Rent payment, and Landlord shall not credit Tenant for any Rent payment made in advance, other than (i) the usual prepayment of Base Rent, and (ii) Tenant's Share of Taxes and Operating Costs payable on an estimated basis on the first day of the month for which the payment is due.

5. Tenant's Obligation for Taxes.

5.1 Personal Property Taxes. Tenant shall pay before delinquency all taxes, including without limitation Town of Eagle Sales and/or Use taxes on tenant finish work, assessments, fees and other charges levied, assessed or imposed and which become payable during the Term upon Tenant's operations at, occupancy of or conduct of business at the Premises or upon Tenant's leasehold improvements, equipment, inventory, furniture, appliances, trade fixtures and any other personal property of any kind installed or located at the Premises. If the taxing authorities fail to render a separate tax bill with respect to such property, Landlord or the Project Association, if appropriate, shall reasonably allocate to such property a portion of such taxes attributable to the Premises. Tenant shall pay the allocated amount to Landlord promptly upon receipt of a written statement of the allocation.

5.2 Exemption from Sales Tax Lien. As provided in Colo. Rev. Stat. §39-26-117 and §39-26-205(3), as amended from time to time, the Premises and all of the improvements and installations constituting any part of Landlord's Work, and all other improvements (other than Tenant's trade fixtures) made to or installed in the Premises (whether constructed by, for or at the expense of Landlord or Tenant), all of which shall be deemed property owned by Landlord (pending any other direction from Landlord under Section 11 below), shall be exempt from any lien for sales and use taxes otherwise imposed or

collected by the taxing authorities of the State of Colorado. In order to secure this exemption, Landlord shall execute a memorandum of this Lease for filing with the Colorado Department of Revenue as prescribed by that agency.

6. Utilities.

6.1 Landlord's Obligation for Utility Services. Landlord shall provide at points in or near the Premises, the facilities necessary to enable Tenant to obtain water, heating, ventilation, air conditioning, electricity, telephone and sanitary sewer services for the Premises.

6.2 Tenant's Payment Obligation. Tenant shall pay all initial utility deposits and fees charged by any utility provider with respect to the Premises, together with monthly charges for service. Landlord shall determine the cost of the utilities, at Landlord's option, (i) as part of Tenant's Share of Operating Costs during the Option Term only, or (ii) on the basis of a separate meter or submeter installed in the Premises at Tenant's cost. Tenant shall be entitled to any amount of deposit returned by the utility company and if the deposit is returned to the Landlord, the Landlord shall credit Tenant's rent for the following month by the amount of the deposit.

6.3 Interruption of Utility Services. Landlord's failure to furnish, or any interruption or termination of, services due to requirements of law, the failure of equipment, the performance of repairs, improvements or alterations, or any cause beyond the reasonable control of Landlord shall not give rise to any liability on the part of Landlord, any claim of constructive eviction, any claim for abatement of rent, or any relief from the obligations of Tenant under this Lease, except as provided in this Section below. If the services which Landlord is obligated to provide are interrupted so that all or a substantial part of the Premises are unusable and are in fact not used for more than five consecutive days, then Tenant shall be entitled to an abatement of Base Rent commencing with the sixth day that the Premises are unusable and not used. However, notwithstanding the preceding sentence, if the interruption of services in question arose directly or indirectly because of (i) any act or omission by Tenant or any of Tenant's Personnel, or (ii) a request by Tenant for an alteration or addition to the Premises which directly or indirectly necessitated the interruption, or (iii) a failure by Tenant to comply with its obligations under this Lease, then Tenant shall not be entitled to any such abatement of Base Rent.

7. Use of Premises; Conduct of Business.

7.1 Permitted Use. Tenant shall use and occupy the Premises for the Permitted Use described in Section 1.13, subject to any applicable laws, rules and regulations, including those of the Town of Eagle, as set forth in Section 7.4 below, and for no other purpose, under the trade name of "Color Coffee Roasters", and under no other name. Tenant shall not alter its use of the Premises or its trade name without Landlord's consent, which Landlord shall not unreasonably withhold, condition or delay. Tenant acknowledges that Tenant's covenants in this Section are essential to Landlord's establishment of a tenant mix for the Building and other properties within Eagle Ranch intended to benefit the owners and the other tenants of the Project and Eagle Ranch and, accordingly, are material considerations which have induced Landlord to enter into this Lease. Tenant's retail shop or office shall be, at all times and in all respects, first-class and of high quality at least equal to respected shops or offices of comparable size and nature in Eagle County, Colorado, as exist on the date of this Lease. The foregoing standards shall apply, without limitation, to the furniture and furnishings of the Premises, the attire and appearance of employees, and the management and operation of the Premises in general. Landlord represents and warrants that Tenant's intended Permitted Use is not limited or restricted in any material respect by any legal or contractual restrictions or limitations affecting the Building or Building A (whether recorded or unrecorded).

7.2 Operation. Tenant shall open for business no later than the Opening Deadline (subject to any extension permitted herein). Further, Tenant shall continuously operate and keep the Premises open for business for the entire Initial Term and Option Period, if any, during all hours established by Landlord for retail operations in the Premises, and, at Tenant's option, during any additional hours with the advance written consent of Landlord, the Project Association, the Commercial Center Association and the Eagle Ranch Association. Without in any way modifying Landlord's right to establish from time to time other hours during which the Premises shall be open for business, Tenant agrees initially to keep the Premises open during the Hours of Operation specified in Section 1.12, excluding only major holidays, and subject to any applicable laws, rules and regulations, including those of the Town of Eagle, as set forth in Section 7.4 below. "Major holidays" means New Year's Day, July 4th, Memorial Day, Labor Day, Thanksgiving Day and Christmas Day. Whether or not open for business, Tenant shall keep the Premises' show windows and any permitted signs illuminated during such hours as Landlord, the Commercial Center Association or the Project Association may reasonably designate. Tenant shall not illuminate such windows and signs during other hours (when the Premises are not open for business) as Landlord, the Commercial Center Association or the Project Association may reasonably designate, or as otherwise prohibited by law.

Nothing contained in this Lease shall be deemed a representation of the hours during which other tenants of the Building or other properties within Eagle Ranch may be required or permitted to be open for business.

7.3 Signs and Advertising.

7.3.1 Signs. Tenant shall not install, place, inscribe, paint or otherwise permit any sign, advertisement, notice, marquee or awning, on any part of the outside of the Premises (including any portion of the Premises fronting on any interior corridor or lobby), on any part of the inside of the Premises which is visible from outside of the Premises, or on any other part of the Building without the prior written consent of Landlord in each instance. Any permitted sign shall comply with the requirements of the Eagle Ranch Association, the Commercial Center Association and the Project Association, the Design Review Board established by the Eagle Ranch Declaration and any governmental or quasi-governmental authority having jurisdiction over the Building, and Tenant shall be solely responsible for such compliance. Tenant acknowledges its receipt of the Eagle Ranch Design Review Board's specifications governing exterior signage and other exterior improvements. Landlord shall have the right to remove all non-permitted signs without notice to Tenant and at the expense of Tenant.

Notwithstanding the foregoing, Tenant shall erect, keep and maintain lighted storefront signage upon the reasonable request of Landlord. Any required storefront signage shall be lighted throughout the hours of Tenant's operation and any additional hours deemed appropriate by Landlord, in Landlord's sole discretion. The costs of lighted storefront signage shall be paid by Tenant.

Tenant shall maintain all signs in first-class condition and Tenant shall remove all signs and repair any damage caused by the removal upon the expiration or earlier termination of this Lease, all at Tenant's own expense. Tenant's obligation under this Section shall survive the expiration or termination of this Lease.

During the last 90 days of the Term, subject to the rules and regulations of the Eagle Ranch Association, the Commercial Center Association and the Project Association, Landlord shall have the right to place "For Lease" or similar signs upon the Premises.

7.3.2 Advertising. All of Tenant's advertising in respect to the Premises shall be truthful, tasteful and discreet, shall be consistent with the theme and quality of Eagle Ranch in general, and shall comply with all laws, rules and regulations, including those of the Town of Eagle, as set forth in

Section 7.4 below. Upon Landlord's request, Tenant shall submit all advertising to Landlord for Landlord's written approval (which shall not be unreasonably withheld, conditioned or delayed) before publication. Any advertising submitted by Tenant for Landlord's approval that is not expressly approved or rejected by Landlord within 48 hours after Tenant's submittal will be deemed approved by Landlord. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's reasonable opinion, violates the standards set forth above or which tends to impair the reputation of the Project or Eagle Ranch or the desirability of the Building as a location for stores, offices and residences, if any. Upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

Without limiting the generality of the foregoing, Tenant is specifically prohibited from employing any advertising on the order of "going out of business" sales or other similar promotions. Further, Tenant shall not install, use or permit on or about the Premises any advertising medium that may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radios, without in each instance, the prior written consent of Landlord, and any other approvals required by the Project Documents, the Commercial Center Documents or the Eagle Ranch Documents.

7.4 Compliance with Law and Applicable Regulations. Tenant shall use the Premises and Common Areas in a careful, safe and proper manner and shall not use or permit the Premises or Common Areas to be used for any purposes prohibited by the rules and regulations of the Landlord, Project Association, the Commercial Center Association, the Eagle Ranch Association or any federal, state, county or municipal law, ordinance, rule, regulation or code applicable to the Premises or the Building. Tenant shall not use or permit all or any part of the Premises or Common Areas to be used in any immoral, illegal, lewd, objectionable or offensive manner or for any such purposes. Tenant shall neither do nor permit to be done any act or thing upon the Premises, the Building, or Common Areas which shall or might subject Landlord to any liability or responsibility for injury to any person or persons or for damage to property by reason of any business or operation carried on at, from or upon the Premises or otherwise.

Further, Tenant, at its sole expense, shall comply in all material respects with all rules and regulations of the Eagle Ranch Association, the Commercial Center Association and the Project Association and of all laws, orders, rules and regulations of all federal, state, county and municipal authorities and with any direction of any officer or officers thereof having jurisdiction over the use, condition or occupation of the Premises or Common Areas.

7.5 Other Premises. Tenant shall not use or permit the Premises or the Common Areas to be used (whether by Tenant's Personnel, invitees, customers or any other person claiming the right to use the Premises through or under Tenant) in any manner that interferes with or disturbs the use and enjoyment of any part of the Building or any other building near the Project by any owner, tenant or occupant thereof whether on account of noise, trash, odors, intoxicated patrons or otherwise. Without limiting the generality of the foregoing, Tenant understands that other buildings near the Project are or will be used primarily for residential purposes, and therefore Tenant agrees that its covenants contained in the previous sentence are material obligations of Tenant and are an essential part of the consideration for Landlord entering into this Lease.

7.6 Trademarks. Tenant shall not use the Eagle Ranch trade name or trademark alone or in any combination, in connection with the business conducted at the Premises or any goods sold or services performed in the Premises, without first obtaining written authorization or licenses from the owner of the name and mark.

8. Quiet Enjoyment. Landlord covenants that upon Tenant's payment of all rent due under this Lease and observance and performance of all the terms, covenants and conditions of this Lease binding Tenant, Landlord shall not disturb Tenant's peaceable and quiet enjoyment of the Premises, subject,

nevertheless, to the terms and conditions of this Lease, and to any Deed of Trust (as defined in Section 21.3 below) and the Project Documents, Eagle Ranch Documents and other matters mentioned in this Lease.

9. Landlord's Right of Entry. Landlord and its agents shall have the right to enter the Premises at all times, after reasonable advance written or email notice to Tenant (except that no advance notice will be required in emergency circumstances), to examine them, to show the Premises to prospective purchasers, managers, lenders or lessees, and to make and perform such decorations, cleaning, maintenance, repairs, alterations, improvements or additions as Landlord may be required to perform under this Lease or as Landlord may deem necessary or desirable for the safety, improvement or preservation of the Premises or of other portions of the Building. Landlord shall have the right from time to time to install, maintain, use, repair and replace utility lines, unexposed pipes, ducts, conduits and wires in and through the Premises. No such action by Landlord shall constitute an eviction of Tenant in whole or in part or entitle Tenant to any abatement of rent or damages, by reason of inconvenience, annoyance, disturbance, loss or interruption of business or otherwise, and no such action shall affect Tenant's obligations under this Lease in any manner whatsoever, except as specifically provided in this Lease.

If Tenant is not personally present to permit Landlord to enter the Premises as provided under this Lease, Landlord or Landlord's agents may forcibly enter the Premises, without rendering Landlord or its agents liable (with the understanding that during such entry Landlord or its agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of Tenant under this Lease. Nothing in this Lease, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Premises other than as provided in this Lease.

10. Preparation and Acceptance of Premises.

10.1 Landlord's and Tenant's Work. There is no Landlord's Work under this Lease. Tenant represents to Landlord that prior to execution of this Lease, Tenant had the opportunity to perform all tests, studies and inspections that it desires, and that Tenant is accepting the Premises in their "AS IS", "WHERE-IS" condition, with all faults, and Landlord shall have no liability with respect to the same except as expressly set forth in this Lease. Tenant alone shall be responsible for the work constituting Tenant's Work and the schedule of performance of Tenant's Work, as defined and set forth in Exhibit B. During the Initial Term, when Tenant shall perform Tenant's Work, Tenant shall be bound by and shall observe and perform all of the provisions of this Lease.

Landlord will provide an allowance of \$10,000.00 towards Tenant's Work to be paid after completion of Tenant's Work, issuance of a certificate of occupancy for the Premises (if a building permit is required for Tenant's Work), and Tenant's opening for business in the Premises. Such reimbursement shall be made within 30 days following Tenant's application, subject to Tenant's delivery to Landlord for Landlord's reasonable approval the plans and specifications for Tenant's Work, copies of the required certificate of occupancy (if a building permit is required for Tenant's Work), paid invoices and supporting documentation reasonably requested by Landlord and copies of final lien waivers. Landlord reserves the right to withhold \$2,000.00 for completion of signage and to ensure that Tenant's Work was built in accordance with plans. Reimbursement towards Tenant's Work will include building permit and construction costs, but excludes architectural design fees, equipment, trade fixtures and furnishings.

10.2 Acceptance of Possession. Acceptance of delivery of the Premises by Tenant shall be conclusive evidence as against Tenant that the Premises and the Building were in good and satisfactory condition when Tenant took possession, unless Tenant shall give notice to Landlord of any unsatisfactory condition within five (5) days after delivery of the Premises to Tenant.

11. Alterations by Tenant. Tenant shall make no alterations, additions or improvements in or to the Premises without Landlord's prior written consent. Tenant understands that Landlord's consent will be conditioned upon compliance with Landlord's requirements as in effect at the time permission is requested, which requirements will include, but not be limited to, Landlord's approval of plans, specifications, contractors, insurance and hours of construction. Upon Landlord's reasonable request, Tenant shall secure, at its cost, a completion and indemnity bond satisfactory to Landlord, for such work. All such work shall be performed in a good and workmanlike manner.

Before beginning any work on the Premises, Tenant shall deliver to Landlord on request, certificates issued by applicable insurance companies evidencing that the contractor and all subcontractors engaged by Tenant to perform such work maintain workers' compensation and public liability insurance and property damage insurance, all in amounts, with companies and on forms satisfactory to Landlord.

All alterations, additions or improvements upon the Premises, including (without limitation) all installations included in Tenant's Work and all paneling, partitions and the like (but excluding Tenant's trade fixtures and apparatus, except as otherwise provided below), shall become the property of Landlord, and shall remain upon and be surrendered with the Premises, as a part thereof, at the end of the Term, unless the parties agree otherwise, or unless Landlord requires Tenant to remove such items at the end of the Term.

All trade fixtures and apparatus owned by Tenant and installed in the Premises shall remain the property of Tenant and shall be removable at any time, including upon the expiration of the Term; provided Tenant shall not at such time be in default of any terms or covenants of this Lease, and provided further, that Tenant shall repair any damage to the Premises caused by the removal of said trade fixtures and apparatus and shall restore the Premises to substantially the same conditions as existed prior to the installation of said trade fixtures and apparatus. To protect Landlord in the event Tenant defaults hereunder, Tenant hereby grants to Landlord a security interest in all goods, inventory, equipment, trade fixtures, and all personal property belonging to Tenant, which are or may be put into the Premises during the Term and all proceeds of the foregoing. Said security interest shall secure all amounts to be paid by Tenant to Landlord hereunder, including all costs of collection and other indebtedness of Tenant to Landlord. Tenant agrees to sign any financing statement or security agreement requested by Landlord in order to perfect such security interests. The lien granted hereunder shall be in addition to any Landlord's lien that may now, or at any time hereafter, be provided by law. Upon request by Tenant, Landlord agrees to subordinate the lien granted by this paragraph, or release same, as required by Tenant's bona fide lender providing a loan to Tenant for Tenant's business purposes at the Premises.

12. Services, Maintenance and Repairs.

12.1 Landlord's Obligations.

12.1.1 Common Areas. Landlord shall be responsible for maintaining, restoring and repairing all components of the Building outside the Premises, including (among others) the Building's structural elements; loading docks; common heating/ventilation/air conditioning (HVAC) and other mechanical, utility, plumbing, electrical and fire/safety installations that serve the Building; and the Building roof, exterior facades and windows (other than the Premises windows required to be maintained by Tenant as provided below). In addition, Tenant acknowledges that the Eagle Ranch Association, and the Commercial Center Association are responsible for the maintenance, repair and restoration of portions of the Common Areas located outside the boundaries of the Project, as set forth in the Eagle Ranch Documents and the Commercial Center Documents. The obligations of the Eagle Ranch Association and the Commercial Center Association include, without limitation, cleaning and snow removal for private walks and drives owned or controlled by the Eagle Ranch Association, or the Commercial Center Association, as applicable and the insurance, maintenance and lighting of landscape, parking and

streetscape areas owned or controlled by the Eagle Ranch Association, or the Commercial Center Association, as applicable.

If the Project is submitted to a condominium or planned community regime, Tenant acknowledges that under the terms of the Project Documents, the Project Association is responsible for the maintenance, repair and restoration of those portions of the Common Areas located within the boundaries of the Project. Landlord, as owner of the commercial unit or units in the Project which include the Premises, agrees to use all commercially reasonable efforts to cause the Project Association, the Commercial Center Association and the Eagle Ranch Association to maintain in good repair, condition and working order, all Common Areas subject to the administration of any of those associations.

The charges billed to Landlord by the Eagle Ranch Association, the Commercial Center Association and the Project Association for the services described above and other functions performed by those associations which benefit the Premises shall be included in Tenant's Share of Operating Costs.

#### 12.1.2 [INTENTIONALLY OMITTED]

12.1.3 Limitations on Landlord's Obligations. Landlord shall not be responsible for any maintenance or repairs arising from (i) any damage caused by the act, negligence or omission of Tenant or Tenant's, customers or invitees except to the extent the damage is insured or required to be insured by Landlord and covered by the obligations of Landlord for repairs under the damage and casualty sections of this Lease; (ii) reasonable wear and tear; and (iii) any structural alterations or improvements required by any governmental agency by reason of Tenant's use and occupancy of the Premises.

#### 12.2 Tenant's Obligation.

12.2.1 General Provisions. Tenant shall take good care of the Premises and the fixtures and improvements comprising the Premises or serving the Premises exclusively, including, without limitation, the doors, plate glass windows, HVAC system, plumbing, pipes, electrical wiring, and conduits. Tenant shall promptly perform maintenance and make repairs, restorations or replacements as and when needed to preserve the Premises in good working order and in a clean, neat and first-class condition. With respect to any damaged plate glass in any door or otherwise in the Premises, Tenant shall replace the damaged glass within 24 hours after the occurrence of the damage. In addition, Tenant shall install or construct any improvements, equipment or fixtures required by any governmental authority as a result of Tenant's use and occupancy of the Premises. Tenant shall also maintain all furniture, furnishings and decorations in, on or about the Premises in first-class condition shall perform such maintenance, redecorating and remodeling and make such repairs, restorations and replacements as may be necessary to maintain the Premises in attractive, first-class condition. Tenant shall perform the maintenance, repair and replacement work required under this Lease at Tenant's sole cost and expense, under the supervision and with the approval of Landlord. Tenant acknowledges that the Premises will be visible from public areas of the Building and from public streets and sidewalks. Accordingly, Tenant acknowledges that its obligations with respect to the appearance and condition of the Premises are material obligations of Tenant.

In addition, Tenant shall pay the cost of repair and replacement due to damage or injury done to the Building (other than the Premises) by Tenant or Tenant's Personnel. Tenant shall pay Landlord such amount upon demand, plus interest thereon at the Maximum Rate, from demand until payment in full.

12.2.2 Landlord's Right to Repair. If Tenant fails to perform any maintenance or make any repairs, restorations or replacements required by this Lease, and if such failure continues for more than 15 days after notice from Landlord (with the understanding that no notice will be required in the

event of an emergency), then Landlord may (but without any obligation to do so) take the required action and charge Tenant the cost of the work, together with an administrative fee equal to 10% of the cost of the work. Such charge, with interest at the Maximum Rate, accruing from the date of Landlord's demand until reimbursement in full by Tenant, shall be due as additional rent.

12.2.3 Limitations on the Obligations of Tenant. The obligations of Tenant for maintenance and repair of the Premises will not extend to repairs covered by costs included in Operating Costs. In addition, in the event of any casualty affecting the Building, the obligations of Tenant for repair and maintenance arising from the acts or omissions of Tenant shall be governed by Section 14.

12.3 Interruption for Repairs. If the need for repairs or the making of repairs (or both) which Landlord is obligated to effect at Landlord's expense renders a material portion of the Premises unusable and such portion is actually left unused by Tenant for more than five consecutive days, then Tenant shall be entitled to an abatement of Base Rent commencing with the sixth day that the Premises are unusable and not used; provided, however, that Tenant shall not be entitled to any such abatement if the repairs in question (i) arose directly or indirectly from any act or omission by Tenant or any of Tenant's Personnel, or (ii) arose because of a request by Tenant for an alteration or addition to the Premises which directly or indirectly necessitated the repair, or (iii) were performed by Landlord on Tenant's account following a failure by Tenant to comply with its obligations under this Lease. Landlord covenants in any event to use commercially reasonable diligence to avoid disruption and inconvenience to Tenant's business and patrons in the course of any exercise of Landlord's right of entry under this Lease.

### 13. Liens.

13.1 No Mechanic's Liens. Tenant covenants and agrees not to permit, and to cause to be removed and released, any mechanic's, materialmen's or other lien on account of supplies, machinery, tools, equipment, labor or material furnished or used in connection with the construction, alteration, improvement, addition to or repair of the Premises by, through or under Tenant. If any lien is recorded against the Premises, or if any action affecting title to the Premises is commenced, Tenant shall give prompt written notice of the lien or action to Landlord. Tenant shall then cause any such lien to be removed of record within five days after the filing of the lien. However, Tenant shall have the right to contest, in good faith and with reasonable diligence, the validity of any such lien, on the conditions that (i) Tenant shall give Landlord such security as Landlord may reasonably request to insure the payment of any amounts claimed, including interest and costs, and to prevent any sale, foreclosure or forfeiture of any interest in the Premises on account of the lien, and (ii) on final determination of the lien claim, Tenant shall immediately pay any judgment rendered, with interest and costs, and will cause the lien to be released and any judgment satisfied, and (iii) Tenant shall comply with any other requirements with respect to such liens as may be imposed by the holder of any Deed of Trust encumbering the Premises or any portion thereof (in any case, a Mortgagee).

13.2 Landlord's Rights. At least 10 days prior to the commencement of any regularly scheduled work on the Premises, and reasonably in advance of any other work on the Premises by or for Tenant or anyone claiming under Tenant, Tenant shall notify Landlord of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work, so that Landlord may avail itself of the provisions of Colo. Rev. Stat. §38-22-105(2), as amended from time to time. Before and during any such work on the Premises, Landlord and its agents shall have the right to inspect the Premises at all reasonable times, and to post notices on the Premises as provided by statute, and to take any further action reasonably necessary to protect Landlord's interest in the Premises.

13.3 No Other Encumbrances. Tenant covenants and agrees not to encumber the Premises or the interest of Tenant in this Lease without the prior written consent of Landlord.

13.4 Landlord Covenants. Landlord will not lease, sell or otherwise cause any tenant to open for business on the Property a specialty coffee shop that roasts coffee or sells primarily coffee, whole ground coffee beans and/or other coffee based or tea beverages. Notwithstanding the foregoing, other tenants on the Property may sell brewed coffee or brewed tea that is neither (i) gourmet nor (ii) brand identified, as well as pre-bottled tea or pre-bottled tea-based drinks. For purposes of the Lease, "gourmet" will be defined as: (1) Arabica bean-based or (2) sourced from a gourmet coffee or tea brand such as Coffee Bean & Tea Leaf, Intelligentsia, Peets, Caribou or similar branding. "Brand identified" means coffee or tea that is advertised or marketed within the premises by its brand name, or served in a brand identified cup.

Landlord represents and warrant that the HVAC system that services the Premises will be in good operating condition and repair on the Commencement Date.

14. Damage or Destruction. If any portion of the Premises or other portion of the Building necessary for Tenant's occupancy is damaged or destroyed by fire or other casualty, then Tenant and Landlord and the Project Association shall proceed with restoration and repairs of each portion of the Property for which each party is responsible, in accordance with and subject to this Section below.

14.1 Responsibility for Repairs. Following a casualty event:

14.1.1 Landlord Obligation. Landlord shall be responsible for repair and replacement of (1) the installations and improvements in the Premises that comprised Landlord's Work, and (2) any other damaged portions of the Project other than (y) Common Areas owned or controlled by the Project Association, the Commercial Center Association, or the Eagle Ranch Association, and (z) the improvements and installations which are Tenant's responsibility under this Section below.

14.1.2 Tenant's Obligation. Tenant shall be responsible for the repair and restoration of the improvements and installations made as part of Tenant's Work, and any other improvements constructed or installed by or at the request of Tenant in the Premises in addition to the Tenant's Work. Tenant shall also be responsible for the repair or replacement of all inventory, furniture, fixtures, equipment and other personal property of Tenant in or around the Premises.

14.1.3 Associations' Obligation. The Project Association shall be responsible for the repair and restoration of any Common Areas and related personal property owned or controlled by the Project Association, as provided in the Project Documents. Likewise, the Eagle Ranch Association and the Commercial Center Association shall be responsible for the repair and replacement of any Common Areas and related personal property owned or controlled, respectively, by the Eagle Ranch Association, as provided in the Eagle Ranch Documents or the Commercial Center Association, as provided in the Commercial Center.

14.2 Options to Terminate If Damage Substantial. As soon as reasonably possible after any casualty occurrence, Landlord shall give written notice to Tenant stating Landlord's estimate of the time that Landlord, the Project Association, the Commercial Center Association or the Eagle Ranch Association (or any or all of them) will require to repair or restore the property affected by the Damage. If Landlord reasonably estimates that repair or restoration of the Premises cannot be completed within 180 days after any casualty occurrence, Landlord and Tenant shall each have the option to terminate this Lease. Any option granted under this Section shall be exercised by written notice to the other party given within 10 days after Landlord's notice of the repair time.

If either Landlord or Tenant exercises its option to terminate this Lease, the Term shall expire 10 days after the terminating party gives notice to the other. Further, Landlord shall refund to Tenant any rent previously paid by Tenant that is applicable to the period after the casualty occurrence, less the

reasonable value of any use or occupation of the Premises by Tenant after the casualty event. However, at Landlord's option, Landlord may apply such rent to any unsatisfied obligation of Tenant under this Lease.

14.3 Obligations to Repair and Restore. In the event neither party terminates this Lease pursuant to this Section above, this Lease shall continue in full force and effect, and Landlord shall proceed with reasonable diligence to repair and restore those installations and improvements as provided in Section 14.1.1 to substantially the same condition as existed immediately before the casualty occurrence. Within 15 days after Landlord has substantially repaired or reconstructed the portion of the Premises that Landlord is obligated to repair or construct, Tenant shall commence to repair or reconstruct so much of the Premises affected by the damage as Tenant is obligated to repair under Section 14.1.2, and prosecute the same diligently to completion.

14.4 Limitation on Obligations. Notwithstanding anything contained in this Lease to the contrary, and without limiting Landlord's rights or remedies under this Lease, Landlord may terminate this Lease, without liability to Tenant, following 30 days' written notice under any of the following conditions:

14.4.1 If damage or destruction occurs to all or any major portion (meaning such portion that would preclude Tenant from operating its business in the Premises) of the Premises by reason of any cause for which there are no insurance proceeds available to Landlord for any reason other than Landlord's failure to carry the insurance as required of Landlord under this Lease; or

14.4.2 If the proceeds of insurance are insufficient to pay Landlord for the costs of rebuilding the portions of the Premises for which Landlord is responsible; or

14.4.3 If a Mortgagee or other person entitled to the proceeds does not consent to the payment to Landlord of such proceeds for such purpose.

On the termination date, Tenant shall vacate the Premises, and Landlord shall refund to Tenant any rent previously paid by Tenant that is applicable to the period subsequent to the termination date. However, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

14.5 Project Association's Determination. Despite anything contained in this Lease to the contrary, if any part of the Building, outside of the Premises, sustains damage, then regardless of whether the Premises are affected by the damage, the rights and obligations of Tenant and Landlord under this Section with respect to repair and restoration work and termination rights shall be subject to the provisions of the Project Declaration, including, without limitation, the rights of the Project Association to cause the damage to be repaired or restored, or, as permitted in specified circumstances, to elect to restore the Property to a natural, undeveloped state, or to sell the Building free and clear of the Project Declaration.

In the event the Project Association elects to complete such repairs or reconstruction work, Landlord shall not be responsible or liable for the timely and proper performance of such work to be done by the Project Association.

In the event of such sale by the Project Association, this Lease shall terminate effective the date of the sale, and Landlord shall refund to Tenant any rent previously paid by Tenant that is applicable to the period subsequent to (i) the date of the casualty occurrence, or (ii) the date of the sale, if Tenant continued to use the Premises following the casualty occurrence. However, at Landlord's option, Landlord may apply such rent to any unsatisfied obligation of Tenant to Landlord.

15. Obsolescence. If the Project Association at any time determines that the Building is obsolete and adopts a plan to reconstruct and renovate the Building or a plan to sell the Building, Landlord shall give Tenant written notice of that determination. Upon giving such notice, Landlord shall have the option to terminate this Lease by giving written notice of termination to Tenant within 30 days after it gives Tenant notice of the Project Association's determination.

If Landlord does not terminate this Lease, this Lease shall continue in full force and effect, and, if any reconstruction or renovation of the Building renders all or part of the Premises untenable, the Base Rent due under this Lease shall be proportionately reduced during the period of untenability as certified by Landlord's Architect. Any such reduction of Base Rent shall be in the amount equal to the proportion that the portion of the Rentable Area of the Premises rendered untenable by the reconstruction or renovation bears to the Rentable Area of the Premises before the reconstruction or renovation.

If Landlord elects to terminate this Lease, this Lease shall terminate as of the day any reconstruction or renovation of the Premises is commenced or the date on which the sale of the Building is closed, as the case may be. Upon termination, Tenant shall surrender the Premises to Landlord. Landlord shall refund to Tenant any rent previously paid by Tenant that is applicable to the period after the termination date. However, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

16. Condemnation.

16.1 Definitions.

16.1.1 A "Taking" shall mean the taking of all or any portion of the Premises, Building, Property or Common Area as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale of all or part of such property under the threat of or in lieu of condemnation.

16.1.2 A "Substantial Taking" shall mean a Taking such that the Premises cannot thereafter be reasonably used by Tenant for carrying on, at substantially the same level or scope, the Permitted Use, or a Taking so as to render, in Landlord's reasonable judgment, the Building unsuitable for the uses previously conducted there.

16.1.3 An "Insubstantial Taking" shall mean a Taking such that the Premises can subsequently continue to be used by Tenant for carrying on, at substantially the same level or scope, the Permitted Use and such that the portion of the Building remaining after the Taking remains, in Landlord's reasonable judgment, suitable for the uses previously conducted there.

16.2 Termination on Substantial Taking. If there is a Substantial Taking, the Term shall terminate on the date of vesting of title pursuant to such Taking. In that event, Landlord may refund to Tenant any rent paid by Tenant as may be applicable to the period subsequent to the date of termination of this Lease. However, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

16.3 Restoration on Insubstantial Taking. If there is an Insubstantial Taking, then subject to this Section below, this Lease shall continue in full force and effect, and Landlord shall cause the Premises to be restored as near as may be reasonably possible to the condition of the Premises prior to the Taking, by repairing or restoring the installations and improvements described in Section 14.1.1. Within 15 days after Landlord has substantially completed its repair and reconstruction work, Tenant shall commence to repair and reconstruct that portion of the Premises for which it is responsible under Section 14.1.2 or any other provision of this Lease, and prosecute same diligently to completion. Following the

date of the Insubstantial Taking, Base Rent shall be reduced as appropriate to reflect the reduced Rentable Area of the Premises.

16.4 Association's Determination. Notwithstanding anything contained in this Lease to the contrary, if any portion of the Building, the Property, or the Common Area is affected by a Taking, then regardless of whether the Premises are affected by such action, the rights and obligations of Landlord and Tenant under this Section 16.4 with respect to repair and reconstruction and termination rights shall be subject to the Project Declaration, the Commercial Center Declaration and the Eagle Ranch Declaration, as applicable, including, without limitation, the rights of the Project Association to determine whether to restore any portions of the Building or the Property remaining after such Taking, or to sell the Building and the Property free and clear of the Project Declaration, and the rights of the Commercial Center Association and the Eagle Ranch Association to determine whether to restore portions of any Common Area remaining after such takings.

If the Premises remain after a Taking affecting other portions of the Building, the Property, or the Common Area, and the Project Association, the Commercial Center Association, or the Eagle Ranch Association, as applicable elects to complete such restoration work to the other affected portions of the Building, the Property or the Common Area, Landlord shall not be responsible for or liable for the timely and proper performance of such work to be done by the Project Association, the Commercial Center Association, or the Eagle Ranch Association, as applicable.

In the event of the sale of the Building or the Property by the Project Association, this Lease shall terminate effective the date of the sale, and Landlord shall refund to Tenant any rent previously paid by Tenant that is applicable to the period after the date of the sale by the Project Association, or if earlier and applicable, the date of the Substantial Taking of the Premises. However, at Landlord's option, Landlord may apply such rent to any unsatisfied obligation of Tenant to Landlord.

16.5 Right to Award. The total award, compensation, damages or consideration received or receivable as a result of a Taking (the Award) shall be paid to and be the property of Landlord, whether the Award is made as compensation for diminution of the value of the leasehold or the fee of the Premises or otherwise. Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any Award. Tenant agrees to execute, immediately upon demand by Landlord, such documents as may be necessary to facilitate collection by Landlord of any Award. Without limiting the foregoing, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be recoverable by Tenant on account of any and all damage to Tenant's business by reason of the Taking or on account of any of Tenant's moving expenses, to the extent that such compensation does not reduce the Award to which Landlord is entitled.

17. Limitation on Landlord's Liability. Except as specifically provided in this Lease above, there shall be no abatement of rent or allowance to Tenant for a diminution of rental value and no liability on the part of Landlord or the Project Association by reason of inconvenience, annoyance, disturbance, or loss or interruption of business or otherwise, arising from any damage to the Premises or the Building by fire or any other cause, however or by whomever caused, or arising from any repairs, reconstruction, restoration or renovation to the Premises or the Building.

18. Insurance.

18.1 Landlord's Insurance. During the Term, Landlord shall provide and keep in force the following insurance coverage with respect to the Building areas specifically described in Section 14.1.1 above:

18.1.1 Commercial general liability insurance with respect to the Property covering bodily injury, death and damage to property of others;

18.1.2 Fire and extended coverage insurance (with coverage at Landlord's option by endorsement or otherwise, for all risks, vandalism and malicious mischief, sprinkler damage, boilers and rental loss); with endorsement providing rental income insurance.

Such insurance shall be in amounts which Landlord shall from time to time determine reasonable and sufficient, shall be subject to such reasonable deductibles and exclusions as Landlord may deem appropriate, and shall otherwise be on such terms and conditions as Landlord or the Association shall determine reasonable and sufficient from time to time. Any insurance provided for in this Section may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds.

18.2 Association Insurance. Those portions of the Project and Common Areas outside the Building, as described herein, shall be covered by insurance as set forth in the Project Documents, the Commercial Center Documents and the Eagle Ranch Documents. Landlord, as a member of any Project Association, if it is formed, the Commercial Center Association, and the Eagle Ranch Association, shall use commercially reasonable efforts to enforce the obligations of the associations with respect to insurance.

18.3 Tenant's Insurance.

18.3.1 Insurance Requirements. Tenant agrees to obtain on or before the commencement date of the Initial Term, and to keep in full force and effect during the Term, the following insurance coverage:

18.3.1.1 Liability Insurance. Commercial general liability insurance with respect to the business carried on, in or from the Premises and the use and occupancy thereof, covering bodily injury, death and damage to property of others with endorsements for assumed contractual liability with respect to the claims against which Tenant has agreed to indemnify Landlord as required in this Lease below, personal injury insurance, premises operations insurance, products/completed operations hazard insurance, broad form property damage insurance and independent contractor's insurance. If Tenant operates its business in various locations in addition to the Premises, Tenant's policy shall include a Designated Locations General Aggregate Limit endorsement.

18.3.1.2 Property Damage Insurance. Fire and extended coverage insurance (including sprinkler damage, vandalism and malicious mischief, with respect to those portions of the Premises which Tenant is required to maintain and repair pursuant to Section 14.1.2 above, which includes, except for items included in Landlord's Work, all leasehold improvements in the Premises, whether installed by Landlord or Tenant (including without limitation all ceilings, interior walls, and floor coverings, and the portion of the HVAC, ventilating and cooling equipment in, and for the exclusive use of, the Premises) and with respect to all of the Tenant's furnishings, fixtures and personal property in the Premises.

Any policy proceeds shall be used for repair and replacement of the property damaged or destroyed unless this Lease is terminated pursuant to Sections 14 or 16 above.

18.3.1.3 Workers Compensation Insurance. Workers compensation insurance in accordance with the Workers Compensation Act of Colorado (Colo. Rev. Stat. §8-40-101 et seq. as amended from time to time), covering all of Tenant's employees. If any services to be performed in

Tenant's business operations are subcontracted, Tenant shall require the subcontractor to provide workers compensation insurance for its employees to be engaged in such service.

18.3.1.4 Plate Glass Insurance. Insurance for all plate glass of the Premises covering all risks for the benefit of Landlord and Tenant in amounts and with a company satisfactory to Landlord.

18.3.1.5 Liquor Liability. Liquor liability coverage, if Tenant's use of the Premises includes the sale or service of alcoholic beverages.

18.3.2 Insurance Amounts. Insurance obtained by Tenant under this Lease shall be in commercially reasonable amounts which Landlord and any Mortgagee shall from time to time determine as being sufficient (provided that, in any event, Tenant shall carry commercial general liability insurance with combined single limits of not less than \$1,000,000 in respect to any one accident or occurrence, and Tenant shall carry property damage insurance on a full replacement cost basis subject to only such deductibles and exclusions as Landlord may reasonably approve).

18.3.3 General Requirements. Except as otherwise approved in writing by Landlord, all insurance obtained by Tenant shall be on forms and with insurers selected or approved by Landlord, which approval shall not be unreasonably withheld; shall name Landlord, the Project Association, the Commercial Center Association and any Mortgagee as additional insured parties, as their interests may appear; shall be written as primary policies, not contributing with and not in addition to coverage that Landlord or the Project Association may carry; and shall provide, by certificate of insurance or otherwise, that the insurance coverage shall not be cancelled or altered except upon 30 days' prior written notice to Landlord, the Project Association and any Mortgagee.

All commercial general liability insurance policies shall contain a provision that Landlord, any Project Association, the Commercial Center Association, and Eagle Ranch Association, and any Mortgagee, although named as additional insureds, shall nevertheless be entitled to recover under such policies for any loss sustained by either of them and their servants, agents and employees, notwithstanding any negligence of Tenant.

18.3.4 Evidence of Insurance. Tenant shall obtain and file with Landlord certificates of insurance on ACORD Form 27 (or another form approved by Landlord in advance), evidencing the insurance coverage required above, and Tenant shall deliver such certificates to Landlord on or before the first day of the Initial Term and from time to time thereafter as Landlord may reasonably require.

18.4 Cooperation In the Event of Loss. Landlord and Tenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

#### 18.5 Waiver and Indemnification.

18.5.1 Definition of Claims. As used in this Section 18, "Claims" means any claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, judgment and executions.

18.5.2 Release of Landlord and Mortgagee. Tenant agrees that Landlord, any Mortgagee, and their respective agents, officers, directors, servants and employees shall be released at all times to the fullest extent permitted by law, from all Claims for any loss, injury or death of any person and for any loss or damage of property which may be suffered by Tenant, Tenant's employees, servants, agents, representatives, contractors and suppliers or any other person rightfully in the Building for any purpose whatsoever, whether such Claims arise from the act, omission or negligence of Landlord, Tenant,

Tenant's Personnel or any occupant, visitor or user of the Premises, or any other tenant or occupant of the Building, including without limitation any owner or occupant of a unit in the Building.

18.5.3 Tenant's Indemnification. Tenant hereby indemnifies and agrees to save harmless Landlord and any Mortgagee from and against all Claims which (i) arise from or are in connection with the possession, use, occupation, management, repair, maintenance or control of all or any part of the Premises; (ii) arise from or are in connection with any act or omission of Tenant or Tenant's Personnel or, licensees, subtenants, heirs, successors, legatees, devisees and any guarantor of Tenant's obligations under this Lease; (iii) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (iv) result from injury to person or property or loss of life sustained in or about the Premises, provided, however, that this indemnity will not be required for Claims to the extent arising from the gross negligence or willful misconduct of Landlord.

18.5.4 Defense of Landlord and Mortgagee. Tenant shall defend Landlord and any Mortgagee from any Claims with respect to the foregoing or in which Landlord or Mortgagee may be impleaded, such obligation to include, without limitation, any reasonable attorneys' fees and investigation costs incurred by Landlord or a Mortgagee in the matter defended. Tenant shall also pay, satisfy and discharge any judgments, orders and decrees which be recovered against Landlord or any Mortgagee in connection with the foregoing.

18.5.5 Cause of Loss. Without limiting the generality of the foregoing, the waiver and indemnification by Tenant shall extend to loss, damage, injury or death resulting from fire, explosion, falling plaster, electricity, gas, odors, noise, water, rain, excessive heat or cold, snow or ice, leak, flow or falling water, rain, snow or ice from the Building roof, street, subsurface or any other place or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires appliances, plumbing, air conditioning or lighting fixtures of the Building, or whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or from other sources.

18.5.6 Amount of Indemnification Obligation. Tenant's obligation to indemnify Landlord as provided above shall be limited to the sum that equals the amount of insurance proceeds, if any, received from Tenant's insurance carrier in payment of the Claim.

18.6 Mutual Waiver of Claims for Property Losses. Landlord and Tenant intend for their insurers to be solely responsible for their respective property losses. Accordingly, Landlord and Tenant each waive and release all claims against the other, their shareholders, officers, directors, members, partners, employees and agents with respect to all matters for which the other has disclaimed liability under this Lease. In addition, Landlord and Tenant agree that neither of them nor their shareholders, members, partners, employees and employers shall be liable to the other for any loss or damage to property or business arising from any cause, including without limitation theft, act of God, public enemy, injunction, riot, strike, war, requisition, order of a court or governmental authority, fire, explosion, steam, water, leak or flow of water, rain or snow into the Premises or from the Premises, or from the street, subsurface or any other place, or by dampness or from the breaking, leaking, obstruction or other defect in the pipes, HVAC, mechanical, electrical or plumbing systems in the Building, or from construction, repair or maintenance of the Premises or the Building, whether caused by the acts or omissions of either Landlord or Tenant or any other tenant, occupant or visitor of the Premises or the Project.

18.7 Waiver of Subrogation. All property damage insurance policies carried by Landlord or Tenant with respect to the Project and the property of Landlord or Tenant within the Project, shall waive any right of the insurer of one party to subrogation against the other party to the extent permitted by law.

If any insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies

without waiver of subrogation, the party undertaking to obtain the insurance shall notify the notifying party of this fact. The other party shall have a period of 10 days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, then Landlord, Tenant and the Association are relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance involved.

18.8 Occupational Safety and Health Laws. Tenant shall provide a safety program for all its employees with respect to the operation of its business in the Premises and shall comply in all material respects with the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and other applicable laws and regulations governing the welfare of Tenant's employees.

18.9 Hazardous Activities. Tenant shall not do anything or permit anything to be done in or about the Premises that is hazardous or that in any manner will violate, suspend, void or make inoperative or tend to increase the rate of any insurance policies carried by Landlord or the Project Association upon the Premises or any other part of the Property. Without limiting the foregoing, Tenant shall comply in all material respects with all applicable environmental laws and permitting requirements impacting the operations of Tenant on the Premises, and Tenant shall indemnify, defend and hold Landlord harmless from any liability, loss and expense arising out of Tenant's use or disposal of toxic or hazardous materials on the Property.

18.10 Increased Costs of Insurance. Tenant shall pay to Landlord or the Project Association, as applicable, on demand, any increase in the cost of any insurance carried by Landlord or the Project Association attributable to Tenant's activities in or about the Premises or Tenant's failure to perform and observe its obligations and covenants under this Lease, whether or not Landlord shall have consented to such actions.

19. Assignment and Subletting.

19.1 Requirement for Landlord's Consent. Tenant shall not assign, convey, mortgage, hypothecate or encumber this Lease or any interest in this Lease or sublet all or any part of the Premises, or permit all or any part of the Premises to be occupied or used by others (any of which shall be referred to as a Transfer), at any time during the Initial Term or Option Period without the prior written consent of Landlord not to be unreasonably withheld, delayed or conditioned, in each instance, subject to the restrictions below. Any attempted Transfer without Landlord's prior written consent shall be void and shall confer no rights upon any third person, and this provision shall serve as notice to any assignee, subtenant, licensee, concessionaire or other transferee (in any case, a Transferee) that a Transfer without Landlord's prior written consent, at the opinion of Landlord, shall be void and of no force and effect.

19.2 Transfer Explained. Without limiting the generality of the provisions of Section 19.1 above, "Transfer" shall be deemed to include the following:

19.2.1 Corporation. If Tenant is a corporation: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the corporate stock or voting securities of Tenant or which, taken with all such prior transfers, involves more than 10% of the voting securities of Tenant, but excluding, however, (i) transfer of minority ownership interests to employees of Tenant which, in any single transfer, do not involve more than 10% of the voting securities of Tenant, and in the aggregate, do not involve more than 25% of the voting securities of Tenant and (ii) transfer of minority ownership interests to persons that control or will control the entity after taking

into account the transfer; provided, however, that Barry Gassman and/or Clark Gundlach shall at all times have voting and operational control of Tenant.

19.2.2 Partnership or Joint Venture. If Tenant is a partnership or joint venture: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the ownership interests of Tenant which results in a change in the voting control of such entity or which, taken with all such prior transfers, involves more than 10% of the ownership interests of such entity, but excluding, however, (i) transfer of minority ownership interests to employees of Tenant which, in any single transfer, do not involve more than 10% of the voting securities of Tenant, and in the aggregate, do not involve more than 25% of the voting securities of Tenant and (ii) transfer of minority ownership interests to persons that control or will control the entity after taking into account the transfer; provided, however, that Barry Gassman and/or Clark Gundlach shall at all times have voting and operational control of Tenant..

19.2.3 Change of Control. Any such change of the parties in control of Tenant by any means whatsoever, and any changes, direct or indirect in the voting or operational control of any entities that may directly or indirectly control Tenant.

19.2.4 Granting License. The granting of a concession or license to operate in or use in any manner any portion of the Premises.

19.2.5 Involuntary Transfers. Any transfer, assignment or sale by operation of law and any involuntary assignment of this Lease or any interest of Tenant in this Lease or in the Premises.

19.3 Payment Upon Assignment. If Landlord consents to an assignment of this Lease, Tenant shall pay to Landlord on the closing date of the assignment an amount equal to 100% of the total value of the consideration to be paid to Tenant by the assignee in connection with the transaction of which the Lease assignment is a part and which is reasonably attributable to the value of the Lease Assignment.

19.4 Payment Upon Sublease. If Landlord consents to a sublease of this Lease, Tenant shall pay to Landlord when received by Tenant the excess, if any, of any and all rental amounts collected by Tenant in connection with the sublease over the Rent and additional rent, if any, payable by Tenant under this Lease (which shall be prorated in the event of a sublease of less than the entire Premises).

19.5 Transfer Documents. Each Transfer to which Landlord has consented shall be by an instrument in writing and shall be executed by the transferor and the transferee in each instance in such manner that it may be recorded (at Landlord's sole election) in the real property records in Eagle County, Colorado. One copy of such written instrument so executed shall be delivered to Landlord. Tenant shall reimburse Landlord for Landlord's expenses and attorneys' fees incurred in conjunction with the review and documentation of any Transfer for which Landlord's consent is requested.

19.6 Reservation of Rights. If any Transfer shall occur, with or without Landlord's prior consent, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or other transferee, and apply the net amount collected to the rent reserved in this Lease, but no such Transfer or collection shall be deemed a waiver of the provisions of this Section 19, or the acceptance of the assignee, subtenant or other transferee as the tenant under this Lease, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this Lease. The consent by Landlord to a Transfer shall not relieve Tenant from primary liability under this Lease or from the obligation to obtain the express consent in writing of Landlord to any further Transfer.

19.7 Conditions of Consent. Landlord shall be deemed to have reasonably withheld consent to a Transfer under any of the following conditions:

19.7.1 The Transferee's financial condition is not reasonably satisfactory to Landlord or does not evidence the ability to pay Tenant's obligations under this Lease when due;

19.7.2 The Transferee's use of the Premises conflicts with the permitted use described in Section 7.1 or with any exclusive use rights granted to any other tenant in property governed by the Commercial Center Documents;

19.7.3 The business, activities or reputation in the business community of the Transferee (or its principals, employees or invitees) are not acceptable to Landlord;

19.7.4 An uncured event of default exists under this Lease (or a condition exists which, with the passage of time or giving of notice, would become an event of default);

19.7.5 The Transferee is an occupant of, or Landlord is otherwise engaged in lease negotiations with the Transferee for, other premises located on property governed by the Commercial Center Documents; or

19.7.6 The Transferee is or has been involved in a dispute with Landlord or any party affiliated with Landlord.

20. End of Term; Holding Over. Upon the expiration or earlier termination of this Lease, or on the date specified in any demand for possession by Landlord after any default by Tenant, Tenant covenants and agrees to surrender possession of the Premises to Landlord, in the same condition as when Tenant first occupied the Premises, ordinary wear and tear, and damage by casualty or damage which Tenant is not required to repair or restore under the express terms of this Lease, excepted.

If Tenant shall hold over after the expiration of the Term without written agreement providing Landlord's consent to the holdover, Tenant shall be deemed to be a tenant from month to month, at a monthly rental, payable in advance, equal to 200% of the monthly installment of the Base Rent payable during the last Lease Year of the Term, and Tenant shall be bound by all of the other terms, covenants and agreements of this Lease. Nothing contained in this Lease shall be construed to give Tenant the right to hold over at any time, and Landlord may exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by Landlord, due to Tenant's failure to vacate the Premises and deliver possession to Landlord as provided in this Lease.

21. Subordination and Attornment.

21.1 Subordination to Eagle Ranch and Project Covenants. This Lease is subject and subordinate to the Eagle Ranch Declaration, the Commercial Center Declaration and the Project Declaration.

21.2 Subordination to Other Matters. This Lease is also subject and subordinate to all applicable federal, state, county and municipal laws, ordinances, codes, orders, rules and regulations, permits and certificates of occupancy and to all covenants, conditions, declarations, encroachments, restrictions, reservations, rights, rights-of-way and easements and all conditions, renewals, extensions, modifications, consolidations and replacements thereof (except to the extent any such item shall expressly provide that this Lease is superior to such item), now or later affecting or placed, charged or enforced against all or any portion of the Building or any interest of Landlord in the Building or Landlord's interest in this Lease and the leasehold estate created by it.

21.3 Subordination to Mortgage; Attornment.

21.3.1 Subordination. Subject to Section 21.3.3 below, this Lease and Tenant's rights under it are and will remain subject and subordinate to each and every underlying indenture, mortgage, deed of trust or other encumbrance (and all voluntary and involuntary advances thereon) granted to a bona fide lender to Landlord that may now or later encumber all or any interest in the Premises, and to all increases, renewals, recasting, modifications, consolidations, participation's, replacements, and extensions thereof (collectively referred to as the Deed of Trust).

If any Deed of Trust is foreclosed or sold in execution of a judgment, or if Landlord's interest under this Lease is conveyed or transferred by deed in lieu of foreclosure, then (i) no person which, as a result of any of the foregoing, has succeeded to the interest of Landlord in this Lease and none of the successors or assigns of such person (any such person or its successors or assigns being called a Successor) shall be liable for any default by Landlord or for any other matter that occurred before the date the Successor succeeded to Landlord's interest in this Lease, nor shall the successor be bound by or subject to any offsets or defenses that Tenant may have against any predecessor in interest of Successor; (ii) upon request of any Successor, Tenant shall attorn to the Successor; (iii) no Successor shall be bound to recognize any prepayment of rent made more than 30 days in advance of the date due (except such sums that represent estimated payments, and are later to be determined to be overpayments, of Percentage Rent, if any, or of Tenant's Share of Operating Costs and Taxes).

21.3.2 Automatic Effect. The foregoing subordination is self-operative, and no further instrument of subordination and/or attornment will be necessary unless required by Landlord, Mortgagee, or any declarant under the Project Declaration, the Commercial Center Declaration or the Eagle Ranch Declaration, in which case Tenant, within 10 days after written request, will execute and deliver without charge any documents acceptable to Landlord or such other requesting party in order to confirm the subordination and/or attornment set forth above.

21.3.3 Right to Subordinate Mortgage to Lease. Should Mortgagee request that this Lease and Tenant's rights under it be made superior, rather than subordinate, to the Mortgage, then Tenant, within 10 days after written request, will execute and deliver without charge an agreement to that effect, in form and content reasonably acceptable to Mortgagee.

21.3.4 Tenant's Default. If Tenant fails to execute and deliver any documents as and when required by this Section above, then, notwithstanding any other provision of this Lease, without the requirement of notice from Landlord, such failure will constitute a default under this Lease beyond any applicable grace period, entitling Landlord to the same rights and remedies as if such default were with respect to non-payment of rent.

21.3.5 Non-Disturbance Agreement. With respect to each Deed of Trust that encumbers the Property on or after the date of this Lease, Landlord agrees that, at Tenant's request, Landlord will use reasonable efforts to obtain from each Mortgagee a "non-disturbance agreement" on the Mortgagee's then current form. Tenant shall bear all costs and expenses (including attorneys' fees) of Landlord and such Mortgagee in connection with a non-disturbance agreement.

22. Statements of Performance. Tenant covenants and agrees to execute, acknowledge and deliver to Landlord, within 10 days after Landlord's written request, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the rate of Base Rent then in effect and the dates to which Base Rent and other rent have been paid; stating the amount of the security deposit, if any, held by Landlord; detailing any options of Tenant with respect to the renewal of the Term, early termination of the Lease, or the expansion or contraction of the Premises; and stating whether Landlord is in default under this Lease (and, if so, specifying the nature of the default). Tenant

agrees that such statement may be delivered to and relied upon by any existing or prospective Mortgagee or purchaser of the Premises. Tenant further agrees that a failure to deliver such a statement within 10 days after written request from Landlord shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord; that there are no uncured defaults by Landlord under this Lease; and that any representation by Landlord with respect to the matters covered by this Section are true.

Nothing in this Section shall be construed to grant Tenant any right to terminate this Lease or to abate rent or set off against rent any amounts claimed by Tenant as due from Tenant.

23. Notice of Landlord's Default. Tenant agrees to give any Mortgagee who has been identified to Tenant from time to time by Landlord or such Mortgagee, written notice of, and at the option of such Mortgagee, an opportunity to cure within a reasonable time, any default by Landlord under this Lease which would give rise to the right of Tenant to cancel this Lease or to abate the rent otherwise payable under it.

Landlord hereby notifies Tenant that as of the date of this Lease, such notice, if any, by Tenant shall be given to the following party:

First Bank of Vail  
17 Vail Road  
Vail, CO 81657

24. Rules and Regulations. Tenant, Tenant's Personnel, and Tenant's licensees, customers, and visitors shall abide by the rules and regulations set forth on the attached Exhibit C and such other reasonable rules and regulations as Landlord, the Project Association, the Commercial Center Association or the Eagle Ranch Association may establish, amend, and supplement from time to time. Such new or modified rules and regulations shall be effective upon notice to Tenant.

In the event of any breach of any rules or regulations, Landlord shall have all remedies in this Lease for a default by Tenant and, in addition, any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations.

No provision of this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations or the terms of in any other lease against any other tenant of Landlord. Landlord shall not be liable to Tenant for violation of such rules, regulations, terms, covenants or conditions by any such other tenant, its servants, employees, agents, visitors or licensees or any other person. In the event of any conflict between the provisions of this Lease and the rules and regulations, the former shall govern.

25. Security. Tenant shall keep on deposit with Landlord at all times after the execution of this Lease the Security Deposit specified in Section 1.14 as security for the payment by Tenant of the rent and other sums due under this Lease and for the faithful performance of all the terms, conditions and covenants of this Lease. Landlord shall have the right to commingle the Security Deposit with other funds of Landlord.

25.1 Application of Security Deposit. If at any time Tenant is in default in the performance of any provision of this Lease, Landlord may, but shall not be required to, use the Security Deposit, or so much of it as may be needed, in payment of any rent or any other sums due under this Lease that are in default, in reimbursement of any expense incurred by Landlord and in payment of the damages incurred by Landlord by reason of Tenant's default. Alternatively, at the option of Landlord, Landlord may retain the Security Deposit toward recovery of damages. In any such event, within ten days after written

demand from Landlord, Tenant shall immediately remit to Landlord an amount in cash to restore the Security Deposit to its original amount. Notwithstanding the provisions above, if the claims of Landlord exceed the Security Deposit, Tenant shall remain liable for the balance of those claims. Landlord's rights under this Section shall be in addition to all its other rights and remedies.

25.2 Return of Security Deposit. In the event Landlord does not use all of the Security Deposit as described above, then Landlord shall refund the balance, without interest upon performance of this Lease by Tenant.

25.3 Transfer of Security Deposit. If Landlord sells its interest in the Premises, Landlord shall deliver the Security Deposit to the purchaser, and upon such delivery and sale, Landlord shall be discharged from further liability with respect to the Security Deposit. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit, except in connection with a permitted Transfer.

26. Default. The occurrence or existence of any one or more of the following events or circumstances, at the option of Landlord, shall constitute a default under this Lease by Tenant:

26.1 Failure in Payment. The failure by Tenant to pay within 10 days when due any installment of Base Rent or other rent or other amount due under this Lease;

26.2 Failure in Performance. The failure by Tenant to perform or observe all of the covenants binding Tenant under this Lease, if Tenant fails to remedy such neglect or failure within 20 days after Landlord gives Tenant written notice specifying the default (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such 20-day period, provided that Tenant commences to remedy such default within such 20-day period and proceeds with reasonable diligence to cure such default);

26.3 Attachment. The taking of this Lease or of all or part of the Premises upon execution or by other process of law directed against Tenant, or upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, if the attachment is not discharged or disposed of within 15 days after the levy of same;

26.4 Vacating or Abandonment. The vacation or abandonment of the Premises (which shall be defined to include, but not be limited to, any absence by Tenant from the Premises for five or more days), or Tenant's locking the Premises so as to prevent the entry by Landlord or its representatives as permitted by this Lease;

26.5 Cessation of Operations. Tenant's removal or attempt to remove any goods or property from the Premises other than in the usual course of business, or Tenant's cessation of its business operations in the Premises;

26.6 Insolvency Filing. An action by Tenant or any guarantor of Tenant's obligations under this Lease to (i) admit in writing its inability to pay its debts generally as they become due; (ii) make an assignment of all or a substantial part of its property for the benefit of creditors; (iii) apply for or consent to or acquiesce in the appointment of a receiver, trustee or liquidator of Tenant or such guarantor or of all or a substantial part of Tenant's or such guarantor's property or of the Premises or of Tenant's interest in this Lease; or (iv) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization under any bankruptcy or insolvency law or an arrangement with creditors, or take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against Tenant or such guarantor in any bankruptcy, reorganization or insolvency proceedings; or

26.7 Insolvency Adjudication. The entry of a court order, judgment or decree without the application, approval or consent of Tenant or any guarantor of Tenant's obligations under this Lease, as the case may be, approving a petition seeking reorganization of Tenant or such guarantor under any bankruptcy or insolvency law or appointing a receiver, trustee or liquidator of Tenant or such guarantor, or of all or a substantial part of Tenant's or such guarantor's property, or of the Premises, or of Tenant's interest in this Lease, or adjudicating Tenant or such guarantor a bankrupt or insolvent, if such order, judgment or decree shall not be vacated, set aside or stayed within 30 days from the date of entry.

27. Landlord's Remedies. If Tenant defaults under this Lease, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether set forth in this Lease or existing at law or equity.

27.1 Termination. Landlord shall have the right to terminate this Lease by giving Tenant notice in writing at any time. No act by or on behalf of Landlord, such as entry in the Premises by Landlord to perform maintenance and repairs and efforts to relet the Premises, other than giving Tenant written notice of termination, shall terminate this Lease. Further, the service upon Tenant of a statutory notice for payment of rent or possession of the Premises, regardless of whether Tenant delivers possession of the Premises to Landlord in response to such notice, shall not operate to terminate this Lease, unless the notice contains a statement calling for such termination upon delivery of possession. Landlord shall have the right to give such notice of termination at any time after service of the statutory notice for payment or possession.

27.1.1 If Landlord gives such notice, this Lease and the Term shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's liability, as expressly provided in this Lease) on the date specified in such notice as if such date were the expiration date of the Term without the necessity of re-entry or any other act on Landlord's part.

27.1.2 If this Lease is terminated, Tenant shall remain liable to Landlord for (i) all rent and damages which may be due or sustained by Landlord and all reasonable costs, fees and expenses including, but not limited to, attorneys' fees, costs and expenses, incurred by Landlord in pursuit of its remedies under this Lease, or in renting the Premises to others from time to time (all such rent, damages, costs, fees and expenses being referred to in this Lease as Termination Damages), and (ii) additional damages (the Liquidated Damages), which at the election of Landlord, shall be either:

27.1.2.1 An amount or amounts equal to the Base Rent, Percentage Rent (conclusively presuming the monthly Percentage Rent for each Lease Year remaining to be 1/12 of the Percentage Rent that was payable for the 12 month period immediately preceding the termination of the Lease, reentry or obtaining possession of the Premises) and all other rent which, but for termination of this Lease, would have become due during the remainder of the Term, less the amount or amounts of rental if any, which Landlord shall receive during such period from others to whom the Premises may be rented (other than any sums received by Landlord as a result of any failure of such other person to perform any of its obligations to Landlord), in which case such Liquidated Damages shall be computed and payable at Landlord's option either in an accelerated lump sum payment in an amount equal to the total rentals due for the period on which the Term would have ended, but for the termination; or by payment in monthly installments, in advance, on the first day of each calendar month following termination of the Lease and continuing until the date on which the Term would have expired but for such termination, and any suit or action brought to collect any such Liquidated Damages for any month shall not in any manner prejudice the right of Landlord to collect any Liquidated Damages for any subsequent month by a similar proceeding; or

27.1.2.2 An amount equal to the present worth (as of the date of such termination) of the Base Rent, Percentage Rent (conclusively presuming the monthly Percentage Rent for each Lease Year remaining to be 1/12 of the Percentage Rent that was payable for the 12 month period immediately preceding the termination of the Lease, reentry or obtaining possession of the Premises) and other rent which, but for termination of this Lease, would have become due during the remainder of the Term, less the fair rental value of the Premises, as determined by an independent real estate appraiser named by Landlord, in which case such Liquidated Damages shall be payable to Landlord in one lump sum on demand and shall bear interest at the Maximum Rate until paid. For purposes of this clause, "present worth" shall be computed by discounting such amount to present worth at a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank nearest to the location of the Building.

Termination Damages shall be due and payable immediately upon demand by Landlord following any termination of this Lease pursuant to this Section above.

If this Lease is terminated pursuant to this Section above, Landlord may relet the Premises or any part thereof, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Term) and on such terms and conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its absolute discretion, may determine, but Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Premises or any failure by Landlord to collect any rent due upon such reletting.

27.2 Re-entry. Landlord may, without demand or notice, re-enter and take possession of the Premises or any part thereof, and repossess the same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass, without prejudice to any remedies for arrears of rent or preceding breach of covenants and without terminating this Lease or otherwise relieving Tenant of any obligation hereunder. Should Landlord elect to re-enter as provided in this Section, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet all or any part of the Premises for such term or terms and at such rental or rentals, and upon such other conditions as Landlord in its absolute discretion may deem advisable, with the right to make alterations and repairs to the Premises.

No such re-entry, repossession or reletting of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant by Landlord. No such re-entry, repossession or reletting of the Premises shall relieve Tenant of its liability and obligation under this Lease, all of which shall survive such re-entry, repossession or reletting.

Upon the occurrence of such re-entry or repossession, Landlord shall be entitled to the amount of the monthly rent, and any other sums, which would be payable under this Lease if such re-entry or repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, expenses of employees, alteration costs and expenses of preparation for such reletting. Tenant shall pay such amount to Landlord on the days on which the rent or any other sums due under this Lease would have been payable under this Lease if possession had not been retaken. In no event shall Tenant be entitled to receive the excess, if any, of net rent collected by Landlord as a result of such reletting over the sums payable by Tenant to Landlord under this Lease.

27.3 Payment on Account of Tenant. If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or shall default in performing any other obligations of

Tenant under this Lease, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. Tenant shall repay to Landlord on demand all sums so expended by Landlord with interest at the Maximum Rate. No such payment or expenditure by Landlord shall be deemed a waiver of Tenant's default, nor shall it affect any other remedy of Landlord by reason of such default.

27.4 Default Interest. If Tenant shall default in making payment of any rent or other sum due under this Lease, Landlord may charge and Tenant shall pay upon demand interest at the Maximum Rate accruing from the date such sum is due until paid.

27.5 Injunction and Specific Performance. In the event of a breach or threatened breach by Tenant of any of the terms, covenants, or conditions of this Lease, Landlord shall also have the right of injunction and specific performance. Tenant agrees to pay the premium for any bond required in connection with any injunction.

28. Bankruptcy Considerations.

28.1 Prior to Term. Notwithstanding any provision in this Lease to the contrary, if at any time before the Commencement Date there occurs a default as described in Sections 26.6 or 26.7 above, this Lease shall be cancelled ipso facto.

28.2 Remedies of Landlord for Bankruptcy Generally. If this Lease is terminated ipso facto prior to the Commencement Date, as provided immediately above, or if this Lease is terminated by Landlord at any time after the Commencement Date as provided in Sections 26.6 or 26.7 above, neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession of the Premises. Further, Landlord, in addition to the other rights and remedies available to Landlord, may retain as damages any rent, security deposit, or other money received by Landlord from Tenant or others on behalf of Tenant.

28.3 Remedies Other than Termination. If Landlord does not choose to exercise, or by law is not able to exercise, its rights under this Lease upon the occurrence of an event of default described in Sections 26.6 or 26.7 above, then, in addition to any other relief reserved by or available to Landlord, Landlord shall not be obligated to provide Tenant with any services unless Landlord has received compensation in advance for such services, and the parties agree that Landlord's estimate of the compensation required with respect to such services shall control. Further, neither Tenant, as debtor-in-possession, nor any trustee or other person (in any case, the Assuming Tenant) shall be entitled to assume this Lease unless, on or before the date of such assumption, the Assuming Tenant does the following:

28.3.1 Cures, or provides adequate assurance that the Assuming Tenant will promptly cure, any default of Tenant under this Lease;

28.3.2 Compensates, or provides adequate assurance that the Assuming Tenant will promptly compensate, Landlord for any monetary loss (including, without limitation, attorneys' fees and disbursements) resulting from such default; and

28.3.3 Provides adequate assurance of further performance under this Lease.

For these purposes, any cure or compensation shall be effected by the immediate payment of any monetary default or any required compensation; and any "adequate assurance" of such cure, compensation, or future performance shall be effected by the establishment of an escrow fund for the amount at issue or by bonding.

Landlord and Tenant agree that the commercial and retail units in the Building constitute a "shopping center" as that term is used in Section 365(b)(3) of the federal Bankruptcy Code.

The foregoing provisions were a material part of the consideration for this Lease.

29. Attorneys' Fees.

29.1 Landlord's Enforcement Costs. All costs and expenses incurred by Landlord in enforcing any covenant or provision of this Lease and collecting any amounts and damages owing by Tenant pursuant to this Lease, including reasonable attorneys' fees (and legal assistants' fees), regardless of whether any action is commenced by Landlord, shall be paid by Tenant to Landlord upon demand.

29.2 Disputes. In the event of any legal proceeding resolving a dispute under this Lease, the prevailing party shall be entitled to an award of its reasonable attorneys' fees (including legal assistants' fees) and costs. For the purposes of this Lease, the term "prevailing party" shall include a party who withdraws or moves for dismissal of a claim in consideration of payment allegedly due, performance allegedly owed or other consideration in substantial satisfaction of the claim withdrawn or dismissed.

30. No Implied Surrender or Waiver.

30.1 Rules. The failure of Landlord to seek redress against Tenant or any other occupant of the Building for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease or any of the rules and regulations adopted by the Project Association, if formed, the Commercial Center Association, the Eagle Ranch Association or by Landlord, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

30.2 Rent. The receipt by Landlord of rent, with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant, or receipt by Landlord, of a lesser amount than the rent due under this Lease shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy available to Landlord.

30.3 Writing Required. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord.

30.4 Surrender. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employees of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord, or of Landlord's agents, shall not operate as a termination of this Lease or a surrender of the Premises.

30.5 Time. Time is of the essence under this Lease.

31. Limitations Regarding Landlord's Liability.

31.1 No Representations by Landlord; Entire Agreement. Landlord and Landlord's agents have made no representations, warranties, agreements or promises with respect to the Premises or the Building except such as are expressed in this Lease. Without in any way limiting the generality of the

foregoing, Landlord and Landlord's agents have made no representations, warranties, agreements or promises with respect to the exact size of the Premises, any other tenants or types of tenants in the Building or in other space leased or offered for lease by Landlord, or the terms of any other tenant's lease. The entire contract of the parties is contained in this Lease (including the exhibits to it), and there are no promises, agreements, representations, warranties, conditions or understandings, either oral or written, between them, other than as are set forth in this Lease.

31.2 Liability of Landlord. Neither Landlord nor any member of Landlord (and in case Landlord shall be a joint venture, partnership, tenancy-in-common, association, or other form of joint ownership, the members of any such joint venture, partnership, tenant-in-common, association, or other form of joint ownership) shall have any personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease in the event of a breach or default by Landlord of any of its obligations. Tenant shall look solely to the equity of Landlord in the Premises at the time of the breach or default (or if the interest of Landlord is a leasehold interest at that time, Tenant shall look solely to such leasehold interest) for the satisfaction of any remedies of Tenant. Such exculpation of liability shall be absolute and without exception.

31.3 Definition of and Actions by Landlord. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Premises. In the event that the interest of Landlord as named in this Lease in the Premises is transferred, whether by sale, lease or sublease, foreclosure, or otherwise, the named Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord under this Lease. Without requirement for any further agreement between the parties or their successors in interest, or between parties and any such transferee, such transferee shall be deemed to have assumed and agreed to carry out the covenants and obligations of Landlord the under this Lease.

Actions taken or decisions made by Landlord under this Lease shall be binding upon Landlord in its capacity as Landlord, but shall not be binding upon the Eagle Ranch Association, the Commercial Center Association, the Project Association or any entity affiliated with Landlord simply because of Landlord's membership or interest therein. Accordingly, Landlord shall have no liability to Tenant for any actions taken or decisions made by the Eagle Ranch Association, the Project Association or any affiliated entity that are contrary to or less beneficial to Tenant than the actions taken or decision made by Landlord.

31.4 No Partnership. Despite anything in this Lease to the contrary, Landlord is not and shall not in any way or for any purpose become principal or partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant under this Lease.

32. Real Estate Brokers. Each party agrees to pay any commission or other compensation due a broker engaged by that party in connection with the Lease. Each party further agrees to pay, hold harmless and indemnify the other party from and against all cost, expense and liability for any compensation, commissions, charges or claims by any other broker or other agent with whom the indemnifying party has dealt with respect to this Lease or the negotiation of it.

33. Notice.

33.1 Notice to Tenant. Any bill, statement, notice, demand or communication which Landlord may desire or be required to give to Tenant shall be in writing and shall be deemed sufficiently given if delivered personally to Charlie Gundlach, President of Tenant, Clark Gundlach, a manager of Tenant, or Barry Gassman, a manager of Tenant, or sent by overnight courier or by certified or registered United States mail, postage prepaid, addressed to Tenant at the address of Tenant stated in Section 1.2 of this

Lease, or, after commencement of the Term, at the Premises, or by email delivery to the email address of Tenant stated in Section 1.2 of this Lease. In the event Landlord delivers any bill, statement, notice, demand or communication personally to the Premises, Landlord shall use reasonable efforts to serve such bill, statement, notice, demand, or communication to the general manager of Tenant's business operations in charge of the Premises.

33.2 Notice to Landlord. Any notice, demand or communication by Tenant to Landlord shall be in writing and must be hand-delivered, sent overnight courier or by certified or registered United States mail, postage prepaid, addressed to Landlord at the address specified in Section 1.1 of this Lease, or sent by email to the email address of Landlord specified in Section 1.1 of this Lease.

33.3 Notices to Holders of Mortgages. Any notice or other communication given by Tenant to a Mortgagee shall be in writing and must be served by (i) certified or registered United States mail, postage prepaid, addressed as stated in Section 23 above or at such other address specified by such holder to Tenant, (ii) by overnight courier service, charges prepaid, addressed as provided above, or (iii) by telecopy transmittal, charges prepaid, addressed as provided above.

33.4 Changes in Notice Provisions. Any party shall have the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

33.5 Effective Delivery. The time of the giving of any notice, demand or communication shall be deemed to be the time when it is received, or if delivery is attempted and refused, on the date of attempted delivery.

#### 34. Miscellaneous.

34.1 Parking. Except as parking may otherwise be assigned from time to time by the Association, Tenant acknowledges and agrees that the commercial and retail portion of the parking area(s), including, but not limited to, the parking available on Sylvan Lake Road, if any, and Capitol Street, is intended primarily for use by the customers of the businesses located in the Building and nearby buildings. Tenant agrees that Tenant shall instruct its employees and contractors, if applicable, and make it a condition of their employment that such employees not use the parking area(s) and parking available on Sylvan Lake Road, if any, and Capitol Street for the parking or storage of their vehicles. Tenant's employees may park in the parking lot located to the north of the building.

34.2 Merchant's Association. Tenant agrees, throughout the Term of this Lease, to become a member of and participate fully in and remain in good standing in the merchant's association for the retail tenants in the Building (the "Merchant's Association"), in the event any Merchant's Association is formed, and abide by the rules and regulations of any such association. Tenant shall have a reasonable time to review and comment on the proposed governing documents for the Merchant's Association. Notwithstanding anything to the contrary set forth in the governing documents for the Merchant's Association, each tenant member and the Landlord shall have one (1) cumulative vote on association matters for each unit within the Building. Tenant agrees to pay association dues to the Merchant's Association, in addition to Basic Rent and any other amounts due hereunder.

34.3 No Recording. Tenant shall not record this Lease or any memorandum of it in any public records without Landlord's written consent, and any violation of this covenant by Tenant shall be a default subject to all remedies of Landlord under this Lease.

34.4 Unavoidable Delays. In the event that either party to this Lease is delayed, hindered in, or prevented from the performance of any act required under this Lease by reason of fire, strike, or other

casualty or contingency beyond the reasonable control of the party who is so delayed in such performance, then, except as otherwise specifically provided herein, performance by that party will be excused for the period of the delay, and the period for the performance of such act shall be extended for a period equal to the period of the delay. However, nothing in this Section shall operate to excuse Tenant from the prompt payment of rent or any other payments required under this Lease or to extend the Term, and delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

34.5 Severability. If any provision of this Lease shall prove to be illegal, invalid or unenforceable, the remainder of this Lease shall not be affected thereby.

34.6 Amendment. Except as otherwise provided in this Lease, no amendment, alteration, modification of or addition to this Lease shall be valid or binding unless expressed in writing and signed by the party or parties to be bound.

34.7 Captions and Exhibits. The caption of each Section is added as a matter of convenience only and shall be considered of no effect in the construction of any provision of this Lease. The exhibits described above and attached to this Lease are incorporated in this Lease by this reference.

34.8 Binding Effect. The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and subject to the terms of this Lease above, their assigns.

34.9 Tenant's Liability. If at any time Tenant is comprised of more than one entity or person, each legal person is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants and conditions of this Lease to be performed or observed by Tenant; and the term "Tenant" shall mean and include each of them jointly and severally. Further, the act of or notice from, or notice or refund to, or the signature of, any one or more of them, with respect to this Lease shall be binding upon each and all of the persons executing this Lease as Tenant.

34.10 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of Colorado.

34.11 Effect of Offer of Lease. This Lease is offered to Tenant for signature by Tenant and submission to Landlord, and this Lease shall not be binding upon Landlord unless and until executed by Landlord.

34.12 Approval by Mortgagees. This Lease is subject to the approval of any Mortgagee of record as of the date of this Lease.

34.13 Counterparts. This Lease may be executed in counterparts, which, taken together, shall evidence the agreement of all parties signing below.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

Brush Creek Market, LLC, a Delaware limited liability company

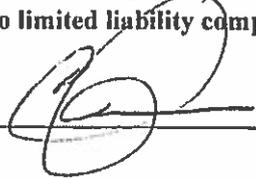
By: Eagle Ranch Village, LLC, a Delaware limited liability company, its Manager

By: Matura Corp., a Delaware corporation, its Manager

By:   
\_\_\_\_\_  
Willis J. Wright, President

**TENANT:**

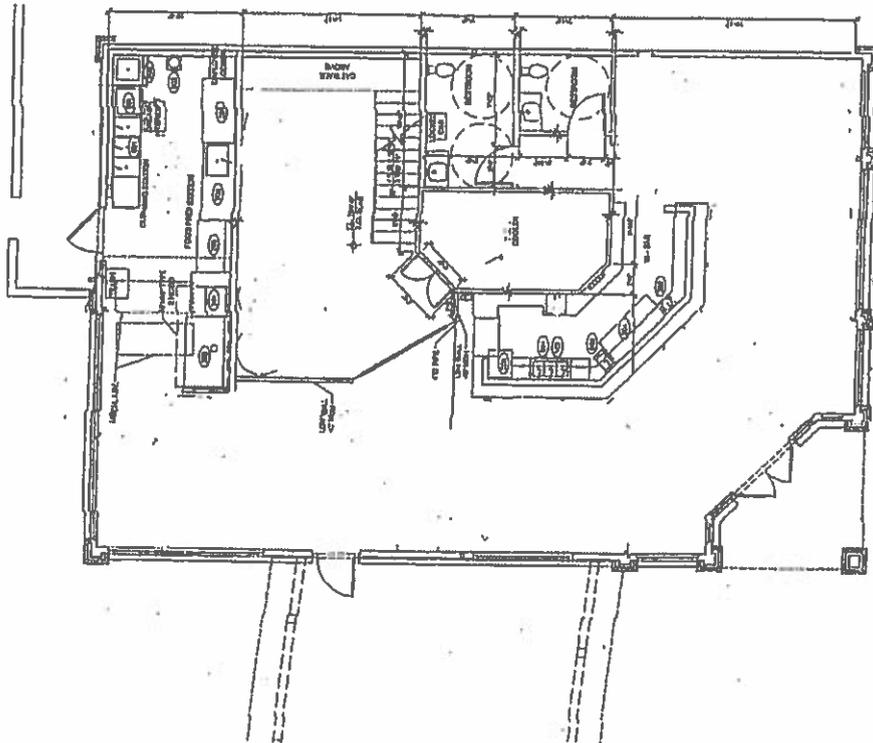
Color Coffee Roasters LLC,  
a Colorado limited liability company

By:   
\_\_\_\_\_

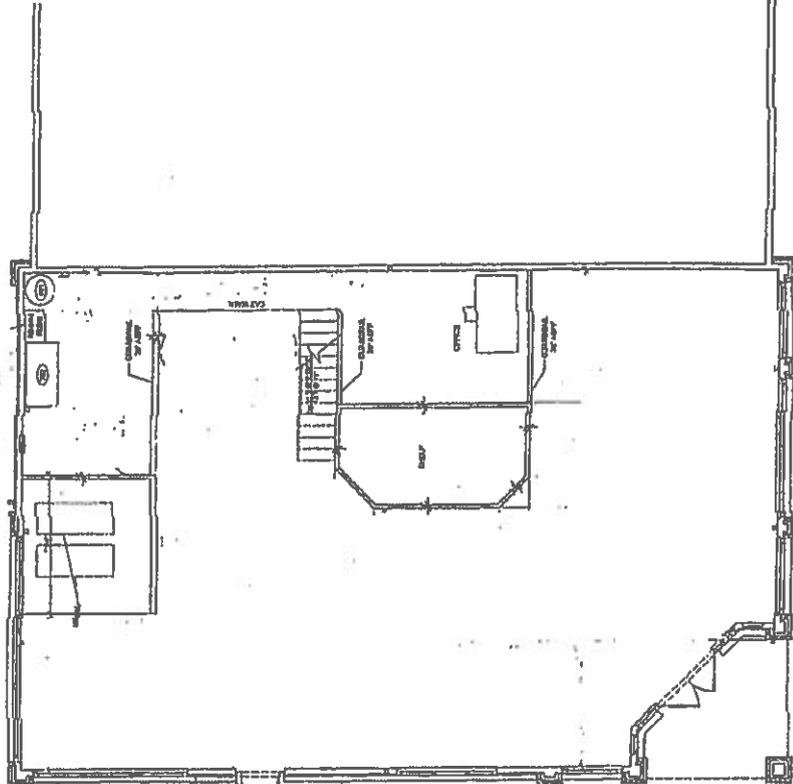
**EXHIBIT A**

**Initial Space Plan  
(attached)**

EXHIBIT A



1 MAIN FLOOR PLAN  
10'-0" x 10'-0"



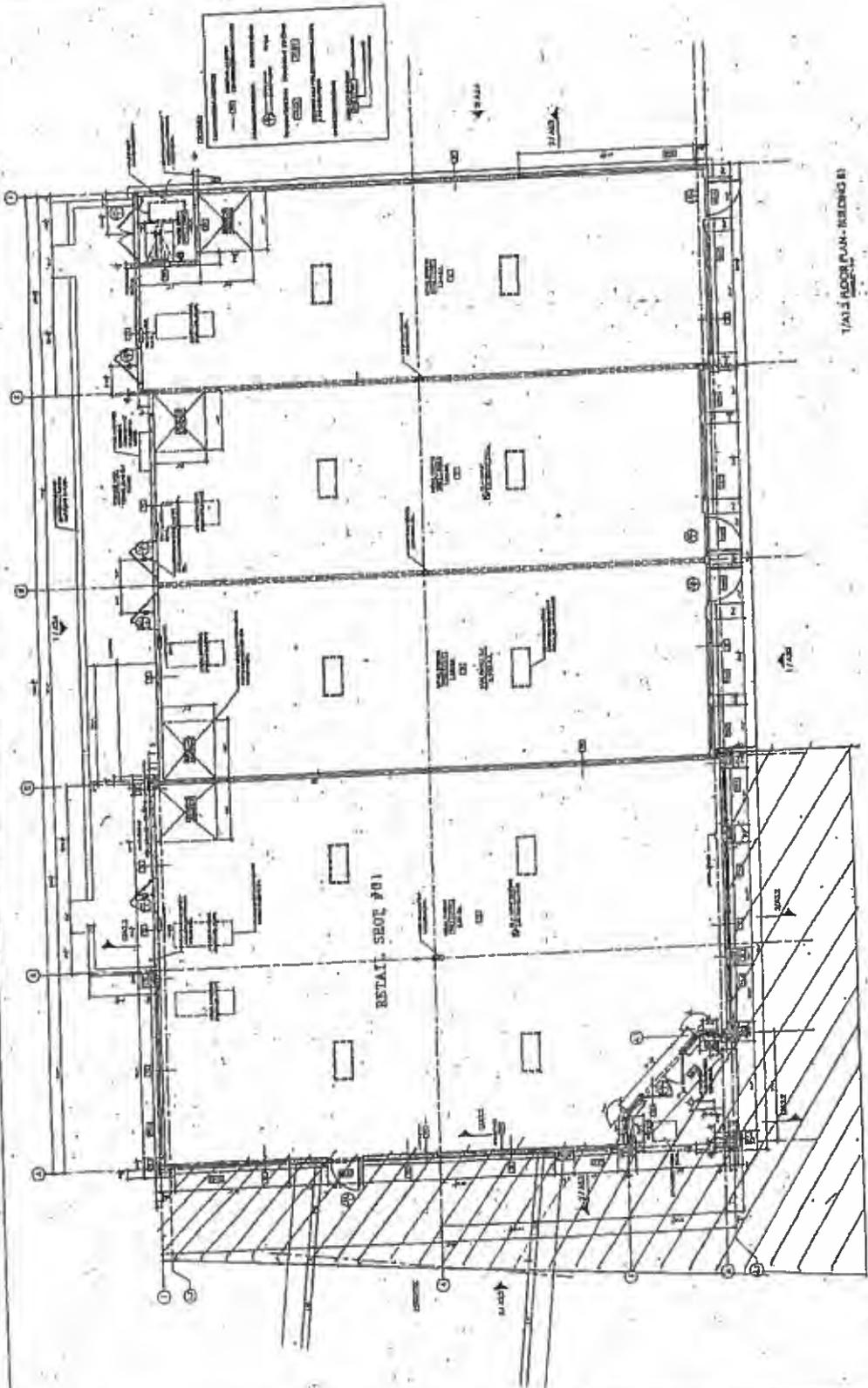
1 LOST FLOOR PLAN  
10'-0" x 10'-0"

717 SYLVAN LAKE ROAD  
EAGLE RANCH  
TOWN OF EAGLE, CO 81631

PROJECT: 7  
DATE: 09.24.13  
REVISIONS:

LOST FLOOR PLAN  
A1.2

EXHIBIT A-1



1/16" = 1'-0" ROCK PLAN - BUILDING #11

APPROPRIATE SPACE  
FOR  
OUTDOOR SEATING



## **EXHIBIT B**

### **Tenant's Work**

Any improvements in the Premises are the responsibility of the Tenant. Tenant will submit plans for any Tenant's work for Landlord's approval prior to commencement of any such work, whether at the beginning of the initial term or at any time during the term. Landlord shall not unreasonably withhold, delay or condition its approval of Tenant's work and in all circumstances shall promptly provide in writing its comments or approval to Tenant within 10 days of Tenant's delivery of Tenant's plans for improvements. Tenant's improvements shall comply with all local, state, and federal codes and regulations.

**EXECUTION COPY**

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**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**COLOR COFFEE ROASTERS LLC**

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5.24.2016

## LIMITED LIABILITY COMPANY AGREEMENT

### OF

## COLOR COFFEE ROASTERS LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) of COLOR COFFEE ROASTERS LLC, a limited liability company organized under the laws of the State of Colorado (the “**Company**”), is made and entered into and shall be effective as of August 31, 2015, by and among the persons and entities listed on Exhibit A to this Agreement and such other persons who become Members (as hereinafter defined) as contemplated herein.

WHEREAS, the Articles of Organization for the Company was filed in the office of the Secretary of State of Colorado on August 31, 2015 pursuant to the Colorado Limited Liability Company Act (the “**Act**”); and

WHEREAS, the Members desire to provide for their respective rights, powers, duties and obligations as Members, as well as for the management, operations and activities of the Company;

NOW, THEREFORE, the Members by this Agreement set forth the limited liability company agreement for the Company under the Act upon the following terms and conditions:

### **ARTICLE 1 DEFINITIONS**

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

- (a) “**Acceptance Notice**” has the meaning set forth in Section 10.3.
- (b) “**Act**” has the meaning set forth in the first recital.
- (c) “**Additional Capital Contributions**” shall mean any Capital Contribution other than the Initial Capital Contribution.
- (d) “**Affiliate**” shall mean with respect to any Person (a) each Person that the Member directly or indirectly controls, (b) each Person that controls directly or indirectly a Member, and (c) each Person that in under common control with a Member.
- (e) “**Availability Notice**” has the meaning set out in Section 10.3(4).
- (f) “**Budget**” shall mean, collectively, the annual operating budget and the capital budget, as the same are approved by the Management Committee and in effect from time to time pursuant to Section 5.19.
- (g) “**Business Day**” shall mean any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of Colorado, or is a day on which banking institutions located in such state are permitted to be closed.

- (h) **“Business”** has the meaning set forth in Section 3.1.
- (i) **“Capital Account”** has the meaning set out in Section 8.3 below.
- (j) **“Capital Contribution”** shall mean any contribution to the capital of the Company in cash, property or services by a Member whenever made.
- (k) **“Charles Gundlach”** shall mean Charles Gundlach, an individual and the son of Clark Gundlach.
- (l) **“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Treasury Regulations.
- (m) **“Color Coffee Roasters LLC”** or **“Company”** shall mean Color Coffee Roasters LLC, a Colorado limited liability company.
- (n) **“Contributing Member”** has the meaning set forth in Section 8.3(a).
- (o) **“Co-Sale”** has the meaning set forth in Section 11.2.
- (p) **“Distribution”** means the transfer of money or property to the Members in their respective capacity as Members without consideration.
- (q) **“Designated Seller Units”** has the meaning set forth in Section 10.3.
- (r) **“Drag Along Right”** has the meaning set forth in Section 11.3.
- (s) **“Entity”** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.
- (t) **“Family Member”** shall mean the spouse, children or grandchildren (by birth, including through a surrogate, or adoption) of such Member or a trust for the benefit of such Member and/or such individuals so long as the Member is the grantor of the trust.
- (u) **“Fiscal Year”** shall mean the Company’s fiscal year, which shall be the period from January 1 to December 31 of each year.
- (v) **“Founder Sale”** has the meaning set forth in Section 11.1.
- (w) **“Founder”** or **“Color Holdings”** shall mean Color Holdings LLC, a Colorado limited liability company all of the outstanding membership interests of which are owned equally by Gundlach and Gassman.
- (x) **“Gassman”** shall mean Barry K. Gassman, an individual who resides at 1005 Cordillera Way, Edwards, CO 81632.

(y) **“Gundlach”** shall mean Clark W. Gundlach, an individual who resides at 18 Poplar Place, Eagle CO 81631.

(z) **“Income Tax Regulations”** shall mean the regulations promulgated by the United States Department of the Treasury under the Code.

(aa) **“Initial Capital Contribution”** has the meaning set forth in Section 8.1.

(bb) **“Lease”** shall mean a retail lease agreement to be entered into by Color Coffee Roasters LLC, as tenant for the operation of a retail specialty coffee store.

(cc) **“Major Decision”** shall mean any material matter pertaining to the Company’s Business.

(dd) **“Management Committee”** has the meaning set forth in Section 5.1 below.

(ee) **“Manager”** shall mean Charles Gundlach, Gundlach and Gassman and any other Member appointed to the Management Committee in accordance with Section 5.

(ff) **“Member”** shall mean a Person who executes this Agreement or otherwise is admitted as a member to the Company in accordance with Section 10.1 or 10.2. Any Family Member owning Units shall be treated as a separate Member of the Company.

(gg) **“Membership Interest”** shall mean, at any time of determination with respect to any Member, the total Capital Contributions made by a Member to the Company divided by the total Capital Contributions of all Members to the Company, expressed as a percentage. By virtue of the ownership of a Membership Interest, a Member shall obtain a right to participate in the profits and losses of the Company and the right to receive distributions from the Company.

(hh) **“Member Subscription Agreement”** shall mean a Membership Interest Subscription Agreement, in a form acceptable to the Management Committee, between a Person who desires to become a Member and the Company.

(ii) **“Non-Contributing Member”** has the meaning set forth in Section 8.3.

(jj) **“Nonvoting Unit”** has the meaning set forth in Section 2.8.1.

(kk) **“Offer Notice”** has the meaning set forth in Section 10.3.

(ll) **“Person”** shall mean any individual or Entity, and their heirs, executors, administrators, legal representatives, successors and assigns where the context so permits.

(mm) “**President**” shall mean the individual appointed as President of the Company by the Management Committee.

(nn) “**Required Members**” shall mean the vote of at least 60% of the issued and outstanding Voting Units.

(oo) “**Sale Notice**” has the meaning set forth in Section 11.1.

(pp) “**Selling Member**” has the meaning set forth in Section 10.3.

(qq) “**Tag Along Right**” has the meaning set forth in Section 11.2.

(rr) “**Termination Event**” has the meaning set out in Section 12.1(a) below.

(ss) “**Triggering Event**” shall mean any of the following events or occurrences: (i) the death or legal incompetence of a Member; (ii) the bankruptcy of a Member; (iii) the withdrawal of a Member from the Company; and (iv) the transfer of a Member of all of his or her Membership Interest (or a lesser number of his or her Units) in violation in any material respect of the provisions of this Agreement.

(tt) “**Units of Membership Interest**” or “**Units**” shall mean the Units of Membership Interest described in Section 2.8.

(uu) “**Voting Unit**” has the meaning set forth in Section 2.8.1.

## ARTICLE 2 FORMATION OF COMPANY

2.1. **Formation.** The Company was organized as a Colorado limited liability company under the name COLOR COFFEE ROASTERS LLC by the filing of Articles of Organization with the Colorado Secretary of State on August 31, 2015.

2.2. **Name.** The name of the Company is COLOR COFFEE ROASTERS LLC.

2.3. **Principal Place of Business.** The principal place of business of the Company shall be such place as the Management Committee shall designate.

2.4. **Registered Office and Registered Agent.** The Company’s initial registered office shall be the office of the initial registered agent named in the Articles of Organization or such other office as the Management Committee may designate in the manner provided in the Act.

2.5. **Term.** The term of the Company commenced on the date of the formation of the Company in accordance with and pursuant to the Act, and shall continue indefinitely unless the Company is earlier dissolved in accordance with the provisions of this Agreement and the Act.

2.6. **Certificates of Membership Interest.** The Management Committee may make such rules and regulations as it may deem appropriate concerning the issuance and registration of certificates of Units of Membership Interest. The Management Committee may authorize the issuance of any Units of Membership Interest without certificates. Such authorization shall not

affect Membership Interests already represented by certificates, if any, until they are surrendered to the Company.

2.7. **Required Filings.** Promptly following the execution hereof, the Management Committee shall execute or cause to be executed all necessary documents and certificates, and shall make all such filings and recordings, and shall do all other acts as may be necessary or appropriate from time to time to comply with all requirements for the formation, continued existence and operation of a Colorado limited liability company.

2.8. **Units and Capitalization**

2.8.1 **General Description; Authorized Number.** Membership Interests in the Company shall be represented by Units, which shall have the rights, privileges and preferences set forth in this Agreement. Units may be either nonvoting Units (“**Nonvoting Units**”) or voting Units, as determined by the Management Committee. Voting Units shall be entitled to one vote per Unit (“**Voting Units**”). There shall be 2,000,000 Units authorized.

2.8.2 **Issuance of Units.** Units shall be issued to Persons who contribute cash and/or property or provide services to the Company. Any Capital Contribution made to the Company by a Member acquiring Units shall be credited to that Member’s Capital Account at its agreed upon fair market value or as otherwise set forth in this Agreement.

2.9. **Foreign Qualification**

The Management Committee shall cause the Company to comply with the requirements of any state or foreign jurisdiction to permit the Company to conduct business in such state or foreign jurisdiction as a foreign limited liability company.

2.10. **No State-Law Partnership**

The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and applicable state income tax purposes. This Agreement may not be construed in a manner contrary to the intent expressed in the preceding sentence.

**ARTICLE 3  
BUSINESS OF COMPANY**

3.1 **Permitted Businesses.** The sole purposes (the “**Business**”) for which this Company is to exist are: (i) to build-out and operate a retail specialty coffee store in Eagle County, Colorado (the “**Retail Store**”), that sells directly to customers roasted coffee beans, specialty coffees and other beverages, including wine and beer, and food products and merchandise; (ii) to sell roasted coffee beans, wholesale to persons located in Eagle County, Colorado; (iii) to sell roasted coffee beans on the internet from beans roasted on the Probat located in the Retail Store; (iv) to do all things necessary, advisable, appropriate or expedient in connection with, or incidental to, the foregoing; and (v) to enter into any other lawful activities approved by the Management Committee.

3.2 **Business Transactions of a Member or a Manager with the Company.**

(a) **Transactions Between Company and its Members and Managers.** The Members or a Manager may lend money to, borrow money from, act as a surety, guarantor

or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with the Company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a Member or a Manager.

(b) **Conflicts of Interest.** Each of the Members recognizes and agrees that the other Member and its members, partners, shareholders, officers, directors, employees, agents, representatives and Affiliates: (a) have, or may have, other business interests, activities and investments, some of which may be in conflict or competition with business of the Company; and (b) are entitled to carry on such other business interests, activities and investments. Notwithstanding any duty otherwise existing, each of the Members may engage in, or possess an interest in, any other business or venture of any kind, independently or with others (including, but not limited to, owning, financing, acquiring, leasing, promoting, developing, improving, operating, managing and servicing a specialty coffee wholesale and retail operations on its own behalf or on behalf of other entities with which any of the Members is affiliated or otherwise), and each of the Members may engage in any such activities (whether or not competitive with the Company) without any obligation to offer any interest in such activities to the Company or to the other Members. Notwithstanding any duty otherwise existing, neither the Company nor the other Members shall have any right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom, and the pursuit of such activities, even if competitive with the business of the Company, shall not be deemed wrongful, improper or a breach of a fiduciary duty of such Member or the Company.

#### **ARTICLE 4 MEMBERS**

**4.1 Name and Address.** The name and address of the initial Member is set forth on Exhibit A to this Agreement. Any additional Members shall sign and deliver a Member Subscription Agreement and shall then be considered a Member of the Company with all rights and privileges expressed herein.

**4.2 Withdrawal of Members.** Except as otherwise specifically provided in this Agreement, neither Member may withdraw or resign from the Company without the prior written consent of the other Member. In the event that any Member withdraws or resigns from the Company in contravention of this Agreement, the same shall not affect such Member's liability hereunder or, to the extent provided in the Act, for the obligations of the Company. No such withdrawal or resignation shall constitute, or afford any Member the right to cause, the dissolution of the Company.

#### **ARTICLE 5. RIGHTS AND DUTIES OF MANAGEMENT COMMITTEE**

**5.1 Management.** The Management Committee shall manage the business and affairs of the Company (the "**Management Committee**"). The Management Committee, acting collectively in accordance with the terms hereof, and not any individual Manager except as expressly provided, shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business and objectives. Notwithstanding the foregoing, the Management Committee shall have the right to delegate any and all of its authority, powers, rights and/or obligations whether arising hereunder, under the Act or otherwise, to any one or more officers, agents or other duly authorized representatives. Subject to the approval of the Management Committee, a Manager may be

entitled to compensation for his or her role as a Manager hereunder. A Manager need not be a Member of the Company.

**5.2 Number, Election, Tenure and Qualifications.** The number of Managers that shall constitute the initial Management Committee shall be fixed by the vote of the Founder. Subject to the last sentence of this Section 5.2, the initial Managers shall each serve for a term of two years ending December 31, 2017. Thereafter, number of Managers that shall constitute the Management Committee and the tenure of each Manager shall be fixed by a vote of the Required Members. Each Manager shall hold office until his or her successor shall have been elected and qualified or until his or her earlier death, resignation or removal. Each Manager of the Company shall be a natural person of majority age who need not be a resident of the State of Colorado.

**5.3 Management Committee.** Initially, there shall be three Managers appointed to the Management Committee. Each of Gundlach, Charles Gundlach and Gassman, is hereby appointed

**5.4 Delegation of Management Powers to Officers.** In accordance with the power of delegation granted under Section 5.1 above, the Management Committee may grant and delegate to one or more persons broad, complete and exclusive authority over day-to-day management of the business of the Company; provided, however, that such delegated authority is subject to (i) the powers specifically granted to the Management Committee or the Members under this Agreement, (ii) any management services agreement entered into by the Company, and may be modified or revoked, from time to time, by the Management Committee and (iii) any such Person shall be subject to the overall supervision and control of the Management Committee. Charles Gundlach is hereby appointed as the President of the Company having the primary responsibility to implement the decisions made by, and the policies and procedures established by, the Management Committee. The President may be removed at any time solely in the discretion of the Management Committee.

**5.5 Approval of Certain Matters by the Members.** Notwithstanding any provision of this Agreement to the contrary, the following matters require the approval of the Required Members:

- (a) merger or consolidation of the Company with any other entity, the sale or other disposition of all or substantially all of the assets of the Company, or change of the legal form of the Company;
- (b) division or conversion of the Company;
- (c) redemption of all or a portion of a Membership Interest constituting more than ten (10) percent of the outstanding Units at the date of the redemption;
- (d) entering into any contract, including an employment agreement, or other transaction with any Manager or any Affiliate or subsidiary of the Company or any Manager who is or may become an employee, officer, service provider or consultant of any Affiliate or subsidiary of the Company which is not on an arm's length basis;
- (e) any amendment or modification to this Agreement other than amendments or modifications to clarify latent ambiguities;

- (f) engagement in any business or activity unrelated to the Business of the Company;
- (g) termination of the Lease;
- (h) any act or omission in contravention of this Agreement; or
- (i) any other matter set forth in this Agreement expressly requiring the consent of the Required Members.

5.6 **Bank Accounts.** The Management Committee may from time to time authorize the opening of bank accounts in the name and on behalf of the Company, and the Management Committee shall determine who shall have the signatory power over such accounts.

5.7 **Resignation.** Any Manager of the Company may resign at any time by giving one month advance written notice to the other Members and the other Managers of the Company. The resignation of any Manager shall take effect one month after receipt of notice thereof or at such later date specified in such notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

5.8 **Removal.** All or any lesser number of Managers may be removed at any time, with cause, by the vote of all of the other Members. A Manager may be removed for “cause” if the Manager (i) has filed a petition in bankruptcy or has been involuntarily placed into bankruptcy during his or her term on the Management Committee; (ii) has breached a material obligation or fiduciary duty under this Agreement; (iii) is convicted of a felony; (iv) has committed a fraudulent act or omission in connection with his or her acting as a Manager; or (v) has acted in violation of an express, written material policy of the Management Committee. A Manager may be removed without cause by a vote of at least seventy percent (70%) of the issued and outstanding Voting Units.

5.9 **Vacancies.** Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the written consent of all of the other Members. Any Manager’s position to be filled by reason of an increase in the number of Managers shall be filled by the written consent of the Required Members. A Manager elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and shall hold office until the expiration of such term and until his or her successor shall be elected and qualified or until his or her earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his or her successor shall be elected and qualified, or until his or her earlier death, resignation or removal.

5.10 **Meetings.** The Management Committee may, but shall not be required to, meet at least once each calendar year. Meetings of the Management Committee, for any purpose or purposes, may be called by any Member by advance written notification to the other Members and non-Member Managers.

5.11 **Place of Meetings.** The Management Committee may designate any place, either within or outside the State of Colorado, as the place of meeting for any meeting of the Management Committee. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be the then principal place of business of the Company.

**5.12 Notice of Meetings.** Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than three (3) nor more than thirty (30) days before the date of the meeting, either personally, by mail, or by electronic mail, by or at the direction of the Management Committee or Member calling the meeting, to each Manager entitled to vote at such meeting. Such notices shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by electronic mail or facsimile, on the date of transmission if transmitted on a Business Day before 4:00 p.m. Denver time or, if not, on the next succeeding Business Day, unless the Person providing notice pursuant to this clause (b) is notified that the transmission has been unsuccessful, or (c) if by United States mail, four (4) Business Days after depositing in the United States mail, with postage prepaid and properly addressed.

**5.13 Quorum and Voting.** Any action taken by the Management Committee must be taken pursuant to a meeting of the Management Committee of which advance notice shall be given to each Manager and to the Members, except as provided in Section 5.15 below. Such notice shall specify when and where such meeting shall be held and the purpose of such meeting. For such meetings, a majority of the total number of Managers shall constitute a quorum for the transaction of business, but, if there be less than a quorum at any meeting of the Management Committee, a majority of the Managers present may adjourn the meeting from time to time. Except as otherwise provided by law or by this Agreement, the vote of a majority of the Managers present at a meeting at which a quorum is present shall constitute an act of the Management Committee. If the Management Committee considers a purchase of Designated Seller Units pursuant to Section 10.3.4, the Selling Member of the Designated Seller Units shall neither take part in discussions nor vote regarding such action.

**5.14 Conference Telephone.** Any Manager may participate in a meeting of the Management Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting by means of such equipment shall constitute presence in person at such meeting.

**5.15 Action by Management Committee Without a Meeting.** Action required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each of the Managers. The consents shall be delivered to the Management Committee of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section 5.15 is effective when all of the Managers required to authorize the action have signed the consent, unless the consent specifies a different effective date.

**5.16 Waiver of Notice.** When any notice is required to be given to any Manager or any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

**5.17 Authority of the President.** Subject to the limitations set forth in this Agreement (including, but not limited to, in this Section 5.17), the President shall have the power and authority to perform the duties delegated to it pursuant to, or in accordance with, this Agreement in compliance with the then existing Budget, the then existing operating plan and any other guidelines adopted by the Management Committee that are then in effect. Such power and authority shall include, but shall not be limited to, the power and authority to: (a) execute and deliver deeds, assignments, bills of sale, leases, notes, mortgages, deeds of trust, pledges, security agreements, satisfactions of mortgages, releases and other

instruments and documents on behalf of the Company, as well as to amend and/or modify any of the foregoing on behalf thereof; (b) transfer funds from the "Deposit Account" to the "Operating Account" (however denoted) established by the Management Committee so as to enable the Company to meet timely its obligations; and (c) make such expenditures of the funds of the Company as are necessary or desirable to implement the then existing operating plan and any other guidelines adopted by the Management Committee that are then in effect. Notwithstanding the foregoing, however, the President shall not: (i) make any decision, or take any action, constituting a Major Decision, unless the same has been specifically approved in writing by the Management Committee or specifically provided for (as applicable) in the then existing Budget, in the then existing operating plan, in any other guidelines adopted by the Management Committee that are then in effect and/or in this Agreement; or (ii) make any decision, or take any action, that is reserved to the Members pursuant to this Agreement, including those decisions described in Section 5.5, or otherwise, except, however, that the President is hereby authorized and directed to cause the Company to incur the Initial Loan, to execute the Initial Loan Documents and deliver the same to the Initial Lender on behalf of the Company and otherwise to grant a lien or liens on, as well as to otherwise encumber, any or all of the Company property in favor of the Initial Lender and its successors or assigns in order to secure the Initial Loan.

**5.18 Duties of the President.** The President shall, subject to the limitations set forth in this Agreement (including, but not limited to, in Section 5.17 above) and provided that funds of the Company are available to it pursuant to Article 8: (a) administer the business and operation of the Company on a day-to-day basis in accordance with: (i) the standard of care required of prudent and experienced third party business administrators performing similar functions in accordance with customary industry standards; and (ii) the then existing Budget, the then existing operating plan and any other guidelines adopted by the Management Committee that are then in effect; (b) perform the other duties assigned to the President in this Agreement, as well as such other services as are reasonably requested from time to time by the Management Committee; and (c) otherwise carry out all lawful decisions and resolutions of the Management Committee.

**5.19 Submission of Budget and Operating Plan.** The President will submit (or caused to be submitted) to the Management Committee a capital budget, an operating budget and an operating plan for the Company for the 2016 fiscal year, which operating budget, capital budget and operating plan will be approved by the Management Committee. Not later than sixty (60) days prior to the end of the current fiscal year and of each succeeding fiscal year of the Company, the President shall prepare (or cause to be prepared) and submit to the Management Committee, for its consideration and approval, a capital budget, an operating budget and an operating plan with respect to the following fiscal year. Subject to such modifications as may be requested by the Management Committee, each such Budget and operating plan shall be in the same form as the corresponding Budget and operating plan for the then current fiscal year, provided, however, that, in all events, each such Budget and operating plan shall conform, in all respects, with any applicable requirements of the Company's lender(s). If the Management Committee shall reject a Budget and/or operating plan submitted by the President and shall direct that the President revise and resubmit the same, the President shall revise such Budget and/or operating plan (or cause the same to be revised) in accordance with the guidelines, comments and/or directives (if any) issued by the Management Committee regarding the same and promptly resubmit the same to the Management Committee for its consideration and approval.

## **ARTICLE 6 RIGHTS AND OBLIGATIONS OF MEMBERS**

6.1 **Limitation of Liability.** A Member shall not be personally liable to creditors of the Company for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort or otherwise, except to the extent of the Member's Capital Contributions which have not theretofore been returned to it as a distribution (including a distribution upon liquidation) except as otherwise required by law. For purposes of the foregoing sentence, distributions to a Member shall first be deemed a return of its Capital Contribution. A Member shall not at any time be liable or held accountable to the Company and to the creditors of the Company or to any other third party for or on account of any negative balance in his or her Capital Account. To the fullest extent permitted by the Law, a Member shall have no obligation to return any distributions received from the Company. Nothing contained in this Section 6.1 shall limit, affect, or impair any agreement, guaranty, or other document entered into by, between, among, or in favor of any of the Members or their respective Affiliates.

6.2 **Voting of Members.** Whenever under this Agreement the consent or approval of a voting Member is required, the Management Committee requesting the same shall solicit such consent or approval by a notice given in accordance with Section 14.1.1 below or at a meeting held by the voting Members. Whenever any Company action is to be taken by vote of the voting Members, it shall be authorized upon receiving the affirmative vote of Members holding a majority of the issued and outstanding Voting Units.

6.3 **Meetings of Members.** No annual or regular meetings of Members are required. Meetings of Members may be held at such date, time and place, within or without the State of Colorado, as the Management Committee or any other Member holding Voting Units may fix from time to time. At any meeting of Members, the Management Committee, or if the meeting was called by a Member (other than the Management Committee), the Member who called the meeting shall preside. Actions required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by a written consent describing the action taken, signed by Members having not less than the minimum votes that would be necessary to authorize or take such action and delivered to the Management Committee for inclusion in the minutes.

6.4 **Waiver of Notice.** When any notice is required to be given to the Members, a waiver thereof in writing signed by the person entitled to such notices whether before, at or after the time stated therein, shall be equivalent to the giving of such notice.

6.5 **Company Books.** In accordance with Section 13.3 below, the Company shall maintain and preserve, during the term of the Company, the accounts, books and other relevant Company documents. Upon reasonable written request, each Member and its duly authorized representative, shall have the right, at a time during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

## **Article 7 STANDARD OF CARE AND INDEMNIFICATION OF MANAGERS, OFFICERS AND EMPLOYEES**

### **7.1 Waiver of Fiduciary Duties**

(a) Except for the implied covenant of good faith and fair dealing and except for such other duties as may be expressly provided for in this Agreement, no Member, including in his or her capacity as a Manager, shall owe any fiduciary or other

duties (including any duty of loyalty or duty of care) to the Company or any other Member. The Members acknowledge and agree that the foregoing is intended to comply with the provisions of the Act.

(b) Without limiting the generality of Section 7.1(a), except as expressly provided in this Agreement, (i) Members and their Affiliates shall have no exclusive duty to act on behalf of the Company and (ii) each Member and its Affiliates may have other business interests, including interests in other coffee related activities, and may engage in other activities, whether similar or dissimilar to the Business, in addition to those relating to the Company, except as may otherwise be provided in an employment agreement between the Company or its subsidiary and a Member. A Member shall have no obligation to offer to other members the right to invest or participate in the equity or management of his or her other business activities, whether similar or dissimilar to the Business.

(c) The Company may, to the fullest extent to which it is empowered to do so by the Act or any other applicable law, indemnify and make advances for expenses to any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Manager, officer or employee of the Company, against losses, damages, expenses (including attorneys' fees), judgments, fines and amounts reasonably incurred by him or her in connection with such action, suit or proceeding. Notwithstanding the foregoing, the indemnification obligation pursuant to this Section 7.1(c) shall not apply to claims brought by the Company or any Member against another Member for an asserted breach of such Member's obligation under this Agreement.

(d) The Company may make any indemnification only as authorized in the specific case upon a determination that indemnification of such Person is proper in the circumstances. The determination must be made:

(i) By the Management Committee in the case of a claim by any Member (other than a Manager) or by the vote of Members holding a majority of the Voting Units of Membership Interest in the case of a claim by a Manager; or

(ii) If the Members so direct (whether or not a Member, or its affiliate, is seeking indemnification hereunder), by independent legal counsel in a written opinion.

**7.2 Notice of Indemnification and Advancement.** Any indemnification of, or advancement of expenses to, any of the Management Committee or the Members in accordance with this Article 7, if arising out of a proceeding by or on behalf of the Company, shall be reported in writing to the Members promptly.

**7.3 Repeal or Modification.** Any repeal or modification of this Article 7 by the Members of the Company shall not adversely affect any right of any of the Management Committee or officers or the Members of the Company existing hereunder at the time of such repeal or modification.

## **ARTICLE 8 MEMBERS' CAPITAL CONTRIBUTIONS**

**8.1 Initial Capital Contributions.** From time to time after the execution and delivery of this Agreement, the Member shall contribute to the Company the cash and property (the "Initial Capital Contributions"). The Initial Contributions as made shall be

set forth in Exhibit B attached hereto. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement. The Initial Capital Contributions of cash will be made by check in good federal funds to a Company account designated by the Management Committee. If one or more additional Members are admitted as Members before the opening for business of a retail store in Eagle County, Colorado, the Management Committee is authorized to establish a price per share for the Units.

**8.2 Additional Capital Contributions.** The Members shall not be required to contribute any additional capital to the Company. If the Management Committee determines the Company needs additional capital, the Members shall have the opportunity, but not the obligation, to participate in such additional Capital Contributions on a pro rata basis in accordance with their Membership Units. If all the Members do not make an additional Capital Contribution in accordance with their Membership Units, immediately following such contributions, the Membership Interests shall be adjusted by the Management Committee to reflect the new relative proportions of the Capital Contributions of the Members.

**8.3 Remedies for Failures to Make Capital Contributions.** If any Member or Members (each a “Non-Contributing Member”) fails to make any of its Initial Capital Contribution (or any portion thereof) within the time period specified in its Member Subscription Agreement or a voluntary additional capital contribution (or any portion thereof) which it has agreed in writing to make to the Company, the Management Committee may elect any remedy available at law or in equity, and may take one or more of the following actions:

(a) The Management Committee may request in writing that Members who have made their Initial Capital Contributions or additional voluntary contributions (“Contributing Members”) have the option to take one of the two following actions:

(i) that each Contributing Member may, but is not obligated to, make an Additional Capital Contribution within ten (10) Business Days after the end of the period in which each Non-Contributing Member had to make such contribution in an amount equal to such Contributing Member’s pro rata share of the total amount of the Capital Contributions that the Non-Contributing Member or Members failed to make. Upon timely making of such contributions, the Contributing Members who have elected to make an Additional Capital Contribution shall be deemed to have purchased additional Voting Units of Membership Interest at a price equal to ninety percent (90 %) of the price per Unit of the Units to be issued.

(ii) that each Contributing Member may, but is not obligated to, loan funds to the Company to cover those amounts that the Non-Contributing Members failed to contribute on terms and conditions to be set by the Management Committee prior to the Contributing Members advancing such funds. If more than one Contributing Member elects to loan funds to the Company, then such Members shall agree among themselves as to the amount each shall contribute.

(b) A Non-Contributing Member shall have no right to receive any Distributions from the Company until the Contributing Members shall have first received Distributions in an amount equal to the additional Capital Contributions made by the

Contributing Members to the Company plus ten percent (10%) per annum on such additional contributions.

(c) A Non-Contributing Member shall lose his or her voting and approval rights under the Act and this Agreement until such time as the Non-Contributing Member cures the default.

(d) Membership Interests shall be adjusted to reflect the additional Capital Contributions, if any, made by the Contributing Members.

(e) The remedies described in this Section 8.3 are not in limitation of the right of the Management Committee on behalf of the Company to pursue additional remedies or a different remedy available under law or in equity with respect to any subsequent default.

#### **8.4 Capital Accounts.**

8.4.1 A single Capital Account shall be maintained for each Member (regardless of the time or manner in which such interest was acquired) in accordance with the capital accounting rules of section 704(b) of the Code, and the regulations thereunder (including without limitation section 1.704-1(b)(2)(iv) of the Income Tax Regulations) (a “**Capital Account**”). In general, under such rules, a Member’s Capital Account shall be:

8.4.1.1 increased by (A) the amount of money contributed by the Member to the Company (including the amount of any Company liabilities that are assumed by such Member other than in connection with a distribution of Company property), (B) the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that under section 752 of the Code the Company is considered to assume or take subject to), and (C) allocations to the Member of Company income and gain (or any item thereof), including income and gain exempt from tax; and

8.4.1.2 decreased by (A) the amount of money distributed to the Member by the Company (including the amount of such Member’s individual liabilities that are assumed by the Company other than in connection with a contribution of property to the Company), (B) the fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that under section 752 of the Code such Member is considered to assume or take subject to), (C) allocations to the Member of expenditures of the Company not deductible in computing its taxable income and not properly chargeable to capital account, and (D) allocations to the Member of Company loss and deduction (or any item thereof).

Except as otherwise required by the Income Tax Regulations, the transferee of any Membership Units shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Units.

8.4.2 Where section 704(c) of the Code applies to Company property or where Company property is revalued pursuant to paragraph (b)(2)(iv)(f) of section 1.704-1 of the Income Tax Regulations, each Member’s Capital Account shall be adjusted in accordance with sections 1.704-1(b)(2)(iv)(g) and 1.704-3(d)(2) of the Income Tax Regulations as to allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes with respect to such property.

8.4.3 When Company property is revalued pursuant to section 1.704-1(b)(2)(iv)(f) of the Income Tax Regulations, or where Company property is distributed in kind (whether in connection with liquidation and dissolution or otherwise), the Capital Accounts of the Members shall first be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property (that has not been reflected in the Capital Account previously) would be allocated among the Members if there were a taxable disposition of such property for the fair market value of such property (taking into account section 7701(g) of the Code) on the date of distribution.

8.4.4 It is intended that the Capital Accounts of the Members shall be determined and maintained throughout the term of the Company in accordance with, and shall be adjusted as may be required under, the Income Tax Regulations promulgated under section 704 of the Code. The foregoing provisions of this Section 8.4 and certain other provisions of this Agreement are intended to comply with said Income Tax Regulations and shall be interpreted and applied in the manner consistent with said Regulations. If the Management Committee determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with said Income Tax Regulations, the Management Committee may make such modification; *provided*, that any such modification shall not have any material effect on the amounts distributable, or the time of making distributions, to any Member, including amounts to be distributed upon liquidation.

8.4.5 No Member shall be required to pay the Company or to any other Member the amount of any negative balance which may exist from time to time in such Member's Capital Account.

## ARTICLE 9 DISTRIBUTIONS AND ALLOCATIONS OF PROFIT AND LOSS

9.1 **Distributions.** To the extent of the available revenues (other than capital contributions and proceeds of loans made to the Company) after taking into account all principal, interest, premiums, fees and expenses paid to lenders in such period, cash expenditures, including capital expenditures, made in such period incident to the operation of the Company's or a subsidiary's business and working capital and cash reserves reasonably necessary to operate the Company's and its subsidiaries' business, each Member shall be entitled to receive cash distributions from available revenues for each calendar year in amounts approximately equal to any federal and state tax liability arising out of the allocations made to each such Member for such calendar year pursuant to Section 9.2. Such cash distributions shall be made no later than March 30 following the end of the immediately preceding calendar year and shall be made based upon the assumptions that the Members are each subject to Colorado and federal income taxes at the highest applicable marginal rates and that the allocations of profit and loss made to each pursuant to Section 9.2 will be taxed at such highest marginal rates. Except as otherwise provided, all distributions made to the Members under this Section 9.1 shall be made in accordance with their relative Membership Units (whether voting or nonvoting).

9.2 **Allocations.** Each Member's distributive share of the Company's total income, gain, loss, deduction or credit (or items thereof), which total shall be as shown on the annual federal income tax return prepared by or at the direction of the Management Committee or as finally determined by the United States Internal Revenue Service or the courts, and as modified by the capital accounting rules of section 704(b) of the Code and

the Income Tax Regulations thereunder, as implemented by Section 13.4 hereof, as applicable, shall be determined as provided in this Section 9.2.

**9.2.1 General Allocation.** Except as otherwise provided in this Article 9, Company income, gain, loss and deduction shall be allocated to the Members in accordance with their respective Membership Units.

**9.2.2 Regulatory Allocations.** The following provisions are intended to comply with certain regulatory requirements for allocations set forth in section 704(b) of the Code. It is the intent and understanding of the parties that the allocations required by this Section 9.2.2 will be offset by future, offsetting allocations pursuant to this Section 9.2.2.

**9.2.2.1 Limitation.** Notwithstanding anything in this Section 9.2 to the contrary, items of loss and deduction allocated to any Member pursuant to this Section 9.2 with respect to any taxable year shall not exceed the maximum amount of such items that can be so allocated to such Member without causing such Member to have a deficit balance in its Capital Account in excess of the amount of such Member's obligation, if any, to restore such deficit Capital Account, computed in accordance with the rules of section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations. Any such items of loss or deduction in excess of the limitation set forth in the preceding sentence shall be allocated to those Members who would not be subject to such limitation, proportionately in accordance with their Capital Contributions.

**9.2.2.2 Minimum Gain Chargeback.** Notwithstanding anything to the contrary in this Section 9.2, if there is a net decrease in "minimum gain" or "partner nonrecourse debt minimum gain" (as such terms are defined in sections 1.704-2(b) and 1.704-2(i)(2) of the Income Tax Regulations) during a taxable period of the Company, then each Member shall be allocated items of income and gain for such year (and, if necessary, for subsequent years) in the manner provided in section 1.704-2 of the Income Tax Regulations. This provision is intended to be a "minimum gain chargeback" and "partner nonrecourse debt minimum gain chargeback" within the meaning of sections 1.704-2(f) and 1.704-2(i)(4) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

**9.2.2.3 Qualified Income Offset.** Subject to the provisions of Section 9.2.2.2, but otherwise notwithstanding anything to the contrary in this Section 9.2, if any Member's Capital Account has a deficit balance in excess of such Member's obligation to restore its Capital Account balance, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of section 1.704-1 of the Income Tax Regulations, then sufficient amounts of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be allocated to such Member in an amount and manner sufficient to eliminate such deficit as quickly as possible. This provision is intended to be a "qualified income offset" within the meaning of section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

**9.2.2.4 Effect of Special Allocations on Subsequent Allocations.** Any special allocation pursuant to Sections 9.2.2.1, 9.2.2.3 and 9.2.2.6 hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.2 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 9.2 if such special allocations had not occurred. It is anticipated that all allocations pursuant to Section 9.2.2.5 will be offset by allocations pursuant to Section 9.2.2.2 hereof. To the extent the Management Committee determines

that any amount allocation pursuant to Section 9.2.2.5 hereof is unlikely to be offset by a countervailing allocation of income from Section 9.2.2.2 hereof, then so much of such allocation as the Management Committee has determined is unlikely to be offset shall also be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.2 so that the net amount of all such allocations shall, to the extent possible, equal the net amount that would be allocated to such Member in the absence of such special allocation.

**9.2.2.5 Nonrecourse Debt.** Items of deduction and loss attributable to “partner nonrecourse debt” within the meaning of section 1.704-2(b)(4) of the Income Tax Regulations shall be allocated to the Members bearing the economic risk of loss with respect to such debt in accordance with section 1.704-2(i)(1) of the Income Tax Regulations. Items of deduction and loss attributable to “nonrecourse liabilities” of the Company within the meaning of section 1.752-1 of the Income Tax Regulations shall be allocated to the Members in proportion to their respective Capital Contributions.

**9.2.2.6 Recourse Debt.** Items of deduction and loss attributable to “recourse debt” within the meaning of section 1.752-1 of the Income Tax Regulations (but excluding “partner nonrecourse debt” as defined in Section 9.2.2.4 hereof), shall be allocated to the Members bearing the economic risk of loss with respect to such debt.

**9.2.3 Allocations With Respect to Certain Property and Income.**

**9.2.3.1** In determining each Member’s allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to property which has been revalued as provided in section 1.704-1(b)(2)(iv)(f) of the Income Tax Regulations, shall be allocated to the Members under the traditional method as provided under section 1.704-3(b) of the Income Tax Regulations. The allocations provided for in this Section 9.2.3.1 are required to be made solely for tax purposes and shall not affect any Member’s Capital Account.

**9.2.3.2** Solely for tax purposes, a Member’s share of the Company’s depreciation and recapture recognized for tax purposes upon the disposition of Company property shall be computed in the manner provided for in sections 1.704-3(a)(11), 1.1245-1(e) and 1.1250-1(f) of the Income Tax Regulations. The allocations provided for in this Section 9.2.3.2 are required to be made solely for tax purposes and shall not affect any Member’s Capital Account.

**9.2.3.3** Subject to Sections 9.2.2 and 9.2.3.1 hereof, if and to the extent any transaction between the Company and a Member results in any adjustment being made to the income of the Company under Section 482 or 7872 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting item of Company income, gain, loss or deduction shall be allocated in its entirety to the affected Member.

**9.2.4 Change in Membership Interests.** Except as otherwise required by law, if the respective Membership Units of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in Section 9.2.1 hereof during each such portion of the taxable year in question.

9.3 **State and Local Items.** Items of income, gain, loss, deduction, credit and tax preference for state and local income tax purposes shall be allocated to and among the Members in a manner consistent with the allocation of such items for federal income tax purposes in accordance with the foregoing provisions of Section 9.2.

## **ARTICLE 10 RESTRICTIONS ON TRANSFERS; ADMISSION OF MEMBERS**

10.1 **Transfer and Assignment of Interests.** No Member (other than the Founder) shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Units (collectively, “transfer”) except (i) to a Family Member who is at least 25 years of age or the beneficiary of a trust in which the Member is the grantor, (ii) with the prior written approval of the Required Members, which approval may be given or withheld in their sole discretion or (iii) in accordance with Section 10.3. The Founder may transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Units of Membership Interest, subject to its compliance with the provisions of Section 11.

10.2 **Substitution of Members.** A transferee of one or more Units shall have the right to become a substitute Member only if (i) it is a permitted assignee in accordance with Section 10.1, (ii) such person executes an instrument satisfactory to the Management Committee accepting and adopting the terms and provisions of this Agreement, and (iii) such person pays any reasonable expenses in connection with his or her admission as a new Member. Subject to Section 2.8.1, any such substituted Member shall succeed to all of the rights and assume all of the obligations of the transferring Member hereunder and otherwise be bound to the terms of this Agreement. The admission of a substitute Member shall not release the Member who assigned the Units from any liability that such Member may have to the Company at the time of such transfer.

10.3 **Right of First Offer.** Upon the occurrence of a Triggering Event, the Member whose acts or omissions caused the Triggering Event (the “Selling Member”) shall offer to sell all of his or her Units first to the other Members and then to the Company in accordance with the following right of first offer procedure.

10.3.1 The Selling Member shall give an irrevocable written offer (the “Offer Notice”) to the other Members which shall (i) state the Selling Member’s bona fide intention to sell the number of his or her Units (the “Designated Seller Units”) required, to be set forth therein, (ii) designate a price per Unit for the Designated Seller Units and (iii) designate a closing date (which shall be no sooner than forty-five (45) days from the notice date) and location at which the sale of all or a portion of the Designated Seller Units will be consummated. The Selling Member shall also make the same irrevocable offer set forth in the Offer Notice to the Company, provided that the offer to the Company is only with respect to the number of Designated Seller Units not accepted for purchase by the Members.

10.3.2 Within twenty (20) days after receipt of the Offer Notice, each other Member shall have the right to accept or reject the offer set forth in the Offer Notice by notice in writing (the “Acceptance Notice”) to the Selling Member (with a copy to the Company). The Acceptance Notice shall set forth the number of Seller Designated Units the accepting Member wishes to purchase. If more than one Member accepts the offer to purchase the Designated Seller Units and the total number of Designated Seller Units that such Members wish to purchase is greater than the total number of Designated Seller Units offered in the Offer Notice, then each such accepting Member shall be entitled to purchase the sum of (i) the number of Designated Seller Units accepted in his or her Acceptance Notice up to the number of the Designated Seller Units that is proportional to the ratio that his or her Units bear to the total Units of all accepting Members plus (ii) the unallocated

Designated Seller Units and, if more than one Member has offered to purchase more than its proportional share, then the unallocated Designated Seller Units shall be allocated amongst such Members in proportion to the ratio that each such Member's Units bear to the total Units of all such Members.

10.3.3 Selling Member shall promptly notify in writing each accepting Member of the number of Designated Seller Units that have been allocated to each accepting Member in accordance with subparagraph (2) above. Within ten (10) days of delivery of the Selling Member's allocation notice, each accepting Member shall deposit in a segregated deposit account maintained by the Selling Member a non-refundable amount equal to ten percent (10%) of the purchase price for the Designated Selling Units allocated to such Member for the benefit of the Selling Member, and no later than the designated closing date set forth in the Offer Notice, the Selling Member shall execute such documents and instruments and make such deliveries, including customary legal opinions addressed to purchasers, as may be reasonably required to consummate such purchase or purchases.

10.3.4 If no Member accepts the offer set forth in the Offer Notice or a Member defaults in its obligation to purchase Units offered for sale after delivery by such person of an Acceptance Notice or not all of the Designated Seller Units are accepted for purchase by the Members, then the Company shall have the right, upon approval of the Management Committee (the Selling Member shall not participate or vote in the decision of the Management Committee to purchase the Designated Seller Units offered), to purchase the number of Designated Seller Units available for sale on the same terms and conditions as set forth in the Offer Notice by delivering to the Selling Member an Acceptance Notice promptly upon receipt from the Selling Member of written notice (an "Availability Notice") that Designated Seller Units are available to be purchased by the Company. If the Company accepts the Offer Notice, subparagraph 3 of this Section shall apply *mutatis mutandis*. If the Company fails to accept the Offer Notice with respect to any of the Designated Seller Units or it defaults in its obligation to purchase Units offered for sale, Selling Member shall have the right for a period of one hundred and twenty (120) days from the date of the Availability Notice to the Company (or, in the case of default, anytime thereafter) to sell the Designated Seller Units not sold to the Company to any Person; provided that the Selling Member may not accept a price for each Unit which is less than the price per Unit set forth in the Offer Notice. If the Units are not sold within the 120 day period, the Selling Member must give notice in accordance with this Section prior to any other or subsequent transfer of Units.

10.3.5 If any accepting Member or the Company shall default in its obligation to purchase the Designated Seller Units (or an allocated number thereof), then the Selling Member may keep as its own the deposit made by such accepting Member pursuant to subparagraph 3 of this Section.

10.3.6. Only Units that are fully vested may be offered pursuant to this Section.

10.4 **Transfers in Violation of this Agreement.** Upon a transfer of Units of Membership Interest in violation of this Section 10, the transferee shall have no right to vote or participate in the management of the Company or to exercise any rights of a Member. Such transferee shall only be entitled to receive the share of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the remaining voting Members, a transfer in violation of this Section 10 would cause the termination of the Company under the Code, in the sole discretion of the remaining Members, the transfer shall be null and void.

## ARTICLE 11 TAG ALONG RIGHTS AND DRAG ALONG RIGHTS

**11.1 Notice of Founder Sale.** Prior to any transfer, assignment, conveyance or sale by the Founder (a “**Founder Sale**”), the Founder will deliver to each Member a written notice (the “**Sales Notice**”), specifying the material terms of such proposed transaction, identifying the proposed purchaser or purchasers thereunder and the scheduled closing date. The Founder shall also attach to the Sales Notice an execution copy of the purchase and sale agreement for the Units to be sold. In the Sales Notice Founder may include notice that it is exercising its Drag Along Rights under Section 11.3 below. If Founder does not notify the Members in the Sales Notice that it is exercising its Drag Along Rights, each Member may exercise his or her Tag Along Right pursuant to Section 11.2 below. No failure of any Co-Sale pursuant to the exercise of the Tag Along Right or Member sale pursuant to the exercise of a Drag Along Right shall preclude the consummation of a Founder Sale.

**11.2 Tag Along Rights.** Prior to any Founder Sale (where the Founder has not exercised its Drag Along Right pursuant to Section 11.1 and 11.3), each other Member may elect to exercise a right of co-sale (such a sale being a “**Co-Sale**”) as set forth below (the “**Tag Along Right**”). Each Member shall have for a period of thirty (30) days from receipt of the Sales Notice a right to elect to participate in the proposed sale to such proposed purchaser or purchasers of Units pursuant to the terms and conditions that are set forth in the purchase and sale agreement attached to the Sales Notice. Each Member that elects to participate in the proposed sale covenants and agrees he or she will use reasonable commercial efforts to aid the Founder in the consummation of any Co-Sale occurring pursuant to the Tag Along Right (which efforts may include the reduction in the number of Units to be sold to the prospective purchaser by the Founder and participating Members, to the extent such reduction facilitates any Co-Sale hereunder). The Founder Sale together with any Co-Sales may be consummated by the parties on any date following 45 days after delivery of the Sales Notice or such other date mutually agreed upon by the participating Members and the purchaser or purchasers. The exercise of the Tag Along Right hereunder shall be further subject to the following terms and conditions:

(1) **Number of Units Sold.** For each Unit to be sold by the Founder, a participating Member exercising his or her rights under this Section 11.2 shall have the right to sell as part of any Co-Sale the same percentage of his or her outstanding Units as the percentage of outstanding Units to be sold by the Founder. Founder may, at its sole option, reduce the number of Units it is offering for sale, if such a reduction is required to facilitate a Co-Sale.

(2) **Payment of Proceeds.** All proceeds from both (i) the sale of Units pursuant to the exercise of the Tag Along Right and (ii) the Founder Sale shall be paid to each such Person in accordance with the number of Units sold by each seller.

(3) **Failure to Notify.** If within thirty (30) days after the delivery of the Sales Notice, one or more Members do not notify in writing Founder that they desire to exercise their Tag Along Right, then Founder may, during a period of one-hundred and twenty (120) days following the end of such thirty-day period, sell the Units specified in the Sales Notice at a price and upon terms and conditions no more favorable in any material respect to Founder than as set forth in the Sales Notice. Any sale of such Units occurring after such 120-day period shall be deemed to be a

new sale for all purposes under this Agreement and the rights of the parties hereto (including the rights arising under Section 10.3 and Section 11.2) shall again be in effect with respect to such new sale.

**11.3 Drag Along Rights.** Prior to any Founder Sale, the Founder may require each other Member to sell all or a pro rata share of his or her outstanding Units in the same transaction or series of transactions to the same purchaser or purchasers that propose to purchase the Units held by the Founder (such right being a “**Drag Along Right**”). The Founder may exercise its Drag Along Right in the Sale Notice. Each Member covenants and agrees he or she will (i) execute the purchase and sale agreement and return it promptly to the Founder at the return address set forth in the Drag Along Notice, and (ii) use reasonable commercial efforts to aid the Founder in the consummation of any sale occurring pursuant to the exercise of the Drag Along Right (which efforts may include the reduction in the number of Units to be sold to the prospective purchaser by the Founder and participating Members, to the extent such reduction facilitates any sale hereunder). Sales under this Section 11.3 may be consummated by the parties on any date following 15 days after delivery of the Sales Notice. The exercise of the Drag Along Right hereunder shall be further subject to the following terms and conditions:

(1) **Number of Units Sold.** For each Unit of a Founder Sale to be sold, a Member shall sell as part of any sale the same percentage of his outstanding Units as the percentage of outstanding Units to be sold by the Founder. Founder may, at its sole option, reduce the number of Units it is offering for sale, if such a reduction is required to facilitate the sale.

(2) **Payment of Proceeds.** All proceeds from both (i) the sale of Units pursuant to the exercise of the Drag Along Right and (ii) a Founder sale shall be paid to each such person in accordance with the number of Units sold by each seller.

(3) **Non-Compliance by a Member.** If, within ten (10) days after delivery of the Drag Along Notice, a Member has not returned an executed copy of the purchase and sale agreement, the Founder may, in its sole discretion, proceed with the sale, exercise all legal remedies against the breaching Member and/or amend the purchase and sale agreement and then proceed with the sale.

## ARTICLE 12 DISSOLUTION AND TERMINATION

### 12.1 **Dissolution.**

(a) The Company shall be dissolved upon the occurrence of any of the following events (each a “**Termination Event**”):

- (i) written consent of all of its Members; or
- (ii) entry of a decree of judicial dissolution under Section 7-80-810 of the Act.

(b) The dissolution of the Company shall be effective on the day on which a Termination Event occurs, but the Company shall not terminate until the certificate of cancellation is filed with the Secretary of State of Delaware and the assets of the Company are distributed as provided in Section 12.2 below.

## 12.2 Winding Up, Liquidation and Distribution of Assets.

- (a) Upon dissolution of the Company, the Management Committee shall be responsible for the winding up of the affairs of the Company and the distribution of its assets. In connection with a winding up of the affairs of the Company, the Management Committee shall cause an accounting to be made of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution.
- (b) If the Company is dissolved and its affairs are to be wound up, the Management Committee shall:
  - (i) Sell or otherwise liquidate, in its sole discretion, all of the Company's assets as promptly as practicable;
  - (ii) Discharge all liabilities of the Company, including liabilities to the Member as a creditor of the Company to the extent permitted by law; and
  - (iii) Distribute the remaining assets to the Members in proportion to the balances of their respective Capital Accounts.
- (c) Upon completion of the winding up, liquidation and distribution of the assets of the Company, the Company shall be deemed terminated.
- (d) The Management Committee shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.3 Statement of Dissolution. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed, a statement of dissolution shall be executed by one or more authorized persons, which shall set forth the information required by the Act. The Statement of Dissolution shall be filed with the Secretary of State of Colorado to accomplish the cancellation of the Articles of Organization upon the dissolution and completion of the winding up of the Company.

12.4 Effect of Filing of Statement of Dissolution. Upon the filing of the Statement of Dissolution with the Secretary of State of Colorado, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Management Committee shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

## ARTICLE 13 TAX ELECTIONS AND REPORTS

13.1 Accounting Principles. The Company's financial statements shall be prepared and its profit and loss statement shall be determined in accordance with the cash basis

method of accounting, if available to the Company; otherwise, in accordance with generally accepted accounting principles applied on a consistent basis.

**13.2 Annual Reports.** Within one hundred and twenty (120) days or such longer period as the Founder shall select, after the end of each Fiscal Year, the Company shall use reasonable efforts to cause to be prepared, and the Members furnished with, unaudited financial statements accompanied by a report thereon of the Company's accountants stating that such statements are prepared and fairly stated in all material respects in accordance with generally accepted accounting principles, and, to the extent inconsistent therewith, in accordance with this Agreement, including the following:

- (a) A copy of the balance sheet of the Company as of the last day of such Fiscal Year;
- (b) A statement of income or loss for the Company for such Fiscal Year; and
- (c) A statement of each Member's Capital Account and changes thereto for such Fiscal Year.

**13.3 Records and Reports.** At the expense of the Company, the Company shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

- (a) A current list of the full name and last known business or mailing address of the Members and the Management Committee;
- (b) A copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) Copies of the Company's financial statements and federal, state and local income tax returns and reports, if any, for the three most recent years, or until the applicable statute of limitation period has ended with respect to such returns, if later; and
- (d) A copy of the Company's currently effective written limited liability company agreement, as the same may be amended from time to time.

**13.4 Returns and Other Elections.** The Management Committee shall cause the preparation and timely filing of all tax returns required to be filed by the Company and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns or pertinent information therefrom shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Management Committee in his or her sole discretion. The Members agree that the Company shall make an election under Section 754 of the Code to adjust the basis of the Company's assets with respect to any Membership Interest in the Company that is transferred by sale or exchange as described in Section 743(b) of the Code

## ARTICLE 14 MISCELLANEOUS PROVISIONS

**14.1 Notices.** Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be made in writing and shall be deemed to have been given when actually received. Any such notice, demand or communication may be given by mail, express package service, email or facsimile and shall be addressed to each Member at the address set forth in Exhibit A and/or to the Company at its principal office, or to such other address as the Member or the Company may from time to time designate by notice. Such notices shall be deemed to have been given: (a) if delivered by express package service for which a delivery receipt has been obtained from a nationally recognized express package service provider, when delivered; (b) if delivered by electronic mail or facsimile, on the date of transmission if transmitted on a Business Day before 4:00 p.m. Denver time or, if not, on the next succeeding Business Day, provided the Person providing notice pursuant to this clause (b) is notified that the transmission has been successful, or (c) if by United States mail, four (4) Business Days after depositing in the United States mail, with postage prepaid and properly addressed.

**14.2 Application of Colorado Law.** This Agreement and its interpretation shall be subject to and is governed exclusively by its terms and by the laws of the State of Colorado and specifically the Act, excluding any conflict-of-laws rule or principle that might refer the governance or construction of this Agreement to the law of another jurisdiction. In the event of a direct conflict between the provisions of this Agreement and the mandatory, non-waivable provisions of the Act, such provisions of the Act will be controlling.

**14.3 Tax Matters Partner.** The Company's "tax matters partner" for purposes of subchapter C of chapter 63 of subtitle F of the Code (dealing with the tax treatment of partnership items) shall be Barry Gassman, or such other Person as has shall be appointed by the Founder.

**14.4 UCC Article 8.** Each Member hereby recognizes and agrees that the Company's Units shall be considered "securities" as defined in and governed by Article 8 of the Uniform Commercial Code, as from time to time in effect in the State of Colorado.

**14.5 Waiver of Action for Partition.** Each Member hereby irrevocably waives during the existence of the Company any right that it may have to maintain any Action for partition with respect to the property of the Company.

**14.6 Amendments.** This Agreement may be amended at any time by a writing signed by the Required Members.

**14.7 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**14.8 Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**14.9 Headings.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

**14.10 Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

14.11 **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14.12 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

14.13 **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

14.14 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

14.15 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

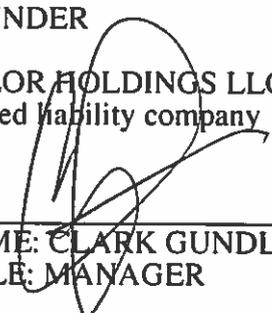
[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Members have caused this **Limited Liability Company Agreement** to be executed and delivered as of the date first above written.

MEMBERS:

FOUNDER

COLOR HOLDINGS LLC, a Colorado  
limited liability company

BY:   
NAME: CLARK GUNDLACH  
TITLE: MANAGER

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**EXHIBIT A**  
**Voting Units of Membership Interest**

<b>Member</b>	<b>Address</b>	<b>Voting Units of Membership Interest</b>
Color Holdings LLC	18 Poplar Place, P O Box 4505 Eagle, CO 81631	2,000

**EXHIBIT B  
MEMBER INITIAL CAPITAL CONTRIBUTIONS**

<b>Name and Address of Member</b>	<b>Contributions</b>	<b>Number of Units</b>
Color Coffee Holdings LLC PO Box 4505, Eagle, CO 81631	Services, Cash and Equipment	7,819

## Individual History Record

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

<b>Notice:</b> This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)				
1. Name of Business Color Coffee Roasters LLC		Home Phone Number 970-926-9055	Cellular Number 914-450-5342	
2. Your Full Name (last, first, middle) Gassman, Barry k		3. List any other names you have used none		
4. Mailing address (if different from residence) 1005 Cordillera Way, Edwards, CO 81632		Email Address barry.gassman@gmail.com		
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)				
<b>Street and Number</b>		<b>City, State, Zip</b>		<b>From</b>
<b>To</b>				
Current 1005 Cordillera Way		Edwards, CO 81632		05/02/14
				05/22/16
Previous 1912 Beard Creek Trail		Edwards, CO 81632		07/01/10
				05/01/14
6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)				
<b>Name of Employer or Business</b>		<b>Address (Street, Number, City, State, Zip)</b>		<b>Position Held</b>
<b>From</b>		<b>To</b>		
retired		same as residence		
				12/31/15
self-employed		same as residence		sole proprietor
				07/01/10
				12/31/15
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
<b>Name of Relative</b>		<b>Relationship to You</b>		<b>Position Held</b>
<b>Name of Licensee</b>				
none				
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				

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

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.)  Yes  No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.)  Yes  No

**Personal and Financial Information**

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth 09/06/46		b. Social Security Number [REDACTED]		c. Place of Birth New York		d. U.S. Citizen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
e. If Naturalized, state where			f. When		g. Name of District Court		
h. Naturalization Certificate Number		i. Date of Certification	j. If an Alien, Give Alien's Registration Card Number		k. Permanent Residence Card Number		
l. Height 5' 4"	m. Weight 137	n. Hair Color black	o. Eye Color brown	p. Gender m	q. Race caucasian	r. Do you have a current Driver's License/ID? If so, give number and state <input type="checkbox"/> Yes <input type="checkbox"/> No # [REDACTED] State <u>CO</u>	

14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.  
\$ 135,000

b. List the total amount of the personal investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ 40,000

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

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

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount
See Attachment			

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

Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount

**Oath of Applicant**

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

Authorized Signature <i>Barry Gassman</i>	Print Signature Barry Gassman	Title Manager	Date 05/22/16
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ATTACHMENT TO INDIVIDUAL HISTORY RECORD OF BARRY GASSMAN

Item 14 c. I have contributed \$38,911.95 in cash and furniture at my cost of \$1088.05 to Color Holdings LLC, a Colorado limited liability company (“Color Holdings”), in exchange for 50% of the outstanding units of membership interests in Color Holdings. The other member has contributed \$40,000 to Color Holdings in the form of cash, furniture, equipment and third party services.

The cash on hand in Color Holdings has been used to purchase equipment and furniture, all of which has been contributed, with the remaining cash and contributed equipment, to Color Coffee Roasters LLC (“Color Roasters”) in exchange for 7,819 units of membership interest of Color Roasters.

Color Holdings owns 100% of the outstanding units of membership interest (equity) of Color Roasters.

Cash for the Gassman contributions to Color Holdings LLC were made from checks from drawn on his (and his spouses’) personal joint checking account at Citibank NA.

## Individual History Record

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

<b>Notice:</b> This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)				
1. Name of Business <b>Color Coffee Roasters LLC</b>		Home Phone Number <b>516-603-2598</b>	Cellular Number <b>516-603-2598</b>	
2. Your Full Name (last, first, middle) <b>Gundlach, Clark</b>		3. List any other names you have used		
4. Mailing address (if different from residence) <b>PO Box 4505 Eagle CO 81631</b>		Email Address <b>clarkgundlach@gmail.com</b>		
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)				
<b>Street and Number</b>		<b>City, State, Zip</b>		<b>From</b>
<b>To</b>				
Current <b>18 Poplar Place</b>		<b>Eagle, CO 81631</b>		<b>2014</b>
				<b>2016</b>
Previous <b>517 Marigold</b>		<b>Corona Del Mar, CA 92625</b>		<b>2011</b>
				<b>2014</b>
6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)				
<b>Name of Employer or Business</b>		<b>Address (Street, Number, City, State, Zip)</b>		<b>Position Held</b>
<b>From</b>		<b>To</b>		
<b>The Gundlach Group LLC</b>		<b>18 Poplar Place Eagle, CO 81631</b>		<b>owner</b>
				<b>2014</b>
				<b>2016</b>
<b>Quiksilver Inc</b>		<b>15202 Graham St. Huntington Beach CA 92649</b>		<b>SVP/GM</b>
				<b>2011</b>
				<b>2014</b>
<b>Burton Inc</b>		<b>80 Industrial Parkway</b>		<b>SVP</b>
				<b>1994</b>
				<b>2011</b>
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
<b>Name of Relative</b>		<b>Relationship to You</b>		<b>Position Held</b>
<b>Name of Licensee</b>				
N/A				
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				

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

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.)  Yes  No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.)  Yes  No

**Personal and Financial Information**

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth 08/02/1954		b. Social Security Number [REDACTED]		c. Place of Birth Chicago, ILL		d. U.S. Citizen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
e. If Naturalized, state where				f. When		g. Name of District Court	
h. Naturalization Certificate Number		i. Date of Certification		j. If an Alien, Give Alien's Registration Card Number		k. Permanent Residence Card Number	
l. Height 5'9"	m. Weight 165lb	n. Hair Color BRN	o. Eye Color BLU	p. Gender M	q. Race White	r. Do you have a current Driver's License/ID? If so, give number and state. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No # [REDACTED] State <u>CO</u>	

14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other. \$ 40,000.00

b. List the total amount of the personal investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ 40,000.00

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

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

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount
See attached			

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

Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount
See attached				

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount

**Oath of Applicant**

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

Authorized Signature	Print Signature	Title	Date
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ATTACHMENT TO INDIVIDUAL HISTORY RECORD OF CLARK GUNDLACH

Item 14 c. I have contributed \$40,000.00 in cash, furniture/fixtures, and third party services to Color Holdings LLC, a Colorado limited liability company ("Color Holdings"), in exchange for 50% of the outstanding membership interests in Color Holdings. The other member has also contributed \$40,000 to Color Holdings in the form of \$38,911.95 of cash and furniture, plus \$1088.05 of expenditures for Color Coffee Roasters LLC.

A substantial portion of the cash on hand in Color Holdings has been used to purchase equipment and furniture, all of which has been contributed, with the remaining cash and contributed equipment, to Color Coffee Roasters LLC ("Color Roasters") in exchange for 7,818 units of membership interest of Color Coffee Roasters LLC.

Color Holdings owns 100% of the outstanding units of membership interest (equity) of Color Roasters.

Cash for the Gundlach contributions to Color Holdings LLC were made from checks drawn on Mr. Gundlach's personal checking account at Fidelity Investments and UMB Bank, Warsaw MO.

## Individual History Record

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

<b>Notice:</b> This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)						
1. Name of Business Color Coffee Roasters		Home Phone Number 802-324-7985	Cellular Number 802-324-7985			
2. Your Full Name (last, first, middle) Gundlach, Charles, Clark		3. List any other names you have used				
4. Mailing address (if different from residence) PO Box 4806, Eagle, CO 81631		Email Address charlie@colorroasters.com				
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)						
<b>Street and Number</b>		<b>City, State, Zip</b>		<b>From</b>	<b>To</b>	
Current 18 Poplar Place		Eagle, CO, 81631		05/01/16	05/19/16	
Previous 10364 Arapahoe Rd		Lafayette, CO, 80026		08/01/14	05/01/16	
6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)						
<b>Name of Employer or Business</b>		<b>Address (Street, Number, City, State, Zip)</b>		<b>Position Held</b>	<b>From</b>	<b>To</b>
Boxcar Coffee Roasters		1825 Pearl St		Barista	08/01/14	05/01/16
Portola Coffee Lab		3313 Hyland Ave, Costa Mesa, CA, 92626		Roaster	04/01/12	07/31/14
Quiksilver Inc		5600 Argosy, Huntington Beach, CA 92626		Exec. Assistant	12/01/11	03/31/12
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.						
<b>Name of Relative</b>		<b>Relationship to You</b>		<b>Position Held</b>	<b>Name of Licensee</b>	
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>						
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>						

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

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.)  Yes  No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.)  Yes  No

**Personal and Financial Information**

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth **05/02/87**    b. Social Security Number [REDACTED]    c. Place of Birth **Fort Collins, Colorado**    d. U.S. Citizen  Yes  No

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

h. Naturalization Certificate Number \_\_\_\_\_    i. Date of Certification \_\_\_\_\_    j. If an Alien, Give Alien's Registration Card Number \_\_\_\_\_    k. Permanent Residence Card Number \_\_\_\_\_

l. Height **5'8"**    m. Weight **125**    n. Hair Color **Brown**    o. Eye Color **Blue**    p. Gender **M**    q. Race **White**    r. Do you have a current Driver's License/ID? if so, give number and state.  Yes  No # [REDACTED] State **Colorado**

14. Financial Information.  
 a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other. \$ **0**

b. List the total amount of the personal investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ **0**  
 \* If corporate investment only please skip to and complete section (d)  
 \*\* Section b should reflect the total of sections c and e

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

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount

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

Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount

**Oath of Applicant**

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

Authorized Signature     Print Signature **Charles Gundlach**    Title \_\_\_\_\_    Date **5-19-16**

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE OF DOCUMENTS FILED**

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office, the attached documents are true and complete copies of all documents relating to:

Color Coffee Roasters LLC

Colorado Limited Liability Company

(Entity ID # 20151565231 )

consisting of 3 pages as filed in this office.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 05/20/2016 that have been posted, and by documents delivered to this office electronically through 05/24/2016 @ 17:48:49 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 05/24/2016 @ 17:48:49 in accordance with applicable law. This certificate is assigned Confirmation Number 9666594 .



A handwritten signature in cursive script that reads "Wayne W. Williams".

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*  
*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/ht/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"*



Colorado Secretary of State  
 Date and Time: 08/31/2015 09:11 AM  
 ID Number: 20151565231  
 Document number: 20151565231  
 Amount Paid: \$50.00

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit [www.sos.state.co.us](http://www.sos.state.co.us).

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Organization**

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

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

**Color Coffee Roasters LLC**

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

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

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

Street address

**1005 Cordillera Way**

*(Street number and name)*

**Edwards**

*(City)*

**CO**

*(State)*

**81632**

*(ZIP/Postal Code)*

**CO**

*(Province - if applicable)*

**United States**

*(Country)*

Mailing address

*(leave blank if same as street address)*

**1005 Cordillera Way**

*(Street number and name or Post Office Box information)*

**Edwards**

*(City)*

**CO**

*(State)*

**81632**

*(ZIP/Postal Code)*

**CO**

*(Province - if applicable)*

**United States**

*(Country)*

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

Name

*(if an individual)*

**Gassman**

*(Last)*

**Barry**

*(First)*

*(Middle)*

*(Suffix)*

or

*(if an entity)*

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

Street address

**1005 Cordillera Way**

*(Street number and name)*

**Edwards**

*(City)*

**CO**

*(State)*

**81632**

*(ZIP Code)*

Mailing address

*(leave blank if same as street address)*

*(Street number and name or Post Office Box information)*

\_\_\_\_\_  
(City) CO \_\_\_\_\_  
(State) (ZIP Code)

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

The person appointed as registered agent has consented to being so appointed.

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

Name  
(if an individual) Gassman Barry  
(Last) (First) (Middle) (Suffix)

or

(if an entity)

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

Mailing address 1005 Cordillera Way  
(Street number and name or Post Office Box information)

Edwards CO 81632  
(City) (State) (ZIP/Postal Code)  
United States  
(Province - if applicable) (Country)

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

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

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

(Mark the applicable box.)

one or more managers.

or

the members.

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

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

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

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

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

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

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

<u>Gassman</u>	<u>Barry</u>		
<i>(Last)</i>	<i>(First)</i>	<i>(Middle)</i>	<i>(Suffix)</i>
<u>1005 Cordillera Way</u>			
<i>(Street number and name or Post Office Box information)</i>			
<hr/>			
<u>Edwards</u>	<u>CO</u>	<u>81632</u>	
<i>(City)</i>	<i>(State)</i>	<i>(ZIP/Postal Code)</i>	
<u>CO</u>	<u>United States</u>		
<i>(Province - if applicable)</i>	<i>(Country)</i>		

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

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

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

COPY

PROMISSORY NOTE

\$25,000

Fort Collins, Colorado  
Date: May 1, 2016

FOR VALUE RECEIVED, Color Coffee Roasters LLC (the "Maker"), a Colorado limited liability company, promises to pay to Cylde W. Gundlach (the "Note Holder") or order, the principal sum of Twenty-Five Thousand Dollars (\$25,000), or such lesser amount as is advanced by the Note Holder to the Maker, with interest on the unpaid principal balance of five percent (5%) per annum. Principal and interest shall be payable at 950 Southridge Greens Blvd., #24, Fort Collins, CO 80525, or such other place or person as the Note Holder may designate. The unpaid principal balance and accrued interest thereon shall be paid in full on May 1, 2021. Interest on the unpaid principal balance shall accrue and be payable at maturity. Accrued interest shall not be compounded.

Borrower may prepay the principal amount outstanding under this Note, in whole or in part, at any time without penalty.

Any prepayment shall be applied first against accrued interest and second against the outstanding principal amount of this Note.

This Note is unsecured.

If this Note is not paid when due or declared due hereunder, the entire principal and accrued interest thereon shall accrue interest at the rate of ten percent (10%) per annum, and the failure to pay interest within five (5) days of each due date shall cause the entire Note to become due and payable at once upon notice by the Note Holder to the Maker. If this Note or interest thereon is not paid when due, Maker shall pay to the Note Holder all of his or her reasonable costs of collection, including attorney's fees and expenses.

COLOR COFFEE ROASTERS  
LLC

By:   
Name: Barry Gassman  
Its: Manager

BEFORE THE TOWN OF EAGLE LIQUOR LICENSING AUTHORITY

200 BROADWAY  
PO BOX 609  
EAGLE CO 81631

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FINDINGS AND ORDER APPROVING NEW LICENSE

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IN THE MATTER OF

Retail License Application for Beer & Wine Liquor Licensee  
For Color Coffee Roasters LLC  
Address: 717B Sylvan Lake Road, Eagle, CO

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Having considered the application of Charles Gundlach, Barry Gassman and Clark W. Gundlach – Color Coffee Roasters LLC for a new Beer and Wine Liquor License, and all attachments submitted therewith (the “Application”), having held a public hearing on the Application on June 28, 2016 following due and property notice, all in accordance with the Colorado Liquor Code, 12-47-101 et seq., C.R.S., and having considered all relevant and competence evidence admitted at the said public hearing, the Local Licensing Authority FINDS AS FOLLOWS:

1. There has not been a denial of an application at the same location by either the State or Local Licensing Authority with the two (2) years preceding the date of the application for the reason that the reasonable requirements of the neighborhood were satisfied by the existing outlets.
2. The Applicant has submitted evidence that it is entitled to possession of the premises where the license is proposed to be exercised.
3. The premises where the Applicant proposes to sell alcohol is not in violation of the 500-foot limitation from any public or parochial school or the principal campus of any college, university or seminary.
4. The premises are properly zoned for the activity which will occur therein.
5. The location has been previously decided by a preponderance of evidence that the reasonable requirements of the neighborhood and the desires of the adult inhabitants of the neighborhood are not currently being met by existing outlets.

BASED UPON THE FOREGOING, THE LOCAL LICENSING AUTHORITY HEREBY ORDERS that the application of Charles Gundlach, Barry Gassman and Clark W. Gundlach – Color Coffee Roasters LLC for a new Beer and Wine Liquor License is hereby GRANTED.

DATED this 28<sup>th</sup> day of June, 2016

LOCAL LIQUOR LICENSING AUTHORITY  
TOWN OF EAGLE

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Anne McKibbin, Chair

ATTEST:

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Jenny Rakow, Town Clerk



**MINUTES**  
**Town Board of Trustees**  
**Tuesday, June 14, 2016**  
**6:00 P.M.**

**Public Meeting Room / Eagle Town Hall**  
**200 Broadway**  
**Eagle, CO**

*This agenda and the meetings can be viewed at [www.townofeagle.org](http://www.townofeagle.org).*

*Meetings are also aired online at <https://vimeo.com/channels/townofeagle/>.*

*This meeting is recorded and a CD will become part of the permanent record of the minutes. The following is a condensed version of the proceedings as written by Angela Haskins.*

<b><u>PRESENT</u></b>	<b><u>STAFF</u></b>
Anne McKibben, Mayor	John Schneider, Town Manager
Andy Jessen	Jenny Rakow, Town Clerk
Paul Witt	Ed Sands, Town Attorney
Mikel "Pappy" Kerst	Matt Farrar, Assistant Town Planner
Matt Solomon	John Staight, Open Space Coordinator
Kevin Brubeck, Mayor Pro Tem	Kevin Sharkey, Town Engineer
Doug Seabury	

**6:00 PM – REGULAR MEETING CALLED TO ORDER**

**PUBLIC COMMENT**

*Citizens are invited to comment on any item not on the Agenda subject to a public hearing. Please limit your comments to five (5) minutes per person per topic, unless arrangements have been made for a presentation with the Town Clerk.*

Shira Korn addressed the Town Board and requested their consideration to allow for them to rent the studio next to the Pavilion for a child care location. The lack of child care in Eagle is a growing concern for many families who live here. Board requested Shira to reach out to John Schneider or Jenny Rakow regarding this request and details regarding procedure and availability.

Dean Rostrom Chairman of the Evergreen Bio Mass Plant in Gypsum introduced himself and invited the Town Board for a tour of the facility, which has been up and running since January.

Mike Jakes stated he was in support of Shira and the Learning Tree use of the Town's studio building for childcare. Infant care is extremely limited.

Chris Sterns stated he is a new resident to Eagle and is finding it difficult to find child care. He is in support of finding solutions.



Pamela Green stated there is currently a waiting list and she receives calls daily from desperate parents trying to find child care.

**CONSENT AGENDA** *Consent agenda items are routine town business, items which have received clear direction previously from the board, final land use file documents after the public hearing has been closed, or which do not require board deliberation.*

Minutes – May 24, 2016 and June 7, 2016  
Bill Paying and Payroll May 2016

MOTION: Trustee Brubeck motioned to approve the Consent Agenda with minor corrections to the Minutes and needing explanation regarding payments to Trustees and Planning Commission. Motion PASSED unanimously.

**DISCUSSION, DECISIONS OR DIRECTION REQUESTED**

Resolution No. 25 (Series 2016) A Resolution Of The Town Of Eagle Board Of Trustees Concerning The Annexation Petition For The Highway 6 Annexation A To The Town Of Eagle, Colorado.

Ed Sands stated the Petitions have been submitted, heirs to the highway six property have been found and deeds have been conveyed. Annexation will occur pursuant to the Boards request with proof of ownership of the easement. Resolutions tonight accept the Petitions and will set the public hearing for July 26, 2016 and notice of annexation will be published four times.

MOTION: Trustee Brubeck Motioned to approve Resolution 25-2016. Motion was seconded and PASSED unanimously.

Resolution No. 26 (Series Of 2016) A Resolution Of The Town Of Eagle Board Of Trustees Concerning The Annexation Petition For The State Highway 6 Annexation B To The Town Of Eagle, Colorado.

MOTION: Trustee Brubeck Motioned to approve Resolution 26-2016. Motion was seconded and PASSED unanimously.

Resolution No. 27 (Series Of 2016) A Resolution Of The Town Of Eagle Board Of Trustees Concerning The Annexation Petition For The State Highway 6 Annexation C To The Town Of Eagle, Colorado.

MOTION: Trustee Brubeck Motioned to approve Resolution 27-2016. Motion was seconded and PASSED unanimously.

Resolution No. 28 (Series Of 2016) A Resolution Of The Town Of Eagle Board Of Trustees Concerning The Annexation Petition For The State Highway 6 Annexation D To The Town Of Eagle, Colorado.

MOTION: Trustee Brubeck Motioned to approve Resolution 28-2016. Motion was seconded and PASSED unanimously.

Ordinance 16-2016 An Ordinance Of The Town Of Eagle, Colorado, Approving A Subdivision Within The Town Of Eagle To Be Known As The Trotter Minor Subdivision; And Approving A Site Specific Development Plan Establishing Vested Property Rights Pursuant To Article 68 Of Title 24, C.R.S., And Chapter 4.17 Of The Eagle Municipal Code. (Matt Farrar, Assistant Town Planner)



MOTION: Trustee Brubeck Motioned to approve Ordinance 16-2016. Motion was seconded and PASSED unanimously.

Ordinance 17-2016 An Ordinance Of The Town Of Eagle, Colorado Amending Certain Provisions Of Chapter 8.12 Of The Eagle Municipal Code Concerning Animal Control Including Changes To Conform To Recent Changes Made To Eagle County's Animal Control Regulations (*Chief Staufer*)

Chief Staufer stated this Ordinance clarifies the "common ground" provision to include all sidewalks and recreation paths, not just Town property. This will alleviate situations that occur on HOA and other properties that are not designated as private property for the purpose of enforcing the leash law and Animal Control situations.

MOTION: Trustee Brubeck Motioned to approve Ordinance 17-2016. Motion was seconded and PASSED unanimously.

Ordinance 18-2016 An Ordinance Of The Town Of Eagle, Colorado Amending Section 2.08.200 Of The Eagle Municipal Code, Concerning Court Fees And Costs, By Imposing A Charitable Organization Fee (*Chief Staufer*)

Chief Staufer stated this is to codify and ensure there are legal reasons to charge the charitable fee. Also sets guidance for the Town Board on where the fees should be donated. Would like to include "local schools" in addition to local charities. Desire is to keep these donations within the community.

Ed Sands stated this Ordinance gives the Board ultimate control over the donations and how they are distributed.

MOTION: Trustee Brubeck Motioned to approve Ordinance 18-2016 with addition to the language to include "local schools". Motion was seconded and PASSED unanimously.

Appointment of Administrative Hearing Officer (*Chief Staufer and Ed Sands*)

Chief Staufer stated this request is being made proactively to gain Board direction on appointment of administrative hearing officer. Ed Sands stated per our Town Code, this role could be fulfilled by the Town Board. The Town Board indicated their preference for an appointed third party. The Town Board approved recruitment of a qualified person to fulfill this duty for the Town on an hourly and as-needed basis. Chief Staufer estimated two times per year we would need this service. An RFP for services will be prepared.

Resolution 30 (Series 2016) A Resolution Of The Board Of Trustees Town Of Eagle, Colorado Authorizing The Future Conveyance Of A Temporary Construction Easement On Town Open Space Near Arroyo Drive To Black Hills Corporation Or Its Affiliates (*Kevin Sharkey, Assistant Engineer*)

Kevin Sharkey stated this Resolution approves the solution reached for the temporary staging areas and easement access for the pipeline project in Eagle Ranch. They have agreed to pay \$24K for the easement to the A&R owners. They will restore the entire width as part of this project. Both Kevin and Ed Sands will review the survey and map once it is submitted as exhibit to the Easement Agreement to ensure it complies with intent of negotiations and Town Board approval.

Gretchen Giesler spoke on behalf of Black Hills Energy and stated they were present and wanted to convey their assurances they will comply with agreement.



MOTION: Trustee Seabury motioned to Approve Resolution 30-2016. Motioned was seconded and PASSED unanimously.

Board requested communication regarding this project to community. Of note was a website maintained by Black Hills for this Project. Link to this will be made available on Town of Eagle media.

**LAND USE**

Project:	Rocky Mountain School of Discovery
File #:	SU16-01
Applicant:	Anne Helene Garberg
Location:	409 Brooks Lane
Staff Contact:	Matt Farrar (Assistant Town Planner)
Request:	Special Use Permit to allow operation of a pre-school and educational facility.

Matt Farrar Assistant Town Planner opened by handing out additional public comments received after packet was produced and deadline. Matt reviewed his staff report including the findings pursuant to Section 4.05.010 of the Land Use Code. Proposed recommendations by the Planning Commission were unanimously listed as: 1. Applicant to negotiate access improvements with the Town at Brooks Lane/Highway 6 intersection conceptually to include lane widening and a pedestrian access to (School) bus stop. 2. Approval of an access from the PUC; 3. Submittal of a drop-off, pick-up management plan by applicant; 4. Submittal of a Traffic Impact Report; and 5. Number of students to be limited to 30.

Staff did not have a recommendation for this file due to the location and whether adequate street improvements are in place or will be constructed to accommodate the proposed use.

Staff read through the planning commission comments and presented public comments received in writing. Issues discussed by staff and town board included traffic capacities and the PUC with the railroad crossing. If this use triggers adding commercial to this street, it may require an update to the crossing, which could cost upwards of \$200K. This would either have to be paid for by the Town or the applicant.

Anne Helene Garberg was present for this item and discussed her background, philosophy of her application and the need for child care in Eagle. Anne provided some ideas on alternative solutions to the traffic concerns, which included parents walking children across the Fishing is Fun bridge or purchasing a van/bus to pick children up from an alternate location.

Trustee Witt inquired if Anne would be willing to reduce students to 30. Anne stated she would be happy with 30.

**PUBLIC COMMENT:**

Kelly Anderson stated his support of this location, providing the child care much needed to residents and willingness to work with the town to make this location work.

Shannon L. 810 Greenway, Gypsum stated her support of Anne Helene's philosophy and care she provides her students/children.



Dana Stiles 400 Brooks Lane stated she has lived at her location for 35 years and stated her concerns about the alternative of using the foot bridge to get children to the location when it's cold and snowy. There is limited parking and the driveway and road to the location is also an icy hill in the winter that could cause issues for accessing the location and impacts on neighbors.

Kris K. 101 Oxbow Court stated her support of Anne Helene and the diversity of what she has to offer parents with children. Provided advocacy for adjusting and providing options.

Ron B. 450 Brooks Lane stated Brooks Lane is a narrow, one lane dead end street. It does not have the capacity for the proposed traffic. There was a fire on the property in the recent past and trucks had difficulty getting to the location. Safety and access is a concern. Railroad Crossing is also a concern. Inquired about an opinion from the railroad on whether it is a public or private easement needs to be addressed. Ed Sands stated this was litigated and the hearing officer's ruling was accepted and it was a neutral position. Trigger points are included in the ruling to improve the crossing, which include adding residential or approval of commercial operation. Twenty Five children living in the neighborhood who also need to walk to the bus stop in the mornings. The estimate is 120 additional cars on the road every day. Access to Highway Six making a left turn is also a concern in the morning, with traffic frequently backed up from the Sylvan Lake Round A Bout.

Amber Jones Brush Creek Road stated her support of Anne Helene and how she commutes to Gypsum to go to her school, even though she works in Avon.

Kim Anderson 206 Haystacker stated her support of the proposal and location and that this location has a circle drive. She currently drives to Gypsum and would like to keep her money local.

N Kenney 534 Third Street stated she is an environmental educator and supports Anne's philosophy. She is willing to walk her child to this school.

Mayor McKibbin closed public comment (7:54 p.m.)

Mayor McKibbin stated that it is obvious we need early childhood care and we are supportive of it, the challenge is finding the right location and making sure it works for the community.

Trustee Seabury stated he loves the idea and would love to see it in Eagle, but there are concerns that make it difficult to make a decision tonight, namely safety, the railroad crossing and how to pay for it.

Ed Sands stated the PUC would be interested in a traffic study for this proposal in order to make its determination on the requirement of the improvement to the crossing. Tom Boni did send a communication to the PUC to get a response on this proposal and has not had a response.

Trustee Solomon stated he loves the philosophy and many aspects of the proposal, but the board has an obligation to look at it from a neighborhood perspective. Safety of the road and access is a concern for emergency vehicles. Can the Town afford to approve this if there is a railroad crossing requirement involved? Would like more information.

Ed Sands suggested that the neighborhood could look into forming a Special Improvement District to address the road width and access issues.



Trustee Brubeck stated his desire to make this work, however, also needing to address the neighborhood concerns, safety and the potential costs of an improved railroad crossing.

Trustee Jessen asked Anne to describe a typical day. Anne stated the children are outside as often as possible, getting in touch with nature and exploring. Would like to have animals and a garden as allowed.

Trustee Kerst stated he had nothing more to add other than the access from a safety perspective for emergency responders.

Board provided their support of the philosophy and idea, but believed more information was needed regarding the railroad crossing and whether or not a traffic study is required. Additional feedback and input from Emergency Services on access and safety.

Trustee Jessen requested that the applicant and staff be given clear direction on what additional information is needed for a decision to not unduly delay the request.

Board also discussed additional concerns with Brooks Lane in general not having maintenance and needed improvements as a town road.

Carrie M. 1099 Capitol Street stated she is a traffic engineer and provided her support and ability to assist the applicant with traffic study.

MOTION: Trustee Brubeck motioned to continue File #SU-01 until to July 12, 2016 Town Board Meeting. Motioned was seconded and PASSED unanimously

EXECUTIVE SESSION – MOTION: Trustee Seabury motioned to hold a conference with the Town's attorney to receive legal advice on specific legal questions and items pertaining to negotiations, pursuant to C.R.S. § 24-6-402(4)(b). Motion was seconded and PASSED unanimously. Attorney Ed Sands certified for the record the session did not need to be recorded because it was subject to Attorney Client privilege. (8:48 p.m.)

MOTION: Trustee Witt motioned to Adjourn from Executive Session and resume the regular meeting. Motion was seconded and PASSED unanimously.

Frost Creek PUD Amendment Water and Bike Path Discussion - Ed Sands stated D. H., Chad Brue and Dominic Mauriello have been working with the Town's attorney, Mary Elizabeth Geiger on making amendments to the Frost Creek Agreement with regard to Brush Creek bike path. They are at an impasse on the Brush Creek bike path. No changes to the original agreement have been made. Attorney for Frost Creek stated they would like to construct the bike path at the time of final plat. As part of the negotiations, the town has proposed the developer pay for \$75K for design costs and we object to that change as design costs were never part of the deal and is not part of the agreement or amendment. Developer considers it redundant. Developer is not willing to be responsible for a million dollar bike path with no present plans to develop. We have agreed to dedicate the easement for the bike path.



Ed Sands reiterated major negotiations were regarding 60% prepayment of water service fees, a park land fee and a few other outstanding issues, but the bike path is our focus right now.

The Town Board had no further questions with expectation attorneys will further negotiate this item.

MOTION: Trustee Seabury motioned to enter into Executive Session consider personnel matters, pursuant to C.R.S. § 24-6-402(4)(f) and will not involve specific employees and to direct attorney on how to process in negotiations pursuant to C.R.S. § 24-6-402(4)(b). Motion was seconded and PASSED unanimously. (9:31 p.m.)

Motion: Trustee Witt motioned to Adjourn from Executive Session and resume the regular meeting. Motion was seconded and PASSED unanimously. (10:31 p.m.)

Motion: Trustee Seabury motioned to continue past 10:00 p.m. Motion was seconded and PASSED unanimously.

Staff Contact:	Matt Farrar (Assistant Town Planner)
Request:	Special Use Permit to allow operation of a pre-school and educational facility.
Project:	Colorado Slab & Tile - Outside Storage
File #:	SU16-02
Applicant:	Jason Kaples
Location:	12 Eagle Park East
Staff Contact:	Matt Farrar (Assistant Town Planner)
Request:	Special Use Permit to allow for outside storage.

Applicant was not present for this item. Request by staff to continue to June 28<sup>th</sup>.

MOTION: Trustee Brubeck motioned to continue File#SU16-02 to the June 28, 2016 Town Board Meeting. Motion was seconded and PASSED unanimously.

**BOARD DISCUSSION AND FUTURE AGENDA ITEMS**

John Schneiger stated Greg Winkler from Department of Local Affairs has agreed to facilitate our Board Retreat.

CML is next week and both he and Mayor will be attending some sessions Wednesday – Friday.

A request to do a more formal grand opening for the Pump Track was requested and approved.

Discussion regarding participating in the November Coordinated Election with Eagle County was discussed. There are several items that could be addressed, Ed Sands stated state law allows for excise tax on wholesale marijuana, which would require a public vote. There is also the issue of offering Broadband via Senate Bill 152 and opting out of the law restricting using tax payer dollars to fund it. Also raised was eliminating the need to public ordinances in full (Town Clerk) which results in some publications on a single Ordinance to be over \$1,000 dollars.

Board would like to schedule a discussion on the next Agenda.



Mayor's Update

Mayor provided update on some meetings attended. Also indicated her desire to hold office hours at Town Hall for about 4 hours a week, Monday from 3-5 and Thursday from 8-10.

Trustee Brubeck stated with regarding to crosswalks he had a citizen request speed bumps to alert drives to them.

**ADJOURN (10:50 pm)**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anne McKibbin, Mayor

\_\_\_\_\_  
Jenny Rakow, CMC Town Clerk



To: Mayor and Town Board  
From: Jenny Rakow, CMC Town Clerk  
Date: June 28, 2016 Town Board Meeting  
Re: Old Town Hall Leases

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The culmination of board direction and public requests for Old Town Hall uses over the past several months has resulted in the acceptance of two tenants who will be splitting the space almost evenly. They were chosen based upon their interest and acceptance of the space in “as is” condition. It was a first-come first-serve situation, which follows the current practice of renting all town facilities.

Rent collected will be on a monthly basis and include the average utilities for electricity, gas, water, sewer and trash. Tenants will be responsible for telecommunications and cleaning. Annual average utility costs were \$7,500.00 for the building. Each tenant will be charged \$1,000.00 per month. Effective rent (less utilities) will be approximately \$8,300.00 annual for each tenant. This is a net to the Town of \$16,600.00. With the records I could find, this would be amongst the highest “income” this property has seen. Both entities will provide their own insurance naming the Town additionally insured.

With most recent use by Colorado Mountain News Media (who vacated the space end of May) for in-kind services and payment for some utilities, covering the building costs and providing for a rental income towards repairs was intended. Prior leases ranged from \$700 to \$1200 per month and were all “for profit” tenants and only one rented the facility at a time. Both proposed leases will split the building costs and be equal in their rent. Both leases are initially set for one year to provide time for evaluation for all parties.

Due to asbestos concerns in the ceiling of the former council chambers, the ceiling and paint was redone. Remediation of these concerns is complete and has been signed off on by the contractor who initially inspected the building and verified by our building official.

The direction given was to opt for non-profit and/or community use. Both tenants have excellent credentials and will be providing unique and valuable experiences for local youth and families.

Mike Pisciotta, who currently serves as the Court Administrator for the 5<sup>th</sup> Judicial District, will be providing a boxing program geared towards youth and young adults. Mr. Pisciotta has been part of boxing for many years, with great success mentoring and providing a positive, meaningful community outlet for youth.

Ute Springs Learning Center will be using the space for their administrative offices. They provide summer camp, retreats and school programs to youth in our area. Amy Ben-Horin (2015 Young Professional of the Year at VVP’s Success Awards), Linda Miner and Julie Norberg have been my contacts in setting up their space and lease.

***STAFF RECOMMENDATION: Approve Resolutions 18 & 19 Series 2016 approving one year leases for Ute Springs Learning Center and Mike Pisciotta, Mean Streets Boxing.***

**RESOLUTION NO. 31**  
**(Series of 2016)**

A RESOLUTION OF THE BOARD OF TRUSTEES TOWN OF EAGLE, COLORADO APPROVING A LEASE AGREEMENT BETWEEN THE TOWN OF EAGLE AND MIKE PISCIOTTA A SOLE PROPRIETORSHIP A/K/A MEAN STREETS BOXING FOR SPACE IN THE TOWN OF EAGLE OLD TOWN HALL; AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

WHEREAS, the Town of Eagle is the owner of the real property situated at 108 West Second Street, Town of Eagle, County of Eagle, State of Colorado, known as the "Eagle Old Town Hall"; and

WHEREAS, the , desires to continue to lease office space at the Eagle Old Town Hall, and the Mean Streets Boxing Town of Eagle is willing to make such space available under the same terms and conditions as contained in attached lease (Exhibit "A").

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

Section 1. The lease Agreement between the Town of Eagle, Colorado and Mean Streets Boxing, for the lease of space at the Eagle Town Hall, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved.

Section 2. The Mayor of the Town of Eagle is hereby authorized and directed to execute the agreement attached hereto as Exhibit "A" on behalf of the Town of Eagle.

INTRODUCED, READ, PASSED, AND ADOPTED at a regular meeting of the Board of Trustees of the Town of Eagle, Colorado, held on the 28th day of June, 2016.

TOWN OF EAGLE, COLORADO

ATTEST:

\_\_\_\_\_  
Jenny Rakow, Town Clerk

\_\_\_\_\_  
Anne McKibbin, Mayor

**LEASE AGREEMENT**

**TOWN OF EAGLE OLD TOWN HALL**

THIS LEASE is made and entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **TOWN OF EAGLE, COLORADO**, a municipal corporation, whose address is P.O. Box 609, Eagle, Colorado 81631 (“Lessor”), and **MIKE PISCIOTTA, A SOLE PROPRIETORSHIP A/K/A MEAN STREETS BOXING**, whose address is \_\_\_\_\_ (“Lessee”).

**RECITALS**

**WHEREAS**, Lessor is the owner of the real property situate at 108 West Second Street, Town of Eagle, County of Eagle, State of Colorado, known as the “Eagle Old Town Hall”, (the “Property”); and

**WHEREAS**, Lessee desires to rent and lease a portion of the Property from Lessor, as described in Exhibit “A”, attached hereto and incorporated herein by this reference (“Leased Premises”).

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and Lessee agree as follows:

1. **LEASED PREMISES.** The Lessor hereby leases to Lessee the portion of the Property described in Exhibit “A”, attached hereto and incorporated herein by this reference, situate in the Town of Eagle, County of Eagle, State of Colorado (“Leased Premises”). Such letting is upon and subject to the terms, conditions and covenants set forth below, and Lessee covenants as a material part of the consideration for this Lease to keep and perform all such terms, conditions and covenants. In addition, Lessee shall have full and complete access to and use of the common areas of the Property described as the two (2) restrooms, hallways to restrooms, and entryway to the building. Said common areas shall also be available for use by other building tenants.

2. **COMMENCEMENT/LEASE TERM.** The initial term of this Lease shall commence July 1, 2016 for a period of one (1) year. In addition, Lessee shall have options to renew this Lease for two (2) additional one (1) year terms subject to the same terms of this Lease. Provided, however, rent for the second term will be \$900.00 per month and rent for the third term will be \$1000.00 per month. Upon execution of this Lease and upon delivery of the insurance certificates required by Section 9 below and delivery of the security deposit, Lessee shall be permitted to enter the Leased Premises between April 15 and July 1, 2016, as determined by the Lessor's Town Manager. The first Lease payment shall be due on July 1, 2016. In the event Lessee elects to exercise its option to renew the Lease for an additional one (1) year term, Lessee shall provide Lessor at least sixty (60) days advance written notice of its election. Lessee may terminate this Lease, with thirty (30) days written notice to Lessor.

3. **RENT.** Lessee shall pay to Lessor for the initial term annual rent in the amount of nine thousand six hundred dollars (\$9,600.00) payable in the amount of \$800.00 per month on the 1st day of each month for the Leased Premises commencing July 1, 2016, at the Lessor's address stated above. In the event Lessee fails to make any rent payment within five (5) days following the scheduled monthly payment date, Lessee shall pay a late fee charge in the amount of fifty dollars (\$50.00) in addition to interest on the unpaid monthly balance and any applicable late fees at the rate of eighteen percent (18%) per annum, compounded monthly, until fully paid. The rent shall be paid to Lessor without notice or demand and without abatement, deduction or setoff unless otherwise specifically permitted in this Lease.

4. **SECURITY DEPOSIT.** Upon execution of this Lease, the Lessee shall deliver to Lessor a security deposit in the amount of one thousand five hundred dollars (\$1,500.00). Said deposit may be commingled by Lessor with its other funds and shall be received by Lessor without liability for interest, as security for Lessee's faithful performance of all of the provisions of this Lease, including the obligation to pay rent. For so long as the security deposit has not been repaid by Lessor, it shall constitute an account payable by Lessor to Lessee. Within sixty (60) days following termination of this Lease, to the extent, if any, that Lessor has not applied the security deposit as herein permitted, the balance shall be returned to Lessee. If Lessee shall default with respect to any covenant, duty or obligation of Lessee under this Lease, then the security deposit or any part thereof may be applied by Lessor (but Lessor shall not be obligated to do so) to the damages sustained by Lessor by reason of any such default or to any indebtedness owing by reason of any failure of Lessee to make any required monetary payment under this Lease. Lessor shall provide Lessee a written notice and accounting of such applications of the security deposit. No such application shall be construed as an agreement to limit the amount of Lessor's claim for damages or as a waiver of any damages or release of any indebtedness, and any claim of Lessor under this Lease not recovered in full from the security deposit shall remain in full force and effect.

At any time when Lessor has made any such application of all or any part of the security deposit, Lessor shall have the right (but not the obligation) at any time thereafter to request that Lessee pay to Lessor a sum or sums equal to the amount so applied by Lessor so that Lessor will always have in its possession a sum equal to the amount of the security deposit stated above. Lessee shall make each such requested remittance within ten (10) days following such written request from Lessor and each such remittance received by Lessor shall thereupon constitute a part of the security deposit subject to the terms and provisions of this Lease. Failure to make any such requested remittance within such ten (10) day period may be treated by Lessor as a failure of Lessee to make timely payment of rent and as an event of default.

In the event of any conveyance or other transfer of the Leased Premises by Lessor, Lessor's remittance of the security deposit or any remaining portion thereof to Lessor's transferee shall release and relieve Lessor of any further obligation or liability to Lessee with respect to the security deposit. Lessor shall comply with all applicable State laws concerning application of the security deposit and any required notices to Lessee.

5. **POSSESSION.** Upon execution of this Lease by both parties, full payment of the

security deposit, and upon delivery of an insurance certificate to Lessor by Lessee as required by Section 9 below, Lessee shall be entitled to full access and possession of the Leased Premises between April and July 1, 2016, as determined by the Lessor's Town Manager.

6. **LESSOR INSTALLED IMPROVEMENTS.** Lessee shall be entitled to use all improvements installed by Lessor and all furnishings belonging to Lessor.

7. **USE OF LEASED PREMISES.** Lessee shall use or cause the Leased Premises to be used for the purpose of operating boxing activities for youth and adults. Lessee covenants that it will not permit the Leased Premises to be used for any illegal or immoral purpose, and that Lessee will not do, or suffer to be done, in or about the Leased Premises, any act or thing that may be a nuisance, annoyance, or inconvenience to Lessor or any other lessees of the Property.

8. **UTILITY AND OTHER SERVICES.** Lessee's rent charges shall include the average utilities for its proportional share of electric, natural gas monthly service charges, water, sewer and trash based on the square footage occupied by Lessee and all other tenants. The Lessee shall be solely responsible for and shall pay the cost of telecommunications and cable service and any security alarm systems to the Leased Premises. The Lessee shall arrange for such telecommunications and cable services in its own name. The physical installation of any additional telecommunication services shall be subject to the Lessor's prior written approval.

9. **INSURANCE.** The Lessor shall keep and maintain (a) fire, casualty and extended coverage insurance on the Leased Premises in such amounts as the Lessor shall from time to time determine; and (b) fire and extended coverage insurance on the Town's personal property remaining within the Leased Premises in such amounts as the Lessor shall from time to time determine.

Lessee shall keep and maintain (a) public liability insurance for the Leased Premises and any business or operations conducted on the Leased Premises, with coverage for bodily injury and property damage on a comprehensive basis with limits of not less than one million dollars (\$1,000,000.00) per occurrence; and (b) fire and extended coverage insurance on the Lessee's personal property and contents within the Leased Premises equal to the full replacement cost. All public liability insurance policies shall name the Lessor as an additional insured. The Lessee shall provide the Lessor with certificates of such insurance prior to taking possession. No such policy or policies may be cancelled without thirty (30) days prior written notice to the Lessor, and said certificate shall so provide. In the event of damage to the Leased Premises covered by insurance, the Lessor shall use its proceeds of such insurance to repair and restore the Leased Premises, except as otherwise provided herein. All insurance companies selected by the Lessee shall be licensed to do business in the State of Colorado and rated A+1. In the event the Lessor elects to also maintain public liability insurance for the Property or the Leased Premises, the Lessee's public liability insurance for the Leased Premises shall be deemed the primary insurance coverage.

10. **ACCEPTANCE OF PREMISES.** The Lessee accepts the Leased Premises in its present condition. The Lessee acknowledges that it has inspected the Leased Premises and all utilities, appurtenances, access and other services to the Leased Premises, and it is satisfied with

all aspects of the same. The Lessee further acknowledges that neither the Lessor nor any agent or other representative of the Lessor has made any representation or warranty as to suitability of the Leased Premises for the conduct of the Lessee's operations and business. All work, improvements and alterations required for the Lessee's use of the Leased Premises will be accomplished at the Lessee's sole cost and expense. The Lessee shall, at the Lessee's sole expense, keep the interior of the Leased Premises in good repair during the term of this Lease.

**11. ALTERATION OF PREMISES.** The Lessee shall not, without the prior written consent of the Lessor, make any alterations, improvements, or additions to the Leased Premises, including, but not limited to, partitions, wall coverings, floor coverings and special lighting installations.

In the event the Lessee desires to make any alterations, improvements or additions, the Lessee shall first submit plans and specifications and obtain the Lessor's written consent for the same prior to commencing any such work. All alterations, improvements or additions, whether temporary or permanent in nature, made by the Lessor or the Lessee in or about the Leased Premises, shall become the Lessor's property and shall remain upon the Leased Premises at the termination of this Lease by lapse of time or otherwise, without compensation to the Lessee (excepting only the Lessee's furniture, trade fixtures and equipment) provided, however, the Lessor shall have the right to require the Lessee to remove such alterations, improvements or additions at the Lessee's cost upon the termination of this Lease and repair any damage caused to the Leased Premises as a result of any such removal. Such repair costs shall be paid for by the Lessee. The Lessee shall promptly pay the cost and expense of all work on the Leased Premises and upon completion deliver to the Lessor evidence of payment and waivers of all liens for labor, servicing or materials. The Lessee shall defend and hold the Lessor and the Leased Premises harmless from all costs, damages or liens for labor, services or material relating to such work. At least five (5) days prior to the commencement of any work on the Leased Premises, the Lessee shall notify the Lessor of the names and addresses of the persons supplying labor and materials for the proposed work. During the progress of any such work on the Leased Premises, the Lessor shall have the right to go upon and inspect the Leased Premises at all reasonable times, and shall have the right to post and keep posted thereon notices of non-liability as provided by law.

**12. HAZARDOUS MATERIALS AND SUBSTANCES.** Lessee shall not cause or permit at any time during the term of this Lease or any renewals, extensions or modifications thereof, any hazardous material or substance (as defined below) to be brought upon, kept, or used in or about the Leased Premises by the Lessee, the Lessee's agents, employees, contractors or invitees. As used herein, the term "hazardous material or substance" means any hazardous or toxic substances, material or waste which is or becomes regulated by any local, State or federal government authority, including the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Material Transportation Act, or the Toxic Substances Control Act. The term "hazardous material or substance" includes without limitation, (a) any material or substance that is defined as a "hazardous substance" or "hazardous waste" under applicable law, (b) petroleum, (c) asbestos, or (d) any material that is defined as a "regulated substance."

Lessee shall comply with all environmental laws, orders, and regulations of federal, State, County and Town authorities, and with any directive issued pursuant to law by any public officer thereof, which shall impose any order or duty upon Lessee pertaining to the construction, use or occupancy of the Leased Premises by Lessee, its assignees or sub-lessees.

Lessee shall have the right, upon giving written notice to Lessor, to contest any obligation imposed upon Lessee pursuant to the provisions of this Section, and to defer compliance during the pendency of the contest proceedings, provided that the failure of Lessee to comply will not subject Lessor to any civil fine or criminal penalty.

Notwithstanding the foregoing, in the event that Lessee's failure to promptly fulfill the contested obligations could pose an imminent threat to public health, public safety and/or the environment, the Lessee shall immediately perform whatever actions may be required to abate the immediate threat. Thereafter, Lessee may contest the obligations and defer further compliance, as set forth above.

Lessee shall provide Lessor with copies of all documents served upon Lessee or its counsel, and served by Lessee or its counsel, upon any governmental authority.

Failure of Lessee to comply with the provisions of this Section shall be an event of default under the terms of this Lease and shall entitle Lessor to pursue all applicable remedies. In addition, Lessor shall be entitled to collect from Lessee any fines, penalties, expenses of defense (including attorney's fees and legal assistant's fees), expenses of compliance and other damages incurred by Lessor by reason of Lessee's default under this Section.

In the event that Lessee discovers any condition during the course of construction or remodeling that would indicate the possible existence of hazardous substances or materials on the Leased Premises, Lessee shall immediately notify Lessor. Lessor shall investigate the matter at its sole cost and expense. If the substances are indeed hazardous (as defined herein), Lessee shall be entitled to terminate this Lease by giving written notice of its election to do so within thirty (30) days after Lessor advises that such substances are hazardous. The obligation to pay rent shall be suspended upon the date of discovery by Lessor of the evidence of hazardous substances. If Lessee elects not to terminate this Lease, Lessor shall promptly take whatever actions are required by law to remedy, remove or otherwise clean up the Leased Premises as required by the Comprehensive Environmental Response Compensation and Liability Act. The obligation to pay rent shall be suspended from the date of discovery of the evidence of hazardous materials or substances until remediation is complete. Lessee shall be entitled to an extension of the term of this Lease for the same period of time.

13. **SIGNS.** The Lessee shall have the right to erect and install signs in and about the Leased Premises; provided, however, that all such signs shall comply with the Town of Eagle's Sign Code and shall be kept in good condition and repair at the Lessee's sole cost and expense. The design, color and size of any such sign shall be subject to prior written approval by the Lessor.

14. **ADDITIONAL COVENANTS OF THE LESSEE.** In addition to the terms,

conditions and covenants set forth elsewhere in this Lease, the Lessee covenants with Lessor that the Lessee shall:

- a. Keep and maintain the Leased Premises and the common areas described in Section 1 in a sanitary condition as required by State and local laws and comply with all fire, safety, health, environmental, building, zoning, anti-discrimination and all other laws regulating the use of the Leased Premises now or hereafter in force;
- b. Keep and maintain the Leased Premises and the common areas described in Section 1, including fixtures, interior doors, floors coverings, windows, window coverings, walls and ceilings in good condition and repair, and at the expiration of this Lease to render and deliver up the Leased Premises clean and in as good an order and condition as when entered upon; loss by fire, inevitable acts, and ordinary wear, tear and depreciation excepted;
- c. Neither commit, suffer nor permit any waste, damage, disfiguration or injury to the Leased Premises or any improvements, fixtures or equipment located therein;
- d. Neither keep, use nor sell any article or substance on the Leased Premises which shall be prohibited by any insurance policy in force;
- e. Neither commit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Leased Premises having a tendency to annoy or disturb other tenants located in the Property or persons on adjacent property;
- f. Neither permit nor suffer the Leased Premises or the walls or floors thereof to be endangered by overloading, nor use the Leased Premises for any purpose which would render the insurance thereon void or the insurance risk more hazardous.
- g. Be responsible, together with any other lessees, for maintenance of the sidewalk in front of the Property including snow removal and sweeping. Lessee shall also be responsible, together with any other lessees, for keeping the entryway to the Property in a clean and orderly condition.

15. **LESSOR'S OBLIGATIONS.** In addition to the terms, conditions and covenants set forth elsewhere in this Lease, the Lessor covenants with the Lessee that the Lessor shall, at Lessor's sole cost and expense, keep and maintain in good condition the following:

- a. The structural components of the Property, which structural components shall include only the foundation, bearing and exterior walls (including glass and doors), subflooring and roof; and

- b. The heating, cooling systems and electrical apparatus, wiring, water and wastewater service lines and fixtures within the building and outside the building serving the Property; and
- c. Window frames, gutters and down spouts.

16. **DAMAGE BY LESSEE.** If any part of the Lessor's Property is damaged or destroyed through the intentional act, negligence, carelessness, abuse or misuse of or by the Lessee, the Lessee's agents, employees, contractors, or invitees, the cost of all necessary repairs and replacements shall be paid by the Lessee, to the Lessor, on demand, as additional rent.

17. **COVENANT OF QUIET ENJOYMENT.** The Lessor covenants that the Lessor is the owner of the Leased Premises and has the power and authority to grant and make the within Lease; that during the term of the Lease and subject to the terms of this Lease, and on condition that the Lessee shall discharge all of the Lessee's obligations hereunder, the Lessee shall have and enjoy the quiet and undisturbed possession of the Leased Premises.

18. **HOLDOVER.** It is mutually agreed that if, after the expiration of this Lease, or any renewal term, the Lessee shall remain in possession of the Leased Premises and continues to pay rent without written agreement as to such possession, then the Lessee shall be deemed a tenant from month to month at a rent payable, in advance, equal to the monthly rent set forth in this Lease and otherwise shall be subject to all terms and conditions of this Lease, and further provided each party shall give thirty (30) days prior written notice of the termination of such holdover tenancy.

19. **LESSOR'S RIGHT TO PERFORM.** In the event the Lessee breaches any covenant or condition of this Lease, the Lessor may cure such breach at the expense of the Lessee and the reasonable amount of all expenses, including attorney's fees and legal assistant's fees, incurred by the Lessor in doing so shall be deemed additional rent payable by Lessee on demand.

20. **ENTRY AND INSPECTION BY LESSOR.** The Lessor and the Lessor's agents and employees shall have the right to enter the Leased Premises at all reasonable times for the purpose of examining or inspecting the same, and to make such alterations, repairs, improvements or additions to the Leased Premises and the Property as the Lessor may deem necessary or desirable. The Lessor may enter by means of a master key, without liability to the Lessee, except for any failure to exercise due care for the Lessee's property, and without affecting this Lease. The Lessor shall use reasonable efforts upon any such entry not to unreasonably interrupt or interfere with the Lessee's use, enjoyment and occupancy of the Leased Premises.

21. **ABANDONMENT OF PERSONAL PROPERTY.** If the Lessee shall abandon, vacate or surrender the Leased Premises or shall be dispossessed by process of law or otherwise, then any personal property belonging to the Lessee and left on the Leased Premises shall be deemed abandoned.

22. **DEFAULT.** Each one of the following events is an "event of default":

- a. The Lessee fails to pay rent or any other amount payable to the Lessor under this Lease and such failure continues for three (3) days after written notice of such default is given to the Lessee in accordance with Colorado law;
- b. The Lessee vacates or abandons the Leased Premises at any time prior to the expiration of this Lease or any renewal term;
- c. This Lease or possession of the Leased Premises is transferred to or obtained by any person other than Lessee without the written consent of the Lessor in accordance with the terms of this Lease;
- d. This Lease or possession of the Leased Premises is taken upon execution or by other process of law directed against the Lessee, or is taken upon attachment by any creditor of or claimant against the Lessee, and such writ is not discharged within fifteen (15) days after levy; or
- e. The Lessee fails to perform any other agreement, term, covenant or condition of this Lease on the Lessee's part to be performed and such non-performance continues for a period of fifteen (15) days after written notice of such default by Lessee is given to the Lessee by Lessor, provided that if such default cannot be reasonably cured within such fifteen (15) day period, the Lessee, in good faith, may commence such cure within such fifteen (15) day period and shall thereafter diligently proceed to completion.

23. **REMEDIES UPON DEFAULT.** In the event of an uncured default by the Lessee, the Lessor may have any one or more of the following described remedies, in addition to all other rights and remedies provided in law or in equity:

- a. The Lessor may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including the Lessor's reasonable attorney's fees and legal assistant's fees; (ii) the unpaid rent owed at the time of termination, plus the rent owed for the remainder of the Lease term, plus applicable late charges and interest thereon at the rate of eighteen percent (18%) per annum from the due date; (iii) damages for the wrongful withholding of the Leased Premises by the Lessee; and (iv) any other damages owed by the Lessee to the Lessor as provided by law.
- b. Any amounts paid by the Lessor to cure any defaults of the Lessee under this Lease which the Lessor shall have the right, but not the obligation, to cure, shall, if not repaid by the Lessee within five (5) days of written demand by the Lessor, thereafter bear interest at the rate of eighteen percent (18%) per annum until paid.

24. **DAMAGE OR DESTRUCTION OF PREMISES.** In the event the Leased Premises is destroyed or becomes untenable as a result of damage by fire or other casualty, the Lessor shall have the right, but not the obligation, to repair and restore the Leased Premises to its former state and condition. If the Lessor elects not to repair or restore the Leased Premises, this Lease shall be deemed terminated and of no further force or effect. If the Lessor elects to repair and restore the Leased Premises as herein provided, then rent shall abate during the time the Leased Premises remains untenable. If the Lease is terminated as herein provided, the Lessee's obligation for the payment of rent shall cease as of the day following such casualty and the Lessor shall be released from any further obligations under this Lease.

25. **INDEMNIFICATION OF LESSOR.** The Lessee shall defend, indemnify and hold harmless the Lessor from and against any and all claims arising from (a) the Lessee's use and occupancy of the Leased Premises, or from the conduct of the Lessee's business and operations in or about the Leased Premises; (b) any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease; (c) the negligence or willful acts of the Lessee, or any of the Lessee's agents, employees, invitees or contractors; and (d) against all costs, including reasonable attorney's fees and legal assistant's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceedings brought thereon. In no event, however, shall the Lessor be entitled to indemnification under this Section if such claim arises from any breach or default in the performance of any obligation on the Lessor's part to be performed under the terms of this Lease, or arising from any negligent or willful act of the Lessor, or any of the Lessor's agents, contractors or employees.

26. **INDEMNIFICATION OF LESSEE.** The Lessor shall defend, indemnify and hold harmless the Lessee from and against any and all claims arising from (a) any breach or default in the performance of any obligation on the Lessor's part to be performed under the terms of this Lease; (b) the negligent or willful acts of the Lessor, or any of the Lessor's agents, contractors or employees; and (c) from and against all costs, including reasonable attorney's fees and legal assistant's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In no event, however, shall the Lessee be entitled to indemnification under this Section if such claim arises from any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease, or arising from any negligent or willful acts of the Lessee, or any of the Lessee's agents, employees, invitees or contractors.

27. **ATTORNEY'S FEES.** In the event of any litigation between the Lessor and the Lessee to enforce any provision of this Lease or any right of either party in this Lease, the substantially prevailing party in such litigation shall be entitled to receive all of its costs and expenses, including reasonable attorney's fees and legal assistant's fees, incurred in such proceeding from the other party. Moreover, if the Lessor, without fault, is made a party to any litigation instituted by or against the Lessee, the Lessee shall indemnify the Lessor against and protect, defend and save the Lessor harmless from all costs and expenses, including attorney's fees and legal assistant's fees, incurred by the Lessor in connection with the same. To the extent permitted by law, the Lessor and Lessee hereby waive their right to a jury trial in any legal proceeding related to this Lease.

28. **LESSOR'S RIGHTS RESERVED.** The Lessor reserves the following rights, exercisable without notice and without liability to the Lessee for damage or injury to property, persons or business, and without effecting an eviction, constructive or actual, or disturbance of the Lessee's use or possession, or giving rise to any claim for setoff or abatement of rent:

- a. To make repairs, alterations, additions or improvements, whether structural or otherwise, in and about the Property and the Leased Premises and for such purpose to enter upon the Leased Premises, and during the continuance of said work to temporarily close doors, entryways and corridors in the building and to interrupt or temporarily suspend building services and facilities;
- b. To enter the Leased Premises at all reasonable times for the purpose of examining or inspecting the same; and
- c. To have and retain a paramount title to the Leased Premises free and clear of any act of the Lessee.

The Lessor shall use reasonable efforts upon any entry into the Leased Premises not to unreasonably interrupt or interfere with the Lessee's use, enjoyment and occupancy of the Leased Premises.

29. **ASSIGNMENT AND SUBLETTING.** The Lessee shall not sublet, assign, encumber, or otherwise transfer any interest in this Lease or the Leased Premises without the expressed written consent of the Lessor having been first obtained, which consent need not release the Lessee from any obligation under this Lease. Any sublease, assignment, transfer or sale of this Lease, or any part thereof, by the Lessee without the expressed written consent of the Lessor shall be invalid, null and void. It is further understood and agreed, however, that the Lessor shall have the right to freely assign and transfer the Lessor's interest in and to this Lease or the Property or the Leased Premises and the Lessee shall remain bound under the terms of this Lease without the necessity of an express attornment to any such assignee or transferee.

30. **NOTICES.** Any notice by either party to the other shall be in writing and shall be deemed to be duly given if delivered personally or mailed ordinary first class mail, postage pre-paid, addressed to the addresses first above set forth, or to such other addresses as the parties may designate in writing. Notice shall be deemed to have been fully given, if personally delivered upon delivery thereof, and if mailed one (1) day after the mailing thereof.

31. **SURVIVAL OF RIGHTS.** Any termination of this Lease (however occasioned) shall not affect the accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

32. **INTERPRETATION.** If any clause or provision of this Lease is determined by

a court to be illegal, invalid, null, void or unenforceable under present or future laws, then it is the intention of the parties to this Lease that the other terms and provisions of this Lease shall remain in full force and effect. No assent, expressed or implied, to any breach of any one (1) or more of the covenants of this Lease shall be taken or deemed to be a waiver of any succeeding or other breach. Subject to Section 29 limiting assignments and subletting, this Lease shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. This Lease shall be governed by, and construed and enforced, in accordance with the laws of the State of Colorado. Any word contained in the text of this Lease shall be read as singular or plural and in the masculine, feminine or neuter gender as may be applicable in the particular context. The captions of sections in this Lease are for convenience only, are not part of this Lease, and do not in any way limit or amplify any term, condition or covenant. This Lease contains all of the agreements, understandings and representations between the parties. No term of this Lease shall be altered, amended, waived or modified to any extent, except by written instrument executed by both parties. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Time is of the essence under this Lease.

33. **EXECUTION OF OTHER DOCUMENTS.** Each party agrees to execute and deliver all other documents requested by the other party necessary to carry out the terms of this Lease and such documents will contain all of the standard terms normally contained in such documents, together with all relevant terms and provisions of this Lease.

34. **EFFECT OF CONVEYANCE.** The term “Lessor” as used in this Lease means only the owner for the time being of the Leased Premises, so that, in the event of any sale of said Leased Premises, the seller shall be and hereby is entirely freed and relieved of all covenants and obligations of the Lessor hereunder, not previously accrued, for the period from and after the transfer of the Property if the security deposit is delivered from the existing Lessor to the new Lessor, and it shall be deemed and construed, without further agreement between the parties and the purchaser of the Leased Premises, that such purchaser has assumed and agreed to carry out any and all covenants and obligations of Lessor hereunder.

35. **STATEMENT OF PERFORMANCE.** Lessor agrees to furnish Lessee, or any creditor of Lessee, from time to time, upon written request therefor, a statement wherein Lessor shall acknowledge that as of the date of such statement, Lessee has performed and observed all of the covenants and conditions herein stated to be performed and observed by Lessee, and that as of said date, the leasehold estate hereby created and granted to Lessee is free of any default hereunder; provided, however, Lessor is not required to furnish Lessee or any other person with such statement more than once during any calendar year, or if at the time it is requested, Lessee is in default hereunder.

IN WITNESS WHEREOF, the parties have signed this Lease as set forth below to be effective the day and year first written above.

LESSOR:  
TOWN OF EAGLE, COLORADO, a

municipal corporation, acting by and through its Board of Trustees

By \_\_\_\_\_  
Anne McKibbin, Mayor

ATTEST:

\_\_\_\_\_  
Jenny Rakow, Town Clerk

LESSEE:

MIKE PISCIOTTA, A SOLE PROPRIETORSHIP, A/K/A MEAN STREETS BOXING

By: \_\_\_\_\_

## **EXHIBIT "A"**

Old Town Hall Building  
108 W. Second Street  
Eagle, CO 81631

Westerly space of lower floor consisting of approximately 1600 square feet.  
Entryway and bathrooms are common areas used by other tenants. (Not part of the 1600 SF)

**RESOLUTION NO. 32**  
**(Series of 2016)**

A RESOLUTION OF THE BOARD OF TRUSTEES TOWN OF EAGLE, COLORADO  
APPROVING A LEASE AGREEMENT BETWEEN THE TOWN OF EAGLE AND UTE  
SPRINGS EXPERIENTIAL LEARNING CENTER FOR SPACE IN THE TOWN OF EAGLE  
OLD TOWN HALL; AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

WHEREAS, the Town of Eagle is the owner of the real property situated at 108 West Second Street, Town of Eagle, County of Eagle, State of Colorado, known as the "Eagle Old Town Hall"; and

WHEREAS, the , desires to continue to lease office space at the Eagle Old Town Hall, and the Ute Springs Experiential Learning Center Town of Eagle is willing to make such space available under the same terms and conditions as contained in attached lease (Exhibit "A").

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

Section 1. The lease Agreement between the Town of Eagle, Colorado and the Ute Springs Experiential Learning Center, for the lease of space at the Eagle Town Hall, attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved.

Section 2. The Mayor of the Town of Eagle is hereby authorized and directed to execute the agreement attached hereto as Exhibit "A" on behalf of the Town of Eagle.

INTRODUCED, READ, PASSED, AND ADOPTED at a regular meeting of the Board of Trustees of the Town of Eagle, Colorado, held on the 28th day of June, 2016.

TOWN OF EAGLE, COLORADO

ATTEST:

\_\_\_\_\_  
Jenny Rakow, Town Clerk

\_\_\_\_\_  
Anne McKibbin, Mayor

**LEASE AGREEMENT**

**TOWN OF EAGLE OLD TOWN HALL**

THIS LEASE is made and entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **TOWN OF EAGLE, COLORADO**, a municipal corporation, whose address is P.O. Box 609, Eagle, Colorado 81631 (“Lessor”), and **UTE SPRINGS EXPERIENTIAL LEARNING CENTER LLC**, whose address is \_\_\_\_\_ (“Lessee”).

**RECITALS**

**WHEREAS**, Lessor is the owner of the real property situate at 108 West Second Street, Town of Eagle, County of Eagle, State of Colorado, known as the “Eagle Old Town Hall”, (the “Property”); and

**WHEREAS**, Lessee desires to rent and lease a portion of the Property from Lessor, as described in Exhibit “A”, attached hereto and incorporated herein by this reference (“Leased Premises”).

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and Lessee agree as follows:

1. **LEASED PREMISES.** The Lessor hereby leases to Lessee the portion of the Property described in Exhibit “A”, attached hereto and incorporated herein by this reference, situate in the Town of Eagle, County of Eagle, State of Colorado (“Leased Premises”). Such letting is upon and subject to the terms, conditions and covenants set forth below, and Lessee covenants as a material part of the consideration for this Lease to keep and perform all such terms, conditions and covenants. In addition, Lessee shall have full and complete access to and use of the common areas of the Property described as the two (2) restrooms, hallways to restrooms, and entryway to the building. Said common areas shall also be available for use by other building tenants.

2. **COMMENCEMENT/LEASE TERM.** The initial term of this Lease shall commence July 1, 2016 for a period of one (1) year. In addition, Lessee shall have options to renew this Lease for two (2) additional one (1) year terms subject to the same terms of this Lease. Provided, however, rent for the second term will be \$900.00 per month and rent for the third term will be \$1000.00 per month. Upon execution of this Lease and upon delivery of the insurance certificates required by Section 9 below and delivery of the security deposit, Lessee shall be permitted to enter the Leased Premises between April 15 and July 1, 2016, as determined by the Lessor's Town Manager. The first Lease payment shall be due on July 1, 2016. In the event Lessee elects to exercise its option to renew the Lease for an additional one (1) year term, Lessee shall provide Lessor at least sixty (60) days advance written notice of its election. Lessee may terminate this Lease, with thirty (30) days written notice to Lessor..

3. **RENT.** Lessee shall pay to Lessor for the initial term annual rent in the amount of nine thousand six hundred dollars (\$9,600.00) payable in the amount of \$800.00 per month on the 1st day of each month for the Leased Premises commencing July 1, 2016, at the Lessor's address stated above. In the event Lessee fails to make any rent payment within five (5) days following the scheduled monthly payment date, Lessee shall pay a late fee charge in the amount of fifty dollars (\$50.00) in addition to interest on the unpaid monthly balance and any applicable late fees at the rate of eighteen percent (18%) per annum, compounded monthly, until fully paid. The rent shall be paid to Lessor without notice or demand and without abatement, deduction or setoff unless otherwise specifically permitted in this Lease.

4. **SECURITY DEPOSIT.** Upon execution of this Lease, the Lessee shall deliver to Lessor a security deposit in the amount of one thousand five hundred dollars (\$1,500.00). Said deposit may be commingled by Lessor with its other funds and shall be received by Lessor without liability for interest, as security for Lessee's faithful performance of all of the provisions of this Lease, including the obligation to pay rent. For so long as the security deposit has not been repaid by Lessor, it shall constitute an account payable by Lessor to Lessee. Within sixty (60) days following termination of this Lease, to the extent, if any, that Lessor has not applied the security deposit as herein permitted, the balance shall be returned to Lessee. If Lessee shall default with respect to any covenant, duty or obligation of Lessee under this Lease, then the security deposit or any part thereof may be applied by Lessor (but Lessor shall not be obligated to do so) to the damages sustained by Lessor by reason of any such default or to any indebtedness owing by reason of any failure of Lessee to make any required monetary payment under this Lease. Lessor shall provide Lessee a written notice and accounting of such applications of the security deposit. No such application shall be construed as an agreement to limit the amount of Lessor's claim for damages or as a waiver of any damages or release of any indebtedness, and any claim of Lessor under this Lease not recovered in full from the security deposit shall remain in full force and effect.

At any time when Lessor has made any such application of all or any part of the security deposit, Lessor shall have the right (but not the obligation) at any time thereafter to request that Lessee pay to Lessor a sum or sums equal to the amount so applied by Lessor so that Lessor will always have in its possession a sum equal to the amount of the security deposit stated above. Lessee shall make each such requested remittance within ten (10) days following such written request from Lessor and each such remittance received by Lessor shall thereupon constitute a part of the security deposit subject to the terms and provisions of this Lease. Failure to make any such requested remittance within such ten (10) day period may be treated by Lessor as a failure of Lessee to make timely payment of rent and as an event of default.

In the event of any conveyance or other transfer of the Leased Premises by Lessor, Lessor's remittance of the security deposit or any remaining portion thereof to Lessor's transferee shall release and relieve Lessor of any further obligation or liability to Lessee with respect to the security deposit. Lessor shall comply with all applicable State laws concerning application of the security deposit and any required notices to Lessee.

5. **POSSESSION.** Upon execution of this Lease by both parties, full payment of the

security deposit, and upon delivery of an insurance certificate to Lessor by Lessee as required by Section 9 below, Lessee shall be entitled to full access and possession of the Leased Premises between April and July 1, 2016, as determined by the Lessor's Town Manager.

6. **LESSOR INSTALLED IMPROVEMENTS.** Lessee shall be entitled to use all improvements installed by Lessor and all furnishings belonging to Lessor.

7. **USE OF LEASED PREMISES.** Lessee shall use or cause the Leased Premises to be used for the purpose of operating a non-profit administrative office. Lessee covenants that it will not permit the Leased Premises to be used for any illegal or immoral purpose, and that Lessee will not do, or suffer to be done, in or about the Leased Premises, any act or thing that may be a nuisance, annoyance, or inconvenience to Lessor or any other lessees of the Property.

8. **UTILITY AND OTHER SERVICES.** Lessee's rent charges shall include the average utilities for its proportional share of electric, natural gas monthly service charges, water, sewer and trash based on the square footage occupied by Lessee and all other tenants. The Lessee shall be solely responsible for and shall pay the cost of telecommunications and cable service and any security alarm systems to the Leased Premises. The Lessee shall arrange for such telecommunications and cable services in its own name. The physical installation of any additional telecommunication services shall be subject to the Lessor's prior written approval.

9. **INSURANCE.** The Lessor shall keep and maintain (a) fire, casualty and extended coverage insurance on the Leased Premises in such amounts as the Lessor shall from time to time determine; and (b) fire and extended coverage insurance on the Town's personal property remaining within the Leased Premises in such amounts as the Lessor shall from time to time determine.

Lessee shall keep and maintain (a) public liability insurance for the Leased Premises and any business or operations conducted on the Leased Premises, with coverage for bodily injury and property damage on a comprehensive basis with limits of not less than one million dollars (\$1,000,000.00) per occurrence; and (b) fire and extended coverage insurance on the Lessee's personal property and contents within the Leased Premises equal to the full replacement cost. All public liability insurance policies shall name the Lessor as an additional insured. The Lessee shall provide the Lessor with certificates of such insurance prior to taking possession. No such policy or policies may be cancelled without thirty (30) days prior written notice to the Lessor, and said certificate shall so provide. In the event of damage to the Leased Premises covered by insurance, the Lessor shall use its proceeds of such insurance to repair and restore the Leased Premises, except as otherwise provided herein. All insurance companies selected by the Lessee shall be licensed to do business in the State of Colorado and rated A+1. In the event the Lessor elects to also maintain public liability insurance for the Property or the Leased Premises, the Lessee's public liability insurance for the Leased Premises shall be deemed the primary insurance coverage.

10. **ACCEPTANCE OF PREMISES.** The Lessee accepts the Leased Premises in its present condition. The Lessee acknowledges that it has inspected the Leased Premises and all utilities, appurtenances, access and other services to the Leased Premises, and it is satisfied with

all aspects of the same. The Lessee further acknowledges that neither the Lessor nor any agent or other representative of the Lessor has made any representation or warranty as to suitability of the Leased Premises for the conduct of the Lessee's operations and business. All work, improvements and alterations required for the Lessee's use of the Leased Premises will be accomplished at the Lessee's sole cost and expense. The Lessee shall, at the Lessee's sole expense, keep the interior of the Leased Premises in good repair during the term of this Lease.

**11. ALTERATION OF PREMISES.** The Lessee shall not, without the prior written consent of the Lessor, make any alterations, improvements, or additions to the Leased Premises, including, but not limited to, partitions, wall coverings, floor coverings and special lighting installations.

In the event the Lessee desires to make any alterations, improvements or additions, the Lessee shall first submit plans and specifications and obtain the Lessor's written consent for the same prior to commencing any such work. All alterations, improvements or additions, whether temporary or permanent in nature, made by the Lessor or the Lessee in or about the Leased Premises, shall become the Lessor's property and shall remain upon the Leased Premises at the termination of this Lease by lapse of time or otherwise, without compensation to the Lessee (excepting only the Lessee's furniture, trade fixtures and equipment) provided, however, the Lessor shall have the right to require the Lessee to remove such alterations, improvements or additions at the Lessee's cost upon the termination of this Lease and repair any damage caused to the Leased Premises as a result of any such removal. Such repair costs shall be paid for by the Lessee. The Lessee shall promptly pay the cost and expense of all work on the Leased Premises and upon completion deliver to the Lessor evidence of payment and waivers of all liens for labor, servicing or materials. The Lessee shall defend and hold the Lessor and the Leased Premises harmless from all costs, damages or liens for labor, services or material relating to such work. At least five (5) days prior to the commencement of any work on the Leased Premises, the Lessee shall notify the Lessor of the names and addresses of the persons supplying labor and materials for the proposed work. During the progress of any such work on the Leased Premises, the Lessor shall have the right to go upon and inspect the Leased Premises at all reasonable times, and shall have the right to post and keep posted thereon notices of non-liability as provided by law.

**12. HAZARDOUS MATERIALS AND SUBSTANCES.** Lessee shall not cause or permit at any time during the term of this Lease or any renewals, extensions or modifications thereof, any hazardous material or substance (as defined below) to be brought upon, kept, or used in or about the Leased Premises by the Lessee, the Lessee's agents, employees, contractors or invitees. As used herein, the term "hazardous material or substance" means any hazardous or toxic substances, material or waste which is or becomes regulated by any local, State or federal government authority, including the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Material Transportation Act, or the Toxic Substances Control Act. The term "hazardous material or substance" includes without limitation, (a) any material or substance that is defined as a "hazardous substance" or "hazardous waste" under applicable law, (b) petroleum, (c) asbestos, or (d) any material that is defined as a "regulated substance."

Lessee shall comply with all environmental laws, orders, and regulations of federal, State, County and Town authorities, and with any directive issued pursuant to law by any public officer thereof, which shall impose any order or duty upon Lessee pertaining to the construction, use or occupancy of the Leased Premises by Lessee, its assignees or sub-lessees.

Lessee shall have the right, upon giving written notice to Lessor, to contest any obligation imposed upon Lessee pursuant to the provisions of this Section, and to defer compliance during the pendency of the contest proceedings, provided that the failure of Lessee to comply will not subject Lessor to any civil fine or criminal penalty.

Notwithstanding the foregoing, in the event that Lessee's failure to promptly fulfill the contested obligations could pose an imminent threat to public health, public safety and/or the environment, the Lessee shall immediately perform whatever actions may be required to abate the immediate threat. Thereafter, Lessee may contest the obligations and defer further compliance, as set forth above.

Lessee shall provide Lessor with copies of all documents served upon Lessee or its counsel, and served by Lessee or its counsel, upon any governmental authority.

Failure of Lessee to comply with the provisions of this Section shall be an event of default under the terms of this Lease and shall entitle Lessor to pursue all applicable remedies. In addition, Lessor shall be entitled to collect from Lessee any fines, penalties, expenses of defense (including attorney's fees and legal assistant's fees), expenses of compliance and other damages incurred by Lessor by reason of Lessee's default under this Section.

In the event that Lessee discovers any condition during the course of construction or remodeling that would indicate the possible existence of hazardous substances or materials on the Leased Premises, Lessee shall immediately notify Lessor. Lessor shall investigate the matter at its sole cost and expense. If the substances are indeed hazardous (as defined herein), Lessee shall be entitled to terminate this Lease by giving written notice of its election to do so within thirty (30) days after Lessor advises that such substances are hazardous. The obligation to pay rent shall be suspended upon the date of discovery by Lessor of the evidence of hazardous substances. If Lessee elects not to terminate this Lease, Lessor shall promptly take whatever actions are required by law to remedy, remove or otherwise clean up the Leased Premises as required by the Comprehensive Environmental Response Compensation and Liability Act. The obligation to pay rent shall be suspended from the date of discovery of the evidence of hazardous materials or substances until remediation is complete. Lessee shall be entitled to an extension of the term of this Lease for the same period of time.

13. **SIGNS.** The Lessee shall have the right to erect and install signs in and about the Leased Premises; provided, however, that all such signs shall comply with the Town of Eagle's Sign Code and shall be kept in good condition and repair at the Lessee's sole cost and expense. The design, color and size of any such sign shall be subject to prior written approval by the Lessor.

14. **ADDITIONAL COVENANTS OF THE LESSEE.** In addition to the terms,

conditions and covenants set forth elsewhere in this Lease, the Lessee covenants with Lessor that the Lessee shall:

- a. Keep and maintain the Leased Premises and the common areas described in Section 1 in a sanitary condition as required by State and local laws and comply with all fire, safety, health, environmental, building, zoning, anti-discrimination and all other laws regulating the use of the Leased Premises now or hereafter in force;
- b. Keep and maintain the Leased Premises and the common areas described in Section 1, including fixtures, interior doors, floors coverings, windows, window coverings, walls and ceilings in good condition and repair, and at the expiration of this Lease to render and deliver up the Leased Premises clean and in as good an order and condition as when entered upon; loss by fire, inevitable acts, and ordinary wear, tear and depreciation excepted;
- c. Neither commit, suffer nor permit any waste, damage, disfiguration or injury to the Leased Premises or any improvements, fixtures or equipment located therein;
- d. Neither keep, use nor sell any article or substance on the Leased Premises which shall be prohibited by any insurance policy in force;
- e. Neither commit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Leased Premises having a tendency to annoy or disturb other tenants located in the Property or persons on adjacent property;
- f. Neither permit nor suffer the Leased Premises or the walls or floors thereof to be endangered by overloading, nor use the Leased Premises for any purpose which would render the insurance thereon void or the insurance risk more hazardous.
- g. Be responsible, together with any other lessees, for maintenance of the sidewalk in front of the Property including snow removal and sweeping. Lessee shall also be responsible, together with any other lessees, for keeping the entryway to the Property in a clean and orderly condition.

15. **LESSOR'S OBLIGATIONS.** In addition to the terms, conditions and covenants set forth elsewhere in this Lease, the Lessor covenants with the Lessee that the Lessor shall, at Lessor's sole cost and expense, keep and maintain in good condition the following:

- a. The structural components of the Property, which structural components shall include only the foundation, bearing and exterior walls (including glass and doors), subflooring and roof; and

- b. The heating, cooling systems and electrical apparatus, wiring, water and wastewater service lines and fixtures within the building and outside the building serving the Property; and
- c. Window frames, gutters and down spouts.

16. **DAMAGE BY LESSEE.** If any part of the Lessor's Property is damaged or destroyed through the intentional act, negligence, carelessness, abuse or misuse of or by the Lessee, the Lessee's agents, employees, contractors, or invitees, the cost of all necessary repairs and replacements shall be paid by the Lessee, to the Lessor, on demand, as additional rent.

17. **COVENANT OF QUIET ENJOYMENT.** The Lessor covenants that the Lessor is the owner of the Leased Premises and has the power and authority to grant and make the within Lease; that during the term of the Lease and subject to the terms of this Lease, and on condition that the Lessee shall discharge all of the Lessee's obligations hereunder, the Lessee shall have and enjoy the quiet and undisturbed possession of the Leased Premises.

18. **HOLDOVER.** It is mutually agreed that if, after the expiration of this Lease, or any renewal term, the Lessee shall remain in possession of the Leased Premises and continues to pay rent without written agreement as to such possession, then the Lessee shall be deemed a tenant from month to month at a rent payable, in advance, equal to the monthly rent set forth in this Lease and otherwise shall be subject to all terms and conditions of this Lease, and further provided each party shall give thirty (30) days prior written notice of the termination of such holdover tenancy.

19. **LESSOR'S RIGHT TO PERFORM.** In the event the Lessee breaches any covenant or condition of this Lease, the Lessor may cure such breach at the expense of the Lessee and the reasonable amount of all expenses, including attorney's fees and legal assistant's fees, incurred by the Lessor in doing so shall be deemed additional rent payable by Lessee on demand.

20. **ENTRY AND INSPECTION BY LESSOR.** The Lessor and the Lessor's agents and employees shall have the right to enter the Leased Premises at all reasonable times for the purpose of examining or inspecting the same, and to make such alterations, repairs, improvements or additions to the Leased Premises and the Property as the Lessor may deem necessary or desirable. The Lessor may enter by means of a master key, without liability to the Lessee, except for any failure to exercise due care for the Lessee's property, and without affecting this Lease. The Lessor shall use reasonable efforts upon any such entry not to unreasonably interrupt or interfere with the Lessee's use, enjoyment and occupancy of the Leased Premises.

21. **ABANDONMENT OF PERSONAL PROPERTY.** If the Lessee shall abandon, vacate or surrender the Leased Premises or shall be dispossessed by process of law or otherwise, then any personal property belonging to the Lessee and left on the Leased Premises shall be deemed abandoned.

22. **DEFAULT.** Each one of the following events is an "event of default":

- a. The Lessee fails to pay rent or any other amount payable to the Lessor under this Lease and such failure continues for three (3) days after written notice of such default is given to the Lessee in accordance with Colorado law;
- b. The Lessee vacates or abandons the Leased Premises at any time prior to the expiration of this Lease or any renewal term;
- c. This Lease or possession of the Leased Premises is transferred to or obtained by any person other than Lessee without the written consent of the Lessor in accordance with the terms of this Lease;
- d. This Lease or possession of the Leased Premises is taken upon execution or by other process of law directed against the Lessee, or is taken upon attachment by any creditor of or claimant against the Lessee, and such writ is not discharged within fifteen (15) days after levy; or
- e. The Lessee fails to perform any other agreement, term, covenant or condition of this Lease on the Lessee's part to be performed and such non-performance continues for a period of fifteen (15) days after written notice of such default by Lessee is given to the Lessee by Lessor, provided that if such default cannot be reasonably cured within such fifteen (15) day period, the Lessee, in good faith, may commence such cure within such fifteen (15) day period and shall thereafter diligently proceed to completion.

23. **REMEDIES UPON DEFAULT.** In the event of an uncured default by the Lessee, the Lessor may have any one or more of the following described remedies, in addition to all other rights and remedies provided in law or in equity:

- a. The Lessor may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including the Lessor's reasonable attorney's fees and legal assistant's fees; (ii) the unpaid rent owed at the time of termination, plus the rent owed for the remainder of the Lease term, plus applicable late charges and interest thereon at the rate of eighteen percent (18%) per annum from the due date; (iii) damages for the wrongful withholding of the Leased Premises by the Lessee; and (iv) any other damages owed by the Lessee to the Lessor as provided by law.
- b. Any amounts paid by the Lessor to cure any defaults of the Lessee under this Lease which the Lessor shall have the right, but not the obligation, to cure, shall, if not repaid by the Lessee within five (5) days of written demand by the Lessor, thereafter bear interest at the rate of eighteen percent (18%) per annum until paid.

24. **DAMAGE OR DESTRUCTION OF PREMISES.** In the event the Leased Premises is destroyed or becomes untenable as a result of damage by fire or other casualty, the Lessor shall have the right, but not the obligation, to repair and restore the Leased Premises to its former state and condition. If the Lessor elects not to repair or restore the Leased Premises, this Lease shall be deemed terminated and of no further force or effect. If the Lessor elects to repair and restore the Leased Premises as herein provided, then rent shall abate during the time the Leased Premises remains untenable. If the Lease is terminated as herein provided, the Lessee's obligation for the payment of rent shall cease as of the day following such casualty and the Lessor shall be released from any further obligations under this Lease.

25. **INDEMNIFICATION OF LESSOR.** The Lessee shall defend, indemnify and hold harmless the Lessor from and against any and all claims arising from (a) the Lessee's use and occupancy of the Leased Premises, or from the conduct of the Lessee's business and operations in or about the Leased Premises; (b) any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease; (c) the negligence or willful acts of the Lessee, or any of the Lessee's agents, employees, invitees or contractors; and (d) against all costs, including reasonable attorney's fees and legal assistant's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceedings brought thereon. In no event, however, shall the Lessor be entitled to indemnification under this Section if such claim arises from any breach or default in the performance of any obligation on the Lessor's part to be performed under the terms of this Lease, or arising from any negligent or willful act of the Lessor, or any of the Lessor's agents, contractors or employees.

26. **INDEMNIFICATION OF LESSEE.** The Lessor shall defend, indemnify and hold harmless the Lessee from and against any and all claims arising from (a) any breach or default in the performance of any obligation on the Lessor's part to be performed under the terms of this Lease; (b) the negligent or willful acts of the Lessor, or any of the Lessor's agents, contractors or employees; and (c) from and against all costs, including reasonable attorney's fees and legal assistant's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In no event, however, shall the Lessee be entitled to indemnification under this Section if such claim arises from any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease, or arising from any negligent or willful acts of the Lessee, or any of the Lessee's agents, employees, invitees or contractors.

27. **ATTORNEY'S FEES.** In the event of any litigation between the Lessor and the Lessee to enforce any provision of this Lease or any right of either party in this Lease, the substantially prevailing party in such litigation shall be entitled to receive all of its costs and expenses, including reasonable attorney's fees and legal assistant's fees, incurred in such proceeding from the other party. Moreover, if the Lessor, without fault, is made a party to any litigation instituted by or against the Lessee, the Lessee shall indemnify the Lessor against and protect, defend and save the Lessor harmless from all costs and expenses, including attorney's fees and legal assistant's fees, incurred by the Lessor in connection with the same. To the extent permitted by law, the Lessor and Lessee hereby waive their right to a jury trial in any legal proceeding related to this Lease.

28. **LESSOR'S RIGHTS RESERVED.** The Lessor reserves the following rights, exercisable without notice and without liability to the Lessee for damage or injury to property, persons or business, and without effecting an eviction, constructive or actual, or disturbance of the Lessee's use or possession, or giving rise to any claim for setoff or abatement of rent:

- a. To make repairs, alterations, additions or improvements, whether structural or otherwise, in and about the Property and the Leased Premises and for such purpose to enter upon the Leased Premises, and during the continuance of said work to temporarily close doors, entryways and corridors in the building and to interrupt or temporarily suspend building services and facilities;
- b. To enter the Leased Premises at all reasonable times for the purpose of examining or inspecting the same; and
- c. To have and retain a paramount title to the Leased Premises free and clear of any act of the Lessee.

The Lessor shall use reasonable efforts upon any entry into the Leased Premises not to unreasonably interrupt or interfere with the Lessee's use, enjoyment and occupancy of the Leased Premises.

29. **ASSIGNMENT AND SUBLETTING.** The Lessee shall not sublet, assign, encumber, or otherwise transfer any interest in this Lease or the Leased Premises without the expressed written consent of the Lessor having been first obtained, which consent need not release the Lessee from any obligation under this Lease. Any sublease, assignment, transfer or sale of this Lease, or any part thereof, by the Lessee without the expressed written consent of the Lessor shall be invalid, null and void. It is further understood and agreed, however, that the Lessor shall have the right to freely assign and transfer the Lessor's interest in and to this Lease or the Property or the Leased Premises and the Lessee shall remain bound under the terms of this Lease without the necessity of an express attornment to any such assignee or transferee.

30. **NOTICES.** Any notice by either party to the other shall be in writing and shall be deemed to be duly given if delivered personally or mailed ordinary first class mail, postage pre-paid, addressed to the addresses first above set forth, or to such other addresses as the parties may designate in writing. Notice shall be deemed to have been fully given, if personally delivered upon delivery thereof, and if mailed one (1) day after the mailing thereof.

31. **SURVIVAL OF RIGHTS.** Any termination of this Lease (however occasioned) shall not affect the accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

32. **INTERPRETATION.** If any clause or provision of this Lease is determined by

a court to be illegal, invalid, null, void or unenforceable under present or future laws, then it is the intention of the parties to this Lease that the other terms and provisions of this Lease shall remain in full force and effect. No assent, expressed or implied, to any breach of any one (1) or more of the covenants of this Lease shall be taken or deemed to be a waiver of any succeeding or other breach. Subject to Section 29 limiting assignments and subletting, this Lease shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. This Lease shall be governed by, and construed and enforced, in accordance with the laws of the State of Colorado. Any word contained in the text of this Lease shall be read as singular or plural and in the masculine, feminine or neuter gender as may be applicable in the particular context. The captions of sections in this Lease are for convenience only, are not part of this Lease, and do not in any way limit or amplify any term, condition or covenant. This Lease contains all of the agreements, understandings and representations between the parties. No term of this Lease shall be altered, amended, waived or modified to any extent, except by written instrument executed by both parties. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Time is of the essence under this Lease.

33. **EXECUTION OF OTHER DOCUMENTS.** Each party agrees to execute and deliver all other documents requested by the other party necessary to carry out the terms of this Lease and such documents will contain all of the standard terms normally contained in such documents, together with all relevant terms and provisions of this Lease.

34. **EFFECT OF CONVEYANCE.** The term “Lessor” as used in this Lease means only the owner for the time being of the Leased Premises, so that, in the event of any sale of said Leased Premises, the seller shall be and hereby is entirely freed and relieved of all covenants and obligations of the Lessor hereunder, not previously accrued, for the period from and after the transfer of the Property if the security deposit is delivered from the existing Lessor to the new Lessor, and it shall be deemed and construed, without further agreement between the parties and the purchaser of the Leased Premises, that such purchaser has assumed and agreed to carry out any and all covenants and obligations of Lessor hereunder.

35. **STATEMENT OF PERFORMANCE.** Lessor agrees to furnish Lessee, or any creditor of Lessee, from time to time, upon written request therefor, a statement wherein Lessor shall acknowledge that as of the date of such statement, Lessee has performed and observed all of the covenants and conditions herein stated to be performed and observed by Lessee, and that as of said date, the leasehold estate hereby created and granted to Lessee is free of any default hereunder; provided, however, Lessor is not required to furnish Lessee or any other person with such statement more than once during any calendar year, or if at the time it is requested, Lessee is in default hereunder.

IN WITNESS WHEREOF, the parties have signed this Lease as set forth below to be effective the day and year first written above.

LESSOR:  
TOWN OF EAGLE, COLORADO, a

municipal corporation, acting by and through its Board of Trustees

By \_\_\_\_\_  
Anne McKibbin, Mayor

ATTEST:

\_\_\_\_\_  
Jenny Rakow, Town Clerk

LESSEE:

UTE SPRINGS EXPERIENTIAL  
LEARNING CENTER LLC

By: \_\_\_\_\_

## **EXHIBIT "A"**

Old Town Hall Building  
108 W. Second Street  
Eagle, CO 81631

Easterly space of lower floor consisting of approximately 833 square feet.

Upper floor consisting of approximately 680 square feet.

Entryway and bathrooms are common areas used by other tenants. (Not part of the 1513 SF)



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

## Background

Mayor Kostick is interested in implementing an annual Community Impact Award program.

*The Community Impact Award honors a Town of Eagle individual, business or organization that is making a tangible, measurable impact on the community.*

*The Community Impact Award recipient has worked to make Eagle a better place to live, work and play, and represents the town's creativity, resourcefulness and potential.*

## Details

- Award presentation at Town Board of Trustee meeting in October
- 1<sup>st</sup> annual award would be selected by the Mayor
- Subsequent awards would follow a nomination/selection process (below)
- Anyone can nominate a Town of Eagle resident, business or organization
- Do not limit to incorporated Town of Eagle

## Process (beginning in 2015)

- Applications / nominations available July 1
- Nominations due August 15
- Board deliberations August 16-September 1
- Winner chosen at first September Town Board of Trustee meeting (Executive Session) to allow enough time to order award
- Awarded mid-October at TBOT meeting

## Award

- \$1,000 from Town of Eagle to purchase an award that is meaningful to the recipient and can be enjoyed by the community
- Seek additional sponsors if needed or appropriate
- Examples might include:
  - o Sculpture
  - o Bike wash
  - o Yoga platform at top of Haymaker Trail
  - o Park bench
  - o Playground equipment
  - o Landscape feature



Date: June 28, 2016  
To: Eagle Town Board of Trustees  
From: John Schneiger, Town Manager  
cc: Jill Ewing and Jenny Rakow  
Re: Mountain States Employers Council Membership (MSEC)

---

As we have quite a number of human resources projects and issues, I want to recommend that we consider becoming a member of MSEC. My experience with MSEC, in three different Colorado communities, has been excellent. I believe they would be able to provide valuable assistance in dealing with the many organizational issues for which we are working on and ultimately assist us in changing the organizational culture. It is my understanding that at present 70% of municipalities in Colorado belong to MSEC. I also believe that they would be an asset with regard to development of the new employee manual in a timely manner. Our membership would include a legal review of the employee manual. My sense is that it would be better to start with their standard template rather than the old personnel handbook, which is where we are currently at. I might also mention that their training is excellent, basically the best I have ever received. I have attached some information that they have sent, as well as something I copied from their website. If desired, they are willing to come out and make a presentation. The cost is \$5,200 annually.

## Application for Council Membership

(Please complete both sides of this form)

### Public Employer

The undersigned employer applies for membership in the MOUNTAIN STATES EMPLOYERS COUNCIL, INC., a non-profit employers' association, and will pay membership dues for its support as set forth below. Our membership may be canceled either by our giving appropriate written notice or by action of the Mountain States Employers Council Board of Directors.

**Our annual dues are payable in advance (payable quarterly after first year of membership) and are to be computed on the following formula:**

4.0% of the amount paid as the employer's share of Social Security (Old Age, Survivor, and Disability Insurance) of Federal Insurance Contribution Act taxes (F.I.C.A.) for all of our employees in the regions covered by this membership in the last four (4) full quarters preceding the date of the application. The total annual membership dues are so computed shall not be less than \$1,300 or more than \$5,200. If you pay into a plan other than FICA, you may calculate the dues as follows: 4.0% of 6.2% of your payroll for the last 12 months, excluding any individual annual salary amount over the appropriate Social Security tax limit for the year (\$118,500). The total annual membership dues shall not be less than \$1,300 or more than \$5,200.

Any additional related membership assessment costs will be billed only after consultation and agreement with the member organization. Membership dues do not cover incidental expenses incurred serving a member organization such as travel or mileage, meals and lodging, or other expenses. Additional costs may be incurred for projects involving multi-state issues or other for-fee services. MSEC services are only provided to the management of member organizations in dealing directly with their employees. Membership services are not available where MSEC information/advice is used with any client of the member. MSEC safeguards the confidential information of its members. Please note, however, that protection from disclosure of confidential information can be lost if members share communications with non-attorney staff at MSEC.

Enclosed is our check of \$\_\_\_\_\_ for our membership dues for one (1) year from \_\_\_\_\_, 20\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_\_.

Date \_\_\_\_\_ By \_\_\_\_\_

### I. Location and Nature of Business

Employer	
Street/Zip	Telephone
P.O. Box/Zip	Toll-Free
City/State	Website
Nature of business	In what states do you operate?
Type of employer	<input type="checkbox"/> For-Profit <input type="checkbox"/> Government Employer <input type="checkbox"/> Non-Profit Employer <input type="checkbox"/> 501(C)3
Industry Classification (NAICS Code)	Total Number of Employees Covered by Membership
Do you have government contracts in excess of \$50,000 annually? <input type="checkbox"/> Yes <input type="checkbox"/> No	

**II. Personnel Information**

Please check who should have access to each:	Dues Services	Website	Comp/ Benefit Survey Data
CEO/ED _____ E-mail _____ Phone _____			
CFO/Controller _____ E-mail _____ Phone _____			
Person responsible for HR _____ E-mail _____ Phone _____			
Organization's primary contact with MSEC _____ E-mail _____ Phone _____			
Person responsible for management training _____ E-mail _____ Phone _____			
Person to receive survey questionnaire/reports _____ E-mail _____ Phone _____			
Person authorized to change member data for your organization (Census Contact) _____ E-mail _____ Phone _____ Title _____			
If unionized, please complete the following: Labor union(s) (include local number) _____ Person responsible for labor relations _____ Title _____			
<b>Person, or office, to receive dues billing</b> _____ E-mail _____ Phone _____ Title _____			
How did you find out about MSEC? <input type="checkbox"/> MSEC Website <input type="checkbox"/> MSEC Marketing <input type="checkbox"/> Word of Mouth <input type="checkbox"/> Previous Member <input type="checkbox"/> Previously Worked for a Member <input type="checkbox"/> Referral from Current Member <input type="checkbox"/> Referral from MSEC Employee <input type="checkbox"/> Other (Please list):			
Please list your reason(s) for joining:  			

*For MSEC use only*

Member #:

Geo Code:

NMA Link:



Search this site...

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- [Seminar Catalog](#)

Mountain States Employers Council > About Membership > Value of Membership

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- [Membership Meetings](#)
- [Join Us](#)

## The Value of MSEC Membership

"MSEC came to my rescue, connecting me with an expert at their organization who was very familiar with the VETS-100 report requirements, who answered my question quickly and simply and allowed me to stay in compliance. Huge return on our investment in membership." - Susan Hammernik, Director of HR, Hospice of Arizona

Services	Support	Cost Without MSEC Membership	MSEC Membership
HR Practices	Access to our team of attorneys and certified HR consultants	Guidance on one employee matter: \$1,000 - \$5,000	Included
Legal Compliance	Representation in EEOC, DOL, NLRB, OFCCP, and state agency complaints: <i>charges of discrimination &amp; harassment, wage &amp; hour claims, unemployment hearings</i>	Civil Rights Charge: \$8,000 - \$15,000 FMLA Claim: \$2,500 - \$10,000	Included
Competiveness	Comprehensive salary and benefits survey data	\$2,000 - \$8,000	Included
HR Guides	Annually updated "Employment Law Resource Guide"	\$495	Included
HR Review	Employee handbook development and legal review	\$2,500 - \$5,000	Included
Online Resources	"Members Only" Website: <i>OCH's Answers Now Jobdescriptions.com BLR's Safety.BLR.com Whitepapers, forms, articles, checklists, and templates</i>	\$2,750	Included
Instant Updates	Instant alerts, weekly Hot Topics, and monthly Bulletins	\$195	Included
		<b>\$19,440 - \$46,440</b>	<b>Standard Membership: \$1,300 - \$5,200</b>



# SERVICES INCLUDED IN MSEC MEMBERSHIP

When you become a member of Mountain States Employers Council, you gain access to the resources of the nation's top employers association. Our unique structure is designed to include a full menu of services, listed below, within the membership fee. We look forward to supporting your success.

## Employment Law Support:

- Affirmative Action Advice
- Age Discrimination Issues
- Americans with Disabilities (ADA)
- Business Closings and Layoffs
- COBRA and HIPAA Issues
- Demand Letters
- Disability Accommodation
- Drug and Alcohol
- EEO Discrimination Complaints
- Employment Agreements
- Family and Medical Leave Act
- Garnishments
- Immigration / Work Authorization Compliance
- OSHA
- Release and Waiver Agreements
- Termination Process
- Unemployment Compensation
- USERRA / Veterans' Rights
- Wage Hour
- Wrongful Discharge
- **Administrative Representation in:**
  - *Civil Rights Charges*
  - *Unemployment Hearings*
  - *Wage Hour Claims*

## Surveys:

- Benefits Surveys
- Compensation Surveys
- Employment Practices Surveys

## Labor Relations and Administrative Representation:\*

- Collective Bargaining
- Grievance and Arbitration Hearings
- NLRB Proceedings
- Strike Assistance
- Unfair Labor Practice Representation
- Union Avoidance
- Union Organizing Campaigns

\* *Labor Relations services may be billed on an hourly basis.*

## Human Resources:

- Appraisal Systems
- Compensation and Benefit Practices
- Day-to-Day Employment Questions
- Downsizing
- Employee Handbooks
- Exit and Transition
- Global HR
- Health Care Reform
- HR Administrative Practices
- HR Metrics
- HR Strategy
- HR Technology
- On-boarding
- Payroll Advice
- Performance Management
- Policy Manuals
- Recordkeeping
- Recruiting
- Staffing and Selection
- Workplace Violence

## Web-Based and Online Resources:

- CCHAnswersNow—An online resource that focuses on HR issues and legal compliance.
- FYIs (MSEC White Papers) and LAWs (*link to statutes and regulations*)
- HR Blog to communicate with other HR professionals
- Safety BLR—An online resource that directly addresses key safety issues
- Website links to outside employment law and HR sites

## Other Resources:

- Annual Planning Packet
- Employee Handbook Planning Guide
- Employment Law Resource Guide
- Federal Record Retention Guide
- HR Forms—English and Spanish
- Industry Roundtables
- Monthly Bulletin with the latest in Employment Law and HR news
- NLRB Election Petition Updates
- Reference Library
- Special Surveys and Reports
- Toolkits and Checklists
- Video Training Resources
- One Set of Employment Law Posters



## SPECIALIZED FOR-FEE SERVICES

In addition to the benefits included under your membership dues, you can also access a number of consulting and project-specific services. These services are priced below the market rate, and are customized to employers' needs.

- 360 Leadership Assessments and Reviews
- Affirmative Action Planning Services
- Assistance During Union Organizing
- Audits:
  - *HR Audits*
  - *HR Business Review*
  - *I-9 Compliance*
- Benefit and Payroll Administration
- Career Transition and Development Services
- Compensation Services
- Custom Opinion Surveys
- Drug and Alcohol Testing Services
- Employment Agreements
- Employment Arbitrations
- Employment Law Compliance Posters
- Employment Testing and Assessments
- ERISA Consulting
- Executive and Management Coaching
- Facilitation
- Human Resource Professional Staffing
- Immigration Services
- Labor Arbitrations
- Labor Negotiations
- Mediation Services
- Organizational Development Services

- Organizational Performance Assessments
- Pre-employment Screening
- Recruiting
- Representation in Unfair Labor Practice and OSHA administrative trials
- Retirement Transition Services
- Selection Testing and Assessments
- Strategic Planning
- Surveys:
  - *Contract Surveys*
  - *Customized Survey and Analysis*
  - *Electronic Survey Data*
  - *Special Studies Surveys*
- Training:
  - *Briefing Sessions*
  - *Conferences*
  - *Customized Curriculum Design*
  - *E-Learning*
  - *On-Site Training*
  - *Special Programs and Seminars*
- Training Needs Assessment
- Wage Hour Audits
- Workforce Planning
- Workplace Coaching Services
- Workplace Investigation Services



# SURVEY SERVICES

MSEC is a clearinghouse of business, economic and human resource information used in the development of personnel policies, benefit design, and compensation plans. Over 30 community and industry-specific surveys are conducted and published for MSEC members.

SURVEY	ISSUE DATE OF QUESTIONNAIRE TO FINAL PUBLICATION DATE OF SURVEY	
Architects Compensation & Benefits	Late Aug	Mid Oct
Benchmark Compensation (AZ, CO & WY)	Early Feb	Early June
BioSciences (Pharma) Compensation	Early June	Late Aug
Casino Compensation and Benefits	Late May	Late Aug
Colorado Ski Compensation and Benefits	Early April	Late July
Construction Compensation	Late June	Late Sept
Country Club Compensation	Late May	Late Aug
Financial Services Compensation	Early June	Late Sept
Health and Welfare Plans (AZ, CO & WY)	Early April	Mid Aug
Health Care Compensation - Summer	Early Mar	Late June
Health Care Pay Practices *	Early July	Mid Sept
Hotel Compensation	Late July	Early Oct
Housing Authority / Property Management Compensation	Early June	Mid Sept
Information Technology Compensation	Early Feb	Mid June
Mental / Behavioral Health Compensation	Late Aug	Mid Nov
Mining Compensation	Early July	Late Sept
Miscellaneous Benefits and Pay Practices (AZ, CO & WY) *	Early Sept	Early Jan
Non-Profit / Foundation Compensation	Mid Aug	Mid Nov
Oil & Gas Compensation *	Late July	Late Oct
Paid Time Off (AZ, CO & WY) *	Early Sept	Early Jan
Personnel Pulse (Turnover / Job Absence / Cost of Benefits) (AZ, CO & WY)	Early Jan	Late Mar
Planning Packet (Pay Projections) (AZ, CO & WY)	Mid July	Mid Sept
Public Employers Compensation	Mid Jan	Late June
Rural Electric Association Compensation and Benefits	Early May	Early Aug
Sales Compensation & Personnel Practices - National	Mid July	Early Dec
Senior Services Compensation	Early June	Late Aug

\*Published biennially



# SURVEYS DEPARTMENT SERVICES

## **Special Studies**

MSEC conducts customized special studies upon member request. These studies may involve wage rates for a previously un-surveyed position, a unique benefit, or an uncommon personnel practice or policy. You provide us with information you would like surveyed from competitors close by or across the country, we gather the information, and deliver the results all for a nominal fee.

## **Custom Survey Analysis**

Members may obtain a Customized Survey Analysis (CSA) from any of our compensation or benefit surveys. A CSA can be requested for any jobs or benefit questions by choosing a selected group of organizations in the survey. This custom survey extract allows an organization to compare its compensation or benefits against an aggregate data line of selected organizations of its choosing. This service is free to participants of select surveys and available for a nominal fee to non-participants.

## **Survey Data Online**

All published MSEC compensation and benefit surveys are available online at **MSEC.org**. Only authorized personnel at MSEC member organizations have access to the surveys. Data are available in both PDF and spreadsheet formats.

## **Contract for Fee Surveys**

If members cannot find the information they need in our regularly scheduled surveys, we can conduct an extensive compensation or benefit survey designed to meet their needs.



## 2016 COMMUNITY IMPACT AWARD NOMINATION

The Community Impact Award honors a Town of Eagle individual, business or organization that is making a tangible, measurable impact on the community. The Community Impact Award recipient has worked to make Eagle a better place to live, work and play, and represents the town's creativity, resourcefulness and potential. Please submit nominations, supporting information and any questions to Jenny Rakow, Town Clerk, at: Email: [jenny.rakow@townofeagle.org](mailto:jenny.rakow@townofeagle.org) • Phone: 970-328-9623  
Or mail to: Town of Eagle, Attn: Jenny Rakow, 200 Broadway, P.O Box 609, Eagle, CO 81631

YOUR NAME: \_\_\_\_\_

YOUR E-MAIL ADDRESS: \_\_\_\_\_

YOUR PHONE NUMBER: \_\_\_\_\_

Do you wish to remain anonymous? \_\_\_\_ Yes \_\_\_\_ No

BUSINESS / ORGANIZATION / PROGRAM / PERSON NOMINATED: \_\_\_\_\_

CONTACT INFORMATION: \_\_\_\_\_

*Please submit this application with a description of the nominee, as well as any supporting documentation and/or images.*

- Describe the company, organization, business or person nominated.
- Describe the nominee's efforts to make a measurable impact on the community.
- Explain how the nominee's efforts have made a positive impact. Identify examples that demonstrate success and direct community impact (e.g. milestones achieved, objectives met, recognition earned and/or testimonials or references from community representatives or from someone who has benefited from the program, as well as other pertinent information).
- Please clearly mark any confidential documentation as such at the top of each page, and this information will be kept strictly confidential.
- Supporting documentation (photography, articles, etc.) will not be returned.

### GUIDELINES & SUGGESTIONS:

Please limit your nomination to 1 page or less.

Supporting Documentation: The Town of Eagle Board of Trustees will use this documentation to verify the impact of the program and learn more about it. You may choose to include statistics, press releases, articles, photography, or anything else that will illustrate the positive impact of the nominee.

### TIMELINE:

- Nominations due August 16, 2016
- Community Impact Award presentation October 25, 2016

**FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN  
TOWN OF EAGLE AND EAGLE COUNTY REGARDING DESIGN, LEASE, AND USE  
OF THE FUTURE EAGLE RIVER PARK**

THIS First Amendment to is made and entered into this \_\_\_ day of June, 2016, between the Town of Eagle, a political subdivision of the State of Colorado, by and through its Board of Trustees (hereinafter the “Town”), and Eagle County, a body corporate and politic, by and through its Board of County Commissioners (hereinafter referred to as “County”).

WHEREAS, Town and County entered into an Agreement dated June 23, 2015 (“Original Agreement”) regarding the Design, Lease and Use of the Future Eagle River Park;

WHEREAS, the Original Agreement contemplated further collaboration between the Town and County on such identified items as “potential clean-up of the properties, ditch and river structural improvements to coordinate with park design, potential annexation of portions of the properties, and the provision of municipal water and wastewater to the properties”; and

WHEREAS, the term of the Original Agreement expires June 23, 2016 and the Town and County desire to continue their collaborative efforts beyond this original term;

In consideration of the terms and conditions of the Original Agreement and the amendments herein, the sufficiency of which is hereby acknowledged, the Town and County agree that this First Amendment shall replace and supersede the section of the Original Agreement as stated hereunder.

*Section 8* shall be deleted in its entirety and replaced with the following effective upon the execution of this First Amendment:

“8. This Agreement shall become effective upon signature of an authorized representative of the governing body of each party, and shall remain in effect through December 31, 2016. This Agreement will automatically renew for three (3) consecutive one-year terms unless terminated by either of the parties as set forth herein. Either party may terminate this Agreement for any reasons, with or without cause, by providing thirty (30) day written notice to the other.”

The Town and County agree that, except as expressly altered, modified and changed in this First Amendment, all terms and provisions of the Original Agreement shall remain in full force and effect, and hereby are ratified and confirmed in all respects as of the date hereof.

If any conflict exists between the provisions of this First Amendment and the Original Agreement, the provisions of this First Amendment shall control.

This First Amendment shall be binding on the parties hereto, their heirs, executors, successors, and assigns.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the day and year first above written.

TOWN OF EAGLE

ATTEST:

By: \_\_\_\_\_  
Jenny Rakow, Town Clerk

By: \_\_\_\_\_  
Anne McKibbon, Mayor

ATTEST:

COUNTY OF EAGLE, STATE OF COLORADO  
By and Through its Board of County Commissioners

By: \_\_\_\_\_  
Teak J. Simonton, Clerk to the  
Board of County Commissioners

By: \_\_\_\_\_  
Jeanne McQueeney, Chair



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

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## CERTIFICATE OF RECOMMENDATION

**TO:** Board of Trustees

**FROM:** Department of Community Development

**DATE:** Tuesday, June 28, 2016

**PROJECT NAME:** Boyz Toyz Special Use Permit Amendment

**FILE NUMBER:** SU97 Amended 2016

**APPLICANT:** Gary Ratkowski

**LOCATION:** 432 Grand Avenue

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:**  
Section 4.05.010 (Special Use Permit)  
Section 4.04 (Zoning)

**EXHIBIT(S):** A. Application Packet  
B. Aerial Photos  
C. Existing Conditions of Approval  
D. Previous Site Plan  
E. Town Board of Trustees Meeting Minutes, August 26, 2003  
F. Planning & Zoning Commission Meeting Minutes, June 7, 2016

**PUBLIC COMMENT:** No written comments. However, one phone call in opposition and written request for existing records on this Special Use Permit and one phone call in support.

**STAFF CONTACT:** Tom Boni, Town Planner

**REQUEST:** Applicant is requesting an amendment to his existing Special Use Permit to remove four of the conditions of the existing Special Use Permit.

---

**DISCUSSION:**

There is a fairly long history related to the Boyz Toyz Special Use Permit. The original application was approved in May of 2002. In December of 2002, the property owner was cited for non-compliance with the conditions of approval. In August of 2003, the Trustees approved an amendment to the Boyz Toyz Special Use Permit with conditions as noted on Exhibit C. Also included in Exhibit C are the minutes of the hearing.

In the summer of 2013, the Planning Department inspected the business and notified the owner that he was out of compliance with the conditions of the Special Use Permit. Based on a discussion with the Board of Trustees at that time we asked that he either come into compliance or apply for an amendment to the Permit. At that time, the owner was selling the business and a closing was imminent.

Over the last three years the Planning Department has met with the owner on several occasions to ask that improvements to the operation be made to lessen the impact on the neighborhood, ask about the status of the sale of the business, and requested the that applicant apply for an amendment to the Special Use Permit. Through this period, I believe that the owner has made improvements to his operations although it remains out of compliance with the conditions attached to the original permit.

In 2016 the Town received a complaint about the business operation. We requested that the applicant meet with the Board to discuss his business operation and existing Special Use Permit. Unfortunately, the applicant had an emergency and was not able to attend. At this point we again informed the applicant that he was out of compliance with his Special Use Permit and that he needed to rectify the problems or request an amendment to the Permit if he believed that he could not operate his business and comply with the conditions. Based on this conversation, the business owner, Gary Ratkowski, has submitted this application.

---

**STANDARDS FOR SPECIAL USE PERMIT (SECTION 4.05.010):**

Listed below are the findings required by Section 4.05.010 of the Land Use & Development Code for approval of a Special Use Permit:

1. The proposed use is consistent with the provisions of this Chapter and with the Town's goals, policies and plans, and
2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, and
3. Street improvements adequate to accommodate traffic volumes generated by the proposed use and provision of safe, convenient access to the use and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the Town, and

4. The special conditions for specific uses, as provided in this Section, are met.

---

**FINDINGS FOR SPECIAL USE PERMIT:***Standard #1:*

Chapter 4.04 – Zoning of the property is Commercial Limited and allows vehicular sales and service through a Special Use Permit.

The Eagle Area Community Plan places emphasis both on Economic Development and Community Design and Appearance. Under Economic Development, the Plan encourages the Town to expand the number and diversity of businesses in Eagle and reduce leakage of shopping dollars to other areas. Under Community Design and Appearance, the Plan emphasizes the importance of maintaining and improving the appearance of the community and maintain “Sense of Community.”

*Standard #2:*

The area surrounding Boyz Toyz along Highway 6 is commercial. On the east side across McIntire Street there is a pizza store and yoga studio. Immediately west of the property is a liquor store. However, south of the property across Fifth Street is a residential neighborhood. There is also a residential use on the property located to the east behind the pizza store on the other side of McIntire.

*Standard #3:*Street Improvements, Parking & Access:

The property has a wide curb cut along Highway 6. This site was previously occupied by a gas station. Access to the building also occurs from McIntire. I have not found any records of the access permit referenced as a condition of approval. (If the Board concurs, this condition requiring an access permit from CDOT should be removed through this amendment.) Parking is provided along the west side of McIntire. However, parking also occurs on the portion of Highway 6 Right of Way not used as a travel way. There has been some parking of display vehicles from time to time that encroaches into Highway 6 Right of Way. The sight line west at the intersection of McIntire and Highway 6 has occasionally been impacted by parked vehicles.

---

**PLANNING & ZONING COMMISSION:**

The Planning and Zoning Commission discussed this application during the presentation of the application and again during deliberations. The Commission asked about how long vehicles are parked along McIntire and if what was shown on the site plan was all within the parcel. They also inquired about how many display vehicles were necessary and how the display vehicles were purchased and whether there are any rental operations from the property. Other questions related to where the vehicles were stored waiting for maintenance. The Commission asked about a Staff recommendation. Tom Boni responded that in this case where there is already an approval with the conditions by the Board of Trustees it is essentially a judgement call about whether to remove the requested conditions originally imposed by the Board of Trustees during their approval of this special use permit.

In addition, Tom stated that he owns a snowmobile and does not mind a two stroke engine and the noise and smoke that they create, which are not liked by many people. Questions by the Commission also addressed hours of operation and signage, the new metal building in the rear of the property and designated drop-off area along McIntire. Considerable attention was focused on the amount and length of time that storage occurs along McIntire Street. In discussions with the applicant and the Commission, the applicant agreed to construct a new privacy fence along the property line. This new fence would coincide with the property line and therefore any storage in the rear of the property would be screened by the fence. Concerns were also expressed about blocking sight distance at the intersection of Highway 6 and McIntire.

Planning Commission recommended approval with the following conditions:

1. Remove item #2, Allow temporary storage of vehicles on the east side of the building.
2. Remove item #5, Allow up to 30 vehicles for display on private property.
3. Remove item #6, the loading area will now be on McIntire.
4. Remove item #14, amend to allow shed with Town of Eagle compliance.
5. Add, Existing fence should be replaced to property line.

---

**BOARD OF TRUSTEES**

April 12, 2016

Town of Eagle  
Board of Trustees  
200 Broadway  
Eagle, CO 81631

Re: Boyz Toyz Special Use Permit

Planning Commissioners and Trustees,

My family has been operating our business for approximately 15 years at this location on Highway 6 and McIntire Street. We have learned some things over this time. Tom Boni, the Town Planner has visited me on several occasion to note that various aspects of my operation were out of compliance with the conditions of the Special Use Permit. While some of those items are operational concerns that can be better managed there are four conditions that I need to revise in order to operate my business successfully. Tom has advised me that I need to amend my Permit.

We request an amendment of the application to revise the following conditions:

- Condition #2 I need to allow temporary placement of vehicles on the east side of the building. This is an area where customers drop their vehicles sometimes when I am closed. At other times I need to do an inspection prior to accepting them for service.
- Condition #5 In order to sell vehicles I need more than the 8 vehicle. I can fit between 20 to 30 vehicles in front of building on the property
- Condition #6 I initially installed this loading area and it became a cut through from McIntire to Highway 6. The drop off works better from McIntire.
- Condition #4 A shed to store material and perform repairs in the rear of the property.

Please see revised site plan and set of existing conditions.

Sincerely



**PLANT MATERIALS**

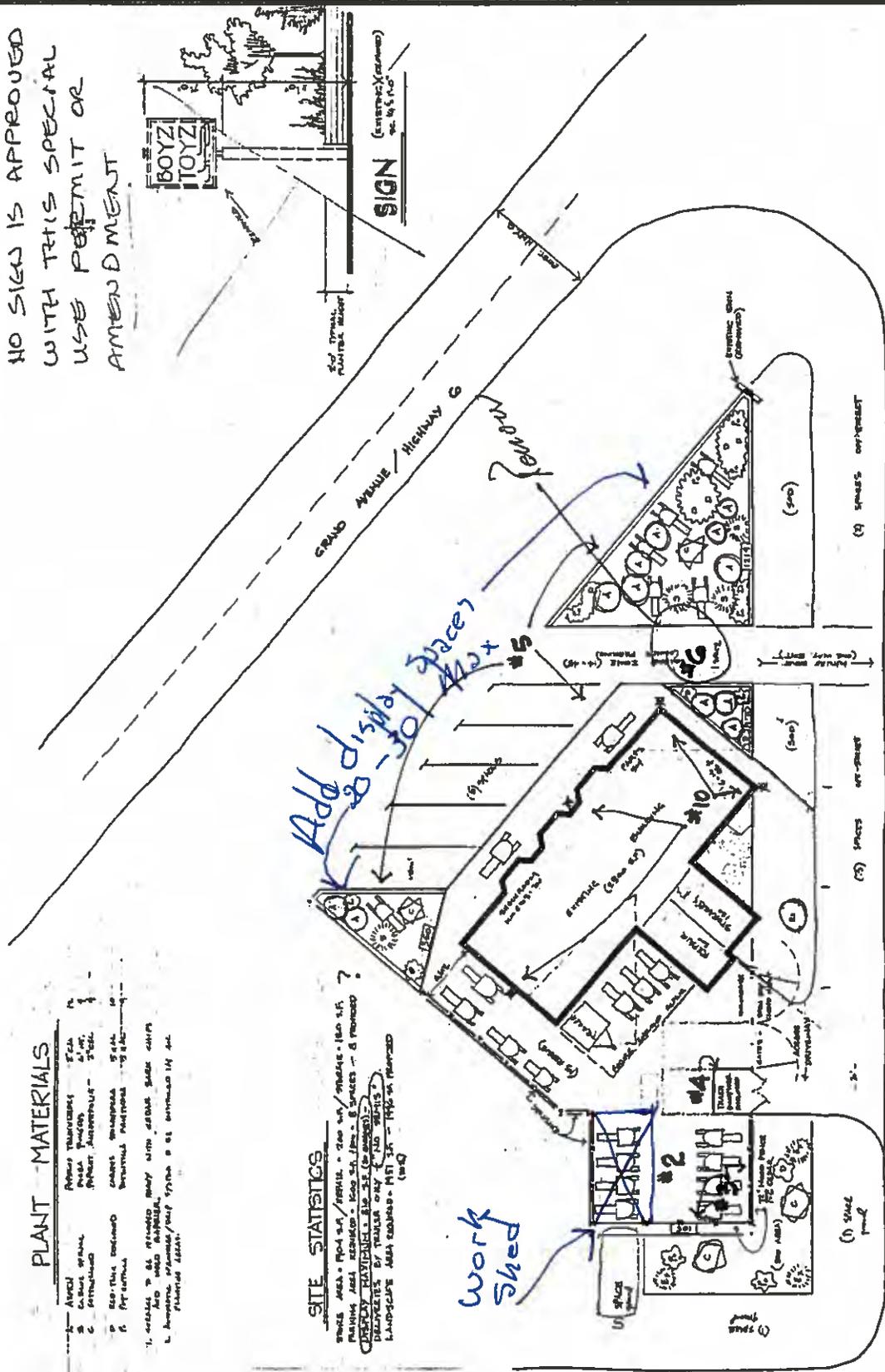
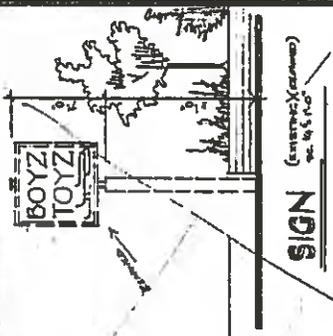
1. ASPEN	2. PINE	3. CEDAR	4. JUNIPER	5. YEW	6. BOXWOOD	7. HYDRANGEA	8. LILY	9. IRIS	10. ROSE
11. PINK PEA	12. PINK PEACH	13. PINK PEACH	14. PINK PEACH	15. PINK PEACH	16. PINK PEACH	17. PINK PEACH	18. PINK PEACH	19. PINK PEACH	20. PINK PEACH

- 1. ASPEN - 20' x 20' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 2. PINE - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 3. CEDAR - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 4. JUNIPER - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 5. YEW - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 6. BOXWOOD - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 7. HYDRANGEA - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 8. LILY - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 9. IRIS - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING
- 10. ROSE - 10' x 10' PLANTED EVERY 10' x 10' WITH 40' x 40' SPACING

**SITE STATISTICS**

BRICK AREA - 100' x 100' / PERMIT - 200' x 200' / TOTAL - 100' x 100'  
 PARKING AREA - 100' x 100' / PERMIT - 200' x 200' / TOTAL - 100' x 100'  
 DRIVEWAY - 100' x 100' / PERMIT - 200' x 200' / TOTAL - 100' x 100'  
 DELIVERIES BY TRUCK ONLY (NO TRUCKS)  
 LANDSCAPE AREA - 100' x 100' / PERMIT - 200' x 200' / TOTAL - 100' x 100'

NO SIGN IS APPROVED WITH THIS SPECIAL USE PERMIT OR AMENDMENT



#12 IMPROVEMENTS COMPLETED BY OCT. 15TH, 2003  
 HEINTIRE STREET  
 (See at Grand Avenue (Corner))

**LANDSCAPE / SITE PLAN 1/200'-0"**



SCOTT SMITH  
 CARY RATKOWSKI

Exhibit B



Google earth

Page 156 of 192

1999

Imagery Date: 4/3/2015 39°39'10.31" N 106°49'54.07" W elev 6595 ft eye alt 7530 ft

## Exhibit C



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

On August 26, 2003 the Board of Trustees approved an Amended Special Use Permit for Boyz Toyz to operate a sales and service business for snowmobiles and all-terrain vehicles. The application was approved with the following conditions:

1. The property owner shall apply for and comply with CDOT Access Permit
2. Storage for vehicles for uses other than display shall be limited to the fenced storage area at the south end of the property.
3. All screen fencing shall not exceed 6 feet in height and all materials stored within the fence shall not exceed 6 feet in height. Fencing materials shall be cedar or redwood and must create a full screen.
4. A Trash enclosure shall be constructed at the location indicated on the amended site plan.
5. Vehicle display shall be limited to eight vehicles with not more than two in the area in front of the building. No display vehicles are to be parked in the five parking spaces located in front of the building.
6. A 14 foot wide signed loading area shall be provided in the drive through area north of the building.
7. Parking on McIntire shall be parallel and delineated with landscaping and worked out in a sufficient manner with the Town Engineer.
8. Landscaping shall be installed and maintained to Town standards, including the grass areas on Town property in the right of way and worked out in a sufficient with the Town Engineer.
9. A new sign is to be constructed for the business that complies with the Town Sign Code.
10. The applicant shall provide an approved lighting plan that complies with the Town lighting code.
11. The special use permit shall be subject to review upon change of business, or substantial change in ownership of business or the property.
12. On-site improvements shall be completed within 90 days of the approval be the Town Board. If at the end of the 90 days the property is not in compliance with all conditions of approval, the Special Use Permit shall be revoked.
13. Applicant shall study the possibility of replacing the fence along the common property line, and if replacement is proposed staff shall review the materials.
14. No additional structures shall be permitted by approval of this amended Special Use Permit.
15. All testimony, submitted plans, Town Engineer's plans and Town Attorney recommendations will be included as record.
16. Cartons and Crates for merchandise are not to remain on property for more than 48 hours from time the merchandise is removed from them.



## Exhibit E

Town Board of Trustees  
August 26, 2003  
Page 4 of 9

McKinzie stated that this application was continued at the prior meeting to allow for the drafting of the ordinance to approve the Lot Line Adjustment. Staff identified no issues associated with this application and recommended approval of the ordinance and the Final Plat with the condition that concerns of staff are addressed prior to recording of the document with Eagle County.

Craig Kinney was present.

### Ordinance No. 36

Stavney made a motion to approve Ordinance No. 36, an ordinance approving the Lot Line Adjustment vacating a common lot line and creating Lot A of the Mayer Addition pending the submittal of a Final Plat and comments from the Town of Eagle Engineer, Attorney and Staff. Ehrenberg seconded. The motion passed unanimously.

### Boyz Toyz SU-97

Mayor Deane reopened the Public Hearing on File No. SU-97, Eagle Interchange South, requesting amendment to a Special Use Permit to Operate a Sales and Service Business for Snowmobiles and ATV's.

Richards stepped down.

McKinzie gave the background of the application and noted that the applicant is proposing to remove the residence to accommodate more storage uses at the site and suggests that this will enable the business to come into compliance with all conditions of approval. In addition the business owner is proposing to construct an additional structure of approximately 300 sq. ft. to house 2 repair bays. McKinzie stated that removing the residence may help the applicant in meeting the conditions of approval but did not encourage the 300 sq. ft. structure. Staff recommended approval of the proposed amendment to SU-97 with the following conditions.

1. The property owner shall apply for and comply with a CDOT Access Permit.
2. Storage for vehicles for uses other than display shall be limited to the fenced storage area at the south end of the property.
3. All screening fencing shall not exceed 6' in height.
4. A trash enclosure shall be constructed at the location indicated on the amended site plan.
5. Vehicle display shall be limited to eight vehicles with not more than 2 in the walk area in front of the building. No

display vehicles are to be parked in the 5 parking located in the front of the building.

6. A 14 wide, signed loading area shall be provided in the drive-through area north of the building.
7. Parking on McIntire shall be parallel and delineated with landscaping and worked out in a sufficient manner with the Town Engineer.
8. Landscaping shall be installed and maintained to Town standards, including the grass areas on Town property in the right-of-way and worked out in a sufficient manner with the Town Engineer.
9. A new sign is to be constructed for the business that complies with the Town Sign Code.
10. Applicant shall provide an approved lighting plan that complies with the Town Lighting Code.
11. The Special Use Permit shall be subject to review upon change of business, or substantial change in ownership of business or property.
12. On-site improvements shall be completed within 90 days of approval by the Town Board. If at the end of 90 days the property is not in compliance with all conditions of approval, the Special Use Permit shall be revoked.
13. Applicant shall study the possibility of replacing the fence along the common property line and if replacement is proposed, staff shall review the materials.
14. No additional structures are permitted by approval of this amended Special Use Permit.
15. All testimony, submitted plans, Town Engineer's plans and Town Attorney recommendations will be included as record.

Ehrenberg made a motion to close SU-97. Stavney seconded. The motion passed unanimously.

Ehrenberg made a motion to approve SU-97 with the following conditions:

- Staff recommendations 1- 2 as written.
- Staff recommendation 3 to read as follows:  
All screening fencing shall not exceed 6' in height and all materials stored within the fence shall not exceed 6' in height. Fencing materials to be cedar or redwood and must create a full screen.
- Staff recommendations 4-15.
- Condition No. 16 as follows:

16. Cartons and Crates for merchandise are not to remain on property for more than 48 hours from time the merchandise is removed from them.

Hasbrouck seconded. The motion passed unanimously.

Richards was reseated.

**Kinney Parcel Annexation  
RZ-45** Mayor Deane reopened the Public Hearing on File No. RZ-45, Kinney Parcel, requesting rezoning of a .9 acre parcel to RR, Rural Residential.

McKinzie stated the Town recently annexed this parcel and per state statutes the parcel must be rezoned within 90 days. The applicant has requested that the property be rezoned to a zone district that will allow for future construction of an ADU. Staff recommended approval.

Craig Kinney was present.

Hasbrouck made a motion to close RZ-45. Witt seconded. The motion passed unanimously.

**Ordinance No. 37** Hasbrouck made a motion to approve Ordinance No. 37, an ordinance amending the Town of Eagle Zone District Map by zoning the Kinney Parcel as Rural Residential. Stavney seconded. The motion passed unanimously.

**Eagle Ranch, LLC  
PUD-14, S-14, PUD-27, S-28**

Mayor Deane reopened the Public Hearing on File No. PUD-14 and S-14, Eagle Ranch LLC, requesting approval of combined PUD zoning and development plans and subdivision concept preliminary plans. File No. PUD-27 and S-28, a request for approval of combined PUD zoning and development plans and subdivision concept and preliminary plans. File No. S-14, a request for approval of a final plat creating 16-single family lots.

McKinzie reviewed the issues pertaining to these requests and recommended approval with conditions for S-14 as follows:

1. That all comments of the Town Attorney, Engineer and Survey Consultant shall be satisfactorily addressed prior to the Town recording the plat and associated documents at the County.

## Exhibit F

Planning & Zoning Commission  
June 7, 2016  
Page 5

1. The chain-link fence should be coated with either black or green epoxy paint.
2. A setback of 2' at the front property lines to allow for landscaping.
3. The applicant will work with town Staff to landscape along fence perimeter inside and outside.

Callicrate seconded. The motion passed with a vote of 5 to 1, with Spinelli voting nay.

Cowles closed Files SU16-02 and V16-02.

### *SU97 (Amended 2016) Boyz Toyz Snowmobile/ATV Store*

Cowles opened File SU97, Boyz Toyz Snowmobile/ATV Store, a request to allow continued operation of store/repair facility, located at 432 Grand Avenue in the Commercial Limited (CL) zoned area. Richards recused himself as he represented the applicant on original application.

Cowles opened public comment and receiving none, closed public comment. Boni presented the location of the store, the location of the vehicles for sale, and the store/repair facility.

Greg made a motion to approve File SU97, Boyz Toyz Snowmobile/ATV Store, an amendment to the special use permit with the following amendments:

1. Remove item #2, Allow temporary storage of vehicles on the east side of the building.
2. Remove item #5, Allow up to 30 vehicles for display on private property.
3. Remove item #6, the loading area will now be on McIntire.
4. Remove item #14, amend to allow shed with Town of Eagle compliance
5. Add, Existing fence should be replaced to property line.

Perkins seconded the motion. The motion passed unanimously.

Cowles closed File SU97 (Amendment 2016).

### *LURA16-01, Revisions to Land Use and Development Code Section 4.03.040*

Cowles made a motion to continue File LURA16-01 to the Planning and Zoning meeting on July 19, 2016. Spinelli seconded. The motion passed unanimously.



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## MEMORANDUM

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**TO:** Board of Trustees  
**FROM:** Matt Farrar (Assistant Town Planner)  
**SUBJECT:** Eagle Tubing & Photography Lease  
**DATE:** June 28, 2016

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Trustees-

As requested, staff has calculated what we believe to be a market rate lease rate for the Eagle Tubing & Photography operation. Below is a breakdown of the calculation that staff conducted to develop the recommended lease rate of \$250 per month plus 15% of gross rental income:

Commercial Space Lease Rates (Eagle, CO): \$10 - \$30 per sq ft

Median Commercial Space Lease Rate (Eagle, CO): \$20 per sq ft

Square footage to be leased to Eagle Tubing & Photography: 600 sq ft

600 sq ft x \$20 per sq ft = \$12,000

\$12,000 / 12 months = \$1,000 per month

Median Commercial Space Lease Rate for 600 sq ft: \$1,000 per month

Eagle Tubing & Photography is leasing a small piece of land and not a unit in a building, nor will they be provided utilities by the town, therefore staff believed that it was unequitable to rent 600 sq ft of park space to this operation at \$1,000 per month (the median lease rate for finished commercial space) given the limited amenities that will be provided. Staff believed it was appropriate to reduce the lease rate to \$250 per month given the limited amenities being provided, which include a desirable business location on town property, a sidewalk and access to a parking lot.

In addition to the flat rate of \$250 per month, staff believed that it was appropriate to assess a percentage on the operation's gross rental income to allow for a portion of rent to be contingent upon the operation's success, as well as account for the lack of tax revenue generated by equipment rentals. Staff believed that 10% was an appropriate amount to assess for rent and an additional 5% to account for the lack of tax revenue generated by equipment rentals. Therefore, staff is recommending that the total monthly lease rate be \$250 plus 15% of gross rental income.



For the security deposit, staff used \$0.60 per sq ft of sod (based on the recent work completed at Nogal Park) and approximated the square footage of sod area that could potentially be impacted by on-site storage of the trailer for Eagle Tubing & Photography, as well as movement of the trailer to and from the designated area in Chambers Park. Based on staff's approximations, staff is recommending a security deposit of \$1,000.

Additional requirements that were included in the lease agreement include:

- Operation limited to sale of food and drink items, commercial photography, rental of inflatable tubes and related equipment, stand-up paddleboards and related equipment, bicycles and related equipment and disc golf equipment. The Lessee may be permitted to sell additional goods and provide additional services but only if granted permission to do so (in writing) by the Town Manager.
- Eagle Tubing & Photography shall be required to clean the Visitor Center restrooms once per day. Cleaning of restrooms to be coordinated with Town of Eagle Public Works staff.
- Eagle Tubing & Photography shall acquire liability insurance, which shall cover the town, and provide proof of said insurance prior to commencement of any operations on town property.
- Hours of operation of Eagle Tubing & Photography shall be limited to 11am-7pm / Monday – Sunday. The town may modify permitted hours and days of operation as necessary to address parking issues or other unforeseen complications.
- Lessee shall not be permitted to store the temporary vending trailer, or other items associated with their operation, overnight unless granted permission to do so (in writing) by the Town Manager.
- Signage for Eagle Tubing & Photography shall be limited to one (1) sandwich board sign.

To the best of staff's knowledge, Ken Hoeve (operator of Eagle Tubing & Photography) is agreeable to the terms of this lease.

**RESOLUTION NO. 29**

**(Series of 2016)**

A RESOLUTION OF THE BOARD OF TRUSTEES TOWN OF EAGLE,  
COLORADO APPROVING A LEASE AGREEMENT WITH EAGLE TUBING &  
PHOTOGRAPHY, LLC

WHEREAS, the Town of Eagle is the owner of park property near the Eagle River located at 100 Fairgrounds Road in the Town of Eagle, County of Eagle, State of Colorado; and

WHEREAS, Eagle Tubing & Photography, LLC desires to lease a portion of the park property from the Town for the purpose of locating a temporary vending trailer and the limited outdoor display of goods and services and operating a commercial photography business and renting inflatable tubes and related equipment, stand-up paddleboards and related equipment, bicycles and related equipment, and disc golf equipment; and

WHEREAS, the Town and Eagle Tubing & Photography, LLC have negotiated a Lease Agreement concerning the lease of such property.

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

Section 1. The Lease Agreement between the Town of Eagle, Colorado and Eagle Tubing & Photography, LLC, attached hereto as Exhibit "A", incorporated herein by this reference, is hereby approved.

Section 2. The Mayor of the Town of Eagle is hereby authorized and directed to execute said Lease Agreement on behalf of the Town of Eagle.

INTRODUCED, READ, PASSED, AND ADOPTED at a regular meeting of the Board of Trustees of the Town of Eagle, Colorado, held on June 28, 2016.

TOWN OF EAGLE, COLORADO

ATTEST:

\_\_\_\_\_  
Jenny Rakow, Town Clerk

\_\_\_\_\_  
Ann McKibbin, Mayor

## LEASE AGREEMENT

### EAGLE TUBING & PHOTOGRAPHY, LLC

THIS LEASE is made and entered into and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **TOWN OF EAGLE, COLORADO**, a municipal corporation, whose address is P.O. Box 609, Eagle, Colorado 81631 (“Lessor”), and **EAGLE TUBING & PHOTOGRAPHY, LLC**, a Colorado limited liability company, whose address is 918 Mayne Street, Gypsum, Colorado 81637 (“Lessee”).

### RECITALS

**WHEREAS**, Lessor is the owner of the park property near the Eagle River located in Town of Eagle, County of Eagle, State of Colorado; and

**WHEREAS**, Lessee desires to rent and lease a portion of the park property from Lessor, as described in Exhibit “A”, attached hereto and incorporated herein by this reference (“Leased Premises”).

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lessor and Lessee agree as follows:

1. **LEASED PREMISES.** The Lessor hereby leases to Lessee the six hundred square feet (600 sq. ft.) area located at 100 Fairgrounds Road as further described in Exhibit “A”, attached hereto and incorporated herein by this reference, situate in the Town of Eagle, County of Eagle, State of Colorado. Such letting is upon and subject to the terms, conditions and covenants set forth below, and Lessee covenants as a material part of the consideration for this Lease to keep and perform all such terms, conditions and covenants.

2. **COMMENCEMENT/LEASE TERM.** The term of this Lease shall commence July 1, 2016 and shall terminate on November 1, 2016.

3. **RENT.** Lessee shall pay Lessor rent in the amount of two hundred fifty dollars (\$250.00) per month plus fifteen percent (15%) of the gross rental income received by Lessee from the rental of inflatable tubes and related equipment, stand-up paddleboards and related equipment, bicycles and related equipment, disc golf equipment or other rental equipment that the Lessor permits the Lessee to offer. Rent shall be due and payable by the seventh (7<sup>th</sup>) day of each month. For the month of July, Lessee shall pay Lessor the amount of two hundred fifty dollars (\$250.00) upon approval of the Lease plus the license fee of two hundred fifty dollars (\$250.00) owed pursuant to Chapter 5.06 of the Eagle Municipal Code, and then shall pay fifteen percent (15%) of Lessee’s gross rental income by August 7, 2016. In an effort to calculate the fifteen percent (15%) of gross rental income that shall be due and payable to the Lessor each month, Lessee shall complete a form provided by the Town and submit such form monthly, together with a copy of Lessee’s monthly earnings report.

4. **SECURITY DEPOSIT.** Upon execution of this Lease, the Lessee shall deliver to Lessor a security deposit in the amount of one thousand dollars (\$1,000.00). Said deposit may be commingled by Lessor with its other funds and shall be received by Lessor without liability for interest, as security for Lessee's faithful performance of all of the provisions of this Lease, including the obligation to pay rent and the remediation of any damage done to the site by Lessee's occupancy of the Leased Premises. For so long as the security deposit has not been repaid by Lessor, it shall constitute an account payable by Lessor to Lessee. Within sixty (60) days following termination of this Lease, to the extent, if any, that Lessor has not applied the security deposit as herein permitted, the balance shall be returned to Lessee. If Lessee shall default with respect to any covenant, duty or obligation of Lessee under this Lease, then the security deposit or any part thereof may be applied by Lessor (but Lessor shall not be obligated to do so) to the damages sustained by Lessor by reason of any such default or to any indebtedness owing by reason of any failure of Lessee to make any required monetary payment under this Lease. Lessor shall provide Lessee a written notice and accounting of such applications of the security deposit. No such application shall be construed as an agreement to limit the amount of Lessor's claim for damages or as a waiver of any damages or release of any indebtedness, and any claim of Lessor under this Lease not recovered in full from the security deposit shall remain in full force and effect.

At any time when Lessor has made any such application of all or any part of the security deposit, Lessor shall have the right (but not the obligation) at any time thereafter to request that Lessee pay to Lessor a sum or sums equal to the amount so applied by Lessor so that Lessor will always have in its possession a sum equal to the amount of one thousand dollars (\$1,000.00). Lessee shall make each such requested remittance within ten (10) days following such written request from Lessor and each such remittance received by Lessor shall thereupon constitute a part of the security deposit subject to the terms and provisions of this Lease. Failure to make any such requested remittance within such ten (10) day period may be treated by Lessor as a failure of Lessee to make timely payment of rent and as an event of default.

5. **POSSESSION.** Upon execution of this Lease by both parties, full payment of the security deposit, and upon delivery of an insurance certificate to Lessor by Lessee as required by Section 8 below, Lessee shall be entitled to full access and possession of the Leased Premises on July 1, 2016.

6. **USE OF LEASED PREMISES.** Lessee may use the Leased Premises for the location of a temporary vending trailer and the limited outdoor display of goods and services. The Lessee may sell limited food and drink items from its vending trailer, such as ice cream, non-alcoholic beverages, and snack items. Lessee may use the Leased Premises to conduct a commercial photography business and for the purpose of renting inflatable tubes and related equipment, stand-up paddleboards and related equipment, bicycles and related equipment, and disc golf equipment. Lessee may be permitted to sell goods and provide services not listed above with written permission from the Town Manager. Lessee covenants that it will not permit the Leased Premises to be used for any illegal or immoral purposes and that Lessee will not do, or suffer to be done, in or about the Leased Premises, any act or thing that may be a nuisance, annoyance or inconvenience to Lessor or surrounding property owners.

7. **UTILITY AND OTHER SERVICES.** Lessor shall not provide any electric, telecommunications service or natural gas services to the Leased Premises and shall not provide trash removal services to the Leased Premises.

8. **INSURANCE.** Lessee shall keep and maintain (a) public liability insurance for the Leased Premises and any business or operations conducted on the Leased Premises, with coverage for bodily injury and property damage on a comprehensive basis with limits of not less than one million dollars (\$1,000,000.00) per occurrence; and (b) fire and extended coverage insurance on the Lessee's personal property and contents within the Leased Premises equal to the full replacement cost. All public liability insurance policies shall name the Lessor as an additional insured. The Lessee shall provide the Lessor with certificates of such insurance prior to taking possession. No such policy or policies may be cancelled without thirty (30) days prior written notice to the Lessor, and said certificate shall so provide. All insurance companies selected by the Lessee shall be licensed to do business in the State of Colorado and rated A+1. In the event the Lessor elects to also maintain public liability insurance for the subject property or the Leased Premises, the Lessee's public liability insurance for the Leased Premises shall be deemed the primary insurance coverage.

9. **ACCEPTANCE OF PREMISES.** The Lessee accepts the Leased Premises in its present condition, "as is". The Lessee acknowledges that it has inspected the Leased Premises and it is satisfied with all aspects of the same. The Lessee further acknowledges that neither the Lessor nor any agent or other representative of the Lessor has made any representation or warranty as to suitability of the Leased Premises for the conduct of the Lessee's operations and business.

10. **SIGNS.** The Lessee shall be permitted to have one (1) sandwich board sign for its operation. No other signage shall be permitted. The sandwich board sign may be a maximum of four feet (4') in height and each side of the sandwich board sign may be a maximum of six square feet (6 sq. ft.). The sandwich board sign shall not be placed in a location that impedes pedestrian, bicycle or vehicular traffic.

11. **ADDITIONAL COVENANTS OF THE LESSEE.** In addition to the terms, conditions and covenants set forth elsewhere in this Lease, the Lessee covenants with Lessor that the Lessee shall:

- a. Keep and maintain the Leased Premises in a sanitary condition free and clear of all trash and debris and shall comply with all fire, safety, health, food safety, environmental, anti-discrimination and all other laws regulating the use of the Leased Premises now or hereafter in force;
- b. Clean the Town of Eagle Visitors Center restrooms once per day. Cleaning of restrooms to be coordinated with Town of Eagle Public Works Staff;

- c. Shall limit its hours of operation from 11:00 A.M. to 7:00 P.M. Monday through Sunday. Lessor may require Lessee to modify days and hours of operation as necessary to address parking issues or other unforeseen complications;
- d. Shall not be permitted to store the temporary vending trailer, or other items associated with the operation, overnight at the Leased Premises unless granted permission, in writing, by the Town Manager to do so;
- e. Shall obtain a business license from the Town of Eagle and shall obtain a license to conduct sales within public rights-of-way and other public property pursuant to Chapter 5.06 of the Eagle Municipal Code;
- f. Shall obtain a sales tax license from the Town Clerk/Treasurer, if applicable;
- g. Shall neither keep, use nor sell any article or substance on the Leased Premises which shall be prohibited by any insurance policy in force;
- h. Shall neither commit nor suffer any disorderly conduct, noise or nuisance whatsoever about the Leased Premises having a tendency to annoy or disturb other tenants located on the subject property or persons on adjacent properties.

12. **LESSOR'S OBLIGATIONS.** In addition to the terms, conditions and covenants set forth elsewhere in this Lease, the Lessor covenants with the Lessee that the Lessor shall, perform the following:

- a. Upon expiration of the Lease term and Lessee's operations, Lessor shall be responsible for any remediation work necessary to the Leased Premises, at Lessee's cost, and Lessor shall deduct from Lessee's security deposit the cost for such remediation. In the event the cost of remediation is in excess of the amount of the security deposit, said costs for remediation of damages shall be billed to Lessee.

13. **COVENANT OF QUIET ENJOYMENT.** The Lessor covenants that the Lessor is the owner of the Leased Premises and has the power and authority to grant and make the within Lease; that during the term of the Lease and subject to the terms of this Lease, and on condition that the Lessee shall discharge all of the Lessee's obligations hereunder, the Lessee shall have and enjoy the quiet and undisturbed possession of the Leased Premises.

14. **LESSOR'S RIGHT TO PERFORM.** In the event the Lessee breaches any covenant or condition of this Lease, the Lessor may cure such breach at the expense of the Lessee and the reasonable amount of all expenses, including attorney's fees and legal assistant's fees, incurred by the Lessor in doing so shall be deemed additional rent payable by Lessee on demand.

15. **ABANDONMENT OF PERSONAL PROPERTY.** If the Lessee shall abandon, vacate or surrender the Leased Premises or shall be dispossessed by process of law or otherwise, then any personal property belonging to the Lessee and left on the Leased Premises shall be deemed abandoned.

16. **DEFAULT.** Each one of the following events is an “event of default”:

- a. The Lessee fails to pay rent or any other amount payable to the Lessor under this Lease and such failure continues for three (3) days after written notice of such default is given to the Lessee in accordance with Colorado law;
- b. The Lessee vacates or abandons the Leased Premises at any time prior to the expiration of this Lease;
- c. This Lease or possession of the Leased Premises is transferred to or obtained by any person other than Lessee without the written consent of the Lessor in accordance with the terms of this Lease;
- d. This Lease or possession of the Leased Premises is taken upon execution or by other process of law directed against the Lessee, or is taken upon attachment by any creditor of or claimant against the Lessee, and such writ is not discharged within fifteen (15) days after levy; or
- e. The Lessee fails to perform any other agreement, term, covenant or condition of this Lease on the Lessee’s part to be performed and such non-performance continues for a period of seven (7) days after written notice of such default by Lessee is given to the Lessee by Lessor, provided that if such default cannot be reasonably cured within such seven (7) day period, the Lessee, in good faith, may commence such cure within such seven (7) day period and shall thereafter diligently proceed to completion.

17. **REMEDIES UPON DEFAULT.** In the event of an uncured default by the Lessee, the Lessor may have any one or more of the following described remedies, in addition to all other rights and remedies provided in law or in equity:

- a. The Lessor may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Leased Premises, including the Lessor’s reasonable attorney’s fees and legal assistant’s fees; (ii) the unpaid rent owed at the time of termination, plus the rent owed for the remainder of the Lease term, plus applicable late charges and interest thereon at the rate of eighteen percent (18%) per annum from the due date; (iii) damages for the wrongful withholding of the Leased Premises by the Lessee; and (iv) any other damages owed by the Lessee to the Lessor as provided by law.

- b. Any amounts paid by the Lessor to cure any defaults of the Lessee under this Lease which the Lessor shall have the right, but not the obligation, to cure, shall, if not repaid by the Lessee within five (5) days of written demand by the Lessor, thereafter bear interest at the rate of eighteen percent (18%) per annum until paid.

18. **INDEMNIFICATION OF LESSOR.** The Lessee shall defend, indemnify and hold harmless the Lessor from and against any and all claims arising from (a) the Lessee's use and occupancy of the Leased Premises, or from the conduct of the Lessee's business and operations in or about the Leased Premises including the rental of inflatable tubes, kayaks and bicycles; (b) any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease; (c) the negligence or willful acts of the Lessee, or any of the Lessee's agents, employees, invitees or contractors; and (d) against all costs, including reasonable attorney's fees and legal assistant's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceedings brought thereon. In no event, however, shall the Lessor be entitled to indemnification under this Section if such claim arises from any breach or default in the performance of any obligation on the Lessor's part to be performed under the terms of this Lease, or arising from any negligent or willful act of the Lessor, or any of the Lessor's agents, contractors or employees.

19. **INDEMNIFICATION OF LESSEE.** The Lessor shall defend, indemnify and hold harmless the Lessee from and against any and all claims arising from (a) any breach or default in the performance of any obligation on the Lessor's part to be performed under the terms of this Lease; (b) the negligent or willful acts of the Lessor, or any of the Lessor's agents, contractors or employees; and (c) from and against all costs, including reasonable attorney's fees and legal assistant's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In no event, however, shall the Lessee be entitled to indemnification under this Section if such claim arises from any breach or default in the performance of any obligation on the Lessee's part to be performed under the terms of this Lease, or arising from any negligent or willful acts of the Lessee, or any of the Lessee's agents, employees, invitees or contractors. Such indemnification provisions shall be subject to the limitations contained in the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S.

20. **ATTORNEY'S FEES.** In the event of any litigation between the Lessor and the Lessee to enforce any provision of this Lease or any right of either party in this Lease, the substantially prevailing party in such litigation shall be entitled to receive all of its costs and expenses, including reasonable attorney's fees and legal assistant's fees, incurred in such proceeding from the other party. Moreover, if the Lessor, without fault, is made a party to any litigation instituted by or against the Lessee, the Lessee shall indemnify the Lessor against and protect, defend and save the Lessor harmless from all costs and expenses, including attorney's fees and legal assistant's fees, incurred by the Lessor in connection with the same. To the extent permitted by law, the Lessor and Lessee hereby waive their right to a jury trial in any legal proceeding related to this Lease.

21. **LESSOR'S RIGHTS RESERVED.** The Lessor reserves the following rights, exercisable without notice and without liability to the Lessee for damage or injury to property, persons or business, and without effecting an eviction, constructive or actual, or disturbance of the Lessee's use or possession, or giving rise to any claim for setoff or abatement of rent:

- a. To enter the Leased Premises at all reasonable times for the purpose of examining or inspecting the same; and
- b. To have and retain a paramount title to the Leased Premises free and clear of any act of the Lessee.

The Lessor shall use reasonable efforts upon any entry into the Leased Premises not to unreasonably interrupt or interfere with the Lessee's use, enjoyment and occupancy of the Leased Premises.

22. **ASSIGNMENT AND SUBLETTING.** The Lessee shall not sublet, assign, encumber, or otherwise transfer any interest in this Lease or the Leased Premises without the expressed written consent of the Lessor having been first obtained, which consent need not release the Lessee from any obligation under this Lease. Any sublease, assignment, transfer or sale of this Lease, or any part thereof, by the Lessee without the expressed written consent of the Lessor shall be invalid, null and void. It is further understood and agreed, however, that the Lessor shall have the right to freely assign and transfer the Lessor's interest in and to this Lease or the Property or the Leased Premises and the Lessee shall remain bound under the terms of this Lease without the necessity of an express attornment to any such assignee or transferee.

23. **NOTICES.** Any notice by either party to the other shall be in writing and shall be deemed to be duly given if delivered personally or mailed ordinary first class mail, postage pre-paid, addressed to the addresses first above set forth, or to such other addresses as the parties may designate in writing. Notice shall be deemed to have been fully given, if personally delivered upon delivery thereof, and if mailed one (1) day after the mailing thereof.

24. **SURVIVAL OF RIGHTS.** Any termination of this Lease (however occasioned) shall not affect the accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

25. **INTERPRETATION.** If any clause or provision of this Lease is determined by a court to be illegal, invalid, null, void or unenforceable under present or future laws, then it is the intention of the parties to this Lease that the other terms and provisions of this Lease shall remain in full force and effect. No assent, expressed or implied, to any breach of any one (1) or more of the covenants of this Lease shall be taken or deemed to be a waiver of any succeeding or other breach. Subject to Section 22 limiting assignments and subletting, this Lease shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties. This Lease shall be governed by, and construed and enforced, in accordance with the laws of the State of Colorado. Any word contained in the text of this Lease shall be read

as singular or plural and in the masculine, feminine or neuter gender as may be applicable in the particular context. The captions of sections in this Lease are for convenience only, are not part of this Lease, and do not in any way limit or amplify any term, condition or covenant. This Lease contains all of the agreements, understandings and representations between the parties. No term of this Lease shall be altered, amended, waived or modified to any extent, except by written instrument executed by both parties. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Time is of the essence under this Lease.

26. **EXECUTION OF OTHER DOCUMENTS.** Each party agrees to execute and deliver all other documents requested by the other party necessary to carry out the terms of this Lease and such documents will contain all of the standard terms normally contained in such documents, together with all relevant terms and provisions of this Lease.

27. **STATEMENT OF PERFORMANCE.** Lessor agrees to furnish Lessee, or any creditor of Lessee, from time to time, upon written request therefor, a statement wherein Lessor shall acknowledge that as of the date of such statement, Lessee has performed and observed all of the covenants and conditions herein stated to be performed and observed by Lessee, and that as of said date, the leasehold estate hereby created and granted to Lessee is free of any default hereunder; provided, however, Lessor is not required to furnish Lessee or any other person with such statement more than once during any calendar year, or if at the time it is requested, Lessee is in default hereunder.

IN WITNESS WHEREOF, the parties have signed this Lease as set forth below to be effective the day and year first written above.

TOWN OF EAGLE, COLORADO, a  
municipal corporation, acting by and  
through its Board of Trustees

By: \_\_\_\_\_  
Anne McKibbin, Mayor

ATTEST:

\_\_\_\_\_  
Jenny Rakow, Town Clerk

EAGLE TUBING &  
PHOTOGRAPHY, LLC, a Colorado  
limited liability company

By: \_\_\_\_\_  
Ken Hoeve, Manager



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## CERTIFICATE OF RECOMMENDATION

**TO:** Board of Trustees

**FROM:** Department of Community Development

**DATE:** June 21, 2016

**PROJECT NAME:** Colorado Slab & Tile – Outside Storage

**FILE NUMBER:** SU16-02

**APPLICANT:** Jason Kaples

**LOCATION:** 12 Eagle Park East

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:**  
Section 4.05.010 (Special Use Permit)  
Section 4.04.100 (Supplementary Regulations and Standards)  
Section 4.07 (Development Standards)

**EXHIBIT(S):** A. Application Packet  
B. Staff's recommendations for outside storage areas  
C. Aerials

**PUBLIC COMMENT:** 1. Email from Bob & Katherine Senn

**STAFF CONTACT:** Matt Farrar (Assistant Town Planner)

**REQUEST:** Special Use Permit to allow for outside storage of stone slabs.



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## **DISCUSSION:**

This file was continued to June 21, 2016 from its originally scheduled hearing date of June 14, 2016.

The applicant currently leases the property located at 32 Eagle Park East Drive, where they operate Colorado Slab and Tile. The applicant recently purchased 12 Eagle Park East Drive, the former location of Sinton Dairy. The applicant purchased 12 Eagle Park East Drive with the intent of having a corner location along Chambers Avenue to showcase their business. The applicant has expressed that this facility will be used as a location to allow customers to design slabs for their kitchens and bathrooms, as well as a location to show customers the slabs that have been designed for them. The applicant also plans to use space in the building for their office.

The applicant has expressed a desire to install a 6' tall chain-link fence around the perimeter of the property to allow their stone slabs to be visible from Chambers Avenue, while also keeping non-customers out of the on-site storage areas. Please refer to *Exhibit A*.

When contacted by the applicant, staff informed the applicant that "Outside Storage" in the Commercial General (CG) zone district necessitated a Special Use Permit and that a 6' tall fence in a required front yard (i.e., the sides of the property that front on Eagle Park East Drive and Chambers Avenue) would require a Zoning Variance. Therefore, the applicant has submitted applications for both a Special Use Permit and a Zoning Variance. The applicant's Zoning Variance application was approved by the Planning and Zoning Commission at their meeting on June 7, 2016.

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## **STANDARDS FOR SPECIAL USE PERMIT (SECTION 4.05.010):**

Listed below are the findings required by Section 4.05.010 of the Land Use & Development Code for approval of a Special Use Permit:

1. The proposed use is consistent with the provisions of this Chapter and with the Town's goals, policies and plans, and
2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, and
3. Street improvements adequate to accommodate traffic volumes generated by the proposed use and provision of safe, convenient access to the use and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the Town, and
4. The special conditions for specific uses, as provided in this Section, are met.



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## FINDINGS FOR SPECIAL USE PERMIT:

### *Standard #1:*

Chapter 4.04 of the Land Use & Development Code permits “Outside Storage” as a Special Use within the Commercial General (CG) Zone District. The subject property is zoned Commercial General (CG) and therefore requires issuance of a Special Use Permit to allow for the desired outside storage.

Section 4.04.100 (M) provides standards for outside storage, which include:

- As a general rule, outside storage shall be situated in the rear yard.
- Outside storage areas in the front yard or on lots with no, or minimal, structures shall be required to provide a front yard street buffer as provided in Section 4.07.010(B).
- Businesses that sell, rent, or lease outside storage items may create a display area in the front yard not to exceed a single area 25 feet by a length of 25% of the lot frontage for the purpose of displaying representative items. All other outside storage items are subject to the requirements in subparagraphs (1) and (2) above.

In addition, Section 4.07.022 (4) states “Chain-link fencing may be used for demonstrated security purposes only and must be vinyl-coated black or green and used in conjunction with plant material that is tightly spaced to create a visual screen. Chain-link fencing shall be restricted to rear yards.”

Staff believes that if the applicant is agreeable to the storage areas shown in *Exhibit B*, and the landscaping recommended along the area fenced in by the chain-link fence, that the proposed outside storage complies with the regulations set forth in the Land Use & Development Code.

12 Eagle Park East Drive is located within an area designated as “Commercial” on the Future Land Use Map of the 2010 Eagle Area Community Plan (2010 EACP). Under the “Intent” of the “Commercial” land use designation, it states:

- A. Provide opportunity for a broad variety of commercial uses important to the local and regional economy.

Under “Character” of the “Commercial” land use designation, it states:

- B. Outdoor storage areas and loading bays are located on the back or sides of properties, and are generally screened from view.

12 Eagle Park East Drive is also located within the “Interstate 70 Influence Character Area.” In the discussion of the I-70 Influence Character Area, the Eagle Area Community Plan emphasizes the importance of encouraging more intensive uses on underutilized properties along Chambers Avenue, while also ensuring that the aesthetic values of the eastern gateway of the town are maintained.



In the “Economic Development and Sustainability” chapter of the 2010 EACP there are variety of recommended strategies that are listed. Some of the recommended strategies that are relevant to this application include:

- Promote businesses and activities that benefit from Eagle’s proximity to the I-70 corridor.
- Work to create more local jobs and additional outlets for goods and services.

In Staff’s opinion, the proposed Special Use Permit helps to facilitate the growth of a local business and therefore complies with many of the objectives of the 2010 EACP. The 2010 EACP also emphasizes the importance of ensuring that development is done in an aesthetic manner and therefore reducing the visual impact of the chain-link fencing around the outside storage area is important in achieving this objective.

*Standard #2:*

Existing uses neighboring 12 Eagle Park East include:

- The existing location of Colorado Slab & Tile at 32 Eagle Park East Drive.
- An office building at 11 Eagle Park East Drive.
- An office building at 850 Chambers Avenue.
- An office building at 31 Eagle Park East Drive.
- A vacant lot at 882 Chambers Avenue.
- The Eagle County Justice Center at 885 Chambers Avenue.

It is staff’s opinion that the proposed outside storage at 12 Eagle Park East Drive, which is adjacent to many other Commercial General (CG) zoned properties, is generally compatible with existing and allowed uses in this part of Eagle.

*Standard #3:*

Street Improvements & Access: The design of Eagle Park East Drive and Chambers Avenue is adequate to accommodate any additional traffic generated by the proposed outside storage.

Staff believes that the parking provided at 12 Eagle Park East is adequate to meet the needs of the outside storage and the office space.

*Standard #4:*

Not Applicable.



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### **PLANNING COMMISSION DISCUSSION:**

The Planning Commission's discussion on the requested Special Use Permit included the following:

- The Commissioners wanted to ensure that the outside storage areas allowed on the property worked for the applicant's business operations. Several of the Commissioners raised questions regarding the functionality of the outdoor storage areas being recommended by staff.
- The Commissioner's discussed various options for fencing in portions of the property, to limit the need to fence the entire perimeter of the property. Ultimately the Commission voted 5-1 in favor of allowing the entire perimeter of the property to be fenced with the proposed chain-link fence.
- The Commissioner's expressed a need for landscaping around the perimeter of the fence to reduce the visual impact of the chain-link fencing. The Commissioner's recommended that landscaping be provided along the perimeter of the fence both on the interior and exterior of the fence and that the landscaping plan be approved by town staff.
- A few Commissioner's raised questions regarding the design of the chain-link fence gates. These Commissioner's questioned if the fence gates could be designed to be more aesthetically pleasing. The Commissioner's did not include a condition regarding the design of the fence gates in their recommendation to the Board.
- The Commissioner's suggested a "tree green" paint color for the fence. The Commissioner's ultimately recommended that the green color of the fence be approved by town staff.

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### **PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission recommended approval of file number SU16-02 based on compliance with Special Use Permit Standards 1, 2 and 3 with the following condition:

1. The chain-link fence shall be painted black or green. Green color to be approved by town staff.
2. Fence shall be setback two (2') feet from the property line to allow for landscaping between the property line and the exterior of the chain-link fence.
3. Landscaping be provided along the fence perimeter, both on the interior and exterior of the fence. Landscaping plan to be approved by town staff.



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**STAFF RECOMMENDATION:**

Staff recommends approval of file number SU16-02 based on compliance with Special Use Permit Standards 1, 2 and 3 with the following condition:

4. The outside storage and 6' tall chain-link be limited to those areas shown in *Exhibit B*.
5. The chain-link fence shall be painted black or green.
6. Landscaping be provided along the exterior of the chain-link fence to minimize the visual impact of the fencing. Shorter landscaping materials (e.g., shrubs, bushes and/or ornamental grasses) are appropriate along the fencing adjacent to Chambers Avenue to allow for the stone slabs to be seen from the public right-of-way. Taller landscaping materials are to be planted along the fencing on the eastern edge of the property. Chain-link fencing should be setback from the property line a minimum of 2' to allow for landscaping to be planted along the exterior of the fencing.

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**BOARD OF TRUSTEES:**

1. Questions of Staff and/or Applicant
2. Public Comment
3. Deliberations



**Colorado Slab & Tile LLC**

0032 Eagle Park East, Eagle CO 81631

970.328.0557

Property : 0012 Eagle Park East, Eagle CO 81631

Our Proposal,

We would like to fence around our property for safety, liability and security. Fence will be a 6" chain-link fence similar to the storage facility across the street by taco bell.

Within the fence line we would like to store and display our stone and remnants. This is not a scrap yard. We will have full size slabs, remnants on display and organized for our customers.

We have already started on cleaning, we are preparing to paint the building and landscape the property by trimming trees and weeding.

We also want to it the property to look nice as it represents both Colorado Slab and Tile as well as the Town of Eagle.

Thank you for your assistance in helping us with this process.

Jason Kaples,

COLORADO SLAB & TILE LLC



Fence.  
6' chain link.



Slab

Marble + Granite  
6' x 13' ea  
x 30 ?

Remnants  
30" x 4'-10"  
x 200.

Court Yard -  
fenced / wood  
and painted.  
to match  
Building

Office Building  
to be painted  
same as existin

Area for "display" slabs. No chain-link fencing.

Shorter landscaping materials.

Outside storage area with 6' tall chain-link fence.

Taller landscaping materials.

 Use of this map should be for general purposes only. The Town of Eagle does not warrant the accuracy of the data contained herein.

1 inch = 50 feet

0 12.5 25 Feet





EXHIBIT  
C



Use of this map should be for general purposes only.  
The Town of Eagle does not warrant the accuracy of  
the data contained herein.

1 inch = 50 feet



## Application for Council Membership

(Please complete both sides of this form)

### Public Employer

The undersigned employer applies for membership in the MOUNTAIN STATES EMPLOYERS COUNCIL, INC., a non-profit employers' association, and will pay membership dues for its support as set forth below. Our membership may be canceled either by our giving appropriate written notice or by action of the Mountain States Employers Council Board of Directors.

**Our annual dues are payable in advance (payable quarterly after first year of membership) and are to be computed on the following formula:**

4.0% of the amount paid as the employer's share of Social Security (Old Age, Survivor, and Disability Insurance) of Federal Insurance Contribution Act taxes (F.I.C.A.) for all of our employees in the regions covered by this membership in the last four (4) full quarters preceding the date of the application. The total annual membership dues are so computed shall not be less than \$1,300 or more than \$5,200. If you pay into a plan other than FICA, you may calculate the dues as follows: 4.0% of 6.2% of your payroll for the last 12 months, excluding any individual annual salary amount over the appropriate Social Security tax limit for the year (\$118,500). The total annual membership dues shall not be less than \$1,300 or more than \$5,200.

Any additional related membership assessment costs will be billed only after consultation and agreement with the member organization. Membership dues do not cover incidental expenses incurred serving a member organization such as travel or mileage, meals and lodging, or other expenses. Additional costs may be incurred for projects involving multi-state issues or other for-fee services. MSEC services are only provided to the management of member organizations in dealing directly with their employees. Membership services are not available where MSEC information/advice is used with any client of the member. MSEC safeguards the confidential information of its members. Please note, however, that protection from disclosure of confidential information can be lost if members share communications with non-attorney staff at MSEC.

Enclosed is our check of \$\_\_\_\_\_ for our membership dues for one (1) year from \_\_\_\_\_, 20\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_\_.

Date \_\_\_\_\_ By \_\_\_\_\_

### I. Location and Nature of Business

Employer	
Street/Zip	Telephone
P.O. Box/Zip	Toll-Free
City/State	Website
Nature of business	In what states do you operate?
Type of employer	<input type="checkbox"/> For-Profit <input type="checkbox"/> Government Employer <input type="checkbox"/> Non-Profit Employer <input type="checkbox"/> 501(C)3
Industry Classification (NAICS Code)	Total Number of Employees Covered by Membership
Do you have government contracts in excess of \$50,000 annually? <input type="checkbox"/> Yes <input type="checkbox"/> No	

**II. Personnel Information**

Please check who should have access to each:	Dues Services	Website	Comp/ Benefit Survey Data
CEO/ED _____ E-mail _____ Phone _____			
CFO/Controller _____ E-mail _____ Phone _____			
Person responsible for HR _____ E-mail _____ Phone _____			
Organization's primary contact with MSEC _____ E-mail _____ Phone _____			
Person responsible for management training _____ E-mail _____ Phone _____			
Person to receive survey questionnaire/reports _____ E-mail _____ Phone _____			
Person authorized to change member data for your organization (Census Contact) _____ E-mail _____ Phone _____ Title _____			
If unionized, please complete the following: Labor union(s) (include local number) _____ Person responsible for labor relations _____ Title _____			
<b>Person, or office, to receive dues billing</b> _____ E-mail _____ Phone _____ Title _____			
How did you find out about MSEC? <input type="checkbox"/> MSEC Website <input type="checkbox"/> MSEC Marketing <input type="checkbox"/> Word of Mouth <input type="checkbox"/> Previous Member <input type="checkbox"/> Previously Worked for a Member <input type="checkbox"/> Referral from Current Member <input type="checkbox"/> Referral from MSEC Employee <input type="checkbox"/> Other (Please list):			
Please list your reason(s) for joining:  			

*For MSEC use only*

Member #:

Geo Code:

NMA Link:

## Jenny Rakow

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**From:** Krista DeHerrera <KDeHerrera@townofgypsum.com>  
**Sent:** Thursday, June 16, 2016 11:20 AM  
**To:** Jenny Rakow  
**Cc:** John Schneiger; Jeff Shroll  
**Subject:** RE: 4th of July

Yes! We welcome the trustees to join us to help serve and or grill at the event.

Our council will be arriving at 6:30pm at Lundgren Theater. They can park backstage along with our council.

We will be serving from 7pm until 9:30pm or until we run out of dogs. It will be from our "Fox Den" building which is the little log cabin to the east of the stage.

We will be serving hot dogs, ice cream, and popcorn.

7:00pm Live music with Soul Sacrifice: A Santana Tribute  
8:45pm (appx) Rose Ashes Fire Dancers  
9:00pm (appx) Fireworks (synchronized to music, 15-20min show)

Should be a really fun event.

### Krista DeHerrera

Marketing & Special Projects Coordinator  
PO Box 130  
Gypsum, CO 81637  
970-524-1727  
970-376-4393 cell  
[www.townofgypsum.com](http://www.townofgypsum.com)



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**From:** Jenny Rakow [mailto:jenny.rakow@townofeagle.org]  
**Sent:** Thursday, June 16, 2016 11:13 AM  
**To:** Krista DeHerrera <KDeHerrera@townofgypsum.com>  
**Cc:** John Schneiger <john.schneiger@townofeagle.org>  
**Subject:** 4th of July

Hi Krista:

Can you send me some information about the 4<sup>th</sup> of July as it pertains to the Town Board serving food to the community. When both Boards met last year, there was an invite to Eagle to participate in this.

Can you give me timeline and location? I want to send reminder and invitation for Eagle Town Board to participate in this and I want to give them as much information and details as I can.

Thank you!

# Jenny Rakow, CMC

Town Clerk

## TOWN OF EAGLE

200 Broadway, PO Box 609, Eagle Co 81631

Phone: 970-328-9623, Fax: 970-328-5203



Sender and receiver should be mindful that all my incoming and outgoing emails may be subject to the Colorado Open Records Act, § 24-72-200.1, et seq.

**TEAK J. SIMONTON**  
Eagle County Clerk & Recorder



P.O. Box 537  
500 Broadway  
Eagle, Colorado 81631-0537  
(970) 328-8710  
[www.eaglecounty.us/clerk](http://www.eaglecounty.us/clerk)  
Recording: (970) 328-8723  
Fax: (970) 328-8716

May 31, 2016

Jenny Ellringer  
Town of Eagle  
Town of Eagle  
P.O. Box 609  
Eagle, CO 81631-0609

Dear District Administrator,

This year's General Mail Ballot Election date is Tuesday, November 8th. If your district will be coordinating questions or candidate races with us, we need to make you aware of some important dates and deadlines.

It is helpful for our planning to know how many entities will be coordinating with us. As soon as possible, and no later than July 29th, please complete the attached form completely and return it to us via email scan, fax or mail.

- **July 29, 2016** 100 days prior - The date by which a political subdivision must notify the clerk's office of intent to participate in the November 8, 2016 Coordinated Mail Ballot Election. C.R.S. 1-7-116(5).
- **August 8, 2016** IGA's will be mailed to participating entities
- **August 30, 2016** 70 Days prior - Political subdivisions participating in the election must return signed Intergovernmental Agreements to the county clerk and recorder. C.R.S. 1-7-116(2) Failure to do so by the deadline will prohibit district from coordinating with Clerk's office.
- **September 9, 2016** 60 Days prior - Last day for the designated election official from each political subdivision to certify the ballot text to the county clerk and recorder. C.R.S. 1-5-203(3)(a)
- **September 27, 2016** 42 Days prior – Political subdivisions shall deliver the full text of any required ballot issue notices (pro/con statements) to the county clerk and recorder in order to be included in the issue mailing. C.R.S. 1-7-904
- **October 17, 2016** First mailing of ballots; continued mailing of ballots through October 31<sup>st</sup>.
- **November 8, 2016** Election Day – First Tuesday of November in odd-numbered years
- **February 6, 2017** Last day for Eagle County Clerk and Recorder to mail invoices to districts for their share of election costs.
- **March 6, 2017** Last day for districts to submit payment for election costs to Clerk's office.

Sincerely,

*Teak J. Simonton*

Teak J. Simonton  
Encl.

Teak Simonton  
Eagle County Clerk and Recorder  
May 31, 2016

Please print or type corrections and responses below and email to [Stacey.jones@eaglecounty.us](mailto:Stacey.jones@eaglecounty.us) or fax your response to 970-328-8716 on or before July 29, 2016.

Is this information correct?

Town of Eagle

Town of Eagle  
P.O. Box 609  
Eagle, CO 81631-0609

Make any corrections in the space below

Contact name and phone # \_\_\_\_\_

Mailing Address: \_\_\_\_\_

E-mail address \_\_\_\_\_

Designated Election Official: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

\*\*\*\*\*

**DO YOU INTEND TO PARTICIPATE IN THE NOVEMBER 8, 2016 COORDINATED MAIL BALLOT ELECTION WITH THE EAGLE COUNTY CLERK AND RECORDER?**

yes \_\_\_\_\_ no \_\_\_\_\_ maybe \_\_\_\_\_

If coordinating with clerk's office:

- Will you have candidate races? yes \_\_\_\_\_ no \_\_\_\_\_
- Will you have a ballot issue or question on the ballot? yes \_\_\_\_\_ no \_\_\_\_\_
  - How many? \_\_\_\_\_
- Will your ballot issues or questions require TABOR notification? yes \_\_\_\_\_ no \_\_\_\_\_  
(all debt or tax increase questions)

If you're not participating with this office:

- Will you be conducting your own mail ballot election? yes \_\_\_\_\_ no \_\_\_\_\_
- Will your mail ballot election require TABOR notification? yes \_\_\_\_\_ no \_\_\_\_\_

**Appendix B**  
**CALENDAR OF EVENTS AND DEADLINES**  
**for**  
**NOVEMBER 8, 2016 GENERAL MAIL BALLOT ELECTION**

**While this calendar may not include all significant dates,  
some key dates are identified for your reference.**

Special districts and political subdivisions planning to coordinate with the clerk's office should be aware of the following deadlines:

- **July 28, 2016** If by 100 days before the election, a political subdivision has taken formal action to participate in an election that will be coordinated by the county clerk and recorder, the political subdivision shall notify the county clerk and recorder in writing. C.R.S. 1-7-116(5)
- **August 8 2016** IGA's will be mailed to participating entities
- **August 30, 2016** 70 Days prior - Political subdivisions participating in the election must return signed Intergovernmental Agreements to the county clerk and recorder. C.R.S. 1-7-116(2)
- **September 9, 2016** 60 Days prior - Last day for the designated election official from each political subdivision to certify the ballot text to the county clerk and recorder. C.R.S. 1-5-203(3)(a)
- **Week of September 19, 2016** Equipment and Logic and Accuracy Testing
- **September 27, 2016** 42 Days prior – Political subdivisions shall deliver the full text of any required ballot issue notices (pro/con statements) to the county clerk and recorder in order to be included in the issue mailing. C.R.S. 1-7-904
- **October 14, 2016** Last date to for political subdivision to cancel election or withdraw ballot issue or question. C.R.S. 1-5-208(2)
- **October 19, 2016** No later than 20 days prior to Election Day, the County Clerk will publish notice of election.
- **October 17, 2016** Ballots mailed
- **October 3, 2016** Deadline to mail ballots. After this date voters have the option of picking up ballots in person at any Voter Service and Polling Center.
- **October 17, 2016** 24-hour ballot drop boxes and interior ballot boxes available in Avon, Eagle and El Jebel Clerk and Recorder locations.
- **October 24 – November 8, 2016** Voter Service and Polling Centers open in all county clerk locations.
- **November 8, 2016** Election Day – First Tuesday following the first Monday of November.
- **November 25, 2016** Deadline to certify election results. Official results will be forwarded to political subdivisions.

**Please keep this list of dates for your reference.**