

Posted: \_\_\_\_\_

Remove:



**Town of New Castle**  
450 W. Main Street  
PO Box 90  
New Castle, CO 81647

**Administration Department**  
**Phone:** (970) 984-2311  
**Fax:** (970) 984-2716  
[www.newcastlecolorado.org](http://www.newcastlecolorado.org)

## **Agenda**

### **New Castle Planning and Zoning Commission Regular Meeting Wednesday, March 25, 2020, 7:00 PM**

#### **Call to Order, Roll Call, Meeting Notice**

**Conflicts of Interest** (Disclosures are on file with Town Clerk & Secretary of State)

#### **Citizen Comments on Items NOT on Agenda**

#### **Public Hearing**

- A. Consider Resolution PZ-2020-04 Recommending Approval of a Conditional Use Permit (CUP) for Veterinary Clinic on Property Located in the Industrial Zone District

#### **Public Hearing**

- B. Consider Continuation of Decision on Resolution PZ-2020-02 Recommending Approval of Castle Valley Ranch PUD Master Plan Amendment Until August 26, 2020

#### **Public Hearing**

- C. Consider Resolution PZ-2020-05 Recommending Approval of Amendments to Section 16.08.040 of the New Castle Municipal Code Concerning the C-1 Zoning Text Amendment.

#### **Comments/Reports**

#### **Review Minutes of Previous Meetings**

- D. Draft Minutes from March 11, 2020

#### **Adjournment**

**Item Attachment Documents:**

- A. Consider Resolution PZ-2020-04 Recommending Approval of a Conditional Use Permit (CUP) for Veterinary Clinic on Property Located in the Industrial Zone District



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**Staff Report**  
**All Dogs and Cats Veterinary Clinic – Conditional Use Permit**  
**Planning Commission – Hearing – March 25, 2020**

Report Date: 3/19/20

**Project Information**

**Name of Applicant:** Lori Pohm & Robert Thorsen

**Applicant's Address/Phone:** 1607 Grand Avenue Suite 11, Glenwood Springs, CO 81601

**Property Address:** 6420, Unit A, CR 335, New Castle, CO 81647

**Property Owner:** Brad & Ruth Mollman, dba Bramco, LLC

**Owner Address/Phone** PO Box 737, New Castle, CO 81647  
Telephone – 970.319.0062  
E-mail: office@bramcollc.com

**Proposed Use:** Veterinary Clinic

**Municipal Code Reference:** Chapter 17.84 – Conditional Uses & Chapter 17.52 – Industrial Uses

**Size of Site:** Lot 1 – 2.881 acres, Lease space Unit A – 4,865 sq. ft.

**Street Frontage:** County Road 335

**Existing Zoning:** Industrial Zone

**Surrounding Zoning:** Industrial Zone/Open Space/County Rural

**Parking Requirements:** For commercial offices other than medical and dental, one space for every 300 square feet of floor space (MC 17.76.020§F). 16 vehicle + 1 van ADA spaces are required based on the floor area.

### **I Description of Application:**

The Applicant requests a conditional use permit to expand their veterinary clinic in Glenwood Springs to the New Castle industrial zone. The proprietors anticipate that a branch in New Castle will provide more effective pet care for both New Castle and Silt residents, many of whom already travel to the Glenwood location. The existing office/warehouse space in Unit A of the Bramco building provides an optimal floor plan for this end.

As a conditional use application, the Planning Commission (P&Z) is required to hold a public hearing in accordance with the procedures set forth in Municipal Code chapter 16.08. Within 30 days after the hearing, P&Z must make one of three recommendations to Town Council:

- 1) Approve the CUP unconditionally;
- 2) Approve the CUP with conditions;
- 3) Deny the CUP.

### **II Application Exhibits:**

- A. Application – February 26<sup>th</sup>, 2020
- B. Owner consent letter – March 3<sup>rd</sup>, 2020
- C. Adjacent uses
- D. Floor plan
- E. Parking plan
- F. Utility plan
- G. Lighting plan
- H. Performance standards agreement – February 25<sup>th</sup> 2020
- I. Public notice
- J. Affidavit of public hearing – March 25<sup>th</sup>, 2020
- K. Property owners within 250'
- L. Agreement to pay consulting fees – February 25, 2020
- M. Lease agreement – January 24<sup>th</sup>, 2020
- N. Deed of trust – July 14<sup>th</sup>, 2008
- O. Request to modify hearing timetable – February 27, 2020
- P. Final plat - Coal Ridge Industrial Subdivision – October 26<sup>th</sup>, 2000

### **III Industrial Zone Requirements:**

The industrial zone states in 17.52.020 – Description that “The purpose of the industrial district is to provide an area for industrial development in the town with minimal adverse environmental effects on the town.” As stated in the industrial zone district (17.52.050 – Conditional Uses), “Any use not specifically defined in the permitted or nonpermitted use categories shall be a conditional use.” By virtue of its exclusion from both lists, a veterinary clinic is thereby subject to the conditional use process.

The industrial zone also has specific land use restrictions. 17.52.060 requires:

- A. All service, fabrication, repair operations and storage of materials shall be enclosed by a fence at least six feet in height. Fences and gates shall be constructed of galvanized chain link.
- B. All loading and unloading of materials shall be conducted on private or town-leased property.

- C. All practical means shall be used to confine odor, noise, glare, and vibration to the site, and to avoid excessive emission of fumes, gases, radiation, liquid waste and smoke.

The operation of a veterinary clinic in the prospective lease space will not violate any of these provisions.

#### **IV Application Requirements:**

The purpose of a conditional use permit is to determine if the nature of the proposed use is appropriate to the location, character of the surrounding development, traffic capacities of adjacent streets, and potential environmental effects, among other factors, that the Town may deem relevant to the type of land use. Although a veterinary clinic may not be strictly classified as an industrial use, by all accounts it is generally compatible with surrounding uses and will add a much needed amenity to this part of the region. The site plans provided in **Exhibit (\*\*\*\*)** intends to demonstrate the compatibility of the clinic with Town code and requirements:

Site Plan:

- (1) Adjacent land uses and location of adjacent structures:  
**Staff Comment** – The Bramco building is bound by the Town of New Castle property to the south side (vacant hillside); Roc Gabossi's lot on the west side, granite and tile retailer, Accents on Tops on the east side, and Frank Breslin Memorial Park to the north.
- (2) Boundary and size of lot  
**Staff Comment** – Exhibits D and O illustrate the boundary and size of lot #1 in the Coal Ridge Industrial Subdivision.
- (3) Boundary location, height and setbacks  
**Staff Comment** – Exhibit O shows the building location within the industrial zone. The overall building height is 30' as identified on the original construction drawings. Setbacks and easements are indicated on the plat.
- (4) Off-street parking and loading areas  
**Staff Comment** – Exhibit E depicts the anticipated off-street parking and loading areas. For commercial offices other than medical and dental, one space for every 300 square feet of floor space is required (MC 17.76.020§F). The building code requires a dedicated ADA van parking place. In sum, 17 spaces would be necessary for the proposed use. Staff contends this total would far exceed the clinic's needs however.

According to MC 17.76.060 Town Council may reduce the number of required spaces in consideration of the following factors:

- Probable number of cars owned by occupants of dwellings in the planned unit development;
- Parking needs of any non-dwelling uses;
- Varying time periods of use; and
- Whatever joint use of common parking areas is proposed.

The Applicant anticipates needing up to four spaces for employees and an additional two spaces for clients. Additionally, because of the nature of use, the parking duration should be minimal for visitors. Also, overflow parking is available in the common areas of the property which can be utilized on occasions of higher demand.

(5) Points of ingress and egress

**Staff comment** – Shown on the plat are two driveways in which to enter and leave the property. Both are compliant with Town standards and therefore can accommodate parking and egress or large vehicles.

(6) Service and refuse areas

**Staff Comment** – Shown on Exhibit E, dumpsters are personally rented by the tenants. There are no known hazardous materials that will need disposal services.

(7) Signs and exterior lighting

**Staff Comment** – Exterior lighting is shown on the lighting design plan, Exhibit G. The applicant will be required to comply with sign code provisions in the municipal code.

(8) Fencing, landscaping and screening

**Staff Comment** – Landscaping and screening is shown on Exhibit F. According to MC 17.52.060§D, adequate screening should be provided on property lines adjacent to Town parks. Currently the building is buffered by mature spruce along the north side of the building.

(9) Compliance with performance standards

**Staff Comment** – The Applicant has submitted a signed document stating they will comply with all performance standards.

(10) Location and size of easements, power poles, fire hydrants, gas lines, water and sewer lines; anticipated utility requirements

**Staff Comment** – No businesses in the industrial zone district in New Castle are connected to Town water and sewer. They are individually shared septic and well water users. Power poles with electrical lines are shown on Exhibit F. Exhibits E & F identify where water storage tanks are buried on the hillside above the building. A buried propane tank is located on the southeast corner of lot 1 on Exhibit A site plan.

### **17.84.070 Alterations**

No approved conditional use may be altered, structurally enlarged, expanded in parking area or expanded in ground area unless the site plan is amended and approved in accordance with the procedures applicable to approval of a conditional use as set out in chapter 17.84 – Conditional Uses

#### **IV 17.84.050 – CUP Approval Criteria and Comments:**

A conditional use application shall be approved only if the town council finds that the application:

1. Is eligible for conditional review under Section 17.84.040;

**Comment: Per MU 17.20.050, a veterinary clinic requires a conditional use approval in the industrial zone. A complete application with all review materials was submitted on February 26, 2019. The public hearing timetable was reduced by the Planning Commission on March 11<sup>th</sup>, which moved the hearing to March 25<sup>th</sup>.**

2. Is generally compatible with adjacent land uses;

**Comment: The proposed use is classified as light industrial or commercial and is therefore generally compatible with neighboring uses. As a veterinary clinic adverse impacts on the community are not likely.**

3. Meets all requirements of Section 17.84.020, is in compliance with this title and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;

**Comment: The proposal anticipates little negative impact on the community and adjacent properties. Furthermore, the Applicant will satisfy the requirements of all adopted building codes and Town codes as described in the conditions of approval.**

4. Is consistent with the comprehensive plan;

**Comment: The New Castle Comprehensive Plan Policy CG-4D maintains that New Castle supports location of compatible commercial/business development that creates a mix of uses, contributes to economic sustainability, job creation, retail/services, non-motorized accessibility and is within or adjacent to predominantly residential areas.**

5. The town has the capacity to serve the proposed use with water, sewer, fire and police protection.

**Comment: The building is completely on well and septic. Fire safety access is sufficient for all occupants. A hydrant is located on the northwest corner of the lot and is supplied by a shared well. The police department anticipates utilizing services of the clinic for impounded animals.**

#### **V Staff Recommendations**

The staff advises the Planning Commission to consider recommending **approval of Resolution No. PZ 2020-04** with the following conditions:

- A. The use approved in the application shall not be conducted until the Town Planner has

issued a conditional use certificate. That certificate shall be issued only after the Applicant has entered into an agreement with the Town specifying that all conditions imposed by the Town council will be completed and that the use and improvements will be in accordance with the approved application site plan and development schedule. The conditional use certificate must be issued within one year of the date of final approval by Town Council, or the application is deemed withdrawn by the Applicant and is of no further force and effect.

- B. No approved conditional use may be altered, structurally enlarged, expanded in parking area or expanded in ground area unless the site plan is amended and approved in accordance with the procedures applicable to approval of a conditional use as set out in chapter 17.84.070.
- C. In the event the Town receives any complaints about the use of the site or observes or becomes aware of any violations of the conditional use approval, the Applicant and/or owner may be summoned before the Town Council in a public meeting to show cause why the permit should not be revoked, suspended, or additional conditions imposed. Such show-cause hearing shall be open to the public and the Applicant or owner may present testimony or offer other evidence on its behalf.
- D. The applicant shall comply with all applicable building, residential, electrical and municipal code requirements including all sign code regulations. Prior to occupancy, the following items must be determined to comply with the adopted Town codes:
  - Fire penetration sealant required at headwall between units and mechanical ducts at floor of mezzanine.
  - Opening protective is required for opening between mezzanine and neighboring unit. Otherwise a fixed wall may be installed to fill the space.
  - Egress stairway required at mezzanine.
  - Fire inspector will verify compliance of fire alarm system.
  - Signage for the accessible bathroom must be installed.
  - Roof leaks will be repaired.
- E. Any added exterior lighting will be dark sky compliant pursuant to the Comprehensive Plan Goal EN-4.
- F. All representations of the applicant in written and verbal presentations submitted to the Town or made at public hearings before the planning commission or Town Council shall be considered part of the application and binding on the applicant.
- G. The applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including without limitation all costs incurred by the Town's outside consultants such as legal and engineering costs.



Planning Department  
 (970) 984-2311  
 Fax: (970) 984-2716  
 Email: tnc@glenwood.net

Town of New Castle  
 PO Box 90  
 450 W. Main Street  
 New Castle, Co 81647

LAND DEVELOPMENT APPLICATION

\$275

Note: You are required to meet with the Town Planner to review a checklist of items applicable to your project before filing this application with the Town. All application materials are subject to the Colorado Open Records Act (CORA), C.R.S. §24-72-201 to 207.

Applicant: Lori D. Pohn + Robert P. Thorsen	
Address: 1607 Grand Ave Suite 11 GWS	Phone: 970-945-6762 FAX: 970-945-8563 E-mail:
Property Owner: Bramco LLC	
Address: P.O. 737 New Castle, Co 81647	Phone: 970-319-0064 FAX: E-mail: ossie@bramcolle.com
Contact Person: Dana Gonzales	
Address: 1607 Grand Ave Suite 11 GWS	Phone: 970-945-6767 FAX: E-mail: danaadc.vet@gmail.com
Property Location/Address: 6420 CR 235, New Castle, CO 81647	
Legal Description: Section: 32 Township: 5 Range: 90 Subdivision: Coal Ridge Industrial Sub-Div lot: 1	Acres:
Existing Zone (e.g., Residential R-1, Commercial C-1): C1	Existing Land Use: Commercial Lease

TYPE(S) OF LAND USE(S) REQUESTED

- |  |  |
|--|--|
| <input type="checkbox"/> Pre-Annexation Agreement<br><input type="checkbox"/> Annexation<br><input type="checkbox"/> Subdivision (Including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations)<br><input type="checkbox"/> Amended Plat<br><input type="checkbox"/> Planned Unit Development (Including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) | <input checked="" type="checkbox"/> Conditional Use Permit or Special Review Use Permit<br><input type="checkbox"/> Lot Line Adjustment or Dissolution<br><input type="checkbox"/> Site Specific Development Plan/Vested Rights<br><input type="checkbox"/> Variance<br><input type="checkbox"/> Zoning<br><input type="checkbox"/> Zoning Amendment<br><input type="checkbox"/> Re-zoning |
|--|--|

Lori D. Pohn DM 2/26/2020  
 Applicant Signature Date

City of New Castle  
Attn: Paul Smith  
[psmith@newcastlecolorado.org](mailto:psmith@newcastlecolorado.org)

03/03/20

Brad & Ruth Mollman  
BRAMCO LLC  
6420 county Rd. 335  
New Castle, CO 81647

To whom it May Concern;

We, Brad and Ruth Mollman, owners of BRAMCO LLC, give our consent for the business 'All Dogs and Cats' to apply for and receive a special use permit to operate their business in the building located at 6420 County Rd. 335, New Castle, Colorado, Space A, located in the northeast corner of the building.

Any questions concerning this Letter of Consent, should be directed to us at the following contact information:

Brad Mollman  
970-404-5541  
Ruth Mollman  
970-319-0062  
105 Mid Valley Drive,  
New Castle, CO 81647  
[mollman@rof.net](mailto:mollman@rof.net)

Thank you for your assistance in this matter,

Sincerely,  
Brad Mollman



Ruth Mollman



# ALL DOGS AND CATS VET CLINIC



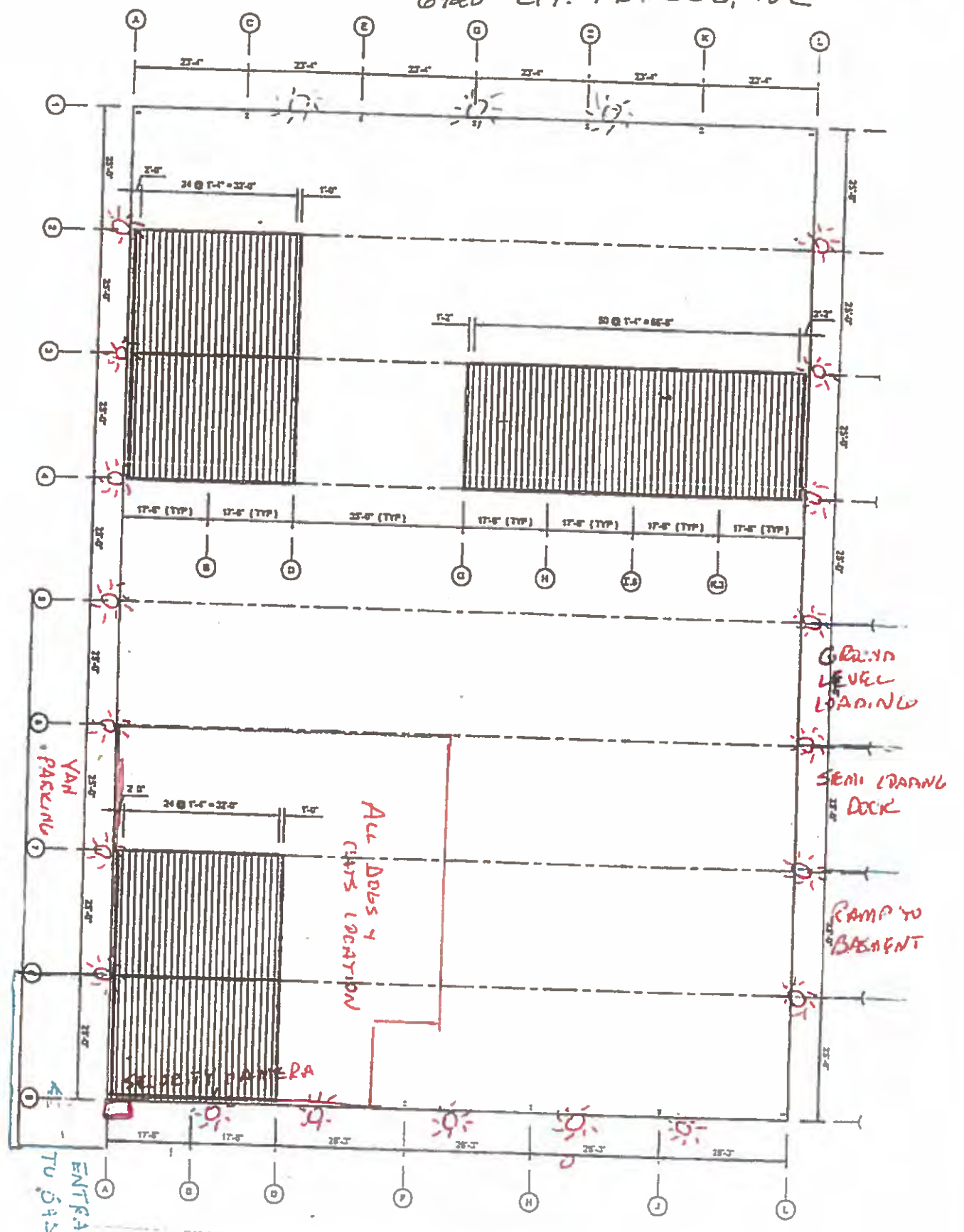
ADJACENT LAND USES







WILKINSON BUILDING  
6420 CRY. RD. 335, NC



EXTERIOR LIGHTING: ☀

N

PERFORMANCE STANDARDS

David Palm DVM ON THIS DATE 2/25/2020 agree to abide by the following PERFORMANCE STANDARDS:

Performance Standards

(A) **Smoke.** No use shall be permitted in any district unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of smoke.

(B) **Particulate Matter.** No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of particulate matter.

(C) **Dust, Odor, Gas, Fumes, Glare or Vibration.** No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of dust, odor, gas, fumes, glare or vibration.

(D) **Radiation Hazards and Electrical Disturbances.** No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to radiation control.

(E) **Noise.** No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to noise.

(F) **Water Pollution.** No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to water pollution.

Source: Ord. 261, Sec. 15.04.090, 1983

## NOTICE OF PUBLIC HEARING Town of New Castle

Date: March 25th, 2020

Time: 7:00 PM

Place of hearing: New Castle Town Hall, 450 West Main Street, New Castle, CO

Public body  
conducting hearing: Planning & Zoning Commission

Brief description  
of application: Conditional Use Permit for a Veterinary Clinic

Legal description: Section: 32 Township: 5 Range: 90 Subdivision: Coal Ridge Industrial Subdivision, Lot 1, according to the plat thereof recorded October 27, 2000 as reception no. 571484, County of Garfield, State of Colorado.

Common address: 6420 CR 335, Unit A, New Castle, CO 81647

Applicant: Lori Pohm

Landowner: Brad Mollman

The complete application is available at the Town Clerk's office at 450 West Main Street, P.O. Box 90, New Castle, CO 81647. All interested persons are invited to appear and state their views, protests or objections. If you cannot appear personally at such hearing, then you are urged to state your views by letter.



Notice of Public Hearing- Town of New Castle

Address 6420 Cr 335, Unit A New Castle

Burning Mountain Land And Cattlettle LLC(Talbot)  
5175 County Rd. 335  
New Castle, Co. 81647

Rocky and Mary Gabossi  
44523 Hwy 6&24  
Glenwood Springs.Co. 81601

Four Sprys Investments LLC  
3792 County Rd. 117  
Glenwood Springs, Co.81601

Ignacio Mendoza & Maria Luisa  
PO Box 72  
New castle, Co. 81647

Town of New Castle  
PO Box 90  
New Castle, Co. 81647

**AGREEMENT TO PAY CONSULTING FEES AND EXPENSES**

It is the policy of the Town of New Castle that all land use applications must be filed in the Office of the Town Clerk to receive formal consideration. Please refer to the Town Clerk's Office for all applicable procedures.

However, the Town encourages land use applicants to consult informally with members of the Town Staff, including outside consultants, prior to filing applications if the applicant has questions regarding areas within Staff members' particular expertise; PROVIDED THAT THE POTENTIAL APPLICANT AGREES TO REIMBURSE THE TOWN FOR ALL FEES AND EXPENSES RELATING TO SUCH INFORMAL MEETINGS.

The Town employs outside consultants for engineering, surveying, planning, and legal advice. These consultants bill the Town on an hourly basis as well as for expenses including but not limited to copies, facsimile transmissions, and long distance telephone calls.

It is the Town's policy that all persons wishing to hold informal meetings with members of the Town Staff acknowledge responsibility for all fees and expenses charged by outside consultants by signing this Agreement below.

I acknowledge and agree to pay the Town of New Castle all actual costs incurred by the Town in relation to legal, engineering, surveying, planning, or other services performed by consultants to the Town as a result of such consultants' review and comment upon, or other services related to, land use proposals and/or applications proposed by me or on my behalf, regardless of whether or not such application is formally filed with the Town. Interest shall be paid at the rate of 1.5% per month on all balances not paid within thirty (30) days of the date of the statement. In the event the Town is forced to pursue collection of any amounts due and unpaid, the Town shall be entitled to collect all costs of collection in addition to the amount due and unpaid, including but not limited to reasonable attorney's fees and costs.

SO AGREED this 25 day of Feb, 2020

Lori D. Pohn D/M  
Applicant (Print Name)

Lori D. Pohn D/M  
Signature of Applicant

970-945-6767  
Telephone

1607 Grand Ave Suetell  
Mailing Address of Applicant

Glenwood Springs  
CO 81601

Brad Mollman  
Property Owner  
Brad Mollman 02/27/2020  
Signature of Property Owner

Brad Mollman PO Box 737 New Castle CO 81647  
Mailing Address if different from above

Landlord and Property Owner  
Relationship to Applicant or Potential Applicant

Type of application: Business license / Special use Permit  
Property description: Section 32 Township 5 Range 90 Subdivision 1  
Cowdridge Industrial Sub-Div lot: 1

**LEASE AGREEMENT**

**THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.**

THIS LEASE AGREEMENT (hereinafter "Lease") is made and entered into this 24 (th) day of January, 2020, by and between Bramco, LLC, (hereinafter "Landlord") whose address is PO Box 737, New Castle, CO 81647, and All Dogs and Cats, whose address is 1607 Grand Ave, #11, GWS, CO 81601 (hereinafter "Tenant").

**WITNESSETH**

1. **LEASED PREMISES.** In consideration of the mutual covenants and agreements set forth herein, Landlord does hereby lease to Tenant and Tenant does hereby lease from the Landlord, the property known as 6420 Cnty Rd 335, Space A, New Castle, CO 81647, consisting of approximately 3,050 sqft, (the "Leased Premises") under the following terms and conditions. The Leased Premises are part of that building commonly known as the Bramco Bldg, (the "Building").

2. **TERM.** The term of this Lease shall be for a period of twenty four (24) months, to commence on March 1st, 2020, and to end on Jan 31st, 2022. Tenant shall have one (1) option for an extension of twenty four (24) months, to commence on March 1st, 2022, and extend until Jan 31st, 2024. Tenant shall give Landlord written notice 90 days before expiration of initial lease term if they will exercise such an option. If they do not provide written notice, Tenant shall be on month to month rent until/if Landlord chooses to remove Tenant from Premises. Option to renew shall be at a 3% CPI base rent increase annually thereafter.

3. **RENT.** Tenant shall pay to the Landlord, as rent for the Leased premises, payable to Bramco, LLC, at PO Box 737 in New Castle, CO 81647, in advance without demand and without deduction, the total sum of [REDACTED] in equal monthly installments in the amount of [REDACTED] base rent plus NNN cost. Upon Lease execution, Tenant shall make payment to Landlord of the first month's rent for the period of March 2020, in the amount of [REDACTED] plus a Security Deposit as referenced in Paragraph 6 below. Also due at lease execution is NNN cost due for the month of March in the amount of [REDACTED] NNN cost to include taxes and insurance, prorated annually, and paid monthly. NNN cost for the year of 2020 is [REDACTED]

Tenant's rent excludes the cost of electric, propane, and trash utilities for the Leased Premises. Tenant shall establish an account for electric, trash, and any other necessary utilities in Tenant's name and pay all amounts for same on or before the due date of each utility payment. Water and sewer are paid for by the Landlord. Landlord will bill Tenant on a monthly basis for Propane usage, which will be paid by Tenant upon receipt. Failure to pay utilities for which Tenant is responsible on or before the due date shall constitute an event of default under this Lease Agreement. Landlord shall not be liable to the Tenant for any damages should the furnishing of any utilities to the Leased Premises be temporarily interrupted because of necessary repairs or improvements or any cause beyond the reasonable control of the Landlord.

**4. ADDITIONAL RENT.**

A. If said monthly payments are not paid on or before the 10th day of each month, Tenant shall pay a late charge of 5% of the monthly payment in addition to the monthly payment provided herein.

Landlord [Signature] Tenant [Signature]

B. In the event all or part of the combined rent as described in Paragraph 3 or Section A of this Paragraph 4 is delinquent beyond the 30th day of the month in which it is due, the delinquent amount (plus the related late payment additional rent) shall bear interest at the rate of one and one-half percent (1.5%) per month.

C. If Tenant's check is returned due to insufficient funds, Tenant will be charged a \$50.00 returned check fee. In addition, if the returned check causes the rent to be paid after the tenth (10<sup>th</sup>) day of the month, Tenant will also be charged a late fee in accordance with Paragraph A above.

D. If Tenant's delinquency in rent payment requires issuance of a Three-Day Notice to Quit, Tenant shall be charged \$50 per issuance.

E. If the Tenant makes a rental payment with a check which does not clear the bank on which it is drawn when it is submitted, (i) the rental for that month shall continue to be deemed unpaid until Tenant delivers to Landlord the amount of such rental (together with any additional rental which may have accrued) in the form of electronic transfer, a cashier's check or certified funds, and (ii) after a second rental payment with a check that does not clear the bank on which it is drawn is submitted, and throughout the remainder of the term of this Lease, a personal or business check shall be an unacceptable method of paying rent hereunder and all of Tenant's subsequent rental payments must be in the form of electronic transfer, a cashier's check or certified funds

Landlord need not give any notice to be entitled to these payments, and such additional rents shall in no way be construed to limit Landlord's remedies in the event of such default, which remedies shall in all cases hereunder be deemed to be cumulative.

5. **TENANT DEFAULT CONSEQUENCES.** In the event Tenant defaults on any of his obligations under the Lease, including the failure to pay rent when due, Tenant agrees to pay any and all costs of collection, including any court costs and reasonable attorney's fees.

6. **SECURITY DEPOSIT.** Upon Tenant's signing of this Lease, Tenant shall deliver to Landlord the Security Deposit in the amount of \_\_\_\_\_, to be held by Landlord without interest as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that such deposit is not an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. If any time during the term of this Lease, any rent or other payment shall be overdue and unpaid (including payments to utility service providers), or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid, then Landlord may at the option of Landlord (but Landlord shall not be required to) appropriate and apply any portion of the Security Deposit to the payment of any such overdue rental or other sum. In the event of the failure of Tenant to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant, then Landlord at its option may appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate Landlord for loss or damage sustained or suffered by Landlord due to such breach on the part of Tenant. Should the Security Deposit or any portion thereof be appropriated and applied by Landlord for the payment of any sums due and payable hereunder, or for a breach on the part of Tenant, the Tenant shall, within five days after the written demand of Landlord, forthwith remit to Landlord a sufficient amount to restore the Security Deposit to the original sum deposited. Landlord shall have the right to commingle the Security Deposit with other funds of Landlord. Subject to Tenant compliance with all of the terms, conditions and covenants of this Lease and the prompt payment of all amounts due, and all

other sums payable by Tenant to Landlord hereunder, the Security Deposit shall be returned to tenant in full within thirty (30) days after the expiration or termination of this Lease.

## 7. TENANT'S USE AND CARE OF LEASED PREMISES

A. Tenant accepts the Leased Premises in present "AS IS" condition and at the expiration of the Lease shall surrender and deliver up said Leased Premises in as good condition as they were in at the time Tenant accepted and entered into possession of same, ordinary wear excepted.

B. Tenant shall utilize the Leased Premises for the purpose of their veterinary business, and for no other use without Landlord's prior written consent. Landlord expressly reserves the right to withhold its consent to any change of use or purpose in its sole and unrestricted discretion.

C. Tenant will not use, occupy, or permit the Leased Premises or any part thereof to be used or occupied for any unlawful or illegal business, use, or purposes deemed by the Landlord to be disreputable, or hazardous, nor in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, State of Colorado, County of Garfield, City of New Castle, or other municipal, governmental, or lawful authority whatsoever. Tenant shall not perform any act or carry on any practices which may injure the Building of which the Leased Premises form a part or disturb or be a nuisance to or endanger other tenants or customers of the Building. Tenant shall not cause or permit any noxious or offensive odors or sounds to exist in or around the Leased Premises.

D. Tenant shall not do or permit anything to be done in or about the Leased Premises or bring or keep anything therein which will in any way increase the rate of fire insurance upon the Building wherein the Leased Premises are situated. Tenant shall, at its sole cost and expense, comply with any and all requirements of any insurance company necessary for the maintenance of reasonable fire and public liability insurance covering the Building and/or the Leased Premises. Tenant shall promptly comply with all laws, rules, ordinances, orders, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation, cleanliness, safety or alteration of the Leased Premises, including the installation of such additional facilities as may be required for the conduct and continuance of Tenant's business on the Leased Premises, all at Tenant's sole cost and expense. No fire, auction, going out of business or bankruptcy sales may be conducted on the Leased Premises without Landlord's prior written consent.

E. Tenant shall at all times and at its expense keep the Leased Premises and every aspect thereof in a good, safe, clean and attractive condition, free from dirt, rubbish, snow, ice, obstructions, and unsightly or hazardous conditions. Tenant shall not use any electrical equipment, which, in the Landlord's reasonable opinion, will overload the wiring installations or interfere with the reasonable use thereof by the Landlord. In addition, Tenant will not assign this Lease nor sublet the Leased Premises nor any part thereof without the prior written consent of the Landlord thereto and endorsed in writing and signed by both parties.

F. The Tenant shall also comply with all reasonable rules and regulations of the Landlord in effect at the time of the execution of this Lease or at any time and from time to time reasonably

promulgated by the Landlord, which the Landlord in its reasonable discretion shall deem necessary in connection with the Leased Premises or the Building.

8. **SURRENDER.** Tenant agrees to and shall, on expiration or sooner termination of this Lease or any extended term hereof, promptly surrender and deliver the Leased premises to the Landlord without demand thereof and in good condition, except for ordinary wear and tear.

Landlord shall have the right to show the Leased Premises during the ninety (90) day period prior to Term expiration or ten (10) days after notice to vacate is received, whichever occurs first. Tenant shall not remove any of its property from the Leased Premises upon termination of the Lease without prior written approval of the Landlord, except during Landlord's normal working hours. In the event Landlord consents to Tenant's removal of personal property of the Tenant's, before or after normal business hours, any expenses incurred by Landlord as a result thereof, including but not limited to expenses for personnel, security, utilities, and the like, shall be paid by the Tenant.

9. **NOTICES.** Wherever any notice is required or permitted hereunder, such notice shall be in writing, directed to the respective parties at their addresses as listed herein below, or to such other address as Landlord or Tenant may hereafter specify by written notice to the other.

LANDLORD: Bramco, LLC  
PO Box 737  
New Castle, CO 81647

TENANT: All Dogs and Cats Veterinary Clinic  
1607 Grand Ave. #11, GWS, CO 81601

#### 10. REPAIRS & MAINTENANCE.

A. **Landlord's Covenants.** Landlord shall keep in good order, condition and repair, the foundation, structure, sidewalks, parking lot, exterior walls and windows (except the interior faces thereof and the interior of all windows and doors within the Leased Premises), downspouts, gutters and roof of the Building. The Landlord shall also maintain the building's mechanical systems including heating, air conditioning, plumbing, and facilities outside the Leased Premises and outside other leasable spaces in the Building. The Landlord shall not be required to make any repairs occasioned by the negligence or willful acts of Tenant, its agents, employees, contractors, subtenants, licensees, invitees or customers, which repairs shall be made by Tenant, at Tenant's expense, or by Landlord, at Tenant's expense. Landlord shall make necessary repairs within a reasonable period of time after receipt of written notice from Tenant as to the need thereof. Landlord also agrees to maintain in a good and attractive condition the common stairways, parking lot, and the patio areas of the Building, and to remove ice and snow there from as necessary; *provided however*, that if such maintenance is necessitated by the negligence or willful acts of Tenant, its agents, employees, contractors, subtenants, licensees, invitees or customers, such repairs shall be made by Tenant, at Tenant's expense, or by Landlord, at Tenant's expense.

B. **Tenant's Covenants.** Throughout the entire term of this Lease, Tenant agrees to keep and maintain the Leased Premises and each and every aspect thereof, including without limitation non-structural elements, including interior walls, floors, ceilings, utility systems and components, glass, windows, doors, fixtures, leasehold improvements, equipment and other personally owned equipment, in a clean, safe and attractive condition and in good working order and repair, at Tenant's sole cost and expense. Tenant agrees that any repairs or replacements of any kind within or upon the Leased Premises shall be at least equal in quality to the original items repaired or replaced. In the event Tenant fails or refuses to perform any of such covenants within the 20 day period following written notice of the need therefor from Landlord to Tenant, Tenant shall be in default under this Lease, and Landlord shall have the right, but never the obligation, to accomplish such maintenance or repair and to add the cost thereof as additional rent to the next installment of fixed minimum rent which becomes due hereunder. Upon the expiration or other termination of this Lease, Tenant shall deliver up the Leased Premises to Landlord in good order and condition, wear and tear from the reasonable use thereof excepted.

11. **TENANT ALTERATIONS, IMPROVEMENTS OR ADDITIONS.** Tenant shall not make any alterations, improvements, and/or additions to the Leased Premises or the exterior of the Building or the surrounding property without first obtaining Landlord's written consent to the plans, specifications and working drawings therefor. Landlord's approval shall create no responsibility or liability on the part of Landlord for the completeness or design sufficiency of such plans, specifications or drawings or for the compliance thereof with all laws, rules and regulations of governmental authorities. All approved changes shall be accomplished by Tenant in a good and workmanlike manner, in compliance with all governmental requirements, and at Tenant's sole cost and expense, and Tenant expressly agrees to keep Landlord's property free of mechanic's liens and other claims in connection therewith. All alterations, improvements, and/or additions to the Leased Premises shall, at Landlord's option, remain as the property of the Landlord after termination of the Lease. To the extent Landlord does not elect to keep such alterations, improvements, and/or additions, Tenant shall, at Tenant's expense, remove them and restore the Leased Premises to a condition similar to the condition of the Leased Premises upon delivery of possession thereof under this Lease.

12. **LANDLORD NOT LIABLE FOR DAMAGES; INDEMNIFICATION.** Landlord shall not be liable to Tenant or to any other person whatsoever for any damages arising from the breakage, leakage, overrunning, obstruction, interruption, failure or discontinuance of all or any part of any utility or utility system in or about the Leased Premises or the Building, or from water being upon or coming through the roof or vents, due to causes other than the gross negligence or willful misconduct of Landlord, nor for any damages arising from any acts or neglect of co-tenants or other occupants of the Building or of adjacent property, or the public. As used herein, the term "damages" shall include lost profits.

The Tenant shall indemnify and hold harmless the Landlord against all expenses, liabilities, and claims of every kind, including reasonable attorney's fees, by or on behalf of any person or entity arising out of: (i) Any injury, damage, wrongful death, property damage, or related claims happening on or about the Leased Premises unless caused by Landlord; (ii) Tenant's failure to comply with any law, ordinance, or resolution of any governmental entity; (iii) Any mechanic's lien or security interest filed against the Leased Premises for alterations, fixtures, or improvements thereon made by Tenant, or for any other reason arising out of work done by or on behalf of the Tenant; and (iv) Any failure by Tenant to perform any of the terms and conditions of this Lease.

13. **ACCESS TO PREMISES.** Landlord and its authorized representatives shall have the right to enter upon the Leased Premises at all reasonable hours (and in emergencies, at all times) to inspect the same, to make repairs, additions or alterations to the Leased Premises and/or the adjoining premises or the Building, and for any other lawful purpose. Except in emergencies, Landlord agrees to provide Tenant with reasonable notice whenever it deems it necessary to enter upon the Leased Premises. For a period commencing ninety (90) days prior to the end of the Lease term, Landlord may have reasonable access to the Leased Premises for the purpose of exhibiting the same to prospective tenants and to post "For Lease" signs upon the Leased Premises.

14. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or in any manner transfer or encumber this Lease or any estate or interest therein, or sublet the Leased Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Leased Premises without the prior written consent of Landlord. Any such assignment, subletting, or creation of security interest or encumbrance in violation hereof shall be void. In the event of any such permitted assignment, subletting, licensing, or granting of a concession, Tenant shall nevertheless remain liable for the performance of all of the terms, conditions, and covenants of this Lease

15. **DAMAGE OR DESTRUCTION.** In case the Leased Premises shall be partially or totally destroyed by fire or other casualty insured under the Landlord's fire and extended coverage risk insurance, the same shall be repaired as speedily as possible at the expense of Landlord, unless Landlord shall elect not to rebuild as hereinafter provided.

A. If fifty percent (50%) or more of the Building shall be damaged or destroyed, or if the Building is damaged or destroyed to the extent of at least thirty three and one third percent (33.3%) of the replacement cost thereof, or in the event the Leased Premises shall be partially or totally destroyed by a cause or casualty other than those covered by Landlord's fire and extended coverage risk insurance, then in any such event, Landlord may, if it so elects, rebuild or put the Building in good condition and fit for occupancy within a reasonable time after such destruction or damage, or may within 60 days after such occurrence give Tenant notice in writing terminating this Lease as of the date of such occurrence. If Landlord elects to repair or rebuild the Building, it shall, within sixty (60) days after such occurrence, give Tenant notice of its intention to repair and then proceed with reasonable speed to make such repairs. Unless Landlord elects to terminate this Lease, this Lease shall remain in full force and effect, and rentals shall continue to be paid as provided in Paragraph 3 of this Lease.

B. Tenant agrees that during any period of reconstruction or repair of the Leased Premises or the Building it will continue the operation of its business within the Leased Premises to the extent reasonably possible. During the period from the occurrence of the casualty until Landlord's repairs are completed, the fixed minimum rental shall be reduced to such extent as may be fair and reasonable under the circumstances. However, there shall be no abatement of the other charges or additional rental provided for herein, and under no circumstances shall Tenant be entitled to compensation for lost profits. Finally, in no event shall Tenant be entitled to any rent abatement if the fire or other casualty shall be the result of carelessness, negligence or improper conduct of Tenant or Tenant's agents, officers, directors, employees, invitees, customers, licensees or subtenants. In such case, Tenant's liability for the payment of rent and the performance of its other Lease obligations shall

continue and Tenant shall be liable to Landlord for all damage and loss suffered by Landlord in connection therewith.

C. Landlord agrees that if the Leased Premises are so damaged by a cause other than the carelessness, negligence or other improper conduct of the Tenant or its agents, employees, invitees or customers as to be unusable by Tenant for its intended purposes, and if the Leased Premises cannot be restored to a usable condition within sixty (60) days following the date the damage occurred, then Tenant shall have the right to terminate the Lease by giving written notice to Landlord effective the date of the occurrence. If Landlord and Tenant cannot agree as to whether restoration can be accomplished within said sixty (60) day period, then they shall select an independent local contractor to make the determination, which determination shall be binding on the parties. Tenant's notice of termination must be given within ten (10) days following the mutual determination by Landlord and Tenant or the termination by the independent contractor, as the case may be. If Tenant does not give timely notice of termination, then Tenant shall be deemed to have waived its right to terminate the Lease under this provision.

16. **SIGNAGE.** Any sign or door lettering is to be designed, produced and installed by Tenant (or Tenant's agent), at the sole expense of Tenant. All exterior signs and lettering must receive the prior written consent of Landlord (or Landlord's agent). Tenant agrees to install any permitted exterior signs in strict conformance with all municipal codes, any applicable association restrictions, and Landlord's sign criteria as to design, material, location, size and style of lettering.

17. **GOVERNING LAW AND JURISDICTION.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Lease. Tenant understands and agrees that the Federal and State courts located in the State of Colorado shall have subject matter jurisdiction to entertain any action brought to enforce this Lease and, by execution hereof, voluntarily submits to the personal jurisdiction of such courts.

18. **INSURANCE.** Tenant shall carry, at its sole expense, any and all desired insurance, insuring Tenant's interests in its improvements, personal effects, and other property owned, Leased, held, or possessed by Tenant and contained therein.

19. **TENANT'S DEFAULT.** Tenant's right in and to the Leased Premises depends upon the performance and keeping of the covenants, agreements, duties, and obligations of Tenant set forth in this Lease. In the event of any default hereunder, then Landlord shall have the following rights and remedies in addition to all other rights provided in this Lease or by law or in equity:

A. Without canceling this Lease, Landlord may re-enter and re-let the Leased Premises or any part thereof, for such rent, upon such provisions, for such period and to such person or persons as may seem proper to Landlord, it being understood that Landlord will use diligence to find a new tenant or tenants and that Landlord will not unreasonably withhold Landlord's consent and acceptance of any tenant or tenants proposed by Tenant if such proposed tenant or tenants possess good reputation and financial stability and if the zoning and other governmental regulations permit the use proposed by said new tenant and such use shall, in the sole opinion of the Landlord, be compatible with land usage of adjacent property. Tenant agrees that such acceptance of a tenant or tenants by Landlord in place of Tenant shall not operate as a cancellation of this Lease nor to release Tenant from the performance of any of Tenant's obligations under this Lease.

B. Landlord may cancel this Lease and all rights of Tenant in the Leased Premises, in which event all rights and duties whatsoever of both Landlord and Tenant under this Lease shall cease as of the date of such cancellation, and the leasehold estate hereby created shall cease to exist; *provided however* that Tenant shall remain responsible for rent and other costs, damages, and expenses described herein for the duration of the Lease term.

The rights and remedies provided above are cumulative. In addition to the rights and remedies set forth above, Landlord shall have all the rights and remedies provided by law whatsoever, including in particular, but not limited to, the right at all times to recover damages, and also all other rights granted by this Lease.

20. **ENTIRE AGREEMENT.** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this agreement. This agreement constitutes the sole and only agreement of the parties thereto and supersedes any prior understanding or written or oral agreements between the parties respecting the subject matter within it.

In Witness Whereof, the undersigned Landlord and Tenant hereto execute this agreement on the date first above written.

Landlord: *STAIR WAY & firewalls will be completed BY LANDLORD PRIOR TO MAR. 1, 2020*

Bramco, LLC

By:

*[Signature]*  
\_\_\_\_\_

Tenant:

All Dogs and Cats

By:

*David D. Palm DVM*  
*Robert P. Thoren DVM*  
\_\_\_\_\_

**RECORDATION REQUESTED BY:**  
Alpine Bank, A Colorado Banking Corporation  
Alpine Bank New Castle  
810 Castle Valley Boulevard  
New Castle, CO 81647

**WHEN RECORDED MAIL TO:**  
Alpine Bank  
400 7th Street South  
Rifle, CO 81650

**SEND TAX NOTICES TO:**  
BRAMCO, LLC, A COLORADO LIMITED  
LIABILITY COMPANY  
PO BOX 737  
NEW CASTLE, CO 81647

FOR RECORDER'S USE ONLY

**DEED OF TRUST**

**MAXIMUM PRINCIPAL AMOUNT SECURED.** The lien of this Deed of Trust shall not exceed at any one time \$750,000.00 except as allowed under applicable Colorado law.

**THIS DEED OF TRUST** is dated July 14, 2008, among BRAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY ("Grantor"); Alpine Bank, A Colorado Banking Corporation, whose address is Alpine Bank New Castle, 810 Castle Valley Boulevard, New Castle, CO 81647 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and the Public Trustee of GARFIELD County, Colorado (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor hereby irrevocably grants, transfers and assigns to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances, all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in GARFIELD County, State of Colorado:

**LOT 1  
COAL RIDGE INDUSTRIAL SUBDIVISION  
ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 27, 2000 AS RECEPTION NO. 571484.  
COUNTY OF GARFIELD  
STATE OF COLORADO**

The Real Property or its address is commonly known as 6420 COUNTY ROAD 335, NEW CASTLE, CO 81647.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or

DEED OF TRUST  
(Continued)

contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary, whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Colorado law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the Existing indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not

been disbursed within 180 days after the receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Compliance with Existing Indebtedness.** During the period in which any Existing indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing indebtedness shall constitute compliance with the insurance provisions under this Deed of Trust, to the extent compliance with the terms of this Deed of Trust would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Deed of Trust for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing indebtedness.

**Grantor's Report on Insurance.** Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to comply with any obligation to maintain Existing indebtedness in good standing as required below, or to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying off taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing indebtedness section below or in any title insurance policy, title report or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**EXISTING INDEBTEDNESS.** The following provisions concerning Existing indebtedness are a part of this Deed of Trust:

**Existing Lien.** The lien of this Deed of Trust securing the indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as

provided above in the Taxes and Loans section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES: ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney in fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** Upon the full performance of all the obligations under the Note and this Deed of Trust, Trustee may, upon production of documents and fees as required under applicable law, release this Deed of Trust, and such release shall constitute a release of the Lien for all such additional sums and expenditures made pursuant to this Deed of Trust. Lender agrees to cooperate with Grantor in obtaining such release and releasing the other collateral securing the indebtedness. Any release fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**Default in Favor of Third Parties.** Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Existing Indebtedness.** The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing such indebtedness, or a default occurs under the instrument securing such indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Grantor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**Foreclosure.** Lender shall have the right to cause all or any part of the Real Property, and Personal Property, if Lender decides to proceed against it as if it were real property, to be sold by the Trustee according to the laws of the State of Colorado as respects foreclosures against real property. The Trustee shall give notice in accordance with the laws of Colorado. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including but not limited to Trustee's fees, attorneys' fees, and the cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled to the excess.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Receiver may be appointed by a court of competent jurisdiction upon ex parte application and without notice, notice being expressly waived.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) vacate the Property immediately upon the demand of Lender, or (2) pay a reasonable rental for the use of the Property, or (3) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Sale of the Property.** In exercising its rights and remedies, Lender shall be free to designate on or before it files a notice of election and demand with the Trustee, that the Trustee sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Upon any sale of the Property, whether made under a power of sale granted in this Deed of Trust or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all, or any portion of, the indebtedness for or in settlement or payment of all, or any portion of, the purchase price of the Property purchased, and, in such case, this Deed of Trust, the Note, and any documents evidencing expenditures secured by this Deed of Trust shall be presented to the person conducting the sale in order that the amount of indebtedness so used or applied may be credited thereon as having been paid.

**Attorneys' Fees; Expenses.** If Lender forecloses or institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** To the extent permitted by applicable law, Trustee shall have all of the rights and duties of Lender as set forth in this section.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or

amendment.

**Annual Reports.** If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Colorado.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Garfield County, State of Colorado.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waive Jury.** All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Colorado as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code.

**Beneficiary.** The word "Beneficiary" means Alpine Bank, A Colorado Banking Corporation, and its successors and assigns.

**Borrower.** The word "Borrower" means BRAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rentals.

**Default.** The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6801, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

**Grantor.** The word "Grantor" means BRAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed to the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts

DEED OF TRUST (Continued)

as provided in this Deed of Trust. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means Alpine Bank, A Colorado Banking Corporation, its successors and assigns.

Note. The word "Note" means the promissory note dated July 14, 2008, in the original principal amount of \$750,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is July 14, 2023. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means the Public Trustee of GARFIELD County, Colorado.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

BIAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY

By: [Signature] BRAD L. MOLLMAN, MEMBER OF BIAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF COLORADO )
COUNTY OF GARFIELD ) SS

On this 15th day of JULY, 2008, before me, the undersigned Notary Public, personally appeared BRAD L. MOLLMAN, MEMBER OF BIAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY, and known to me to be a member or designated agent of the limited liability company that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the limited liability company.

By: [Signature] Notary Public in and for the State of COLORADO. My commission expires 05/06/2010



**Paul Smith**

---

**From:** Dana Gonzales <danaadcvet@gmail.com>  
**Sent:** Thursday, February 27, 2020 12:30 PM  
**To:** Paul Smith  
**Subject:** All Dogs and Cats Veterinary Hospital

To Whom It may Concern,

I (Lori D Pohm) the current owner of All Dogs and Cats Veterinary Hospital in Glenwood Springs, Co. request the formal meeting regarding the business and building use permit for our new location at 6420 County Rd. Unit A, New Castle Co. 81647 to be moved forward to the month of March.

Our anticipated opening is April 13th, 2020. We have hired an additional Veterinarian who is under contract to be working as of April 1, 2020. We also have a pending contract with a laboratory equipment lease that needs to be confirmed and completed by April 1st, with an install date shortly after. We have also been under a lease contract since January 1st, with the current owner of the property. The security of the city's approval is a primary priority before the opening of this new location. Lastly we are hoping to start out strong within the New Castle and Silt communities providing a huge asset in Veterinary care and feel as soon as we open our doors we will be generating business in the community.

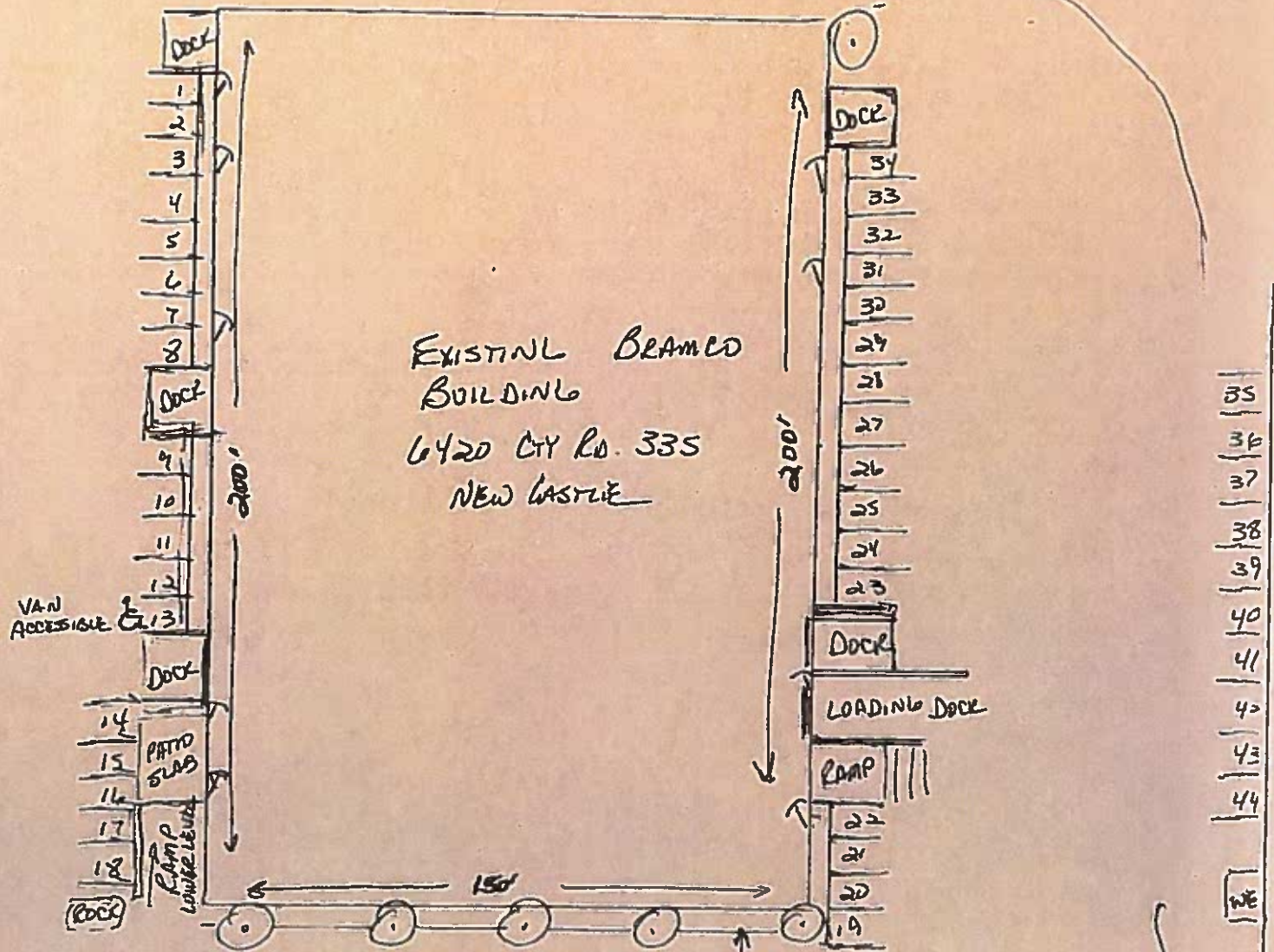
--  
*Sincerely, Lori D. Pohm*

**Owner and Veterinarian**  
**All Dogs and Cats Veterinary Hospital**  
1607 Grand Ave. Suite 11  
Glenwood Springs, Co. 81601  
(970) 945-6762

BURM FOR ROCKFALL MITIGATION

FENCE

EXISTING BEAMED BUILDING  
 6420 CRY RD. 335  
 NEW CASTLE



- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- NE

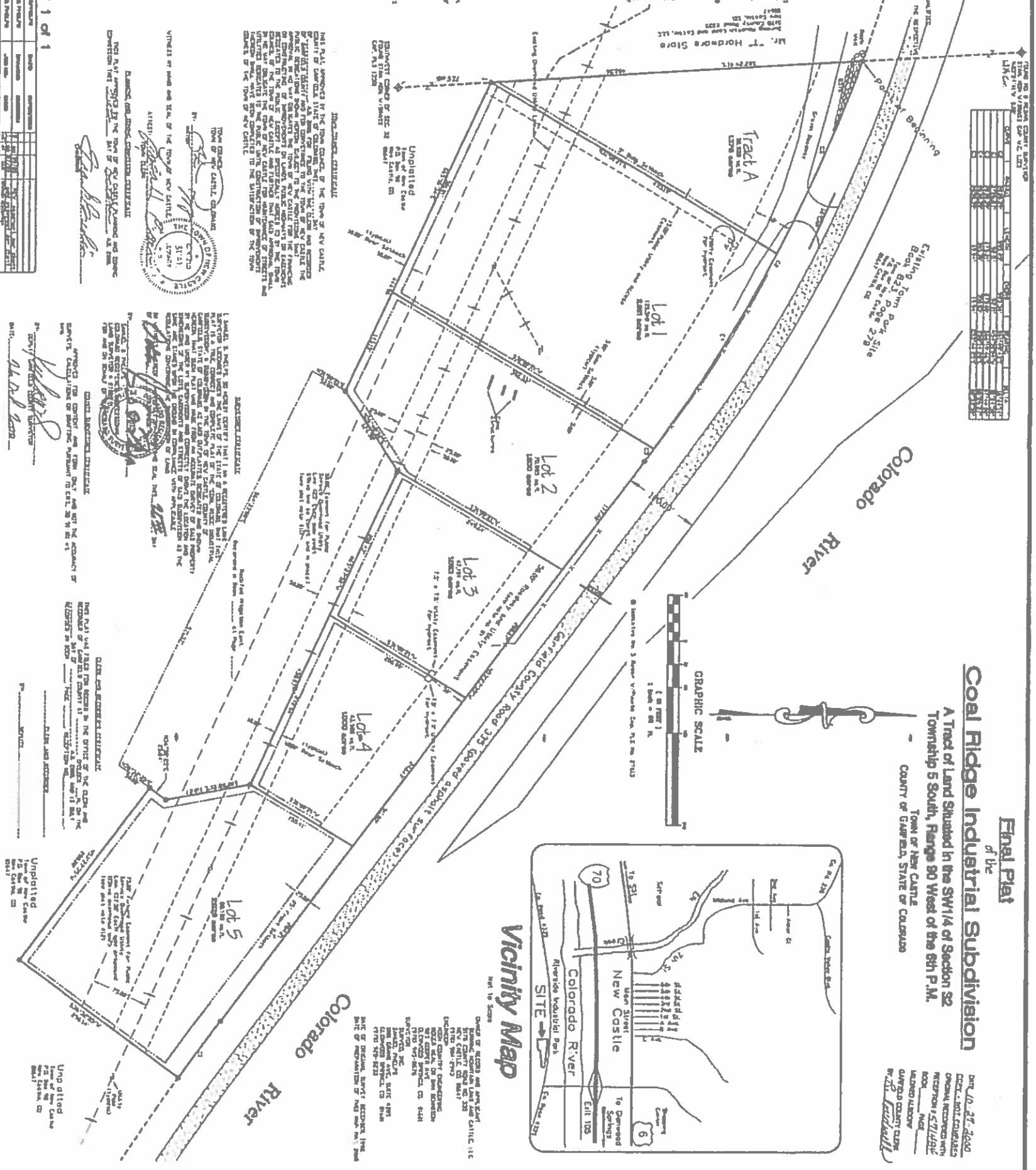
270' TO PROPERTY LINES  
 (POTENTIAL PARKING FOR 25 SPACES)  
 WITH 20' ROADWAY

602

- 1) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 2) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 3) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 4) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 5) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 6) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 7) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
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- 9) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.
- 10) THE PROPERTY SHOWN ON THIS PLAN IS SUBJECT TO THE RIGHTS OF THE STATE OF COLORADO IN THE COAL AND NATURAL GAS RESOURCES OF THE STATE OF COLORADO AS PROVIDED BY THE CONSTITUTION AND STATUTES OF THE STATE OF COLORADO.

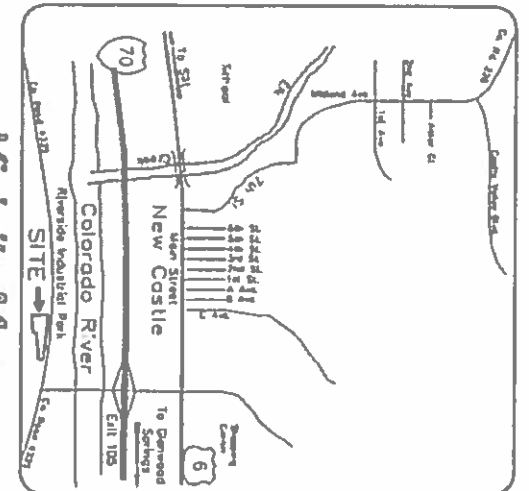
**STATE OF COLORADO**  
**COUNTY OF GARFIELD**  
**PLAT NO. 112**  
**7-15-02**

**Professional Land Surveying Services**  
 1001 Grand Avenue, Suite 100  
 Durango, Colorado 81301  
 Phone: (970) 248-4233 Fax: (970) 248-4840



**Final Plat**  
 of the  
**Coal Ridge Industrial Subdivision**  
 A Tract of Land Situated in the SW 1/4 of Section 32  
 Township 5 South, Range 80 West of the 6th P.M.,  
 County of Garfield, State of Colorado

DATE: 10-27-2000  
 CHECKED: J. J. COLEMAN  
 ORIGINAL RECORDED WITH  
 REC'D: 12/17/2002  
 BOOK: 112  
 PAGE: 112  
 COUNTY CLERK'S OFFICE  
 BY: J. J. COLEMAN



**Unplatted**  
 Lot of the same  
 size as the  
 lot shown on  
 this plat.

**Unplatted**  
 Lot of the same  
 size as the  
 lot shown on  
 this plat.

**Unplatted**  
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 this plat.

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 lot shown on  
 this plat.

**Unplatted**  
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 size as the  
 lot shown on  
 this plat.

**TOWN OF NEW CASTLE, COLORADO  
PLANNING AND ZONING COMMISSION  
RESOLUTION NO. PZ 2020-04**

A RESOLUTION OF THE NEW CASTLE PLANNING AND ZONING  
COMMISSION RECOMMENDING APPROVAL OF A CONDITIONAL USE  
PERMIT FOR VETERINARY CLINIC ON PROPERTY LOCATED IN THE  
INDUSTRIAL ZONE DISTRICT.

WHEREAS, on February 26, 2020, Lori Pohm d/b/a All Dogs and Cats Veterinary Clinic (“Applicant”) submitted a Conditional Use Permit Application (“Application”) for the property located at 6420 County Road 335, Unit A, New Castle, Colorado, and legally described in Exhibit A hereto (“Property”); and

WHEREAS, the Property is zoned Industrial (I); and

WHEREAS, Bramco, LLC owns the Property, is leasing it to Applicant, and has authorized Applicant to pursue the Application; and

WHEREAS, Applicant seeks a permit to operate a veterinary clinic in one of the units in the building that is located on the Property; and

WHEREAS, Chapter 17.52 of the New Castle Municipal Code (the “Code”) establishes the permitted, conditional, and nonpermitted uses for the Industrial zone district; and

WHEREAS, pursuant to §17.52.050 of the Code, any use not specifically defined in the permitted or nonpermitted use categories for the Industrial zone district shall be a conditional use requiring the issuance of a conditional use permit pursuant to Chapter 17.84 of the Code; and

WHEREAS, “veterinary clinic” is not listed in the permitted or nonpermitted use categories for the Industrial zone district, making it a conditional use; and

WHEREAS, as required under Code §17.84.040(B), the New Castle Planning and Zoning Commission (“Commission”) held a duly-noticed public hearing on March 25, 2020, to consider the Application; and

WHEREAS, pursuant to Code §17.84.050, the Commission hereby finds that the Application:

1. is eligible for conditional review under §17.84.040;
2. is generally compatible with adjacent land uses;
3. meets all requirements of §17.84.020 of the Code, is in compliance with Title 17 of the Code, and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;
4. is consistent with the comprehensive plan; and

5. the Town has the capacity to serve the proposed use with fire and police protection and is not required to provide water or sewer service.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW CASTLE PLANNING AND ZONING COMMISSION AS FOLLOWS:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the New Castle Planning and Zoning Commission.

2. Listing of Approved Uses. The following constitute the uses for the Property that the Commission recommends be approved under the Application:

- A. the operation of a veterinary clinic

3. Recommendation. The Planning and Zoning Commission hereby recommends that the Town Council approve the Application and use proposed therein pursuant to § 17.84.050 of the Code, subject to the following conditions:

- A. All representations of the Applicant in written Application materials and in verbal presentations submitted to the Town or made at public hearings before the Planning Commission or Town Council and reflected in the minutes thereof shall be considered part of the Application and binding on the Applicant;

- B. Applicant shall comply with all applicable building, residential, electrical and other municipal code requirements, including all sign code regulations. Prior to occupancy, the leaks in the roof of the unit shall be repaired and the following items must be completed and found in compliance with the adopted Town codes:

- Fire penetration sealant required at headwall between units and mechanical ducts at floor of mezzanine.
- Opening protective is required for opening between mezzanine and neighboring unit. Otherwise a fixed wall may be installed to fill the space.
- Egress stairway required at mezzanine.
- Compliance of fire alarm system as verified by Fire inspector
- Signage for the accessible bathroom must be installed.

- C. Any new exterior lighting will be dark-sky compliant pursuant to the Comprehensive Plan Goal EN-4;

- D. In the event the Town receives any complaints about the use of the site or observes or becomes aware of any violations of the conditional use approval, Applicant and/or owner may be summoned before the Town Council in a public meeting to show cause why the permit should not be revoked, suspended, or additional conditions imposed, with such show-cause hearing open to the public and the Applicant or owner being able to present testimony or offer other evidence on their behalf;

E. Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including without limitation all costs incurred by the Town's outside consultants such as legal and engineering costs;

F. No approved conditional use may be altered, structurally enlarged, expanded in parking area, or expanded in ground area unless the site plan is amended and approved in accordance with the procedures applicable to approval of a conditional use as set out in Section 17.84.070 of the Code; and

G. The use approved in the Application shall not be conducted until the Town Planner has issued a conditional use certificate. That certificate shall be issued only after Applicant has entered into an agreement with the Town specifying that all conditions imposed by the Town council will be completed and that the use and improvements will be in accordance with the approved Application site plan and development schedule. The conditional use certificate must be issued within one year of the date of final approval by Town Council, or the Application is deemed withdrawn by the Applicant and is of no further force and effect.

THIS RESOLUTION PZ 2020-04 was adopted by the New Castle Planning and Zoning Commission by a vote of \_\_\_ to \_\_\_ on the 25<sup>th</sup> day of March, 2020.

NEW CASTLE PLANNING AND  
ZONING COMMISSION

By: \_\_\_\_\_  
Chuck Apostolik, Chairman

ATTEST:

\_\_\_\_\_  
Mindy Andis, Deputy Town Clerk

**EXHIBIT A**  
Legal Description

The property that is the subject of the Application described in Resolution PZ 2020-4 is legally described as follows:

Lot 1, Coal Ridge Industrial Subdivision, according to the Plat thereof recorded October 27, 2000, as Reception No. 571484, County of Garfield, State of Colorado,

commonly known as 6420 County Road 335, New Castle, Colorado 81647

**Item Attachment Documents:**

- B. Consider Continuation of Decision on Resolution PZ-2020-02 Recommending Approval of Castle Valley Ranch PUD Master Plan Amendment Until August 26, 2020



**Town of New Castle**  
450 W. Main Street  
PO Box 90  
New Castle, CO 81657

**Planning Department**  
**Phone:** (970) 984-2311  
**Fax:** (970) 984-2716  
[www.newcastlecolorado.org](http://www.newcastlecolorado.org)

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## Memorandum

**To:** Planning Commission

**From:** Paul Smith

**Re:** Agenda Item – Public Hearing – continued from February 26, 2020; Resolution PZ-2020-02 Recommending Approval of Castle Valley Ranch PUD Master Plan Amendment

**Date:** 3-25-20

**Purpose:**

Per email correspondence received by the Town on March 20<sup>th</sup>, 2020, the applicant requests postponing a decision on Resolution PZ 2020-02 until August 26<sup>th</sup>, 2020. The request is predicated on a need for greater time and collaborative effort between the applicant and Town to work out issues related to the amendment. P&Z can decide whether to agree to the request or not. If P&Z denies the continuance, P&Z is required by the code to make a recommendation on the application at the March 25<sup>th</sup> meeting. The recommendation will then go to Council for final decision. If P&Z agrees to the continuance, the applicant will need to re-notice the meeting (mailing, publishing, and posting) at which the continued hearing will take place.

Thank you,  
Paul

**TOWN OF NEW CASTLE, COLORADO**  
**RESOLUTION NO. PZ-2020-02**

A RESOLUTION OF THE NEW CASTLE PLANNING & ZONING  
COMMISSION RECOMMENDING APPROVAL OF A MAJOR AMENDMENT  
OF THE CASTLE VALLEY RANCH PUD MASTER PLAN.

WHEREAS, CVR Investments, Inc. (“Applicant”) is the owner of certain undeveloped real property within the Castle Valley Ranch PUD that is more fully described on Exhibit A hereto (the “Property”); and

WHEREAS, a portion of the Property is zoned Mixed Use 1 and Mixed Use 2 (“MU 1” and “MU 2”) under the Castle Valley Ranch PUD Master Plan (the “Plan”) and the remainder is zoned Open Space or Residential; and

WHEREAS, the MU 1 and MU 2 portions of the Property are identified as PA 13, PA 16, PA 17, & PA 18 (collectively, the “MU Property”) on the Castle Valley Ranch Master Plan Map; and

WHEREAS, the current version of the Plan was approved by the Town of New Castle (“Town”) by Ordinance No. 2002-2; and

WHEREAS, Applicant has submitted an application to the Town to amend the Plan to change the zoning of the MU Property to Residential (the “Application”); and

WHEREAS, because the Application involves a change in the use and zoning of the MU Property, the Application is considered a major amendment to the Plan under Section 17.100.110(C) of the Town Municipal Code (the “Code”); and

WHEREAS, pursuant to Sections 17.100.110(C) and 17.100.080(C) of the Code, the Planning & Zoning Commission (“Commission”) conducted a duly-noticed public hearing regarding the Application on February 12, 2020, which was continued until February 24, 2020, and again to March 25, 2020; and

WHEREAS, at the hearing, the Commission considered the Application; comments and information presented by the Applicant, Town staff, referral agencies, and the public; and the criteria set forth in Section 17.100.090 Code; and

WHEREAS, based on the Application and the information and testimony presented regarding the same, the Commission **hereby finds/does not find** that:

1. The Application is generally compatible with adjacent land uses;
2. The Application is consistent with the comprehensive plan;
3. The Town has the capacity to serve the proposed use with water, sewer, fire and police protection;
4. The uses proposed within the PUD are uses permitted outright or by special review within the zoning district or districts contained within the PUD;

5. The number of dwelling units permitted by the underlying zoning districts is not exceeded by the PUD plan; and
6. The PUD utilizes the natural character of the land, includes compatible land uses, provides, as applicable, for fire and police protection, off-street parking, vehicular, pedestrian and bicycle circulation, outdoor recreation, is of overall compatible architectural design, achieves adequate screening, buffering and aesthetic landscaping, avoids development of areas of potential hazard, ensures compliance with the performance standards and meets all other provisions of the Town Municipal Code.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING & ZONING COMMISSION OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the Commission.

2. Recommendation. Pursuant to Chapter 17.100 of the New Castle Municipal Code, the Commission hereby recommends that the Town Council **approve/deny** the Application as an amendment of the Castle Valley Ranch PUD Master Plan, including the Master Plan Map, and that the Town Zoning Map **be updated/not be updated** accordingly. Only those aspects of the Plan addressed in the Application shall be amended upon Town Council's approval of the Application, and all other provisions of the Plan shall remain in full force and effect, including, without limitation, the existing Open Space and Residential zoning of the Property that is not the MU Property.

3. Conditions. The Commission recommends the following conditions of approval:

A. All representations of the Applicant in written and verbal presentations submitted to the Town or made at public hearings before the Commission or Town Council and reflected in the minutes of such hearings shall be considered part of the Application and binding on the Applicant;

B. The Applicant shall comply with all applicable building, residential, electrical and municipal code requirements, including all sign code regulations, when developing the Property according to the Plan, as amended;

C. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs;

D. Applicant, CTS Investments, LLC, and Williams Family Investment Company, RLLP shall enter into an agreement pursuant to which all parties consent to the change in vested rights associated with their respective properties that will result from the granting of the Application.

E.

F.

THIS RESOLUTION PZ 2020-02 was adopted by the New Castle Planning and Zoning Commission by a vote of \_\_\_\_ to \_\_\_\_ on the 25<sup>th</sup> day of March, 2020.

NEW CASTLE PLANNING AND  
ZONING COMMISSION

By: \_\_\_\_\_  
Chuck Apostolik, Chairman

ATTEST:

\_\_\_\_\_  
Mindy Andis, Deputy Town Clerk

DRAFT

**EXHIBIT A**  
Property Legal Description

**Parcel A:** A PARCEL OF LAND SITUATE IN THE NE1/4 SECTION 31 AND THE NW1/4 SECTION 32, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M., COUNTY OF GARFIELD, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST 1/16 CORNER BETWEEN SAID SECTIONS 29 AND 32 A REBAR AND ALUMINUM CAP LS NO. 36572 SET IN PLACE; THENCE S 01° 19' 34" E 1570.62 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF LINE CASTLE VALLEY BOULEVARD, AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED JANUARY 9, 2001 UNDER RECEPTION NO. 574735, ALSO BEING A POINT ON THE EASTERLY BOUNDARY LINE OF CASTLE VALLEY RANCH PUD AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED AUGUST 10, 1983 UNDER RECEPTION NO. 344590 THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAD RIGHT OF WAYS 01°19' 34" E AND ALONG SAID EASTERLY BOUNDARY LINE 1066.16 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF SAID CASTLE VALLEY RANCH, P.U.D.; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE THE FOLLOWING FOUR (4) COURSES: 1. N 89° 40' 24" W 1195.15 FEET; 2. N 00° 19' 36" E 120.00 FEET; 3. N 89° 40' 24" W 180.00 FEET; 4. N 00° 05'00" W 210.20 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE N 00° 05'00" W 983.59 FEET; THENCE S 89° 56' 5" W 552.43 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF CASTLE VALLEY RANCH, PA19A AND PA19B AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED NOVEMBER 29, 2005 UNDER RECEPTION NO. 687288; THENCE N 40° 33' 51" E ALONG SAID EASTERLY BOUNDARY LINE 283.40 FEET; THENCE CONTINUING ALONG SAD EASTERLY BOUNDARY LINE N 55° 43' 05" E 455.98 FEET TO A POINT ON SAID SOUTHERLY RIGHT OF WAY LINE OF CASTLE VALLEY BOULEVARD; THENCE DEPARTING SAD EASTERLY BOUNDARY LINE AND ALONG SAID SOUTHERLY RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 862.01 FEET; AN ARC LENGTH OF 591.51 FEET (CHORD BEARS S61° 39' 09" E 579.98 FEET); THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING SEVEN (7) COURSES: 1.S 81° 18' 39" E 261.25 FEET; 2. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 719.98 FEET, AN ARC LENGTH OF 342.58 FEET (CHORD BEARS S 67° 40' 47" E 339.36 FEET); 3. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 115.42 FEET, AN ARC LENGTH OF 19.02 FEET (CHORD BEARS S 14° 30' 47" E 19.00 FEET); 4. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 82.00 FEET, AN ARC LENGTH OF 110.68 FEET (CHORD BEARS S 48° 27' 33" E 102.47 FEET); 5. ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 115.42 FEET, AN ARC LENGTH OF 20.06 FEET (CHORD BEARS S 82° 08' 49" E 20.03 FEET); 6. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 719.98 FEET, AN ARC LENGTH OF 57.30 FEET (CHORD BEARS S 41° 01' 02" E 57.29 FEET); 7. S 38° 44' 14" E 193.94 FEET TO THE POINT OF BEGINNING.

**Parcel B:** A PARCEL OF LAND SITUATE IN THE NE1/4 SECTION 31, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M. COUNTY OF GARFIELD, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST 1/16 CORNER BETWEEN SAID SECTIONS 29 AND 32, A REBAR AND ALUMINUM CAP LS NO. 36572 SET IN PLACE; THENCE S29° 45' 20" W 2647.04 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF CASTLE VALLEY RANCH, P.U.D. AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED AUGUST 10, 1983 UNDER RECEPTION NO. 344590, THE TRUE POINT OF BEGINNING; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE THE FOLLOWING FOUR (4) COURSES: 1. N 89° 50' 34" W 450.00 FEET; 2. N 00° 09' 26" E 75.00 FEET; 3. N 89° 50' 34" W 275.00 FEET; 4. N 00° 09' 26" E 150.00 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE N00° 47' 28" W 548.03 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF CASTLE VALLEY RANCH, PA 19A & WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED NOVEMBER 29, 2005 UNDER RECEPTION NO. 687288; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE N 40° 33' 51" E 273.86 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE N 89° 56' 25" E 552.43 FEET; THENCE S 00° 05'00" E 983.59 FEET TO THE POINT OF BEGINNING (a/k/a Assessor Account No. R043084.)

**Parcel C:** A PARCEL OF LAND SITUATE IN THE SW1/4 SECTION 29, SE1/4 SECTION 30, THE NE1/4 SECTION 31 AND THE NW1/4 SECTION 32, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M., COUNTY OF GARFIELD, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE 1/4 CORNER BETWEEN SAD SECTIONS 29 AND 30, A BLM BRASS CAP IN PLACE; THENCE S 27° 20' 37" E 2941.40 FEET TO A POINT ON THE WESTERLY LINE OF LAKOTA CANYON RANCH, FIRST AMENDED PLAT FLING NO. 1 AS FILED WITH THE GARFIELD COUNTY CLERK AND

RECORDER'S OFFICE RECORDED JULY 18, 2003 UNDER RECEPTION NO. **632116**, THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAID WESTERLY LINE S 90° 00' 00" W 34.26 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 300.00 FEET; AN ARC LENGTH OF 123.32 FEET, CHORD BEARS S 78° 13' 25" W 122.46 FEET; THENCE S 66° 26' 50" W 88.64 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, AN ARC LENGTH OF 180.86 FEET, CHORD BEARS S 83° 43' 05" W 178.13 FEET; THENCE N 79° 00' 40" W 277.49 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, AN ARC LENGTH OF 273.25 FEET, CHORD BEARS N 52° 55' 05" W 263.90 FEET; THENCE N 26° 49' 30" W 358.53 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 175.00 FEET; AN ARC LENGTH OF 218.29 FEET, CHORD BEARS N 62° 33' 33" W 204.41 FEET; THENCE S 81° 42' 24" W 142.08 FEET; THENCE S 08° 42' 12" E 51.58 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 855.84 FEET, AN ARC LENGTH OF 209.29 FEET, CHORD BEARS S 15° 42' 32" E 208.77 FEET; THENCE S 65° 53' 03" W 97.34 FEET; THENCE S 81° 23' 34" W 266.32 FEET; THENCE S 51° 51' 16" W 126.84 FEET; THENCE S 36° 47' 12" W 88.30 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF CASTLE VALLEY BOULEVARD AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDERS OFFICE RECORDED JANUARY 9, 2001 UNDER RECEPTION NO. **574735**; THENCE ALONG SAID NORTHERLY RIGHT OF WAY THE FOLLOWING NINE (9) COURSES: 1. S 34° 40' 33" E 927.02 FEET; 2. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 762.01 FEET, AN ARC LENGTH OF 620.22 FEET, CHORD BEARS S 57° 59' 36" E 603.25 FEET; 3. S 81° 18' 39" E 261.25 FEET; 4. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 819.98 FEET, AN ARC LENGTH OF 395.62 FEET, CHORD BEARS S 67° 29' 21" E 391.79 FEET; 5. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 140.42 FEET, AN ARC LENGTH OF 11.84 FEET, CHORD BEARS N 87° 15' 43" E 11.84 FEET; 6. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 86.00 FEET, AN ARC LENGTH OF 136.02 FEET; CHORD BEARS S 49° 50' 45" E 122.28 FEET; 7. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 170.42 FEET, AN ARC LENGTH OF 16.26 FEET, CHORD BEARS S 07° 16' 18" E 16.26 FEET; 8. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 819.98 FEET, AN ARC LENGTH OF 70.54 FEET, CHORD BEARS S 41° 12' 06" E 70.52 FEET; 9. S 38° 44' 14" E 63.19 FEET TO A POINT ON SAID WESTERLY LINE OF LAKOTA CANYON RANCH, FIRST AMENDED PLAT FILING NO. 1 AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED JULY 18, 2003 UNDER RECEPTION NO. **632116** UNDER RECEPTION NO. **632116**; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING NINE (9) COURSES: 1. N 01° 19' 33" W 284.64 FEET; 2. N 00° 50' 46" W 298.08 FEET; 3. N 01° 24' 24" W 405.00 FEET; 4. N 01° 13' 24" W 135.00 FEET; 5. N 03° 05' 23" E 23.82 FEET; 6. N 01° 46' 46" W 247.13 FEET; 7. S 88° 47' 17" W 2.05 FEET; 8. N 01° 19' 33" W 12.43 FEET TO THE WEST 1/16 CORNER OF SECTIONS 29 AND 32 A REBAR AND ALUMINUM CAP LS NO. 36572 IN PLACE; 9. N 00° 55' 44" W 17.57 FEET TO THE POINT OF BEGINNING.

**Parcel D:** A PARCEL OF LAND LOCATED ENTIRELY WITHIN THAT PARCEL DESCRIBED BY THE WARRANTY DEED RECORDED MARCH 9, 2006 UNDER RECEPTION NO. 693683 SITUATE IN THE SW 1/4 OF SECTION 29, SE 1/4 OF SECTION 30, AND NW 1/4 OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6<sup>TH</sup> P.M., GARFIELD COUNTY, COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT FROM WHENCE A BLM BRASS CAP IN PLACE AT THE 1/4 CORNER OF SAID SECTIONS 29 AND 30 BEARS N 53° 08' 04" W A DISTANCE OF 1655.92 FEET WITH ALL BEARING RELATIVE TO N 89° 36' 48" E THE LINE BETWEEN FOUND MONUMENTS FOR SAID W 1/4 CORNER SECTION 29 AND A REBAR AND CAP STAMPED LS 13174 THE NORTHEAST CORNER OF SAID OPTION PARCEL; THENCE S 00° 55' 44" E ALONG THE WEST LINE OF PARCEL A-1 AS DEPICTED ON THE PLAT; THE AMENDED AND RESTATED SUBDIVISION EXCLUSION/EXEMPTION OF LAKOTA CANYON RANCH AS RECORDED JULY 18, 2003 UNDER RECEPTION NO. 632118 A DISTANCE OF 1124.50 FEET TO A POINT ON THE WEST LINE OF BLOCK F AS DEPICTED ON THE PLAT; FIRST AMENDED AND RESTATED FINAL SUBDIVISION PLAT OF LAKOTA CANYON RANCH FILING 1 AS RECORDED JULY 18, 2003 UNDER RECEPTION NO. 632116; THENCE N 88° 47' 17" E ALONG A SOUTHERLY LINE OF SAID AMENDED AND RESTATED SUBDIVISION EXCLUSION/EXEMPTION OF LAKOTA CANYON RANCH A DISTANCE OF 0.99 FEET; THENCE S 01° 21' 09" E ALONG SAID WEST LINE BLOCK F A DISTANCE OF 465.00 FEET TO A POINT ON THE NORTH LINE OF SILVERADO TRAIL RIGHT OF WAY AS DEPICTED ON SAID PLAT OF LAKOTA CANYON RANCH FILING 1; THENCE S 88° 47' 17" W ALONG THE NORTH LINE OF SAID SILVERADO TRAIL A DISTANCE OF 4.42 FEET; THENCE S 00° 55' 44" E A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTH LINE OF A PARCEL AS DESCRIBED IN INSTRUMENT RECORDED APRIL 17, 2007 UNDER RECEPTION NO. 721293; THENCE THE FOLLOWING NINE (9) COURSES ALONG SAID NORTH LINE; 1. S 90° 00' 00" W A DISTANCE OF 34.26 FEET; 2. THENCE 123.32 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 23° 33' 09" AND A SUBTENDING CHORD BEARING S 78° 13' 26" W A DISTANCE OF 122.45 FEET; 3. THENCE S 66° 26' 50" W A DISTANCE OF 88.64 FEET; 4. THENCE 180.86 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 34° 32' 30" AND A

SUBTENDING CHORD BEARING S 83° 43' 05" W A DISTANCE OF 178.13 FEET; 5. THENCE N 79° 00' 40" W A DISTANCE 277.49 FEET; 6. THENCE 273.25 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 52° 11' 11" AND A SUBTENDING CHORD BEARING N 52° 55' 05" W A DISTANCE OF 263.90 FEET; 7. THENCE N 26° 49' 30" W A DISTANCE OF 358.53 FEET; 8. THENCE 218.29 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 175.00 FEET, A CENTRAL ANGLE OF 71° 28' 06" AND SUBTENDING CHORD BEARING N 62° 33' 33" W A DISTANCE OF 204.41 FEET; 9. THENCE S 81° 42' 24" W DISTANCES OF 104.99 FEET TO A POINT ON THE EAST LINE OF THE NORTH WILD HORSE DRIVE RIGHT OF WAY AS DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED SEPTEMBER 25, 2007 UNDER RECEPTION NO. **733780**; THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID NORTH WILD HORSE DRIVE; 1. N 08° 42' 12" W A DISTANCE OF 17.22 FEET; 2. THENCE 390.97 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 668.49 FEET, A CENTRAL ANGLE OF 33° 30' 34" AND A SUBTENDING CHORD BEARING N 08° 03' 05" E A DISTANCE OF 385.42 FEET; 3. THENCE 228.11 FEET ALONG THE ARC OF A REVERSE CURVE HAVING A RADIUS OF 491.25 FEET, A CENTRAL ANGLE OF 26° 36' 20" AND SUBTENDING CHORD BEARING N 11° 30' 11" E A DISTANCE OF 226.07 FEET TO A POINT OF NON-TANGENCY; THENCE 103.99 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 23°50'00" AND A SUBTENDING CHORD BEARING S 79° 12' 35" E A DISTANCE OF 103.24 FEET; THENCE S 67° 17' 36" E A DISTANCE OF 131.42 FEET; THENCE S 30° 00' 58" W A DISTANCE OF 50.41 FEET; THENCE S 18° 54' 59" W A DISTANCE OF 221.52 FEET; THENCE S16° 07' 55" W A DISTANCE OF 50.00 FEET; THENCE 104.09 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 970.00 FEET, A CENTRAL ANGLE OF 6° 08' 55" AND A SUBTENDING CHORD BEARING S 11° 34' 51" W A DISTANCE OF 104.04 FEET TO A POINT OF NON-TANGENCY; THENCE S 71° 43' 03" E A DISTANCE OF 57.57 FEET; THENCE S 63° 30' 38" E A DISTANCE OF 55.33 FEET; THENCE S 56° 40' 07" E A DISTANCE OF 55.13 FEET; THENCE S 44°48' 48" E A DISTANCE OF 174.82 FEET TO A POINT OF NON-TANGENCY; THENCE 30.23 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 275.00 FEET, A CENTRAL ANGLE OF 6° 17' 51" AND A SUBTENDING CHORD BEARING N 42° 06' 34" E A DISTANCE OF 30.21 FEET; THENCE S 51° 02' 22" E A DISTANCE OF 247.25 FEET TO A POINT OF NON-TANGENCY; THENCE 102.92 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 481.00 FEET, A CENTRAL ANGLE OF 12° 15' 34" AND SUBTENDING CHORD BEARING N 54° 54' 14" E A DISTANCE OF 102.72 FEET; THENCE 122.69 FEET ALONG THE ARC OF A REVERSE CURVE HAVING A RADIUS OF 219.00 FEET, A CENTRAL ANGLE OF 32° 05' 53" AND A SUBTENDING CHORD BEARING N 44° 59' 05" E A DISTANCE OF 121.09 FEET; THENCE N 28° 56' 08" E A DISTANCE OF 541.68 FEET; THENCE N 14° 00' 12" E A DISTANCE OF 22.45 FEET; THENCE N 00° 55' 44" W A DISTANCE OF 289.40 FEET; THENCE N 32° 41' 48" W A DISTANCE OF 88.46 FEET; THENCE N 00° 02' 34" W A DISTANCE OF 167.50 FEET; THENCE N 54° 50' 38" E A DISTANCE OF 173.10 FEET; THENCE S 89° 54' 27" E A DISTANCE OF 116.87 FEET TO THE POINT OF BEGINNING,

**LESS AND EXCEPT THE FOLLOWING PROPERTIES FROM ALL OF THE ABOVE:** LOTS 1 THROUGH 19 AND OPEN SPACE, CASTLE VALLEY RANCH SUBDIVISION PA12, FILING 9, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 25, 2007 UNDER RECEPTION NO. **733785**; LOTS 1 THROUGH 17, CASTLE VALLEY RANCH SUBDIVISION PA13, FILING NO. 10, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 28, 2011 UNDER RECEPTION NO. **812500**; LOTS 1A, 1B AND 1C, LOTS 2A, 2B AND 2C, AMENDED FINAL PLAT OF LOTS 1 AND 2 OF CASTLE VALLEY RANCH PA12, FILING NO. 9; LOTS 3A, 3B AND 3C, LOTS 14A, 14B AND 14C, AMENDED FINAL PLAT OF LOTS 3 AND 14 OF CASTLE VALLEY RANCH PA12, FILING NO.9; LOTS 4A, 4B AND 4C, LOTS 15A, 15B AND 15C, AMENDED FINAL PLAT OF LOTS 4 AND 15 OF CASTLE VALLEY RANCH PA12, FILING NO. 9; ALL THOSE STREETS AND PUBLIC RIGHTS OF WAY DEDICATED ON THE FINAL PLAT OF CASTLE VALLEY RANCH PA12, FILING NO.9; and ALL THOSE STREETS AND PUBLIC RIGHTS OF WAY DEDICATED ON THE FINAL PLAT OF CASTLE VALLEY RANCH PA13, FILING NO.10,

**Item Attachment Documents:**

D. Draft Minutes from March 11, 2020

1  
2  
3 **New Castle Planning and Zoning Commission Meeting**  
4 **Wednesday, March 11, 2020, 7:00p.m., Town Hall**

5  
6 **Call to Order**

7 Commission Chair Apostolik called the meeting to order at 7:00p.m.

8  
9 **Roll Call**

10 Present Vice-Chair Bourquin  
11 Commissioner McDonald  
12 Commissioner Riddile  
13 Commissioner Sass

14  
15 Absent Chair Apostolik  
16 Commissioner Johannsson  
17 Commissioner Lucio

18  
19 Also present at the meeting were Town Administrator Dave Reynolds, Town Planner  
20 Paul Smith, Assistant Town Attorney Haley Carmer, Deputy Town Clerk Mindy Andis  
21 and members of the public.

22 **Meeting Notice**

23 Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting  
24 in accordance with Resolution TC 2020-1.

25  
26 **Conflicts of Interest**

27 There were no conflicts of interest.

28  
29 **Citizen Comments on Items NOT on the Agenda**

30 There were no citizen comments.

31  
32 **Public Hearing – Continued from February 26, 2020**

33 Zoning text amendment pursuant to Sections 16.16.010 & 17.100.040 of the Town  
34 of New Castle Municipal Code concerning the application process for Subdivision  
35 and PUD Development Sketch Plans.

36  
37 **Vice-Chair Bourquin opened the public hearing at 7:02pm**

38  
39 Town Planner Paul Smith said that per Colorado Revised Statute (C.R.S.) 31-23-  
40 214, amendments to land use codes require a public hearing with the Planning and  
41 Zoning Commission. Ordinance TC 2020-1 considered improving the means of  
42 assessing the adequacy and compliance of sketch plan applications with town  
43 regulations. The recommended changes generally include:

- 44 • A pre-application meeting requirement  
45 • More robust submittal criteria  
46 • An improved process for determining an application completeness  
47 • A sketch review meeting with both Planning and Zoning Commission and  
48 Council

- 1 • A community open house
- 2 • Defined approval expirations

3  
4 One item of concern has been the addition of a community open house meeting.  
5 Though transparency with the land use process has been endorsed by all involved,  
6 the potential cost, added delays, and the perception that such meetings appear to  
7 delegate authority to residents may require that these meetings be reconsidered.  
8 Staff plans to make similar modifications to later steps in the application process,  
9 namely changes to the code defining the procedures for preliminary and final  
10 applications. The end goal is procedural continuity and increased efficiency with the  
11 process.

12  
13 Planner Smith reviewed the proposed ordinance with the commission.

14  
15 After some discussion, the commission made the following changes to New Castle  
16 Municipal Code §16.16.010 – Sketch Plan Submittal:

- 17  
18 • Section C. (11) General traffic circulation plan showing entries and exits,  
19 roads, anticipated turning movements into and within the development area,  
20 etc.;
- 21 • Section C. (12) Open space, trails, sidewalks, parks, and other amenities;
- 22 • Section C. (13) Site Plan showing approximate lot lines and general site  
23 layout, including the location of any existing structures; and.
- 24 • Section C. add (14) Viewshed analysis

25  
26 After some discussion the commission made the following changes to 17.100.040 –  
27 Sketch Plan Submittal:

- 28  
29 • Section C. (11) General traffic circulation plan showing entries and exits,  
30 roads, anticipated turning movements into and within the development area,  
31 etc.;
- 32 • Section C. (12) Open space, trails, sidewalks, parks, and other amenities;
- 33 • Section C. (13) Site Plan showing approximate lot lines and general site  
34 layout, including the location of any existing structures; and.
- 35 • Section C. add (14) Viewshed analysis

36  
37 Section F. Prior to submitting a preliminary plan application, the Applicant shall  
38 conduct a community open house meeting regarding the sketch plan, any changes  
39 thereto recommended by the Town, and any other changes made to the proposed  
40 development in anticipation of submitting a preliminary PUD development plan. The  
41 open house is an occasion to share the project directly with residents and  
42 stakeholders. The Applicant shall notify the Town of the date of the community  
43 open house, and notice the community open house according to the Town’s public  
44 hearing notice procedures set forth in Section 16.08.040, except that notice to  
45 mineral owners is not required.

46 **Vice-Chair Bourquin closed the public hearing at 8:03pm**

47

1 **MOTION: Vice-Chair Bourquin made a motion recommending approval of**  
2 **Resolution PZ-2020-3, A Resolution of the New Castle Planning & Zoning**  
3 **Commission Recommending Approval of Amendments to Section 16.16.010**  
4 **& 17.100.040 of the New Castle Municipal Code Concerning the Application**  
5 **Process for Subdivision and PUD Development Sketch Plans with changes.**  
6

7 **Commissioner Sass seconded the motion and it passed on a roll call vote:**  
8 **Commissioner Riddile: Yes; Commissioner McDonald: Yes; Commissioner**  
9 **Sass: Yes; Vice-Chair Bourquin: Yes.**

10  
11 **Items for Consideration**

12 Consider Request for Waiver of Section 16.08.030 regarding Timing Requirements  
13 for a Conditional Use Permit Application.

14  
15 Planner Smith said he had received a Conditional Use Permit Application for a  
16 veterinary clinic in the industrial zone across the river. The conditional use permit  
17 process had a 45-day noticing period before a public hearing was scheduled with  
18 the planning & zoning commission. The owner of the veterinary clinic had requested  
19 that the public hearing date be moved up to March 25, 2020. The applicant had  
20 submitted all necessary documents and the application was complete. The  
21 applicant had already noticed the property as required. Planner Smith said that  
22 staff had reviewed the application.  
23

24 Doctor Lori Pohm and Doctor Bob Thorsen, Owners. Dr. Pohm said they had owned  
25 a veterinary practice in Glenwood Springs since 1992. Because so many area vets  
26 had closed, their clinic was being overwhelmed with new clients. She said they  
27 were looking to branch out to relieve some of the pressure on their current clinic.  
28 Dr. Pohm said they had hired an additional veterinarian who will start March 23,  
29 2020. She said they had ordered lab equipment for the New Castle location and  
30 were ready to install it. Dr. Pohm said they would like to open their doors as soon  
31 as possible to help provide more veterinary care in New Castle.  
32

33 Vice-Chair Bourquin asked Planner Smith if he had any concerns.

34  
35 Planner Smith said there were no concerns. There were a few building code issues  
36 but they were being addressed.  
37

38 **MOTION: Commissioner Riddile made a motion to approve the Request for**  
39 **Waiver of Section 16.08.030 regarding Timing Requirements for**  
40 **Conditional Use Permit Applications. Commissioner Sass seconded the**  
41 **motion and it passed unanimously.**  
42

43  
44 **Staff Reports**

45 There were no staff reports.  
46

47 **Commission Comments and Reports**

48 There were no commission comments or reports  
49

50 **Review Minutes from Previous Meeting**

1 **MOTION: Commissioner McDonald made a motion to approve the February**  
2 **26, 2020 meeting minutes as submitted. Commissioner Riddile seconded**  
3 **the motion and it passed unanimously.**

4  
5 **MOTION: Vice-Chair Bourquin made a motion to adjourn the meeting.**  
6 **Commissioner Riddile seconded the motion and it passed unanimously.**

7  
8 The meeting adjourned at 8:15 p.m.

9  
10  
11 Respectfully Submitted,

12  
13  
14  
15  
16  
17 \_\_\_\_\_  
Commission Vice-Chair Alison Bourquin

18 \_\_\_\_\_  
Deputy Town Clerk Mindy Andis, CMC

DRAFT