

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

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**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 Town Council Regular VIRTUAL Meeting

**Tuesday, May 19, 2020, 7:00 PM**

Starting times on the agenda are approximate and intended as a guide for Council.  
The starting times are subject to change by Council, as is the order of items on the agenda.

**Due to concerns related to COVID-19, this meeting will be held as a virtual meeting only. The public is invited to attend.**

**[To join by computer, smart phone or tablet click HERE](#)**

**If you prefer to telephone in:  
Please call: 1-346-248-7799  
Meeting ID: 709 658 8400**

**Follow the prompts as directed. Be sure to set your phone to mute until called on.**

#### Call to Order

#### Pledge of Allegiance

#### Roll Call

#### Meeting Notice

#### Conflicts of Interest

#### Agenda Changes

#### Citizen Comments on Items not on the Agenda

-Comments are limited to three minutes-

#### Consultant Reports

Consultant Attorney

Consultant Engineer

#### Items for Consideration

Recess the Town Council Meeting, Convene as the Local Liquor Licensing Authority

- A. Consider an Application from Elk Creek Mining Company dba 88 Grill to Modify their H&R Liquor Licensed Area to Include Sidewalk Seating on Town ROW (7:05 p.m.)**

Adjourn the Local Liquor Licensing Authority, Reconvene the Town Council Meeting

**B. Town Treasurer Report (7:20 p.m.)**

**C. Update: Business Assistance Grant Program (7:35 p.m.)**

**D. Ordinance TC 2020-1 - An Ordinance of the New Castle Town Council Amending Sections 16.16.010 & 17.100.040 of the New Castle Municipal Code Concerning the Application Process for Subdivision and PUD Development Sketch Plans (1st reading) (7:50 p.m.)**

**E. Consider Authorizing the Mayor to Sign a Lease Agreement for the Kamm Property (7:55 p.m.)**

### **Consent Agenda**

Items on the consent agenda are routine and non-controversial and will be approved by one motion. There will be no separate discussion of these items unless a council member or citizen requests it, in which case the item will be removed from the consent agenda.

[May](#) 5, 2020 minutes

[Elk](#) Creek Mining Co. dba 88 Grill H&R Liquor License Renewal

### **Staff Reports**

Town Administrator

Town Clerk

Town Planner

Public Works Director

### **Commission Reports**

Planning & Zoning Commission

Historic Preservation Commission

Climate Action Advisory Committee

Senior Program

RFTA

AGNC

GCE

EAB

### **Council Comments**

### **Adjourn**

## **MEMO**

**To:** Town Council

**From:** Melody Harrison, Town Clerk

**Date:** May 14, 2020

**Re:** Elk Creek Mining Co. dba 88 Grill Modification of Premises for Outdoor Seating

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**Recommendation:** Staff recommends that Council approve the application from Elk Creek Mining Company dba 88 Grill for a modification of premises to include sidewalk seating on town right of way.

**Policy Implications:** Adopting this recommendation would be consistent with the requirements of the State Liquor Code.

**Budget Implications:** Adopting this recommendation would allow 88 Grill to serve malt, vinous and spirituous liquors for on-premises consumption and Town sales tax would be collected on sales of these beverages.

*Melody L Harrison, CMC*

Department Head (signature)

**Background:** Elk Creek Mining Co. dba 88 Grill has applied for a modification of their hotel and restaurant liquor license for 502 West Main Street, New Castle to include sidewalk seating on town right of way.

The applicant applied for the license on April 27, 2020. On May 5, 2020 the town council approved a revocable license agreement with 88 Grill providing the applicant with legal possession of a portion of the town right of way (sidewalk) on the east and south sides of the building for outdoor seating. All pertinent documentation has been submitted and all fees are paid.

## Permit Application and Report of Changes

**Current License Number** 26-26577-0000  
**All Answers Must Be Printed in Black Ink or Typewritten**  
**Local License Fee \$** \_\_\_\_\_

1. Applicant is a <input type="checkbox"/> Corporation ..... <input type="checkbox"/> Individual <input type="checkbox"/> Partnership..... <input checked="" type="checkbox"/> Limited Liability Company		Present License Number  <u>26-26577-0000</u>
2. Name of Licensee <u>EIK CREEK Mining CO. LLC</u>	3. Trade Name <u>88 GREN</u>	
4. Location Address <u>502 W. Main Street</u>		
City <u>New Castle</u>	County <u>GARFIELD</u>	ZIP <u>81647</u>

**SELECT THE APPROPRIATE SECTION BELOW AND PROCEED TO THE INSTRUCTIONS ON PAGE 2.**

Section A – Manager reg/change	Section C
<ul style="list-style-type: none"> <li>• License Account No. _____</li> <li><input type="checkbox"/> Manager's Registration (Hotel &amp; Restr.).....\$75.00</li> <li><input type="checkbox"/> Manager's Registration (Tavern).....\$75.00</li> <li><input type="checkbox"/> Manager's Registration (Lodging &amp; Entertainment).....\$75.00</li> <li><input type="checkbox"/> Change of Manager (Other Licenses pursuant to section 44-3-301(8), C.R.S.) NO FEE</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Retail Warehouse Storage Permit (ea).....\$100.00</li> <li><input type="checkbox"/> Wholesale Branch House Permit (ea)..... 100.00</li> <li><input type="checkbox"/> Change Corp. or Trade Name Permit (ea) ..... 50.00</li> <li><input type="checkbox"/> Change Location Permit (ea)..... 150.00</li> <li><input type="checkbox"/> Change, Alter or Modify Premises \$150.00 x _____ Total Fee _____</li> <li><input type="checkbox"/> Addition of Optional Premises to Existing H/R \$100.00 x _____ Total Fee _____</li> <li><input type="checkbox"/> Addition of Related Facility to an Existing Resort or Campus Liquor Complex \$160.00 x _____ Total Fee _____</li> <li><input type="checkbox"/> Campus Liquor Complex Designation <span style="float: right;">No Fee</span></li> <li><input checked="" type="checkbox"/> Sidewalk Service Area <span style="float: right;">\$75.00</span></li> </ul>
Section B – Duplicate License	
<ul style="list-style-type: none"> <li>• Liquor License No. _____</li> <li><input type="checkbox"/> Duplicate License ..... \$50.00</li> </ul>	

**Do Not Write in This Space – For Department of Revenue Use Only**

Date License Issued	License Account Number	Period

The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.	<b>TOTAL AMOUNT DUE</b>	\$	.00
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# Instruction Sheet

For All Sections, Complete Questions 1-4 Located on Page 1

**Section A**

**To Register or Change Managers**, check the appropriate box in section A and complete question 8 on page 5. Proceed to the Oath of Applicant for signature. Submit to State Licensing Authority for approval.

**Section B**

**For a Duplicate license**, be sure to include the liquor license number in section B on page 1 and proceed to page 5 for Oath of Applicant signature.


**Section C**

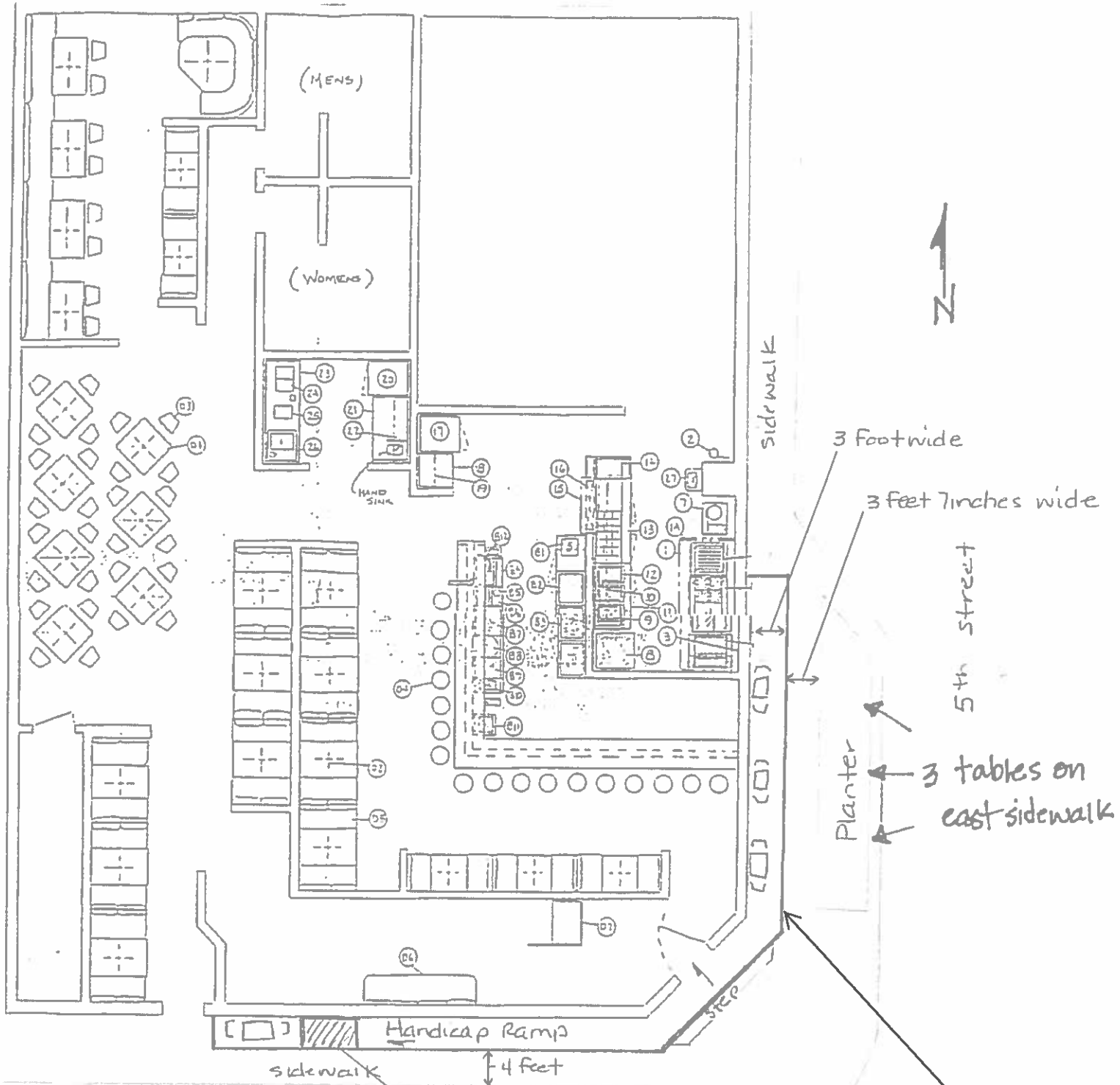
Check the appropriate box in section C and proceed below.

- 1) **For a Retail Warehouse Storage Permit**, go to page 3 complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 5 for Oath of Applicant signature. Submit to State Licensing Authority for approval.
- 2) **For a Wholesale Branch House Permit**, go to page 3 and complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 5 for Oath of Applicant signature. Submit to State Licensing Authority for approval.
- 3) **To Change Trade Name or Corporation Name**, go to page 3 and complete question 6 (be sure to check the appropriate box). Submit the necessary information and proceed to page 5 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 4) **To modify Premise, or add Sidewalk Service Area**, go to page 4 and complete question 9. Submit the necessary information and proceed to page 5 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 5) **For Optional Premises** go to page 4 and complete question 9. Submit the necessary information and proceed to page 5 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County).
- 6) **To Change Location**, go to page 3 and complete question 7. Submit the necessary information and proceed to page 5 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 7) **Campus Liquor Complex Designation**, go to page 4 and complete question 10. Submit the necessary information and proceed to page 5 for Oath of Applicant signature.
- 8) **To add another Related Facility** to an existing Resort or Campus Liquor Complex, go to page 4 and complete question 11.

<b>Storage Permit</b>	<p><b>5. Retail Warehouse Storage Permit or a Wholesalers Branch House Permit</b></p> <p><input type="checkbox"/> Retail Warehouse Permit for:</p> <p style="margin-left: 20px;"><input type="checkbox"/> On-Premises Licensee (Taverns, Restaurants etc.)</p> <p style="margin-left: 20px;"><input type="checkbox"/> Off-Premises Licensee (Liquor stores)</p> <p><input type="checkbox"/> Wholesalers Branch House Permit</p> <p>Address of storage premise: _____</p> <p>City _____, County _____, Zip _____</p> <p>Attach a deed/ lease or rental agreement for the storage premises. Attach a detailed diagram of the storage premises.</p>				
<b>Change Trade Name or Corporate Name</b>	<p><b>6. Change of Trade Name or Corporation Name</b></p> <p><input checked="" type="checkbox"/> Change of Trade name / DBA only</p> <p><input type="checkbox"/> Corporate Name Change (Attach the following supporting documents)</p> <p style="margin-left: 20px;">1. Certificate of Amendment filed with the Secretary of State, or</p> <p style="margin-left: 20px;">2. Statement of Change filed with the Secretary of State, <u>and</u></p> <p style="margin-left: 20px;">3. Minutes of Corporate meeting, Limited Liability Members meeting, Partnership agreement.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 2px;">Old Trade Name <i>Elk Creek Mining Co. LLC</i></td> <td style="width:50%; padding: 2px;">New Trade Name <i>BB Grill</i></td> </tr> <tr> <td style="padding: 2px;">Old Corporate Name <i>" "</i></td> <td style="padding: 2px;">New Corporate Name</td> </tr> </table>	Old Trade Name <i>Elk Creek Mining Co. LLC</i>	New Trade Name <i>BB Grill</i>	Old Corporate Name <i>" "</i>	New Corporate Name
Old Trade Name <i>Elk Creek Mining Co. LLC</i>	New Trade Name <i>BB Grill</i>				
Old Corporate Name <i>" "</i>	New Corporate Name				
<b>Change of Location</b>	<p><b>7. Change of Location</b></p> <p><b>NOTE TO RETAIL LICENSEES:</b> An application to change location has a local application fee of \$750 payable to your local licensing authority. You may only change location within the same jurisdiction as the original license that was issued. Pursuant to 44-3-311(1) C.R.S. Your application must be on file with the local authority thirty (30) days before a public hearing can be held.</p> <p>Date filed with Local Authority _____ Date of Hearing _____</p> <p>(a) Address of current premises _____</p> <p style="margin-left: 20px;">City _____ County _____ Zip _____</p> <p>(b) Address of proposed New Premises (Attach copy of the deed or lease that establishes possession of the premises by the licensee)</p> <p>Address _____</p> <p style="margin-left: 20px;">City _____ County _____ Zip _____</p> <p>(c) New mailing address if applicable.</p> <p>Address _____</p> <p style="margin-left: 20px;">City _____ County _____ State _____ Zip _____</p> <p>(d) Attach detailed diagram of the premises showing where the alcohol beverages will be stored, served, possessed or consumed. Include kitchen area(s) for hotel and restaurants.</p>				

Change of Manager	<p><b>8. Change of Manager or to Register the Manager of a Tavern, Hotel and Restaurant, Lodging &amp; Entertainment liquor license or licenses pursuant to section 44-3-301(8).</b></p> <p>(a) Change of Manager (attach Individual History DR 8404-I H/R, Tavern and Lodging &amp; Entertainment only)          Former manager's name _____          New manager's name _____</p> <p>(b) Date of Employment _____          Has manager ever managed a liquor licensed establishment? Yes <input type="checkbox"/> No <input type="checkbox"/>          Does manager have a financial interest in any other liquor licensed establishment? Yes <input type="checkbox"/> No <input type="checkbox"/>          If yes, give name and location of establishment _____</p>
Modify Premises or Addition of Optional Premises, Related Facility, or Sidewalk Service Area	<p><b>9. Modification of Premises, Addition of an Optional Premises, Addition of Related Facility, or Addition of a Sidewalk Service Area</b></p> <p>NOTE: Licensees may not modify or add to their licensed premises until approved by state and local authorities.</p> <p>(a) Describe change proposed <u>WOULD LIKE TO ADD FOUR 2 PERSON OUTDOOR DINING TABLES ON MY SIDEWALK TO ENCOURAGE SOCIAL DISTANCING</u></p> <p>(b) If the modification is temporary, when will the proposed change:          Start _____ (mo/day/year) End _____ (mo/day/year)          NOTE: THE TOTAL STATE FEE FOR TEMPORARY MODIFICATION IS \$300.00</p> <p>(c) Will the proposed change result in the licensed premises now being located within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?          (If yes, explain in detail and describe any exemptions that apply) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(d) Is the proposed change in compliance with local building and zoning laws? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(e) If this modification is for an additional Hotel and Restaurant Optional Premises has the local authority authorized by resolution or ordinance the issuance of optional premises? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(f) Attach a diagram of the current licensed premises and a diagram of the proposed changes for the licensed premises.</p> <p>(g) Attach any existing lease that is revised due to the modification.</p> <p>(h) For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.</p>
Campus Liquor Complex Designation	<p><b>10. Campus Liquor Complex Designation</b></p> <p>An institution of higher education or a person who contracts with the institution to provide food services</p> <p>(a) I wish to designate my existing _____ Liquor License # _____ to a Campus Liquor Complex Yes <input type="checkbox"/> No <input type="checkbox"/></p>
Additional Related Facility	<p><b>11. Additional Related Facility</b></p> <p>To add a Related Facility to an existing Resort or Campus Liquor Complex, include the name of the Related Facility and include the address and an outlined drawing of the Related Facility Premises.</p> <p>(a) Address of Related Facility _____</p> <p>(b) Outlined diagram provided Yes <input type="checkbox"/> No <input type="checkbox"/></p>

<b>Oath of Applicant</b>		
I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge		
Signature 	Title owner	Date 4-27-20
<b>Report and Approval of LOCAL Licensing Authority (CITY / COUNTY)</b>		
The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the applicable provisions of Title 44, Articles 4 and 3, C.R.S., as amended. <b>Therefore, This Application is Approved.</b>		
Local Licensing Authority (City or County)		Date filed with Local Authority
Signature	Title	Date
<b>Report of STATE Licensing Authority</b>		
The foregoing has been examined and complies with the filing requirements of Title 44, Article 3, C.R.S., as amended.		
Signature	Title	Date



3 Foot wide  
 3 feet 7 inches wide  
 5th street  
 3 tables on east sidewalk  
 Planter

One table on south sidewalk

Handicap ramp landing = 3' x 5'

Thick black line = License area boundary

total of 204 s.f. contiguous to currently licensed area. tables are 24" 2-tops. Remaining sidewalk access is four-plus feet wide

Main Street

## REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (“Agreement”), is made by and among the Town of New Castle, Colorado (hereinafter “Town”) and Elk Creek Mining, LLC, d/b/a 88 Grill (“88 Grill”) this 5<sup>th</sup> day of May, 2020.

WHEREAS, the Town is the owner of those certain rights-of-way known as West Main Street and 5<sup>th</sup> Street, which include the roadway and sidewalks adjacent thereto (the “Town Property”); and

WHEREAS, 88 Grill leases the property located at 502 W. Main Street, New Castle, Colorado (the “Grill Property”) from John R. Webber and Del Howard, owners of the Grill Property, for the purpose of operating the 88 Grill restaurant at that location; and

WHEREAS, the Grill Property is immediately adjacent to the Town Property; and

WHEREAS, 88 Grill has requested permission to utilize a portion of the Town Property to permit certain encroachments consisting of an outdoor seating area where food and alcoholic beverages will be served (“Improvements”) as further shown on the attached Exhibit A, which is incorporated herein; and

WHEREAS, Resolution No. TC 99-19 and Town Code Section 12.20.100 permits the Town to approve such encroachments onto Town property under certain conditions; and

WHEREAS, the Parties desire to enter into this Agreement to outline the various responsibilities of the parties concerning access to and use of the Town Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

The Town hereby grants a revocable license to 88 Grill to occupy that portion of the Town Property shown on Exhibit A hereto (the “License Area”) for the purpose of permitting, installing, operating, and maintaining the Improvements on the following terms and conditions:

1. Any party may terminate this Agreement for any reason whatsoever by giving the other party sixty (60) days’ written notice.
2. 88 Grill shall be solely responsible for all costs incurred to install, operate, maintain, and repair the Improvements.
3. 88 Grill will be responsible for any damage done to the License Area, other portions of Town Property, 88 Grill’s property, or the personal property of any

third party that occurs as a result of 88 Grill's or its licensees' or invitees' use of the License Area.

4. Upon the termination of this Agreement, 88 Grill shall remove the Improvements and all other personal property from the License Area.
5. If, upon termination, 88 Grill does not remove the Improvements and/or other personal property, the Town reserves the right to remove any obstacle or obstruction, including 88 Grill's personal property, and to charge 88 Grill for the costs associated with removing, storing, and/or disposing of such obstacle or obstruction.
6. 88 Grill agrees to indemnify and hold harmless the Town and its elected and appointed officials, officers, employees, and agents from and against any liability, demands, and expenses, including reasonable court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the Improvements, the use of the License Area by 88 Grill or its licensees or invitees, or otherwise under this Agreement. This indemnification shall include actual attorneys' fees incurred by the Town in the event that any party brings an action against the Town.
7. 88 Grill has or will provide the Town with a certificate naming the Town as an additional insured under its liability insurance policy. 88 Grill shall maintain that insurance pursuant to the requirements of Resolution No. TC 99-19, and shall otherwise comply with that Resolution and the Municipal Code in all manner and respects.
8. All parties have participated in the negotiation and preparation of this Agreement and it shall therefore not be construed against or in favor of any party.
9. Any notices per this Agreement shall be sent as follows:

Town:	Town of New Castle P.O. Box 90 New Castle CO 81647
with a copy to:	David McConaughy Garfield & Hecht, P.C. 901 Grand Avenue, Suite 201 Glenwood Springs CO 81601
88 Grill:	2533 W. Pinyon Ave., Grand Junction, CO 81505

10. Upon execution by the parties, this Agreement shall become binding upon and inure to the benefit and detriment of the parties, their successor and assigns. 88 Grill or the owners of the Grill Property shall disclose the existence of this Agreement to any prospective purchaser of the Grill Property. Any successor of 88 Grill or the Grill Property owners must consent in writing to be bound by the terms and conditions of this Agreement, Resolution TC 99-19, and the Municipal Code in order for this Agreement and the license granted herein to remain in effect as to any such successor. If such written consent is not obtained, this Agreement shall terminate at the direction of the Town.
11. The Parties hereto understand and agree that the Town is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* as amended from time to time or otherwise available to the Town.
12. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. In the event of any dispute arising out of this Agreement, the parties agree that jurisdiction and venue is proper in the courts of Garfield County, Colorado, and the prevailing party shall be entitled to recover its reasonable costs and attorney fees in addition to all other remedies.
13. The Parties agree that this Agreement constitutes the final and entire agreement among the Parties and thereby supersedes and voids any and all prior agreements, letters, or understandings, whether written or oral, which may have existed regarding the subject matter of this Agreement.
14. No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived, or otherwise changed except by written instrument duly executed by the Parties hereto.
15. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute the Agreement. The parties consent to the use of electronic signatures hereon.
16. If any provision in this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired.
17. In case at any time after the date hereof, any further action is necessary or desirable to give full effect to the intent and purpose of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other party hereto reasonably may request.

18. This Agreement does not constitute an express or implied land use approval of any type concerning the Grill Property, nor does it otherwise impact or affect the zoning and entitlements of the Grill Property. 88 Grill is required to obtain any and all land use, business, and other licenses, permits, and approvals needed to operate its business on the Grill Property.

19. No provision of this Contract shall be construed or interpreted: i) to directly or indirectly obligate Town to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Town to or in aid of any person, company or corporation within the meaning Colorado law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

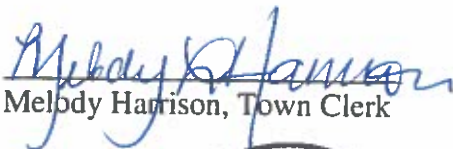
TOWN OF NEW CASTLE

By:

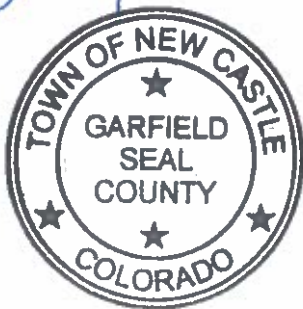


Art Riddile, Mayor

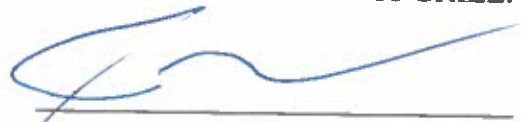
Attest:



Melody Harrison, Town Clerk



88 GRILL:



Elk Creek Mining, LLC  
By: John Webster Member

**TOWN OF NEW CASTLE, COLORADO**  
**ORDINANCE NO. TC 2020-1**

AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL AMENDING  
SECTIONS 16.16.010 & 17.100.040 OF THE NEW CASTLE MUNICIPAL  
CODE CONCERNING THE APPLICATION PROCESS FOR SUBDIVISION  
AND PUD DEVELOPMENT SKETCH PLANS.

WHEREAS, Chapter 16.16.010 of the Town of New Castle (“Town”) municipal code (“Code”) sets forth the provisions and regulations for sketch plans relevant to subdivision applications; and

WHEREAS, Chapter 17.100.040 of the Code sets forth the provisions and regulations for sketch plans relevant to Planned Unit Development (“PUD”) applications; and

WHEREAS, sketch plans provide an opportunity for the Town to review and comment on the level of conformance with Town regulations and requirements before significant expense is incurred by the developer; and

WHEREAS, Town staff has determined that the current sketch plan requirements within Sections 16.16.010 & 17.100.040 are inadequate for assessing an application’s initial level of conformance with Town regulations and requirements; and

WHEREAS, Town staff has developed proposed amendments to Sections 16.16.010 & 17.100.040 of the Code that it believes will help staff, the Planning Commission, and Town Council better evaluate proposed development at the sketch plan level and streamline and reduce issues at the preliminary and final review levels; and

WHEREAS, the Planning Commission (“Commission”) held a public hearing regarding the changes on February 26, 2020, which was continued to March 11, 2020, and approved Resolution PZ 2020-3 recommending approval of the changes to Sections 16.16.010 & 17.100.040 of the Code; and

WHEREAS, the Town Council (“Council”) has considered the amendments to the Code set forth herein and now desires to approve the same.

NOW, THEREFORE, BE IT ORDAINED BY THE NEW CASTLE TOWN COUNCIL AS FOLLOWS:

1. **Recitals.** The foregoing recitals are incorporated by reference herein as findings and determinations of the Council.
2. **Section 16.16.010 Amendment.** Section 16.16.010 of the Town Municipal Code is hereby repealed in its entirety and reenacted as set forth below:

## **16.16.010 – Sketch Plan Requirements.**

### **A. Purpose**

All subdivisions of a single lot into six (6) or more lots or condominium units shall be deemed a major subdivision per Section 16.04.020. Any major subdivision land use proposal shall generally require a 3-step subdivision plat review – sketch, preliminary, and final – unless granted an exemption by the Town Administrator. The sketch review will assess: initial compliance with the Town Code, provisions for utilities and infrastructure, substantial conformance to the Comprehensive Plan, and any adverse impacts to the Town. At this initial step, no formal approvals are made. In instances of combined PUD/Subdivision development applications, both sketch plans shall be processed concurrently pursuant to 17.100.030.

### **B. Pre-Application Meeting**

Prior to submission of a sketch plan application, the applicant and the Town Administrator or designated Town staff will conduct a pre-application meeting. Pre-application meetings are non-binding for all parties but are an opportunity for the Applicant to receive initial feedback about Code requirements and the Town's application process. At the pre-application meeting, the applicant shall provide a description of the project, conceptual drawings identifying proposed uses, zonings, and densities, and any additional information requested by the Town Administrator. A subsequent pre-application meeting may be required by the Town Administrator if a complete sketch plan application is not submitted within six (6) months of the initial pre-application meeting. The Town Administrator may waive the pre-application meeting for good cause upon request from the applicant or otherwise at the discretion of the Town Administrator.

### **C. Sketch Plan Submittal**

The sketch plan application shall include the following:

1. Narrative of proposed development;
2. Topography;
3. Estimated number of residents, occupants, or employees, as applicable;
4. Water & sewer loads;
5. Number of dwelling units and/or non-residential square footage, including the number of bedrooms in any multi-family units;
6. Size of site;
7. Lot Sizes;
8. Density;
9. Approved & proposed land uses;
10. Location of proposed public and semi-public uses (dedicated and otherwise);
11. General traffic circulation plan showing entries and exits, roads, anticipated turning movements into and within the development area, etc.;
12. Open space, trails, sidewalks, parks, and other amenities;

13. Site Plan showing approximate lot lines and general site layout, including the location of any existing structures; and
14. Viewshed analysis

All application materials shall be submitted in electronic format. Upon receipt of the electronic materials, the Town Administrator or designated Town staff will determine the number of paper copies applicant will be required to provide.

#### D. Completeness Determination

A completeness determination of the application will be made within thirty (30) days after submission of the initial application materials. An application is deemed complete once all fees, signed documentation, and necessary review materials from section C are furnished. If the application is deemed incomplete, the applicant will be notified of any deficiencies. The application process—including the scheduling of public meetings—will not continue until all deficiencies are corrected and the application is deemed complete.

#### E. Review Process

The sketch plan application will be reviewed by both the Planning Commission and Town Council. The Applicant will be scheduled with the Planning Commission on the first available meeting date at least fifteen (15) days after the date that the sketch plat application is deemed complete pursuant to Section D, above. The application will be evaluated according to the following review topics:

- Consistency with the comprehensive plan;
- Compliance with zoning and density requirements;
- Compatibility to neighboring land uses;
- Availability of Town services from public works, fire, and police;
- Vehicle, bicycle, and pedestrian circulation; and
- Preservation of the natural character of the land;

The Commission shall direct any recommendations for the application to Council. At the first available meeting date after the Commission's review, the sketch plan shall be presented to Council with any comments and recommendations from the Commission and staff members. Council may make further comments and recommendations upon review of the application. Afterwards, the Applicant may elect either: 1.) to make revisions to the sketch plan for further review, or 2.) proceed directly to the preliminary application phase.

#### F. Duration of Sketch Plan

The sketch plan review conducted pursuant to this Section 16.16.010 will remain in effect for one year from the date Town Council reviews the application. If the applicant does not submit a preliminary plat application within said year, applicant may be required to submit a new sketch plan application before filing a preliminary plat application. Similarly, if applicant's preliminary plat application includes substantial and material (e.g. proposes new uses, higher density

development, new or additional variances, etc.) changes from the original sketch plan, the Town Administrator may require the applicant to conduct a new sketch plan review.

3. **Section 17.100.040 Amendment.** Section 17.100.040 of the Town Municipal Code is hereby repealed in its entirety and reenacted as set forth below:

### **17.100.040 - Sketch Plan Requirements.**

#### **A. Purpose**

Any PUD land use proposal shall generally require a 3-step review – sketch, preliminary, and final – unless granted an exemption by the Town Administrator. The sketch review will assess: initial compliance with the Town Code, provisions for utilities and infrastructure, substantial conformance to the Comprehensive Plan, and any adverse impacts to the Town. At this initial step, no formal approvals are made. In instances of combined PUD/Subdivision development applications, both sketch plans shall be processed concurrently pursuant to 17.100.030.

#### **B. Pre-Application Meeting**

Prior to submission of a sketch plan application, the applicant and the Town Administrator or designated Town staff will conduct a pre-application meeting. Pre-application meetings are non-binding for all parties, but are an opportunity for the Applicant to receive initial feedback about Code requirements and the Town's application process. At the pre-application meeting, the applicant shall provide a description of the project, conceptual drawings identifying proposed uses, zoning, and densities, and any additional information requested by the Town Administrator. A subsequent pre-application meeting may be required by the Town Administrator if a complete sketch plan application is not submitted within six (6) months of the initial pre-application meeting. The Town Administrator may waive the pre-application meeting for good cause upon request from the applicant or otherwise at the discretion of the Town Administrator.

#### **C. Sketch Plan Submittal**

The sketch plan application shall include the following:

1. Narrative of proposed development;
2. Topography;
3. Estimated number of residents or employees, as applicable;
4. Water & sewer loads;
5. Number of dwelling units and/or non-residential square footage, and the number of bedrooms in any multi-family residential unit;
6. Size of site;
7. Lot Sizes;
8. Density;
9. Approved & proposed land uses;
10. Location of proposed public and semi-public uses (dedicated and otherwise);

11. General traffic circulation showing entries and exits, roads, anticipated turning movements into and within the development area, etc.;
12. Open space, trails, sidewalks, parks, and other amenities;
13. Site Plan showing approximate lot lines and general site layout, including the location of any existing structures; and
14. Viewshed analysis

All application materials shall be submitted in electronic format. Upon receipt of the electronic materials, the Town Administrator or designated Town staff will determine the number of paper copies applicant will be required to provide.

#### D. Completeness Determination

A completeness determination of the application will be made within thirty (30) days after submission of the initial application materials. An application is deemed complete once all fees, signed documentation, and necessary review materials from section C are furnished. If the application is deemed incomplete, the applicant will be notified of any deficiencies. The application process—including the scheduling of public meetings—will not continue until all deficiencies are corrected and the application is deemed complete.

#### E. Review Process

The sketch plan application will be reviewed by both the Planning Commission and Town Council. The Applicant will be scheduled with the Planning Commission on the first available meeting date at least fifteen (15) days after the date that the sketch plan application is deemed complete pursuant to Section D, above. The application will be evaluated according to the following review topics:

- Consistency with the comprehensive plan;
- Compatibility of proposed zoning, density, and general development plan to neighboring land uses and applicable Town Code provisions;
- Availability of Town services from public works, fire, and police;
- Vehicle, bicycle, and pedestrian circulation; and
- Preservation of the natural character of the land;

The Commission shall direct any recommendations for the application to Council. At the first available meeting date after the Commission's review, the sketch plan shall be presented to Council with a summary of the comments and recommendations from the Commission and staff members. Council may make further comments and recommendations upon review of the application. Afterwards, the Applicant may elect either: 1.) to make revisions to the sketch plan for further review, or 2.) proceed directly to the preliminary application phase.

#### F. Community Open House

Prior to submitting a preliminary plan application, the Applicant shall conduct a community open house meeting regarding the sketch plan, any changes thereto recommended by the Town, and any other changes made to the proposed development in anticipation of submitting a preliminary PUD

development plan. The open house is an occasion to share the project directly with residents and stakeholders. The Applicant shall notify the Town of the date of the community open house, and notice the community open house according to the Town's public hearing notice procedures set forth in Section 16.08.040, except that notice to mineral owners is not required.

G. Duration of Sketch Plan

The sketch plan review conducted pursuant to this Section 17.100.040 will remain in effect for one year from the date Town Council reviews the application. If applicant does not submit a preliminary PUD plan application within said year, applicant may be required to submit a new sketch plan application before filing a preliminary plan application. Similarly, if applicant's preliminary PUD plan application includes substantial and material (e.g. proposes new uses, higher density development, new or additional variances, etc.) changes from the original sketch plan, the Town Administrator may require the applicant to conduct a new sketch plan review.

4. **Effective Date.** This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on May 19, 2020, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on June 2, 2020, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE, COLORADO

By: \_\_\_\_\_  
Art Riddle, Mayor

ATTEST:

\_\_\_\_\_  
Melody Harrison, Town Clerk

## COMMERCIAL LEASE

This Commercial Lease (the “**Lease**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020, and is entered into by and between Landlord (as defined below) and Tenant (as defined below). In consideration of the payment of the Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord pursuant to the Lease (the “**Additional Rent**”); and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts, the Premises (as defined below), subject to the terms and provisions set forth in the Lease.

Landlord and Tenant agree that this Lease shall fully and completely replace that certain Commercial Lease dated April 5, 2018, between Landlord and Tenant regarding the Premises (the “**Prior Lease**”) and that upon commencement of the Term (defined below) of this Lease, the Prior Lease shall terminate and be of no further force or effect.

### PARTIES, PREMISES, AND DEFINED TERMS

**1. Landlord:** Town of New Castle, Colorado, a Colorado home rule municipality (the “**Landlord**”). Landlord’s authorized representative for matters arising this Lease shall be the Town of New Castle Town Administrator (“**Town Administrator**”).

**2. Tenant:** Rustic Furniture Designs, LLC, a Colorado limited liability company, and Me & My House Cottage Furniture, LLC, a Colorado limited liability company (collectively, the “**Tenant**”).

**3. Premises:** Landlord is the owner of that certain real property located at 667 W. Main Street, New Castle, Colorado, Assessor Parcel No. 212331300005, and the improvements thereon, including a 1,200 square-foot warehouse (the “**Premises**”). Landlord hereby leases the Premises to Tenant according to the terms of this Lease.

**4. Term:** Tenant is currently in possession of the Premises pursuant to the terms of the Prior Lease, which Prior Lease shall remain in effect until 11:59 p.m. on May 31, 2020. Thereafter, Tenant shall remain in possession of the Premises and Landlord will lease the Premises to Tenant pursuant to the terms and conditions of this Lease from 12:00 a.m. on the 1st day of June, 2020, and until 11:59 p.m. on the 31st day of May, 2021 (the “**Initial Term**”). Subject to Tenant’s performance of all obligations under the Lease, including, without limitation, payment of Rent and Additional Rent, Tenant shall enjoy quiet possession of the Premises.

**5. Renewal.** Provided that Tenant completes all of the Tenant Improvements described in Paragraphs 21(a)(i) and 21(a)(ii), below, by the end of the Initial Term, Tenant shall have the option to extend the Term, pursuant to the terms and conditions contained herein, for two additional 1-year periods (each a “**Renewal Term**”) upon providing Landlord with written notice of its intent to renew at least forty-five (45) days before the end of the Initial Term or Renewal Term, as applicable. Notwithstanding the foregoing, Tenant’s option to extend this Lease for the first Renewal Term is contingent upon Tenant’s completing the Tenant Improvements described in Paragraph 21(a)(iii) of this Lease. Further, the option to renew set forth in this Paragraph 5 shall only be exercisable provided that no Tenant Defaults exist at the time the renewal is sought and that no Tenant Defaults have occurred during the Initial or Renewal Term which have not been cured by Tenant as provided by the Lease.

**6. Termination.** Landlord and Tenant reserve the right to terminate this Lease with or without cause upon one hundred twenty (120) days’ written notice to the other party. In the event one party elects to terminate the Lease pursuant to the terms of this Paragraph 6, all of the parties’ obligations under this Lease will cease as of the date of termination of the Lease stated in the notice. In no event shall Landlord be liable to Tenant for any damages Tenant may incur as a result of Landlord’s exercising its rights under this Paragraph 6.

**7. Rent:** Rental for the Initial Term shall be payable, without notice, in equal installments of SIX HUNDRED FIFTY and 00/100 Dollars (\$650.00) to Landlord on the first day of each calendar month for that month’s rental (the “**Rent**”). Rent for the first month of the Initial Term shall be due on or before May 1, 2020. Unless otherwise provided in the Lease, all payments due under the Lease, including Rent and Additional Rent, shall be mailed or delivered to Landlord at the following address: 450 West Main Street, P.O. Box 90, New Castle, Colorado 81647. The monthly Rent for each Renewal Term shall increase by \$50.00 or the CPI in effect at the end of the immediately preceding term, whichever is greater, and the Rent shall continue to be paid on a monthly basis for the duration of each Renewal Term.

**8. Security Deposit:** Landlord currently holds a \$600.00 deposit (“**Security Deposit**”) provided by Tenant pursuant to the Prior Lease. The existing Security Deposit shall constitute the Security Deposit for this Lease. Landlord will hold the Security Deposit as security for the return of the Premises at the expiration of the Term or Renewal Term, as applicable, in

as good condition as when Tenant entered the Premises, normal wear and tear and approved improvements excepted, as well as the faithful, timely, and complete performance of all other terms, conditions, and covenants of the Lease.

**a. Application of Security Deposit:** The parties agree: (1) that the Security Deposit, or any portion thereof, may be applied to the curing of any Default that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that the Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied, which shall be added to the Security Deposit so it will be restored to its original amount; (2) that should the Premises be conveyed by Landlord, the Security Deposit or any portion thereof may be turned over to Landlord's grantee, and if the Security Deposit is turned over, Tenant agrees to look to such grantee for such application or return; (3) that Landlord shall not be obligated to hold Security Deposit as a separate fund; and (4) that should a Default occur, Landlord may, as an additional remedy, increase the Security Deposit at its sole discretion. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise.

**b. Return of Security Deposit:** If Tenant shall perform all of its respective covenants and agreements in the Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of the Lease, together with a statement, shall be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, or any renewal or extension thereof (or such earlier time if required by applicable law), provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.

**9. Use of Premises:** The Premises shall be used for the operation of a retail furniture store, which includes the sale, showing, and alteration and maintenance of Tenant's inventory of furniture, provided said use conforms with applicable zoning regulations. At least 75% of the interior of the building on the Premises shall be used for Tenant's retail operations. The remaining 25% of the building may be used as a workshop to conduct Tenant's furniture alterations. Tenant may also hold special events on the Premises from time to time, including live music events, food truck offerings, and open houses. Tenant shall obtain any necessary permits or licenses from the Town of New Castle prior to conducting any such special events. Tenant shall not, without the prior written consent of Landlord, permit the Premises to be used for any other purpose.

**10. Hours of Operation.** Tenant agrees that the primary use of the Premises is that of a retail operation. Tenant shall maintain and advertise regular hours of operation, which as of the date of this Lease are Thursday through Saturday, 10:00 a.m. to 3:00 p.m. Tenant may adjust the days and times of its operations if needed to better serve its customers, but in no event shall Tenant's hours of operation be less than 15 hours per calendar week. It will be deemed a Default of the Lease if Tenant fails to be open for business for the minimum number of hours identified in this Paragraph 10 unless Tenant is prohibited from operating by a court or governmental order. Tenant's hours of operation shall be clearly posted on the exterior of the building on the Premises.

**11. Utilities/Additional Rent:** Tenant shall be responsible for paying all utilities needed on the Premise, which include, but are not limited to, electric, gas, water, sewer, phone, cable/satellite T.V., internet, refuse disposal, and any other utilities Tenant desires to allow Tenant to use the Premises in compliance with this Lease. Tenant shall put said utilities in its name and pay the utilities directly to the utility provider. In the event Tenant fails to timely pay any of the aforementioned charges, it shall be deemed a Default.

**12. Payment of Additional Rent:** Additional Rent shall be paid by Tenant to Landlord in monthly installments concurrent with the Rent.

**13. Late Payments:** If any Rent, Additional Rent, or other payment is received later than 5 days after the date when due, the parties agree that a late fee in the amount of \$200.00 shall also be due and payable, which late fee shall constitute Additional Rent. The addition of such amount and the collection thereof shall not operate to waive any other rights of Landlord for nonpayment of Rent, or for any other reason.

**14. Parking:** For the Term, Landlord grants to Tenant and its employees and invitees, at no additional charge, a Parking License. The Parking License is a non-exclusive license for the use of all parking spaces upon the Premises (the "**Parking License**"). The Parking License shall be effective for the Initial Term and any Renewal Term. Tenant may, at its discretion, designate and/or demarcate the parking spaces available to its employees and invitees. Notwithstanding the foregoing, Tenant and its licensees and invitees are prohibited from parking or storing mobile homes, trailers, and broken down motor vehicles on the Premises, except that trailers may be temporarily parked on the Premises for the purpose of delivering and removing furniture and other inventory.

## PREMISES

**15. Condition of Premises and Representations:** Tenant is familiar with the physical condition of the Premises. Except as may otherwise be provided in the Lease, Landlord makes no representations, or warranties as to the physical condition of the Premises or their suitability for Tenant's intended use. The Premises are rented "as is," in current condition, and all warranties are hereby expressly disclaimed. Landlord makes no representations or warranties as to the suitability of the Premises for Tenant's intended use. Landlord further makes no representations or warranties as to whether Tenant's intended use will necessitate changes or alterations to the Premises in order to comport with local, state, or federal laws and regulations. Such laws and regulations include, but are not limited to: health code regulations, access regulations (including, but not limited to, the Americans with Disabilities Act), and zoning regulations. Tenant understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Premises into compliance with any local, state, or federal laws and regulations because of Tenant's intended use, Tenant shall be solely responsible for any and all associated costs and expenses relative thereto. Tenant further indemnifies and agrees to hold Landlord harmless from any and all claims and liabilities that may arise by virtue of Tenant's use of the Premises in violation of any local, state, or federal laws and regulations.

**16. Use of Premises:** Tenant, in consideration of the leasing of the Premises, agrees as follows:

**a. Use of Premises:** To use and occupy the Premises solely as and for the use specified in Paragraph 9 of the Lease. Landlord's consent to the aforementioned use is not an assurance, or warranty that the Premises' attributes are sufficient for Tenant's use. Tenant represents and warrants that it has conducted sufficient due diligence to assure itself that the Premises are suitable for its use, and that such use is permitted by applicable law.

**b. Signage:** Tenant shall be permitted to erect a sign or signs upon the Premises, provided all signage is in compliance with size and other requirements of Landlord and as may be set forth by applicable ordinances and regulations including, but not limited to, sign and design ordinances.

**c. Vacancy:** It will be deemed a Default of the Lease if the Premises are left vacant and unoccupied for over thirty (30) days. In addition to other remedies contained in the Lease, the Landlord may, without being obligated to do so, and without terminating the Lease, retake possession of the Premises and relet, or attempt to relet them for such rent and upon such conditions as the Landlord deems best, making such changes and repairs as may be required, giving credit for the amount of rent so received, less all expenses of such changes and repairs. Tenant shall be liable for the balance of the Rent and Additional Rent herein reserved until the expiration of the Term or Renewal Term, as applicable.

**d. Legal Compliance:** Tenant and its licensees and invitees shall comply with and abide by all federal, state, county, and municipal laws and ordinances in connection with the occupancy and use of the Premises. Such municipal laws and ordinances include the obligation to collect and remit sales tax to the Town of New Castle. Tenant understands and agrees that the sale of furniture or other goods on the Premises are taxable transactions for which sales tax is owed and that Tenant shall collect and remit sales tax for the same. Failing to collect and remit sales tax in compliance with the Town of New Castle municipal code will be deemed a Default of this Lease. Tenant hereby covenants and agrees to use its reasonable efforts to prevent and preclude its employees, guests, invitees, etc. from the engaging in illegal conduct. Tenant and its licensees and invitees shall not use the Premises in any way that may result in an increase of the rate or cost to the Landlord to insure the Property. No hazardous or dangerous activities are permitted upon the Premises.

**e. Additional Prohibitions:** Neither Tenant nor its subtenants, licensees, volunteers, employees, guests, or invitees shall act in any manner that would interfere with, or be a nuisance to adjacent property owners or that would interfere with other parties' quiet enjoyment of their premises. Said prohibition includes, but is not limited to, loud noises, loud music, noxious or unpleasant odors, and disruptive behavior or actions. Tenant shall not permit any portion of the Premises to be used in a manner that may endanger the person or property of Landlord, co-tenants, or any person living on or near the Premises. Tenant shall keep all portions of the Premises in a clean, safe, sanitary, and habitable condition.

**f. Pets and Animals:** Pets or animals shall be permitted upon the Premises.

**g. Storage/Trash:** Tenant shall store all personal property entirely within the Premises. Tenant shall store all trash and refuse in adequate containers within the Premises, which Tenant shall maintain in a neat and clean condition and so as not to be visible to members of the public in, on, or about the Premises, and so as not to create any health or fire hazard.

**h. Hazardous Material Prohibited:** Tenant shall not cause or permit any hazardous material to be brought upon, kept or used in, on, or about the Premises by Tenant, its agents, employees, contractors, or invitees. Landlord and Tenant agree that reasonable quantities of the paints, stains, glues, and other such materials related to Tenant's furniture repair and restoration activities do not constitute hazardous materials. If Tenant breaches the obligations stated in this subsection, or if the presence of hazardous material on the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs for which Tenant is responsible to Landlord for resulting damage, then Tenant shall indemnify, defend, and hold Landlord harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

**i. Quiet Enjoyment:** Landlord agrees that upon Tenant's paying the Rent and performing Tenant's obligations under the Lease, Tenant shall peacefully and quietly have, hold, and enjoy the Premises throughout the Term or until the Lease is terminated pursuant to its terms. Landlord shall not be responsible for the acts or omissions of any other tenant or third party that may interfere with Tenant's use and enjoyment of the Premises. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for security purposes only, the Landlord shall be automatically relieved of any and all obligations and liabilities accruing from and after the date of such transfer.

**17. Subletting or Assignment:** Tenant shall not sublet the Premises or any part thereof, nor assign the Lease or any interest therein, without the prior written consent of Landlord. Such consent shall be at the sole discretion of Landlord. As a condition of assignment or sublease, Landlord may require the continued liability of Tenant or a separate personal guaranty by Tenant or its principal. In the event an assignment or sublease is permitted, all payments from assignee or sublessee shall be made directly by said party to Landlord, and not through Tenant.

**18. Surrender of Premises:** Tenant will return the Premises to Landlord at the expiration of the Term in as good order and repair as when Tenant took possession, loss by casualty, normal wear and tear, and approved improvements excepted. Any deterioration or damage caused by accident, abuse, carelessness, or negligence shall not be considered normal wear and tear. In the event that Tenant fails to redeliver the Premises in appropriate condition, Landlord may restore the Premises to appropriate condition, including repair, replacement, and cleaning. The cost of any work necessitated shall be deducted from the Security Deposit; if the Security Deposit is insufficient to cover work performed, Tenant shall be obliged to pay the additional balance.

**19. Removal of Fixtures/Redelivery:** Tenant shall remove, at the termination of the Lease, provided Tenant is not in Default, Tenant's moveable trade fixtures and other items of personal property that are not permanently affixed to the Premises. Tenant shall remove the alterations and additions and signs made by Tenant as Landlord may request and repair any damage caused by such removal. Tenant shall peaceably yield up the Premises, all alterations and additions thereto (except such as Landlord has requested Tenant to remove), and all fixtures, furnishings, floor coverings, and equipment that are permanently affixed to the Premises, which shall thereupon become the property of the Landlord. Any personal property of Tenant not removed within five (5) days following such termination shall, at Landlord's option, become the property of Landlord.

### **REPAIRS AND MAINTENANCE**

**20. Repairs and Maintenance of the Premises:** The Landlord shall maintain the foundation, exterior walls, and roof of the improvements located on the Premises in good repair. The Tenant agrees to keep all the other improvements (including plate glass and other windows, window frames, and doors) upon the Premises repaired and maintained in good order as described in the Lease. The Tenant shall properly irrigate and care for all trees, shrubbery, and lawn, and the Tenant shall keep all driveways, sidewalks, and parking areas on the Premises free and clear of ice and snow.

#### **21. Tenant Improvements.**

- a. Required Improvements:** As additional consideration for this Lease, Tenant agrees to make the following improvements to the Premises (the "**Required Work**") at Tenant's cost and expense:
- i. By June 1, 2020: Replace the solid surface front door of the building with a new front door that has 50% or greater glass surface; install a window in the front wall area to the east of the garage overhead door.
  - ii. By September 1, 2020: Replace the solid surface overhead garage door with a full glass panel overhead garage door; provide planter boxes and plants along the front and east side of the building on the Premises.

iii. By June 1, 2021: install small deck area to allow for bands, entertainment, and extended outdoor retail space; install front or east side roof awning.

- b. **Optional Improvements:** Tenant may desire to make additional changes to the interior of the building located on the Premises to make the Premises suitable for Tenant's intended use thereof as stated in Paragraph 9 of this Lease. Such work may include, but is not limited to, electrical wiring, HVAC, plumbing, framing, drywall, flooring, finish work, telephone systems, wiring, and other fixtures necessary to finish the Premises to a condition suitable for Tenant's use ("**Optional Work**"). The details of such work shall be specified and agreed to between the parties in a separate document appended to this Lease and which shall constitute a part of this Lease ("**Work Letter**"). Tenant's Work Letter may, if deemed necessary by the Town Administrator, require approval by the New Castle Town Council at a public meeting.

**22. Improvements/Prior Landlord Consent:** Tenant agrees to submit to the Town Administrator complete plans and specifications, including engineering, mechanical, and electrical work, if any, covering any and all Required Improvements and Optional Work (collectively, "**Tenant Work**") and any subsequent improvements or alterations of the Premises. The plans and specifications shall be in such detail as the Town Administrator may require, and in compliance with all applicable statutes, ordinances, regulations, and codes. Tenant shall not commence any Tenant Work or any other improvements or alterations of Premises until the Town Administrator has approved Tenant's plans for the same and Tenant has obtained any necessary permits or approvals from the Town of New Castle. Moreover, if Tenant desires to paint the outside of the building located on the Premises, the Town Council must approve the paint color in advance.

**23. Landlord's Limited Responsibility:** Landlord shall be responsible for: (i) at the end of this Lease, any repairs, replacements, restorations, or maintenance that have been necessitated by reason of ordinary wear and tear, and (ii) any repairs, replacements, restorations, or maintenance that have been necessitated by sudden natural forces, or acts of God, or by fire not caused by Tenant. The cost of any maintenance, repairs, or replacements necessitated by the act, neglect, misuse, or abuse of Tenant, its agents, employees, customers, licensees, invitees, or contractors shall be paid by Tenant to Landlord promptly upon billing. Landlord shall use reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made, including, without limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Rent or Additional Rent or damages, or be deemed an eviction of Tenant in whole or in part. In the event any repair that is the responsibility of Landlord becomes necessary, Tenant shall notify Landlord as soon as possible, and allow reasonable time for the work to be completed. Tenant shall not perform or contract with third parties to perform any such repairs upon the Premises or structure thereon. Any unauthorized work performed or contracted for by Tenant will be at the sole expense of Tenant.

**24. Tenant's Duty to Repair:** Except for the repair and maintenance responsibilities designated to Landlord, Tenant shall, at Tenant's sole cost and expense, maintain the Premises, including, but not limited to, the plumbing, exterior plate glass and other windows, window frames, electric wiring, HVAC equipment, fixtures, appliances, and interior walls, doorways, and appurtenances belonging thereto installed for the use or used in connection with the Premises (the "**Tenant Repairs**"). Tenant shall, at Tenant's own expense, make as and when needed all Tenant Repairs to the Premises and to all such equipment, fixtures, appliances, and appurtenances necessary to keep the same in good order and condition. Tenant Repairs shall include all replacements, renewals, alterations, and betterments. All Tenant Repairs shall be equal or better in quality and class to the original work. In the event Tenant fails to complete Tenant Repairs, Landlord may obtain them and bill Tenant for such work as Additional Rent.

**25. Tenant Work and Repairs/Compliance with Codes:** Tenant shall procure all necessary permits before undertaking any Tenant Work or Tenant Repairs. Tenant shall perform all Tenant Work or Tenant Repairs in a good and workmanlike manner. Tenant shall use materials of good quality. Tenant shall comply with all laws, ordinances, and regulations, including, but not limited to, building, health, fire, and safety codes. Tenant hereby agrees to hold Landlord and Landlord's elected officials, appointed officials, employees, and agents harmless and indemnified from all injury (including injury to property or person, including death), loss, claims, or damage to any person or property (including the cost for defending against the foregoing) occasioned by, or arising out of any Tenant Work or Tenant Repairs.

**26. Mechanic's Liens.** Tenant shall promptly pay when due the entire cost of any Tenant Work or Tenant Repairs on the Premises undertaken by Tenant, so that the Premises shall at all times be free of liens for labor and materials. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless of and from all liability, loss, damages, costs, or expenses, including reasonable attorneys' fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials, or supplies furnished to Tenant, including lien claims of laborers, materialmen, or others. Should any such liens be filed or recorded against the Premises or the Improvements with respect to work done for, or materials supplied to, or on behalf

of, Tenant, or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within five (5) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanic's lien statutes. If Tenant shall be in default in paying any charge for which such mechanic's lien or suit to foreclose such lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent. Landlord shall have the right to post and keep posted on the Premises until any Tenant Work or other alterations, additions, improvements, or repairs are completed any notices permitted or required by law which Landlord shall deem proper for the protection of Landlord, the Premises, or any party having an interest therein, from mechanic's liens, and Tenant shall assist as requested in maintaining such postings.

**27. Keys/Locks:** Tenant shall not place any additional locks upon the Premises, including, but not limited to, exterior and interior doors. Tenant shall not cause any of the locks or cylinders therein to be changed or re-keyed without the prior consent of Landlord and provided that Tenant provides a key for any re-keyed lock to Landlord.

**28. Waste/Rubbish Removal:** Tenant shall not lay waste to the Premises. Tenant shall not perform any action or practice that may injure the Premises. Tenant shall keep the Premises and the property surrounding the Premises free and clear of all debris, garbage, and rubbish. Unless otherwise provided for in the Lease, Tenant shall be responsible for contracting for and paying for trash and debris removal required by Tenant's use of the Premises.

### DEFAULT, NOTICE AND REMEDIES

**29. Default:** If Tenant is in arrears in the payment of any installment of Rent, any Additional Rent, or any portion thereof, or is in violation of any other covenants or agreements set forth in the Lease (a "Default") and the Default remains uncorrected for a period of three (3) days after Landlord has given written notice thereof pursuant to applicable law, then Landlord may, at Landlord's option, undertake any of the following remedies without limitation: (a) declare the Term of the Lease ended; (b) terminate Tenant's right to possession of the Premises and reenter and repossess the Premises pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute; (c) recover all present and future damages, costs, and other relief to which Landlord is entitled; (d) pursue Landlord's lien remedies; (e) pursue breach of contract remedies; and (f) pursue any and all available remedies in law or equity. In the event possession is terminated by reason of a Default prior to expiration of the Term, Tenant shall remain responsible for the Rent and Additional Rent, subject to Landlord's duty to mitigate such damages. Pursuant to C.R.S. §§ 13-40-104(d.5) and (e.5), and 13-40-107.5, hereby incorporated by reference, in the event repeated or substantial Defaults(s) under the Lease occur, Landlord may terminate Tenant's possession upon a written Notice to Quit, without a right to cure. Upon such termination, Landlord shall have available any and all of the remedies listed above.

**30. Abandonment:** In the event of an abandonment of the Premises, Landlord may, without being obligated to do so and without terminating the Lease, retake possession of the Premises and exercise any of the remedies contained in Paragraph 31 below.

**31. Re-Entry:** In the event of re-entry by Landlord as a result of abandonment or a Default by Tenant:

a. Tenant shall be liable for damages to Landlord for all loss sustained, including, without limitation, the balance of the Rent and Additional Rent, court costs, and reasonable attorneys' fees;

b. Tenant's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Premises and left on the street or alley, or, at Landlord's option, it may be removed and stored, or disposed of at Landlord's sole discretion. Landlord shall not be deemed a bailee of the property removed and Landlord shall not be held liable for the property. Tenant shall indemnify Landlord for any expense in defending against any claim by Tenant or third party and for any legal expense, cost, fine, or judgment awarded to a third-party as a result of Landlord's action under the term of the Lease;

c. Landlord may attempt to relet the Premises for such rent and under such terms as Landlord believes appropriate;

d. Landlord may enter the Premises, clean and make repairs, and charge Tenant accordingly;

e. Any money received by Landlord from Tenant shall be applied first to Rent, Additional Rent, and other payments due; and

f. Tenant shall surrender all keys and peacefully surrender and deliver up possession of the Premises.

**32. No Offset.** No assent, express or implied, to any Default of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other Default. The covenants set forth in the Lease are independent. Tenant shall have no right to withhold or set off any Rent due Landlord.

### **INSURANCE AND INDEMNIFICATION**

**33. Negligent Damages:** Tenant shall be responsible for and reimburse Landlord for any and all damages to the Premises and persons and property therein caused by the negligent, grossly negligent, reckless, or intentional acts of itself, its employees, agents, invitees, licensees, or contractors.

**34. Insurance:** Tenant shall maintain the following types of insurance:

a. Public liability and commercial liability insurance insuring Landlord and Landlord's agents, as their interest may appear, against all claims, demands, or actions for injury to or death with minimum combined single limits of three hundred fifty thousand dollars (\$350,000.00) per occurrence and one million dollars (\$1,000,000.00) in the annual aggregate. The policy shall be applicable to the Premises and all associated operations and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), and blanket contractual damages in amount of not less than one million dollars (\$1,000,000) arising out of any one occurrence, made by, or on behalf of any person, firm, or corporation, arising from, related to, or connected with the conduct and operation of Tenant's business, including, but not limited to, special events on the Premises;

b. Renter's insurance in an amount adequate to cover any damage to the Premises and Tenant's personal property therein in connection with Tenant's use thereof under the terms of this Lease; and

c. Any additional insurance required by law, including workers' compensation insurance, or that Tenant deems necessary to cover its trade fixtures, equipment, and other personal property located on the Premises. Landlord reserves the right to require Tenant to obtain additional insurance coverage with respect to special events held on the Premises.

**35. Insurance Requirements:** All of Tenant's insurance related to the Premises shall be in the form and from responsible and well-rated companies, shall name Landlord as an additional insured thereunder, and shall provide that the insurance will not be subject to cancellation, termination, or change except after at least thirty (30) days prior written notice to Landlord. The policies or duly executed certificates for such insurance shall be provided to Landlord prior to commencement of Term and upon request of Landlord.

**36. Liability Indemnification.** Tenant shall hold Landlord, Landlord's elected officials, officers, employees, and agents, and their respective successors and assigns, harmless and indemnified from all injury (including injury to property or persons, including death), loss, claims, or damage to any person or property while on the Premises or arising in any way out of Tenant's business, which is occasioned by a negligent, intentional, or reckless act, or omission of Tenant, its employees, agents, invitees, licensees, or contractors.

**37. Waiver of Liability:** Landlord and Landlord's elected officials, officers, agents, and employees shall not be liable for, and Tenant waives all claims for, damage to property sustained by Tenant, employees, agents or contractors, or any other person claiming through Tenant, resulting from any accident in or upon the Premises of which they shall be a part, including, but not limited to, claims for damage resulting from: (1) any equipment or appurtenances becoming out of repair; (2) Landlord's failure to keep the Premises in repair; (3) injury done or occasioned by wind, water, or other act of God; (4) any defect in, or failure of, plumbing, heating, or air-conditioning equipment, electric wiring, or installation thereof, gas, water and steam pipes, stairs, porches, railings, or walks; (5) broken glass; (6) the backing-up of any sewer pipe, or downspout; (7) the bursting, leaking, or running of any tank, tub, sink, sprinkler system, water closet, waste pipe, drain, or any other pipe or tank in, upon, or about the Premises; (8) the escape of steam, or hot water; (9) water, snow, or ice being upon, or coming through the roof, skylight, doors, stairs, walks, or any other place upon, or near the Premises, or otherwise; (10) the falling of any fixtures, plaster, or stucco; (11) fire or other casualty; and (12) any act, omission, or negligence of co-Tenants, or of other persons or occupants of the Premises, or of adjoining or contiguous buildings, or of adjacent or contiguous property.

**38. Third-Party Liability:** Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any occupant, licensee, or invitee of or to the Premises, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to persons or property resulting in whole or in part from the criminal activities of others. To the extent not covered by normal fire and extended coverage insurance, Tenant agrees to pay for all damage to the Premises.

**39. Landlord Insurance:** Property insurance may be procured by Landlord in its sole discretion. All awards and payments thereunder shall be the property of the Landlord, and Tenant shall have no interest in the same.

**40. Indemnification Fees and Costs:** In case any claim, demand, action, or proceeding is made or brought against Landlord, its elected officials, officers, agents, or employees, by reason of any obligation on Tenant's part to be performed under the terms of the Lease or arising from any act of negligence of Tenant or its agents or employees, or which gives rise to Tenant's obligation to indemnify Landlord, Tenant shall be responsible for all costs and expenses, including, but not limited to, reasonable attorneys' fees incurred in defending or prosecution of the same, as applicable.

**41. Colorado Governmental Immunity Act.** The parties hereto understand and agree that Landlord is relying on and does not waive or intend to waive by any provision of this Lease the monetary limits or any other rights, immunities, and protections provided by the Colorado Governmental Immunities Act, C.R.S. §§ 24-10-101, *et seq.*, as from time to time amended, or otherwise available to Landlord, its elected officials, officers, or employees.

### OTHER PROVISIONS

**42. Destruction of Premises:** Landlord's and Tenant's duties and responsibilities are as follows when destruction of the Premises occurs:

**a. Partial Destruction of the Premises:** In case of partial destruction of the Premises by fire, or other casualty, Landlord at its discretion may repair the Premises with reasonable dispatch after notice of said partial destruction. Tenant shall remain responsible for payment of Rent. Subparagraph (c) of this Paragraph shall apply if Landlord determines that the partial destruction will not be repaired.

**b. Premises Untenable:** If the Premises are made totally untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where Landlord, within a reasonable time, decides not to rebuild, or repair, then Subparagraph (c) of this Paragraph shall apply.

**c. Termination of Term:** Tenant agrees that if Landlord decides not to repair or rebuild the Premises where the destruction has occurred as described in Subparagraphs (a) and (b) of this Paragraph, the Term hereby granted by the Lease shall cease and the Rent and Additional Rent shall be prorated and payable up to the time of the cessation of the Term. A refund will be given for the balance of any Rent paid in advance for which Tenant did not have use of the Premises due to the cessation of the Term under the conditions of this Paragraph. Tenant shall not hold Landlord liable for any damages as a result of any of the acts or events described in this subparagraph.

**43. Holdover:** Tenant shall vacate the Premises and remove all of Tenant's personal property from the Premises prior to 11:59 p.m. on the date the Initial Term or Renewal Term, as applicable, expires. If Tenant does not vacate the Premises as provided in the immediately preceding sentence, Landlord may immediately commence eviction proceedings at its sole discretion. If, after the expiration of the Lease, Tenant shall remain in possession of the Premises with Landlord's knowledge and consent and continue to pay Rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to the last month's Rent paid under the Lease, and subject to all the terms and conditions of the Lease.

**44. Entry by Landlord:** Landlord may enter the Premises at reasonable hours for reasonable purposes (such as repairs, inspections, or re-letting to prospective new tenants), upon reasonable notice to Tenant. Landlord may also enter the Premises in the event of emergency, without notice, or in the event of vacancy of the Premises.

**45. Guarantor:** In the event the Lease is guaranteed, the person(s) guaranteeing the Lease ("Guarantor") hereby absolutely guarantees Tenant's obligations and performance under the Lease. Guarantor further agrees to be bound by the same covenants and conditions of the Lease and hereby makes the same warranties and representations as Tenant hereunder. If Tenant defaults in the performance of its obligations under the Lease, Guarantor will perform said obligations.

**46. Notices:** All notices required to be sent under the Lease shall be in writing and either: (i) delivered as provided by applicable law, including, *inter alia*, § 13-40-101, C.R.S., *et seq.*, [Colorado Forcible Entry and Unlawful Detainer statute]; (ii) personally delivered, with proper proof of service; or (iii) sent via U.S. first class mail, postage prepaid. All notices required to be sent to Landlord shall be sent or delivered to the address where the Rent is to be paid, and all notices required to be sent to Tenant shall be sent or delivered to the Premises, unless otherwise specified in the Lease. Notwithstanding the foregoing, all notices involving or concerning § 13-40-101, C.R.S., *et seq.* shall be delivered as provided by statute.

**47. Attorneys' Fees:** In the event Tenant or Landlord fails to perform any of its obligations under the Lease, or in the event a dispute arises concerning the meaning or interpretation of any provision of the Lease, the defaulting party, or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

**48. Governing Law:** The Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Venue shall be proper in the county where the Premises are located.

**49. Amendments and Termination:** Unless otherwise provided in the Lease, the Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

**50. Waivers:** No right under the Lease may be waived except by written instrument executed by the party who is waiving such right. No waiver of any breach of any provision contained in the Lease shall be deemed a waiver of any preceding or succeeding breach of that provision, or of any other provision contained in the Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

**51. Heirs, Assigns, Successors:** The Lease is binding and inures to the benefit of the heirs, assigns, and successors in interest to the parties, subject to the restrictions on assignment in Paragraph 17.

**52. Time of the Essence:** Time is of the essence of the Lease, and each and all of its provisions.

**53. No Reservation of Option:** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and is not effective as a lease or otherwise until approved at a public meeting by the New Castle Town Council and executed and delivered by both Landlord and Tenant.

**54. Corporate Authorization:** Each individual executing the Lease on behalf of Tenant and Landlord represents and warrants that he or she is duly authorized to execute and deliver the Lease on behalf of the party for whom he or she signs this Lease and that the Lease is binding upon the party in accordance with its terms.

**55. Severability:** If any term, covenant, condition, or provision of the Lease, or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term, or provision to persons, or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby, and each provision of the Lease shall be valid and shall be enforced to the fullest extent permitted by law.

**56. Compliance with TABOR.** No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate City to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by City to or in aid of any person, company or corporation under applicable law.

**57. Lead-Based Paint Disclosure Rule:** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenant must also receive a federally approved pamphlet on lead poisoning prevention. In the event the Premises were constructed before 1978, Landlord shall comply with the Lead-Based Paint Disclosure, 42 U.S.C. § 4852d.

**58. ADA Compliance:** Tenant shall not cause or permit any violation of the Americans with Disabilities Act (the "ADA") to occur on, or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses

(including, without limitation, diminution in value of the Premises, damages for the loss or restriction of use of rentable or usable space, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultation fees and expert fees) that arise during or after the Term as a result of such violation. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any remedial work required by any federal, state, or local governmental agency or political subdivision because of any ADA violation present on or about the Premises. Tenant shall be permitted to make such alterations to the Premises as may be necessary to comply with the ADA, at Tenant's sole expense and upon the prior written consent of Landlord. Without limiting the foregoing, if the presence of any ADA violation on the Premises caused or permitted by Tenant results in remedial work on the Premises, Tenant shall promptly take all actions at its sole expense as are required by any authority to comply with the ADA; provided that Landlord's consent to such actions shall first be obtained, which shall not be reasonably withheld.

**59. Additional Provisions:** In the event that there are any additional agreements between the parties or provisions with respect to the Premises, an Addendum may be attached to the Lease, which shall be incorporated by this reference as a part of the Lease.

**THE PARTIES SHOULD INITIAL EACH PAGE OF THE LEASE AND SIGN BELOW. EACH PARTY SHOULD RECEIVE A SIGNED COPY OF THE LEASE AND ANY ADDENDA.**

**TENANT:**

RUSTIC FURNITURE DESIGNS, LLC, a Colorado limited liability company

\_\_\_\_\_  
Gennivieve Nalley, Member

Date: \_\_\_\_\_

ME & MY HOUSE COTTAGE FURNITURE, LLC,  
a Colorado limited liability company

\_\_\_\_\_  
Emily Barham, Member

Date: \_\_\_\_\_

**GUARANTOR:**

\_\_\_\_\_  
Gennivieve Nalley

Date: \_\_\_\_\_

\_\_\_\_\_  
Emily Barham

Date: \_\_\_\_\_

**LANDLORD:**

TOWN OF NEW CASTLE, COLORADO, a Colorado home rule municipality

\_\_\_\_\_  
Art Riddile, Mayor

**ATTEST:**

\_\_\_\_\_  
Melody Harrison, Town Clerk

Date: \_\_\_\_\_

1  
2 **New Castle Town Council Regular Meeting**  
3 **Tuesday, May 5, 2020, 7:00 PM**  
4  
5

6 **Due to concerns related to COVID-19, this meeting was held as a virtual meeting**  
7 **only. The public was invited to attend.**  
8

9 **To join by computer, smart phone or tablet:**  
10 **<https://us02web.zoom.us/j/7096588400>**  
11

12 **If you prefer to telephone in:**  
13 **Please call: 1-346-248-7799**  
14 **Meeting ID: 709 658 8400**  
15

16  
17 **Call to Order**

18 Mayor A Riddile called the meeting to order at 7:00 p.m.  
19

20 **Pledge of Allegiance**  
21

22 **Roll Call**

23 Present Councilor Mariscal  
24 Councilor Owens  
25 Councilor Hazelton  
26 Mayor A Riddile  
27 Councilor Copeland  
28 Councilor Leland  
29 Councilor G Riddile  
30

31 Also present at the meeting were Town Administrator Dave Reynolds, Town Planner Paul  
32 Smith, Town Treasurer Loni Burk, Assistant Town Treasurer Viktoriya Ehlers, Assistant  
33 Town Attorney Haley Carmer, Town Clerk Melody Harrison  
34

35  
36 **Meeting Notice**

37 Town Clerk Melody Harrison verified that her office gave notice of the meeting in  
38 accordance with Resolution TC 2020-1.  
39

40 **Conflicts of Interest**

41 There were no conflicts of interest.  
42

43 **Agenda Changes**

44 There were no agenda changes.  
45

46 **Citizen Comments on Items not on the Agenda**

47 There were no citizen comments.

1 **Consultant Reports**

2 Consultant Attorney – nothing to report.

3 Consultant Engineer – not present.

4  
5 **Items for Consideration**

6  
7 **Introduction: Assistant Treasurer Viktoriya Ehlers**

8 Town Treasurer Loni Burk introduced her new assistant, Viktoriya Ehlers who had been  
9 with the town for about a month. Treasurer Burk said that Ms. Ehlers was doing well and  
10 had brought some fresh perspectives to the finance department.

11 Ms. Ehlers greeted the council. She said that she had been working for Carbondale, but  
12 lived in Silt and the commute was difficult. When the position opened in New Castle, she  
13 felt it was the perfect opportunity to be closer to home.

14 Ms. Ehlers said she had a degree in accounting and was currently working on a degree in  
15 leadership management.

16 Councilor Leland asked Ms. Ehlers what her favorite thing was about Carbondale. She said  
17 it was her supervisor. She said she enjoyed strong leadership, someone she could learn  
18 from and she felt that Treasurer Burk was that type of leader.

19 Councilor Owens asked what her definition of a strong leader was. Ms. Ehlers said to her it  
20 was someone who could direct their staff, someone who could be straight forward and  
21 someone who could own their mistakes or admit when they did not know something. She  
22 felt those qualities provided opportunity for learning and good collaboration in the  
23 department.

24 Mayor A Riddile welcomed Ms. Ehlers to the team.  
25  
26

27 **Consider a License Agreement with 88 Grill**

28 Clerk Harrison said that John Webber, owner of 88 Grill, had approached her and asked  
29 what it would take to modify his liquor license to allow service on the sidewalk space right  
30 outside his building. She said that the revocable license agreement in the packet  
31 represented the necessary legal requirement for the license holder to have possession of  
32 the property in order to be able to serve alcohol there. Clerk Harrison said that the map in  
33 the packet indicated that 88 Grill would have three tables on the east sidewalk and one on  
34 the south sidewalk. The space met ADA requirements and would allow 88 Grill some  
35 additional social distancing of patrons once the governor and health department reopened  
36 restaurants for some limited service. She also said that both Public Works Director John  
37 Wenzel and Town Planner Paul Smith were

38 Councilor Owens asked if the license would be temporary or permanent, whether it was  
39 strictly related to the COVID-19 pandemic.

40 Clerk Harrison said that the pandemic had certainly made it clear to Mr. Webber that  
41 sidewalk service was something he felt he wanted to pursue, and it would provide some  
42 slightly greater ability him to serve once restaurants were allowed to begin socially  
43 distanced service. More importantly, it would allow 88 Grill to serve patrons on the  
44 sidewalk into the future.

45 **MOTION: Mayor A Riddile made a motion to approve the Revocable License**  
46 **Agreement with 88 Grill. Councilor Mariscal seconded the motion and it passed**  
47 **on a roll call vote: Councilor Copeland: yes; Mayor A Riddile: yes; Councilor G**  
48 **Riddile: yes; Councilor Leland: yes; Councilor Hazelton: yes; Councilor Mariscal:**  
49 **yes; Councilor Owens: yes.**

1  
2  
3 **Consider a Professional Services Agreement with Cadfish LLC**

4 Town Administrator Dave Reynolds said that Cadfish, LLC was Bruce Stolbach and he had  
5 been a professional service provider for the town for about twelve years. Mr. Stolbach  
6 does plans reviews and does building inspections as well. When he began working for the  
7 town, his rate was \$65.00 per hour. During the recession, he took a pay cut to \$55.00 per  
8 hour, and it had not changed since. Administrator Reynolds said that staff had studied the  
9 cost of such professional services and found that most municipalities paid an hourly rate  
10 for inspections and a percentage of the calculated plan review fee for plan reviews. He  
11 explained that the agreement council was considering would provide payment to Mr.  
12 Stolbach in the amount of sixty percent of the calculated plan review fee for residential  
13 and sixty-eight percent of the calculated plan review fee for commercial. For small jobs  
14 such as a garage plan, he would be paid an hourly rate. That hourly rate was proposed to  
15 be increased to \$75.00 per hour.

16 **MOTION: Councilor Owens made a motion to approve a Professional Services**  
17 **Agreement with Cadfish LLC. Councilor Copeland seconded the motion and it**  
18 **passed on a roll-call vote: Councilor Leland: yes; Councilor Owens: yes; Councilor**  
19 **Hazelton: yes; Councilor G Riddile: yes; Councilor Mariscal: yes; Mayor A Riddile:**  
20 **yes; Councilor Copeland: yes.**

21  
22  
23 **Consider Authorization for Two Members of Town Council to Meet with Staff and**  
24 **Potential Developer**

25 Administrator Reynolds told the council that the Lakota properties owned by Warrior Golf  
26 that were in Chapter 11 bankruptcy could be coming out of bankruptcy in early summer.  
27 He said there was a developer who was interested in the Golf Course and the adjoining  
28 developable property and was in the due diligence period. Part of that was to gain  
29 understanding from the town regarding the open space. The golf course was approved, as  
30 the dedicated open space for Lakota. The developer intended to continue the golf course,  
31 but wanted to discuss the future possibilities in the event the golf course could not or did  
32 not remain viable.

33 Administrator Reynolds said that a committee was being created that consisted of himself,  
34 Town Engineer Jeff Simonson, Town Attorney David McConaughy or Haley Carmer, Town  
35 Planner Paul Smith, Public Works Director John Wenzel and two council members. The  
36 committee would meet with the developers via a Zoom meeting.

37 Councilors Graham Riddile and Scott Owens volunteered to sit on the committee.

38 Councilor Leland asked if there was a clear answer to the question. Assistant Town  
39 Attorney Haley Carmer said that it was definitely an open question and the point of the  
40 meeting.

41 Councilor Leland said that he wanted Councilors G Riddile and Owens to say that they  
42 could not commit a future council to anything, which meant that there would not be a  
43 definitive answer.

44 Administrator Reynolds said that the discussion would clarify that the golf course was the  
45 dedicated open space and was not developable so that the interested party did not get the  
46 idea that there could be homes there. He said they did not know what other questions the  
47 developer might have.

1  
2  
3 **Consider Ordinance TC 2020-3, An Ordinance of the New Castle Town Council**  
4 **Amending Chapter 17.36.040 of the New Castle Municipal Code (1st reading)**

5 Planner Smith explained that the existing land use code intended that the application  
6 process be in three steps: sketch, preliminary and final. The recent influx of land use  
7 applications had shown that the sketch plan process appeared rushed and did not  
8 sufficiently flesh out the town or developer's expectations.

9 Planner Smith said that the ordinance was to amend the code to fix the shortcomings in  
10 the sketch plan process. He said that there would be two amendments. One to  
11 subdivisions and one to PUDs and they mirrored one another with a few exceptions. He  
12 reviewed details of how an application would proceed with the new amendments in place.  
13 The council, staff and Attorney Carmer discussed in detail the section of the ordinance  
14 that proposed required community meetings.

15 **MOTION: Mayor A Riddile made a motion to approve ordinance TC 2020-3, An**  
16 **Ordinance of the New Castle Town Council Amending Chapter 17.36.040 of the**  
17 **New Castle Municipal Code on 1st reading. Councilor Owens seconded the motion**  
18 **and it passed on a roll-call vote: Councilor Copeland: yes; Councilor Hazelton:**  
19 **yes; Councilor Leland: yes; Councilor Owens: yes; Mayor A Riddile: yes; Councilor**  
20 **G Riddile: yes; Councilor Mariscal: yes.**

21  
22  
23  
24 **Consider Ordinance TC 2020-5, An Emergency Ordinance of the New Castle Town**  
25 **Council Amending Chapters 9.28 and 12.20 of the New Castle Municipal Code**

26 Clerk Harrison told the council that the purpose of the ordinance was so that the town  
27 could respond to the COVID-19 pandemic and the economic impact it was having on the  
28 town's residents and restaurants. Clerk Harrison said that the current municipal code did  
29 not allow alcohol in any of the town parks. The ordinance proposed to allow temporary  
30 alcohol consumption in four parks: Burning Mountain Park, Ritter Plaza and the two pocket  
31 parks adjacent to the town hall. It also included the southern portion of 5<sup>th</sup> Street between  
32 Main Street and the alley.

33 Clerk Harrison said that once the governor and state health department allowed limited  
34 service in restaurants and allowed parks to reopen with proper social distancing, the idea  
35 was to allow restaurant patrons to take their carryout food and drinks to one of the listed  
36 parks where they could enjoy their meal and drinks.

37 Clerk Harrison said that the idea for 5<sup>th</sup> Street was to block off the street to vehicular  
38 traffic and to install properly distanced tables and canopies where restaurant patrons  
39 could go to consume their meal and drinks. Although people would not be eating in a  
40 restaurant, it was closer to dining out than had been previously allowed. Clerk Harrison  
41 said that staff felt may bring increased patronage to the restaurants and also give the  
42 residents, who had been locked down at home, a chance to be out.

43 Clerk Harrison said that the ordinance would also change the code for the future to  
44 provide the council authority to allow alcohol consumption in town parks on a temporary,  
45 case-by-case basis by resolution. For instance, if someone wanted to hold a wedding and  
46 reception in VIX Ranch Park, they could apply to the town and the council could approve  
47 alcohol consumption for the afternoon by resolution. It would give the town a different  
48 level of flexibility for use of the parks.

1 Clerk Harrison clarified that it would not be the same a special event liquor license that  
2 was a completely separate process for non-profits to sell alcohol at an event.

3 Clerk Harrison said that the reason the ordinance was an emergency was because it was  
4 for the well-being of the town residents and businesses.

5 Administrator Reynolds added that the town wanted to be ready for when the governor  
6 released restaurants to be open on a limited basis and there was not enough time for two  
7 readings of an ordinance, so staff decided to approach council with it as an emergency so  
8 that the town is ready when restaurants are ready. If the council chose to approve it, staff  
9 could approach the restaurants right away and inform them of the intent so they could  
10 prepare as well. He said it would hopefully help them be less limited by their in-house  
11 seating and whatever restrictions are imposed by the state upon reopening.

12 Councilor G Riddile said he felt like it was a good idea. Councilor Copeland liked the idea  
13 as well, but asked what the police chief's opinion was. Administrator Reynolds said that  
14 the chief was okay with it and did not have any particular concerns provided he was aware  
15 of the parameters of the approval.

16 Administrator Reynolds said that one of the other intents of the ordinance, at least during  
17 the COVID-19 pandemic, was that the alcohol should be obtained from a local restaurant  
18 to bolster local business.

19 Attorney Carmer confirmed that the ordinance was drafted to allow alcoholic beverages  
20 from restaurants located in New Castle. She said that the reason that the temporary  
21 provisions for the COVID-19 situation was included was simply for ease of not having to  
22 pass a separate resolution, however, the council will have to eliminate the temporary  
23 COVID authorization by resolution. Going forward, the council could pass resolutions that  
24 imposed a deadline. She said it would provide a lot of flexibility without making it a  
25 blanket authorization.

26 The council and staff discussed what the enforcement issues might be and opportunities  
27 for the future.

28 **MOION: Mayor A Riddile made a motion to approve Ordinance TC 2020-5, An**  
29 **Emergency Ordinance of the New Castle Town Council Amending Chapters 9.28**  
30 **and 12.20 of the New Castle Municipal Code. Councilor Hazelton seconded the**  
31 **motion and it passed on a roll-call vote: Councilor Copeland: Councilor Mariscal:**  
32 **yes;**  
33  
34

### 35 **Public Health and Recovery Update**

36 Administrator Reynolds gave the council a lengthy update regarding recent news in the  
37 COVID-19 crisis and a recovery plan being considered by the governor and county, and  
38 how that looked for the town through the upcoming months.

39 The council thanked Administrator Reynolds for the update.  
40  
41

### 42 **Consider a Motion to Approve the Business Assistant Grant Program**

43 Administrator Reynolds and the town council discussed the details of the grant program  
44 during the council work session.

45 **MOTION: Councilor Hazelton made a motion to approve the business assistance**  
46 **grant program as previously discussed in the work session. Councilor Copeland**  
47 **seconded the motion and it passed on a roll-call vote: Councilor G Riddile: yes;**  
48 **Councilor Mariscal: yes; Councilor Hazelton: yes; Councilor Copeland: yes; Mayor**  
49 **A Riddile: yes; Councilor Owens: yes; Councilor Leland: yes.**

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**Consent Agenda**

April 21, 2020 minutes  
April Bills of \$561,604.64  
The consent agenda was approved by consensus.

**Staff Reports**

Town Administrator – Administrator Reynolds said that when the COVID crisis began and the town declared a state of emergency, the council agreed that water shut-offs would not occur. He said that now that a few months had gone by there had been perhaps a dozen people reach out to the town who were struggling financially due to the crisis. Staff had placed those residents on a COVID list for non-shut off. Unfortunately, there were residents who had been delinquent on their utility bill long before the COVID crisis began. Administrator Reynolds said that staff did not wish to be heavy-handed, but wanted to conduct business as usual in regard to those long-term past due accounts. If those accounts were having issues, staff would exercise compassion. Mayor A Riddile stated that when the council decided to delay shut-offs, they were concerned that there were those who would take advantage of the situation.

Town Clerk – Clerk Harrison said that as part of the budgetary changes made in response to the pandemic, public works had delayed hiring seasonal workers. Beginning on April 27, Administrative Assistant Bart Mendoza had gone to full-time in public works. She said she had heard that he may be there for five more weeks which may cause her department to be a bit short-staffed once the town hall opened to the public. Clerk Harrison said that the phone system for the town had been updated over the prior weekend and it had gone well. She said that the fire department had been in town hall all day because it was their election day and they had collected ballots beginning at 7:00 a.m. that morning. She said that the bid opening for the streets maintenance projects had taken place earlier in the day. Clerk Harrison said she had been working with John Webber from 88 Grill on their liquor license modification for sidewalk service. She said she had also been working with the Lakota HOA on their liquor license transfer and will be issuing their temporary license later in the week. Clerk Harrison said that she had been working with David McConaughy and Haley Carmer doing research for some current staff projects. Clerk Harrison said that the vault project had been delayed but she hoped to get to it later in the week. Clerk Harrison said she had been doing some training for members of Climate Action Advisory Commission.

Councilor G Riddile asked what the results of the bid opening had been. Clerk Harrison said there was one bid for crack sealing, and two for asphalt, and the difference in costs was about \$8,0000.00 but she did not know how the actual scope of works compared between the two. Administrator Reynolds said that Grand River Construction had the lower bid.

Town Planner – Planner Smith said that the CVR filing 11 preliminary/final application would be at P&Z on Wednesday, May 13 and he invited the council to attend.

Public Works Director – not present.

Town Treasurer – Town Treasurer Loni Burk said that she was glad everyone was able to meet Viktoriya Ehlers. She said that she felt Ms. Ehlers was a great addition to her department. Treasurer Burk said that it was payroll week and asked that the council members e-mail her if they would like their pay stubs mailed to them. Treasurer Burk said that the audit will begin the following week and she had been preparing for that. She also

1 said she planned to be in Colorado by the upcoming weekend provided travel was allowed.  
2 Last, she said that they were doing accounts payable and asked that the finance  
3 committee members look for the approval e-mail from her.  
4  
5

6 **Commission Reports**

7 Planning & Zoning Commission – nothing to report.  
8 Historic Preservation Commission – nothing to report.  
9 Climate Action Advisory Committee – Councilor Leland said that CAAC held a work session  
10 and brainstormed ideas for projects.  
11 Senior Program – Councilor Mariscal said that Senior Programs had held a virtual meeting,  
12 but it was difficult to understand.  
13 RFTA – nothing to report.  
14 AGNC – Councilor Hazelton said that because the AGNC had not met the prior month, the  
15 meeting was a lot of housekeeping items. They also discussed the COVID pandemic and  
16 how they could possible help with that.  
17 GCE – nothing to report.  
18 EAB - nothing to report.  
19  
20

21 **Council Comments**

22 Mayor AA Riddile thanked the council and the staff for all their hard work and wished  
23 everyone a good evening.  
24  
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26 **MOTION: Mayor A Riddile made a motion to adjourn. Councilor Leland seconded**  
27 **the motion and it passed unanimously.**  
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30 The meeting adjourned at 8:40 p.m.  
31  
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33 Respectfully submitted,  
34  
35

36  
37 \_\_\_\_\_  
38 Mayor Art Riddile  
39  
40

41 \_\_\_\_\_  
42 Town Clerk Melody Harrison, CMC

**Submit to Local Licensing Authority**

**ELK CREEK MINING CO  
P O BOX 589  
New Castle CO 81647**

Fees Due		
Renewal Fee		500.00
Storage Permit	\$100 X _____	\$
Sidewalk Service Area	\$75.00	\$
Additional Optional Premise Hotel & Restaurant	\$100 X _____	\$
Related Facility - Campus Liquor Complex	\$160.00 per facility	\$
Amount Due/Paid		\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

**Retail Liquor or Fermented Malt Beverage License Renewal Application**

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name <b>ELK CREEK MINING LLC</b>			Doing Business As Name (DBA) <b>ELK CREEK MINING CO</b>	
Liquor License # <b>26-26577-0000</b>	License Type <b>Hotel &amp; Restaurant</b>	Sales Tax License # <b>26265770000</b>	Expiration Date <b>07/21/2020</b>	Due Date <b>06/06/2020</b>
Business Address <b>502 W MAIN New Castle CO 81647</b>			Phone Number <b>9702421336</b>	
Mailing Address <b>P O BOX 589 New Castle CO 81647</b>			Email <b>TAUGUVAPO@YAHOO.COM</b>	
Operating Manager <b>John Webber</b>	Date of Birth <b>3-17-71</b>	Home Address <b>66 Esther Ct</b>		Phone Number <b>970-984-0879</b>
1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Are the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease <b>9-25</b>				
2. Are you renewing a storage permit, additional optional premises, sidewalk service area, or related facility? If yes, please see the table in upper right hand corner and include all fees due. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
3a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
3b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
4. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
5. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
6. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
7. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input type="checkbox"/> No				

**Affirmation & Consent**

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

Type or Print Name of Applicant/Authorized Agent of Business	Title
<i>John Weber</i>	<i>owner</i>
Signature	Date
<i>[Signature]</i>	<i>5-7-20</i>

**Report & Approval of City or County Licensing Authority**

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

**Therefore this application is approved.**

Local Licensing Authority For	Date
Signature	Title
	Attest


## Tax Check Authorization, Waiver, and Request to Release Information

I, John Webber am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of Elk Creek Mining LLC (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and its duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business) <u>Elk Creek Mining LLC D.B.A. 88 Grill</u>		Social Security Number/Tax Identification Number <u>84-1500722</u>	
Address <u>502 W. Main Street</u>			
City <u>New Castle</u>		State <u>Colorado</u>	Zip <u>81647</u>
Home Phone Number <u>(970)-618-6213</u>		Business/Work Phone Number <u>(970)-984-0828</u>	
Printed name of person signing on behalf of the Applicant/Licensee <u>John Webber</u>			
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information) 			Date signed <u>5-6-2020</u>

### Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

## Del "Spike" Howard

Dos Hombres  
3245 I-70 Business Loop  
Clifton, CO 81520  
970-434-5078  
970-434-9724  
dos@wic.net

May 6, 2020

Colorado Dept. of Revenue  
Liquor Enforcement Division

Dear Sirs:

This is in reference to Question #5 on the liquor license renewal application for Elk Creek Mining LLC #26265770000. Del Howard is a 100% owner of D.H. Food services, Inc DBA Dos Hombres 3245 I-70 B, Clifton, CO 81520. Liquor license # 08-88573.

Sincerely,

Del " Spike" Howard

President

D.H. Food Services, Inc.