



CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201
December 05, 2023 - 6:00 PM

AGENDA

Please register for Regular City Council Meeting

<https://attendee.gotowebinar.com/register/6382995264411204366>

After registering, you will receive a confirmation email containing information about joining the webinar.

To watch live

meetings: https://c.streamhoster.com/embed/media/W6sdC9/xAllQfSsmmO/vpfQhcsApYv_5?preview=1

CALL TO ORDER

Pledge of Allegiance

Roll Call

Civility Invocation

1. Civility Invocation

CONSENT AGENDA

2. Approve Agenda

3. Approve November 21, 2023 Minutes

4. Approve MOU with the Salida School District for the Dog Park

5. Approve Contract with Monarch Mountain for Ski Bus Services

CITIZEN COMMENT—Three (3) Minute Time Limit

LIQUOR LICENSING AUTHORITY

6. A new Brew Pub Liquor License for Elevation Beer Company LLC dba Elevation Beer Company at 146 W 1st Street, **PUBLIC HEARING**

UNFINISHED BUSINESS / ACTION ITEMS

7. **Ordinance 2023-16** AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO APPROVING A SUBSTANTIAL MODIFICATION OF PARCELS VPA-1, VPA-7, VPA-8, AND VPA-9 OF THE VANDAVEER RANCH PLANNED DEVELOPMENT TO MODIFY THE OVERALL DEVELOPMENT PLAN BY CHANGING THE ENTITLEMENTS, ZONE DISTRICT MAP, DIMENSIONAL STANDARDS, AND OTHER STANDARDS FOR THE SOUTH ARK NEIGHBORHOOD, **FINAL READING AND PUBLIC HEARING**

8. **Ordinance 2023-17** AN ORDINANCE OF THE CITY OF SALIDA, COLORADO ANNEXING TO THE CITY OF SALIDA A CERTAIN TRACT OF LAND IN UNINCORPORATED CHAFFEE COUNTY KNOWN AS THE FLOUR MILL ANNEXATION, **FINAL READING AND PUBLIC HEARING**

9. **Ordinance 2023-18** AN ORDINANCE OF THE CITY OF SALIDA, COLORADO, ZONING CERTAIN REAL PROPERTY KNOWN AS THE FLOUR MILL ANNEXATION AS HIGH DENSITY RESIDENTIAL (R-3) ZONE DISTRICT, **FINAL READING AND PUBLIC HEARING**

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.

NEW BUSINESS / ACTION ITEMS

- 10. Resolution 2023-51** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, MAKING FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS CONCERNING THE FLOUR MILL ANNEXATION
- 11. Resolution 2023-52** AN AMENDMENT TO RESOLUTION 2022-50 ESTABLISHING BUDGET AND APPROPRIATIONS BY FUND FOR THE CITY OF SALIDA OPERATIONS FOR CALENDAR YEAR 2023, **PUBLIC HEARING**
- 12. Resolution 2023-53** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, SUPPORTING APPLICATIONS FOR STATE AND FEDERAL GRANT FUNDS TO ASSIST IN THE IMPLEMENTATION OF INFRASTRUCTURE FOR THE SOUTH ARK NEIGHBORHOOD AND COMMITTING LOCAL MATCHING FUNDS
- 13. Ordinance 2023-19** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING AN OPTION TO GROUND LEASE REAL PROPERTY, LOCATED AT 102 D STREET AND 233 E. FIRST STREET, FROM THE CITY OF SALIDA TO ARTSPACE PROJECTS, INC., **FIRST READING AND SETTING A PUBLIC HEARING**
14. Announcement of Christy Doon as the name of the sole finalist under consideration for the position of City Administrator

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

- Critelli, Fontana, Kasper, Naccarato, Pappenfort, Stephens

Mayor Report

Treasurer Report

Attorney Report

Staff Reports

ADJOURN



City Clerk | Deputy City Clerk

Mayor Dan Shore



CIVILITY INVOCATION

We are here working together to create a thriving community. It is the intention of the Salida City Council to promote civil communication by adopting the following guidelines for speaking to the public in the City Council Chambers. It is our hope that by acting in this manner we can help create a safe space for people to share their perspectives and opinions:

- We honor the opportunity to be engaged in the process of governance for the benefit of our community.
- We acknowledge that each of us brings a unique perspective to this conversation and that our perspectives may differ.
- We challenge ourselves to value varying points of view and hold all contributions as equally important.
- We understand and accept that while we may sometimes disagree, we can always be courteous and kind.
- We commit to respectful language, avoiding rumor, harsh criticism or personal accusation, even when feeling emotionally charged.
- We will, to best of our ability, speak thoughtfully and listen with attention, respect, and curiosity.
- We are confident that there may be even better solutions than any of us have thought of, which may be discovered through civil conversations.
- We affirm our support for women's rights, including equal pay, equal treatment under the law and in the workplace, and the right to determine choices that impact the direction and personal values of one's life, including all individuals' reproductive health choices.
- We commit to the City of Salida being a hate-free zone and declare and affirm a policy of non-discrimination on the basis of a person's race, color, religion, ancestry, national origin, age, sexual orientation, gender, gender identity, marital status, military or veteran status, socio-economic class, medical condition, or physical or mental disability.



CITY COUNCIL REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201
November 21, 2023 - 6:00 PM

MINUTES

CALL TO ORDER

Pledge of Allegiance

Swear in Elected Officials

Suzanne Fontana, Ben Gilling, Alisa Pappenfort, and Aaron Stephens were sworn in.

Roll Call

PRESENT

Council Member Suzanne Fontana
Council Member Justin Critelli
Council Member Aaron Stephens
Council Member Harald Kasper
Council Member Alisa Pappenfort
Mayor Dan Shore
Treasurer Ben Gilling

ABSENT

Council Member Dominique Naccarato

Appointment of Mayor Pro Tem

Council Member Kasper moved to appoint Council Member Critelli as Mayor Pro Tem, Seconded by Council Member Pappenfort.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Civility Invocation

CONSENT AGENDA

Council Member Pappenfort moved to remove the Contract with Concious Creations for Custodial Services to the beginning of New Business and to combine and approve the remaining items on the Consent Agenda, Seconded by Council Member Critelli.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Approve Agenda

Approve November 7, 2023 Minutes

Approve Final Settlement for the 2022 Street Reconstruction Project

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.

New Years Day 5K Amplified Sound Permit

CITIZEN COMMENT—Three (3) Minute Time Limit

Danny Taylor spoke during Public Comment.

UNFINISHED BUSINESS / ACTION ITEMS

Ordinance 2023-14 AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AMENDING CHAPTER 13 OF THE SALIDA MUNICIPAL CODE, ADDING A NEW SECTION 13-2-310, REGARDING VARIANCE FOR PRIVATE WATER SUPPLY, **FINAL READING AND PUBLIC HEARING**

Mayor Shore opened the Public Hearing. Public Works Director David Lady presented the Ordinance.

Hearing no comment, Shore closed the Public Hearing.

Council discussed the Ordinance.

Council Member Critelli moved to approve the Ordinance, Seconded by Council Member Kasper.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Ordinance 2023-15 AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO, AMENDING THE CITY CODE TO ADD ARTICLE XVIII TO CHAPTER 2 ENTITLED SUSTAINABILITY COMMITTEE TO ESTABLISH THE COMMITTEE AS AN OFFICIAL ADVISORY BODY WITHIN THE SALIDA MUNICIPAL CODE, **FINAL READING AND PUBLIC HEARING**

Mayor Shore opened the Public Hearing. Interim City Administrator Christy Doon presented the Ordinance.

Hearing no comment, Shore closed the Public Hearing.

Council discussed the Ordinance.

Council Member Pappenfort moved to approve the Ordinance, Seconded by Council Member Kasper.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Ordinance 2023-16 AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO APPROVING A SUBSTANTIAL MODIFICATION OF PARCELS VPA-1, VPA-7, VPA-8, AND VPA-9 OF THE VANDAVEER RANCH PLANNED DEVELOPMENT TO MODIFY THE OVERALL DEVELOPMENT PLAN BY CHANGING THE ENTITLEMENTS, ZONE DISTRICT MAP, DIMENSIONAL STANDARDS, AND OTHER STANDARDS FOR THE SOUTH ARK NEIGHBORHOOD, **FINAL READING AND PUBLIC HEARING**

Mayor Shore opened the Public Hearing. Community Development Director Bill Almquist presented the Ordinance.

Read McCulloch and Cory "Salty" Riggs, Ashley Kappel, and Betsy Dittenber gave public comment.

Hearing no further comment, Shore closed the Public Hearing.

Council discussed the Ordinance.

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph. 719-530-2630 at least 48 hours in advance.

Council Member Pappenfort moved to continue the Ordinance until the December 5, 2023 Regular Meeting, Seconded by Council Member Kasper.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

NEW BUSINESS / ACTION ITEMS

Approve Contract with Concious Creations for Custodial Services

Council Member Kasper moved to approve the contract, Seconded by Council Member Pappenfort.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Resolution 2023-50 A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AMENDING ITS PREVIOUS APPROVAL OF THE SUBDIVISION IMPROVEMENT AND INCLUSIONARY HOUSING AGREEMENT FOR THE 505 OAK STREET PLANNED DEVELOPMENT AND MAJOR SUBDIVISION

Council Member Critelli moved to approve the Resolution, Seconded by Council Member Kasper.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Ordinance 2023-17 AN ORDINANCE OF THE CITY OF SALIDA, COLORADO ANNEXING TO THE CITY OF SALIDA A CERTAIN TRACT OF LAND IN UNINCORPORATED CHAFFEE COUNTY KNOWN AS THE FLOUR MILL ANNEXATION, **FIRST READING AND SETTING A PUBLIC HEARING**

Council Member Pappenfort moved to approve the Ordinance on First Reading and set a Public Hearing for December 5, 2023, Seconded by Council Member Critelli.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

Ordinance 2023-18 AN ORDINANCE OF THE CITY OF SALIDA, COLORADO, ZONING CERTAIN REAL PROPERTY KNOWN AS THE FLOUR MILL ANNEXATION AS HIGH DENSITY RESIDENTIAL (R-3) ZONE DISTRICT, **FIRST READING AND SETTING A PUBLIC HEARING**

Council Member Critelli moved to approve the Ordinance on First Reading and set a Public Hearing for December 5, 2023, Seconded by Council Member Kasper.

Voting Yea: Council Member Fontana, Council Member Critelli, Council Member Stephens, Council Member Kasper, Council Member Pappenfort

THE MOTION PASSED.

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Reports were given.

ADJOURN

Adjourned at 7:54 p.m.



City Clerk | Deputy City Clerk

Mayor Dan Shore



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Parks and Recreation	Diesel Post - Parks and Recreation Director	December 5, 2023

ITEM

MOU with the Salida School District for community use and City management of the dog park

BACKGROUND

While the School District owns the land the Loyal Duke Dog Park is on, the City manages it for community use. The attached MOU describes the roles and responsibilities of each organization.

FISCAL NOTE

The Department currently does not have a means of parsing out the staff time required to manage the dog park.

STAFF RECOMMENDATION

To approve entering into the MOU with the Salida School District.

SUGGESTED MOTION

A City Councilperson should state, "I move to combine and approve the Consent Agenda", followed by a second and a roll call vote.

Fourth Amendment to Real Property Lease

THIS FOURTH AMENDMENT TO REAL PROPERTY LEASE is made and entered into this 12 day of December, 2023 by and between the R-32-J SCHOOL DISTRICT (the "Lessor") and the CITY OF SALIDA, COLORADO (the "Lessee");

WITNESSETH:

WHEREAS, the Lessee and Lessor entered into a lease agreement dated August 4, 2009 (the Lease Agreement") for property identified as an approximately three-quarter (3/4) acre parcel of land bordered by the Ben Oswald Soccer Field parking lot, the Salida Trail, Holman Street, and the soccer equipment shed for use as an off-leash dog park (the "Dog Park" or "Property") that expired on August 31, 2014 and a Second Amendment to Real Property Lease that expires on August 31, 2019; and a Third Amendment to Real Property Lease that expires on September 1, 2024.

WHEREAS, the Lessee and Lessor amended the real property lease with the School District on April 10, 2010 to include a portion of the Ben Oswald parking lot (the "Parking Lot") as part of the subject property; and

WHEREAS, the City of Salida is now responsible for the operations and maintenance of the Dog Park; and

WHEREAS, the Lessee and Lessor now wish to amend the terms of the Lease Agreement to extend the term of the lease.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Paragraph 3 of the Lease, is hereby replaced as follows:

Term. The term of the Lease shall be for a period of one (1) year, commencing on September 1, 2024 and continuing through August 31, 2025 subject to earlier termination or renewal as provided in this Lease. The Lease will automatically renew for successive one- year terms unless terminated by either party upon written notice provided at least three (3) months prior to the expiration of the then current Lease term; provided, however, that the Lease and the automatic one-year renewals shall terminate at five (5) successive one-year terms, or on September 1, 2029.

2. All other terms and conditions of the Lease as amended shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first written above.

R-32-J SALIDA SCHOOL DISTRICT

By:_____

Title:_____ Superintendent_____

CITY OF SALIDA, COLORADO

By:_____

Title:_____ Mayor_____



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Parks and Recreation	Diesel Post - Parks and Recreation Director	December 5, 2023

ITEM

Contract with Monarch Mountain for Ski Bus services

BACKGROUND

The Department of Parks and Recreation has offered a “ski bus” for the community on Fridays and Saturdays during the ski season that leaves the Aquatics Center in the morning and returns in the afternoon for many years. The Department tracks ridership and Monarch Mountain pays the City \$10 per rider of the bus. The ski bus is used by youth and adults, as well as locals and visitors.

FISCAL NOTE

The Department charges \$5 per rider and receives \$10 per rider from Monarch.

STAFF RECOMMENDATION

To approve entering into a contract with Monarch Mountain after legal team review.

SUGGESTED MOTION

A City Councilperson should state, “I move to combine and approve the Consent Agenda”, followed by a second and a roll call vote.



**CITY OF SALIDA –
POWDERMONARCH LLC
SALIDA SKI BUS PROGRAM
AGREEMENT
2023-24**

THIS AGREEMENT entered into this 14th day of November, 2023, by and between **THE CITY OF SALIDA, COLORADO**, a statutory city and municipal corporation, hereinafter referred to as “City”, and **PowderMonarch, LLC - DBA Monarch Mountain**, hereinafter referred to as “User”.

NOW THEREFORE, BE IT HEREINAFTER AGREED BY THE PARTIES AS FOLLOWS:

1. **Term:** The term of this agreement commences on November 14, 2023 and ends on April 30, 2024.
2. **Rate:** User will pay the City for every participant in the Salida Ski Bus Program for a rate of \$10/participant.
3. **Special Conditions:** The parties have agreed to comply with the additional rules under this agreement as follows:

A. Monarch Mountain will:

- i. Make payments to the City at the end of the agreed upon time frame (April 30th, 2024)
- ii. Contribute \$10 to the City for every Salida Ski Bus Program Participant between November 14, 2023 and April 30, 2024.
- iii. Advertise for the Salida Ski bus via social media, print and on skimonarch.com
- iv. Nov 14th - March 9th will be supported on Fridays and Saturdays and then March 15th - April 26th the program will be supported only on Fridays.

B. The City will:

- i. Coordinate and schedule a 15-passenger van to run on the agreed upon dates above, excluding holidays.
- ii. Report monthly ridership numbers to the Organization before the 10th day of the following month.

- iii. Provide registration and instructions for riders to be able to participate in the shuttle.
 - iv. Charge \$5 to each Ski bus participant to ride round-trip on the bus.
 - v. Will not include “Monarch” in the name of the program.
 - vi. Advertise via social media and print outlets.
4. **Modification:** Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
 5. **Compliance with Law:** Each party to this agreement shall comply with all laws of the United States and of the State of Colorado, all ordinances of the City of Salida, all rules and requirements of the Police and Fire Departments or other municipal authorities of the City of Salida. User will not do or suffer to be done anything on the designated Property during the term of this agreement in violation of any such laws, ordinances, rules, or requirements. If User’s attention is called to any such violation on their part or of any person employed by or admitted to the designated Property by User, they will immediately desist from and correct or cause to be corrected such violation.
 6. **Independent Contractor Status:** The City certifies that the transportation services to be provided under this agreement are those of an independent contractor, and that the City is solely responsible for the services performed under this agreement. City represents and warrants that its employees, agents, and representatives are not officers, agents, or employees of the User. Any personnel performing the services under this agreement on behalf of City shall at all times be under the City’s exclusive direction and control.
 7. **Indemnification:** The City and its riders agree to indemnify, defend and hold harmless PowderMonarch LLC and its directors, affiliates, officers, agents and employees from any and all liability, costs, losses, damages, demands, actions, claims and expenses (including, by way of example rather than limitation, reasonable attorney’s fees and disbursements) sustained or incurred as a result of or in connection with the Ski Bus Program, acts or omissions of the City or its agents, employees, representatives and/or subcontractors.
 8. **No Third-Party Beneficiaries:** City and User are the only parties to this agreement and are the only parties entitled to enforce its terms. Nothing in this agreement provides any benefit or right, directly or indirectly, to third parties.
 9. **No Partnership or Joint Venture:** The parties to this agreement are not partners or joint venturers with each other and nothing herein shall be construed to make them partners or joint venturers or impose any liability as such on either of them.

SIGNATURE PAGE:

The undersigned hereby certifies that he/she is authorized to enter into and execute this Agreement on behalf of the User and the City, respectively, and that the User and the City acknowledge and accept the terms and conditions herein.

CITY OF SALIDA (“City”)

By: _____
Title: Christy Doon, City Administrator
Date: _____

**PowderMonarch LLC
MONARCH MOUNTAIN (“User”)**

By: _____
Title: Scott Pressly, VP Mountain Operations
Date: _____



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Clerk	Erin Kelley - City Clerk	December 5, 2023

ITEM

New Brew Pub City Liquor License request for Elevation Beer Company LLC dba Elevation Beer Company at 146 W 1st Street.

BACKGROUND

A new Colorado Brew Pub Liquor License application was filed with the City Clerk on October 24, 2023. The Notice of Public Hearing was published on October 27th, 2023 and the premises was posted on November 8, 2023.

All proper fees have been remitted to the City and State of Colorado.

STAFF RECOMMENDATION

Staff recommends that the Liquor Licensing Authority approve a new Brew Pub Liquor License request for Elevation Beer Company LLC dba Elevation Beer Company at 146 W 1st Street.

SUGGESTED MOTION

Following a public hearing on the matter, a Liquor Authority member should “move to approve a new Brew Pub Liquor License request for Elevation Beer Company LLC dba Elevation Beer Company at 146 W 1st Street.” followed by a second and roll call vote.

Colorado Liquor Retail License Application

Item 6.

* Note that the Division will not accept cash ☒ Paid by check ☐ Paid online

Uploaded to
MoveIt on

Date

☐ New License ☒ New-Concurrent ☐ Transfer of Ownership ☐ State Property Only ☐ Master file

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor, Beer and Wine Code: SBG.Colorado.gov/Liquor

1. Applicant is applying as a/an ☐ Individual ☒ Limited Liability Company ☐ Association or Other
☐ Corporation ☐ Partnership (includes Limited Liability and Husband and Wife Partnerships)

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

FEIN Number

Elevation Beer Company, LLC

2a. Trade Name of Establishment (DBA)

State Sales Tax Number

Business Telephone

Elevation Beer Company

719-539-5258

3. Address of Premises (specify exact location of premises, include suite/unit numbers)

146 W. First Street

City

Salida

County

Chaffee

State

CO

ZIP Code

81242

4. Mailing Address (Number and Street)

PO BOX 310

City or Town

Poncha Springs

State

CO

ZIP Code

81242

5. Email Address

accounting@elevationbeerco.com

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

Present Trade Name of Establishment (DBA)

Present State License Number

Present Class of License

Present Expiration Date

Section A Nonrefundable Application Fees*

- ☐ Application Fee for New License \$1,100.00
☒ Application Fee for New License w/Concurrent Review \$1,200.00
☐ Application Fee for Transfer \$1,100.00

Section B Liquor License Fees*

- ☐ Add Optional Premises to H & R \$100.00 X _____ Total _____
☐ Add Related Facility to Resort Complex \$75.00 X _____ Total _____
☐ Add Sidewalk Service Area \$75.00
☐ Arts License (City) \$308.75
☐ Arts License (County) \$308.75
☐ Beer and Wine License (City) \$351.25
☐ Beer and Wine License (County) \$436.25
☒ Brew Pub License (City) \$750.00
☐ Brew Pub License (County) \$750.00
☐ Campus Liquor Complex (City) \$500.00
☐ Campus Liquor Complex (County) \$500.00
☐ Campus Liquor Complex (State) \$500.00
☐ Club License (City) \$308.75
☐ Club License (County) \$308.75
☐ Distillery Pub License (City) \$750.00
☐ Distillery Pub License (County) \$750.00
☐ Hotel and Restaurant License (City) \$500.00
☐ Hotel and Restaurant License (County) \$500.00
☐ Hotel and Restaurant License w/one opt premises (City) \$600.00
☐ Hotel and Restaurant License w/one opt premises (County) \$600.00
☐ Liquor-Licensed Drugstore (City) \$227.50

Section B (Cont.) Liquor License Fees*

- ☐ Liquor-Licensed Drugstore (County) \$312.50
☐ Lodging & Entertainment - L&E (City) \$500.00
☐ Lodging & Entertainment - L&E (County) \$500.00
☐ Manager Registration - H & R \$30.00
☐ Manager Registration - Tavern \$30.00
☐ Manager Registration - Lodging & Entertainment \$30.00
☐ Manager Registration - Campus Liquor Complex \$30.00
☐ Optional Premises License (City) \$500.00
☐ Optional Premises License (County) \$500.00
☐ Racetrack License (City) \$500.00
☐ Racetrack License (County) \$500.00
☐ Resort Complex License (City) \$500.00
☐ Resort Complex License (County) \$500.00
☐ Related Facility - Campus Liquor Complex (City) \$160.00
☐ Related Facility - Campus Liquor Complex (County) \$160.00
☐ Related Facility - Campus Liquor Complex (State) \$160.00
☐ Retail Gaming Tavern License (City) \$500.00
☐ Retail Gaming Tavern License (County) \$500.00
☐ Retail Liquor Store License-Additional (City) \$227.50
☐ Retail Liquor Store License-Additional (County) \$312.50
☐ Retail Liquor Store (City) \$227.50
☐ Retail Liquor Store (County) \$312.50
☐ Tavern License (City) \$500.00
☐ Tavern License (County) \$500.00
☐ Vintners Restaurant License (City) \$750.00
☐ Vintners Restaurant License (County) \$750.00

Questions? Visit: SBG.Colorado.gov/Liquor for more information

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

Liability Information

License Account Number

Liability Date

License Issued Through (Expiration Date)

Total
\$

Name Elevation Beer Company	Type of License Brew Pub	Account Number
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7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years? Yes ☐ No ☒

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

a. Been denied an alcohol beverage license? ☐ ☒

b. Had an alcohol beverage license suspended or revoked? ☐ ☒

c. Had interest in another entity that had an alcohol beverage license suspended or revoked? ☐ ☒

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

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

10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary? ☐ ☒ or
Waiver by local ordinance? ☐ ☐
Other: _____

11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. ☐ ☐ N/A

12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. ☐ ☐ N/A

13. a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016? ☐ ☐
b. Are you a Colorado resident? ☒ ☐ N/A

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

15. Does the applicant, as listed on line 2 of this application, **have legal possession of the premises by ownership, lease or other arrangement?** ☒ ☐
☐ Ownership ☒ Lease ☐ Other (Explain in Detail) _____
a. If leased, list name of landlord and tenant, and date of expiration, **exactly** as they appear on the lease:

Landlord 146 W First St, LLC	Tenant Elevation Beer Company	Expires 10/10/2028
---------------------------------	----------------------------------	-----------------------

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16. ☐ ☒

c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8½" X 11".

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

Last Name None	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage

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

17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: N/A ☐ ☐
Has a local ordinance or resolution authorizing optional premises been adopted? N/A ☐ ☐
Number of additional Optional Premise areas requested. (See license fee chart) _____

18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and 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. N/A

Name Elevation Beer Company	Type of License Brew Pub	Account Number
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19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:
 a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? ☐ Yes ☐ No
 If "yes" a copy of license must be attached. N/A

20. Club Liquor License applicants answer the following: **Attach a copy of applicable documentation** Yes No
 a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain? ☐ Yes ☐ No
 b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain? ☐ Yes ☐ No
 c. How long has the club been incorporated? N/A
 d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above? ☐ Yes ☐ No

21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:
 a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached) ☒ Yes ☐ No

22. Campus Liquor Complex applicants answer the following:
 a. Is the applicant an institution of higher education? ☐ Yes ☐ No
 b. Is the applicant a person who contracts with the institution of higher education to provide food services? ☐ Yes ☐ No
 If "yes" please provide a copy of the contract with the institution of higher education to provide food services. N/A

23. For all on-premises applicants.
 a. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.

Last Name of Manager Koch	First Name of Manager Christian
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24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number. Yes No
☒ Yes ☐ No


25. Related Facility - Campus Liquor Complex applicants answer the following: Yes No
 a. Is the related facility located within the boundaries of the Campus Liquor Complex?
 If yes, please provide a map of the geographical location within the Campus Liquor Complex. N/A
 If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.
 b. Designated Manager for Related Facility- Campus Liquor Complex

Last Name of Manager	First Name of Manager
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26. Tax Information. Yes No
 a. 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? ☐ Yes ☒ No
 b. 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.? ☐ Yes ☒ No

27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all **Officers, Directors, General Partners, and Managing Members**. In addition, applicant must list any stockholders, partners, or members with **ownership of 10% or more in the applicant**. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.

Name	Home Address, City & State	DOB	Position	%Owned
Carlin Walsh			MBR	
Christian Koch			MBR	
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned

Name Elevation Beer Company		Type of License Brew Pub		Account Number	
<p>** If applicant is owned 100% by a parent company, please list the designated principal officer on above.</p> <p>** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)</p> <p>** If total ownership percentage disclosed here does not total 100%, applicant must check this box:</p> <p><input checked="" type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.</p>					
Oath Of Applicant					
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.					
Authorized Signature 		Printed Name and Title Christian Koch, Founder		Date 10/12/23	
Report and Approval of Local Licensing Authority (City/County)					
Date application filed with local authority 10/24/23		Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) 12/15/23			
For Transfer Applications Only - Is the license being transferred valid?					Yes <input type="checkbox"/> No <input type="checkbox"/>
The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been: <input checked="" type="checkbox"/> Fingerprinted <input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license (Check One) <input type="checkbox"/> Date of inspection or anticipated date _____ <input checked="" type="checkbox"/> Will conduct inspection upon approval of state licensing authority					
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?					Yes <input type="checkbox"/> No <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?					Yes <input type="checkbox"/> No <input type="checkbox"/>
NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.					
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?					Yes <input type="checkbox"/> No <input type="checkbox"/>
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. Therefore, this application is approved.					
Local Licensing Authority for			Telephone Number		<input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title	Date		
Signature	Print	Title	Date		

**PUBLIC NOTICE
PURSUANT TO THE LIQUOR LAWS
OF COLORADO**

Pursuant to the Liquor Laws of the State of Colorado, Elevation Beer Company LLC dba Elevation Beer Company, has requested the Local Licensing Authority of the City of Salida, Colorado to grant a new Brew Pub (City) liquor license to sell malt, vinous and spirituous liquors for consumption on premises at 146 W 1st Street, Salida, CO 81201. A hearing on the application received October 24, 2023 will be held before the Local Licensing Authority of the City of Salida, Colorado at the hour of 6:00 p.m., or as soon thereafter as may be heard, on Tuesday, December 5th, remotely through the GoToWebinar application via the following direct link: <https://attendee.gotowebinar.com/register/6382995264411204366>

At said time and place, any interested persons may appear to be heard for or against the granting of said license.

LOCAL LICENSING AUTHORITY
Erin Kelley, City Clerk

Premises Posted by November 24th, 2023
Published in The Mountain Mail October 27, 2023



OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Elevation Beer Company, LLC

is a

Limited Liability Company

formed or registered on 06/22/2010 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20101352311 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 09/28/2023 that have been posted, and by documents delivered to this office electronically through 10/02/2023 @ 15:03:39 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 10/02/2023 @ 15:03:39 in accordance with applicable law. This certificate is assigned Confirmation Number 15369037 .



Jena Griswold

Secretary of State of the State of Colorado

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

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

COMMERCIAL LEASE

This Lease is made to be effective the ~~10th~~ ^{Oct 10} day of October, 2023, between **146 West First Street, LLC**, a Colorado limited liability company, of 410 H Street, Salida, CO 81201, (herein "Lessor"), and **Elevation Beer Company, LLC**, a Colorado limited liability company, of PO Box [REDACTED] (herein "Lessee"), as follows:

RECITALS

WHEREAS, Lessor is the owner of the developed property located at 146 West First Street, Salida, CO 81201 (herein referred to as the "Premises"); and;

WHEREAS, Lessor entered into that certain Lease with The 146 Tap House, the previous owner of the business conducted on the Premises dated [REDACTED] ("Original Lease"); and

WHEREAS, Lessee purchased certain assets from The 146 Tap House; and

WHEREAS, Lessee desires to lease the Premises for the purposes of operating and maintaining a tap room or bar; and

WHEREAS, Lessor has the authority and discretion to approve an assignment of the Original Lease pursuant to Section 27 of the Original Lease;

WHEREAS, Lessor has required that the parties enter into this Lease Agreement as a condition of Lessor's consenting to the transfer of the business to Lessee; and

WHEREAS, the parties desire to enter into this Lease Agreement ("Lease") defining their respective rights, duties, obligations, and liabilities relating to the Premises and its use, and replacing and superseding in its entirety the Original Lease;

NOW THEREFORE, in consideration of the payment of rent and the performance of the covenants and agreements by the parties set forth below, the parties agree as follows:

1. DESCRIPTION OF PREMISES, PURPOSE AND USE, AND RESERVATION BY LESSOR. Lessor leases to Lessee for Lessee's exclusive use the Premises located at 146 West First Street, Salida, Colorado. Lessor reserves the area for Lessor's exclusive use shown on Exhibit A. This reserved area may be used by Lessor for placement, use, and maintenance of a camper or tiny house. Prior to any such improvements on the reserved area, Lessor shall fence the reserved area with fencing to be tasteful and consistent with existing improvements on the Premises. Further, Lessee acknowledges the limitations of use of those areas of the Premises described as the sewer line easement and easement serving the building on the adjoining property also shown on Exhibit A. Lessee shall use the demised Premises for the purpose of conducting a tap room bar, and/or restaurant Lessee shall not use the Premises for any other purposes, without the prior written consent of Lessor, which consent may be withheld at the sole discretion of Lessor. Lessee also agrees not to conduct or to permit to be conducted upon the

Premises any business or any act which is contrary to or in violation of the laws of the United States of America or of the State of Colorado or of any ordinances, regulations, or orders of any municipality or other public authority affecting the Premises. Lessee shall neither use nor occupy, nor permit the use or occupancy of the Premises, or any part thereof, for any unlawful, disreputable, or hazardous purpose nor operate its business in a manner constituting a nuisance of any kind

3. **TERM.** The initial term of this Lease shall be a five (5) year period commencing [REDACTED], and shall continue for five years thereafter. Lessee shall have an option to extend the Lease for an additional term of five (5) years conditioned upon Lessee giving Lessor written notice at least 90 days prior to the end of the initial term of Lessee's intent to extend, conditioned upon Lessee being in good standing under this Lease. Lessee shall not be in good standing if in the previous 12 months, Lessor has served two or more notices of default on Lessee. Further, upon receipt of Lessee's notice, Lessor shall have 20 days to propose amended terms for the renewal including rent adjustments based on market rates. Thereafter, if parties do not agree in writing to the proposed new terms for the renewal, then this Lease shall terminate at the end of the current term.

4. **RENTAL.** Installments of rent shall be payable in advance and without notice at to Lessor at 410 H Street, Salida, CO 81201, or as automatic deposit as directed by Lessor, or at such other place as Lessor from time to time designates in writing. The Base Rent in the first twelve (12) months of the initial term shall be [REDACTED]. The Base Rent for the initial term shall have an annual increase of rent at the minimum rate of four percent [REDACTED]. On the first of each month, Lessee shall also pay monthly installments of Taxes (Section 12B) and Insurance (Section 20F) which initially shall be in the sum of [REDACTED] subject to adjustment as set forth herein.

5. **LATE PAYMENT CHARGE.** In the event any payment required hereunder is not made within five (5) days after the payment is due, a late charge in the amount of ten percent (10%) of the payment will be paid by the Lessee. As set forth in Section 21A, Lessee shall be in default if Lessee fails to pay monthly rent within five (5) days of its due date.

6. **SECURITY DEPOSIT.** Lessee shall deposit with Lessor, the receipt of which is acknowledged by Lessor, the sum of [REDACTED] as security for the performance of Lessee's obligations under this Lease, including, without limitation, the surrender of possession of the Premises to Lessor as provided in this Lease. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall, upon demand, deposit with Lessor the amount so applied, so that Lessor shall have the full deposit on hand at all times during the term of this Lease. The deposit

will be returned to Lessee within thirty (30) days after the end of the lease term if: (a) all obligations of Lessee have been performed, and (b) the Premises is not damaged and is left in its original condition, normal wear and tear excepted. Retention of said deposit shall not prevent Lessor from recovering additional damages. Lessee may not apply the deposit hereunder to the payment of rent reserved hereunder or the performance of other obligations. The Lessor may apply the deposit to cure any default under the terms of this Lease, including failure to pay rent or other charges, and shall account to the Lessee for the balance.

7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.

A. At no time shall Lessee make any alterations, additions, or improvements in or to the demised Premises without a written proposal of such changes first being approved by the Lessor in writing. Said written proposal shall contain Lessee's promise to pay the full cost of the improvements and shall delineate Lessee's need, the material composition, and the decorative coordination to be used. Lessee shall provide Lessor the names and addresses of all persons performing labor or furnishing skill, materials, machinery, or fixtures in the alteration, addition, or improvement of the Premises, as soon as those persons are known. Lessee shall give notice to the aforementioned persons that Lessor's interest shall not be subject to any liens arising from any improvements, repairs, or alterations provided at the request of Lessee. Lessee shall not permit any contractor or subcontractor whose employees are not adequately covered by Workers' Compensation insurance to perform any work on or within the Premises and shall hold harmless and indemnify Lessor with respect to any and all claims of any and all persons who perform work or other services for or for the benefit of Lessee or Lessee's contractors or subcontractors.

B. Should any mechanic's lien be filed against the Premises as the result of any remodeling or alterations done by the Lessee at any time following Lessee's taking of possession, Lessee shall, within ten (10) days after demand by Lessor, cause said lien to be released.

C. Any approved alterations thereafter shall be performed in a workmanlike manner and shall not weaken or impair the structural strength or lessen the value of the building or any part thereof.

D. All work permitted hereunder shall be carried out and performed in accordance with requirements of applicable federal, state, and local statutes, laws, ordinance, codes, and regulations.

E. Subject to the requirements and restrictions set forth in the foregoing paragraphs A. through E. of this Section 7, Lessor shall not unreasonably withhold its approval of alterations, additions, or improvements to the demised Premises which might from time to time be requested by Lessee.

F. Upon the approval of any alterations, and upon the request of Lessee, Lessor and Lessee must also agree in writing as to whether any such alteration or improvement

shall be deemed a fixture which shall remain with the Premises upon termination or shall be deemed to be the personal property of Lessee which will be removed upon termination. The parties shall also set forth in writing the conditions or restoration needed for removal of any such improvement. In the absence of any such written agreement, all improvements and fixtures shall constitute the sole property of the Lessor as set forth in Section 8 herein.

G. At Lessee's cost, Lessee shall be permitted to make certain initial improvements which shall include the improvements described on Exhibit B.

8. **FIXTURES.** Any alterations made in the building located on the Premises (the "Building") by Lessee and any equipment or fixtures built into the Premises by Lessee shall upon the termination of this Lease become the sole property of the Lessor, unless otherwise agreed in writing by the parties.

9. **LESSEE'S MAINTENANCE OBLIGATIONS.** Lessee covenants to maintain, repair, replace and keep all exterior signage, all glass, all doors and windows, lighting fixtures and HVAC systems, as well as the interior of the Premises, and all improvements, fixtures and personal property therein, including, but not limited to, all doors, all restrooms, and all plumbing, electrical, HVAC and mechanical systems and fixtures, in good, safe and sanitary condition, order and repair and in accordance with all applicable laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction; to pay all costs and expenses in connection therewith; and to contract for the same in Lessee's own name. All maintenance and repairs by Lessee shall be done promptly, in a good and workmanlike fashion, and without diminishing the original quality of the Premises.

A. Lessee shall also be responsible for the repair of damages if any damage or defect was caused by the negligence of Lessee or Lessee's employees, agents, contractors, customers, clients, or other invitees, or if the damage or defect is caused by or otherwise due to work performed by Lessee or Lessee's agents or contractors.

B. Lessee shall keep the entire exterior Premises free from all litter, dirt, debris and obstructions; and to keep the Premises in a clean and sanitary condition as required by the ordinances of the city and county in which the Premises is situate. Lessee, at Lessee's sole expense, shall also be responsible for trash removal and janitorial services in the Premises. Lessee shall engage in a recycling program if commercially available. Lessee shall comply with all applicable fire codes and required inspections. Lessee shall keep the interior and exterior of all windows in a clean condition.

C. Lessee shall keep the sidewalks and parking areas on and around the Premises free and clear of ice and snow, and keep the entire exterior Premises free from all litter, dirt, debris and obstructions; and to keep the Premises in a clean and sanitary condition as required by the ordinances of the City of Salida. Specifically, at a minimum of once per day and prior to 10:00 AM, Lessee shall sweep and pick up all dirt, mud, trash, cigarette butts, and debris from the sidewalk and gutter in front of the Premises and along that part of G Street adjoining the Premises. Further, prior to 10:00 AM all snow and ice shall be thoroughly removed from the sidewalk and gutter in front of the Premises along

1st Street and along that part of G Street adjoining the Premises. Snow shall be piled around the base of the sidewalk trees in front of the Premises to provide moisture to the trees during the winter. Lessee shall clean all glass periodically.

D. Lessee agrees to return the Premises at the end of the Lease term, including all fixtures and lease improvements, in the same condition as the beginning of this Lease and in good working order subject to normal wear and tear.

10. **LESSOR'S MAINTENANCE OBLIGATIONS.** Lessor covenants and agrees to maintain, repair, replace and keep the roof, exterior walls, and foundation of the Premises, (excluding glass, signage, doors, and lighting), in good, safe and sanitary condition, order and repair and in accordance with all applicable laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction and to pay all costs and expenses in connection with. Further, if any repair, replacement or restoration is necessitated by any act or omission of Lessee, or any of Lessee's officers, employees, agents, guests or invitees, all costs and expenses incurred by Lessor in connection therewith shall be payable by Lessee immediately upon Lessor's written request. Except as provided in Section 20H, there shall be no allowance to Lessee for a diminution of rental value and no liability on the part of Lessor, by reason or inconvenience, annoyance or injury to, or interruption of business, arising from Lessor, Lessee or others making any repairs, restorations, replacements, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment thereof.

11. **UTILITIES.** All applications and connections for necessary gas, telecommunications, trash service, and electricity to the Premises shall be made in the name of the Lessee only. From the date Lessee takes possession of the Premises until this Lease is terminated, Lessee shall be solely liable for the payment of all water and sewer, gas, telecommunications, trash service and electricity deposits and charges for facilities and services.

12. **TAXES.**

A. Lessee's Taxes. During the term of this Lease, Lessee shall pay in full, as and when the same become due and payable, all personal property taxes levied on or with respect to Lessee's personal property located in or used in connection with the Premises, and all sales, use, and other taxes levied on or in connection with the operation of Lessee's business in the Premises.

B. Real Property Taxes. The parties acknowledge that the real property taxes are assessed in one assessment and tax bill against Lessor's Property, which includes the Premises. Lessee shall pay a portion of such taxes and assessments to Lessor in monthly installments, together with each monthly installment of rent due under this Lease, each installment in an amount equal to [REDACTED] of that amount which is equal to the amount (the "Tax Installment") that Lessor estimates (based on the most recent levy and the most recent assessment) will be needed to pay the next required installment or payment of real property taxes and assessments payable with respect to the Premises. Not less than annually, Lessor shall provide Lessee with copies of the tax bills and a revised calculation of the [REDACTED] payment adjusted to reflect any increase in the tax assessment. The adjusted amount shall be due commencing with the next payment of rent.

13. **SIGNS.** Lessee shall at no time build, construct, erect, attach, or hang signs in the absence of Lessor's prior written consent, which will not be unreasonably withheld. All permitted signs must be erected and maintained in accordance with the provisions of applicable federal, state, and local law, rules, and regulations.

14. **PARKING.** Lessee acknowledges that there are no parking spaces on the Premises.

15. **OTHER COVENANTS OF LESSEE.**

A. Compliance with Insurance Requirements. Lessee covenants and agrees that nothing shall be done or kept on the Premises which might impair or increase the cost of insurance maintained with respect to the Premises, which might increase the insured risks, or which might result in cancellation of any such insurance. Failure to comply with any required fire inspection shall be deemed a default under this Lease.

B. No Waste or Impairment of Value. Lessee covenants and agrees that nothing shall be done or kept on the Premises which might impair the value of the Premises or which would constitute waste.

C. No Nuisance, Noxious or Offensive Activity. Lessee covenants and agrees that no noxious or offensive activity shall be carried on upon the Premises nor shall anything be done or kept on the Premises which may be or become a public or private nuisance or which may cause embarrassment, disturbance, or annoyance to others on adjacent or nearby property.

D. No Unsightliness. Lessee covenants and agrees that no unsightliness shall be permitted on the Premises which is visible from any adjacent or nearby property. Without limiting the generality of the foregoing, all unsightly conditions, equipment, objects and conditions shall be kept enclosed within the Premises; no refuse, scrap, debris, garbage, trash, bulk materials, used automobile parts, or waste shall be kept, stored or allowed to accumulate on the Premises except as may be enclosed within the Premises; no storage of abandoned vehicles shall be permitted on the Premises; and except for vehicles located on the portion of the property reserved for exclusive use by the Lessor, no vehicles shall remain parked on the Premises longer than that period of time which is reasonably required to service or repair said vehicles, and in no event longer than seventy-two (72) hours.

E. Environmental Compliance and Indemnity. Lessee covenants and agrees to conduct its business and operations on and from the Premises in accordance with all federal, state and local environmental laws, regulations, executive orders, ordinances and directives including, but not limited to, the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, and state law counterparts, and any amendments thereto, including, without limitation, the Colorado Hazardous Waste Management Act, C.R.S. § 25-15-101 et seq., and not to cause, suffer or permit any damage or impairment to the health, safety or comfort of any person or to the environment at or on the Premises and surrounding property, including, but not limited to, damage or threatened

damage to the soil, surface or ground water resources at the Premises and surrounding property or any condition constituting a nuisance or causing a violation of or resulting in liability under any state, federal or local law, regulation or ordinance. The foregoing obligations of Lessee shall hereinafter collectively be referred to as the "Environmental Obligations." In the event of any violation of, or failure to comply with, any of the Environmental Obligations, Lessee agrees, at its sole cost and expense, promptly to remedy and correct such violation or failure, including all required or appropriate clean up, clean up-related activities and all other appropriate remedial action. Lessee covenants and agrees to protect, indemnify and save Lessor harmless from and against any and all liability, obligations, claims, including administrative claims and claims for injunctive relief, loss, cost, damage, expense or liability, including without limitation, any liability arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, plus reasonable attorney fees, incurred by or asserted against Lessor resulting from any failure to comply with the provisions of this Section 15 E. Lessor shall have the right to defend itself in any action, suit or proceeding commenced against Lessor as a result of Lessee's violation of or failure to comply with the provision of this Section 15 E, with attorneys and, as necessary, technical consultants chosen by Lessor, and Lessee agrees to pay to Lessor all reasonable attorney fees, consultant fees, and other costs in connection therewith incurred by Lessor. The provisions of this Section 15 E shall survive the expiration or termination of this Lease.

F. OFAC Compliance. Lessee represents and warrants to Lessor that Lessee is currently in compliance with and shall at all times during the term of this Lease (including any further extensions or renewals) remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

G. No Security Interest. Lessee agrees and warrants that no security interest will or may be granted with respect to any fixture physically attached to the Premises at any time during the term hereof.

H. Dogs. Lessee's employees shall not leave dogs unattended in vehicles on the Premises or anywhere on Lessor's property.

I. Smoking. Smoking anywhere on the Premises or Lessor's Property shall be prohibited.

16. **CONDITION OF THE PREMISES**. The taking of possession of the Premises by Lessee shall be conclusive evidence as against Lessee that the Premises were in satisfactory condition when possession of the same was taken. Lessee shall be permitted to make a final walk-through inspection of the Premises prior to its taking possession thereof.

17. **ADJACENT PROPERTY ATTACHMENT**. Lessee hereby consents to the attachment or connection to the Building of any permanent or temporary structure which may be

constructed or placed on the property immediately adjacent to the Premises, provided that any such attachment or connection does not unreasonably interfere with or disturb the operation of Lessee's use and occupancy of the Premises as permitted hereunder.

18. **ACCESS AND QUIET ENJOYMENT.** Lessor warrants that Lessee shall have peaceable and quiet enjoyment of the Premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided for herein, and otherwise fully and punctually performs the terms and conditions hereof.

19. **RESERVATIONS AND INSPECTION BY LESSOR.** Lessor or its agents shall have the right at any time to enter the Premises to examine the same to ensure Lessee's compliance with all terms of this Lease, or to make such repairs as it may deem necessary or proper for the safety, improvement, or preservation thereof. Lessor shall at all times have the right, at its election, to make such alterations of, changes in, or additions to any adjoining buildings, if any, not leased to the Lessee, as may appear desirable to Lessor, and to demolish and/or dispose of the adjoining premises as it shall elect, at Lessor's sole expense. Lessor may show the Premises to prospective purchasers and mortgagees, and during the three months prior to termination of this Lease, to prospective tenants, during business hours upon reasonable notice to Lessee.

20. **LIABILITY OF LESSOR, INDEMNIFICATION, AND INSURANCE.**

A. Except as otherwise provided herein, Lessee shall be in exclusive control and possession of the Premises from the date this Lease is executed until it is terminated. Lessor shall not be liable for any injury or damages to any property or to any person on or about the Premises nor for any injury or damage to any property of the Lessee. Lessor shall not be liable to Lessee for any entry on the Premises for inspection or repair purposes.

B. To the fullest extent permitted by applicable law, Lessee shall hold harmless and indemnify Lessor from and against all expenses, liabilities, and claims of every kind and character, including reasonable attorney fees and court costs, incurred, raised, or brought by or on behalf of any person or entity arising out of either: (1) a failure by Lessee to perform any of the terms or conditions of this Lease, (2) any injury or damage happening on or about the Premises, except for injury or damage caused solely by the negligence of Lessor, (3) Lessee's failure to comply with any law of any governmental authority, or (4) any mechanic's lien pertaining to work, services, or materials contracted for by Lessee or security interest filed against the Premises or equipment, materials, or alterations of buildings or improvements thereon which pertains to any indebtedness incurred by Lessee.

C. Lessee shall insure all building materials, supplies, personal property, furnishings, equipment, inventory, and records that it uses or stores on the Premises at any time following the execution hereof against fire and other hazards and shall promptly furnish proof of such insurance coverage to Lessor. Lessor shall be named as an additional insured under said policy.

D. Lessee shall obtain and maintain prior to taking possession of the Premises and at all times thereafter during the term hereof, including any optioned term, insurance

against liability for bodily injury and property damage, all to be in amounts and in forms of insurance policies as may from time to time be required by Lessor, with policy limits in an amount not less than [REDACTED] for death, illness or injury to one or more persons, and [REDACTED] for property damage, in respect of each occurrence. Not less than annually or upon request by lessor, Lessee shall provide Lessor with the declaration pages of the applicable policies and certificates evidencing such insurance coverage before occupying the Premises for performing any work within the Premises. Lessor shall be named as an additional insured under such policies.

E. Policies for such insurance shall be in a form and with an insurer reasonably acceptable to Lessor, and shall require at least 15 days written notice to Lessor of termination or material alteration during the term of this Lease, and shall waive any right of subrogation against Lessor and all individuals and entities for whom Lessor is responsible in law. Lessee shall deliver to Lessor, on the commencement date of the term of this Lease and on each anniversary thereof, certified copies or other evidence of such policies, or other evidence satisfactory to Lessor that all premiums thereof have been paid and that the policies are in full force and effect. Any default or breach of the insurance requirements of this Lease shall be deemed an immediate default and shall not require Lessor to give a 10 day notice of default described in Section 21 herein.

F. Lessor shall maintain at all times during the term of this Lease insurance coverage for the demised premises for property damage, fire and casualty, and extended coverage. Lessee shall pay a portion of such insurance premium to Lessor in monthly installments, together with each monthly installment of rent due under this Lease, each installment in an amount equal to [REDACTED] of that amount which is equal to the amount (the "Insurance Installment") that Lessor estimates (based on the most recent policy) will be needed to pay the next required installment or payment of such insurance premiums with respect to the Premises. Not less than annually, Lessor shall provide Lessee with copies of the insurance bills and a revised calculation of the [REDACTED] payment adjusted to reflect any increase in the Insurance Installment. The adjusted amount shall be due commencing with the next payment of rent.

G. In the event the Premises shall be damaged by fire or other casualty during the term of the tenancy, in a manner rendering all or a part of the Premises unusable for the intended purpose under this Lease, the parties shall be entitled to exercise the following options:

(1.) Lessor may repair the Premises at its own expense. Lessor shall be entitled to reimbursement from insurance proceeds from any casualty insurance for the Premises paid as a result of such damage to the Premises. If the casualty insurance policy was maintained by Lessee, Lessor shall be entitled to reimbursement not to exceed the total cost of repair to the Premises.

(2.) Lessee may repair the Premises at its own expense. Lessee shall be entitled to reimbursement from insurance proceeds from any casualty insurance for the Premises paid as a result of such damage to the Premises.

(3.) If neither party elects to repair the damaged portions of the Premises, by giving written notice of its intent to make the repairs to the other, within thirty (30) days following the date of the damage by fire or other casualty, or if the damage to the Premises cannot be substantially repaired within 180 days following the date when the Premises were damaged, Lessee or Lessor shall be entitled to declare this Lease null and void.

H. Except in cases where the damage to the Premises was proximately caused by the negligent actions or omissions of Lessee, or its employees, agents, customers, clients, or invitees, Lessee shall be entitled to an abatement of Lessee's obligation to pay rent hereunder as to so much of the Premises as are rendered unusable for their intended purpose under this agreement as a result of fire or other casualty for so long as the Premises remain unusable.

21. DEFAULT AND REMEDIES. Each of the following events shall constitute a default or breach of this Lease by Lessee:

A. If Lessee fails to pay Lessor such monthly rent within five (5) days of its due date, subject to the late charges set forth in Section 5, or if Lessee fails to pay any accrued late charges.

B. If Lessee fails to perform or comply with any of the other terms or conditions of this Lease and if the breach or nonperformance continues for a period of ten (10) days after notice thereof is given by Lessor to Lessee.

C. If Lessee vacates or abandons the Premises.

D. If this Lease or the estate of Lessee hereunder is transferred to or shall pass to any other person or party, except in the manner and to the extent herein permitted.

E. Lessee shall be in default in the event any lien is placed on the business of Lessee, Lessee's assets of any kind, on the Premises, Lessor's real or personal property, whether voluntarily by Lessee or by any creditor, taxing authority, or any party whatsoever.

F. Lessee shall be in default if Lessor has served three or more notices of default on Lessee within a 12-month period, in which case any and all rights to cure under this Lease shall not apply.

G. In the event of any default hereunder, as set forth above, the rights of Lessor shall be as follows:

(1.) Lessor shall have the right to cancel and terminate this Lease, as well as all of the right and interest of Lessee hereunder, by giving to Lessee not less than three (3) days' notice of the cancellation and termination in accordance with Colorado law and to re-enter and repossess the Premises, and to remove therefrom

any personal property belonging to the Lessee, without prejudice to any claim for rent or for the breach of covenants hereof.

(2.) Lessor may elect, but shall not be obligated, to make any payment required of Lessee herein or comply with any agreement, term or condition required hereby to be performed by Lessee, and Lessor shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Lessor shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible hereunder in the case of default.

22. **LIEN.** The Lessor shall have at all times a valid lien for all sums of rent due hereunder from the Lessee upon all of the personal property of the Lessee situate in the Premises, and said property shall not be removed therefrom without the consent of the Lessor until all arrearages in rent shall have first been paid and discharged.

23. **REMEDIES CUMULATIVE.** No reference to nor exercise of any specific right or remedy by Lessor shall prejudice or preclude Lessor from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but Lessor may from time to time exercise any one or more of such remedies independently or in combination.

24. **ATTORNEY FEES.** In the event there is controversy or dispute regarding this Agreement and/or any related documents and the parties are unable to settle the controversy or dispute through mediation or otherwise, the prevailing party in any administrative or legal action shall be entitled to recover from the breaching party all reasonable attorneys fees actually incurred, together with costs, including mediation fees. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement or judgment.

25. **SURRENDER AND POSSESSION.** Lessee shall, on the last day of the term or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the Premises to Lessor, including all buildings, additions, keys and security codes, and improvements constructed and placed thereon by Lessee, except Lessee's personal property, all in good condition and repair. Any personal property belonging to Lessee, if not removed at or before the termination or forfeiture date, and if Lessor shall so elect, shall be deemed abandoned and become the property of Lessor without any payment or offset therefor. Lessor may at its option remove such personal property from the Premises and store it at the risk and expense of Lessee. Lessee shall repair and restore all damage to the Premises caused by the removal of equipment and other personal property or be liable for the costs incurred in such repair or restoration. Lessee shall deliver the Premises back to Lessor in substantially the same condition as exists on the date on the execution of this Lease, normal wear and tear excepted. Upon termination of this Lease at any time for any reason, Lessee shall not have the right to remove from the Premises any leasehold improvements, including fixtures physically attached to any portion of the Premises, regardless of whether such leasehold improvements, including fixtures, were installed by Lessee, Lessor, or others. Once

attached, such leasehold improvements, including fixtures, shall become a part of the Premises subject to the terms of Sections 7 F. and 8 above.

26. **HOLDING OVER.** It is mutually agreed that if, after the expiration of this Lease, the Lessee shall remain in possession of the Premises, without a written agreement as to such holding, then such holding over shall be deemed and taken to be a holding upon a tenancy from month to month at a monthly rental equal to the monthly rental last payable hereunder, payable in advance on the 1st day of each calendar month. Any month-to-month tenancy or tenancy at sufferance hereunder shall be subject to all other terms and conditions of this Lease and nothing contained in this Section 26 shall be construed to alter or impair any of Lessor's rights of re-entry or eviction or constitute a waiver thereof.

27. **ASSIGNMENT, SUBLEASE AND LESSOR'S RIGHT OF FIRST.** Lessee may not assign or sublease any interest in the Premises without the prior written consent of Lessor. Lessee and all guarantors shall remain responsible for the lease payments under any approved sublease agreement. Nor shall any assignment for the benefit of creditors or by operation of law be effective to transfer any rights to the said assignees without the prior written consent of the Lessor first having been obtained. The sale of a [REDACTED] or greater interest of shares in the corporate entity of Lessee shall be considered a prohibited assignment under this Section 27. Further, if at any time hereafter, Lessee decides to market, sell or transfer that part of its business operated on the Premises or all or a portion of its assets (herein the "Business"), even if initiated by an unsolicited bona fide offer from a third party to purchase the business or all or a portion of its assets, then Lessee shall first give Lessor written Notice of Intent to Sell ("Notice") prior to marketing or offering the Business to any other prospective purchaser. The Notice from Lessee will include a true and complete copy of the terms and conditions of Lessee's intent to sell the Business, which shall be a bona fide offer with a purchase price that does not unreasonably exceed market value (the "Offer"). Within twenty (20) days after Lessor's receipt of the Notice (including the copy or summary of the Offer as required above), Lessor will notify Lessee whether Lessor will exercise Lessee's Right of First Offer. If Lessor fails or declines to notify Lessee regarding Lessor's exercise of the Right of First Offer within the sixty (60) day period allowed above, Lessor will be deemed to have decided against exercising Lessee's Right of First Offer, and Lessee will be free to market and sell the Business as communicated in the Notice from Lessor to Lessee.

28. **LESSOR'S ASSIGNMENT.** Lessor may, without notice, assign this Lease in whole or in part. Any such assignment shall operate to release Lessor from liability from and after the effective date thereof upon all of the covenants, terms and conditions of this lease, express or implied, and Lessee shall thereafter look solely to Lessor's successor in interest in and to this Lease. This Lease shall not be affected by any such assignment, and Lessee shall attorn to Lessor's successor in interest thereunder.

29. **SUBORDINATION AND ATTORNMENT.**

A. Subordination. Upon the written request of Lessor or any Mortgagee, Lessee will in writing subordinate its rights under this Lease to the lien of any mortgage or deed of trust now or hereafter in force against the Premises, the Building, or the underlying land, and to all advances made or hereafter to be made upon the security thereof, and to all extensions, modifications, and renewals thereunder. Lessee shall also, upon Lessor's

request, subordinate its rights under this Lease to any ground or underlying lease which may now exist or hereafter be executed affecting the Building and/or the underlying land. Lessee shall have the right to condition its subordination upon the execution and delivery of an attornment and nondisturbance agreement, as described in Section 29B, between the Mortgagee or the Lessor under any such ground or underlying lease and Lessee. Lessee shall not subordinate its rights hereunder to any lien other than that of a first mortgage or first deed of trust, except with the prior written consent of the Mortgagee holding such first mortgage or deed of trust.

B. Attornment. Upon the written request of the Lessor or any Mortgagee or any lessor under a ground or underlying lease, Lessee shall attorn to any such Mortgagee or lessor, provided such Mortgagee or lessor agrees that if Lessee is not in default under this Lease, Lessee's possession of the Premises in accordance with the terms of this Lease shall not be disturbed. Such agreement shall provide, among other things, (a) that this Lease shall remain in full force and effect, (b) that Lessee pay rent to said Mortgagee or lessor from the date of said attornment, (c) that said Mortgagee or lessor shall not be responsible to Lessee under this Lease except for obligations accruing subsequent to the date of such attornment, and (d) that Lessee, in the event of a foreclosure or a deed in lieu thereof or a termination of the ground or underlying lease, will enter into a new lease with the Mortgagee, lessor, or other person having or acquiring title on the same terms and conditions as this Lease and for the balance of the Term.

C. Nonmaterial Amendments. If any lender should require as a condition of loans secured by a lien on the Premises, the Building, or the land underlying the Building any modification of this Lease, Lessee will approve and execute any such modifications promptly after request, provided no such modification shall relate to the rent payable hereunder, the length of the Term, or otherwise materially change the rights or obligations of Lessor or Lessee.

30. **SUCCESSORS**. Subject to the restrictions of Section 27 above, the covenants and agreements contained in the within Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors, and assigns, except as expressly otherwise hereinbefore provided.

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

32. **LESSEE'S BANKRUPTCY OR INSOLVENCY**. It is further agreed between the parties hereto that if the Lessee shall be declared insolvent or bankrupt, or if any assignment of the Lessee's property shall be made for the benefit of creditors or otherwise, or if the Lessee's leasehold interest herein shall be levied upon under execution, or seized by virtue of any writ of any court of law, or a Trustee in Bankruptcy or a receiver be appointed for the property of the Lessee, whether under the operation of the state or the federal statutes, then and in any such case, the Lessor may at its option immediately, with or without notice (notice described in Section 17 above being expressly waived), terminate this Lease and immediately retake possession of the Premises without the same working any forfeiture of the obligations of the Lessee hereunder.

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

34. **SEVERABILITY.** All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this contract shall be interpreted as though such invalid agreements or covenants are not contained herein.

35. **NOTICES.** All notices required to be given in this Lease shall be in writing deposited in the United States Mail, certified or registered, with postage prepaid, and addressed to the parties at their respective addresses set forth herein, or notices may be delivered by e-mail or other electronic delivery with verified receipt, or maybe hand-delivered to the principal office of the party, or hand delivered to a principal or manager of the party.

36. **MEMORANDUM OF LEASE.** Lessee agrees, from time to time, to complete and execute a memorandum of lease for filing with the Department of Revenue, State of Colorado, in compliance with Sections 39-22-604, 39-26-117, and 39-26-205, C.R.S., or similar laws.

37. **TIME IS OF THE ESSENCE.** The parties hereto agree that time is of the essence of this Lease.

38. **ESTOPPEL.** Lessee shall, at any time and from time to time, upon not less than ten (10) days' prior notice from Lessor, execute, acknowledge and deliver a written statement ratifying this Lease and certifying any information concerning Lessee's lease and occupancy of the Premises reasonably required by Lessor.

39. **GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Colorado. All questions in dispute under this Lease between the parties shall be settled with venue in Chaffee County, Colorado.

40. **COUNTERPARTS.** This Lease may be executed in counterparts, in which case each such counterpart shall be construed as an original. Facsimile signatures shall be equally as binding as original signatures.

41. **INDEPENDENT COUNSEL.** The parties acknowledge that Powell & Murphy, P.C. represents Lessor. Lessee is advised to seek independent counsel if so desired.

42. **RIGHT OF FIRST OFFER.** Simultaneously with the execution of this Lease, the parties shall enter into the Right of First Offer pertaining to the sale of the Premises.

43. **ENTIRE AGREEMENT.** This Lease sets forth all the covenants, provisions, agreements, conditions, and understandings between the parties, and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. Any modifications of this Lease must be in writing and signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LESSOR: 146 West First Street, LLC:

By: [REDACTED]

Gregory J. Walter, Manager

Date: 10/10/23

By: [REDACTED]

Therese A. Dunn, Manager

Date: 10/10/23

LESSEE: [REDACTED] Company, LLC

By: [REDACTED]

Carlin W. Walsh

Its: Manager

Date: 10/10/23

By: [REDACTED]

Christian Koch

Its: Manager

Date: 10/10/23

GUARANTEE:

The undersigned hereby unconditionally guarantee, jointly and severally with all other guarantors, the payment by and performance of the obligations of Elevation Beer Co as Lessee under the above Lease.

Carlin Walsh

Christian Koch, individually

10/10/23

Date

Guarantor's Address: [REDACTED]

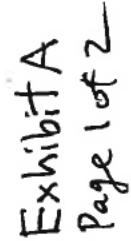
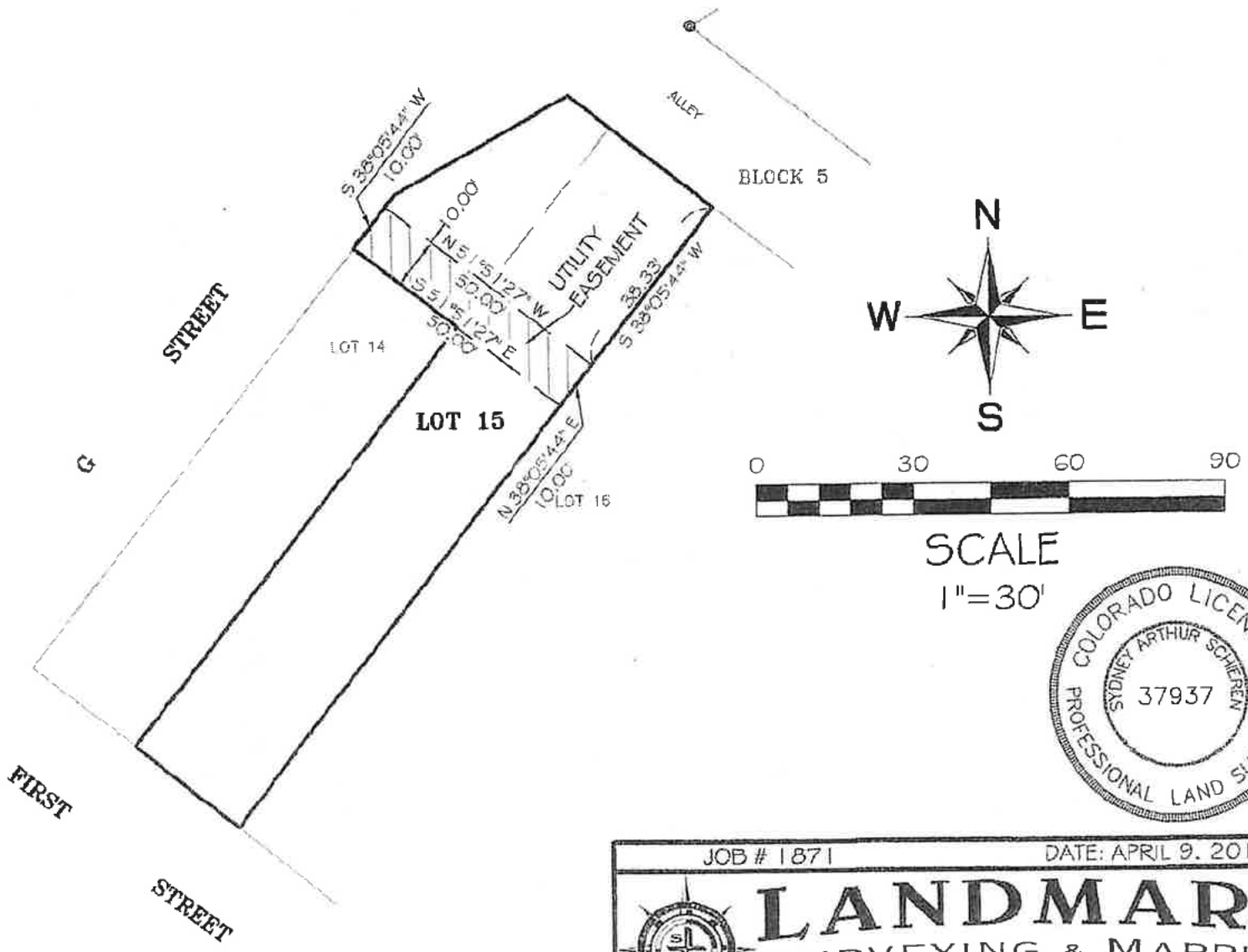


EXHIBIT B
UTILITY EASEMENT EXHIBIT
LOCATED WITHIN LOTS 14 & 15, BLOCK 5
CITY OF SALIDA
CHAFFEE COUNTY, COLORADO

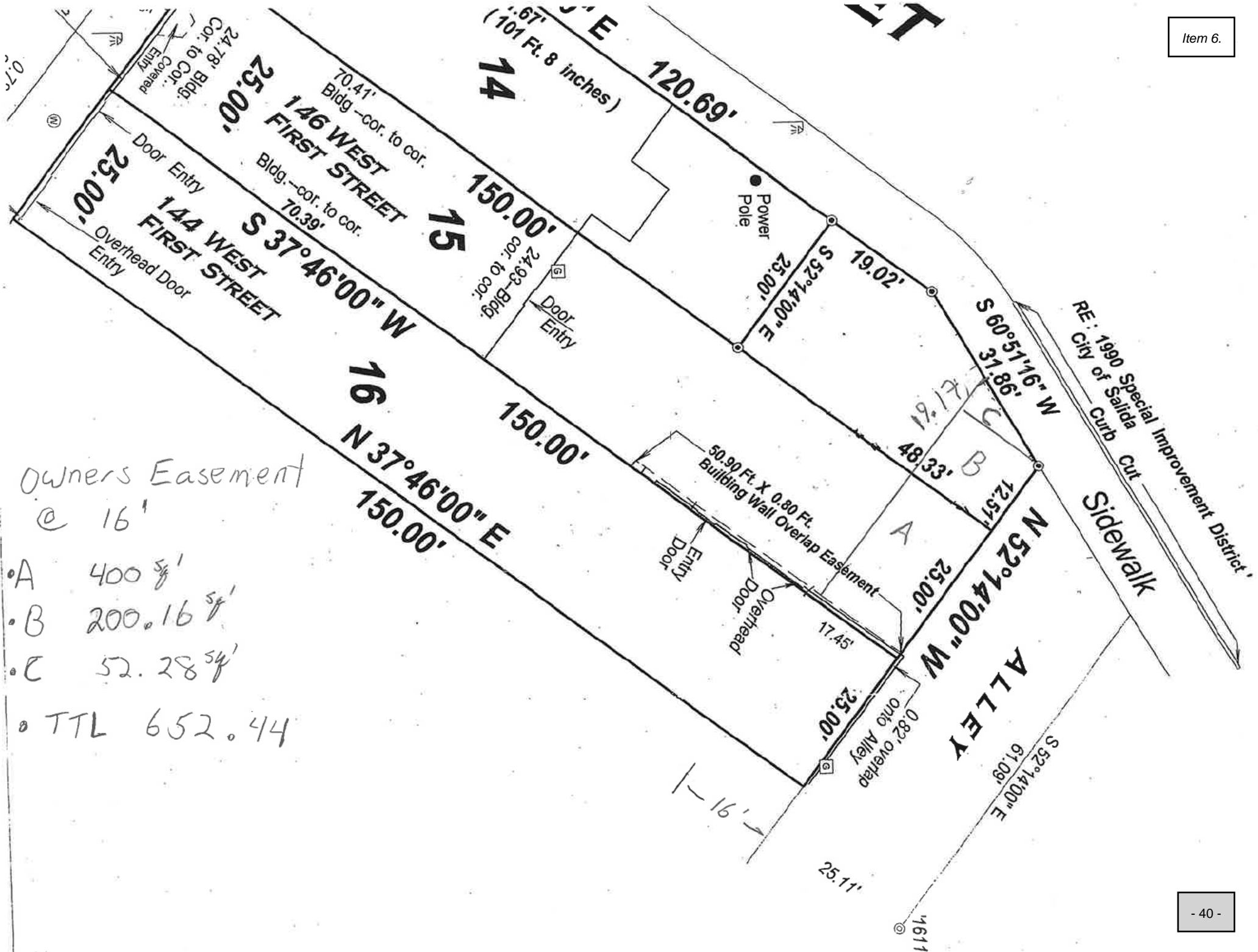


JOB # 1871 DATE: APRIL 9, 2018

LANDMARK
SURVEYING & MAPPING

P.O. BOX 668 SALIDA, CO 81201
PH 719.539.4021 FAX 719.539.4031

Exhibit A
Page 2 of 2



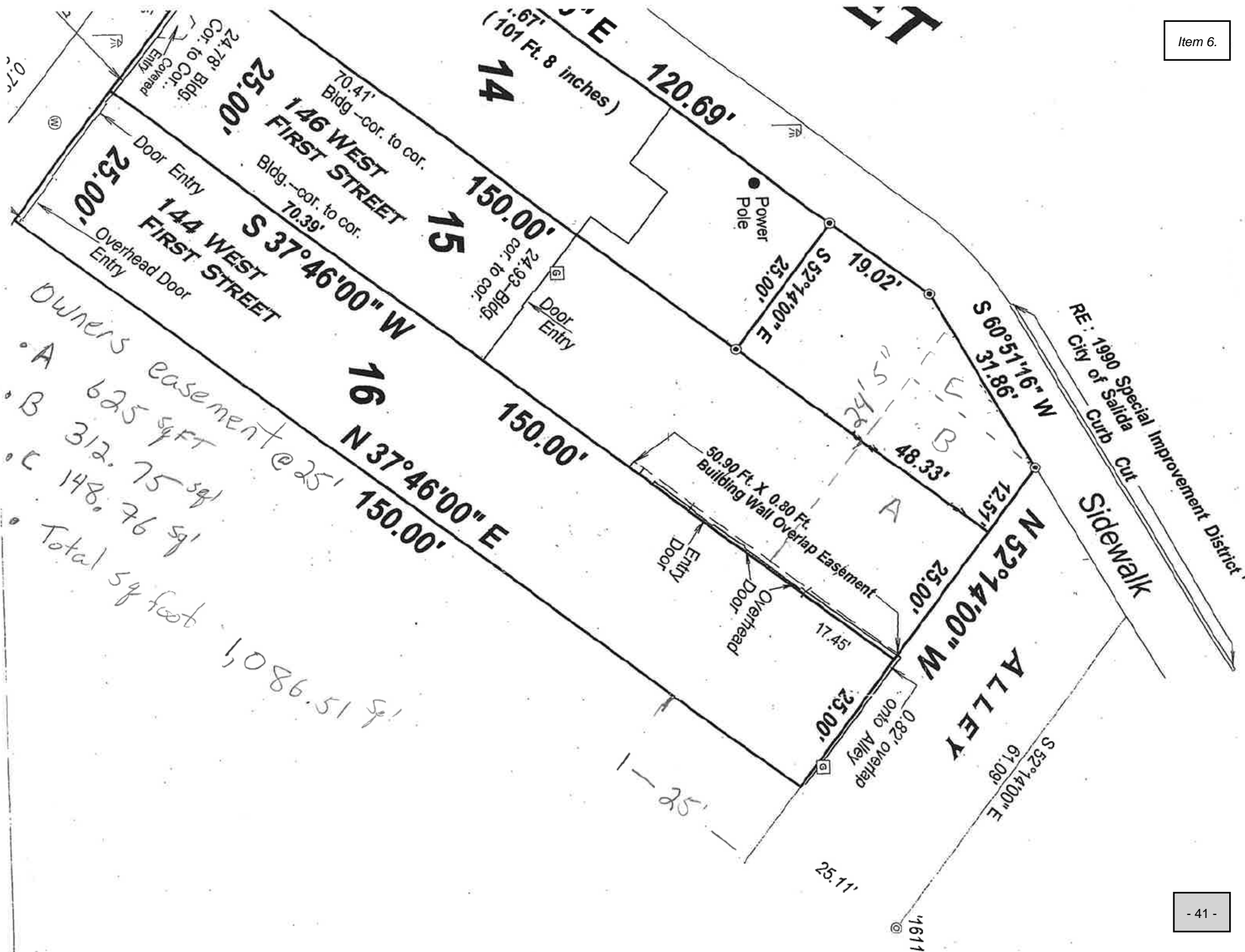
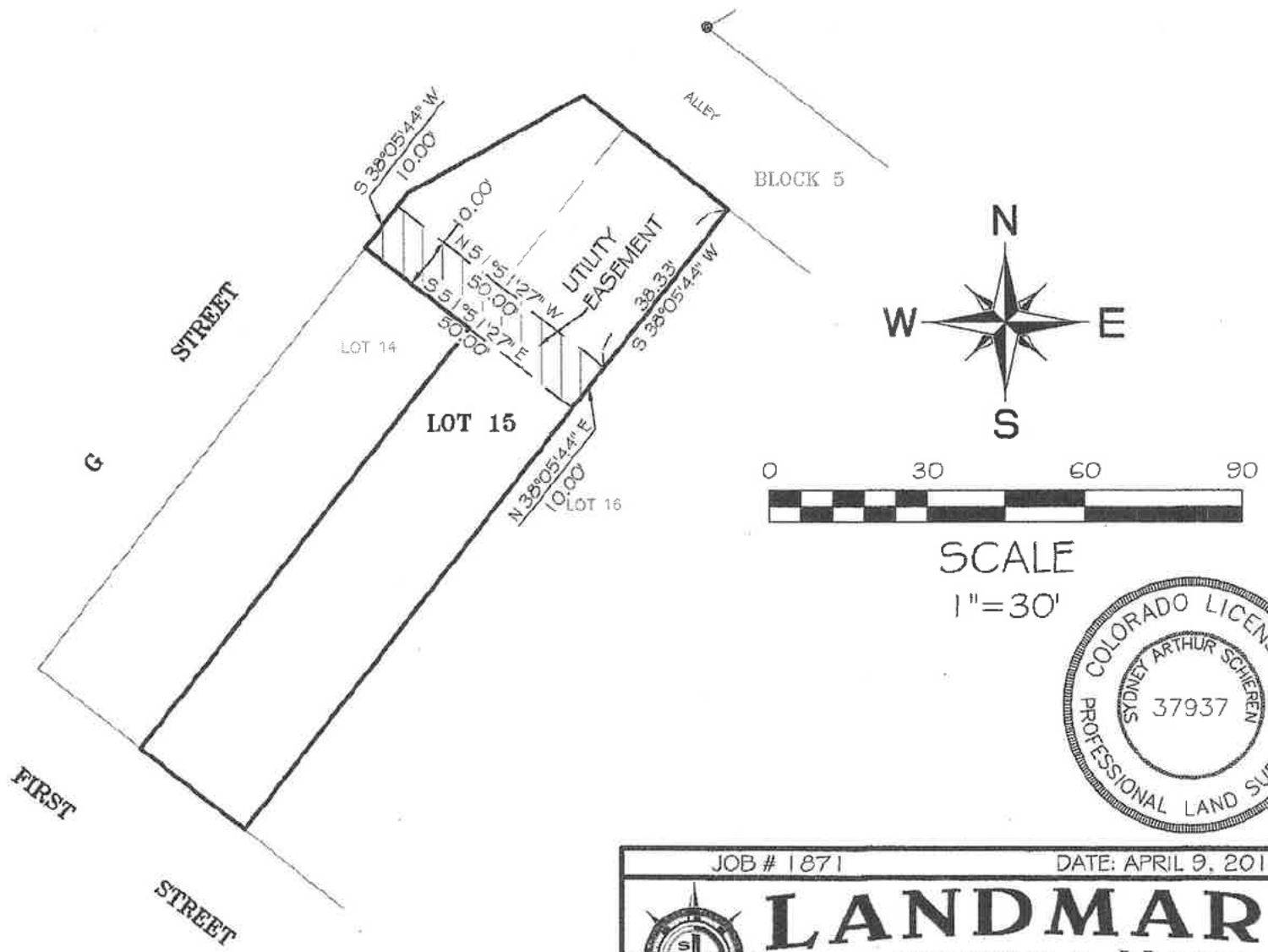


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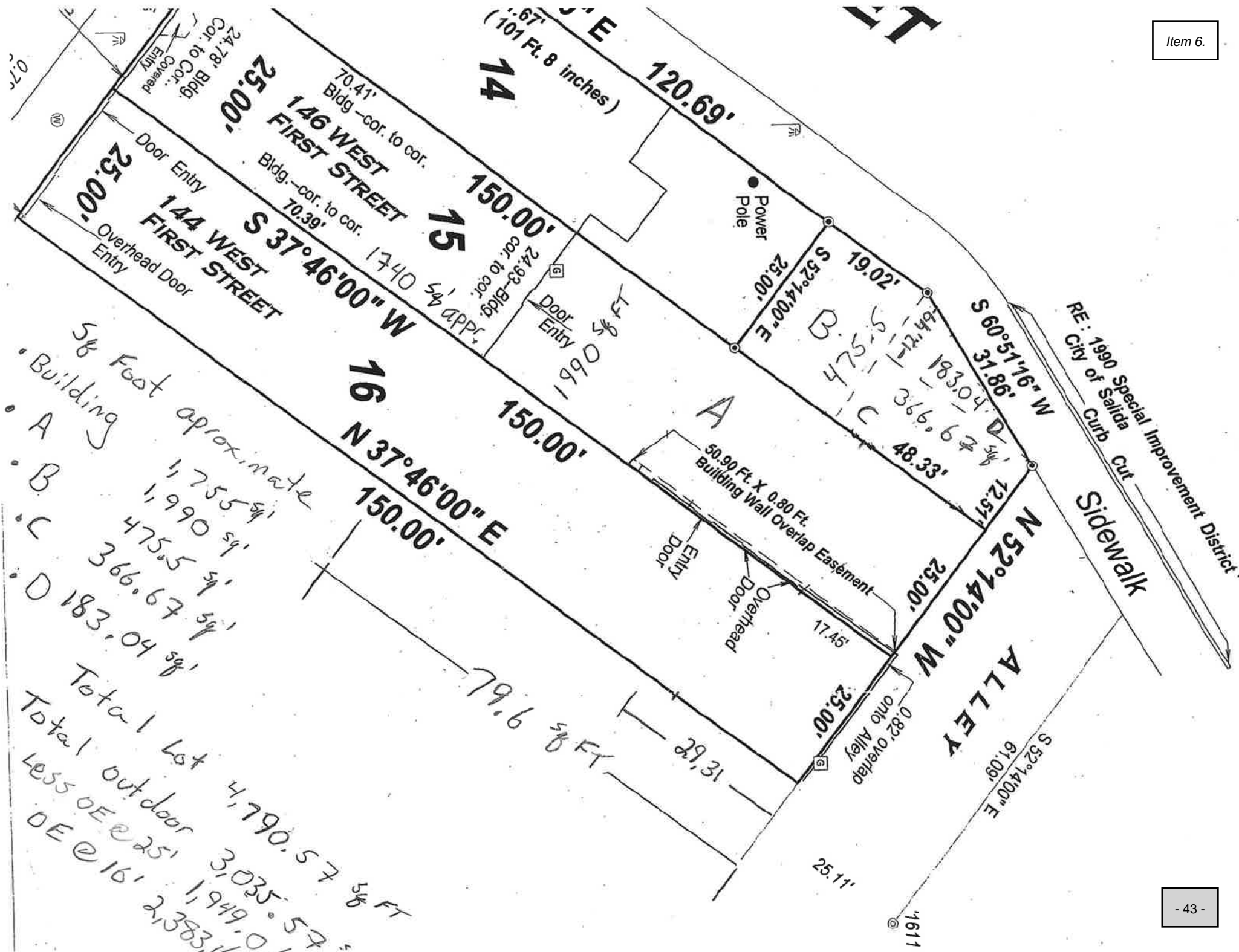


JOB # 1871

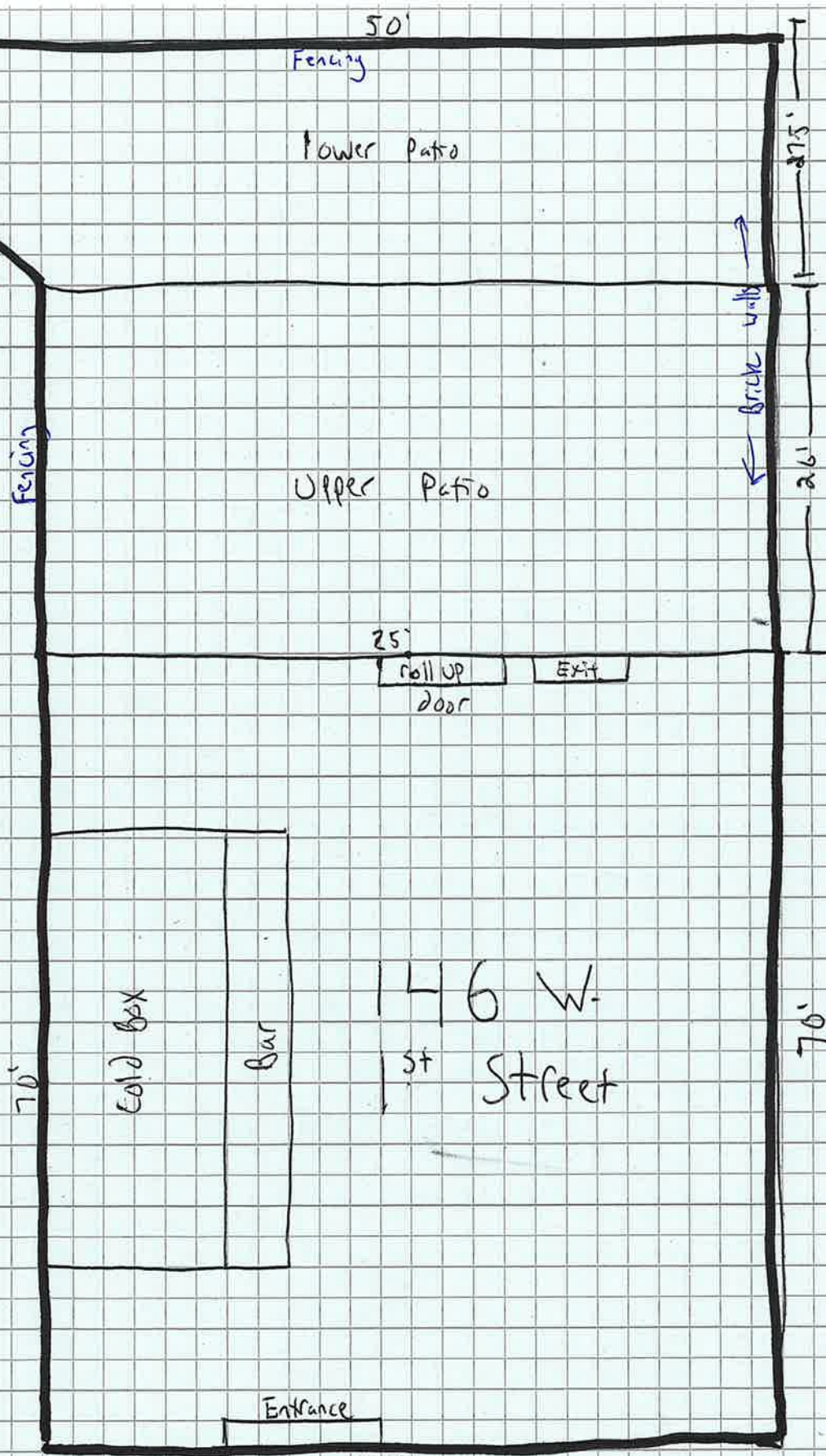
DATE: APRIL 9, 2018



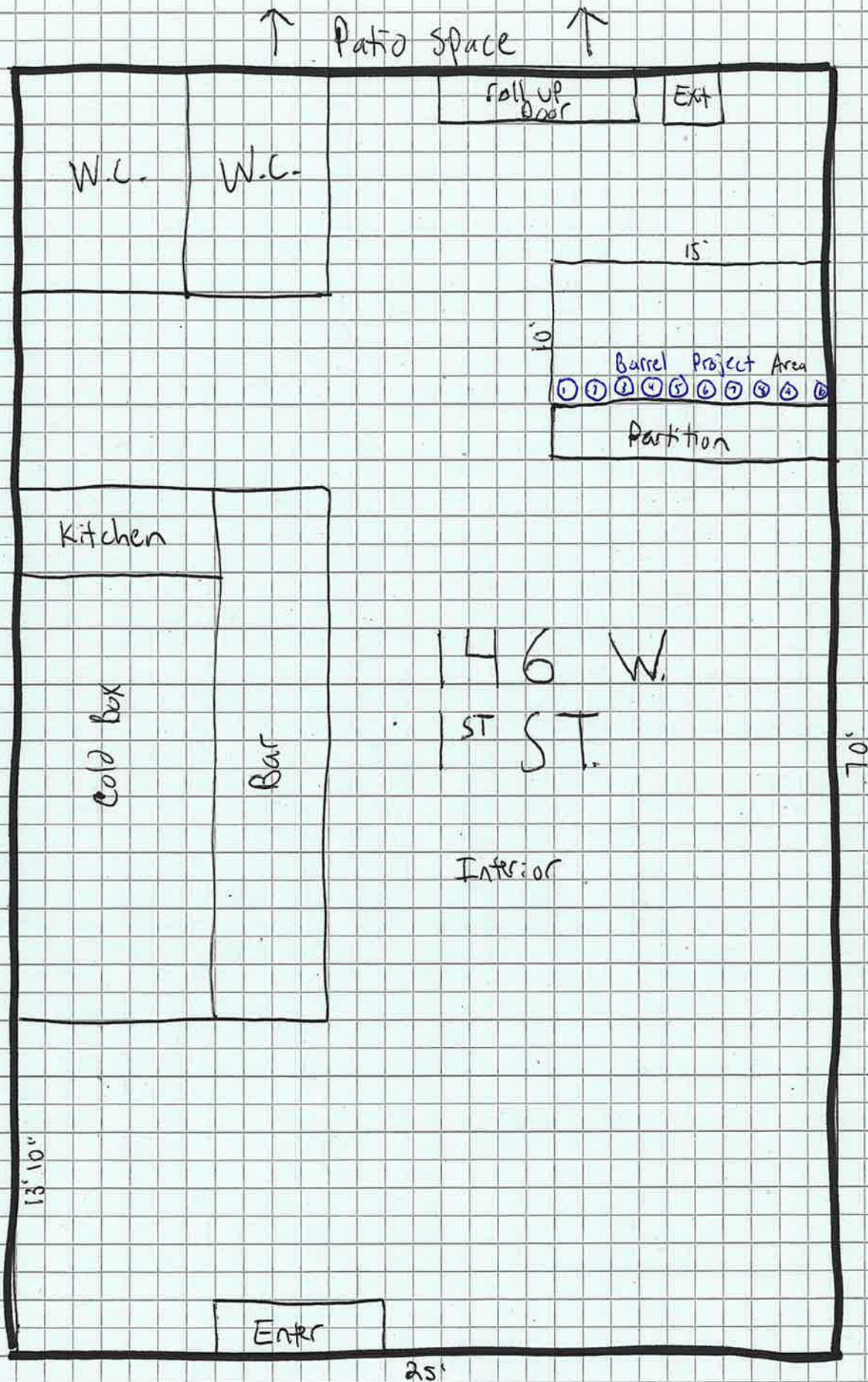
LANDMARK
SURVEYING & MAPPING
P.O. BOX 668 SALIDA, CO 81201
PH 719.539.4021 FAX 719.539.4031



G Street



W. 1st Street



1416 W. 1st ST

Patio Space

Item 6.

50'

Stage

Lower Patio

27' 6"

Planter box

19'

Upper Patio

26'

↓ Rear entrance ↓



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Bill Almquist - Community Development Director Cheney Bostic – Studio Seed, Inc. (Master Plan Consultants)	December 5, 2023

ITEM:

(Continued) Second Reading and Public Hearing for Ordinance 2023-16: An Ordinance of the City Council for the City of Salida, Colorado Approving a Substantial Modification of Parcels VPA-1, VPA-7, VPA-8, and VPA-9 of the Vandaveer Ranch Planned Development to Modify the Overall Development Plan by Changing Various Map, the Entitlements, Dimensional Standards, and Other Standards Regarding the South Ark Neighborhood

UPDATE SINCE CONTINUATION (11/21/23):

At the November 21st public hearing, City Council directed staff to provide a slate of alternative options to the original proposal that a minimum of 25% of all units (up to approximately 100 units in all) be reserved for market-rate (i.e. “non-income-based”) workforce housing, subject to a minimum 5-year deed restriction. Staff and consultants from Studio Seed subsequently discussed several options that would still protect the financial viability of the project (including the approximately 200 affordable units proposed for the site). Previous case studies of similar developments were reviewed, but none were found that included non-income-based workforce deed restrictions. Further research on the topic determined that this concept is fairly new and primarily geared toward very high-priced resort markets (e.g. Vail, Summit County, Telluride, Jackson Hole, etc.) where these communities offer individual market-rate homeowners a significant financial incentive to deed-restrict their own property for the local workforce—it is uncommon in new construction, however. Therefore, staff is recommending that Council consider the on-the-ground implications and feasibility of implementation when reviewing the following four options which are listed from least-restrictive to most restrictive below. Pros and cons are listed for each to assist with decision-making:

Option #1 – Eliminate the market-rate workforce housing requirement (simplify requirements to a minimum of 50% of all units permanently affordable and a maximum of 50% of all units at general market rate)

Pros:

- Simpler, more straightforward.
- The risk to the potential developer partner(s) is lower than with the non-income-based deed restriction model, thereby providing the highest likelihood of finding a developer(s) to build out the project, including all the affordable units.
- The overall requirements of administering deed-restrictions (anticipated by the Housing Authority) would be the least (no non-income-based workforce units to oversee).
- Leaves negotiation room for offering some market-rate units to the local workforce first, or potentially a slightly larger % of affordable units via developer agreements that Council would review and approve.

Cons:

- Members of the local workforce who do not qualify for the affordable units would have no competitive advantage in buying the other units on the open market.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Bill Almquist - Community Development Director Cheney Bostic – Studio Seed, Inc. (Master Plan Consultants)	December 5, 2023

Option #2 – Extend the Deed Restriction Duration of the Original Proposal but Reduce the Required Percentage of Units (minimum of 10% of all units, or min. of approx. 40 units, deed-restricted as market-rate workforce housing, for a min. of 7 years, with options to increase the percentage in later phases)

Pros:

- This could provide a minimum of approximately 40 “bonus” units to give a competitive advantage to the local workforce over other potential buyers/renters. Could increase to greater numbers if proven successful.
- Provides an opportunity to “test” out the market-rate workforce housing concept, which is unproven as an integral part any other comparable developments, to determine its potential for success.
- A minimum of 7 years is long enough to ensure that a buyer would not simply “flip” the home for significant profit and would remain a contributing member of the community/workforce. Additionally, many of the homes could be expected to be occupied by the same households for considerably longer.
- If the home were to be sold within 7 years of completion, it would still need to be sold to another member of the local workforce.

Cons:

- There is risk to a potential developer(s) being able to sell the market-rate workforce units (which will help pay for building the affordable units) due to the deed restrictions, though that risk is minimal given the relatively low number of those units and the limited deed-restriction duration. This risk may jeopardize the project as a whole.
- Over time, and after the deed restrictions have expired, these units may be passed on to individuals/households outside of the local workforce.
- Those fortunate enough to initially purchase the units could possibly see disproportionate profit once the deed restriction has expired and the home is sold on the general market (if general market prices have increased significantly). There is still risk involved, however.
- More complicated for the potential development partner(s) than just a min. 50% affordable, max. 50% market model—additional uncertainty involved.
- As some of the homes could potentially be resold within the deed restriction timeline, there would likely be additional requirements for the Housing Authority to administer these units, and the requirements could increase if the percentage of such units were increased in later phases.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Bill Almquist - Community Development Director Cheney Bostic – Studio Seed, Inc. (Master Plan Consultants)	December 5, 2023

Option #3 – Original Proposal (25% of all units, or up to approx. 100 units, deed-restricted as non-income-based workforce housing, at market rate, for a minimum of 5 years)

Pros:

- This could provide a minimum of approximately 100 “bonus” units to give a competitive advantage to the local workforce over other potential buyers/renters.
- If the home were to be sold within 5 years of construction, it would still need to be sold to another member of the local workforce.

Cons:

- There is considerable risk to a potential developer(s) being able to sell the market-rate workforce units (which will help pay for building the affordable units) due to the required number of deed restrictions. This risk may jeopardize the project as a whole.
- There are concerns from some that a minimum of only 5 years may not be long enough to ensure that some buyers would not “flip” the home for profit on the general market and potentially leave the workforce after 5 years?
- Over time, and after the deed restriction has expired, these units may be passed on to individuals/households outside of the local workforce.
- Those fortunate enough to initially purchase the units could possibly see disproportionate profit once the deed restriction has expired and the home is sold on the general market (if general market prices have increased significantly). There is still risk involved, however.
- More complicated for potential project developers than just a min. 50% affordable, max. 50% market model—additional uncertainty involved.
- As some of the homes would likely be resold within the deed restriction timeline, there would be additional requirements for the Housing Authority to administer these units.

Option #4 – Original Proposal Plus a Revolving First-Right of Refusal (25% of all units, or up to approx. 100 units, deed-restricted as non-income-based workforce housing, at market rate, for a minimum of 5 years, plus first-right of refusal (FRR) for every sale transaction thereafter, in perpetuity)

• Pros:

- This could provide a minimum of approximately 100 “bonus” units to give a competitive advantage to the local workforce over other potential buyers/renters.
- If the home were to be sold within 5 years of construction, it would still need to be sold to another member of the local workforce.
- If the home were to be sold *after* 5 years, a first right of refusal grace period would be required to provide opportunity for the local workforce to bid on the home without competition from others.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Community Development	Bill Almquist - Community Development Director Cheney Bostic – Studio Seed, Inc. (Master Plan Consultants)	December 5, 2023

- Cons:
 - There is considerable risk to a potential developer(s) being able to sell the market-rate workforce units (which will help pay for building the affordable units) due to the required number of deed restrictions. This risk may jeopardize the project as a whole.
 - There are concerns that a minimum of only 5 years may not be long enough to ensure that some buyers would not “flip” the home for profit on the general market and potentially leave the workforce after 5 years.
 - Over time, and after the deed restriction has expired, these units may be passed on to individuals/households outside of the local workforce (though the FRR may help prevent some).
 - Those fortunate enough to initially purchase the units could possibly see disproportionate profit once the deed restriction has expired and the home is sold on the general market (if general market prices have increased significantly). There is still risk involved, however.
 - More complicated for potential project developers than just a min. 50% affordable, max. 50% market model—additional uncertainty involved.
 - As some of the homes would likely be resold within the deed restriction timeline, there would be additional requirements for the Housing Authority to administer these units. Additionally, the FRR would apply to all in perpetuity, which would require additional administration and oversight to ensure the rule is being followed correctly.
 - Issues could arise over time with tracking and enforcing a FRR (reliant on title companies).

STAFF RECOMMENDATION

Although the original proposal included a provision for an additional 100 units that could be reserved for the local workforce at market rate, additional analysis and consideration leads Staff to strongly recommend that Council choose the simplest option (Option #1—minimum of 50% of all units as permanently affordable and a maximum of 50% of all units as general market rate, eliminating the non-income based local workforce units). This option will provide a development partner with the greatest level of certainty and the lowest amount of risk to better ensure eventual development of at least approximately 200 permanently-restricted affordable units. This option would also simplify the development agreement and put the smallest relative administrative burden on the Chaffee Housing Authority—which is still a relatively new organization with no permanent or stable funding source and few staff—but will already be tasked with administering many other inclusionary housing units constructed around the City. It should also be noted that unit sizes and lot sizes in the South Ark Neighborhood are limited via the proposed PD modification, which may keep the market-rate costs from being inflated to costs that are seen in other parts of town (where units and lots are larger). These units may naturally be more suited for the local workforce anyhow, both in size and cost. Subsequent development agreement(s) with development partner(s) would also provide opportunities to negotiate prioritization of the local workforce when offering market rate units, and perhaps even more affordable units.



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If an option with market-rate local workforce units absolutely must be chosen, staff would strongly recommend Option #2, which will provide a potential developer with the smallest level of uncertainty relative to all other options and allow for this unproven new concept (within new development, anyways) to be tested to see if those units can actually sell. The risk (with this option as well as all other options that include this concept) is that, if those units do not sell, the project will likely stall and permanently affordable units (as well as other market rate units) will not be built. But, if the concept proves to be successful, it has the opportunity to be expanded in future phases. It should be noted, however, that when a local developer was recently posed with a similar proposal during a public hearing, they pushed back at the idea noting that it limited the pool of potential buyers and would significantly increase their risk.

Note: A “clawback” option for potentially disproportionate profits was considered but was determined to add so much risk and administration as to make the project untenable. Additionally, the vast majority of subsidization in this process is going towards the minimum 50% of affordable units, via defrayed land and infrastructure costs. The amount of subsidy that would potentially be realized via any market-rate local workforce units (shown by the difference in those unit sales prices from general market sales prices) would be minimal—and, if it were to be more substantial, then the timely construction of affordable units would be jeopardized anyways.



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APPLICANT: The applicant is the City of Salida, 448 E. 1st Street, Salida, CO 81201.

REQUEST SUMMARY:

The request is to amend the Vandaveer Ranch Overall Development Plan (ODP) specifically for the 93.5 acres owned by the City of Salida on the west side of the ODP area. The area currently encompasses four “Vandaveer Planning Areas” (VPAs) of the ODP: the primarily residential area (VPA-1) —formerly referred to as the “Vandaveer Neighborhood” which is now referred to as the “South Ark Neighborhood”—and three parks and open space areas (VPA-7, VPA-8, and VPA-9) which are intended, collectively, to be named “Vandaveer Regional Park.” The remaining VPAs to the east of the subject site are not part of this modification request.

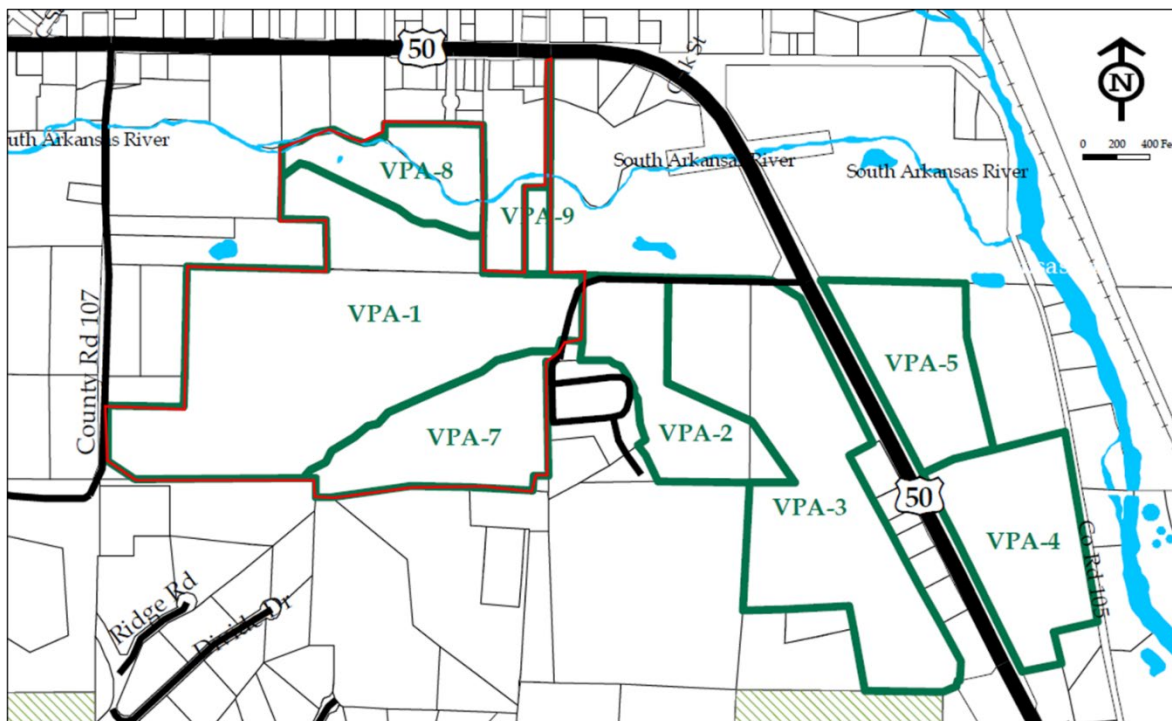


Figure 1: Existing Vandaveer Ranch Overall Development Plan (ODP) Map with PD Modification Area Outlined in Red



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The PD modification request proposes the following:

- Revisions to the boundaries and sizes of the 4 subject VPAs (VPA-1 is reduced significantly due to natural features and other factors; VPA-9 is increased significantly to account for park uses and the recent City of Salida/Snyder land swap; VPA-7 remains primarily the same; and VPA-8 is adjusted slightly to account more river corridor and the recent land swap.
- Amendments to the purposes and goals of the various VPAs.
- The creation of three subarea zone districts within VPA-1: SA-1, SA-2, and SA-3.
- Revisions to the use and dimensional standards for the three subareas.
- Revisions to the use standards for VPA-7, VPA-8, and VPA-9.
- Revisions to non-residential development square footage allowed in VPA-8 & VPA-9.
- Unique affordable and workforce housing requirements and definitions above and beyond those of the City's current inclusionary housing requirements.
- Specification of desired street sections and connections to surrounding areas.
- Specification around utilities and stormwater management.
- Updated Development and Design Standards for the South Ark Neighborhood area.
- Inclusion of updated maps specific to entitlements, zone districts, multi-modal circulation, and open space/parks.
- Guidance regarding phasing and implementation of the project.
- Other relevant language.

The overall number of primary units allowed on the site (up to 400) does not change, nor does the maximum residential building height that was allowed within the original ODP (up to 40 feet for multi-family in relevant zones), though some areas would be limited to 30 feet. If approved, final development/subdivision plans would also be required to be approved prior to issuance of any building permits.



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SITE LOCATION: South of Highway 50, East of CR 107 and West of CR 104

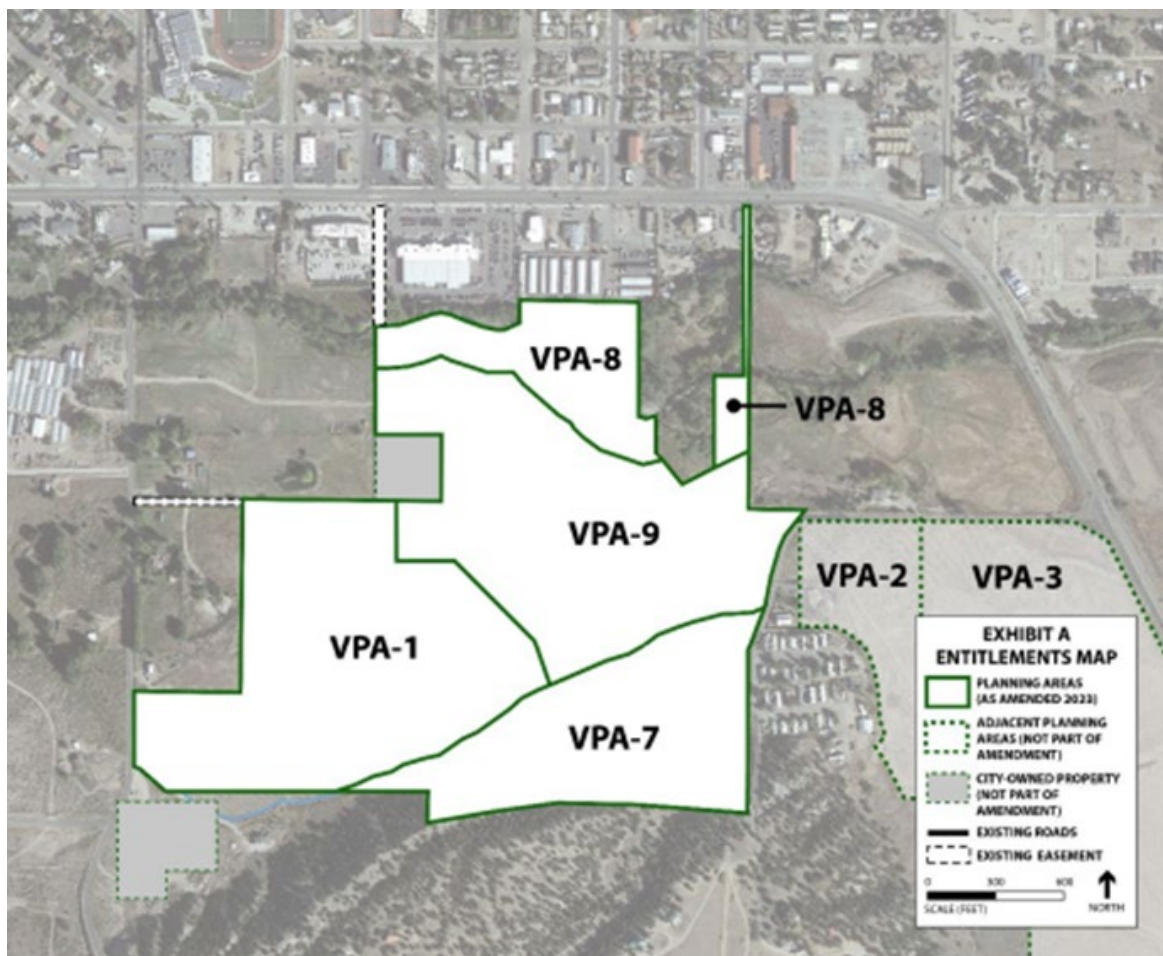


Figure 2: Site Location and Proposed Entitlements Map with Revised Planning Area Boundaries



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PHOTOS OF SUBJECT AREA:



PROCESS:

An application for a substantial modification to an approved Planned Development must follow a two-step process. The request is first addressed by the Planning Commission through a public hearing process. The Commission makes a recommendation of approval, approval with conditions, or denial of the request to City Council. The Commission may also remand the application back to the applicant for further information or amendment.



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The City Council has final decision-making authority in such applications. During the review of any proposed substantial modification to the PD, the City Council may require such new conditions of approval as are necessary to ensure that the development will be compatible with the current community standards and regulations. This shall include, but not be limited to, applying the portions of the PD which have not obtained building permits, or are subject to the proposed amendment, any new community policies or regulations which have been implemented since the PD was originally approved. An applicant may withdraw a proposed modification at any time during the review process. A request for a substantial modification shall be accompanied by the same type and quality of information as was necessary for the original PD Development Plan approval and shall include a map of the entire PD Development Plan area which clearly defines that portion which is proposed for modification and a written justification of the proposed modification, including a discussion of any changes in impact which would result from the modification.

BACKGROUND AND DETAILS OF REQUEST:

In 2004, the City of Salida purchased approximately 200 acres of the former Vandaveer Ranch for the purposes of water rights and future development potential. An overall development plan (ODP) was created for the entire site in 2006 to provide for a variety of residential, commercial, recreational and open space opportunities and was subsequently updated in 2011. Attempts to develop out portions of the property around that timeframe failed for a variety of reasons, and the property was eventually transferred to a quasi-governmental board in 2012 to steward. Between 2016 and 2018, following additional planning efforts and projects that did not materialize, approximately half of the entire ODP area (west of the subject site) was sold off to a variety of private developers and other public entities. The remaining approximately 93.5 acres on the western side of the ODP area was then returned to the City of Salida in 2018. The ODP was amended once more in 2020 via the Confluent Park PD Modification which affected only VPA-5. In 2022, the City conducted a minor .9-acre land swap with an adjacent property owner northeast of the City property in order to increase the usability near the eastern entrance to the site. That swap is reflected in the mapping changes proposed.

In light of the current housing crisis and dwindling vacant/developable lands within city limits, City Council directed staff to initiate a new master planning process for the remaining parcel. The process kicked off January 2023 with the assistance and expertise of Studio Seed, a multi-discipline consulting organization. The process included a host of public engagement opportunities, including open houses, presentations, site tours, design charrettes, several Planning Commission and City Council work sessions, and more. The site was originally designated for a combination of primarily residential, recreational, and some commercial use as part of VPA-1 (Vandaveer Neighborhood), while VPAs 7, 8, and 9 were designated primarily for parks and open space—the preferred master plan concept for the South Ark Neighborhood that resulted out of the recent master planning process (which is the basis for this proposed PD modification) maintains and expands upon the purpose and intent of the original ODP while also reflecting some of the underlying constraints of the site.



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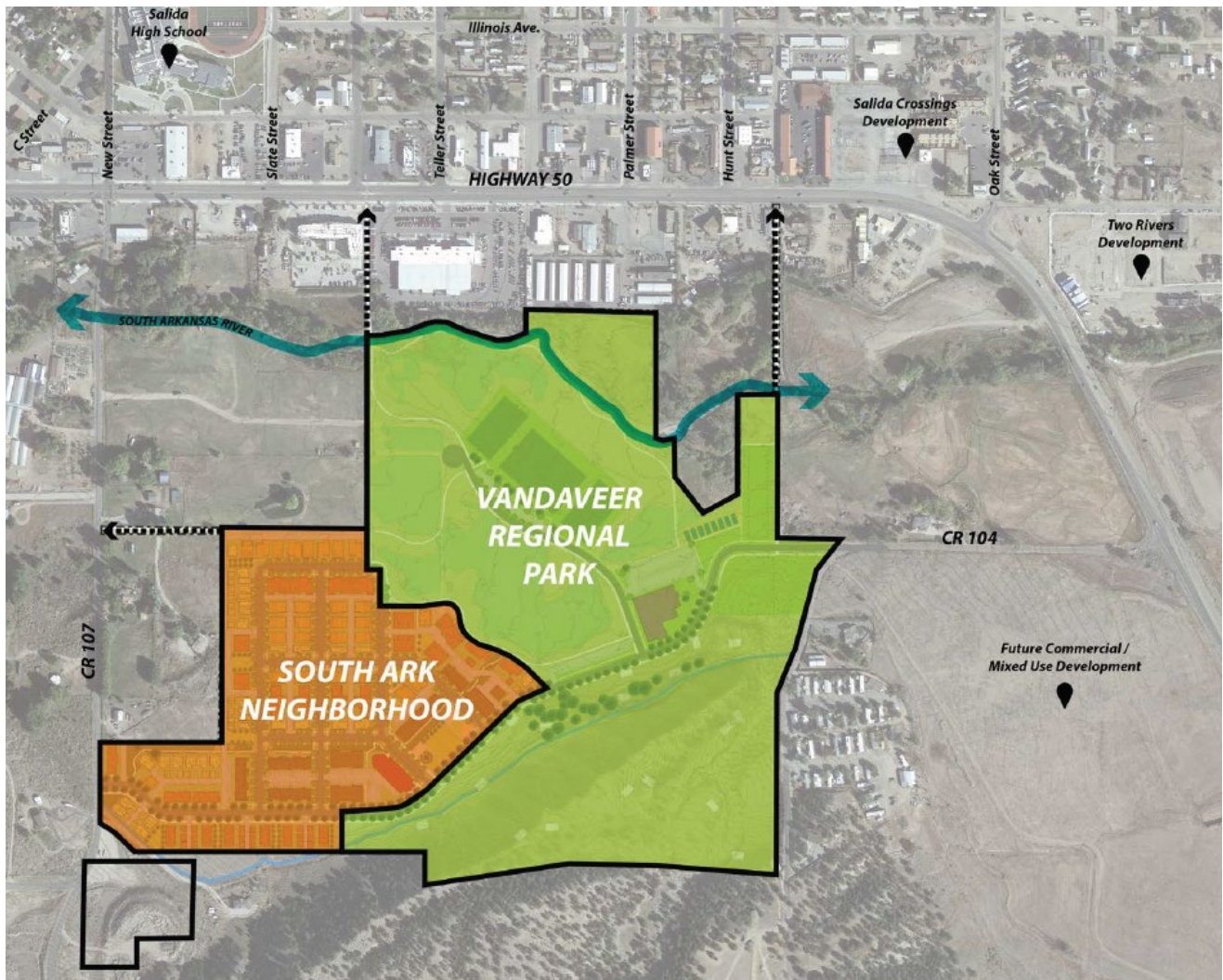


Figure 3: Overview of Master Plan for South Ark Neighborhood



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Figure 4: Master Plan Details for South Ark Neighborhood



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Figure 5: Master Plan Details for South Ark Neighborhood (Alternative Option)



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The preferred master plan for the site (Figure 4) allows for up to 400 primary units within VPA-1 and shows a future civic/educational/recreational facility towards the eastern edge of the site, within VPA-9. An alternative option (Figure 5) would allow for 350 – 400 units (in greater concentration within VPA-1), with a civic/educational/recreational facility in the northeastern portion of that VPA, in the case that housing is no longer the top priority by the time that specific area is developed in a final phase (and assuming such a facility has not already been constructed). The modification request provides flexibility for both scenarios and maintains the original 400-unit maximum for primary housing units over approximately 33 developable acres, plus over 60 acres for parks, open space, recreational and other civic purposes (proposed as “Vandaveer Regional Park”).

The primary modifications to the ODP involve the boundaries of the four planning areas and the concentration of the residential units into the southwestern portion of the site. These changes reflect the constraints of a variety of natural features identified on the site: including floodplain, fluvial and alluvial hazards, topography, seasonal springs, and a more extensive wetlands delineation than was previously known. The modification also proposes a variety of refinements to allowed uses and dimensional standards, especially in VPA-1, as well as greater specificity in regard to the planned transportation network, utility connections, and the like. Highlights of these changes are described in greater details in the sections below.



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Planning Area Entitlements Chart

Planning Areas	Zoning	Gross Area	Dwelling Units and Commercial Lodging Units ¹	Non-residential ² Development Square Footage
PROPOSED DEVELOPMENT	Corresponding Zone District	(Acres)	(up to and including)	(up to and including)
VPA-1	SA-1, SA-2, SA-3, POS per South Ark Neighborhood PD Mod	32.7	400	25,000
VPA-2	Transitional Residential	15.6	130	30,000
VPA-3	Mixed Use Village	44.1	180 (includes commercial lodging units)	300,000
VPA-4	Mixed Use Village	21.7	125 (includes commercial lodging units)	100,000
VPA-5	R-3, RMU and C-1 per Article 10. Confluent Park ³	15	289 ³	125,000 ³
VPA-7	Open Space/Parks	19.4	0	2,500
VPA-8	Open Space/Parks	11.3	0	0
VPA-9	Open Space/Parks	30.1	0	40,000
Total		189.9	1,124 units	622,500 SF

¹ This represents the total number of units but does not specify if they are single family, attached, or stacked units.

² Non-residential square footage includes employment centers, retail, commercial, educational centers, active and passive recreational uses requiring built facilities, commercial lodging, services, arts and cultural facilities, research and development.

³ See Article 10, Confluence Park Standards



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Subarea Creation for VPA-1 (South Ark Neighborhood)

The modification changes the zoning of VPA-1 from “Vandaveer Neighborhood” to three zoning subareas within the residential South Ark Neighborhood (SA-1, SA-2, and SA-3) reflecting varying levels of development intensity that generally increases as you move from southwest to northeast, as shown below:

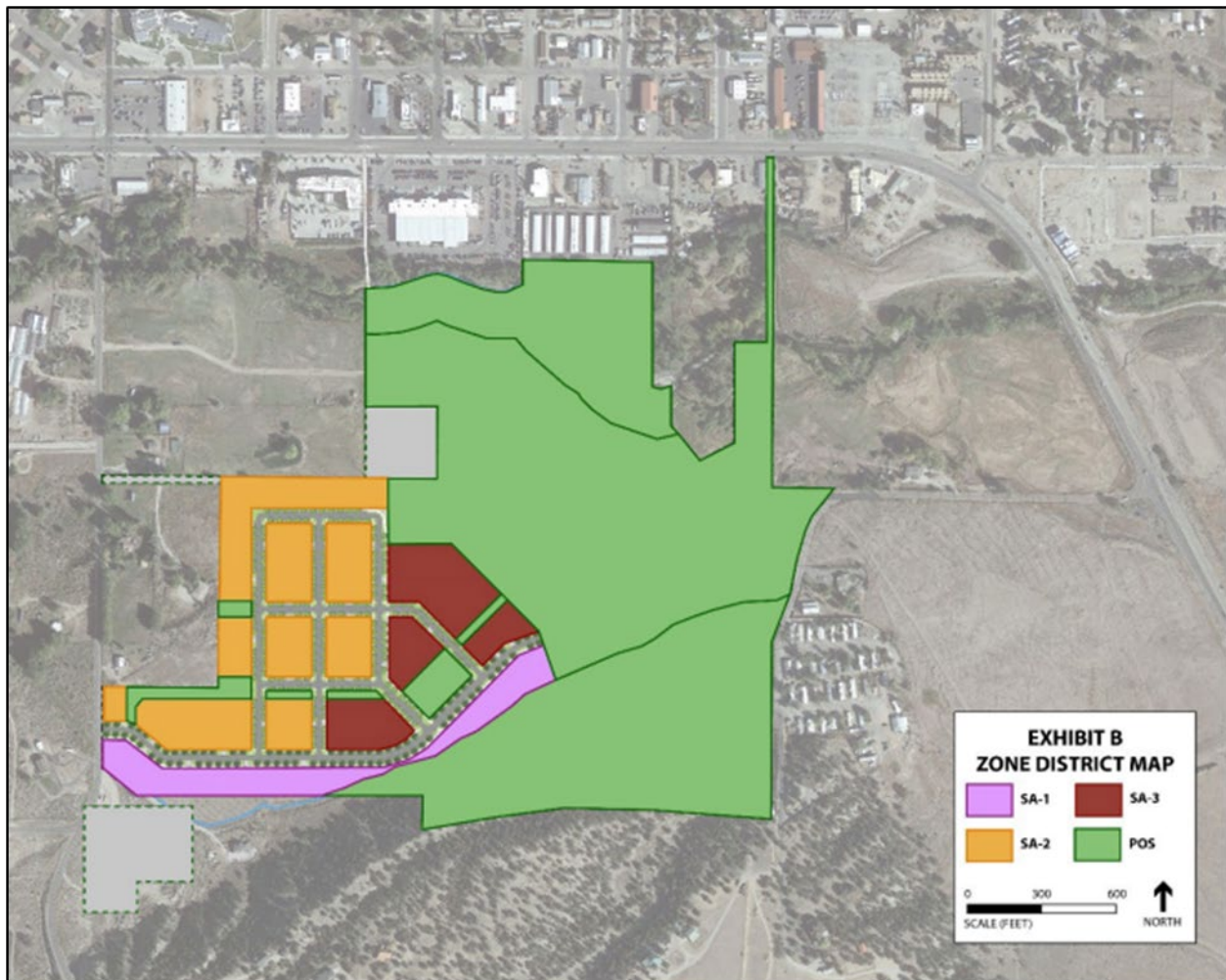


Figure 7: VPA-1 Zone District Subarea Map



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Uses

The use standards at Sections 4.03 and 4.06 of the ODP are updated to reflect the above subareas for VPA-1 as well as the three parks and open space planning areas (VPA-7, VPA-8, and VPA-9). In general, SA-1 allows for a variety of low-to-mid-density residential development, SA-2 allows for a variety of mid-to-high-density residential development, and SA-3 allows for primarily high-density residential development, along with some limited commercial uses (inc. daycare facilities). This represents considerably more concentration of units than is permitted in the current Vandaveer Neighborhood district uses in order to maintain the same number of residential units. SA-3 also allows for a variety of public, institutional, and recreational uses via administrative review, provided housing is not prioritized by the time the northeast extent of the neighborhood is developed (such public and non-profit uses are already exempted from total allowable development square footage, per the ODP). It is also worth mentioning that neither detached single-family dwellings nor short-term rentals would be permitted in SA-3. A maximum of 30 accessory dwelling units (not to count towards the 400-unit maximum) would be allowed throughout the entire site, along with other accessory uses (per code requirements).

The uses for the various planning areas of the to-be-created Vandaveer Regional Park are as follows: The uses within VPA-7 (Ridgeline/Wash Area) would be limited primarily to primitive existing uses such as a disc golf course, hiking trails, as well as a dog park, bike skills track, etc., while the uses within VPA-8 (River Corridor Area) would be sensitive to natural ecological processes of that area and limited to trail access, fishing, outdoor education signage, etc. The permitted uses within VPA-9 (Active Recreation Area) would be much more diverse, including a variety of sports fields and recreation facilities, other civic and educational facilities, daycare facilities, community gardens, dog park, and other potential uses.

Dimensional Standards

The PD modification request outlines proposed dimensional standards for the VPA-1 subareas in a corollary revision to Section 5.06 Table of Dimensional Standards as shown below. The changes correspond to the increased concentration of units and choices of housing types, while actually reducing the allowable height in specific areas along the far southern and western edges of VPA-1. Note that several other dimensional standards have been added for these subareas, specifically, including specific setbacks, maximum unit size, and minimum and maximum densities.



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DIMENSIONAL STANDARD	(former) Vandaveer Neighborhood	SA-1	SA-2	SA-3
Minimum Lot Area	3,000 sq. ft. per unit – res. 5,000 sq. ft. non res.	2,400 sq. ft. single family 1,600 sq. ft. attached	2,000 sq. ft. single family 1,200 sq. ft. attached	3,200 sq. ft. 5,000 non-res sq.ft.
Minimum Lot Width	30'	30' single family 20' attached	25' single family 15' attached	15' attached N/A multi-family/non-residential
Minimum Front Setback*	18' on one side, 5' on all other sides	15'	10'	10' residential 5' non-residential
Minimum Side Setbacks		3' accessory structure 5' primary structure	3' accessory structure 5' primary structure	3' accessory structure 5' primary structure
Minimum Rear Setbacks		5'	5'	5'
Maximum Lot Coverage (paved parking and structures)	60%	60%	60% 75%	90%
Maximum Height – single family	35'	30', no more than 2-stories	30', no more than 2-stories	N/A
Maximum Height – multi-family, non-residential, and mixed use	40', no more than 3 stories	30', no more than 2-stories	40', no more than 3 stories 30', no more than 2 stories fronting CR 107	40', no more than 3 stories
Maximum Height – accessory buildings	25'	25'	25'	25'
Maximum unit size (above grade)		2,000 sq. ft.	2,000 sq. ft.	2,000 sq. ft.
Minimum Density (Max. lot SF per unit)		4,800 sq. ft./unit	4,000 sq. ft./unit	3,200 sq. ft./unit
Maximum Density (Min. lot SF per unit)		1,600 sq. ft./unit	1,200 sq. ft./unit	N/A

*Up to 5-ft. encroachment allowed for covered porches.

Figure 8: Dimensional Standards Table (5.06) for VPA-1 Subareas with Comparison to Existing Standards



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Affordability and Workforce Housing Requirements

As this property is considered one of the best opportunities to address the current workforce housing challenges, the modification proposes specific affordability and employment requirements for the South Ark Neighborhood that is well above and beyond the requirements of the City's Inclusionary Housing policies. In particular, it proposes that a minimum of 50% (up to 200 primary units) of all housing is to be legally-restricted affordable for the Chaffee County local workforce (certain exceptions are made for qualifying seniors) and an additional 25% (up to 100 primary units) of all housing is to be legally-restricted for the local Chaffee County workforce (non-income-based) for a minimum of 5 years.

The modification states that the breakdown between rental units and for-sale units shall be approximately equal, with affordable rental units restricted affordable to households between 30% and 100% Area Median Income (AMI), with at least half at 80% AMI or below; and for-sale units restricted affordable to households between 60% and 160% AMI, with the average being at 130% AMI or lower and no more than 15% of such units being restricted above 140% AMI. Furthermore, language is proposed that will ensure affordable units are being built at a roughly proportionate rate to market-rate units in each zone and throughout each phase of development.

Additionally, as mentioned above, short-term rentals would not be allowed in the development, but a limited number of accessory dwelling units would be, in order to further meet affordability needs. Single-family detached dwellings would also be limited throughout the development to a maximum of 30 units. ADUs would only be allowed with single-family attached and detached units. The table below shows the minimum and maximum numbers of allowable units in each subarea of the South Ark Neighborhood:

Residential Minimums/Maximums

Zone District	NetArea (acres)	Units (min)	Units (max)	ADUs (max)
SA-1	3.9	20	30	10
SA-2	10	140	155	15
SA-3	6.4	190	215	5
Total	20.3	350	400	30

Figure 9: Residential Minimum/Maximums

Street Types and Access

The modification proposes a handful of street types desired throughout the development represented via a variety of street sections. The main "spine" road (Type A) connecting CR 104 to CR 107 is a wider boulevard-style street with an adjacent but separated and wide multi-use path, on-street parking, and larger parkways



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conducive for the establishment of larger mature trees. Type B and B2 streets are more like typical local urban roads, while Type C would function more like rural county roads which would access recreation facilities and open space areas, specifically. Type D would function as alley access for buildings in the South Ark Neighborhood. The modification also spells out other multi-modal connections to Hwy 50, CR 107, and CR 104.

Parks and Open Space, Utilities and Stormwater

The modification distinguishes the three VPAs zoned Open Space/Parks into separate categories (VPA-7 as “Ridgeline/Wash Area”, VPA-8 as “River Corridor Area”, and VPA-9 as “Active Recreation Area”). As discussed above, it also provides additional specification of uses and functions for each of those areas. Additionally, the modification discusses the timing for construction of the small neighborhood park to be located within SA-3 of VPA-1. It also discusses the stormwater greenway that will carry potential floodwaters from the CR 107/CR 108 area towards the Crippen Spring and eventually to the river. Lastly, it discusses additional drainage area/green spaces that may one day take on other uses such as additional right-of-way connections. The modification also provides guidance for installation of infrastructure, inc. water, sewer, and other utilities, including surface stormwater conveyance mentioned above.

Development and Design Standards

The modification updates the previous development and design standards for the Vandaveer Neighborhood (VPA-1) in order to provide some additional architectural/aesthetic standards, parking standards, safety and accessibility for bikes and pedestrians, as well as list of basic environmental and natural hazard resiliency standards.

Phasing

The preferred South Ark Neighborhood master plan proposes development in primarily 3 phases, as shown below (though it is not technically part of the PD modification—the graphics are shown for reference and context purposes only). The PD modification request acknowledges the unpredictability inherent in such a large project and allows for quite a bit of variability in such phasing. At the same time, the modification request emphasizes the importance of having a diversity of housing types, a wide mix of income levels spread throughout the site, and the importance of delivering affordable housing units as quickly as possible.

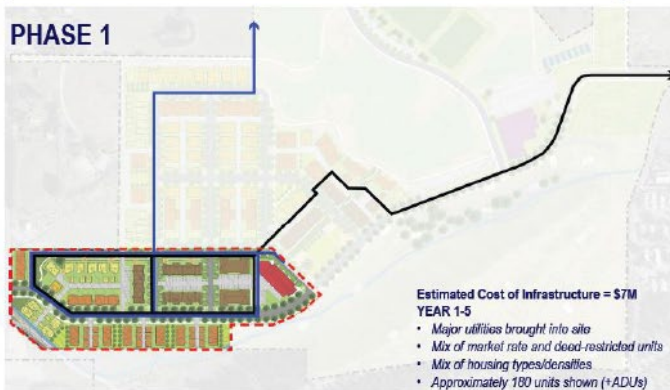


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POSSIBLE SOUTH ARK NEIGHBORHOOD PHASING

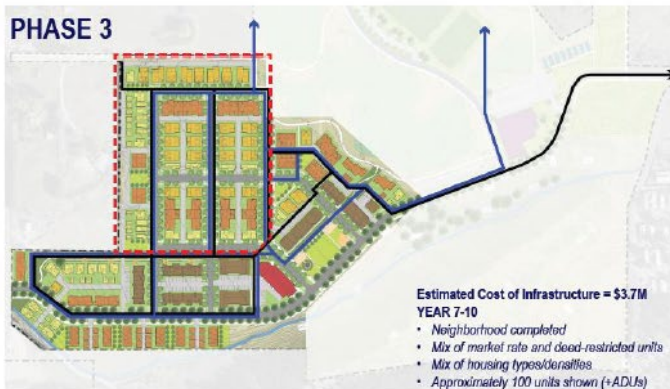
PHASE 1



PHASE 2



PHASE 3



PHASING:

- It is anticipated that it could take **up to 10 years** (or more, depending on market forces) to build out the South Ark Neighborhood.
- The first phase will bring **water from Hwy 50 to the north and sewer from Hwy 50 to the east** and take utilities to the furthest point - CR107 neighborhood entrance.
- Each phase would include a **mix of market rate and affordable units** to make development feasible and a **mix of densities and housing types** to appeal to a wide variety of people.

NOTE: Phasing diagrams illustrate Site Plan #2 - but similar phasing approach (and cost) would occur for Site Plan #1

REQUIREMENTS FOR APPROVAL OF SUBSTANTIAL MODIFICATIONS TO A PD:

Section 16-7-150 Modifications describes the conditions of when and how a PD may be modified.

(a) All provisions of the PD Development Plan authorized to be enforced by the City may be modified, removed or released by the City subject to the following:

- (1) No modification, removal or release of the provisions of the PD Development Plan by the City shall affect the rights of the residents, occupants and owners of the PD to maintain and enforce those provisions in law or in equity; and



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(2) No substantial modification removal or release of the provisions of a PD Development Plan by the City shall be permitted except upon a finding by the City Council, following a public hearing upon notice as required by this Chapter, that the modification, removal or release is:

- (i) Consistent with the efficient development and preservation of the entire PD;
- (ii) Does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the PD or the public interest; and
- (iii) Is not granted solely for a special benefit upon any person.

Staff: In regards to (1), a modification would not affect said rights and, in regards to (2), staff finds that the request is consistent with the efficient development and preservation of the entire PD as described above; does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the PD or the public interest (other than that the current open views would eventually include that of the proposed development, which is situated in locations and at height and densities allotments that would minimize those impacts); and is not granted solely for a special benefit upon any person (but rather to the entire community via large percentages of affordable workforce housing).

- (b) Residents and owners of land in the PD, may to the extent and in the manner expressly authorized by the provisions of the PD Development Plan, modify, remove or release their rights to enforce the provisions of the plan; but no such action shall affect the right of the City to enforce the provisions of the plan.

Staff: No such modification shall affect the right of the City to enforce provisions of the plan as approved.

- (c) An insubstantial modification to an approved PD Development Plan may be authorized by the Administrator. However, insubstantial modifications may only be approved if they promote the terms, purposes and conditions of the original PD Development Plan and approval. The applicant shall make a written request to the Administrator justifying the proposed modification and clearly showing on the PD Development Plan and accompanying written narrative that portion which is proposed for modification. A record of such approved insubstantial modification shall be filed and recorded in the same manner as the original. The following shall NOT be considered an insubstantial modification:

- (1) A change in land use or development concept.
- (2) An increase in residential density levels or building coverage of nonresidential uses.
- (3) An increase in the permitted height.
- (4) A realignment of major circulation patterns or a change in functional classification of the street network.
- (5) A reduction in approved open space or common amenities.



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(6) Other significant changes which involve policy questions or issues of overriding importance to the community.

Staff: The proposed modification is not an insubstantial modification of the PD. This criterion is not applicable.

- (d) During the review of any proposed substantial modification to the PD, the City Council may require such new conditions of approval as are necessary to ensure that the development will be compatible with the current community standards and regulations. This shall include, but not be limited to, applying the portions of the PD which have not obtained building permits, or are subject to the proposed amendment, any new community policies or regulations which have been implemented since the PD was originally approved. An applicant may withdraw a proposed modification at any time during the review process. A request for a substantial modification shall be accompanied by the same type and quality of information as was necessary for the original PD Development Plan approval and shall include a map of the entire PD Development Plan area which clearly defines that portion which is proposed for modification and a written justification of the proposed modification, including a discussion of any changes in impact which would result from the modification.

Staff: The workforce/affordable housing requirements of the PD modification, along with provisions for ample recreation and open space more than satisfy any conditions that the City might apply in this situation. Therefore, no conditions are suggested. The applicant has also made a complete application that defines which portions are proposed for modification. The modification meets the above requirements.

PLANNING COMMISSION RECOMMENDATION

Planning Commission reviewed the PD Modification proposal at a public hearing on October 10, 2023 and unanimously recommended approval subject to the following conditions (all of which have already been incorporated into the updated narrative portion of the application) :

1. Provide more specific definitions of “Chaffee County local workforce” and “Affordable workforce housing”, including refined language regarding exceptions for seniors.
2. City Attorney will provide legal and non-substantive amendments to the wording of Section 3.3.
3. Accessory Dwelling Units (ADUs) may only be allowed with single-family attached and detached units.
4. Specify that any shared-use bike/pedestrian trails be separated from the primary roads and, where practicable, provide separated bike and pedestrian lanes within such trails, if right-of-way space will allow.



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Community Development	Bill Almquist - Community Development Director Cheney Bostic – Studio Seed, Inc. (Master Plan Consultants)	December 5, 2023

RECOMMENDED FINDINGS:

The application is in compliance with the review standards for Substantial Modifications to a Planned Development found at Section 16-7-150 of the Land Use Code and is consistent with the efficient development and preservation of the entire PD; does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the PD or the public interest; and is not granted solely for a special benefit upon any person.

RECOMMENDED MOTION:

"I make a motion to approve Ordinance 2023-16 to approve a Substantial Modification to the Vandaveer Ranch Overall Development Plan for the South Ark Neighborhood, as it is in compliance with the review standards for Substantial Modifications to a Planned Development found at Section 16-7-150 of the Land Use Code."

Note: Should Council decide to amend the Ordinance with one of the "options" listed above, staff and City Attorney recommend that Council make said motion to amend (and indicate their direction) and add at the end of the amendment, "which final technical language shall be finalized and approved by the City Attorney before publication of the ordinance, with no substantive changes being made."

Attachments:

Ordinance 2023-16
Application materials for Substantial PD Modification
Narrative of PD Modification (with appendices)
2011 Amended Vandaveer Ranch Overall Development Plan
2020 Confluent Park PD modification/amended ODP Ordinance
Description of 2021 Land Swap with Jodie and Barry Snyder
Public comment letters
Proof of publication

ORDINANCE NO. 16
(Series 2023)

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO APPROVING A SUBSTANTIAL MODIFICATION OF PARCELS VPA-1, VPA-7, VPA-8, AND VPA-9 OF THE VANDAVEER RANCH PLANNED DEVELOPMENT TO MODIFY THE OVERALL DEVELOPMENT PLAN BY CHANGING VARIOUS MAPS, THE ENTITLEMENTS, DIMENSIONAL STANDARDS, AND OTHER STANDARDS REGARDING THE SOUTH ARK NEIGHBORHOOD

WHEREAS, the City Council approved the original Overall Development Plan for the Vandaveer Ranch Planned Development by Ordinance 2006-19 on December 22, 2006; and

WHEREAS, the Overall Development Plan was modified by changing the entitlements, zone district map, dimensional standards and adding new Article 10: Pinto Barn Parcel Standards for Parcel VPA-5 by Ordinance 2011-16 on October 18, 2011; and

WHEREAS, the Overall Development Plan was modified once again by changing the entitlements, zone district map, dimensional standards and Article 10: Pinto Barn Parcel Standards via the Confluent Park Planned Development Amendment; and

WHEREAS, Section 16-7-150 of the Salida Municipal Code (SMC) states substantial modifications to a Planned Development may be amended by the City Council after a public hearing and subject to certain criteria; and

WHEREAS, the City of Salida is the owner of all of Vandaveer Planning Area (VPA) parcels 1, 7, 8, and 9 which encompasses approximately 93.5 acres on the far western side of the Overall Development Plan area; and

WHEREAS, the City of Salida has made an application to amend the Planned Development in accordance with the SMC, to allow development of VPAs 1, 7, 8, and 9 in accordance with new land uses and development standards; and

WHEREAS, the City of Salida Planning Commission held a duly noticed public hearing on October 10, 2023 to review the proposed changes and made a recommendation that the City Council approve the proposed substantial modification of the Planned Development, with conditions, as it met the criteria stated in Section 16-7-150; and

WHEREAS, the proposal for the subject territory is consistent with the policies and goals of the City's land use regulations and Comprehensive Plan, and will advance the public interest and welfare; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO as follows:

Section One

The Entitlements Map of the Vandaveer Ranch Planned Development District Overall Development Plan shall be amended for VPAs 1, 7, 8, and 9 (only) as shown in Exhibit A attached hereto.

Section Two

The Zone Districts Map (Exhibit A of Confluent Park PD Amendment) shall be amended as shown in Exhibit B attached hereto.

Section Three

The South Ark Neighborhood portions (VPAs 1, 7, 8, and 9) only of the Circulation Map (Exhibit C of the 2011 Vandaveer Ranch PD Amendment) shall be amended as shown in Exhibit C attached hereto.

Section Four

The Open Space and Parks Map of the Vandaveer Ranch Planned Development District Overall Development Plan shall be replaced with Exhibit D Parks and Open Space Map attached hereto.

Section Five

Section 3.01, the Planning Area Entitlements Chart of Article 3 of the Vandaveer Ranch Planned Development District Overall Development Plan, shall be replaced in its entirety, to read as follows:

Planning Area Entitlements Chart

Planning Areas	Zoning	Gross Area	Dwelling Units and Commercial Lodging Units ¹	Non-residential ² Development Square Footage
PROPOSED DEVELOPMENT	Corresponding Zone District	(Acres)	(up to and including)	(up to and including)
VPA-1	SA-1, SA-2, SA-3, POS per South Ark Neighborhood PD Mod	32.7	400	25,000
VPA-2	Transitional Residential	15.6	130	30,000
VPA-3	Mixed Use Village	44.1	180 (includes commercial lodging units)	300,000
VPA-4	Mixed Use Village	21.7	125 (includes commercial lodging units)	100,000
VPA-5	R-3, RMU and C-1 per Article 10. Confluent Park ³	15	289 ³	125,000 ³
VPA-7	Open Space/Parks	19.4	0	2,500
VPA-8	Open Space/Parks	11.3	0	0
VPA-9	Open Space/Parks	30.1	0	40,000
Total		189.9	1,124 units	622,500 SF

¹ This represents the total number of units but does not specify if they are single family, attached, or stacked units.

² Non-residential square footage includes employment centers, retail, commercial, educational centers, active and passive recreational uses requiring built facilities, commercial lodging, services, arts and cultural facilities, research and development

³ See Article 10, Confluence Park Standards

Section Six

Section 4.01 “Purpose of the Development Zones” of Article 4 of the Vandaveer Ranch Planned Development District Overall Development Plan shall be amended by replacing the paragraph beginning with “Vandaveer Neighborhood” in its entirety, to read as follows:

South Ark Neighborhood. This district is intended to provide an area for residential uses that will increase the range of housing types and choice of housing styles within the community. Site and dimensional requirements are more flexible than what is allowed under the City’s residential zone districts and are designed to promote innovative design and a greater choice of housing, promote housing affordability, and diverse home sizes to serve a mix of income levels. The size and location of the South Ark Neighborhood allows individual homes to be oriented to take advantage of views and solar access.

Section 4.01 “Purpose of the Development Zones” of Article 4 of the Vandaveer Ranch Planned Development District Overall Development Plan shall be further amended by replacing the paragraph beginning with “Open Space/Parks and Recreation” in its entirety, to read as follows:

Open Space/Parks and Recreation. Lands designated as Open Space or Parks and Recreation are shown on the zone district map as well as the Parks and Open Space Map. The areas within VPAs 7, 8, and 9 make up the proposed “Vandaveer Regional Park” and shall remain as permanent open space and parks unless alternative open space or parks acceptable to the City is substituted. No improvements other than recreational/civic/educational facilities, trails, roads, and drainage facilities may be constructed in such open space areas, as specified per planning area below.

Section 4.02.6 “Zone Districts Created” of Article 4 of the Vandaveer Ranch Planned Development District Overall Development Plan shall be replaced in its entirety to read as follows:

The following zone districts are hereby created for the Project: South Ark Neighborhood (along with the three subarea zone districts SA-1, SA-2, and SA-3); Transitional Residential; Mixed Use Village Center; Confluent Park (along with the three subarea zone districts R-3, RMU, and C-1); and Open Space/Parks and Recreation. The land areas are shown on the Vandaveer Planned Development Zone Districts Map Exhibit B along with the South Ark Neighborhood PD Modification Zone Districts Map Exhibit B.

Section 4.03, “Vandaveer Neighborhood” of Article 4 of the Vandaveer Ranch Planned Development District Overall Development Plan, shall be renamed and replaced in its entirety to read as follows:

4.03 South Ark Neighborhood

The three South Ark Neighborhood subarea zone districts (SA-1, SA-2, and SA-3, as described below and all within VPA-1) shall be reserved for a mix of residential types and sizes. Non-residential (commercial/mixed use/public) is allowed in SA-3 only. Single-family detached units are not allowed in SA-3. Short-term rentals shall not be allowed anywhere in the South Ark Neighborhood. All uses must meet parking and other use specific criteria of the Code unless stated otherwise in this PD. The following principal and accessory uses are allowed:

SA-1: South Ark Variable Residential

This subarea zone includes residential lots south of the primary east-west “spine” road connecting CR107 to CR104. These lots are arranged around common courtyards to preserve views and provide areas for water to naturally drain toward the South Arkansas River from the south. This zone allows for single unit and attached-unit residential types at slightly lower densities and heights compared to other zone districts. Vehicular access is provided via alleys or shared parking courts.

Principal Uses Permitted by Right:

- Single-family dwelling units

- Duplex dwelling units
- Residential Multi-Family (3-4 units)
- Attached townhomes with no more than eight (8) units per structure

Accessory Uses Permitted with Conditions (conditions in parentheses):

- Accessory dwelling units (shall comply with ADU dimensional requirements in code requirements and be located behind a principal use)
- Accessory buildings and structures (e.g., garage, shed, art studio, etc.)
- Home occupations (shall occupy no more than 30% of the gross floor area of the residence and have no exterior indication of nonresidential activity. The business owner or operator must reside within the dwelling unit in which the business is conducted.)

SA-2: South Ark Higher-Efficiency Residential

This subarea zone district includes residential lots along the western and northern edges of VPA-1 as well as the central four blocks. These lots orient onto the public streets or the neighborhood greenway and allow for single unit, attached unit, and small multi-unit residential types at medium densities and heights compared to other zone districts. Vehicular access is provided via alleys.

Principal Uses Permitted by Right:

- Single-family dwelling units
- Duplex dwelling units
- Residential Multi-Family (3-4 units)
- Attached townhomes with no more than eight (8) units per structure
- Residential Multi-Family (5-19 units)

Accessory Uses Permitted with Conditions (conditions in parentheses):

- Accessory dwelling units (shall comply with ADU dimensional requirements in code requirements and be located behind a principal use)
- Accessory buildings and structures (e.g., garage, shed, art studio, etc.)
- Home occupations (shall occupy no more than 30% of the gross floor area of the residence and have no exterior indication of nonresidential activity. The business owner or operator must reside within the dwelling unit in which the business is conducted.)

SA-3: South Ark Residential Mixed-Use Center

This subarea zone district includes the lots and blocks adjacent to the public park and regional park. These lots orient onto the public streets, neighborhood greenway, and the neighborhood park or regional park. Attached, multi-unit, and commercial/mixed uses are allowed at the highest densities and heights compared to other zone districts. Vehicular access is provided via alleys or shared parking courts. Single-unit housing is not allowed in this zone.

Principal Uses Permitted by Right:

- Duplex dwelling units
- Residential Multi-Family (3-4 units)
- Attached townhomes with no more than eight (8) units per structure

- Residential Multi-Family (5-19 units)
- Residential Multi-Family (20+ units)
- Eating and drinking establishments less than 10,000 SF
- Retail sales and rental establishments less than 10,000 SF
- Daycare facility

Accessory Uses Permitted with Conditions (conditions in parentheses):

- Accessory dwelling units (shall comply with ADU dimensional requirements in code requirements and be located behind a principal use)
- Accessory buildings and structures
- Home occupations (shall occupy no more than 30% of the gross floor area of the residence and have no exterior indication of nonresidential activity. The business owner or operator must reside within the dwelling unit in which the business is conducted.)

Uses Allowed by Administrative Review:

- Public/Institutional Uses (transit center, church/religious, clubs, community buildings, government administrative facility, group homes, park, public parking facility, recreation facility, school)
- Other Commercial Uses (e.g., offices, retail, etc.)
- Sports complexes and active recreational fields, whether public, semi-public or private which may include related commercial uses, such as snack bars and restroom facilities, instruction, equipment storage and maintenance facilities, including but not limited to ball fields and courts, playfields and playgrounds.
- Other uses not listed above that are deemed similar by the City Administrator or his/her designee.

POS: Open Space/Parks and Recreation

This zone district is intended to prohibit intensive development, to provide open space and civic/educational facilities (including potentially a recreation center) and to protect the floodplain and wetlands. Areas designated as either Parks or Open Space satisfies the Planned Development District requirement for open space dedication. The POS zone district exists within all four separate planning areas. The allowed uses for those planning areas are listed below and expand upon the uses outlined at Section 4.06 of the ODP:

VPA-1: South Ark Neighborhood

Principal Uses Permitted by Right:

- Neighborhood Park with uses that support surrounding residences such as: playground, grilling areas, lawn space, plaza area, shade structure(s), benches, kiosks/signage, etc.
- Neighborhood Greenway designed to support the flow of stormwater through the neighborhood to VPA-9. This area may include passive recreation spaces such as overlooks, small plazas with seating, etc.
- Stormwater/Green Space areas that are intended to be preserved as open space in the short term but may be converted to street right-of-way in the future if redevelopment occurs to the west along CR 107.

VPA-7: Ridgeline/Wash Area**Principal Uses Permitted by Right:**

- Trails, benches, kiosks/signage, disc golf, dog park, other active outdoor recreation, and public restrooms are allowed.

VPA-8: River Corridor**Principal Uses Permitted by Right:**

- Trails, benches, kiosks/signage, outdoor education, and fishing are allowed.

VPA-9: Active Recreation Area**Principal Uses Permitted by Right:**

- Active or passive recreational areas or facilities, both public and private, open or covered, (and which may include related recreational amenities such as, snack bars and restroom facilities, band shells, picnic areas, instruction, equipment storage and maintenance facilities), including, but not limited to fishing facilities, ballfields and courts, play fields and playgrounds, trails, dog park, community supported agriculture, community gardens, passive recreational and Open Space areas.
- A future daycare facility shall also be allowed.

Section 4.06 Open Space/Parks and Recreation shall be replaced in its entirety to read as follows, including the reference and incorporation of Exhibit D, Parks and Open Space Map, attached hereto:

Note that the original Vandaveer Ranch PD open space requirements were satisfied via the inclusion of VPAs 7, 8, and 9 and therefore no additional open space dedication or fees in lieu will be required. The Vandaveer Regional Park will be a City-owned and maintained public park of 60.8 Acres, with three distinct use zones, as described below. Trails within the site are to be provided by the City – 8’ minimum for paved and 5’ for unpaved – when feasible, and in locations generally aligned with the Exhibit C: Transportation Network Map.

A - Vandaveer Regional Park – River Corridor Area

This 11.3-acre area of open space in VPA-8 within the Vandaveer Regional Park is intended to be one of the most undisturbed and natural open spaces in the area. It should be the backbone of a South Arkansas River sanctuary, in which trees, naturally shifting channels, wetlands, beaver ponds, etc. are all preserved, and only supplemented with environmentally sensitive trails. This area should remain an area for birding and wildlife habitat and should include opportunities for environmental education along the river corridor. Initiatives by local environmental groups for grants to design and build river restoration projects should be encouraged.

The northeast portion of this area should leverage the connectivity opportunity presented by the 15’ north-south easement extending up to Hwy 50. This easement can help to provide north-south bicycle and pedestrian access to the site – extending over the river with a future bike/pedestrian bridge – and should be accompanied by a safe crossing (RRFB and/or pedestrian refuge island) across Hwy 50 to Caldwell Street.

B - Vandaveer Regional Park – Wetlands Area

The approx. 12.7-acre Wetlands Area (as mapped in 2023) in VPA-9 within the Vandaveer Regional Park is intended to be kept natural/undisturbed. This area is distinct in that it should include trail connectivity to the broader Vandaveer Regional Park and the South Ark Neighborhood. However, any disturbance to the existing jurisdictional wetlands areas should be carefully considered and studied to minimize any detrimental impacts to the wetland habitats. Any future efforts to relocate/mitigate existing jurisdictional wetlands should be studied prior to implementation.

C - Vandaveer Regional Park – Active Recreation Area

The approx. 19.4-acre Active Recreation Area in VPA-9 within the Vandaveer Regional Park is the best opportunity for the City to expand its footprint of City-serving active recreational opportunities and needed community facilities. Appropriate active recreation and supplementary uses in this area include:

- Flexible fields for recreation and festivals
- Various sport courts
- Trails
- Small restroom facilities
- Public parking (to support active recreation uses and trailhead access)
- Additional active recreation uses as identified by the PROST Board and approved by the City

Administrator

- Recreation center
- Daycare
- Educational facilities
- Maintenance facilities
- Civic facilities
- Non-profit space
- Dog park (separate from VPA-7)

It is highly recommended that this area consider well irrigation for maintenance and watering of the flexible field uses.

This area is also allowed to accommodate a future civic/education facility, as outlined in VPA-9 above, of up to 40,000 SF. If located in Active Recreation Area, such a building shall be sited in a location that maximizes access to the supporting recreation fields/courts, while minimizing the obstruction of view corridors.

D - Vandaveer Regional Park – Ridgeline/Wash Area

The 19.4 acre Ridgeline/Wash Area in VPA-7 within the Vandaveer Regional Park currently includes the Heart of the Rockies Disc Golf Course, which is intended to remain as a use in this area (note that some tee boxes/hole locations may need to be moved over time to facilitate the implementation of the South Ark Neighborhood and other uses for the Vandaveer Regional Park, including corresponding infrastructure needs). Uses in this area should leverage the natural topography and mature vegetation, while minimizing the disturbance of each. Appropriate uses in this area include:

- Approximately 1-acre dog park, planned to be located under the cottonwood grove, adjacent to the spine road, and associated parking.
- Small picnic area(s)/restrooms
- Maintenance facility
- Disc Golf Course (existing Heart of the Rockies Disc Golf Course)
- Adventure Recreation, such as a zipline course, treehouses, etc.
- Trails (walking & biking)
- Pump Track/Bike Park
- Additional active recreation uses as identified by the PROST Board and approved by the City Administrator

E - Neighborhood Park

The Neighborhood Park within the South Ark Neighborhood/VPA-1 is intended to serve the surrounding neighborhood as a place for formal and informal community gathering among South Ark Neighborhood residents. Accordingly, the park area should include community amenities such as seating areas, shared grills, etc. This park area should include opportunities for shade and respite from the sun, whether through tree planting and/or a pavilion or shade structure as well as opportunities for small neighborhood events.

The construction of the park should occur prior to, or concurrently to, the immediate adjacent land uses, so that the park will become an active gathering space upon its completion. The park will be constructed to City Standard by the vertical developer of the adjacent land uses (to be determined through a developer's agreement) but it will be owned and maintained in perpetuity by the City following the completion of its corresponding development phase.

F - Stormwater Greenway

As noted in Section 7.2 below, a stormwater swale should be incorporated in the neighborhood greenway to convey storm events from the existing detention facility at the northeast corner of the County Road 107 / County Road 108 intersection. This stormwater greenway, while serving essential stormwater conveyance use, should be designed in a manner that also makes it an amenity to the South Ark Neighborhood. Where possible, a multi-use path should be incorporated into its design, so that connectivity across the site is further increased, and pedestrians and cyclists can utilize this corridor to move east-west across the site from the Vandaveer Regional Park through the South Ark Neighborhood to CR 107. The area should be well-planted with tree and plant species that will not disturb the stormwater conveyance functions of the greenway.

G - Stormwater/Green Space

A pair of small stormwater/green spaces are located on the western edge of the central part of the South Ark Neighborhood. These green spaces are strategically located to align with the roadways running east-west adjacent to them, to facilitate the potential for future roadway connections to CR 107. The need/desire for future connections from the neighborhood to CR107 is currently unknown, so they should be designed in a manner that allows near-term neighborhood use and informal gathering, but would not require extensive demolition (i.e., strategically planting any trees so that they would not require removal).

Section Seven

Article 5 of the Vandaveer Ranch Planned Development District Overall Development Plan, shall be amended by: (1) amendments to Section 5.03, "Vandaveer Neighborhood [VR-VN]"; (2) amendments to Section 5.06, "Table of Dimensional Standards," and; (3) the creation of a new Section 5.07, "Affordable and Workforce Housing Standards", as follows:

Section 5.03 within Article 5 of the Vandaveer Ranch Planned Development District Overall Plan, entitled Vandaveer Neighborhood [VR-VN] shall be re-named and replaced in its entirety to read as follows:

5.03 South Ark Neighborhood (VPA-1)

Dimensional Standards for the subarea zone districts of the South Ark Neighborhood (SA-1, SA-2, and SA-3) are listed in the columns of Section 5.06 Table of Dimensional Standards, within the section of the table titled "South Ark Neighborhood."

5.06 Table of Dimensional Standards

The column titled “Vandaveer Neighborhood,” within Section 5.06, “Table of Dimensional Standards”, of Article 5 of the Vandaveer Ranch Planned Development District Overall Plan, shall be replaced in its entirety to read as follows: “South Ark Neighborhood”

DIMENSIONAL STANDARD	SA-1	SA-2	SA-3
Minimum Lot Area	2,400 sq. ft. single family 1,600 sq. ft. attached	2,000 sq. ft. single family 1,200 sq. ft. attached	3,200 sq. ft. 5,000 non-res sq.ft.
Minimum Lot Width	30’ single family 20’ attached	25’ single family 15’ attached	15’ attached N/A multi-family/non-residential
Minimum Front Setback**	15’	10’	10’ residential 5’ non-residential
Minimum Side Setbacks	3’ accessory structure 5’ primary structure	3’ accessory structure 5’ primary structure	3’ accessory structure 5’ primary structure
Minimum Rear Setbacks	5’	5’	5’
Maximum Lot Coverage (paved parking and structures)	60%	75%	90%
Maximum Height – single family	30’, no more than 2-stories	30’, no more than 2-stories	N/A
Maximum Height – multi-family, non-residential, and mixed use	30’, no more than 2-stories	40’, no more than 3 stories 30’, no more than 2 stories fronting CR 107	40’, no more than 3 stories
Maximum Height – accessory buildings	25’	25’	25’
Maximum unit size (above grade)	2,000 sq. ft.	2,000 sq. ft.	2,000 sq. ft.
Minimum Density (Max. lot SF per unit)	4,800 sq. ft./unit	4,000 sq. ft./unit	3,200 sq. ft./unit
Maximum Density (Min. lot SF per unit)	1,600 sq. ft./unit	1,200 sq. ft./unit	N/A

**Up to 5-ft. encroachment allowed for covered porches.

A new Section 5.07, of Article 5 of the Vandaveer Ranch Planned Development District Overall Development Plan, Article 5, entitled “Affordable and Workforce Housing Standards”, shall be created to read as follows:

Affordable and Workforce Housing Standards

This South Ark Neighborhood PD modification shall ensure and require that a minimum of seventy-five percent (75%) of all housing units constructed within the PD modification area be either “affordable workforce housing” or “non-income-based workforce housing,” as defined

herein and as further specified below. The additional requirements listed below shall override and supersede the City of Salida's Inclusionary Housing Ordinance requirements as found within the Salida Municipal Code:

“Chaffee County local workforce” shall be defined as those individuals earning their primary (80% or more) source of income at a business or employer within Chaffee County, as documented with the United States Internal Revenue Service and as further defined and certified by the City Administrator and his/her designee. Individuals over sixty (60) years of age shall be considered part of the Chaffee County local workforce if they have: (1) maintained their sole and primary residence within Chaffee County a minimum of 10 years; or (2) earned 80% or more of their primary source of income at a business or employer within Chaffee County, as documented with the United States Internal Revenue Service, for a minimum of four (4) years over the last ten (10) years; *and* if they otherwise qualify for the deed-restricted units (or otherwise-restricted units as defined herein).

“Affordable workforce housing” is housing that is available and affordable to very low-income, low-income and middle-income households where members of such households are part of the Chaffee County local workforce as defined herein, and further specified immediately below:

- **“Affordable workforce housing rental units”** shall be defined as permanently deed-restricted residential rental units which are affordable to households earning between thirty percent (30%) and one hundred percent (100%) of Area Median Income (AMI) for Chaffee County, as defined annually by the Colorado Housing Finance Authority (CHFA).
- **“Affordable workforce housing for-sale units”** shall be defined as permanently deed-restricted residential for-sale units which are affordable to households earning between sixty percent (60%) and one hundred sixty percent (160%) of Area Median Income (AMI) for Chaffee County, as defined annually by the Colorado Housing Finance Authority (CHFA).

“Non-income-based workforce housing” shall be defined as deed-restricted housing that is available to individuals who are part of the Chaffee County local workforce as defined herein. Such housing shall not be based on income but shall be deed-restricted only for members of the Chaffee County local workforce for a minimum of 5 years from the date of initial sale.

Additional Requirements:

- A minimum of fifty percent (50%) of the total residential units within the South Ark Neighborhood PD modification area shall be permanently deed-restricted affordable workforce housing as defined herein and as further specified immediately below:
 - This requirement of a minimum of fifty percent (50%) of units permanently deed-restricted as affordable workforce housing shall apply to each phase of development.
 - Of all the affordable workforce housing units, no fewer than forty percent (40%) shall be reserved for affordable workforce housing *rental* units, and no fewer than forty percent (40%) shall be reserved for affordable workforce housing *for-sale* units. This requirement shall apply to each phase of development.

- A minimum of half of the affordable workforce housing *rental* units must be deed-restricted affordable to households earning eighty percent (80%) or less of the AMI for Chaffee County, as defined annually by CHFA. This requirement shall apply to each phase of development.
 - The average of all affordable workforce housing *for-sale* units must be deed-restricted affordable to households earning one hundred thirty percent (130%) or less of the AMI for Chaffee County, as defined annually by CHFA. Additionally, no more than fifteen percent (15%) of affordable workforce housing for-sale units shall be sold at prices affordable to households earning above one hundred forty percent (140%) of the AMI for Chaffee County, as defined annually by CHFA. This requirement shall apply to each phase of development.
 - Any residential units within the South Ark Neighborhood PD modification area owned by public or non-profit entities, such as the Chaffee Housing Authority, ~~or the~~ Chaffee Housing Trust, Chaffee County, City of Salida, Colorado Mountain College, or Salida School District, are exempt from the AMI and deed-restriction requirements set forth herein, as long as the use of such units are restricted to the Chaffee County local workforce or students of a local educational institution, but such residential units may count however toward the fifty percent (50%) overall and per-phase affordable workforce housing units requirement.
- A minimum of twenty-five percent (25%) of total residential units within the PD amendment area shall be deed-restricted non-income-based workforce housing as defined herein. Such deed restrictions on all non-income-based workforce housing shall apply for a minimum of 5 years. It is preferred that these units remain available and occupied by the Chaffee County local workforce following the termination of the deed-restriction.
- The deed-restricted (or otherwise-restricted) affordable workforce housing units and non-income-based workforce housing units in each zone district (and phase) shall be built at substantially the same time as the non-deed-restricted residential units.
- Certificates of occupancy (COs) shall be given at a maximum of three (3) non-deed-restricted residential units for every one (1) deed-restricted or otherwise-restricted unit, as defined herein.
- Short Term Rental Unit(s) shall not be permitted anywhere in the South Ark Neighborhood PD modification area.
- Accessory Dwelling Units (ADUs) are encouraged but not required. They are permitted on attached and detached single family lots to assist in furthering the goals of serving the affordable and workforce housing needs of the County and City, but do not count towards the residential unit maximum or affordable or workforce housing requirements. See maximums ADU allotments further below.

Each of the zone districts include a minimum and maximum number of units allowed, as defined in the table below with the goal that the sum of deed-restricted (and otherwise-restricted) affordable units in total for VPA-1 is at least 50% as defined above.

Residential Minimum/Maximums

Zone District	Net Area (acres)	Units (min)	Units (max)	ADUs (max)
SA-1	3.9	20	30	10
SA-2	10	140	155	15
SA-3	6.4	190	215	5
Total	20.3	350	400	30

Section Seven

Section 8.02 of Article 8 of the Vandaveer Ranch Planned Development District Overall Development Plan, entitled “Vandaveer Neighborhood District: Development and Design Standards”, shall be replaced in its entirety to read as follows:

8.02 South Ark Neighborhood: Development and Design Standards

8.02.1 Development must be located with the existing topography in mind and shall minimize disruption to existing terrain, vegetation, drainage patterns, natural slopes and any other distinctive features.

8.02.2 The design and siting of all structures shall protect and preserve wetlands and riparian areas, critical wildlife habitats, natural features and landmarks and shall minimize the visual impact from Highways 50 and CR 107.

8.02.3 All permanent buildings shall be set back a minimum of two hundred and fifty (250) feet from the edge of the South Arkansas River channel.

8.02.4 All development shall be designed so that for the given location, egress points, grading and other elements of the development could not be reasonably altered to:

- Reduce the number of access points onto a collector or local street.
- Minimize adverse impacts on any existing or planned residential uses.
- Improve pedestrian or vehicle safety within the site and exiting from it.
- Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

8.02.5 All development shall respect and complement existing development on abutting sites. This shall include:

- Provision for consolidating access points with abutting properties through joint access easements or other negotiated means;
- Provision for making sidewalks, trails and paths contiguous with abutting properties;
- Compatible massing and scale

8.02.6 A variety of housing styles is strongly encouraged; therefore, model types shall vary.

- A variety of roof forms is permitted, though low-sloping or “flat” roofs shall be limited to two for every eight structures.
- Natural materials such as wood siding and masonry are encouraged.
- Affordable units shall be designed with the same quality of exterior finishes as market-rate units.

8.02.7 Vehicular access and garages, carports, or other private vehicle storage shall be accessed from an alley or parking court.

- Provide either a building or a landscaped area at least ten (10) feet wide containing dense planting between the front property line of any use and an outdoor parking or service area.
- Surface parking lots are encouraged to use permeable surfaces (gravel, permeable paving, or other permeable surface.)
- No street-facing garages shall be allowed.

8.02.8 Parking Standards

- Commercial uses shall be required to provide a minimum of 1 parking space per 1,000 SF of the commercial use
- Residential uses shall be required to provide a minimum of 1 parking space per unit.

8.02.9 Orient buildings to take best advantage of solar access.

8.02.10 In order to create usable private open spaces for residences in this area, front yards shall be used for outdoor patio space or for a landscaped buffer space. It shall not be used for the storage of anything other than patio/porch furniture.

8.02.11 Primary building entrances should be oriented towards streets, parks, or pedestrian ways. Any multi-story building should have one clearly identifiable “front door.”

8.02.12 Ensure exterior walls are designed on a pedestrian scale by:

- Fragmenting them into smaller or multiple structures;
- Providing mature landscaping and manipulating the land form;
- Placing wall texture at eye-level;
- Clustering of small scale elements such as planter walls around the primary structure;
- Ensure that the ground floor uses are oriented toward the pedestrian with storefronts (where applicable), front porches, stoops, or patios that open onto the sidewalk as well as other pedestrian oriented spaces;
- Minimize the visual impact of service areas, refuse storage and mechanical/electrical equipment on streets, open space and adjoining development. For multifamily, mixed use, or commercial, civic, or education

facilities, storage and refuse containers must be screened with impervious fencing or plantings.

8.02.13 Courtyards or green spaces between residential uses shall be designed to accommodate a sidewalk/path and outdoor amenities such as, but not limited to: seating areas, garden beds (edible or aesthetic), pollinator gardens, small pavilions, stormwater gardens, or other amenity.

- Front doors and porches of residential units shall front onto the courtyard/common space.

GATEWAYS AND CIRCULATION DESIGN STANDARDS

8.02.14 Gateways:

- Gateway elements at entry points to the neighborhood (at CR 107 entry and Highway 50/CR 104 intersection) shall be provided and be primarily architectural elements and not signs, although graphic elements are allowed.

8.02.15 Transportation System/Vehicular Access:

- The “spine” road connecting CR 107 to CR 104 shall serve as a primary connection to the South Ark Neighborhood and shall be designed as a multi-modal street with ample space adjacent to the curb to promote healthy, long-term tree growth.
- The street network shall be laid out as shown in Exhibit C. Any modifications to the proposed street grid shall be presented with proper reasoning and determined appropriate by the Community Development Director.
 - Rectangular blocks shall be a minimum of 180-feet wide.
 - The street network shall consider opportunities for future connections to CR 107, as shown in Exhibit C.
- All subdivisions within the South Ark Neighborhood shall provide an adaptable and interconnected transportation system that encourages alternative modes of transportation, disperses traffic, and provides streets that accommodate multiple modes of transportation including motor vehicles, bicycles, and pedestrians.
- Safe and efficient movement of vehicles, pedestrians and bicyclists is an important attribute of the South Ark Neighborhood. Uninterrupted pedestrian ways shall be maximized in order to improve or support the subarea as a walkable neighborhood.
- The width of driveways and curb cuts shall be minimized to reduce the overall impact of vehicular access across a planned pedestrian path or trail.
- Sharing of vehicle entries between two adjacent lots is strongly encouraged.
- Ensure all subareas have included a clearly defined connection to the regional trail system.

ENVIRONMENTAL DESIGN STANDARDS

Note that the model energy code and building codes shall supersede these standards, whichever is more stringent.

8.02.16 Orient buildings to take best advantage of solar access.

- Buildings should be designed to plan for the application of solar panels.
- Consideration of passive solar design opportunities should be provided.

8.02.17 Limit water use.

- Buildings should utilize water-saving fixtures and appliances.
- Landscaping should include water-wise, indigenous plant species.
- Consider the use of well irrigation for maintenance and watering of the flexible field uses.

8.02.18 Natural disaster preparedness.

- Buildings within the fluvial hazard buffer shall be elevated or the site shall be graded to alleviate the risk of flooding.
- Buildings shall include an appropriate buffer around their perimeter that does not include combustible materials.
- Stormwater detention elements should be considered in common areas such as courtyards, public parks, and yards to prevent the risk of flooding.

Section Eight

The Transportation Network Map shall be created as shown in Exhibit C, attached hereto, which shall amend the South Ark Neighborhood portion of Exhibit C “Circulation Map” as shown in the 2011 Vandaveer Ranch Overall Development Plan amendment.

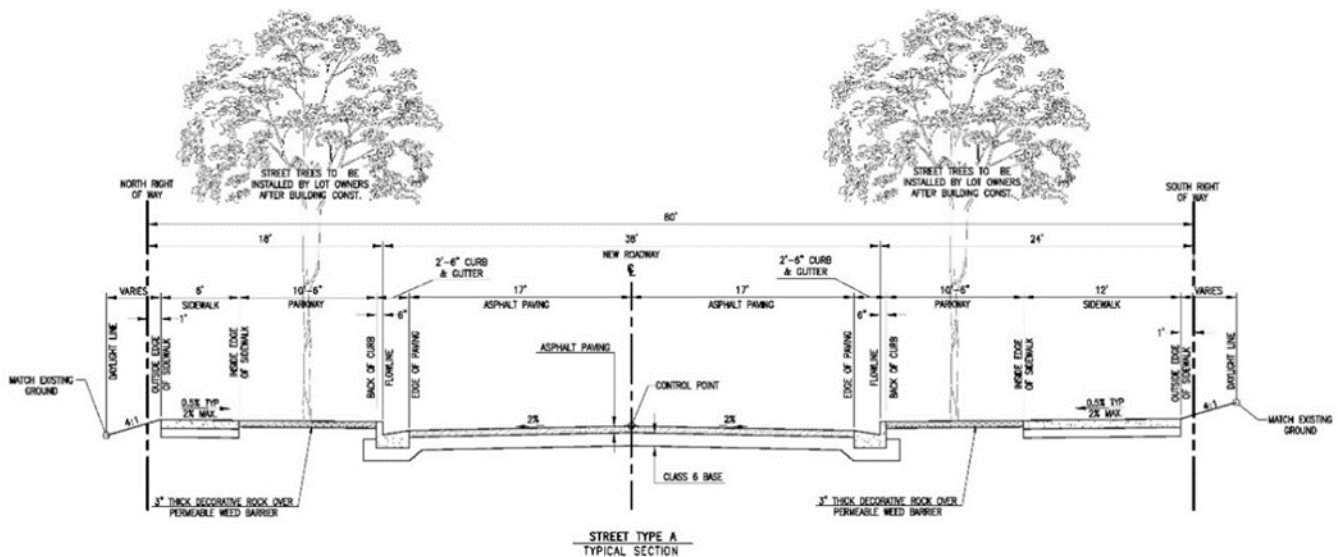
Additionally, Section 8.05.4 of Article 8 of the Vandaveer Ranch Planned Development District Overall Development Plan, entitled “Street and Streetscape Design,” shall be amended to by the addition of subsection 8.05.4.1, to read in its entirety as follows:

8.05.4.1 Street and Streetscape Design Specific to the South Ark Neighborhood Planned Development Modification area:

- **Street Type ‘A’** (80’ R.O.W.) – An east-west “spine road” connecting CR107 at the west to CR104 to the east, provides two points of access to the South Ark Neighborhood and Vandaveer Regional Park, while also providing helpful emergency access in the case of a county roadway closure. While this roadway is primarily responsible for east-west circulation across the site for vehicles, it is still intended to have a slower design speed, with ample tree lawns, and a clear multi-modal emphasis by way of a well-separated multi-use path on the south side of the roadway. As shown in the street section below, the street type includes a 38’ roadway (two 11’ travel lanes, along with 8’ parallel parking on each side of the roadway); an 11’ tree lawn (6” curb and 10’-6” parkway) on each side of the

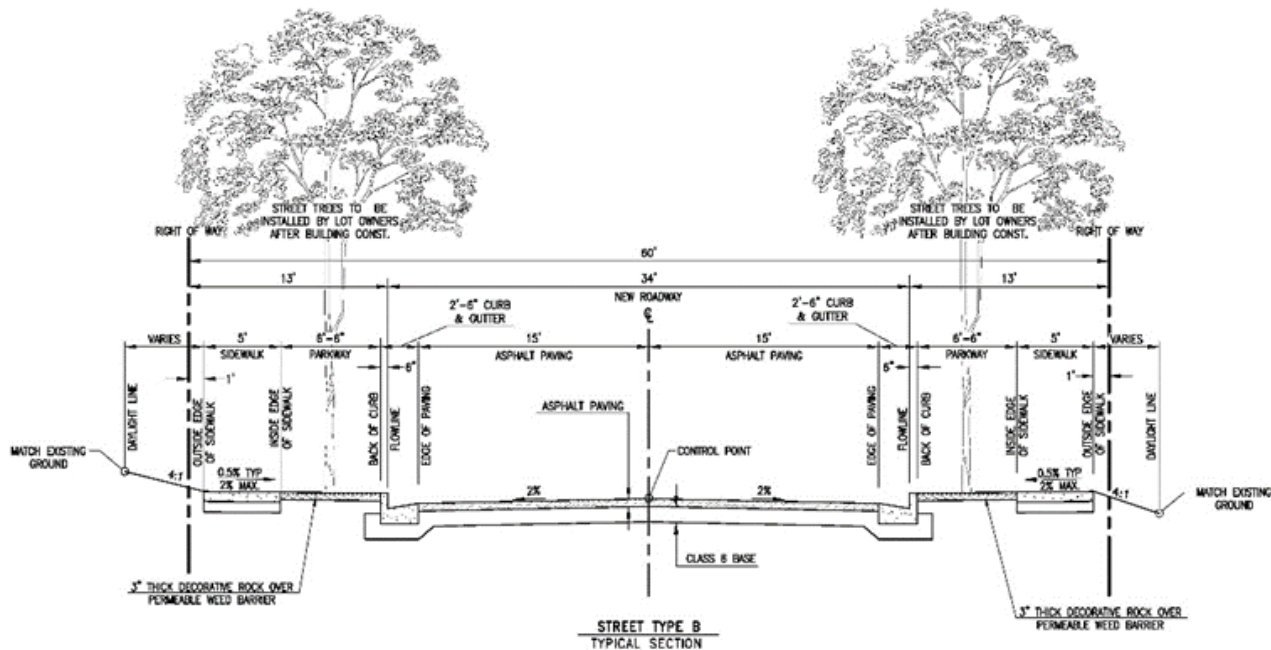
roadway; a 6' sidewalk on the north side of the roadway; a 12' multi-use path on the south side of the roadway; and a 1' buffer from back of sidewalk/multi-use path to the adjacent property line. Note that depending on parking demand estimated at time of development, the spine road could potentially eliminate the southern parking lane in some areas (especially where no residences are adjacent to the street) in lieu of more space for landscaping, bicyclists, and pedestrians. Final street section should be determined during final design.

- The full build-out of Street Type 'A' will likely be constructed in phases, to help distribute the infrastructure costs to the project over time. The interim condition of the roadway shall be similar to that of Street Type 'C,' outlined below, so that access is maintained across the site, and to the recreation amenities, but at a lesser infrastructure expense.
- The interim condition of the spine road (similar to that of Street Type 'C') shall be constructed to the specification of Street Type 'A' as the development advances from one phase into another, or whenever the City deems it to be necessary for the circulation and safety of the development.



- **Street Type 'B' (60' R.O.W.)** – The typical street type within the South Ark Neighborhood, Street Type 'B' is intended to be a pedestrian-friendly, lower design speed street, with ample tree lawns. As shown in the street section below, the street will include a 34' roadway (two 9' travel lanes, along with 8' parallel parking on each side of the roadway); a 7' tree lawn (6" curb and 6'-6" parkway) on each side of the roadway; a 5' sidewalk on each side of the roadway; and a 1' buffer from back of sidewalk to the adjacent property line.
- **Street Type 'B2' (65' R.O.W.)** – A slight variation of Street Type 'B' that would be applicable only to the north-south street shown on Exhibit C. This

variation expands the R.O.W. 5' to the east, in order to facilitate a 10' multi-use trail (in lieu of the 5' sidewalk in the typical Street Type 'B' section below) to provide enhanced connectivity from Street Type 'A' up to the pedestrian bridge over the South Arkansas River, and to the trail amenities in



Vandaveer Regional Park.

- **Street Type 'C'** (60' – 80' R.O.W.) – A more rural street type that will serve as a recreation access road and, as noted above, an interim condition for the spine road, until the full build-out to Street Type 'A.' The street will include a minimum of 11' wide travel lanes, surfaced with a minimum of four-inch compacted aggregate base with a dust control application; and shoulders that are a minimum of 8' wide, constructed with a compacted road base.
 - The 60' to 80' of dedicated R.O.W. is intended to provide flexibility to the City long-term, should there be a desire to build-out the roadway in a manner similar to that of Street Type 'A' or 'B' in the future.
- **Street Type 'D'** (20' R.O.W.) – While not technically a “street,” this serves as the typical alley R.O.W. within the South Ark Neighborhood. There shall be a minimum width of 16' within the center of the R.O.W., and 20' of width is encouraged adjacent to commercial uses.

Connectivity to Surrounding Area

Hwy 50 – Comfortable bicycle and pedestrian connections to/across Hwy 50 will provide critical connectivity to the South Ark Neighborhood and Vandaveer Regional Park.

- The existing connection and pedestrian crossing at Hwy 50 and Milford Street, which connects to the pedestrian bridge at the northwest corner of the Vandaveer Regional Park should be retained and enhanced, if necessary.
- At the northeast corner of Vandaveer Regional Park, there is a 15' easement providing connectivity to/from Hwy 50. A trail should be constructed along this easement, along with an additional pedestrian bridge over the South Arkansas River at this location. At Hwy 50, a pedestrian crossing should be implemented - RRFB and/or pedestrian refuge island, similar to the crossing at Hwy 50 and Milford Street – to ensure a safe crossing from this new trail to/from Caldwell Street.

CR 104 – This is the main existing vehicular access point to Vandaveer Regional Park. It will continue to function in its current state until development of the adjacent parcels. CR 104 should be upgraded to include pedestrian and bicycle facilities when adjacent development allows for dedication of additional right of way. The utility highway crossing installed as part of the South Ark Neighborhood will make the large parcels on both sides of CR 104 more development-ready. The challenges to development of these adjacent parcels are entitlement (annexations or PD amendments are required) and highway access. A traffic signal will likely be required when the 48-acre parcel south of CR 104 develops.

CR 107 – This is the main vehicular connection between the City of Salida and South Ark Neighborhood due to proximity and the existing traffic signal at Highway 50. There are currently no pedestrian or bicycle facilities, and the addition of such is not currently feasible due to right of way constraints. Cooperation between adjacent private property owners, Tennessee Ditch water users, the City of Salida, and Chaffee County is needed to secure right of way for pedestrian and bicycle facilities as soon as possible. Until then, the existing ped/bike bridge will provide safe access to the South Ark Neighborhood and Vandaveer Regional Park for those who aren't comfortable using CR 107. In addition, the City of Salida and Chaffee County should follow up with SSG Holdings, LLC to the southwest of the site, to facilitate ped and bike access from South Ark Neighborhood to the Methodist Mountain trail system.

Future potential transit connections and locations should be explored in the future to provide additional connectivity and access to the South Ark Neighborhood and Vandaveer Regional Park from Hwy 50.

Section Nine

This Ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of any ordinance repealed or amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

Section Ten

The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause or portion of the Ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

INTRODUCED ON FIRST READING, on November 7, 2023, ADOPTED and ORDERED PUBLISHED IN FULL, other than Exhibits A, B, C, and D described herein which shall be on record with the City Clerk's office, in a newspaper of general circulation in the City of Salida by the City Council on the ____ day of _____, 2023 and set for **second reading and public hearing on the 5th day of December, 2023.**

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED IN FULL, by the City Council on the **5th day of December, 2023.**

CITY OF SALIDA, COLORADO

Dan Shore, Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 2023, and BY TITLE ONLY, after final adoption on the ____ day of _____, 2023.

City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

ITEM

Ordinance 2023-17: Second Reading and Public Hearing on the proposed Flour Mill Annexation of the 2 acre property located at 6907 C.R.105.

BACKGROUND

The applicant, Biker Baker Holdings LLC, represented by Rob Gartzman submitted a complete application to annex the property located at 6907 County Road 105 on September 13, 2023 along with an application for Zoning to be considered during a separate hearing.

A conceptual review meeting was held with City Council and Planning Commission on August 14, 2023.

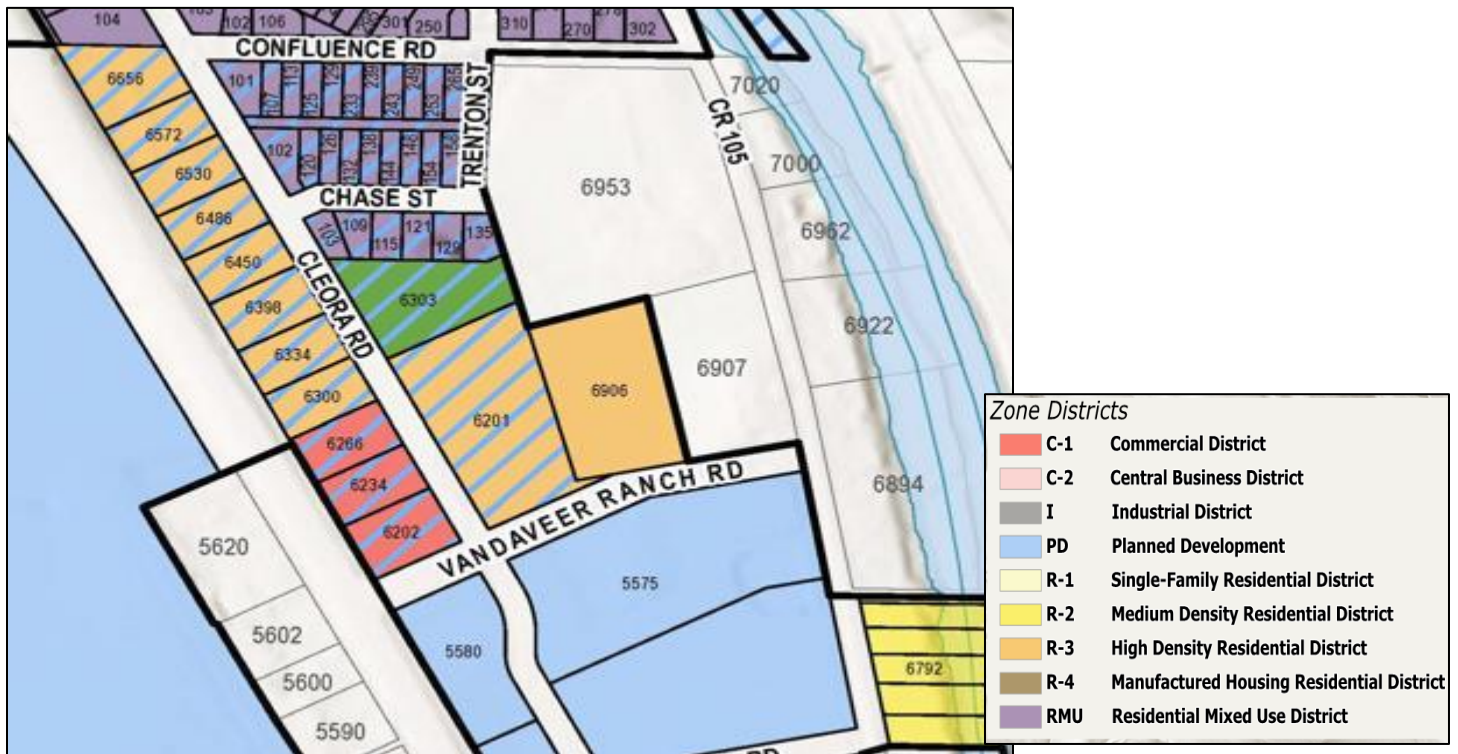




CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

Surrounding Land Use and Zoning: The site is currently zoned RES (Residential Zone District) in Chaffee County. The properties to the north and east remain in Chaffee County and are also zoned RES. The properties to the west are within the city limits and are zoned High Density Residential (R-3) and the properties to the south are part of the Vandaveer Ranch Planned Development.



PROCESS:

An application for annexation is a multi-step process. When annexing a property, the City must follow state statutes for contiguity and procedural requirements. The steps and standards include:

- 1/6th of the perimeter of a proposed annexation must be contiguous with the City of Salida;
- Staff reviews the petition for compliance with city and state statutes and Council adopts a resolution stating the petition is valid and sets a public hearing date that is no less than 30 days and no greater than 60 days from the resolution date;



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

- On October 17, 2023 City Council adopted Resolution 2023-46 finding the Annexation petition in compliance with city and state statutes and set the public hearing date for December 5, 2023.
- The (City Council) public hearing is advertised in the newspaper for four consecutive weeks;
- The Planning Commission holds a public hearing to review the annexation and recommend the zoning designation of the property;
- Council holds the public hearing on the annexation petition;
- Council reviews and possibly approves an annexation agreement; and
- Council holds a public hearing to review and possibly approves the proposed zoning.

FINDINGS OF FACT:

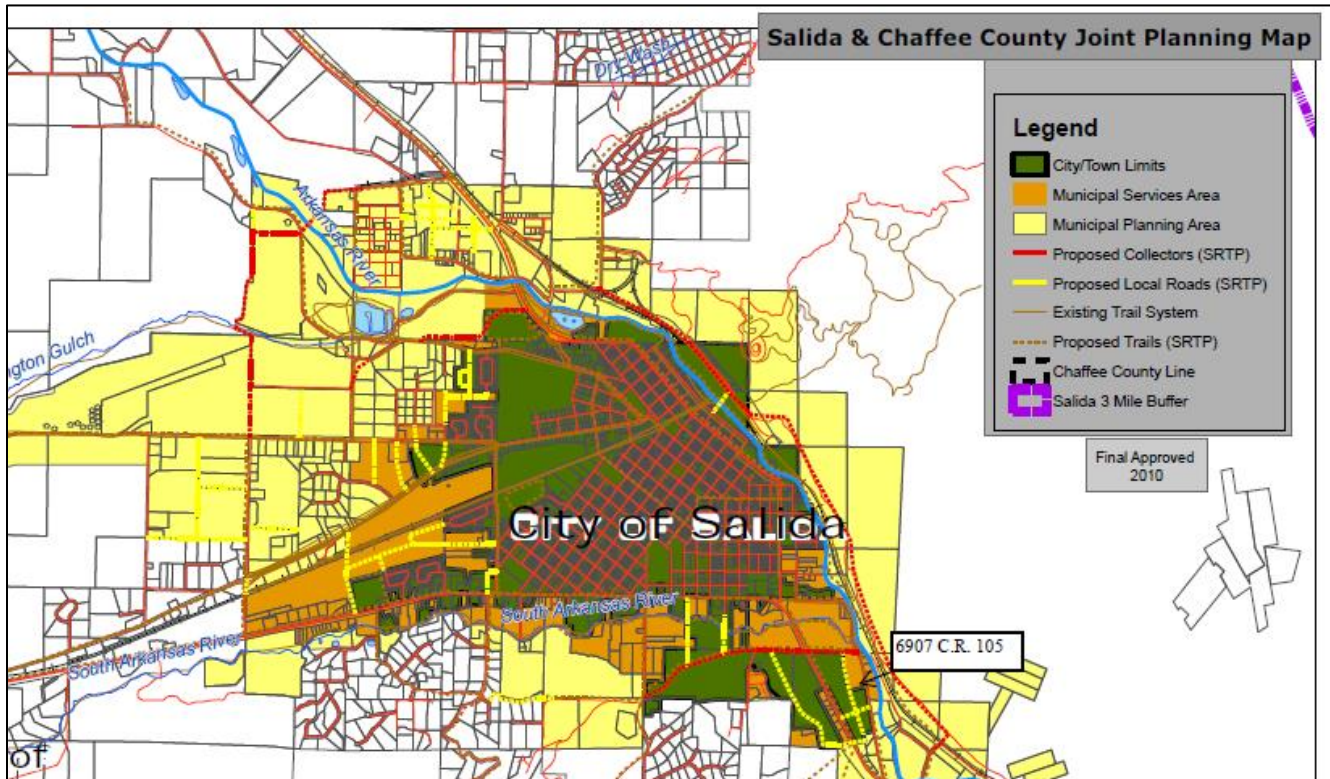
1. The proposed annexation meets the required 1/6th contiguity with the municipal boundary of the City of Salida as shown on the annexation plat.
2. All applicable owners of the property are party to the annexation.
3. The annexation property is within the Municipal Services Area (MSA) of the City of Salida, as defined in the City's Comprehensive Plan and its intergovernmental agreement (IGA) with Chaffee County approved in 2010. According to the IGA, the MSA "encompasses properties which are eligible for annexation and extension of municipal utilities and infrastructure, within the parameters set forth in the Salida Municipal Code and Salida Comprehensive Plan, which may be amended from time to time."

The annexation of the property is consistent with the vision and goals set forth in the Comprehensive Land Use Plan. Specifically, to promote new development projects that contain a variety of housing, including affordable units. The applicant will be required to meet the Inclusionary Housing Ordinance with new development on the property.



CITY COUNCIL ACTION FORM

DEPARTMENT Planning	PRESENTED BY Kristi Jefferson - Senior Planner	DATE December 5, 2023
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In addition, the proposal will provide for a logical extension of the City boundary to support the demand for residentially-zoned land, which will provide housing opportunities.

4. The property may be efficiently served by City fire and police departments.
5. The property is a natural extension of the City's municipal boundary and meets the legal requirements for annexation.

The timeline for the related requests to the annexation are as follows:

Proposed Action	Planning Commission Recommendation	City Council First Reading	City Council Final Action
Findings of Fact Resolution 2023-51			12/05/2023
Annexation Ordinance 2023-17	10/23/2023	11/21/2023	12/05/2023
Annexation Agreement (January 2, 2024)			
Zoning Ordinance 2023-18	10/23/2023	11/21/2023	12/05/2023



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

Annexation Agreement: On January 2, 2024, staff will propose an annexation agreement that will incorporate the Inclusionary Housing, Open Space In-lieu fees and Fair Contributions to Public School site requirements.

RESPONSE FROM REFERRAL DEPARTMENTS AND AGENCIES:

- Salida Fire Department: Assistant Fire Chief, Kathy Rohrich, responded "Fire Department has no concerns at this time."
- Salida Police Department: Police Chief, Russ Johnson, responded "No issues from PD at this time."
- Salida Parks and Recreation Department: Director Diesel Post, responded "Thanks for sharing. I do not see any mention of open space or fee-in-lieu. I know that Rob mention to the planning commission that Confluent park was so close and that that would the park that this neighborhood would use, use he will still need fee-in-lieu and probably some trail connections."
- Public Works Department and City Engineering Consultants: Public Works and JVA are in the process of reviewing the civil plans.
- Salida Finance Department: Staff Accountant, Renee Thonhoff, responded 6907 C.R. 105 has a sewer/water utility account. System development fees would need to be paid upon further development.
- Salida School District: Superintendent David Blackburn, responded "We will accept fees in lieu of land."
- Xcel Energy: Response is attached
- Chaffee County Planning Department, No response received

PLANNING COMMISSION RECOMMENDATION

A public hearing with the Planning Commission was held October 23, 2023, and the Commission recommended Council approve the proposed Flour Mill Annexation with staffs recommended conditions.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

STAFF RECOMMENDATION

Staff recommends approval of the proposed annexation, subject to Council approval of an annexation agreement with the following conditions:

1. That new residential dwelling units constructed on the property shall meet the inclusionary housing requirements of Article XIII of Chapter 16 of the Salida Municipal Code at the time of building permit submittal.
2. That new residential dwelling units constructed on the property shall meet the requirements of Land Use Code Sec. 16-6-140, Fair Contributions to Public School Sites, at the time of issuance of a building permit.
3. Fees in lieu of open space shall be provided, in an amount then in effect, at the time of issuance of a building permit for new residential units constructed on the property.

SUGGESTED MOTION

A council person should make the motion to “approve Ordinance 2023-17 approving the annexation of the 2 acre parcel of land to the City of Salida known as the Flour Mill Annexation.”

Attachments: Ordinance 2023-17

Agency reviews

Flour Mill Annexation petition and Annexation plat

Minutes from the October 23, 2023 Planning Commission meeting

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 17
SERIES OF 2023**

AN ORDINANCE OF THE CITY OF SALIDA, COLORADO ANNEXING TO THE CITY OF SALIDA A CERTAIN TRACT OF LAND IN UNINCORPORATED CHAFFEE COUNTY KNOWN AS THE FLOUR MILL ANNEXATION

WHEREAS, on September 13, 2023, representatives of the Flour Mill, filed a General Development Application (the "Petition") to commence proceedings to annex to the City of Salida (the "City") a certain unincorporated tract of land comprised of 2 acres located at 6907 C.R. 105 in the County of Chaffee, State of Colorado (the "Property"), and being more particularly described on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to C.R.S. §31-12-108, the City Council by Resolution No. 46, Series of 2023 specified that the City Council would hold a hearing on the proposed annexation at its regular meeting on December 5, 2023, commencing at the hour of 6 p.m. in the City Council Chambers, 448 East First Street, Salida, Colorado; and

WHEREAS, pursuant to C.R.S. §31-12-108 to -110, the City Council on December 5, 2023 held a duly-noticed public hearing to consider the proposed annexation; and

WHEREAS, notice of such hearing was published on November 3, 2023, November 10, 2023, November 17, 2023 and November 24, 2023 in *The Mountain Mail* newspaper; and

WHEREAS, C.R.S. §31-12-105(1)(e) provides that prior to the completion of any annexation within a three-mile area, the municipality shall have in place a plan for that area, which generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities and terminals for water, light, sanitation, transportation and power to be provided by the municipality and the proposed land uses for the area; and

WHEREAS, the City hereby sets forth its Findings of Fact, Determinations, and Conclusions with regard to annexation to the City of the Flour Mill Annexation; and

WHEREAS, the City currently has in place a Comprehensive Plan and other long-range planning documents which constitute the City's annexation plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

1. The City incorporates the foregoing recitals as findings and determinations by the City Council.

2. The City hereby approves the annexation of the Property described on Exhibit A, attached hereto with the following conditions of approval, and such real Property is hereby annexed to and made a part of the City of Salida.

1. That new residential dwelling units constructed on the property shall meet the inclusionary housing requirements of Article XIII of Chapter 16 of the Salida Municipal Code at the time of building permit submittal.

2. That new residential dwelling units constructed on the property shall meet the requirements of Land Use Code Sec. 16-6-140, Fair Contributions to Public School Sites, at the time of issuance of a building permit.

3. Fees in lieu of open space shall be provided, in an amount then in effect, at the time of issuance of a building permit for new residential units constructed on the property.

3. Within ten (10) days after final publication of this Ordinance, the City Clerk of the City of Salida, Colorado, on behalf of the City shall:

- A. File one (1) copy of the Annexation Plat and the original of this Annexation Ordinance in the office of the City Clerk of the City of Salida, Colorado;
- B. File for recording three (3) certified copies of this Annexation Ordinance and three (3) copies of the Annexation Plat, containing a legal description of the annexation parcel, with the County Clerk and Recorder of Chaffee County, Colorado, with directions to the Chaffee County Clerk and Recorder to file one certified copy of this Annexation Ordinance and one copy of the Annexation Map with the Division of Local Government of the Department of Local Affairs of the State of Colorado and one certified copy of this Annexation Ordinance and one copy of the Annexation Map with the Colorado Department of Revenue; and
- C. File one certified copy of this Annexation Ordinance and one copy of the Annexation Map in the office of the County Assessor of Chaffee County, Colorado.

INTRODUCED ON FIRST READING, on November 21, 2023, ADOPTED and set for second reading and public hearing on the 5th day of December, 2023.

CITY OF SALIDA, COLORADO

Dan Shore, Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 2023, and BY TITLE ONLY, after final adoption on the ____ day of _____, 2023.

City Clerk/Deputy City Clerk

EXHIBIT A
LEGAL DESCRIPTION
OF A
TRACT OF LAND TO BE ANNEXED

A PARCEL OF LAND LOCATED WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING LOT 3 OF THE TRIPLE T RANCH MINOR SUBDIVISION AND A PORTION OF CHAFFEE COUNTY ROAD NO. 105, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD AND THE WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, SAID POINT BEING MARKED BY A 1½" ALUMINUM CAP STAMPED "LS 16117" AND BEING THE POINT OF BEGINNING;

THENCE SOUTH 78°47'57" WEST ALONG SAID NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD, A DISTANCE OF 221.72 FEET;
 THENCE NORTH 12°14'41" WEST, A DISTANCE OF 383.06 FEET;
 THENCE NORTH 73°55'54" EAST, A DISTANCE OF 221.81 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
 THENCE NORTH 12°48'58" WEST A DISTANCE OF 60.18 FEET;
 THENCE NORTH 13°53'16" WEST A DISTANCE OF 268.86 FEET;
 THENCE NORTHWESTERLY AND DEFLECTING TO THE LEFT, A DISTANCE OF 169.14 FEET ALONG THE ARC OF A CURVE HAVING A RADIUS OF 820.00 FEET, A DELTA ANGLE OF 11°49'07", A CHORD LENGTH OF 168.84 FEET AND A CHORD BEARING OF NORTH 19°46'48" WEST;
 THENCE NORTH 25°25'46" WEST A DISTANCE OF 16.62 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
 THENCE SOUTH 88°48'25" EAST A DISTANCE OF 55.88 FEET TO THE EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;
 THENCE SOUTH 17°20'35" EAST A DISTANCE OF 299.74 FEET;
 THENCE SOUTH 14°18'14" EAST A DISTANCE OF 237.32 FEET;
 THENCE SOUTH 11°01'56" EAST A DISTANCE OF 251.91 FEET;
 THENCE SOUTH 10°39'25" EAST A DISTANCE OF 180.73 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;
 THENCE SOUTH 78°47'57" WEST A DISTANCE OF 47.24 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105 ;
 THENCE NORTH 09°55'44" WEST ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, A DISTANCE OF 66.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.10 ACRES.

Also known by the following address:

6907 County Road 105, Salida, CO 81201

And assessor's schedule or parcel number: 380709100072



**PLANNING DEPARTMENT
PROJECT REVIEW TRANSMITTAL FORM**

ATTENTION: _____

DATE: September 25, 2023

- ☒ Salida Public Works
- ☒ **Salida Fire Chief**
- ☒ Salida Police Chief
- ☒ Salida Finance Department
- ☐ U.S. Postal Service
- ☐ U.S. Forest Service
- ☐ CO Dept. of Transportation
- ☒ City Consulting Engineer
- ☐ City Attorney
- ☒ Parks and Recreation Director

- ☒ Xcel Energy
- ☒ Atmos Energy
- ☒ Chaffee Co. Planning
- ☐ Army Corps of Engineers
- ☐ Division of Wildlife
- ☐ Town of Poncha Springs
- ☐ Chaffee Co. Building Official
- ☐ Historic Preservation Commission
- ☒ School District R-32-J
- ☐ Other:

APPLICANT: Biker Baker Holdings LLC (Rob Gartzman) PHONE: 303-903-4620EMAIL: rob@sweeties insalida.comPROPERTY LOCATION: 6907 C.R. 105PROJECT DESCRIPTION: The owner submitted applications for Annexation, Zoning, Planned Development Overlay and Major Subdivision of the property located at 6907 C.R. 107

TENTATIVE MEETING DATES:

- | | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> Planning Commission | <u>10/23/23 @ 6:00 P.M.</u> |
| <input checked="" type="checkbox"/> City Council | <u>12/05/23 @ 6:00 P.M.</u> |
| <input type="checkbox"/> Board of Adjustment | <u>_____ @ _____ P.M.</u> |
| <input type="checkbox"/> Board of Appeals | <u>_____ @ _____ P.M.</u> |

TRANSMITTAL INCLUDES:

- ☒ Application Form/Cover Letter
- ☐ Vicinity Map
- ☒ Site Plan
- ☒ Plat
- ☐ Other:

NOTE: A written response, even if only to advise that you have no concerns, is requested.

REPLY: NO CONCERNS AT THIS TIME.RESPONSE NEEDED BY: October 12, 2023

RECEIVED: _____

PLANNING STAFF: Kristi Jefferson

From: [Diesel Post](#)
To: [Kristi Jefferson](#); [Doug Bess](#); [Kathy Rohrich](#); rjohnson@salidapolice.com
Subject: Re: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review
Date: Monday, September 25, 2023 9:17:41 AM
Attachments: [image001.png](#)

Thanks for sharing. I do not see any mention of open space or fee-in-lieu. I know that Rob mention to the planning commission that Confluent park was so close and that that would the park that this neighborhood would use, use he will still nee fee-in-lie and probably some trail connections.



Mike 'Diesel' Post

Director, Parks and Recreation

diesel.post@cityofsalida.com
P: 719-539-4555 | C: 719-966-9378
448 E First Street, Suite 112, Salida, CO 81201
cityofsalida.com

From: Kristi Jefferson <kristi.jefferson@cityofsalida.com>
Sent: Monday, September 25, 2023 8:53 AM
To: Doug Bess <doug.bess@cityofsalida.com>; Kathy Rohrich <kathy.rohrich@cityofsalida.com>; rjohnson@salidapolice.com <rjohnson@salidapolice.com>; Diesel Post <diesel.post@cityofsalida.com>
Subject: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review

Attached is the agency review for Rob Gartzman's annexation, zoning, Planned Development and Subdivision applications. Please let me know if you have any questions.

Kristi Jefferson
Senior Planner
City of Salida
448 E. First Street
Suite 112
Salida, CO 81201
(719) 530-2626



Sender and receiver should be mindful that all my incoming and outgoing emails may be subject to the Colorado Open Records Act, § 24-72-100.1, et seq.

From: [Russ Johnson](#)
To: [Kristi Jefferson](#); [Doug Bess](#); [Kathy Rohrich](#); [Diesel Post](#)
Subject: RE: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review
Date: Monday, September 25, 2023 2:33:35 PM
Attachments: [image001.png](#)

Nothing from PD at this time.

From: Kristi Jefferson <kristi.jefferson@cityofsalida.com>
Sent: Monday, September 25, 2023 8:54 AM
To: Doug Bess <doug.bess@cityofsalida.com>; Kathy Rohrich <kathy.rohrich@cityofsalida.com>; Russ Johnson <rjohnson@salidapolice.com>; Diesel Post <diesel.post@cityofsalida.com>
Subject: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review

Attached is the agency review for Rob Gartzman's annexation, zoning, Planned Development and Subdivision applications. Please let me know if you have any questions.

Kristi Jefferson
Senior Planner
City of Salida
448 E. First Street
Suite 112
Salida, CO 81201
(719) 530-2626



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From: [Blackburn, David](#)
To: [Kristi Jefferson](#)
Subject: Re: FW: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review
Date: Friday, September 29, 2023 1:26:21 PM
Attachments: [image001.png](#)
[image001.png](#)

We will accept fees in lieu of land. Thank you.

Respectfully,

Dr. D. Blackburn
Superintendent
719.530.5203
719-221-5915
salidaschools.com

On Mon, Sep 25, 2023 at 11:30 AM Kristi Jefferson <kristi.jefferson@cityofsalida.com> wrote:

Attached is the agency review for Rob Gartzman's Annexation, Zoning, Planned Development and Subdivision applications for his property at 6907 C.R. 105. Please let me know if you have any questions.

Kristi Jefferson

Senior Planner

City of Salida

448 E. First Street

Suite 112

Salida, CO 81201

(719) 530-2626



Sender and receiver should be mindful that all my incoming and outgoing emails may be subject to the Colorado Open Records Act, § 24-72-100.1, et seq.

From: [Renee Thonhoff](#)
To: [Kristi Jefferson](#)
Subject: Re: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review
Date: Monday, September 25, 2023 10:55:55 AM
Attachments: [image001.png](#)
[Outlook-2efhggrn](#)

The property located at 6907 C.R. 105 currently has one water and one sewer tap. Upon development system development fees will need to be paid.

Thank you,
 Renee



Renee Thonhoff
 Staff Accountant, Finance Department

renee.thonhoff@cityofsalida.com
 P: 719-539-4555 | C: 719-539-5271
 448 E First Street, Suite 112, Salida, CO 81201
cityofsalida.com

<!--[if !vml]-->

<!--[endif]-->

Easy ways to pay your utility bill: auto pay with a checking account, phone or text payments 833.892.0176, or to pay online please register your utility account at <https://www.municipalonlinepayments.com/salidaco> or download our iOS or Android app MyCivic Utilities where you can now set up auto pay.

From: Kristi Jefferson <kristi.jefferson@cityofsalida.com>
Sent: Monday, September 25, 2023 8:54 AM
To: Renee Thonhoff <renee.thonhoff@cityofsalida.com>
Subject: FW: 6907 C.R. 105 - Flour Mill Annex, Zoning, PD & Sub - Agency review

Attached is the agency review for Rob Gartzman's annexation, zoning, Planned Development and Subdivision applications. Please let me know if you have any questions.

Kristi Jefferson
 Senior Planner
 City of Salida
 448 E. First Street
 Suite 112
 Salida, CO 81201
 (719) 530-2626



Sender and receiver should be mindful that all my incoming and outgoing emails may be subject to



Right of Way & Permits
 1123 West 3rd Avenue
 Denver, Colorado 80223
 Telephone: **303.571.3306**
 Facsimile: 303.571.3284
 Donna.L.George@xcelenergy.com

October 2, 2023

City of Salida
 448 East First Street, Suite 112
 Salida, CO 81201

Attn: Kristi Jefferson

Re: The Flour Mill

Public Service Company of Colorado's (PSCo) Right of Way & Permits Referral Desk has reviewed the plans for **The Flour Mill** Annexation and Zoning. Please be advised that Public Service Company has existing overhead and underground electric distribution facilities within the areas indicated in this proposed rezone. Public Service Company has no objection to this proposed rezone, contingent upon Public Service Company of Colorado's ability to maintain all existing rights and this amendment should not hinder our ability for future expansion, including all present and any future accommodations for natural gas transmission and electric transmission related facilities.

The City of Salida must send us notification after approval of the proposed annexation has been finalized. This notification should be sent to dlAnnexationNotifications@xcelenergy.com. This will allow our mapping department to make the necessary updates to our mapping system.

PSCo requests that the following language or plat note is placed on the preliminary and final plats for the subdivision:

Utility easements are dedicated to the City of Salida for the benefit of the applicable utility providers for the installation, maintenance, and replacement of electric, gas, television, cable, and telecommunications facilities (Dry Utilities). Utility easements shall also be granted within any access easements and private streets in the subdivision. Permanent structures, improvements, objects, buildings, wells, water meters and other objects that may interfere with the utility facilities or use thereof (Interfering Objects) shall not be permitted within said utility easements and the utility providers, as grantees, may remove any Interfering Objects at no cost to such grantees, including, without limitation, vegetation. Public Service Company of Colorado (PSCo) and its successors reserve the right to require additional easements and to require the property owner to grant PSCo an easement on its standard form.

The property owner/developer/contractor must complete the application process for any new electric service, or modification to existing facilities including relocation and/or removal via

xcelenergy.com/InstallAndConnect. It is then the responsibility of the developer to contact the Designer assigned to the project for approval of design details. This includes discussions regarding transformer location(s) and issues with the parking lot.

Additional easements may need to be acquired by separate document for new facilities – be sure to contact the Designer and request that they connect with a Right-of-Way and Permits Agent in this event.

As a safety precaution, PSCo would like to remind the developer to contact Colorado 811 for utility locates prior to construction.

Donna George
Right of Way and Permits
Public Service Company of Colorado dba Xcel Energy
Office: 303-571-3306 – Email: Donna.L.George@xcelenergy.com



GENERAL DEVELOPMENT APPLICATION

448 East First Street, Suite 112
Salida, CO 81201
Phone: 719-530-2626 Fax: 719-539-5271
Email: planning@cityofsalida.com

1. TYPE OF APPLICATION (Check-off as appropriate)

- | | |
|--|---|
| <input checked="" type="checkbox"/> Annexation | <input type="checkbox"/> Administrative Review:
(Type) _____ |
| <input type="checkbox"/> Pre-Annexation Agreement | <input type="checkbox"/> Limited Impact Review:
(Type) _____ |
| <input type="checkbox"/> Appeal Application (Interpretation) | <input type="checkbox"/> Major Impact Review:
(Type) _____ |
| <input type="checkbox"/> Certificate of Approval | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Creative Sign Permit | |
| <input type="checkbox"/> Historic Landmark/District | |
| <input type="checkbox"/> License to Encroach | |
| <input type="checkbox"/> Text Amendment to Land Use Code | |
| <input type="checkbox"/> Watershed Protection Permit | |
| <input type="checkbox"/> Conditional Use | |

2. GENERAL DATA (To be completed by the applicant)

A. Applicant Information

Name of Applicant: Biker Baker Holdings / Rob Gatzman

Mailing Address: 815 G St Salida CO 81201

Telephone Number: 303 903 4620 FAX: _____

Email Address: rob@sweetiesin Salida.com

Power of Attorney/ Authorized Representative: _____
(Provide a letter authorizing agent to represent you, include representative's name, street and mailing address, telephone number, and FAX)

B. Site Data

Name of Development: The Flour Mill

Street Address: 6967 CR 105, Salida, CO 81201

Legal Description: Lot 3 Block _____ Subdivision Tripe T Minor Subdivision (attach description)

Disclosure of Ownership: List all owners' names, mortgages, liens, easements, judgments, contracts and agreements that run with the land. (May be in the form of a current certificate from a title insurance company, deed, ownership and encumbrance report, attorney's opinion, or other documentation acceptable to the City Attorney)

I certify that I have read the application form and that the information and exhibits herewith submitted are true and correct to the best of my knowledge.

Signature of applicant/agent _____ Date _____

Signature of property owner [Signature] Date 8/31/23



ANNEXATION APPLICATION

448 East First Street, Suite 112

Salida, CO 81201

Phone: 719-530-2626 Fax: 719-539-5271

Email: planning@cityofsalida.com

Item 8.

1. PROCEDURE (City Code Section 16-9-20)

A. Development Process

1. Pre-Application Conference. Optional.
2. Submit Application.
3. Staff Review for Completeness.
4. Resolution to Accept Application to City Council
5. Establish Public Hearing Date before Council per Colorado Municipal Annexation Act of 1965.
6. Staff Evaluation of Application and Annexation Agreement (if applicable)
7. Establish Public Hearing Date Before the Planning Commission.
8. Public Notice Provided For Hearings.
9. Public Hearing Conducted by Commission.
10. Annexation Ordinance to City Council for 1st and 2nd Reading.

2. APPLICATION CONTENTS (City Code Section 16-9-40)

1. General Development Application

2. Annexation Petition

3. **Annexation Map.** The preferred scale of the map is one (1) inch equals one hundred (100) feet; the minimum allowable scale is one (1) inch equals two hundred (200) feet. Sheet size shall be twenty-four (24) inches by thirty-six (36) inches. If it is necessary to draw the map on more than one (1) sheet, a sheet index shall be placed on the first sheet. The annexation map shall contain the following:
 - a. Annexation Name
 - b. Legal description. Legal description of the perimeter
 - c. Names and addresses. Names and addresses of the owners, subdivider, land planner and land surveyor registered in the State.
 - d. Scale
 - e. North arrow
 - f. Date. The date the map was prepared.
 - g. Boundary lines and dimensions. Boundary lines of the proposed annexation. Distinction of the boundary that is contiguous to the City and the length of the same boundary on the map, including required showing of contiguity in feet.
 - h. Platted lots. Lot and block numbers if the area is already platted.
 - i. Improvements and easements. The location and dimensions of all existing and proposed streets, alleys, easements, ditches and utilities within or adjacent to the proposed annexation.
 - j. Vicinity map. The vicinity map shall show the location of the proposed annexation, in relation to the City.
 - k. Acreage. Total acreage to be annexed.
 - l. Certificates. Certificates required to appear on the final annexation plat are described in Section 16-9-40 of the Land Use Code.
4. **Digital Copy.** A digital copy of the plat compatible with the City GIS shall be submitted.
5. **Application Fee** \$3,000 cash or check made out to City of Salida (\$1,000 application fee + \$2,000 retainer for attorney's fees)

7. Public Notice.

- a) A list shall be submitted by the applicant to the city of adjoining property owners' names and addresses. A property owner is considered adjoining if it is within 175 feet of the subject property regardless of public ways. The list shall be created using the current Chaffee County tax records.
- b) Postage Paid Envelopes. Each name on the list shall be written on a postage-paid envelope. Postage is required for up to one ounce. Return Address shall be: City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201.
- c) Applicant is responsible for posting the property and proof of posting the public notice.

8. Petition for Exclusion from the South Arkansas Fire Protection District (optional)**9. Notarized Special Fee and Cost Reimbursement Agreement completed**

ANNEXATION PETITION**TO THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, GREETINGS:**

The undersigned hereby petition(s) the City of Salida to annex to the City of Salida the territory shown on the map(s) attached hereto and described on the attachment hereto:

This Petition is signed by the landowners qualified to sign. It is intended that this Petition be a one hundred percent (100%) petition for annexation as described in C. R. S. 1973, Section 31-12-107(l)(g), (as amended).

In support of this petition, the undersigned state(s) and allege(s) as follows, to wit:

1. That it is desirable and necessary that the above-described territory be annexed to the City of Salida.
2. That petitioners are landowners of one hundred percent (100%) of the territory, excluding streets and alleys, herein proposed for annexation to the City of Salida.
3. That no less than one-sixth of the aggregate external boundaries of the above-described territory hereby petitioned to the City of Salida is contiguous to the City limits of the City of Salida.
4. Accompanying this petition are two mylars and twenty copies of the annexation map.
5. That a community of interest exists between the above-described territory and the City of Salida, and that the same is urban, or will be urbanized in the near future, and further that the said territory is integrated or is capable of being integrated in the City of Salida.
6. That the above-described territory does not include any area which is the same or substantially the same area in which an election for an annexation to the City of Salida, was held within the twelve months preceding the filing of this petition.
7. That the above-described territory does not include any area included in another annexation proceeding involving city other than the City of Salida.
8. That the above-described territory is not presently a part of any incorporated city, city and county, or town.
9. That the above area described will (not) result in the detachment of the area from any school district and the attachment of the same to another school district.

ANNEXATION PETITION

"INSERT A"

(Description of territory proposed for annexation)

LEGAL DESCRIPTION OF A TRACT OF LAND TO BE ANNEXED

A PARCEL OF LAND LOCATED WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING LOT 3 OF THE TRIPLE T RANCH MINOR SUBDIVISION AND A PORTION OF CHAFFEE COUNTY ROAD NO. 105, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD AND THE WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, SAID POINT BEING MARKED BY A 1½" ALUMINUM CAP STAMPED "LS 16117" AND BEING THE POINT OF BEGINNING;

THENCE SOUTH 78°47'57" WEST ALONG SAID NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD, A DISTANCE OF 221.72 FEET;

THENCE NORTH 12°14'41" WEST, A DISTANCE OF 383.06 FEET;

THENCE NORTH 73°55'54" EAST, A DISTANCE OF 221.81 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;

THENCE NORTH 12°48'58" WEST A DISTANCE OF 60.18 FEET;

THENCE NORTH 13°53'16" WEST A DISTANCE OF 268.86 FEET;

THENCE NORTHWESTERLY AND DEFLECTING TO THE LEFT, A DISTANCE OF 169.14 FEET ALONG THE ARC OF A CURVE HAVING A RADIUS OF 820.00 FEET, A DELTA ANGLE OF 11°49'07", A CHORD LENGTH OF 168.84 FEET AND A CHORD BEARING OF NORTH 19°46'48" WEST;

THENCE NORTH 25°25'46" WEST A DISTANCE OF 16.62 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;

THENCE SOUTH 88°48'25" EAST A DISTANCE OF 55.88 FEET TO THE EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;

THENCE SOUTH 17°20'35" EAST A DISTANCE OF 299.74 FEET;

THENCE SOUTH 14°18'14" EAST A DISTANCE OF 237.32 FEET;

THENCE SOUTH 11°01'56" EAST A DISTANCE OF 251.91 FEET;

THENCE SOUTH 10°39'25" EAST A DISTANCE OF 180.73 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;

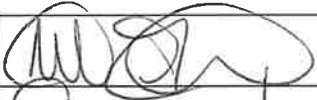
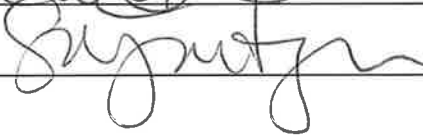
THENCE SOUTH 78°47'57" WEST A DISTANCE OF 47.24 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105 ;

THENCE NORTH 09°55'44" WEST ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, A DISTANCE OF 66.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.10 ACRES.

ANNEXATION PETITION

This Section must be filled out if there are multiple properties/property owners petitioning annexation.

Signature of Petitioners Requesting Annexation to the City of Salida, Colorado	Date of Signature of Each Petitioner	Mailing Address of each Petitioner	Description of Property Included the Area Proposed for Annexation Owned by Each person Signing this Petition. (Attach separate sheet, if necessary)
	8/31/23	8156 St Salida CO 81201	6907 CR 105, Salida CO 81201
	8/31/23	8156 St Salida CO 81201	6907 CR 105 Salida CO 81201

CIRCULATOR'S AFFIDAVIT

[illegible]

being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

Circulator

Subscribed and sworn to before me this _____ day of _____, A. D. 20__.

Witness my hand and official seal. My commission expires: _____.

Notary Public

**PETITION FOR EXCLUSION OF THE PROPERTY FROM THE SOUTH ARKANSAS FIRE
PROTECTION DISTRICT**

As an owner of property located in unincorporated Chaffee County, fire protection services are generally provided by the South Arkansas Fire Protection District (SAFPD). These services are supported by a mill levy, specifically for the SAFP, on your property tax bill. Once a property is annexed into the City of Salida, certain fire protection services will be provided by the City.

If a property owner annexes into the City and does not petition the SAFP for exclusion from the district, the property owner(s) will continue to pay real property taxes to South Arkansas Fire Protection District. It is the responsibility of the property owner to request that their land be excluded from the special taxing district during the annexation process. The petition to exclude land from the special taxing district should be submitted to the SAFP if you would like to have your property considered for exclusion by the South Arkansas Fire Protection District Board.

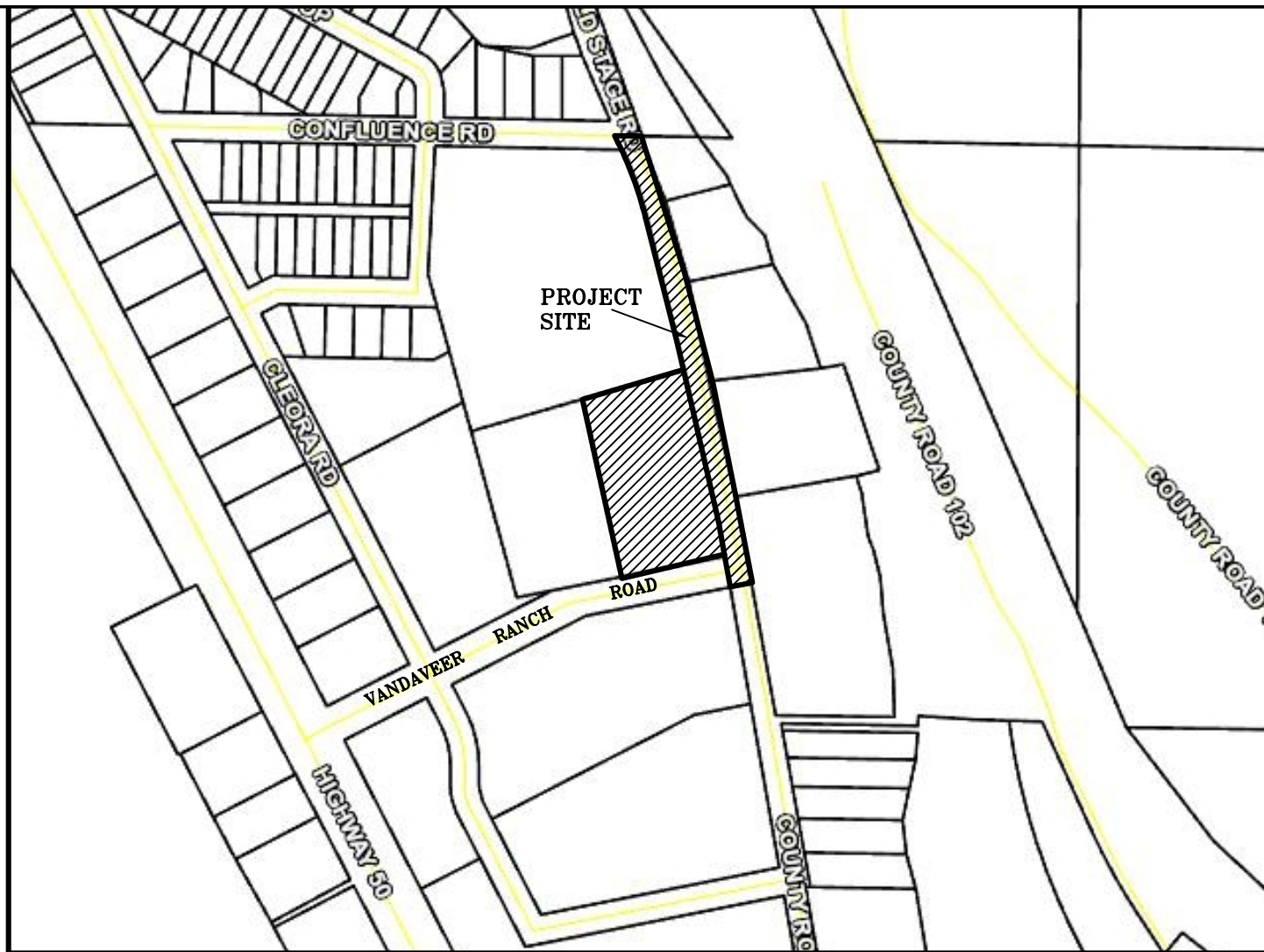
Petitions need to meet the requirements of Section 32-1501(1), C.R.S., in the following respects:

- A. Include a "legal description of the property"
- B. The petition/request must include notarized signature of the property owner(s)

You may mail or deliver a notarized copy of the request letter along with a full legal description of the property or properties (a copy of vesting deeds(s) will suffice) directly to the District, at 124 E Street, P.O. Box 393, Salida, CO 81201

The District incurs legal fees for exclusions in the range of \$650 - \$1000. A \$500 deposit for legal fees will be required up front.

BIKER BAKER HOLDINGS, LLC
ANNEXATION TO THE CITY OF SALIDA
LOT 3, TRIPLE T RANCH MINOR SUBDIVISION
AND A PORTION OF CHAFFEE COUNTY ROAD 105
CHAFFEE COUNTY, COLORADO



VICINITY MAP
NOT TO SCALE

CITY COUNCIL APPROVAL

WHEREAS, THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO HAS BEEN PRESENTED WITH AN APPLICATION TO ANNEX TERRITORY AS DESCRIBED HEREIN BY BIKER BAKER HOLDINGS, LLC, AS OWNERS OF 100 PERCENT OF THE AREA TO BE ANNEXED, EXCEPTING PUBLIC STREETS; AND WHEREAS, THE CITY COUNCIL BY RESOLUTION ADOPTED ON _____, 20____, DETERMINED THAT THE ANNEXATION APPLICATION SUBSTANTIALLY COMPLIES WITH THE REQUIREMENT OF SECTION 31-12-107(1), WHEREAS, AFTER NOTICE AND PUBLIC HEARING ON _____, 20____, AS REQUIRED BY SECTION 31-12-108, C.R.S., THE CITY COUNCIL ADOPTED RESOLUTION NO. _____ (SERIES 20____), DETERMINING THAT THE ANNEXATION ELECTION WAS NOT REQUIRED; AND WHEREAS, ON _____, 20____, THE CITY COUNCIL ADOPTED ORDINANCE NO. _____ (SERIES 20____) APPROVING AND ANNEXING BIKER BAKER HOLDINGS, LLC ANNEXATION TO THE CITY OF SALIDA; NOW, THEREFORE, THE CITY COUNCIL OF SALIDA, COLORADO DOES HEREBY APPROVE AND ACCEPT THE BIKER BAKER HOLDINGS, LLC ANNEXATION TO THE CITY OF SALIDA AS DESCRIBED HEREIN, TO WIT:

A PARCEL OF LAND LOCATED WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING LOT 3 OF THE TRIPLE T RANCH MINOR SUBDIVISION AND A PORTION OF CHAFFEE COUNTY ROAD NO. 105, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD AND THE WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, SAID POINT BEING MARKED BY A 1/2" ALUMINUM CAP STAMPED 'LS 16117' AND BEING THE POINT OF BEGINNING;

THENCE SOUTH 78°47'57" WEST ALONG SAID NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD, A DISTANCE OF 221.72 FEET;
THENCE NORTH 12°14'41" WEST, A DISTANCE OF 383.06 FEET;
THENCE NORTH 73°55'54" EAST, A DISTANCE OF 221.81 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
THENCE NORTH 12°48'58" WEST A DISTANCE OF 60.18 FEET;
THENCE NORTH 13°53'16" WEST A DISTANCE OF 268.86 FEET;
THENCE NORTHWESTERLY AND DEFLECTING TO THE LEFT, A DISTANCE OF 169.14 FEET ALONG THE ARC OF A CURVE HAVING A RADIUS OF 820.00 FEET, A DELTA ANGLE OF 11°49'07", A CHORD LENGTH OF 168.84 FEET AND A CHORD BEARING OF NORTH 19°46'48" WEST;
THENCE NORTH 25°25'46" WEST A DISTANCE OF 16.62 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
THENCE SOUTH 88°48'25" EAST A DISTANCE OF 55.88 FEET TO THE EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;
THENCE SOUTH 17°20'35" EAST A DISTANCE OF 299.74 FEET;
THENCE SOUTH 14°18'14" EAST A DISTANCE OF 237.32 FEET;
THENCE SOUTH 11°01'56" EAST A DISTANCE OF 251.91 FEET;
THENCE SOUTH 10°39'25" EAST A DISTANCE OF 180.73 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;
THENCE SOUTH 78°47'57" WEST A DISTANCE OF 47.24 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
THENCE NORTH 09°55'44" WEST ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, A DISTANCE OF 66.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.10 ACRES.

SIGNED THIS ____ DAY OF _____, 2023.

CITY OF SALIDA

BY: _____
MAYOR

CERTIFICATION OF TITLE

I, _____, A LICENSED TITLE INSURANCE AGENT IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE TO THE PROPERTY HEREBY DEDICATED AND AS SHOWN AND DESCRIBED ON THIS PLAT AND FOUND TITLE VESTED IN BIKER BAKER HOLDINGS, LLC, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT AS LISTED BELOW:

DATED THIS ____ DAY OF _____, 2023.

TITLE AGENT

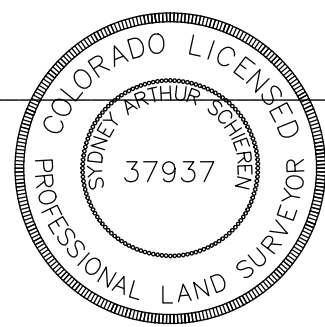
GENERAL NOTES

- 1) BASIS OF BEARING FOR THIS SURVEY IS GRID NORTH FROM COLORADO STATE PLANE COORDINATE SYSTEM CENTRAL ZONE, BASED ON G.P.S. OBSERVATIONS ALONG THE NORTHERN RIGHT-OF-WAY OF VANDAVEER RANCH ROAD BETWEEN A 1/2" ALUMINUM CAP STAMPED 'LS 37937' AND A 1/2" ALUMINUM CAP STAMPED 'LS 16117' HAVING A BEARING OF NORTH 78°47'57" EAST.
- 2) THIS SURVEY WAS PERFORMED IN CONJUNCTION WITH WESTCOR LAND TITLE INSURANCE COMPANY (CENTRAL COLORADO TITLE AND ESCROW), COMMITMENT NO. 22-20579, DATED AUGUST 15, 2022.
- 3) TOTAL AREA TO BE ANNEXED= 3.10 ACRES +/-
- 4) THIS ANNEXATION SUBJECT TO THE TERMS & CONDITIONS AS SET FORTH IN THE ANNEXATION AGREEMENT RECORDED AT RECEPTION NO. _____

LAND SURVEYOR'S CERTIFICATE

I, SYDNEY A. SCHIEREN, A REGISTERED LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS LAND SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION, AND THAT THE PLAT REPRESENTS THE RESULTS OF SAID SURVEY AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SYDNEY A. SCHIEREN
COLORADO P.L.S. 37937



TOTAL PERIMETER OF LAND TO BE ANNEXED	2480.23 FT
CONTIGUOUS BOUNDARY WITH CITY OF SALIDA	670.80 FT
CONTIGUOUS BOUNDARY REQUIREMENT 1/6= 16.7%	27.0 %

REVISED:	
JOB # 22097	
DATE: SEPTEMBER 11, 2023	
SHEET 1 OF 1	

BIKER BAKER HOLDINGS, LLC
ANNEXATION TO THE
CITY OF SALIDA

LOT 3, TRIPLE T RANCH
MINOR SUBDIVISION AND
A PORTION OF CHAFFEE COUNTY ROAD 105
CHAFFEE COUNTY, COLORADO

LANDMARK
SURVEYING & MAPPING

P.O. BOX 668 SALIDA, CO 81201
PH 719.539.4021 FAX 719.539.4031



PLANNING COMMISSION REGULAR MEETING

448 E. 1st Street, Room 190 Salida, Colorado 81201
October 23, 2023 - 6:00 PM

MINUTES

Email public comments to: planning@cityofsalida.com

Please register for the Planning Commission meeting:
<https://attendee.gotowebinar.com/rt/1909092342220683277>

CALL TO ORDER BY CHAIRMAN – 6:00 PM

ROLL CALL

PRESENT

Chairman Greg Follet
Vice-Chair Francie Bomer
Commissioner Giff Kriebel
Commissioner Judith Dockery
Commissioner Michelle Walker
Commissioner Aaron Derwingson
Alternate Commissioner Dan Bush

ABSENT

Commissioner Brian Colby
Commissioner Kenneth Layton

APPROVAL OF THE MINUTES

1. October 10, 2023 - Draft Minutes

Motion to approve the minutes made by Commissioner Kriebel, Seconded by Commissioner Dockery.
Voting Yea: Chairman Follet, Vice-Chair Bomer, Commissioner Kriebel, Commissioner Dockery,
Commissioner Walker, Commissioner Derwingson, Alternate Commissioner Bush

MOTION PASSED.

UNSCHEDULED CITIZENS- NA

AMENDMENT(S) TO AGENDA- NA

PUBLIC HEARINGS

Public Hearings will follow the following procedure:

- | | |
|---|--|
| A. Open Public Hearing | E. Public Input |
| B. Proof of Publication | F. Close Public Hearing |
| C. Staff Review of Application/Proposal | G. Commission Discussion |
| D. Applicant's Presentation (if applicable) | H. Commission Decision or Recommendation |

2. **Flour Mill Annexation** - The applicant, Biker Baker LLC, represented by Rob Gartzman submitted a complete application to annex the property located at 6907 County Road 105 on September 13, 2023 along with an application for Zoning to be considered during a separate hearing.

A. Open Public hearing – 6:02 pm

B. Proof of Publication –

C. Staff Review– Planner Jefferson reviewed the application.

D. Applicant's Presentation– Mark Gartzman was present in person. Rob Gartzman and Jordan Yoder were present online.

- E. Public Input –** Deb Coquoz-Shuey spoke during Public Input.
- F. Close Public Hearing –** 6:21 pm
- G. Commissioner Discussion –**
- H. Commission Recommendation –**

Motion made by Vice-Chair Bomer to recommend City Council approve the proposed Flour Mill Annexation as it meets the findings of fact for annexation subject to the following recommended conditions to be included in the annexation agreement as stated by staff. First, that the new residential units constructed on the property shall meet the inclusionary housing requirements of Article XIII of Chapter 16 of the Salida Municipal Code at the time of building permit submittal. That two, the residential dwelling units constructed on the property shall meet the requirements of Land Use Code Sec. 16-6-140, Fair Contributions to Public School Sites at the time of issuance of building permit and three, the Fees in Lieu of open space shall be provided, in an amount then in effect, at the time of issuance of a building permit for new residential units constructed on the property,

Seconded by Commissioner Walker.

Voting Yea: Chairman Follet, Vice-Chair Bomer, Commissioner Kriebel, Commissioner Dockery, Commissioner Walker, Commissioner Derwingson, Alternate Commissioner Bush

THE MOTION PASSED.

- 3. Flour Mill Zoning -** The applicant, Biker and Baker Holdings, is requesting a zoning designation of High Density Residential (R-3) should the property located at 6907 C.R. 105 be annexed.

- A. Open Public hearing –** 6:23 pm
- B. Proof of Publication –**
- C. Staff Review–** Planner Jefferson reviewed the application.
- D. Applicant's Presentation-** Mark Gartzman was present in person. Rob Gartzman and Jordan Yoder were present online.
- E. Public Input –** Ned Suesse, Steve Shuey and Curt Shuey spoke during Public Input.
- F. Close Public Hearing –** 6:34 pm
- G. Commissioner Discussion –**
- H. Commission Recommendation –**

Motion made by Vice-Chair Bomer to recommend City Council approve the proposed zoning of the Flour Mill Annexation site to High-Density Residential (R-3) Zone District, as it meets the review standards for a zoning/rezoning, Seconded by Commissioner Kriebel.

Voting Yea: Chairman Follet, Vice-Chair Bomer, Commissioner Kriebel, Commissioner Dockery, Commissioner Walker, Commissioner Derwingson, Alternate Commissioner Bush

THE MOTION PASSED.

- 4. Major Impact Review - Flour Mill Planned Development and Major Subdivision -** Following approval of the Flour Mill Annexation of the 2-acre property into the City of Salida, and zoning of High-Density Residential (R-3) the applicant, Biker Baker Holdings, is requesting approval of a Major Impact Review for a Planned Development Overlay and Major Subdivision of the property located at 6907 C.R. 105. Below are the requests:

A: Major Impact Review approval of a Planned Development Overlay for the following deviations to the Dimensional Standards:

- Lots 11 and 12 will have frontage off of the private parking lot and not a public street
- Increased density
- Increased height allowed for Lots 10, 11 and 13
- Reduced minimum lot size for Lots 1, 2, 3 and 4

- Reduced minimum lot frontage for the single-family and Laundromat lots
- Reduced minimum setbacks - reduced minimum front and rear setbacks
- Increased maximum Lot Coverage with structures for Lots 10, 11 and 13
- Increased maximum Lot Coverage for uncovered parking/access for Lot 14 (parking lot)
- Reduced minimum Landscape area for Lot 14
- Modified Schedule of Uses

The applicant is proposing to deed restrict 50% of the units within the development.

A. Open Public hearing – 6:37 pm

B. Proof of Publication –

C. Staff Review– Planner Jefferson reviewed the application.

D. Applicant's Presentation- Rob Gartzman, applicant, Ken Puncerelli and Jordan Yoder, architects, spoke on the application online.

E. Public Input – Ned Suesse, Mary Branson, Suzette Megyeri, Simonne Laylin, Deb Coquoz-Shuey, Steve Shuey, Shawn Shuey, Curt Shuey, Wayles Martin, Eric Warner, Kristen Homer, "Salty" Riggs, Abby Peters, Mark Gartzman, and Lee Shuey spoke during Public Input.

F. Close Public Hearing –7:52 pm

Commission took a brief recess at 7:52 pm and returned at 8:00 pm.

G. Commissioner Discussion –

H. Commission Recommendation –

Motion to continue until the next regular meeting on November 27th made by Vice-Chair Bomer, Seconded by Commissioner Kriebel.

Voting Yea: Chairman Follet, Vice-Chair Bomer, Commissioner Kriebel, Commissioner Dockery, Commissioner Walker, Commissioner Derwingson, Alternate Commissioner Bush

THE MOTION PASSED.

B: Approval of a Major Subdivision to subdivide the above-described property into 12 residential lots, one (1) lot for a laundromat and one (1) lot for the HOA maintained parking lot.

Motion to continue until the next regular meeting on November 27th made by Vice-Chair Bomer, Seconded by Commissioner Walker.

Voting Yea: Chairman Follet, Vice-Chair Bomer, Commissioner Kriebel, Commissioner Dockery, Commissioner Kriebel, Commissioner Derwingson, Alternate Commissioner Bush

THE MOTION PASSED.

UPDATES: Community Development Director Almquist provided updates.

COMMISSIONERS' COMMENTS

ADJOURN With no further business to come before the Commission, the meeting adjourned at 8:46 p.m



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

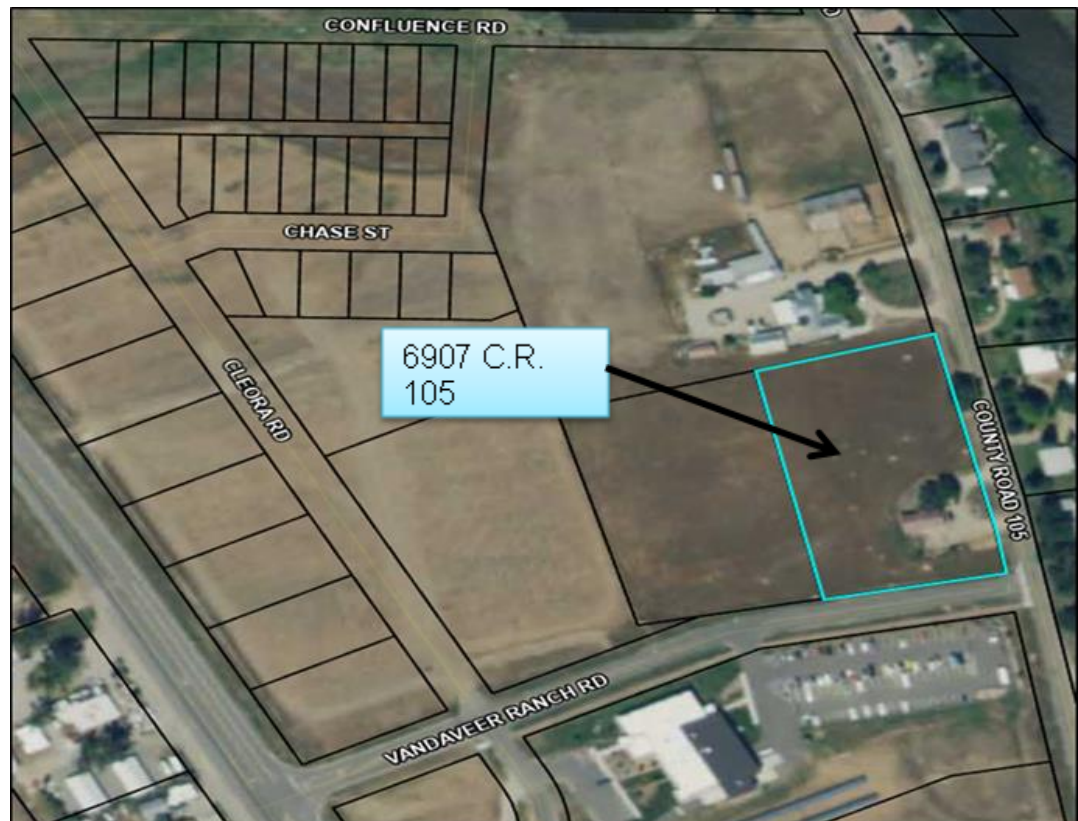
ITEM

Ordinance 2023-18: Second reading and Public Hearing on proposed zoning of High Density Residential (R-3) for the Flour Mill Annexation.

BACKGROUND

Following approval of the Flour Mill Annexation of the two (2) acre property into the City of Salida, the applicant Biker Baker LLC, represented by Rob Gartzman has requested a designation of the High Density Residential (R-3) zone district. The area annexed must be brought under the municipality's zoning ordinance within 90 days from the effective date of the annexation ordinance.

The property is located along County Road 105 and Vandaveer Ranch Road, as shown on the map below.



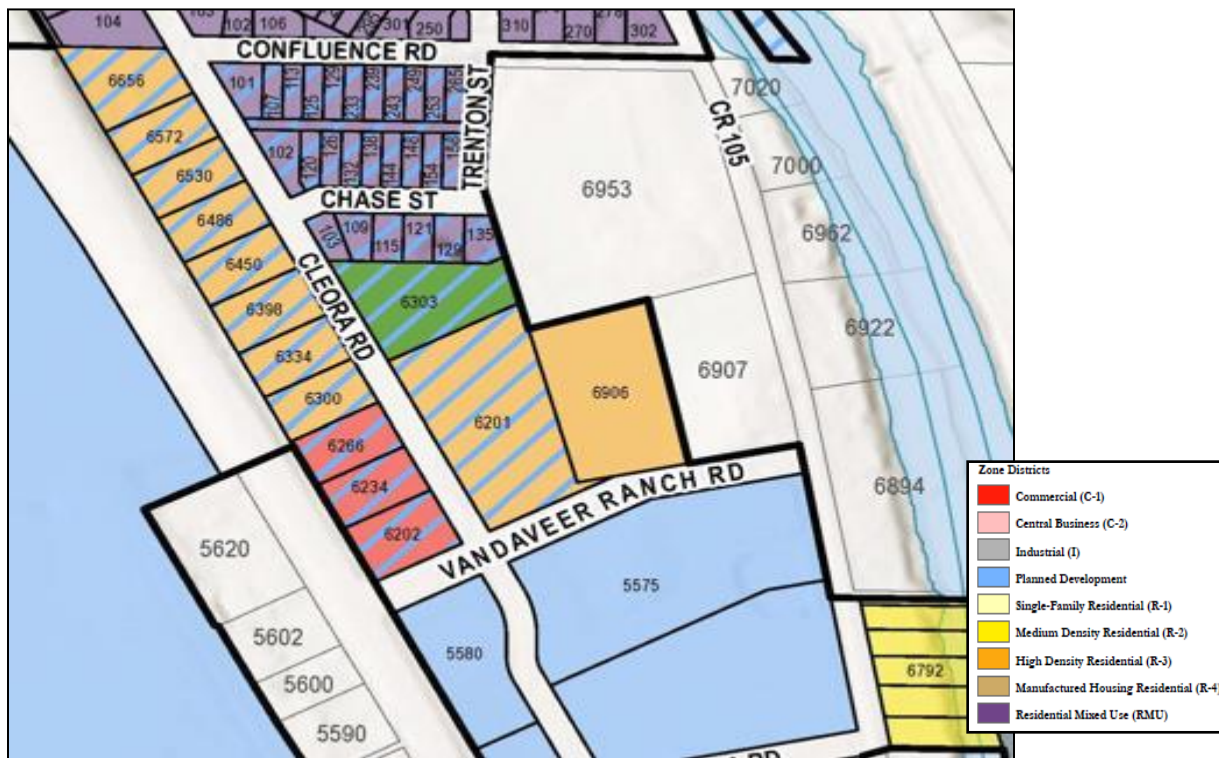
A complete legal description is shown as exhibit A with the annexation application.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

Surrounding Land Use and Zoning: The site is currently zoned RES (Residential Zone District) in Chaffee County. The properties to the north and east remain in Chaffee County and are also zoned RES. The properties to the west are within the city limits and are zoned High Density Residential (R-3) and the properties to the south are part of the Vandaveer Ranch Planned Development.



REVIEW STANDARDS FOR MAP AMENDMENTS (Section 16-4-210):

- Consistent with Comprehensive Plan. The proposed amendment shall be consistent with the Comprehensive Plan.
 - The Comprehensive Plan includes the goals that new projects should complement the neighborhood's mass and scale; be focused within the Municipal Services Area (MSA) and be developed at maximum densities to make the best use of available infrastructure.
 - The zoning of R-3 would be consistent with the zoning found in the adjacent properties and would continue the regular pattern of zone district application.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

2. Consistency with Purpose of Zone District. The proposed amendment shall be consistent with the purpose of the zone district to which the property is to be designated.
 - Per the land use code, the purpose of the High-Density Residential (R-3) zone district is to provide for relatively high-density duplex and multi-family residential areas, including primarily triplex, townhouse and apartment uses. Complementary land uses may also include such supporting land uses as parks, schools, churches, home occupations or day care, amongst other uses.
 - The 6907 C.R. 105 property has a single-family manufactured home which will be removed prior to development of the site.
 - The owner has submitted applications for a Planned Development Overlay and Major Subdivision for the development of the property. At their October 23rd meeting, the Planning Commission continued the public hearing on the Planned Development and Major Subdivision to November 27, 2023. Those two matters will therefore be forthcoming in the form of a subsequent public hearing in front of City Council in the near future.
 - With the inclusionary housing density incentive this property is allowed 41 units of density within the R-3 zone district.
 - Staff supports the request to zone the subject property as High-Density Residential (R-3).
3. Compatibility with Surrounding Zone Districts and Uses. The development permitted by the proposed amendment shall be compatible with surrounding zone districts, land uses and neighborhood character.
 - The zoning classification of High Density (R-3) is consistent and compatible with the zoning of the adjoining 6906 Vandaveer Ranch Road property.
4. Changed Conditions or Errors. The applicant shall demonstrate that conditions affecting the subject parcel or the surrounding neighborhood have changed, or that due to incorrect assumptions or conclusions about the property, one (1) or more errors in the boundaries shown on the Official Zoning Map have occurred.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

- The proposed zoning is occurring because of the requirement to zone the property when annexed into the City in accordance with Section 16-4-50 of the Land Use and Development Code.

PLANNING COMMISSION RECOMMENDATION

A public hearing with the Planning Commission was held October 23, 2023, and the Commission recommended Council approve the proposed zoning of the site as High Density Residential (R-3).

STAFF RECOMMENDATION

Staff recommends approval of the proposed zoning of the Flour Mill Annexation site as High Density Residential (R-3).

SUGGESTED MOTION

A council person should make the motion to “approve Ordinance 2023-18 an ordinance of the City of Salida, Colorado zoning certain real property known as the Flour Mill Annexation as High Density residential (R-3).”

Attachments: Ordinance 2023-18
Application materials

**CITY OF SALIDA, COLORADO
ORDINANCE NO. 18
SERIES OF 2023**

**AN ORDINANCE OF THE CITY OF SALIDA, COLORADO, ZONING CERTAIN REAL
PROPERTY KNOWN AS THE FLOUR MILL ANNEXATION AS HIGH DENSITY
RESIDENTIAL (R-3) ZONE DISTRICT**

WHEREAS, on September 13, 2023, representatives of the Flour Mill, filed a General Development Application (the “Petition”) to commence proceedings to annex to the City of Salida (the “City”) a certain unincorporated tract of land comprised of 2 acres located at 6907 C.R. 105 in the County of Chaffee, State of Colorado (the “Property”), and being more particularly described on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, by Ordinance No.17, Series of 2023 the City of Salida annexed the Flour Mill Annexation to the City; and;

WHEREAS, Petitioner has filed an application to zone the Property within the High Density Residential (R-3) zone district, and on October 23, 2023 the City of Salida Planning Commission considered the zoning application for the Property at a duly noticed public hearing and recommended that the City Council zone it as High Density Residential (R-3); and

WHEREAS, as required by the Salida Municipal Code, the public hearing on the zoning application for the Flour Mill Annexation will be held on December 5, 2023 at a regularly scheduled meeting of the Salida City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

1. The aforementioned recitals are hereby fully incorporated herein.
2. The Property described on Exhibit A is hereby zoned High Density Residential.
3. Promptly following adoption of this Ordinance, the City Administrator shall cause the terms of this Ordinance to be incorporated into the Official Zoning Map of the City pursuant to Section 16-4-210 of the Salida Municipal Code. The signed original copy of the Zoning Map shall be filed with the City Clerk. The Clerk shall also record a certified copy of this Ordinance with the Chaffee County Clerk and Recorder. The City staff is further directed to comply with all provisions of the Salida Land Use Regulations, SMC §16-1-10, et seq., to implement the provisions of this Ordinance.

INTRODUCED ON FIRST READING, on November 21, 2023, ADOPTED and set for second reading and public hearing on the 5th day of December, 2023.

CITY OF SALIDA, COLORADO

Dan Shore, Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 2023, and BY TITLE ONLY, after final adoption on the ____ day of _____, 2023.

City Clerk/Deputy City Clerk

EXHIBIT A

**LEGAL DESCRIPTION
OF A
TRACT OF LAND TO BE ANNEXED**

A PARCEL OF LAND LOCATED WITHIN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 49 NORTH, RANGE 9 EAST OF THE NEW MEXICO PRINCIPAL MERIDIAN, CHAFFEE COUNTY, COLORADO, BEING LOT 3 OF THE TRIPLE T RANCH MINOR SUBDIVISION AND A PORTION OF CHAFFEE COUNTY ROAD NO. 105, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT LOCATED AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD AND THE WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, SAID POINT BEING MARKED BY A 1½" ALUMINUM CAP STAMPED "LS 16117" AND BEING THE POINT OF BEGINNING;

THENCE SOUTH 78°47'57" WEST ALONG SAID NORTH RIGHT-OF-WAY OF VANDAVEER RANCH ROAD, A DISTANCE OF 221.72 FEET;
 THENCE NORTH 12°14'41" WEST, A DISTANCE OF 383.06 FEET;
 THENCE NORTH 73°55'54" EAST, A DISTANCE OF 221.81 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
 THENCE NORTH 12°48'58" WEST A DISTANCE OF 60.18 FEET;
 THENCE NORTH 13°53'16" WEST A DISTANCE OF 268.86 FEET;
 THENCE NORTHWESTERLY AND DEFLECTING TO THE LEFT, A DISTANCE OF 169.14 FEET ALONG THE ARC OF A CURVE HAVING A RADIUS OF 820.00 FEET, A DELTA ANGLE OF 11°49'07", A CHORD LENGTH OF 168.84 FEET AND A CHORD BEARING OF NORTH 19°46'48" WEST;
 THENCE NORTH 25°25'46" WEST A DISTANCE OF 16.62 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105;
 THENCE SOUTH 88°48'25" EAST A DISTANCE OF 55.88 FEET TO THE EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;
 THENCE SOUTH 17°20'35" EAST A DISTANCE OF 299.74 FEET;
 THENCE SOUTH 14°18'14" EAST A DISTANCE OF 237.32 FEET;
 THENCE SOUTH 11°01'56" EAST A DISTANCE OF 251.91 FEET;
 THENCE SOUTH 10°39'25" EAST A DISTANCE OF 180.73 FEET, THIS AND THE PREVIOUS 3 COURSES ARE ALONG SAID EASTERN RIGHT-OF-WAY OF SAID CHAFFEE COUNTY ROAD NO. 105;
 THENCE SOUTH 78°47'57" WEST A DISTANCE OF 47.24 FEET TO SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105 ;
 THENCE NORTH 09°55'44" WEST ALONG SAID WESTERN RIGHT-OF-WAY OF CHAFFEE COUNTY ROAD NO. 105, A DISTANCE OF 66.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.10 ACRES.

Also known by the following address:

6907 County Road 105, Salida, CO 81201
 And assessor's schedule or parcel number: 380709100072



GENERAL DEVELOPMENT APPLICATION

448 East First Street, Suite 112

Salida, CO 81201

Phone: 719-530-2626 Fax: 719-539-5271

Email: planning@cityofsalida.com

1. TYPE OF APPLICATION (Check-off as appropriate)

- | | |
|--|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Administrative Review:
(Type) _____ |
| <input type="checkbox"/> Pre-Annexation Agreement | |
| <input type="checkbox"/> Appeal Application (Interpretation) | <input type="checkbox"/> Limited Impact Review:
(Type) _____ |
| <input type="checkbox"/> Certificate of Approval | |
| <input type="checkbox"/> Creative Sign Permit | <input checked="" type="checkbox"/> Major Impact Review:
(Type) <u>Zoning</u> |
| <input type="checkbox"/> Historic Landmark/District | |
| <input type="checkbox"/> License to Encroach | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Text Amendment to Land Use Code | |
| <input type="checkbox"/> Watershed Protection Permit | |
| <input type="checkbox"/> Conditional Use | |

2. GENERAL DATA (To be completed by the applicant)

A. Applicant Information

Name of Applicant: Bbsc Baker Holdings / Rob Gertzen

Mailing Address: 815 G St Salida CO 81201

Telephone Number: 303 903 4620 FAX: _____

Email Address: rob@sweetiesinsalida.com

Power of Attorney/ Authorized Representative: _____
(Provide a letter authorizing agent to represent you, include representative's name, street and mailing address, telephone number, and FAX)

B. Site Data

Name of Development: The Flour Mill

Street Address: 6907 CE 105 Salida CO 81201

Legal Description: Lot 3 Block _____ Subdivision Triple T Minor Subdivision (attach description)

Disclosure of Ownership: List all owners' names, mortgages, liens, easements, judgments, contracts and agreements that run with the land. (May be in the form of a current certificate from a title insurance company, deed, ownership and encumbrance report, attorney's opinion, or other documentation acceptable to the City Attorney)

I certify that I have read the application form and that the information and exhibits herewith submitted are true and correct to the best of my knowledge.

Signature of applicant/agent _____ Date _____

Signature of property owner [Signature] Date 8/31/23

Zoning Application Narrative

We are applying for our annexed property to be zoned with an R-3 designation. The other properties along Vandaveer Ranch Road have already been given R-3 zoning and this would allow for the zoning to be consistent throughout the street and neighborhood. We are also applying for a high-density development, as a Planned Development.



Rob Gartzman



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

ITEM

Resolution 2023-51: Approving the Findings of Fact of the Flour Mill Annexation.

BACKGROUND

The proposed actions for the Flour Mill Annexation are as follows:

Proposed Action	Planning Commission Recommendation	City Council First Reading	City Council Final Action
Findings of Fact Resolution 2023-51			12/05/2023
Annexation Ordinance 2023-17	10/23/2023	11/21/2023	12/05/2023
Annexation Agreement Resolution (01/02/2024)			
Zoning Ordinance 2023-18	10/23/2023	11/21/2023	12/05/2023

State statutes require cities to approve findings that the proposed annexation has met the requirements of the State of Colorado. The proposed annexation consists of 2 acres located at 6907 County Road 105, and including portions County Road 105. The findings include:

- Notice in the paper for four consecutive weeks: the proposed annexation was published in the Mountain Mail on November 3, 2023, November 10, 2023, November 17, 2023 and November 24, 2023.
- Mail notice by registered mail to County Clerk, County Attorney, Salida School District, HRRMC Hospital District, Upper Arkansas Water Conservancy District, Salida Regional Library, Colorado Mountain College-Salida District and South Arkansas Fire Protection District. The letters were mailed on October 30, 2023.
- A public hearing was held on the annexation on December 5, 2023 and determined the area to be annexed complies with state statutes including:
 - That not less than one-sixth of the perimeter of the area is adjacent to Salida's boundary;
 - The property has not been divided since starting the annexation;
 - No other annexation proceedings including the property have been started by another municipality;
 - The annexation will not cause the property to be detached from the school district; and
 - The annexation is not three miles beyond our municipality and there is a Three Mile Plan in place.



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Kristi Jefferson - Senior Planner	December 5, 2023

STAFF RECOMMENDATION

All of the findings have been met and staff recommends the Council adopt Resolution 2023-51.

SUGGESTED MOTION

A council person should make the motion to “adopt Resolution 2023-51 approving the findings of facts for the Flour Mill Annexation.”

Attachment:

Resolution 2023-51

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 51
SERIES OF 2023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
MAKING FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS CONCERNING
THE FLOUR MILL ANNEXATION.**

WHEREAS, on September 13, 2023, representatives of the Flour Mill Annexation, filed a General Development Application (the “Petition”) to commence proceedings to annex to the City of Salida (the “City”) a certain unincorporated tract of land comprised of 2 acres located at 6907 C.R. 105 in the County of Chaffee, State of Colorado (the “Property”), and being more particularly described on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the City Council by Resolution 46, Series of 2023, found that the Petition is in substantial compliance with § 31-12-107(1) of the Colorado Revised Statutes; and

WHEREAS, the City Clerk has provided notice of public hearing on the proposed annexation by publication once per week for four successive weeks and by registered mail to the Clerk of the Board of County Commissioners, the County Attorney, the school district and to any special district having territory in the area to be annexed; and

WHEREAS, the City Council has completed a public hearing on December 5, 2023 to determine of the proposed annexation complies with Article II, Section 30 of the Colorado Constitution and Sections 31-12-104 and 105, Colorado Revised Statutes, to establish eligibility for annexation.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA
THAT:**

That the City Council hereby finds and concludes with regard to the annexation of the territory described in Exhibit A attached hereto and incorporated herein, that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the City and because of such contiguity, a community of interest exists between the territory proposed to be annexed and the City; and

BE IT FURTHER RESOLVED:

That the City Council finds and determines that no land held in identical ownership has been divided or included without written consent of the owner thereof; that no annexation proceedings have been commenced by another municipality; that the annexation will not result in the detachment of area from a school district; that the annexation will not result in the extension of a municipal boundary more than three miles; that the City has in place a plan for said three mile area; and that in establishing the boundaries of the area to be annexed the entire width of any street or alley is included with the area annexed.

BE IT FURTHER RESOLVED:

That an election is not required, and no additional terms or conditions are to be imposed upon the area to be annexed.

RESOLVED, APPROVED AND ADOPTED this 5th day of December, 2023.

CITY OF SALIDA, COLORADO

Dan Shore, Mayor

[SEAL]
ATTEST:

City Clerk/Deputy City Clerk

EXHIBIT A

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CONTAINING 3.10 ACRES.

Also known by the following address:

6907 County Road 105, Salida, CO 81201

And assessor's schedule or parcel number: 380709100072



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Finance	Aimee Tihonovich - Finance Director	December 5, 2023

ITEM

Resolution 2023-52, a first amendment to the 2023 budget

BACKGROUND

A budget is a planning tool and it is important to revisit the plan periodically to evaluate for updates. An amendment to the 2023 budget is deemed to be necessary to accommodate several updates as outlined in the attached resolution. Although not required by statute, it seems appropriate to reduce the budget in the Capital Fund to better show the timing of the fire station costs. That project has been rebudgeted in 2024 at the updated costs and only costs planned to be incurred in 2023 have been left in the 2023 budget.

FISCAL NOTE

Not counting the \$10,500,000 decrease in the 2023 spending authorization for the firestation, this amendment increases spending in the 2023 budget by \$2,584,000; of this amount, \$1,400,000 (Poncha Blvd Phase II) is for spending done early to increase efficiency and save costs and will be paid for with future sales tax receipts; \$320,000 is a roll-over of funds budgeted in 2022 but not expended in that year; \$455,000 is spending offset with grant revenue; and the rest (\$409,000) is new spending determined after the budget was adopted.

STAFF RECOMMENDATION

Staff recommends adopting the budget amendment resolution.

SUGGESTED MOTION

After a hearing is held on the Budget Amendment, it is recommended that a City Councilperson make a motion to adopt the resolution to amend the 2023 budget.

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 52
(Series 2023)**

**AN AMENDMENT TO RESOLUTION 2022-50 ESTABLISHING BUDGET AND
APPROPRIATIONS BY FUND FOR THE CITY OF SALIDA OPERATIONS FOR CALENDAR
YEAR 2023**

WHEREAS, City Council adopted Resolution No. 2022-50, dated October 18, 2022 establishing the Budget and appropriations by fund for the City of Salida operations in calendar year 2023; and

WHEREAS, C.R.S. Section 29-1-109 requires that changes to the budget due to any transfer, supplemental appropriation, or revised appropriation be made by ordinance or resolution; and

WHEREAS, this Council has determined an amendment to the 2023 budget and appropriations for the General Fund in the amount of \$1,559,000 is necessary to account for a \$1,200,000 interfund loan to the Street fund to be fully paid back to the General Fund no later than December 31, 2025 for completing Phase II of the Poncha Blvd project; and to account for \$359,000 in increased cost associated with increasing the minimum wage paid to part time and seasonal employees at the aquatic center and the SteamPlant. Part of the increased pay cost is also attributed to the need to increase the number of lifeguards on duty at the aquatic center to meet best practice safety standards. This amendment will be funded partially with higher than anticipated recreation fee income and with reserves; and

WHEREAS, this Council has determined an amendment to the 2023 budget and appropriations for the Streets Fund in the amount of \$1,720,000 is necessary in order to account for a \$1,400,000 change order to the Poncha Blvd Phase II project approved by Council on June 20, 2023 which will finish the project sooner than originally anticipated; and to account for purchasing two plow/dump trucks with sanders in the amount of \$320,000 such purchase was originally anticipated in the 2022 budget but was not accomplished timely due to supply chain issues. This amendment will be offset with an interfund loan from the general fund and with reserves; and

WHEREAS, this Council has determined an amendment to the 2023 budget and appropriations for the Capital Improvement Projects (CIP) Fund decreasing spending in the amount of \$10,500,000 is warranted in order to better represent 2023 spending for the Firehouse project. This amendment will be offset with an equal reduction in the amount anticipated from financing draws on Certificates of Participation issued for this purpose; and

WHEREAS, this council has determined an amendment to the 2023 budget and appropriations for the Housing Fund in the amount of \$455,000 is necessary to account for work associated with the 1st and D Street condemnation and redevelopment plans, such costs to be offset with grant revenue not anticipated at the time of budget adoption; and to account for \$50,000 in spending associated with the continuation of the "Open Doors" program implemented in 2022 such costs to be offset by fees charged. Anticipated Revenue for the Short Term Rental (STR) tax (\$646,000) and License Fees (\$227,000) as well as associated

investment earnings (\$5,000) are included as increases to the Housing Fund revenues such taxes approved by citizens after the 2023 budget was adopted.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Salida, Colorado that the budgets and appropriations by fund for Calendar Year 2023 be amended as follows:

Fund	Original Budget Reso No. 2022-50	Amendment	Amended Budget & Appropriation
Estimated Revenues:			
General Fund	\$ 11,604,251	\$ 147,000	\$ 11,751,251
Water Fund	\$ 3,240,027		\$ 3,240,027
Wastewater Fund	\$ 2,663,899		\$ 2,663,899
Conservation Trust Fund	\$ 74,000		\$ 74,000
Streets Fund	\$ 6,740,327	\$ 1,200,000	\$ 7,940,327
Capital Improvement Fund	\$ 16,706,267	\$ (10,500,000)	\$ 6,206,267
Economic Development Fund	\$ 191,317		\$ 191,317
Lodging Tax Fund	\$ 450,000		\$ 450,000
Housing Fund	\$ 380,000	\$ 1,638,000	\$ 2,018,000
	<u>\$ 42,050,088</u>	<u>\$ (7,515,000)</u>	<u>\$ 34,535,088</u>
Estimated Expenditures:			
General Fund	\$ 14,132,074	\$ 1,559,000	\$ 15,691,074
Water Fund	\$ 5,000,323		\$ 5,000,323
Wastewater Fund	\$ 2,662,264		\$ 2,662,264
Conservation Trust Fund	\$ 74,000		\$ 74,000
Streets Fund	\$ 7,607,898	\$ 1,720,000	\$ 9,327,898
Capital Improvement Fund	\$ 16,707,000	\$ (10,500,000)	\$ 6,207,000
Economic Development Fund	\$ 291,300		\$ 291,300
Lodging Tax Fund	\$ 450,000		\$ 450,000
Housing Fund	\$ 385,000	\$ 505,000	\$ 890,000
	<u>\$ 47,309,859</u>	<u>\$ (6,716,000)</u>	<u>\$ 40,593,859</u>

APPROVED AND PASSED this 5th day of December, 2023 by a vote of _____ to _____.

CITY OF SALIDA, COLORADO

By: _____
Dan Shore, Mayor

ATTEST:

City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Bill Almquist - Community Development Director	December 5, 2023

ITEM

Resolution 2023-53: A Resolution of the City Council of the City of Salida, Colorado, Supporting Applications for State and Federal Grant Funds to Assist in the Implementation of Infrastructure for the South Ark Neighborhood and Committing Local Matching Funds

BACKGROUND

Following the master planning process for the South Ark Neighborhood, it is estimated that Phase I of the infrastructure development will cost approximately \$7.1 million (out of a total cost of approximately \$15 million for all phases). This first phase of infrastructure development would allow for the development of between approximately 150 and 200 homes (with a minimum of 50% of them being deed-restricted affordable to the local workforce). The \$7.1 million price tag, however, will not easily be footed by the City, esp. given other funding obligations in the coming years. Therefore, staff is pursuing a variety of additional funding avenues, including teaming up with other public partners and applying for grant funds that will help pay for public infrastructure. These types of grants are relatively rare, but have recently been advertised out of state and federal funding. Staff intends to apply for two separate infrastructure grants—the More Housing Now Initiative (max. award of \$2 million) and the Strong Communities grant (max. \$5 million), both run through the Colorado Department of Local Affairs (DOLA).

The required local match for the More Housing Now Initiative is 25% while the required local match for the Strong Communities Grant is 20%. To the best of staff's knowledge, the grants can also be used as matching funds to each other. At this point, staff is requesting that Council approve this resolution supporting applications for both of these grants, which are prerequisites of the applications, and commit to a maximum amount (at this time) of \$1.25 million, which represents 25% of \$5 million, which would leave a little bit of buffer in the case that up to \$5 million is received. If additional funds are required and not able to be met by partner contributions, staff will return for a revised request.

SUGGESTED MOTION

A council person should make the motion to “approve Resolution 2023-53 A Resolution of the City Council of the City of Salida, Colorado, Supporting Applications for State and Federal Grant Funds to Assist in the Implementation of Infrastructure for the South Ark Neighborhood and Committing Local Matching Funds”

Attachments: Ordinance 2023-53

CITY OF SALIDA, COLORADO
RESOLUTION NO. 53
(Series of 2023)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, SUPPORTING APPLICATIONS FOR STATE AND FEDERAL GRANT FUNDS TO ASSIST IN THE IMPLEMENTATION OF INFRASTRUCTURE FOR THE SOUTH ARK NEIGHBORHOOD AND COMMITTING LOCAL MATCHING FUNDS.

WHEREAS, housing, and especially affordable housing, is of paramount need to the community and the local Chaffee County workforce; and

WHEREAS, the City recently conducted a master planning process for the South Ark Neighborhood and is in support of the preferred master plan for the area to have up to 400 units constructed, including a minimum of 50% of the units legally-restricted as affordable; and

WHEREAS, buildout of the South Ark Neighborhood requires basic infrastructure of water, sewer, roads, and other utilities; and

WHEREAS, such infrastructure is estimated to cost in the vicinity of \$15 million, with the first phase of that infrastructure costing approximately \$7.1 million; and

WHEREAS, Phase I of the infrastructure will allow for development of approximately 150 – 200 of the total units, and the public provision of this infrastructure will greatly assist with creating the affordability of homes in the neighborhood; and

WHEREAS, the Colorado Department of Local Affairs awards and administers state and federal monies to partially fund local government infrastructure and housing projects through the Strong Communities Grant and the More Housing Now Initiative Grant, which may be applied in combination; and

WHEREAS, local matching fund requirements equal twenty percent (20%) of project cost for the Strong Communities and twenty-five percent (25%) for More Housing Now, and the funds from one award may be used to satisfy the matching requirements of the other, and those local matching funds are estimated to be up to \$1.25 million, potentially reduced by contributions from other public partner contributions, for Phase I of the project costing \$7.1 million overall; and

WHEREAS, 32 percent of sales tax goes to the Street Improvement Funds and 8 percent of sales tax goes to Capital Improvement Project Funds for projects such as those proposed for these grant applications, and short-term rental taxes and inclusionary housing fees-in-lieu go into the Housing Fund, and said Funds would be appropriate sources for required local matches.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO AUTHORIZING THE APPLICATIONS FOR STATE AND FEDERAL FUNDS TO SUPPORT THE IMPLEMENTATION OF INFRASTRUCTURE FOR THE SOUTH ARK NEIGHBORHOOD AND COMMITTING LOCAL MATCHING FUNDS.

RESOLVED, APPROVED AND ADOPTED this 5th day of December, 2023.

CITY OF SALIDA, COLORADO

Dan Shore, Mayor

[SEAL]

ATTEST:

City Clerk/Deputy City Clerk



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon, Interim City Administrator	December 5, 2023

ITEM

Ordinance 2023-19, Approving an Option to Ground Lease Real Property, located at 102 D Street and 233 E. First Street, from the City of Salida to Artspace Projects, Inc.

BACKGROUND

On June 14, 2022, a Chaffee County District Court Final Rule & Order granted the City fee simple interest in Property (known as 102 D Street and 233 E. First Street, Salida) via eminent domain “to construct and maintain affordable housing and related improvements, and for other municipal uses.”

This Property is located in downtown Salida and prime for redevelopment as workforce housing for the community.

The provision of safe, affordable housing in Salida is a critical need, and the 2022 Chaffee County Housing Needs Assessment indicated that 1,105 new homes are needed for the local workforce by 2027, with 415 new rental units needed in Salida alone.

The City, in partnership with Artspace, a non-profit housing organization, identified in a Feasibility Study and Needs Survey that the community has goals for Preserving Affordability, Supporting Rural Creatives and Art Forms, Supporting a Diverse Cultural Community, and Anchoring a Creative District with new housing opportunities in downtown Salida.

In furtherance of these goals, the City Council wishes to ground lease the Property to Artspace for the purposes of developing, constructing, renovating and operating, in accordance with the Space to Create Colorado program, an affordable live/work project for individuals and their families, consisting of approximately nineteen (19) apartments and related uses.

FISCAL NOTE:

STAFF RECOMMENDATION City staff recommends approval of Ordinance No. 2023-19, Approving an Option to Ground Lease Real Property, located at 102 D Street and 233 E. First Street, from the City of Salida to Artspace Projects, Inc.

SUGGESTED MOTION



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon, Interim City Administrator	December 5, 2023

A City Councilmember should state, "I move to approve Ordinance 2023-19 on first reading and set the second reading and public hearing for December 19, 2023."

CITY OF SALIDA, COLORADO
ORDINANCE NO. 19
(Series of 2023)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
 APPROVING AN OPTION TO GROUND LEASE REAL PROPERTY, LOCATED AT
 102 D STREET AND 233 E. FIRST STREET, FROM THE CITY OF SALIDA TO
 ARTSPACE PROJECTS, INC.**

WHEREAS, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the State of Colorado; and

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-401, the City, acting by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

WHEREAS, pursuant to Colorado Revised Statutes § 31-15-713, the Council also possesses the authority to approve leases of City property for periods in excess of one year by ordinance; and

WHEREAS, the City owns certain real property within the City, located in downtown Salida, prime for redevelopment as workforce housing for the community, commonly known as 102 D Street and 233 E. First Street, Salida, Colorado 81201, and more specifically described and referred to within the Option to Ground Lease Agreement, attached hereto as **Exhibit A** (the “Property”); and

WHEREAS, pursuant to a Final Rule & Order filed by the Chaffee County District Court, dated June 14, 2022, the City was granted fee simple interest in the Property via eminent domain “to construct and maintain affordable housing and related improvements, and for other municipal uses,” and

WHEREAS, the provision of safe, affordable housing in Salida is a critical need, and whereas the 2022 Chaffee County Housing Needs Assessment indicated that 1,105 new homes are needed for the local workforce by 2027, with 415 new rental units needed in Salida alone; and

WHEREAS, the City, in partnership with Artspace, a non-profit housing organization, identified in a Feasibility Study and Needs Survey that the community has goals for Preserving Affordability, Supporting Rural Creatives and Art Forms, Supporting a Diverse Cultural Community, and Anchoring a Creative District with new housing opportunities in downtown Salida; and

WHEREAS, in furtherance of these goals, the City wishes to ground lease the Property to Artspace for the purposes of developing, constructing, renovating and operating, in accordance with the Space to Create Colorado program, an affordable live/work project for individuals and their families, consisting of approximately nineteen (19) apartments and related uses; and

WHEREAS, the City Council therefore desires to enter into the Option to Ground Lease Agreement with Artspace Projects, Inc., attached hereto as **Exhibit A**, finding that the lease of the Property will benefit the City, its workforce, its residents, its businesses, its customers and its Creative Art District.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO:

Section 1. The City Council incorporates the foregoing recitals as conclusions, facts, determinations and findings by the City Council.

Section 2. Option to Ground Lease Approved. Pursuant to Colorado Revised Statutes § 31-15-713, the City Council hereby accepts and approves the Option to Ground Lease Agreement between the City of Salida and Artspace Projects, Inc., attached hereto as **Exhibit A**.

Section 3. Execution of Option to Ground Lease Agreement. The City Council authorizes the Mayor on behalf of the City to execute the Option to Ground Lease Agreement, attached hereto as **Exhibit A**, and to execute and deliver any and all other documents reasonably necessary or convenient to effectuated the intent of the Option to Ground Lease Agreement, in accordance with the terms of this Ordinance.

Section 4. Severability. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING, on December 5, 2023, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ____ day of _____, 2023, and set for second reading and public hearing on the 19th day of December, 2023.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 19th day of December, 2023.

City of Salida

Mayor Dan Shore

ATTEST:

City Clerk Erin Kelley

EXHIBIT A

Option to Ground Lease Agreement between City of Salida and Artspace Projects, Inc.

OPTION TO GROUND LEASE

THIS OPTION TO GROUND LEASE (the “Agreement”) is made and entered into this ____ day of _____, 2023 (the “Effective Date”), by and between the **CITY OF SALIDA, COLORADO** (hereinafter the “City”), a statutory city existing under the laws of the State of Colorado having an address at 448 E 1st Street, Salida, Colorado 81201, and **ARTSPACE PROJECTS, INC.** (hereinafter “API”), a Minnesota nonprofit corporation having an address at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401. Hereinafter the City and API shall individually be referred to as “Party” or collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, pursuant to that certain Final Rule & Order filed by the District Court, Chaffee County, Colorado dated June 14, 2022 (the “Order”), which Order is attached hereto as Exhibit A, the City is the owner of certain real property more particularly described on Exhibit B (the “Property”); and

WHEREAS, API intends to ground lease the Property and develop at the Property, in accordance with the Space to Create Colorado program, an affordable live/work project for individuals and their families, consisting of, but not necessarily limited to, approximately nineteen (19) apartments and related uses (the “Project”), which Project shall be funded, in part, with use financing necessary for the development and operation of the Project; and

WHEREAS, API has requested, and the City has agreed to grant API an option to ground lease the Property for purposes of developing the Project on the Property, all in accordance with the terms set forth herein as well as in compliance with all local, State and federal laws, rules, regulations and requirements, as amended from time to time.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), and the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings ascribed thereto:
 - a. Affiliate Person shall mean an individual or entity controlled directly or indirectly by API, which will own the Project in lieu of API.
 - b. CHFA shall mean the Colorado Housing and Finance Authority.
 - c. Commencement Date shall mean the date API delivers written notice to the City of the exercise of the Option.
 - d. DOLA shall mean the Colorado Department of Local Affairs

e. Encumbrances shall mean all liens, security, interests, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, covenants, conditions and any other matters affecting title to the Property.

f. Environment shall mean water or water vapor, land surface or subsurface, air, wildlife, biota and all other natural resources.

g. Environmental Law shall mean any applicable, or relevant and appropriate, statutes, ordinances, by-laws, directives or other written, published laws, any written, published rules or regulations, orders, and any licenses, permits, orders, judgments, notices or other requirements issued pursuant thereto, enacted, promulgated or issued by any Governmental Authority, in effect as of the Effective Date, relating to pollution or protection of public health or the Environment from Hazardous Materials (including, but not limited to, any air, surface water, groundwater, land surface or sub-surface strata, whether outside, inside or under any structure), or to the identification, reporting, generation, manufacture, processing, distribution, use, handling, treatment, storage, disposal, transporting, presence, Release or threatened Release, of any Hazardous Substances. Without limiting the generality of the foregoing, Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and all analogous laws enacted, promulgated or lawfully issued by any Governmental Authority, but shall exclude the Occupational Safety and Health Act, as amended, and similar state laws.

h. Governmental Authority shall mean any federal, state or local governmental court, agency or other entity, body, organization or group exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative government function.

i. Ground Lease shall have the meaning provided in Section 3.

j. Hazardous Material shall mean any petroleum, PCBs, asbestos, chemical substance, waste, pollutant or contaminant, as defined in, or regulated by, any Environmental Law or as determined by any Governmental Authority.

k. Option shall have the meaning provided in Section 2.

l. Option Term shall mean the period from the Effective Date to the Termination Date.

m. Permitted Encumbrances shall mean the Encumbrances listed on the schedule of exceptions to be contained in the leasehold title policy to be dated as of the Commencement Date, or as described as a Permitted Encumbrance in this Agreement.

n. Person shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

o. Project shall have the meaning provided in the Recitals.

p. Property shall have the meaning provided in the Recitals.

q. Taking shall mean any taking or pending or threatened taking, in condemnation or under the right of eminent domain of the Property or any portion thereof.

r. Termination Date shall have the meaning provided in Section 2.

2. Option to Ground Lease: The City hereby grants to API an exclusive option to ground lease the Property (the “**Option**”). The Option shall remain in full force and effect and may be exercised by API at any time until the first to occur of (i) the closing of the primary construction financing (excluding predevelopment financing) for the Project or (ii) December 31, 2025 (hereinafter referred to as the “**Termination Date**”). API has the right to extend the date in item (ii) above by twelve (12) months upon securing financing necessary to complete the Project.

3. Terms and Conditions of Lease: The City and API shall enter into a ground lease for the Property in a form substantially the same as the form attached hereto as Exhibit C, subject to changes required by any lender or funder of the Project and approved by the City, which approval shall not be unreasonably withheld, conditioned, delayed or denied (the “**Ground Lease**”) no later than the Termination Date. On the Commencement Date the mutually acceptable finalized version of the Ground Lease shall take effect. The parties shall negotiate the Ground Lease in good faith. If, despite reasonable efforts, the Parties are unable to negotiate a Ground Lease that is acceptable to both Parties, then this Option and all obligations of the Parties shall terminate on the Termination Date. While not specific to this Option, API understands that the City may be interested in additional terms for the Ground Lease, including but not limited to: local preference in procurement of goods and services as is reasonable for the construction of any future improvements; the City’s participation in design, architecture, financing and construction of future improvements; the City’s interest in any non-residential space or other City-funded improvements; the final term of the lease and the timing of project construction; lease renewal options.

4. Ground Lease Rent and Term: The rent payable under the Ground Lease is anticipated to be ONE DOLLAR (\$1.00) per year. The term of the Ground Lease shall be no less than thirty-five (35) years from the Commencement Date with two (2) five (5) year extensions. The Ground Lease’s rent and term shall ultimately be decided in consultation with the any lender or funder of the Project and the City of Salida. Notwithstanding the foregoing, this Agreement and the terms contained herein shall not constitute a multiyear fiscal obligation for the City.

5. Limitations on City’s Contribution to the Project. The Parties recognize and acknowledge that the City acquired the Property as a result of substantial expenditure of public funds, and that the City’s contribution to the Project is the value of the Property that is being provided for use of the Project at little cost to API in order for the City to receive the benefits

described above and for the community. The Parties do not contemplate further contributions from the City other than those payments made in accordance with that certain Professional Services Agreement between the City and API dated May 16, 2023. However, the City may, in its sole discretion, provide further contributions, funds, donations, or outlay of funds or in-kind services to assist in the development of the Project. API represents and warrants that it believes it can provide or acquire all necessary funding for the Project, other than for acquisition of the Property, from sources other than the City. The Parties acknowledge that some sources of financing may require the City to participate in the application, receipt and deployment of such funds.

6. Restrictive Covenants. The Parties acknowledge and agree that API will be permitted to record restrictive covenants (as contained in certain land use restriction agreement(s) required by CHFA, DOLA and such other applicable Persons as may be necessary to develop the Project (the “**LURA**”)) on the land and all improvements and that the LURA shall be binding on the City and any successor in interest to the City’s interest in the Property. The Parties further acknowledge and agree that upon the termination of the LURA by foreclosure or deed in lieu thereof, the Parties agree not to evict any residential tenants without cause and likewise acknowledge and agree that they will not increase the gross rent for a period of three (3) years.

7. Right to Inspect Property. The Parties acknowledge and agree that this Option is subject to a determination by the API on the desirability of the Property for the Project, including API’s environmental review of the Property. During the Option Term, API may conduct inspections, tests, and studies with respect to the physical and environmental condition of the Property, including all environmental, surveying, engineering, soil borings and other tests with respect to the Property. API and its consultants, agents, engineers, inspectors, contractors, and employees, upon notice to the City, shall be given reasonable access to the Property for the purpose of performing such due diligence.

8. Warranties and Representations of the City. As a material inducement to cause API to enter into this Agreement, the City represents to API that as of the Effective Date, throughout the term of this Agreement and as of the Commencement Date the following are true:

a. The City has full right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Agreement when fully executed will constitute a valid and binding agreement of the City, enforceable against the City according to its terms.

b. The City has title to the Property. The City is not aware of any party that has or shall have any right in, or to acquire the Property. At the Commencement Date, the Property shall be free and clear of all Encumbrances except Permitted Encumbrances.

c. There is no action, suit, proceeding or investigation pending or, to the City’s knowledge, threatened before any Governmental Authority which relates to the Property or the City’s use of the Property.

d. There is no known Taking affecting the Property.

e. The Property is not situated in any area classified by any Governmental Authority as being a “wetland” or “flood-prone.”

f. The City has received no notice from any Governmental Authority of a violation of any requirement of such Governmental Authority with respect to the use or occupation of the Property, including, but not limited to, Environmental Law, zoning, subdivision and other land use requirements, and the City has received no notice and have no knowledge of any violations or investigations relating to any such requirement.

g. The City has received no notice of any default or breach by the City under any covenant, condition, restriction, right of way or easement affecting the Property or any portion thereof, and no such default or breach is known by the City to now exist.

h. There are none, and, without the prior written consent of API, on the Commencement Date will be no service contracts, leases, purchase agreements or rights of first refusal affecting all or any part of the Property and there are and will be no oral or written promises, understandings, agreements or commitments between the City and any third party with respect to the Property.

i. There is no litigation or proceeding pending, or to the City’s knowledge, threatened against or relating to the Property.

j. To the best of the City’s knowledge, the Property is in compliance with, and the City has not been charged with, has not received any notice of and is not under investigation for, failure to comply with any Environmental Law. Neither the City nor, to the best of the City’s knowledge, any prior owners and occupants of the Property have stored, treated, generated, transported, processed, handled, produced or disposed of any Hazardous Materials (except in compliance with applicable Environmental Laws) at the Property. There are no underground storage tanks at the Property of which the City is aware.

k. The Property is presently vacant land not being used for a governmental purpose.

l. The City is a statutory city under the laws of the State of Colorado and pursuant to the provisions of Section 31-15-713, Colorado Revised Statutes, prior to entering into the Ground Lease or this Agreement, the City shall adopt an ordinance authorizing the City to enter into the Ground Lease and this Agreement.

m. The City was granted fee simple interest in the Property via eminent domain by the Order “to construct and maintain affordable housing and related improvements, and for other municipal uses.”

n. The City’s entering into this Agreement and the Ground Lease, and the transferring of a leasehold estate in the Property to API, or its Affiliate, does not and will not violate the Order.

9. Covenants of the City. The City covenants that during the Option Term:

- a. It shall not encumber the Property or enter into any lease or other occupancy agreement with respect thereto without the prior written consent of API.
- b. The City shall, at its sole cost and expense, comply with all notices, orders and requirements issued by any Governmental Authority against or affecting the Property, to the extent such notices, orders and requirements are issued as a result of the City's use or ownership of the Property.
- c. The City, upon knowledge of the same, shall promptly notify API of any material change with respect to the Property, or with respect to any information, representation or warranty heretofore or hereafter furnished by the City to API concerning the Property.
- d. The City shall, upon request, provide API with reasonable access to the Property for the purpose of verifying the City's performance of its obligations hereunder.

10. Warranties and Representations of API. As a material inducement to cause the City to enter into this Agreement, API represents and warrants to the City that as of the Effective Date, throughout the term of this Agreement and as of the Commencement Date:

- a. API has full right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Agreement when fully executed will constitute a valid and binding agreement of API, enforceable against API according to its terms.
- b. API has substantial experience in the financing and development through completion of workforce and affordable housing projects similar to the Project and, further, that API intends to diligently pursue financing and development of the Project through the completion stage.

11. Covenants of API. API covenants that during the Option Term:

- a. API shall work judiciously and in good faith at its sole cost to perform any and all due diligence regarding the historical or current use or uses of the Property.
- b. API shall, upon knowledge of the same, promptly notify the City of any material findings with respect to the Property, or with respect to any representation or warranty heretofore or hereafter furnished by API to the City.
- c. API shall, upon request, provide the City with reasonable satisfactory evidence or proof for the purpose of verifying API's compliance with performance of its obligations hereunder. Failure of API to provide such evidence or proof to the City for a period of twelve (12) consecutive months shall constitute an event of default under this Agreement which entitled the City to terminate the Option.

d. API shall not encumber the Property or enter into any lease or other occupancy agreement with any other person, party, or entity with the express written approval of the City.

12. Notice: All notices under this Agreement, including notice of the exercise of this Option, shall be in writing and shall be sent by certified or registered mail, return receipt requested, Federal Express, or similar private overnight carrier, addressed to the Party for which such notice is intended, at such Party's address set forth below or at such other address as may be provided by such Party to the other Party by notice complying with this Section. All notices sent pursuant to this Section shall be deemed effective when deposited in the mail or delivered to the overnight carrier, as the case may be, addressed as follows:

To the City:	City of Salida, Colorado 448 E 1 st Street, Suite 112 Salida, Colorado 81201 Attn: City Administrator
With a copy to:	Wilson Williams LLP 1314 Main Street, Suite 101 Louisville, Colorado 80027 Attn: Nina P. Williams, Esq.
To API:	Artspace Projects, Inc. 250 Third Avenue North Suite 400 Minneapolis, Minnesota 55401 Attn: President/COO/Sr. VP Properties
With a copy to:	Cannon Heyman & Weiss, LLP 726 Exchange Street, Suite 500 Buffalo, New York 14210 Attn: Steven J. Weiss, Esq.

13. Miscellaneous Provisions.

a. Unless terminated pursuant to its provisions, this Agreement, and all of its agreements, warranties and representations, shall survive the Option Term and commencement of the Ground Lease.

b. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Colorado, without regard to principles of conflict of laws. The Parties agree and consent that venue for purposes of resolving any dispute or controversy relating to this Agreement shall be Chaffee County.

c. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior agreements,

understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

d. No waiver by either Party hereto of any failure or refusal by the other Party hereto to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal by such Party to so comply.

e. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

f. Upon prior written notice to the City, API may assign all of its rights under this Agreement to an Affiliate Person, including, but not limited to, the eventual tenant, in its sole and absolute discretion, without the consent of the City.

g. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs or successors and assigns.

h. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

i. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement.

j. In the event that any one or more of the provisions contained in this Agreement should be found or held to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired thereby.

k. Time is of the essence of this Agreement.

l. City and API acknowledge that each Party's entry into this Agreement is voluntary in nature.

m. This Agreement has been carefully read by the Parties, the contents hereof are known and understood by the Parties, and it is signed freely by each Party executing this Agreement. Each Party has had the opportunity to review this Agreement with independent legal counsel.

n. The Parties recognize and acknowledge that the City is a Colorado municipality and is entitled to the protections of the Colorado Governmental Immunity Act,

Sections 24-10-101, et seq., Colorado Revised Statutes (“**CGIA**”). By entering into this Agreement, the City does not waive, and does not intend to waive any of the protections to which it is entitled under CGIA.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the City and API have caused this Agreement to be executed under seal as of the day and year first above written.

CITY:

CITY OF SALIDA, COLORADO

By: _____

Name: Dan Shore

Title: Mayor

API:

ARTSPACE PROJECTS, INC.

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF COLORADO)
 :ss.
 COUNTY OF CHAFFEE)

On the ____ day of December, in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Dan Shore**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

 Notary Public

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of December, 2023 by [INSERT SIGNATORY NAME], the [INSERT TITLE] of Artspace Projects, Inc., a nonprofit corporation under the laws of Minnesota.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

 SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

EXHIBIT A

Order

See Attached

EXHIBIT B

Description of Property

102 D Street: Lots 1 and 2 and Southeasterly 20 feet of Lot 3 of Block 23 of Sacketts Addition plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

233 E. First Street: Northwesterly 5 feet of Lot 3, Lots 4 and 5, and Southeasterly 7.5 feet of Lot 6 of Block 23 of the Sacketts Addition plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

EXHIBIT C

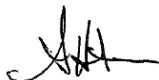
Form of Ground Lease
See Attached

DISTRICT COURT, CHAFFEE COUNTY, COLORADO		<p>DATE FILED: June 30, 2022 4:39 PM</p> <p>CLERK NUMBER: 0409162008</p> <p>CASE NUMBER: 2021CV30028</p>
Court Address: 142 CRESTONE AVENUE, P.O. BOX 279, SALIDA, CO, 81201		
Petitioner(s) CITY OF SALIDA v. Respondent(s) PMM LLC et al.		
		<p align="center">△ COURT USE ONLY △</p> <p>Case Number: 2021CV30028 Division: 2 Courtroom:</p>
<p align="center">Order:Final Rule & Order (proposed) with Exhibit 1 - Subject Property Legal Description</p>		

The motion/proposed order attached hereto: SO ORDERED.

This Order was issued with the consent of the parties and any appeal must be taken pursuant to C.R.M. Rule 7(b).

Issue Date: 6/14/2022



AMANDA HUNTER
Magistrate

DISTRICT COURT, CHAFFEE COUNTY, STATE OF COLORADO Chaffee Combined Court 142 Crestone Avenue; P.O. Box 279 Salida, CO 81201 (719) 539-2561	<div style="text-align: center;"> <p>▲ COURT USE ONLY ▲</p> <p>Case Number: 2021CV30028</p> <p>Division: 2</p> </div>
<p>PETITIONER:</p> <p>CITY OF SALIDA, a Colorado statutory municipality,</p> <p>v.</p> <p>RESPONDENTS:</p> <p>PMM, LLC, a Colorado limited liability company; PENELOPE L. MEHOS, an individual; JOHN G. MEHOS, an individual; PLAINTIFFS IN CASE NO. 2021CV30014; and DEE DEE COPPER in her official capacity as Treasurer/Public Trustee of Chaffee County, Colorado.</p>	
<div style="text-align: center;"> <p>FINAL RULE & ORDER</p> </div>	

In accordance with C.R.S. §§ 38-1-105(3) and (4), the Court enters this Final Rule & Order.

THE COURT HEREBY FINDS AS FOLLOWS:

1. This matter is an eminent domain proceeding brought pursuant to the procedures set forth in Title 38, Article 1, Colorado Revised Statutes (“C.R.S.”). In this action, Petitioner City of Salida, Colorado (“City”) sought to acquire by eminent domain a fee interest in a tract of land to construct and maintain affordable housing and related improvements, and for other municipal uses.

2. The Petitioner caused a Petition in Condemnation to be filed on, or about, August 3, 2021. The real property interest the Petitioner sought to acquire by eminent domain is more particularly described on the attached **Exhibit 1** (the “Subject Property”).

3. Based upon the records and files herein, the Court finds that all persons interested as owners or otherwise appearing of record have been joined as Respondents in this action; that service of process has been properly perfected on all named Respondents as required by law, or that the same have subjected themselves to the jurisdiction of this Court; and that the Court has full and complete jurisdiction over the parties hereto. The Court further finds that it has subject matter jurisdiction pursuant to C.R.S. §38-1-102, and that venue is proper since the Subject Property is located in Chaffee County, Colorado.

4. All of the named Respondents have been properly joined as Respondents to this case:

- a. On September 16, 2021, through counsel, in her official capacity as Chaffee County Treasurer and Public Trustee, Respondent Dee Dee Copper filed a Disclaimer of Interest;
- b. On September 24, 2021, on behalf of Plaintiffs in Case No. 2021cv30014 (hereinafter, collectively the "Class-Action Plaintiffs"), Matthew K. Hobbs filed an entry of appearance;
- c. On, or about, August 17, 2021, through the Chaffee County Sheriff Office, the City caused personal service of the Petition in Condemnation and related pleadings on Respondent John Mehos, Respondent Penelope Mehos, and Respondent PMM, LLC (hereinafter, collectively, the "Respondent-Landowners");
- d. On October 19, 2021, from the bench and as recorded in its Minute Order, the Court found the City properly served the Respondent-Landowners; and
- e. The Respondent-Landowners did not respond to the City's Petition in Condemnation or otherwise appear before this Court.

5. On March 26, 2022, through counsel, the Class-Action Plaintiffs filed with this Court a pleading captioned as Notice From Plaintiff's in Case No. 2021cv30014 Regarding Further Case Participation ("Notice of Non-Participation"). In their Notice of Non-Participation, the Class-Action Plaintiffs notified the Court that "they will be not contesting or participating in the valuation hearing, or otherwise further participating in this case, unless otherwise ordered to do so by the Court."

6. On April 20, 2022, the Court accepted the Class Action Plaintiffs' Notice of Non-Participation.

7. This matter then came before the Court on May 2, 2022 for a valuation trial to a commission. The commission was sworn and given written instruction. The City appeared with counsel, Joseph Rivera, at the valuation hearing. None of the Respondents participated in the valuation trial.

8. On May 2, 2022, after deliberation, the commission returned a Certificate of Ascertainment and Assessment and Report of Commissioners (hereinafter "Certificate"). In its Certificate, the commission ascertained the value of the property actually taken as six hundred and twenty thousand dollars and no cents (\$620,000.00) ("Certificate Amount").

9. On May 3, 2022 the Court has caused the commissioners' Certificate to be entered upon the records of the Court in accordance with C.R.S. §38-1-116.

NOW THEREFORE, based upon these findings and other matters in the Court record, along with the commissioners' Certificate, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that a fee simple interest in the Subject Property, as described in **Exhibit 1**, is and has been duly and lawfully taken and condemned by Petitioner pursuant to the statutes and the Constitution of the State of Colorado, that all interests of all Respondents in the Subject Property have been acquired by and vested in Petitioner, and that the Subject Property is hereby conveyed to Petitioner free and clear of same. All claims for compensation or damages resulting from the taking of the Subject Property must be made against the amounts deposited by the Petitioner in the Court's registry, as described herein, and not against Petitioner or against the Subject Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of six hundred and twenty thousand dollars and no cents (\$620,000.00) represents the full and final compensation to be paid by Petitioner for the taking of a fee simple interest in the Subject Property, and the Court's Registry shall accept from the City a deposit of six hundred and twenty thousand dollars and no cents (\$620,000.00) and shall hold same in an interest bearing account until claimed.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a certified copy of this Final Rule & Order may be recorded and indexed in the office of the Clerk and Recorder of Chaffee County, Colorado, in like manner and in like effect as if it were a deed of conveyance of a fee simple interest in the Subject Property (as shown on the attached **Exhibit 1**) from the owners and parties interested therein to Petitioner City of Salida, Colorado. Upon recording of this Rule & Order, the Lis Pendens recorded on October 15, 2021 at Reception No. 475047 with the Clerk and Recorder of Chaffee County, Colorado, shall be released and of no further effect.

SO ORDERED, this _____ day of _____, 2022.

BY THE COURT:

District Court Judge

EXHIBIT 1

TO

FINAL RULE & ORDER

SUBJECT PROPERTY LEGAL DESCRIPTION

CITY OF SALIDA v. PMM, LLC, a Colorado limited liability company; PENELOPE L. MEHOS, an individual; JOHN G. MEHOS, an individual; PLAINTIFFS IN CASE NO. 2021CV30014; and DEE DEE COPPER in her official capacity as Treasurer/Public Trustee of Chaffee County, Colorado
[Chaffee County District Court Case No. 2021CV30028]

EXHIBIT 1

TO

DATE FILED: August 3, 2021 5:00 PM
FILING ID: EB633DA92D6E3
CASE NUMBER: 2021CV30028

PETITION IN CONDEMNATION

SUBJECT PROPERTY LEGAL DESCRIPTION

PMM, LLC, a Colorado limited liability company; PENELOPE L. MEHOS, an individual; JOHN G. MEHOS, an individual; PLAINTIFFS IN CASE NO. 2021CV30014; and DEE DEE COPPER in her official capacity as Treasurer/Public Trustee of Chaffee County, Colorado



GROUND LEASE

THIS GROUND LEASE (“this Lease” or “the Lease”) made and entered into as of the [] day of [], 20[], by and between **CITY OF SALIDA, COLORADO** (“Lessor”), a statutory city existing under the laws of the State of Colorado having an address at 448 E 1st Street, Salida, Colorado 81201 and [] (“Lessee”), a [] having an address at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401, hereinafter, the Lessor and Lessee shall individually be referred to as “Party” or collectively referred to as the “Parties.”

WHEREAS, Lessor owns certain parcels of land located at [] in the City of Salida, County of Chaffee, State of Colorado, all as more fully described on **Exhibit 1**, annexed hereto (the “Land”). Lessor desires to lease the Land to Lessee for the purpose of developing, constructing, renovating and operating an affordable live/work project for individuals and their families, consisting of, but not necessarily limited to, approximately nineteen (19) apartments and related uses (the “Project”).

WHEREAS, the Lessee enters into this Lease to lease the Premises ;

NOW, THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: Demise of Leased Premises

1.1 **LEASED PREMISES:** Lessor leases to Lessee and Lessee leases from Lessor, the Land and any improvements now or hereafter located thereon (collectively referred to in this Lease as the “Leased Premises”) described in the attached **Exhibit 1**. Lessor represents and warrants that as of the date of this Lease, the Leased Premises are free and clear of all lien or encumbrances other than those consented to by Lessee as of the date hereof (the “Permitted Encumbrances”). Lessee takes the Leased Premises upon the terms and conditions set forth herein, subject only to the Permitted Encumbrances.

ARTICLE 2: Duration of Lease

2.1 **TERM:** The term of this Lease will be thirty-five years commencing on [] (the “Effective Date”), and terminating on the thirty-fifth (35th) anniversary of the Effective Date, unless terminated sooner as hereinafter set forth (the “Initial Term”). To facilitate refinancings as may be needed with respect to the Leased Premises, if any, so long as Lessee is not in default hereunder at the time of exercise of Lessee’s option to renew hereunder at the conclusion of the Initial Term, Lessee shall have the right to extend this Lease for two additional terms of five (5) years (individually, a “Renewal Term” and collectively the “Renewal Terms”; provided, however, that the right of Lessee to extend the Lease for the Renewal Term shall be effective only if Lessee shall give written notice to Lessor of Lessee’s exercise of such option not less than ninety (90) days prior to the expiration of the Initial Term. Reference to the “Term” shall mean either the Initial Term or the Renewal Term(s) consistent with whether the Lease has been extended for the Renewal Term(s).

ARTICLE 3: Use of Leased Premises

3.1 **USE:** Pursuant to a Professional Services Agreement between the Lessor and Artspace Projects, Inc., a Minnesota nonprofit corporation, (“Artspace”), dated May 16, 2023, the Project shall be developed on the Land by Artspace. Lessee and any person occupying the Leased Premises will use the Leased Premises only for the Project. The Leased Premises shall not be used by Lessee for any unrelated purpose without the prior written consent of the Lessor.

3.2 **RESPONSIBLE USE AND COMPLIANCE WITH LAW:** Lessee will maintain the Leased Premises or cause the Leased Premises to be maintained in good, safe and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations.

3.3 **RESPONSIBLE FOR OTHERS:** Lessee will be responsible for the use of the Leased Premises by all tenants, invitees, guests, visitors, members of the public, and anyone else using the Leased Premises.

3.4 **INSPECTION:** Subject to the rights of any tenants, Lessor may inspect the Leased Premises at any reasonable time and in a reasonable manner upon at least twelve (12) hours written notice to Lessee.

3.5 **LESSEE’S RIGHT TO PEACEFUL ENJOYMENT:** So long as Lessee fulfills its obligations under this Lease, it will have the peaceful and undisturbed enjoyment of the Leased Premises.

ARTICLE 4: Ground Lease Fee

4.1 **GROUND LEASE FEE:** On the Effective Date or at such other time as Lessor and Lessee may mutually agree, Lessee agrees to pay to the Lessor rent in advance in the amount of One Dollar (\$1.00) per annum (the “Ground Lease Fee”).

4.2 **NET LEASE:** Lessor shall not be required to furnish Lessee any facilities or services of any kind whatsoever. Lessee shall pay or cause to be paid, as additional rent, all expenses of every kind and nature, relating to or arising from the Leased Premises, including expenses arising from the leasing, insuring, management, operation, maintenance, repair, use or occupancy of the Leased Premises and payment of all real estate taxes, special assessments, and governmental assessments and impositions of any kind that relate to the Leased Premises, if any.

ARTICLE 5: Nature of Lease

5.1 **ANNUAL APPROPRIATION.** No provision of this Lease shall be construed or interpreted as creating a general obligation, multiple fiscal year financial obligation, or other indebtedness of the Lessor within the meaning of any constitutional, home rule charter or statutory debt limitation. No provision of this Lease shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Lessor within the meaning of Article XI, Sections 1 or 2 of the Colorado constitution. This Lease nor the execution and delivery of any documents related to the construction and maintenance of the Leased Premises shall directly or indirectly obligate the Lessor to make any payments beyond those duly

budgeted and appropriated for the Lessor's then current fiscal year. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Lessor's moneys, nor shall any provision of this Lease restrict the future issuance of any City of Salida Bonds, or obligations payable from any class or source of Lessor's moneys.

ARTICLE 6: Ownership Rights

6.1 EXCLUSIVE RIGHTS TO LEASED PREMISES: Lessee shall have the exclusive right during the term of this Lease to occupy and possess the Leased Premises and any improvements existing at the time of the execution of this Lease or hereinafter constructed by Lessee during the term of this lease.

6.2 ATTORNEY IN FACT: Lessor hereby irrevocably and unconditionally agrees, promptly upon the request of Lessee, in each instance, and at the Lessee's expense, (i) to execute and deliver all agreements, documents and instruments necessary or advisable to effect any benefits arising in connection with and issued by the Lenders pursuant to the applicable provisions under Title 39 of the Colorado Revised Statutes or other applicable law in connection with the Project, and (ii) any other government agency which may confer benefits to the Project or Property, as applicable. Lessor hereby unconditionally and unequivocally constitutes and appoints Lessee to be its lawful and true agent and attorney-in-fact coupled with an interest, with full power of substitution to execute and/or record any such documents or instruments. The Parties agree that Lessor's failure to comply with the provisions of this Article 6 shall cause irreparable harm to Lessee for which no adequate remedy at law will be available and, in addition to any other available remedies, Lessee shall be entitled to the right of specific performance in the event of a breach by the Lessor of the provisions of this Section 6.2.

6.3 CONSTRUCTION AND ALTERATION: Any construction in connection with an existing or new improvement is subject to the following conditions:

- (a) Lessee will bear all costs of construction;
- (b) All construction will be performed in a work-like manner in compliance with all applicable laws and regulations; and
- (c) All construction will be consistent with the permitted uses set forth in Article 3.

6.4 PROHIBITION OF LIENS: Lessee will procure the record discharge of any mechanic's or materialman's claim of lien which might be filed against the Leased Premises within forty-five (45) days of its filing. If Lessee fails to procure the record discharge of a claim of lien within the time allowed, Lessor may, but is not obligated to, discharge the same by paying the amount in question. Lessee may contest the validity of any lien asserted so long as Lessee furnishes a bond in an amount sufficient to release the Leased Premises from the lien. Any amounts paid by Lessor hereunder in respect of the liens will be deemed an additional Ground Lease Fee payable by Lessee upon demand.

6.5 MAINTENANCE AND SERVICES: Lessee will, at Lessee's sole expense, maintain the Leased Premises as required by Section 3.2 above. Lessor will not be required to

furnish any services or facilities, including but not limited to heat, electricity, air conditioning, or water, or to make any repairs to the Leased Premises, and Lessee hereby assumes the sole responsibility for furnishing and paying for all fees, charges, costs, expenses or services.

6.6 DISPOSITION OF LEASED PREMISES UPON EXPIRATION OF LEASE

TERM: Upon the expiration of the Term of this Lease as such Term may be terminated in accordance with this Lease, Lessee will surrender the Leased Premises to the Lessor without liens or encumbrances of any kind, except for Permitted Encumbrances. Any and all improvements constructed during the Term shall be in good condition, reasonable wear and tear excepted and shall, at the end of the Term, become the property of the Lessor. The exclusive right to possess the Leased Premises will thereupon revert to Lessor.

6.7 TRANSFER OF TITLE TO IMPROVEMENTS: Upon expiration of the Term, Lessee, at Lessor's election, shall execute and deliver to Lessor such deed, bill of sale or other instruments reasonably required to evidence the vesting of title to the Leased Premises and the improvements thereon to the Lessor.

6.8 HOLDING OVER: If Lessee shall hold the Leased Premises after the expiration of the term, such holding over, in the absence of written agreement to the contrary, shall be deemed to have created a month-to-month tenancy terminable on thirty (30) days' notice by either Party to the other.

6.9 RIGHT OF FIRST REFUSAL: The Lessee hereby grants to Lessor a right of first refusal ("ROFR") to purchase the Project and Lessee's interest in the Leased Premises subject to the terms and conditions set forth in this Section 6.9.

If the Lessee desires to sell, transfer, assign, or convey the Project and its interest in the Leased Premises, then the Lessee shall follow the following procedures:

(a) If the Lessee receives a bona fide offer that is from a party that is not related to the Lessee or Artspace and that is acceptable to Lessee, and the Lessee intends to accept such offer ("Offer"), the Lessee shall promptly give written notice to the Lessor of all relevant terms of the Offer, including any letter of intent, term sheet, or other written materials related to the Offer ("Offer Notice"). If the Lessee fails to give the Offer Notice to the Lessor and accepts the Offer, any subsequent transfer is null and void, and the Lessor may seek any remedy at law or equity to enforce its rights under the ROFR including injunctive relief and specific performance.

(b) Upon receipt of the Offer Notice, the Lessor shall have fifteen (15) days to deliver to the Lessee a written notice of its intent to exercise the ROFR on terms no less favourable to the Lessee as the terms set forth in the Offer ("Acceptance Notice").

(c) If the Lessor delivers the Acceptance Notice, then within thirty (30) days the Lessee and the Lessor shall negotiate a definitive purchase and sale agreement based on substantially the same terms as the Offer; provided, that if the Lessee and the Lessor are unable to reach agreement within thirty (30) days, the disputed terms shall be resolved by arbitration under the rules of the American Arbitration Association.

(d) If the Lessor does not deliver its Acceptance Notice within fifteen (15) days, withdraws the Acceptance Notice, or waives its ROFR in writing, then the Seller may sell the Project or its interest in the Leased Premises upon substantially the same the terms of the Offer. If the Lessee consummates the sale, this ROFR will terminate.

(e) The Lessor shall, at the request of the Lessee, execute any necessary documents to memorialize the termination or expiration of this ROFR in accordance with its terms, including such documents as may be necessary to satisfy the third-party purchaser and the title insurance company that the ROFR does not apply.

ARTICLE 7: Encumbrances

7.1 LESSEE MORTGAGE:

(a) Lessee may mortgage or otherwise encumber its interest in the Leased Premises with the prior written consent of the Lessor. Lessor hereby consents to the mortgages and encumbrances set forth in the leasehold owners policy issued to Lessee at construction loan closing, as may be updated at permanent loan closing.

(b) Lessor may consent to the granting by Lessee of leasehold mortgage liens on, and security interests in, Lessee's interests in the Leased Premises, including any improvements thereon, Lessee's personal property and/or trade fixtures located thereon, and this Lease. Lessor does hereby certify to Lenders that: (i) Lessor is the current owner of the fee interest in the Leased Premises; (ii) Lessor is the current owner of: (A) the interests demised under the Lease, and (B) all of the rights and benefits of "lessor" under the Lease; and (C) the Lease is the only instrument governing Lessor's and Lessee's rights and obligations with respect to the Leased Premises.

(c) Lessor may, upon review, execute any and all documents necessary to grant to the financial institution or institutions making loans to Lessee a mortgage or mortgages and any similar security interests on the Property and the Project, as well as any documents reasonably required by the Lessee to be executed by the Lessor in connection with the development of the Property and the operation and management of the Project, provided that the Lessor shall execute such documents for the sole purpose of encumbering its interest in the Property and the Project, and provided further that all such mortgages and notes secured by such mortgages shall be non-recourse to the Lessor and the only recourse for satisfaction of any obligations of the Lessor thereunder shall be to the Lessee's interest in the Property.

7.2 LESSOR MORTGAGES: Except for the Permitted Encumbrances, Lessor may not encumber, lien, mortgage, and/or create or grant any rights and/or interests in or to its fee interest in the Leased Premises or the Project or otherwise encumber its interest in the Leased Premises or Project and/or any part or parts thereof, and any encumbrance, lien, mortgage, right and/or interest purported to be created, granted, permitted and/or resulting from any action of the Lessor in connection with the Leased Premises and the Project and/or any part or parts thereof shall be void, unenforceable and of no effect whatsoever and shall not be binding in any manner upon Lessee. In addition, this Lease shall be superior to any mortgage on the fee interest in the Leased Premises, which may now or hereafter affect such fee interest and to all renewals,

modifications, consolidations, replacements and extensions of any such mortgages. Lessor represents and warrants that there is currently no mortgage on the fee interest in the Leased Premises.

7.3 LAND USE RESTRICTION AGREEMENT: Lessor hereby authorizes and agrees at the direction of Lessee to execute and record, as applicable, any and all documents required by Colorado Housing Finance Authority (CHFA), Colorado Department of Local Affairs (DOLA), and such other applicable Persons as may be necessary to develop the Project in connection with placing restrictive covenants on the fee and/or leasehold interest(s) in the Leased Premises, including, without limitation, a certain land use restriction agreement.

ARTICLE 8: Liability, Insurance, Damage and Destruction, Eminent Domain

8.1 LESSEE'S LIABILITY: Lessee assumes sole responsibility and liability to all persons and authorities related to the possession, occupancy, and use of the Leased Premises and will defend, indemnify, and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises unless it occurred prior to the date of this Lease or is caused by Lessor's gross negligence or intentional wrongdoing by Lessor in its capacity as lessor of the Premises. Lessee waives all claims against Lessor for injury or damage arising from the Leased Premises except for claims arising prior to the commencement of this Lease or out of Lessor's gross negligence or intentional wrongdoing.

8.2 LESSOR'S LIABILITY: Lessor shall defend, indemnify and hold harmless Lessee against any and all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises that occurred solely prior to the commencement of this lease.

8.3 PAYMENT BY LESSOR: If Lessor is required to pay any sum that is the Lessee's responsibility or liability, the Lessee will reimburse the Lessor for the payment and for reasonable expenses caused thereby.

8.4 INSURANCE: Lessee will keep or cause to be kept all improvements continuously insured against loss or damage by fire and other hazards and will maintain premises liability insurance with excess coverage limits of not less than [\$2,000,000 per occurrence, \$4,000,000 aggregate] covering the Land and improvements insuring Lessee against all liability assumed under this Lease, as well as all liability imposed by law. The property and liability insurance policies will name both Lessee and Lessor as "named insureds" so as to create the same liability on the part of insurer as though separate policies had been written for Lessee and Lessor.

8.5 DAMAGE OR DESTRUCTION: If any improvements are damaged or destroyed by fire or other casualty, Lessee shall have the right to receive any insurance proceeds available from such casualty and may use such proceeds (with any costs in excess of the insurance proceeds paid for by the Lessee) to replace the improvements or demolish such improvements and remove all debris if permitted by law. In no event shall the Lease terminate, however. Lessee's receipt and use on insurance proceeds is subject to Lenders requirements as set forth in Lenders' loan documents.

8.6 ***EMINENT DOMAIN, CONDEMNATION AND PUBLIC DEDICATION:***

(a) The Parties hereto shall promptly give Lender notice of any condemnation proceedings or of any pending adjustment of insurance claims as each may relate to the Improvements.

(b) No partial casualty or condemnation shall result in a termination of this Lease.

(c) If the entire Leased Premises are taken by eminent domain, this Lease will terminate as of the date the Lessee is required to surrender possession of the Leased Premises.

(d) If this Lease is terminated by reason of any such taking, then subject to Section 8.6(f), Lessor shall be entitled to receive 100% of any award ("Condemnation Proceeds") for the remainder value of the Land as encumbered by this Lease and exclusive of the value of any improvements, and Lessee and/or Lender, as applicable, shall be entitled to the balance of any award.

(e) If the Lessee reasonably determines that the Leased Premises cannot be restored to a use consistent with this Lease, Lessee may, with Lender's consent, as applicable, terminate this Lease on sixty (60) days written notice to Lessor.

(f) If Lessee shall assign to any Lender any Condemnation Proceeds to which it shall be entitled under the provisions of Section 8.6(d), Lessor shall recognize such assignment and agrees that the Condemnation Proceeds shall be paid to such assignee as its interest may appear.

(g) Lessee and the Lenders shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights under this Lease, and in this connection, specifically and without limitation to introduce evidence independently of Lessor to establish the value of or damage to the improvements.

ARTICLE 9: Transfer, Sale, or Disposition of Leasehold

9.1 ***LESSOR'S RIGHT TO SELL:*** Subject to the provision of this Article 9, Lessor may, only upon the consent of Lessee and Lenders, sell or transfer the Leased Premises provided, however, that Lessor shall require any purchaser to assume each and every obligation under the Lease and to agree not to disturb Lessee's possession under this Lease except to the extent permitted by this Lease.

ARTICLE 10: Assignment and Sublease

10.1 Lessee shall not assign, sublease, sell, or otherwise convey any of Lessee's rights under this Lease without the prior written consent of the Lessor, provided that (i) no such transfer shall relieve Lessee of its obligations hereunder, and (ii) any assignee or subtenant shall be bound by the use restrictions set forth in Section 3.1. Lessor hereby agrees that Lessee shall be able to sublease the Project's units in the normal course of business without such prior written consent.

ARTICLE 11: Default

11.1 ***EVENTS OF DEFAULT:*** The following events are referred to collectively as “Events of Default,” or individually as an “Event of Default”:

(a) Lessee defaults in the due and punctual payment of the Ground Lease Fee or any other amounts due to Lessor pursuant to this Lease and such default continues for one hundred eighty (180) days after written notice of the failure is given to Lessee and any Lender;

(b) This Lease or the Leased Premises or any part of the Leased Premises is taken upon execution or by other process of law directed against Lessee, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Lessee and the attachment is not discharged or disposed of within ninety (90) days after its levy;

(c) Lessee files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;

(d) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Lessee are instituted against Lessee, or a receiver or trustee is appointed for all or substantially all of the property of Lessee, and such proceeding is not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment; or

(e) Lessee breaches any of the other material agreements, terms, covenants or conditions which this Lease requires Lessee to perform, and such breach continues for a period of ninety (90) days after notice from Lessor to Lessee; or if such breach cannot reasonably be cured within such ninety (90) day period, Lessee fails promptly within said ninety (90) day period to commence and proceed diligently and in good faith to cure such breach and fails to complete such cure within a reasonable time.

Notwithstanding the foregoing, Lessee’s limited partners or any of the limited partners’ members or partners, shall have the right, but not the obligation, to cure a default under this Lease within the same time period as Lessee. Lenders shall have the rights afforded them as set forth in Section 12.2.

11.2 ***TERMINATION:*** In the case of any of the Events of Default described above, Lessor may terminate this Lease and initiate summary ejectment proceedings allowing Lessor to enter and repossess the entire Leased Premises. If this Lease is terminated by Lessor, or if Lessor reenters the Leased Premises after an Event of Default, the Lessee agrees to pay and be liable for any due and any unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with the termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys’ fees) incurred by Lessor in pursuit of its remedies in law or in equity that may be available to Lessor under this Lease. Upon such termination, and so long as there are no events of default under applicable subleases, Lessor shall grant non-disturbance and attornment agreements to such subtenants.

11.3 **FORBEARANCE:** Notwithstanding anything to the contrary in this Lease, so long as any leasehold mortgage remains outstanding on the Leased Premises (the “Forbearance Period”), the Lessor agrees that it shall not bring any action to terminate the Lease, to transfer Lessee’s interest under the Lease or otherwise to disturb or affect the Lessee’s rights and enjoyment of possession of the Leased Premises or result in the termination of the Lease (a “Lease Enforcement Action”), nor name Lessee, and/or any subtenant as a party defendant to any Lease Enforcement Action, nor shall the Lease be terminated by Lessor in connection with, or by reason of, any Lease Enforcement Action, unless the Lease Enforcement Action will not result in a direct or indirect termination, cancellation or other cessation of the Lease.

11.4 **DEFAULT BY LESSOR:** Lessor will in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform the obligations within one hundred eighty (180) days, or within the additional time as is reasonably required to correct any default, after notice by Lessee to Lessor properly specifying Lessor's failure to perform any obligation.

ARTICLE 12: General Provisions

12.1 **NOTICES:** Whenever this Lease requires either Party to give notice to the other, the notice will be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the Party at the address set forth below, or the other address designated by like written notice

If to Lessor:	City of Salida, Colorado The Touber Building 448 E. First Street, Suite 112 Salida, Colorado 81201 Attention: City Administrator
With a copy to:	Wilson Williams LLP 1314 Main Street, Suite 101 Louisville, CO 80027 Attn: Nina P. Williams, Esq.
If to Lessee:	[_____] c/o Artspace Projects, Inc. 250 Third Avenue North, Suite 400 Minneapolis, Minnesota 55401 Attention: President/COO/Sr. VP Properties
With a copy to:	Cannon Heyman & Weiss, LLP 726 Exchange Street, Suite 500 Buffalo, New York 14210 Attention: Steven J. Weiss, Esq.

With a copy to: []
 []
 []
 []
 []

With a copy to: []
 []
 []
 []
 []

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

12.2 RIGHTS OF LENDERS: Lessor shall concurrently with the giving of any notice of Event of Default under the Lease, provide a duplicate copy thereof to any Lender of which Lessor has been notified (the “Lenders”).

(a) If Lessor shall give any notice, demand, election, or other communication (other than rent and other periodic billing notices), including without limitation a notice of an Event of Default (as defined in Article 11) hereunder (hereinafter collectively “Notices”), to Lessee hereunder, Lessor shall simultaneously give a copy of each such Notice to Lender at the address theretofore designated by it. Such copies of Notices shall be sent by Lessor and deemed received as described in Section 12.1 above. No Notice given by Lessor to Lessee shall be binding upon or affect a Lender unless a copy of said Notice shall be given to such Lender pursuant to this Section. In the case of an assignment of any Lender’s mortgage or change in address of any Lender, said assignee or Lender, by written notice to Lessor, may change the address to which such copies of Notices are to be sent. Lessor shall not be bound to recognize any assignment of any mortgage unless and until Lessor shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Lender hereunder with respect to such mortgage being assigned.

(b) In the event of any default by Lessee under the provisions of this Lease, any Lender will have the same periods as are given Lessee for remedying such default or causing it to be remedied, plus, in each case, an additional period of (i) with respect to any monetary default, thirty (30) days after the expiration of the initial period or after Lessor has served a notice or a copy of a notice of such default upon the Lender, whichever is later and (ii) with respect to any non-monetary default, (A) ninety (90) days after the date such default is required to be cured by Lessee under the terms of this Lease, and (B) ninety (90) days after the date Lender is given notice of Lessee’s default, whichever is later; provided that no such Lender shall be obligated to cure any default hereunder. Any Lender’s failure to exercise its cure right under this subparagraph does not waive such Lender’s right to a new lease under subparagraph (e) below.

(c) In the event that Lessee shall default under any of the provisions of this Lease, any Lender, without prejudice to its rights against Lessee, shall have the right to cure such default within the applicable grace periods provided for in the preceding Subsection 12.2(b),

above, whether the same consists of the failure to pay rent or the failure to perform any other matter or thing that Lessee is hereby required to do or perform, and Lessor shall accept such performance on the part of such Lender as though the same had been done or performed by Lessee. For such purpose, Lessor and Lessee hereby authorize such Lender to enter upon the Leased Premises and to exercise any of its rights and powers under this Lease and subject to the provisions of this Lease.

(d) In the event of any default by Lessee, and if prior to the expiration of the applicable grace period specified in Subsection 12.2(b), above, a Lender shall give Lessor written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Lessee by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, whether by performance on behalf of Lessee of its obligations under this Lease, or by entry on the Leased Premises and/or the improvements by foreclosure or otherwise, then Lessor will not terminate or take any action to effect a termination of the Lease or re-enter, take possession of or relet the Leased Premises or the improvements or similarly enforce performance of this Lease in a mode provided by law so long as such Lender is with all due diligence and in good faith engaged in the curing of such default, or effecting such foreclosure; provided, however, that the Lender shall not be required to continue such possession or continue such foreclosure proceedings if such default shall be cured.

(e) If this Lease is terminated for any reason or if this Lease is rejected or disaffirmed by Lessee pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Lessor shall give prompt notice thereof to each Lender which has an unsatisfied mortgage at the time in question (which notice shall set forth in reasonable detail a description of all outstanding defaults) and shall, upon written request of any such Lender (or if more than one Lender makes such request, the Lender whose mortgage has the most senior lien), made any time within thirty (30) days after the giving of such notice by Lessor, shall promptly execute and deliver to such Lender or its designee a new lease of the Premises. Such new lease shall be for a term equal to the remainder of the Term before giving effect to such termination and shall contain the same covenants, agreements, terms, provisions and limitations as this Lease, and shall be subject only to the encumbrances and other matters recited in this Lease and acts done or suffered by Lessee. The new lease shall continue to maintain the same priority as this Lease with regard to any fee mortgage or any lien, charge or encumbrance upon this Lease. Lessor's agreement to enter into a new lease with any Lender shall be unaffected by the rejection of this Lease in any bankruptcy or insolvency proceeding by either Lessor or Lessee. Upon the execution and delivery of such new lease, the new Lessee, in its own name or in the name of Lessor, may take all appropriate steps as shall be necessary to remove Lessee from the Leased Premises and the improvements, but Lessor shall not be subject to any liability for the payments of fees, including reasonable attorneys' fees, costs or expenses in connection with such removal; and such new tenant shall pay all such fees, including attorneys' fees, costs and expenses or, on demand make reimbursements therefor to Lessor.

(f) In the event a default under a mortgage (such term defined as any note, loan, or loan agreement, together with any related mortgage, or other lien upon this Lease and the estate created thereby, as may be incurred from time to time by Lessee) shall have occurred, such Lender

may exercise with respect to the Leased Premises and the improvements any right, power or remedy under such mortgage.

(g) In the case of an Event of Default which is not susceptible to being cured by the Lender (for example, the insolvency of Lessee), Lender may, without Lessor's consent, institute foreclosure proceedings and, if so instituted, shall diligently prosecute the same to completion (unless in the meantime it shall acquire Lessee's estate hereunder, either in its own name or through a designee or nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured.

(h) Foreclosure of any mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Lender or its designee or nominee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor nor shall they constitute a breach of any provision of or a default under this Lease if Lessor was first given notice of the Event of Default under a mortgage and an opportunity to cure. Upon such foreclosure, sale, or conveyance Lessor shall recognize the Lender or such designee as the Lessee hereunder. If any Lender or other third party shall acquire Lessee's estate as a result of a judicial or nonjudicial foreclosure under any mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Lender or such other third party purchaser shall thereafter have the right to further assign or transfer Lessee's estate to an assignee upon such assignee's execution of a written agreement with the Lessor that the Land will continue to be used for the Project in accordance with the terms of this Lease. Upon such acquisition of Lessee's estate as described in the preceding sentence by a Lender or its designee or nominee, Lessor shall promptly execute an assignment of this Lease to such Lender, upon the written request therefor by such Lender or its designee or nominee given not later than one hundred twenty (120) days after such Party's acquisition of the Lessee's estate if such Lender or its designee or nominee has entered into a written agreement with the Lessor that the Land will continue to be used for the Project in accordance with the terms of this Lease. Such new ground lease shall be substantially similar in form and content to the provisions of this Lease, except with respect to the Parties thereto, the term thereof (which shall be co-extensive with the remaining Term hereof), and the elimination of any requirements which have been fulfilled by Lessee prior thereto, and such new ground lease shall have priority equal to the priority of this Lease. Upon execution and delivery of such new ground lease, Lessor shall cooperate with the new Lessee, at the sole expense of said new Lessee, in taking such action as may be necessary to cancel and discharge this Lease and to remove Lessee named herein from the Land.

(i) The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Lessor, operate as an assignment to Lessor of any or all subleases of subtenants. Lessor agrees that neither the surrender, cancellation, expiration, or termination of this Lease, nor Lessor's acquisition of Lessee's estate by any means contemplated hereunder, shall, either by the election of Lessor or by operation of law, work as a merger of Lessor's estate and Lessee's estate unless and until all indebtedness under any mortgage has been repaid pursuant to the terms thereof. The lien of such mortgage shall remain unaffected and in full force and effect upon and following the occurrence of any of the

events described in the preceding sentence, and Lessor shall be subject to, and bound by, the provisions of such mortgage as the successor tenant hereunder following the occurrence of any of such events.

(j) No surrender (except a surrender upon the expiration of the Term or upon termination by Lessor pursuant and subject to the provisions of this Lease) by Lessee to Lessor of this Lease, or of the Leased Premises, or any part thereof, or of any interest therein, and no termination of this Lease by Lessee shall be valid or effective, and neither this Lease nor any of the terms of this Lease may be amended, modified, changed or canceled and no consents of Lessee under this Lease shall be valid or effective without the prior written consent of any Lender who shall have previously given Lessor written notice of the existence of its mortgage. Lessor and Lessee hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Lender for the purpose of implementing the Lender protection provisions contained in this Lease and allowing such Lender reasonable means to protect or preserve the lien of its mortgage, as well as such other documents containing terms and provisions customarily required by the Lender (taking into account the customary requirements of their participants, syndication partners, or ratings agencies) in connection with any such financing. Lessor and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement reasonably necessary to effectuate any such amendment as well as such other documents containing terms and provisions customarily required by lenders in connection with any such financing, provided, however, that any such amendment shall not in any way affect the Term or Ground Lease Fee under this Lease or otherwise in any material respect adversely affect any rights of Lessor under this Lease.

(k) Lessor consents to a provision in mortgages or otherwise for an assignment of rents from subleases of the Leased Premises to the holder of any such mortgage, effective upon any default under such mortgage.

(l) If at any time there shall be more than one mortgage constituting a lien on this Lease and the estate created by this Lease and Lessee's interest in the improvements, and the holder of the mortgage prior in lien to any other mortgage shall fail or refuse to exercise the rights set forth in this Article 12.2, each holder of a mortgage in the order of the priority of their respective liens shall have the right to exercise such rights and provided further, however, that with respect to the right of the holder of a mortgage under Section 12.2(e), above, to request a new lease, such right may, notwithstanding the limitation of time set forth in Section 12.2(e), be exercised by the holder of any junior mortgage, in the event the holder of prior mortgage shall not have exercised such right, more than sixty (60) days but not more than seventy-five (75) days after the giving of notice by Lessor of termination of this Lease as provided in that Section.

(m) Lenders shall not be liable to Lessor unless they expressly assumed such liability in writing. In the event a Lender or its designees becomes lessee under this Lease, Lenders or their designees shall not be personally liable for the obligations of Lessee under this Lease that do not accrue during the period of time that the Lenders or such designees, as the case may be, remains actual lessee under this Lease. In no event shall Lenders or their successors be: (i) liable for any condition of the Leased Premises which existed prior to the date of its acquisition of Lessee's interest in the Leased Premises, or for any damage caused by such pre-existing condition, or for the correction thereof or the compliance with any law related thereto; (ii) bound by any

amendment of this Lease made without the prior written consent of Lenders (for which no such amendment is allowed); or (iii) liable for any act or omission of any prior lessee of any portion of the Leased Premises (including Lessee). Any agreement of Lessee to indemnify Lessor under this Lease shall apply to Lenders only to the extent of any actual damage suffered by Lessor as a result of Lenders' failure to perform any obligation of Lessee under this Lease after the date it acquired Lessee's interest in the Leased Premises, and before the date they assign this Lease to any third party as provided herein. Lenders, or their designees or successors, also shall be entitled to any protections from liability afforded to Lessee hereunder.

(n) Lessor may enter into Lease amendments reasonably requested by a prospective Lender, as long as such requests do not change the rent to be received by the Lessor and do not materially or adversely affect the Lessor's rights or interests in the Leased Premises or the Lessee's obligations to develop the Project.

(o) In the event any Lender or its designee or nominee becomes the Lessee under this Lease or under any new lease obtained pursuant to the terms herein, the Lender or its designee or nominee shall, with the exception of liens against the Land that are superior to all Lender's interests, be personally liable for the obligations of Lessee under this Lease or a new lease only for the period of time that the Lender or its designee or nominee remains the actual beneficial holder of the Lessee's estate, and only to the extent provided in this Lease or such new lease, but, with the exception of liens against the Land that are superior to all Lender's interests, a Lender shall not have any personal liability for the obligations of Lessee first arising prior to the date such Lender, or its designee or nominee, succeeded to the interests of the Lessee under this Lease or pursuant to a new lease. No Lender shall have any personal liability beyond its interest in the improvements for the performance or payment of any covenant, liability, warranty, or obligation hereunder or under any new lease, new agreement, or other agreement entered into in connection herewith, and the Lessor agrees that it shall look solely to the interests of such Lender in the improvements for payment or discharge of any such covenant, liability, warranty, or obligation.

(p) Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Lender.

12.3 **NO BROKERAGE:** Lessee warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessor relative to dealings with brokers, Lessee will defend the claim against Lessor with counsel of Lessee's selection, reasonably acceptable to Lessor, and save harmless and indemnify Lessor on account of loss, cost or damage which may arise by reason of any such claim. Lessor warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made against Lessee relative to dealings with brokers, Lessor will defend the claim against Lessee with counsel of Lessor's selection, reasonably acceptable to Lessee, and save harmless and indemnify Lessee on account of loss, cost or damage which may arise by reason of any such claim.

12.4 **RECORDING.** At the request of either Lessor or Lessee, a memorandum of lease shall be executed by Lessor and Lessee and recorded in the Office of the County Recorder of Ouray County, State of Colorado. In no event shall this Lease be recorded.

12.5 **SEVERABILITY AND DURATION:** If any part of this Lease is declared unenforceable or invalid, the applicable provision shall be deemed removed from this Lease and will not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease will be valid and enforced to the fullest extent permitted by law. It is the intention of the Parties that all rights under this Lease will continue in effect for the full term of this Lease and any renewal thereof, and the rights will be considered to be coupled with an interest.

12.6 **WAIVER:** The waiver by Lessor at any given time of any term or condition of this Lease, or the failure of Lessor to take action with respect to any breach of any the term or condition, will not be deemed to be a waiver of the term or condition with regard to any subsequent breach of the term or condition, or of any other term or condition of the Lease. Lessor may grant waivers in the terms of this Lease, but the waivers must be in writing and signed by Lessor before being effective.

The subsequent acceptance of Ground Lease Fee payments by Lessor will not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of the Lessee to pay the particular Ground Lease Fee so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of the Ground Lease Fee payment.

12.7 **LESSOR'S RIGHT TO PROSECUTE OR DEFEND:** Lessor will have the right, but will be under no obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by Lessor, Lessee will give Lessor all reasonable aid in any the action or proceeding.

12.8 **CONSTRUCTION:** Whenever in this Lease a pronoun is used it will be construed to represent either the singular or the plural, masculine or feminine, as the case will demand.

12.9 **CAPTIONS:** The captions appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

12.10 **PARTIES BOUND:** This Lease sets forth the entire agreement between Lessor and Lessee with respect to the leasing of the Leased Premises. It is binding upon and inures to the benefit of these Parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by Lessor and Lessee or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

12.11 **GOVERNING LAW:** This Lease will be interpreted in accordance with and governed by the laws of the State of Colorado. The language in all parts of this Lease will be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

12.12 **ESTOPPEL CERTIFICATES:** Lessor agrees within fifteen (15) business days following a request by Lessee or Lender to execute and deliver an Estoppel Certificate to whichever of them has requested the same if the provisions of the Estoppel Certificate as set forth in the next sentence are true and correct. The term “Estoppel Certificate” shall mean an estoppel certificate, certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Ground Lease Fee and other charges are paid in advance, if any, (b) that there are no uncured Events of Default on the part of Lessor and Lessee hereunder, or if there exist any uncured Events of Default on the part of Lessor and/or Lessee hereunder stating the nature of such uncured defaults on the part of Lessor and/or Lessee, (c) that no Ground Lease Fee is delinquent or has been paid in advance, and (d) the correctness of such other information respecting the status of this Lease as may be reasonably required by the Party hereto requesting execution of such Estoppel Certificate. Unless the Lessor has notified the requesting Party that one or more provisions in the proposed Estoppel Certificate are not true and correct, its failure to so execute and deliver an Estoppel Certificate within fifteen (15) business days following written request as required above, shall be conclusive upon such Party that as of the date of said request for the same (x) that this Lease is in full force and effect, without modification except as may be represented by the Party hereto requesting execution of such Estoppel Certificate, (y) that there are no uncured Events of Default in Lessor’s or Lessee’s obligations under this Lease except as may be represented by the Party hereto requesting execution of such Estoppel Certificate, and (z) that no Ground Lease Fee is delinquent or has been paid in advance except as may be represented by the Party hereto requesting execution of such Estoppel Certificate.

12.13 **HAZARDOUS SUBSTANCES.:** Except for customary materials necessary for construction, operation, cleaning and maintenance of the Leased Premises, Lessee shall not cause or permit any Hazardous Substance to be brought upon, generated at, stored or kept or used in or about the Leased Premises without prior written notice to the Lessor and all Hazardous Substances, including, customary materials necessary for construction, operation, cleaning and maintenance of the Leased Premises, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Leased Premises.

12.14 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** No provision of this Lease shall act or be deemed to be a waiver by the Lessor of the Colorado governmental Immunity Act, CRS 24-10-101, et seq.

12.15 **AUTHORITY OF LESSOR.** As a material inducement to cause Lessee to enter into this Lease, Lessor represents and warrants to Lessee that:

(a) as of the date hereof, the Leased Premises is vacant land not being used for a governmental purpose;

(b) pursuant to the provisions of Section 31-15-713(1)(c), Colorado Revised Statutes, the Lessor has authorized this Lease pursuant to an Ordinance number [] of the City of Salida, Chafee County, Colorado, attached hereto as **Exhibit 2**;

(c) this Lease does not require electoral approval pursuant to the provisions of Section 31-15-713, Colorado Revised Statutes; and

(d) the Lessor has full right, power and authority to execute, deliver and perform this Lease without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and this Lease when fully executed will constitute a valid and binding agreement of the Lessor, enforceable against the Lessor according to its terms.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LESSEE:

[_____]

By: [_____]
 its [_____]

By: _____
 Name: _____
 Title: _____

LESSOR:

CITY OF SALIDA, COLORADO

By: _____
 Name: Dan Shore
 Title: Mayor

EXHIBIT 1

Property Description

102 D Street: Lots 1 and 2 and Southeasterly 20 feet of Lot 3 of Block 23 of Sacketts Addition plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

233 E. First Street: Northwesterly 5 feet of Lot 3, Lots 4 and 5, and Southeasterly 7.5 feet of Lot 6 of Block 23 of the Sacketts Addition plat recorded at Reception No. 444196 of the Chaffee County Recorder Office

EXHIBIT 2

Authorizing Ordinance