

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: <u>https://c.streamhoster.com/embed/media/W6sdC9/xAllQfSsmm0/vpfQhcsApYv_5?preview=1</u>

CALL TO ORDER

Pledge of Allegiance

Roll Call

Civility Invocation

1. Civility Invocation

CONSENT AGENDA

- 2. Approve Agenda
- 3. Approve December 15, 2020 Meeting Minutes
- 4. Approve Final Settlement for the 2020 Street Reconstruction Project
- 5. Approve Final Settlement for the 2020 Sewer Rehabilitation CIPP Point Repairs Project
- 6. Approve final payment to K&W Construction for SHSAC locker room rebuild

CITIZEN COMMENT-Three (3) Minute Time Limit

LIQUOR LICENSING AUTHORITY

7. A Hearing to review a new Beer and Wine Liquor License for Mojo's Eatery LLC, dba Mojo's Eatery for the for the City of Salida, 142 Old Stage Road, PUBLIC HEARING

UNFINISHED BUSINESS / ACTION ITEMS

B. ORDINANCE 2020-13 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING THE TRANSFER AND CONVEYANCE OF REAL PROPERTY, LOCATED AT THE INTERSECTION OF M STREET AND THIRD STREET, FROM THE

CITY OF SALIDA TO THE CHAFFEE HOUSING TRUST, AND AUTHORIZING THE EXECUTION OF CERTAIN AGREEMENTS FOR SAID SALE, **Second Reading and Public Hearing**

9. ORDINANCE 2020-14 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING A LEASE OF REAL PROPERTY, LOCATED AT 232 G STREET, FROM THE CITY OF SALIDA TO RIVIAN, LLC, AND AUTHORIZING THE EXECUTION OF A CHARGING STATION LEASE AGREEMENT IN CONNECTION THERETO, **SECOND READING AND PUBLIC HEARING**

NEW BUSINESS / ACTION ITEMS

- **10. Resolution 2021-01** A resolution of the city council for the city of salida, colorado designating the place for the posting of public notices for city council meetings and other city business
- 11. Declaration of Extension of State of Local Emergency COVID-19 Action Plan Implementation

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

- Critelli, Kasper, Pappenfort, Pollock, Shore, Templeton

Mayor Report

Treasurer Report

Attorney Report

EXECUTIVE SESSION

- 12. For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)e), and for the purpose of discussing the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest in accordance with C.R.S. Section 24-6-402(4)(a), and the following additional details are provided for identification purposes: a Right of First Refusal.
- 13. For the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e), and for a conference with the City Attorney for the purposes of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b), and the following additional details are provided for identification purposes: a pending lawsuit in Chaffee County District Court.

ADJOURN



City Clerk | Deputy City Clerk

Mayor P.T. Wood

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 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

December 15, 2020 - 6:00 PM

MINUTES

CALL TO ORDER

Pledge of Allegiance

Roll Call

PRESENT

Council Member Alisa Pappenfort Council Member Dan Shore Council Member Harald Kasper Council Member Jane Templeton Council Member Justin Critelli Council Member Mike Pollock Mayor PT Wood Treasurer Merrell Bergin **Civility Invocation**

CONSENT AGENDA

Council Member Critelli moved to combine and approve the items on the Consent Agenda, Seconded by Council Member Templeton. Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

- 2. Approve Agenda
- 3. Approve December 1, 2020 Meeting Minutes
- 4. City of Salida Personnel Manual Update Healthy Families and Workplaces Act Compliance

CITIZEN COMMENT-Three (3) Minute Time Limit

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. F^t Street, Ste. 112, Salida, CO B1201, Ph.719-530-2630 at least 48 hours in advance. Adam Martinez gave an update on the PROST Board.

Jessica Downing was speaking on behalf of SPOT and PROST sharing their disfavor of Resolution 2020-44, a Public Access Agreement with Kitson Holdings LLC.

UNFINISHED BUSINESS / ACTION ITEMS

 Ordinance 2020-12 An Ordinance of the City Council of the City of Salida, Colorado, Concerning Elections, and Creating a New Section 2-1-60 of the Salida Municipal Code to Create a Process for Addressing Complaints Alleging Campaign Finance Law Violations in City Elections

Mayor Wood opened the Public Hearing, hearing no comment Wood closed the Public Hearing.

Council Member Shore moved to approve Ordinance 2020-12 on second reading, Seconded by Council Member Pappenfort. Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

NEW BUSINESS / ACTION ITEMS

6. Resolution 2020-43 A Resolution of the City Council for the City Of Salida, Colorado Adopting and Approving the 2021 Fee Schedules

Council Member Critelli moved to approve Resolution 2020-43, Seconded by Council Member Kasper. Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

7. Resolution 2020-44 A Resolution of the City Council of the City Of Salida, Colorado, Approving a Public Access Agreement with Kitson Holdings, LLC

Council Member Pollock moved to continue Resolution 2020-44 and readdress it on January 19, 2021, Seconded by Council Member Kasper.

Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

8. Resolution 2020-45 An Amendment to Resolution 2019-62 Establishing Budget and Appropriations by Fund for the City of Salida Operations for Calendar Year 2020

Mayor Wood opened the Public Hearing, hearing no comment, he closed the Public Hearing.

Council Member Critelli moved to approve Resolution 2020-45, Seconded by Council Member Pappenfort. Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

9. Resolution 2020-46 A Resolution of the City Council for the City of Salida, Colorado Approving Citizen Appointments to the Public Art Commission

Council Member Templeton moved to appoint Martin Jolley to the Public Art Commission, Seconded by Council Member Pappenfort.

Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

10. Resolution 2020-47 Approving Citizen Appointments to the Chaffee Housing Authority Pursuant to Section 2-7-10 of the Salida Municipal Code

Council Member Shore moved to appoint Jane Templeton as a member of the Board of Directors of the Chaffee Housing Authority, with a term expiring on January 1, 2022, Elaine Rogers as a member of the Board of Directors of the Chaffee Housing Authority, with a term expiring on January 1, 2023, and appoint Administrator Drew Nelson as an alternate member of the Board of Directors of the Chaffee Housing Authority, with a term to expire on January 1, 2023. Seconded by Council Member Kasper.

Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Critelli, Council Member Pollock

Abstaining: Council Member Templeton

THE MOTION PASSED.

 Ordinance 2020-13 An Ordinance of the City Council of the City Of Salida, Colorado, Approving the Transfer and Conveyance of Real Property, Located at the Intersection of M Street and W. Third Street, from the City of Salida to the Chaffee Housing Trust, and Authorizing the Execution of certain Agreements for Said Sale Mayor Wood opened the Public Hearing, hearing no comment. he closed the Public Hearing. Council Member Kasper moved to approve Ordinance 2020-13, Seconded by Council Member Pappenfort. Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

12. Ordinance 2020-14 An Ordinance of the City Council of the City Of Salida, Colorado, Approving a Lease of Real Property, Located at 232 G Street, from the City Of Salida to Rivian, LLC, and Authorizing the Execution of a Charging Station Lease Agreement in Connection thereto

Council Member Critelli moved to approve Ordinance 2020-14, Seconded by Council Member Pappenfort. Voting Yea: Council Member Pappenfort, Council Member Shore, Council Member Kasper, Council Member Templeton, Council Member Critelli, Council Member Pollock

THE MOTION PASSED.

COUNCILORS, MAYOR AND CITY TREASURER REPORTS

Council Reports

Critelli wished the community a happy holiday season and was looking forward to the vaccine distribution in 2021.

Kasper had nothing to report.

Pappenfort seconded Critelli's comments hoping for a safe and happy holiday season so that Chaffee County could stay in the State of Colorado Orange level instead of moving to a more restrictive environment.

Shore thanked the public, wished them a happy holiday season and relayed that the Community Center will be offering Christmas dinners again this year. He also relayed that they are looking for volunteers for the event.

Pollock wished the community a happy holiday season.

Templeton read a paragraph from an article in Time Magazine, related to an "I Society vs.We Society". She described Council as a "We Society" and then wished the community a happy holiday season.

Mayor Report

Wood relayed that roughly 345 doses of the vaccine were scheduled to arrive that week. He shared that Colorado would be rolling out a 5 Star Business Program but he hadn't received any other details. He thanked the community for doing their best through the pandemic.

Treasurer Report

Bergin reported that there was a 30% increase in City sales tax from 2019. Shared County tax was up 17%. Marijuana tax was up 259% from 2019. The Retail Trade was up 36% from 2019 and Food Services was down 8%. Finally, he relayed that expenditures were under budget due to City Departments spending frugally.

Adjourned at 7:42 p.m.



City Clerk | Deputy City Clerk

Mayor P.T. Wood



Meeting Date: January 5, 2021:

ORIGINATING DEPARTMENT:	PRESENTED BY:
Public Works	David Lady

ITEM:

Consent Agenda

Council Action: Approve Final Settlement for the 2020 Street Reconstruction Project

Project No 2020-001

BACKGROUND:

Street reconstruction projects planned for 2020 consisted of Blake Street (Park Ave. to US-50) and G Street (Sackett Ave. to 1st St.). The condition of the streets and desire for increased parking capacity on G Street warranted complete reconstruction of the driving surface and drainage improvements. In addition to surface improvements, aging water line replacements were included in the Blake Street project.

FISCAL NOTE:

City Council awarded a Construction Contract to Pridemore Construction, Inc on March 3, 2020 for the 2020 Street Reconstruction Project with a total project budget of \$978,578.12.

All work was completed within budget and was accepted by Public Works (minor concrete punchlist items to be completed under warranty in 2021 once weather accommodates). The final project construction cost was \$938,817.70. The 10% retainage in the amount of \$93,881.77 has been withheld pending approval of final settlement by council. Public Notice of Final Settlement was advertised on December 29th, 2020 and January 1st. 2021.

Pridemore Construction, Inc, Inc provided excellent quality of work of the utility components of the project. Additional review of concrete work scope and qualifications will be considered in the future due punchlist/re-work of concrete improvements associated with the project.

STAFF RECOMMENDATION:

To approve final settlement to Pridemore Construction, Inc in the amount of \$93,881.77 for the 2020 Street Reconstruction Project.

SUGGESTED MOTIONS:

A Council person should make a motion to "combine and approve the items on the consent agenda."

Followed by a second and then a voice vote.



Meeting Date: January 5, 2021:

ORIGINATING DEPARTMENT:	PRESENTED BY:
Public Works	David Lady

ITEM:

Consent Agenda

Council Action: Approve Final Settlement for the 2020 Sewer Rehabilitation CIPP Point Repairs Project

Project No 2020-008

BACKGROUND:

The City of Salida owns and maintains the wastewater collection system within the service areas of Salida and Poncha Springs. The City has a maintenance program that includes scheduled line cleaning and inspection of mains. Capital improvement programs including line rehabilitation and replacement are necessary to address system deficiencies, ensure reliable service, and replace infrastructure that is nearing the end of its useful life. The useful life of a sewer main can depend on multiple factors such as structural issues/breaks, offset joints, and gaps in joints which can introduce water infiltration and roots.

Cured-In-Place Pipe (CIPP) is a common rehabilitation practice that allows for point repairs to be completed without excavation. A liner is pulled into a pipe, expanded, and cured to form a structural interior surface at broken pipes, infiltration locations, or other defects. This method is cost effective and limits disruption to citizens. It is often a preferred method in the industry depending on the overall pipe condition and line size.

FISCAL NOTE:

City Council awarded a Construction Contract to Guildner Pipeline Maintenance, Inc on February 4, 2020 for the 2020 Sewer Rehabilitation CIPP Point Repairs Project with a total project budget of \$171,050.

All work was completed within budget and was accepted by Public Works. The final project construction cost was \$155,229.00. The 10% retainage in the amount of \$15,522.90 has been withheld pending approval of final settlement by council. Public Notice of Final Settlement was advertised on December 29th, 2020 and January 1st. 2021.

Guildner Pipeline Maintenance, Inc provided excellent quality of work and coordination with the City throughout the project.

STAFF RECOMMENDATION:

To approve final settlement to Guildner Pipeline Maintenance, Inc in the amount of \$15,522.90 for the 2020 Sewer Rehabilitation CIPP Point Repairs Project.



Meeting Date: January 5, 2021:

ORIGINATING DEPARTMENT:	PRESENTED BY:
Public Works	David Lady

SUGGESTED MOTIONS:

A Council person should make a motion to "combine and approve the items on the consent agenda."

Followed by a second and then a voice vote.



Meeting Date: January 5, 2021:

ORIGINATING DEPARTMENT:	PRESENTED BY:
Parks and Recreation	Mike 'Diesel' Post

ITEM:

Approval of final payment to K&W Construction for SHSAC locker room rebuild.

BACKGROUND:

In April of 2020, the City entered into a contract with K&W Construction to rebuild the Salida Hot Springs Aquatics Center locker rooms for \$158,000. As of 12/18/20 the reconstruction project has been completed and accepted by City staff.

FISCAL NOTE:

Final Payment: \$19,320.00

Total project cost: \$158,000

<u>STAFF RECOMMENDATION:</u> Council should approve issuing final payment to K&W Construction for rebuilding the SHAC locker rooms.

SUGGESTED MOTIONS:

Content agenda item



Meeting Date: January 5, 2021:

ORIGINATING DEPARTMENT:	PRESENTED BY:
Administration	Erin Kelley

ITEM:

New Beer and Wine Liquor License for Misty and Andrew Modrzejewski, Mojo's Eatery, 142 Old Stage Road

BACKGROUND:

A new Colorado Beer and Wine Liquor License application was filed with the City Clerk on November 25, 2020. The Notice of Public Hearing was published on December 4, 2020 in the Mountain Mail and the premises was posted on December 23, 2020.

All proper fees have been remitted to the City and State of Colorado. Individual history records and the Colorado Bureau of Investigation background checks have been reviewed by staff with no issues.

STAFF RECOMMENDATION:

Staff recommends that the Liquor Licensing Authority approve a new Beer and Wine Liquor License for Mojo's Eatery, conditional upon an inspection by both the police and fire department upon receipt of a Certificate of Occupancy for the structure.

SUGGESTED MOTIONS:

Following a public hearing on the matter, a Licensing Authority member should make a motion to approve a new Beer and Wine City Liquor License for Misty and Andrew Modrzejewski, 142 Old Stage Road, DBA Mojo's Eatery, conditional upon an inspection of the premises by police and fire personnel upon receipt of a Certificate of Occupancy for the structure, followed by a second and a roll call vote.

C	olorado	Liquor
Retail	License	Application

	New License	New-Concurre	nt Trans	Inse Applie		rty O-1	
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	as a/a			ability Company	Accordent	-	
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	2. Applicant If an LLC, name Mojos	Entonul I C and	least 2 partner's	names; if corporation	, name of corporation	and and	d Wife Partnerships)
	2a. Trade Name of Establishme	sEateryLLC, Andrew	v Modrzejew:	ski, Misty Modrze	ewski		FEIN Number
		MoiooFata			State Sales Tax Nu	mber	Business Telephone
	3. Address of Premises (speci	fy exact location of prem	ises include sui	to hus it	9452733		(719) 207-3230
			142 (Nd Stage Rd			(10) 201-3230
1	City			County	and the second se		
t l	4. Mailing Address (Number a	Salida			haffee	State	ZIP Code
				City or Town		Co	81201
5	5. Email Address	Old Stage Rd		78 ALC: 1153	alida	State	ZIP Code
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6	 If the premises currently has Present Trade Name of Establish 		marew-misty	@mojoseatery.co	m		
P	Present Trade Name of Establish	hment (DBA)	Present Of	er the following questi	олѕ		
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J

DR 8404 (01/22/20) Application Documents Checklist and Worksheet Instructions: This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable. Questions? Visit: www.colorado.gov/enforcement/liquor for more information

1101	realitable. Questions Prist. www.colorado.governorcement/liquor for more information
-	Items submitted, please check all appropriate boxes completed or documents submitted
1.	 Applicant information A. Applicant/Licensee identified B. State sales tax license number listed or applied for at time of application C. License type or other transaction identified D. Return originals to local authority (additional items may be required by the local licensing authority) E. All sections of the application need to be completed
	F. Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application
11.	 Diagram of the premises ☑ A. No larger than 8 1/2" X 11" ☑ B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.) □ C. Separate diagram for each floor (if multiple levels) □ D. Kitchen - identified if Hotel and Restaurant ☑ E. Bold/Outlined Licensed Premises
INI.	 Proof of property possession (One Year Needed) A. Deed in name of the applicant (or) (matching question #2) date stamped / filed with County Clerk B. Lease in the name of the applicant (or) (matching question #2) C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant D. Other agreement if not deed or lease. (matching question #2)
IV.	 A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members) B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved state vendor. Do not complete fingerprint cards prior to submitting your application. The Vendors are as follows:
	IdentoGO – https://uenroll.identogo.com/ Phone: 844-539-5539 (toll-free) IdentoGO FAQs: https://www.colorado.gov/pacific/cbi/identification-faqs Colorado Fingerprinting – http://www.coloradofingerprinting.com Appointment Scheduling Website: http://www.coloradofingerprinting.com/cabs/ Phone: 720-292-2722 Toll Free: 833-224-2227 C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license
V.	 D. List of all notes and loans (Copies to also be attached) Sole proprietor/husband and wife partnership (if applicable) A. Form DR 4679
	B. Copy of State issued Driver's License or Colorado Identification Card for each applicant
VI.	 Corporate applicant information (if applicable) A. Certificate of Incorporation B. Certificate of Good Standing C. Certificate of Authorization if foreign corporation (out of state applicants only)
VII.	Partnership applicant information (if applicable) A. Partnership Agreement (general or limited). B. Certificate of Good Standing
	 Limited Liability Company applicant information (if applicable) A. Copy of articles of organization B. Certificate of Good Standing C. Copy of Operating Agreement (if applicable) D. Certificate of Authority if foreign LLC (out of state applicants only)
IX.	Manager registration for Hotel and Restaurant, Tavern, Lodging & Entertainment, and Campus Liquor Complex licenses when included with this application A. \$75.00 fee B. Individual History Record (DR 8404-I) C. If owner is managing, no fee required

Nai	ne		Type of L	icense	Accou	int Number			
7.	Is the applicant (including any of the partners if a stockholders or directors if a corporation) or mar	nagers unde	er the age of twenty-o	ne years?				Yes	No
8.	Has the applicant (including any of the partners	if a partners	ship; members or mar	agers if a limited	liability company;	or officers,			
	stockholders or directors if a corporation) or man a. Been denied an alcohol beverage license?	nagers ever	(in Colorado or any o	iner state):					
	b. Had an alcohol beverage license suspended	or revoked?	•					H	×××
	c. Had interest in another entity that had an alco			or revoked?					×
	bu answered yes to 8a, b or c, explain in detail on								-
9.	Has a liquor license application (same license cl preceding two years? If "yes", explain in detail.						in the		×
10.	Are the premises to be licensed within 500 feet, Colorado law, or the principal campus of any col	of any publi lege, univer	ic or private school th sity or seminary?	at meets compu	sory education req	uirements of		0	x
					Other:	by local ordina			
11.	Is your Liquor Licensed Drugstore (LLDS) or Re sales in a jurisdiction with a population of greate that begins at the principal doorway of the LLDS way of the Licensed LLDS/RLS.	r than (>) 10	0,0000? NOTE: The c	istance shall be	determined by a ra	adius measure	ment		X
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13	a. For additional Retail Liquor Store only. Was you	ur Retail Liq	uor Store License iss	ued on or before	January 1, 2016?				×
13	b. Are you a Colorado resident?							×	
14.	Has a liquor or beer license ever been issued to Limited Liability Company; or officers, stockholde <u>current</u> financial interest in said business includir	ers or directed	ors if a corporation)?	If yes, identify th	artnership; membe e name of the busi	ers or manager ness and list a	ifa any		×
15.	arrangement?		legal possession of	the premises by	/ ownership , lease	or other		X	
	Ownership 🛛 Lease 🗌 Other (Explain in								
	a. If leased, list name of landlord and tenant, and	date of expi		appear on the l	ease:				
Land			Tenant			Exp	pires		
	Parcel 2 LLC	omponentio		ndrew Modrz			5/1/2	025	_
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40	partitions, entrances, exits and what each room	m shall be u	tilized for in this busit	iess. This diagra	am should be no la	rger than 8 1/2	" X 11	•	
	Who, besides the owners listed in this application (i inventory, furniture or equipment to or for use in the second second sec	his business	s; or who will receive i	noney from this	business? Attach a	npanies) will lo separate shee	an orgi et if ne	ve mo cessa	oney, iry.
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Last	Name	First Name)	Date of Birth	FEIN or SSN	Inte	rest/P	ercen	tage
partr	ch copies of all notes and security instruments nerships, corporations, limited liability compan ing to the business which is contingent or con	ies, etc.) wi	ill share in the profit	or gross proce	eds of this establis	shment, and a	rson (i any ag	nclud	ling ent
	Optional Premises or Hotel and Restaurant Licen Has a local ordinance or resolution authorizing of								×
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 the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement other legal permissions.							ived f emen	from t, or
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? If "yes" a copy of license must be attached. 								

DR 8404 (01/22/20)

-	404 (01/22/20)							
Nan	10		Type of License		Account Number			
20.	Club Liquor License applicants answer	the following: Attach a copy of	f applicable docume	ntation		Vee	Nie	
	a. Is the applicant organization operated				and not for pecuniary gain?	Yes	No	
	 Is the applicant organization a regul 	arly chartered branch, lodge or a	chapter of a national o	rganization which	ch is operated solely for the			
	object of a patriotic or fraternal orga	nization or society, but not for pe	ecuniary gain?		,			
	c. How long has the club been incorpo							
	d. Has applicant occupied an establishm			ated solely for th	e reasons stated above?			
21.	Brew-Pub, Distillery Pub or Vintner's R	estaurant applicants answer the	following:				П	
22.	Campus Liquor Complex applicants an	plicant received or applied for a Federal Permit? (Copy of permit or application must be attached)						
	a. Is the applicant an institution of high					_	_	
	at to the approant an institution of high	Bi eduçation:					L	
	b. Is the applicant a person who contra	cts with the institution of higher	education to provide f	ood services?				
22	If "yes" please provide a copy of	the contract with the institution	on of higher educatio	n to provide fo	od services.			
23.	For all on-premises applicants. a. Hotel and Restaurant, Lodging and I	- Intertainment Tavern License a	nd Campus Liquor Co	moley the Regi	stared Managar must also			
	Individual History Record							
	- DR 8404-I and fingerprint submitter	d to approved State Vendor thro	ugh the Vendor's web	site. See applica	ation checklist, Section IV, for	or deta	ails.	
	 b. For all Liquor Licensed Drugstores (LI - DR 8000 and fingerprints. 	LDS) the Permitted Manager mus	stalso submit an Mana	iger Permit Appli	cation			
Last	Name of Manager		First Name of Manag	er				
	170		3					
24.	Does this manager act as the manager	of, or have a financial interest i	n, any other liquor lice	nsed establishm	ent in the State of	Yes	Ng	
	Colorado? If yes, provide name, type o	f license and account number.					X	
	Related Facility - Campus Liquor Comp					Ē	Π	
	a. Is the related facility located within the							
	If yes, please provide a map of the g	eographical location within the (Campus Liquor Compl	ex.				
	If no, this license type is not available b. Designated Manager for Related Fac	e for issues outside the geograp	hical location of the C	ampus Liquor C	omplex.			
	Name of Manager	sing- Campus Liquor Complex	First Name of Manag	er			-	
			in the second					
26.	Tax Information.					Yes	No	
	a. Has the applicant, including its mana other person with a 10% or greater fi payment of any state or local taxes, p	nancial interest in the applicant,	been found in final or	s (LLC), managi der of a tax age	ing members (LLC), or any ncy to be delinquent in the		M	
	h lles the endland to better t						14	
	b. Has the applicant, including its mana other person with a 10% or greater fill	ger, partners, officer, directors, and annual interest in the applicant is	stockholders, member	s (LLC), manag	ing members (LLC), or any		×	
	44-3-503, C.R.S.?	number interest in the applicant	aned to pay any lees	or surcharges in	hposed pursuant to section		152167	
27	fapplicant is a correction mathematic	e eessistiss as limited wet we					_	
	f applicant is a corporation, partnershi and Managing Members. In addition, applicant. All persons listed below r	applicant must list any stockhol nust also attach form DR 8404	Iders, partners, or me -I (Individual History F	mbers with own	ership of 10% or more in	the	-	
Vame	State Vendor through their website. Se	Home Address, City & State	iv, for details.	DOB /	Position /	%Ow	ned	
t	INDREW MODRZETENSKI		1A, CO.41201	States,		40.		
Vame	1111-014-1-	Home Address, City & State	/	DOB ,	Position / ward	%Ow		
6	LISTY MEDRIEJENSKI	MARCHAR SALTON	1081201	THE A		40	2	
lame		Home Address, City & State		DOB		%Ow	-	
							00000	
lame		Home Address, City & State		DOB	Position	%Ow	ned	
lame		Home Address, City & State		DOB	Position	%Ow	ned	
Cor	oplicant is owned 100% by a parent cor porations - the President, Vice-Presider tal ownership percentage disclosed her Applicant affirms that no individual othe prohibited liquor license pursuant to Art	nt, Secretary and Treasurer must re does not total 100%, applicar er than these disclosed herein o	be accounted for about this box.	ve (include owne			na	

DR 8404	(01/22/20)
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Name		Type of License		Account Number					
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 Signatures A Printed Name and Title AINIZED MOVEZED CHEF/OWNER									
		icensing Authority							
Date application filed with local authority Date	of local authority hearing	(for new license applicant	s; cannot be les	s than 30 days from date	of application)				
The Local Licensing Authority Hereby Affirms that each been:			tory Record) or	a DR 8000 (Manager F	'ermit) has				
Subject to background investigation, includin That the local authority has conducted, or intends to c and aware of, liquor code provisions affecting their cla (Check One)	conduct, an inspection		es to ensure th	at the applicant is in c	ompliance with				
 Date of inspection or anticipated date. Will conduct inspection upon approval of state 	te licensing authority								
Is the Liquor Licensed Drugstore (LLDS) or premises sales in a jurisdiction with a popula	Retail Liquor Store (RI ation of > 10,0000?	S) within 1,500 feet of a	another retail li	quor license for off-	Yes No				
Is the Liquor Licensed Drugstore(LLDS) or F premises sales in a jurisdiction with a popula	Retail Liquor Store (RL ation of < 10,0000?	S) within 3,000 feet of a	nother retail lic	uor license for off-					
NOTE: The distance shall be determined by for which the application is being made and of				of the LLDS/RLS prem	ises				
Does the Liquor-Licensed Drugstore (LLDS) from the sale of food, during the prior twelve	have at least twenty p (12) month period?	ercent (20%) of the app	licant's gross a	nnual income derived					
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		County					
Signature	Print		Title	and Obding	Date				
Signature	Print		Title		Date				

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448 East 1st Street, Suite 112 SALIDA, CO 81201 PHONE719-539-4555FAX719-539-5271

PUBLIC NOTICE PURSUANT TO THE LIQUOR LAWS OF COLORADO

Pursuant to the Liquor Laws of the State of Colorado, MojosEateryLLC dba MojosEatery, has requested the Local Licensing Authority of the City of Salida, Colorado to grant a Beer and Wine (City) liquor license to sell malt and vinous liquors for consumption on premises at 142 Old Stage Road, Salida, CO 81201.

A hearing on the application received November 25, 2020 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, January 5, 2021, remotely through the GoToWebinar application via the following direct link: https://attendee.gotowebinar.com/register/2923586433681497360

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

Additionally, depending on which "Tier" of its COVID-19 Action Plan the City of Salida is in on January 5, 2021, based upon Public Health Department guidance, the hearing may also take place in the City Council Chambers, 448 East 1st Street, Salida, Colorado.

LOCAL LICENSING AUTHORITY

Erin Kelley, City Clerk

Premises Posted: Wednesday, December 23, 2020 Publish in Mountain Mail: December 4, 2020

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Erin Kelley, City Clark

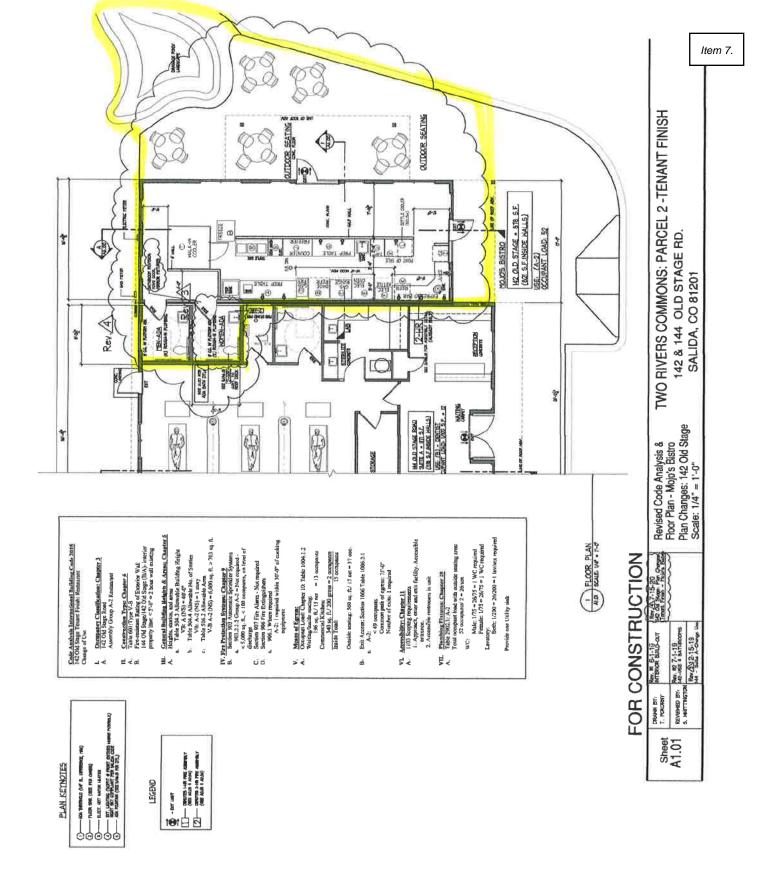
FRIDAY, DECEMBER 4, 2020

2020

ximately 74.3 1 in size from 1 and on-site 5 will serve the 100-year

Premises Posted: Wednesday, December 23, 2020 Published in The Mountain Mail December 4, 2020

PURI IC NOTICE



- 22 -

COMMERCIAL LEASE -

LEASE made this First day of June, 2020 by and between Parcel 2, LLC (Lessor) and Andy and Misty Modrzejewski (Mojo's Restaurant) (Lessee).

1. **PREMISES**: In consideration of payment of the rent and the keeping and performance of the covenants and agreements by the said Lessee hereinafter set forth, the said Lessor hereby leases unto the said Lessee the following described premises, situate in the City of Salida and the County of Chaffee, in the State of Colorado to wit:

approximately 878 square feet in a retail center situated in the City of Salida, Colorado, 142 Old Stage Road, being a part of a retail building located at144 and 142 Old Stage Road and legally described as:

Lot 13 of the Two Rivers Subdivision in Salida, Colorado

Together with the following:

- 1) Access and use of the Common Areas including the parking lot per the POA declaration.
- 2) Use of approximately 850 sq. ft. of Limited Common Element on the north and east side of building (see Exhibit A)
- 3)
- 2. LEASE TERM: The initial term of this lease will be 60 months. This Lease shall commence at 12:00 noon on the First day of June, 2020 and shall end on the last day of May, 2025.
- 3. USE: Lessee agrees that the Premises shall be used and occupied for the operation of an Assembly (restaurant) space in a careful, safe and proper manner, and that it will pay on demand for any damage to the Premises or the building of which said Premises are a part, caused by the misuse of same by its agents, employees, customers or clients.

Lessee shall provide, during all hours of operation, at its sole expense, proper supervisory authority in and around the Premises to prevent loitering, graffiti, and other types of nuisance behavior by the Lessee's patrons. Lessee agrees not to suffer any disorderly conduct, noise or nuisance whatsoever about said Premises having a tendency to disturb any persons occupying adjacent premises.

Lessor shall not be liable to Lessee, or to Lessee's employees, patrons, vendors, contractors or visitors for any damage to person or property caused by any act, omission or neglect of Lessee, or Lessee's employees, patrons or visitors, or any other Lessee of the

property its employees, patrons, vendors, contractors or visitors, and Lessee agrees to hold Lessor harmless from all claims for such damage.

 DEPOSIT: The Lessee has deposited with Lessor, and will keep on deposit at all times during the term of this Lease and any extensions thereof, the sum

(**1**), as security for payment by the Lessee of all the terms, conditions, and covenants of this Lease and also as security for those damages which Lessee may cause. Said deposit shall not bear interest accruing to the benefit of the Lessee. The Lessor may apply the deposit to cure any default under the terms of the Lease and shall account to Lessee for the balance. Lessee may not apply the deposit hereunder to the payment of rent received hereunder or the performance of other obligations.

There is no provision for early termination of this Lease, unless Lessee executes the Option to Purchase as provided within the Additional Provisions of this Agreement. Within sixty (60) days of termination of Lease and vacation of premises, Lessor will mail to Lessee's last known address a full and specific statement of retention of any or all of the deposit and/or any refund due Lessee or monies owed Lessor. Lessor shall have the right to proceed against Lessee to recover any sums due exceeding Lessee's deposit, as provided by law. REFUNDS WILL ONLY BE MADE BY MAIL DURING THE SIXTY (60) DAY PERIOD PROVIDED FOR ABOVE.

5. Base Rent: The minimum rental for the Premises, for the full term aforesaid, shall be no less than which amount shall be payable in equal monthly installments, and which will be adjusted as described below, without notice, set-off or deduction, in advance on or before the first (1st) of each month during the term of this Lease at the address of the Lessor as written below:

All payments shall be made, without notice, to the office of Parcel 2 LLC, PO Box 745, Salida CO 81201, or to such other location as the Lessor may from time to time designate.

Escalation of Base Rent: The Base Rent shall escalate at 2% per year effective beginning upon the first month's rent of the third year and the first month's rent of each additional year of the Lease Term of this agreement.

These Additional Rents shall be adjusted annually to reflect any increase in costs. These real costs will be shown to Lessee upon demand.

Lessee shall also all personal property taxes on the equipment, furniture, signs and fixtures whether owned or leased by lessor or owned or leased by lessee.

- 7. LATE CHARGES: Should any payment not be received in full at the office of Parcel 2 LLC, or at such other location which the Lessor may from time to time designate as the location at which rent is to be paid, on or before the tenth (10th) day of each calendar month, a late charge equal to _________ of the outstanding balance shall become due and payable without notice.
- 8. **OPTION TO EXTEND**: The Lessee shall have <u>one</u> (1) additional option to extend this lease for a period of <u>five</u> (5) years following the initial <u>five</u> (5) year term.

The minimum rent for the first year of any additional five (5) year terms shall be adjusted to be equal to the fair market rent for the Leased Premises as agreed upon by Lessee and Lessor plus Additional Rent then due. In no case shall the minimum rent for the first year of the additional term be less than the amount of the minimum rent for the year immediately preceding the commencement of the additional year term.

The Lessee must notify the Lessor in writing no later than 180 days prior to the end of the initial term of this lease of its intent to exercise its option. The Lessee's right to exercise its option shall terminate if notice is not received by Lessor 180 days prior to the expiration of the primary term. Lessee's right to exercise its option is specifically conditioned on Lessee not having previously defaulted, or being in default at the time the option is exercised, and/or not being in default at the start of the option period.

During the additional $\underline{five}(5)$ year extension period, all other terms and conditions of the initial Lease shall be in full force and effect.

9. UTILITIES: Lessee shall pay all costs of delivery of electricity, gas, water and sewer, telephones, internet, cable service and trash removal to the Premises, whether charged by a public utility company, private contractor or Lessor.

It shall be the sole responsibility of the Lessee to contact the applicable telephone, cable and internet service provider(s) to arrange for service for the Premises. It shall also be the sole responsibility of the Lessee to provide access for the service provider's representatives to initiate service. Lessor shall not be responsible for failure to make any telephone, cable, television or internet service available. THE OWNERS OF THE PROPERTY ARE NOT RESPONSIBLE FOR REPAIRS, MAINTENANCE OR INSTALLATION OF ANY TELEPHONE OR OTHER LESSEE INITIATED COMMUNICATIONS OR ENTERTAINMENT SERVICES, including, but not limited to, jacks, connections, or wiring whether in the premises or between the premises and the utility provider's service. It is the responsibility of the Lessee to obtain and maintain these personal services at the Lessee's sole expense.

10. MAINTENANCE/NET LEASE: Lessee has inspected the Leased Premises and accepts the same in their "as is" present condition and deems them to be acceptable, Leaseable and in good condition.

Subject to Lessor's obligation outlined in Section 13, Lessee covenants and agrees that it shall, throughout the term of this Lease or any extension thereof, at its sole cost and expense, keep and maintain the exterior and interior of the Leased Premises and all the improvements upon said Leased Premises, in or about the Leased Premises in good repair and, at the expiration of this Lease to surrender and deliver said Leased Premises in as good order and condition as when the same were entered upon, except for normal wear and tear. Failure to repair and maintain said improvements, systems and equipment does not constitute normal wear and tear.

Lessee shall maintain, repair and/or replace the structural and non structural components of the Leased Premises including, but not limited to, all plate glass; exterior and interior doors and locks; appliances; counters; sub flooring; floor covering; windows and window coverings; interior walls and ceilings; electrical systems (including delivery systems), fixtures, components and wiring; all gas service (including mains); sewer connections and pipes (including mains and backed up drains however caused); plumbing, pipes, fixtures and components; water heaters; alarm systems; heating and air-conditioning equipment and components; signs and any and all equipment, furniture or fixtures used in connection with the operation of the Leased Premises.

Lessee shall keep exterior areas including the sidewalks and walkways in front of and around said Leased Premises free from ice and snow, and said sidewalks and Leased Premises free from all litter, dirt, debris, graffiti and obstructions. All graffiti is to be removed within twenty four (24) hours.

Lessee shall keep Leased Premises clean and in the sanitary conditions required by ordinance and the health and police regulations of the State of Colorado, and the City of Salida, Colorado.

Nothing may be screwed, nailed or otherwise affixed to the door and/or window frames. Interior signs, including neon signs, need to be hung from above the doors and windows attached to the drywall and/or the ceiling. Lessee may not move, alter modify or reconfigure any of the existing doors, door frames, windows, window frames or glass in the Premises.

Lessee may not affix any material, including but not limited to, satellite dishes, antennae, signs, awnings, banners, notices, etc. to the exterior of the building including the mansard, walls, doors, door and window frames, and exterior glass without written permission from the Lessor.

- 11. AMERICANS WITH DISABILITIES ACT: Lessee shall be responsible for complying with the Americans with Disabilities Act with respect to Lessee's use, occupancy and alteration of the Premises, including any alterations or modifications to the exterior of the Premises or other areas of the Shopping Center required by Law and attributable to Lessee's use, occupancy or alteration of the Premises. Lessor shall be responsible for compliance with the ADA with respect to the common areas of the Shopping Center to the extent, but only to the extent, that any alterations or other modifications to such areas required under the ADA are not attributable to Lessee's use, occupancy or alteration of the Premises.
- 12. LESSEE'S OBLIGATIONS: Lessee agrees to neither hold nor attempt to hold Lessor liable for any injury or damage, either proximate or remote, occurring through or caused by any repairs, alterations, injury or accident to the Leased Premises or to adjacent premises, nor liable for any injury or damage occasioned by defective electric wiring, falling plaster, steam, gas, electricity, water, dampness or the breakage or stoppage of plumbing or sewage upon said Leased Premises or adjacent premises, whether said breakage or stoppage is caused by freezing or otherwise unless due to the Lessor's negligence; nor shall the Premises be used for any

purpose which renders the insurance thereon void or the insurance risk more hazardous, unless specific insurance coverage is endorsed for a more hazardous risk.

13. LESSOR'S OBLIGATIONS: Lessor shall keep the foundations, roof, exterior walls and painting thereof the Building in which the Leased Premises are located in good repair, except that the Lessor shall not be required to make any such repairs which become necessary or desirable by reason of the act or negligence of the Lessee, its agents, servants, employees or visitors, except when caused by fire, explosion or other cause covered by fire and extended insurance coverage.

Lessor agrees to cause to be supplied water, gas and a reasonable supply of electricity to the Building of which the Leased Premises are a part. Lessee agrees that Lessor shall not be liable for failure to provide these services, or any of them, when such failure is not due to gross negligence on its part, or when caused by reasons of accident, repairs, alterations, strikes, lockouts, riots, acts of God or other circumstances beyond Lessor's control.

14. MOLD & FUNGUS: Lessee acknowledges, understands and agrees that mold and fungi have been associated with potential adverse health effects and symptoms; there is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture; if mold is a problem it must be cleaned up and the source of the moisture repaired or eliminated; and insurance companies are excluding coverage in policy renewals with respect to loss due to mold or fungi. For the purposes of this Agreement, mold and/or fungi in any form, its byproducts and components, mildew and any mycotoxins, endotoxins, spores or scents produced or released by mold and/or fungi shall mean and be referred to collectively as "mold."

In order to minimize or avoid the occurrence of mold in the Premises, as well as in the floors, sub-floors, walls, ceilings, sub-roofs and other areas adjacent to the Premises, including adjacent units (collectively, the "Adjacent Areas"), Lessee covenants that it shall keep the Premises properly ventilated and free of accumulation of water or moisture, and shall not alter any portion of the Premises in a manner which could reasonably cause an accumulation of water or moisture in Adjacent Areas. Lessee agrees to notify Lessor immediately upon Lessee's observation of unusual or unreasonable amounts of water, moisture, mold, odors or staining in the Premises or Adjacent Areas and to observe such steps as Lessor may reasonably require from time to time avoiding or minimizing any occurrence or recurrence of mold in the Premises and Adjacent Areas. Lessee shall indemnify Lessor and hold it harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and costs for mold inspections, reports, and remediation), arising directly or indirectly, in whole or in part, out of Lessee's breach of any covenant or agreement under this section.

15. ENVIRONMENTAL PROVISIONS: Lessee, prior to the Commencement Date, shall obtain all permits necessary for Lessee to operate its business, and shall thereafter continue to comply with all city, county, state, and federal laws applicable to Lessee's business and Hazardous Materials (as defined herein). Lessee shall not discharge any chemicals or other Hazardous Materials into the sewer system or sanitary sewer or Shopping Center drains, and if Lessee does so, Lessee shall immediately report same to the appropriate city and state authorities. Lessee agrees that at the expiration or other termination of this Lease, the Premises will not be in violation of any city, county, state or federal law, ordinance or regulation relating to environmental conditions on, under or about the Premises, including, but not limited to, soil and groundwater conditions, which shall have been caused by Lessee's negligence or unlawful acts, and Lessee shall submit Lessee's affidavit to Lessor to such effect. If there is such contamination, Lessee shall, at its own cost, promptly cause said contamination to be removed and furnish Lessor with a closure letter from the Colorado Department of Health showing the removal of all contamination.

Lessee shall indemnify Lessor and hold it harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action, requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of the presence on, under or about the Premises of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from the Premises or other areas of the Shopping Center resulting from activity carried on or undertaken by Lessee, its agents or employees on or about the Premises or other areas of the Shopping Center. Lessee's obligations and liabilities under this section shall survive the termination of the Lease.

16. HAZARDOUS SUBSTANCES AND ENVIRONMENTAL REGULATIONS: Lessee shall not use the Premises for the production, sale, or storage of any toxic or hazardous chemicals, wastes, materials or substances, or any pollutants or contaminants, as those terms are defined in any applicable Federal, state, local or other governmental ordinance, code, rule or regulation.

17. ALTERATIONS AND LESSEE FINISH:

See Additional Provisions section

Any of the improvements that are connected to the property, including but not limited to, plumbing and electrical modifications, the hot water heater, demising walls, floor covering and electrical modifications including light fixtures are considered a permanent part of the real estate and shall remain in place and in the possession of the Lessor at such time as the Lessee vacates.

Those items which are the personal property of the Lessee, such as furniture, portable lighting fixtures and work stations shall remain the property of the Lessee.

Improvements or Alterations by Lessee: Improvements to the demised premises shall be installed at Lessee's expense only in accordance with plans and specifications which have been previously submitted to and approved in writing by Lessor. Lessee will submit his plans to Lessor for approval within thirty (30) calendar days of the execution date of this Lease.

The Lessee may <u>NOT</u> access, breach or in any other way impact the roof of the building for any reason including the installation of ventilation systems without the written consent of Lessor.

Should any improvement require roof access, and should Lessor grant such access, Lessee and/or his architect and general contractor must contact and coordinate with Lessor and manufacturer who has the warranty on the roof.

Lessee shall give written notice to Lessor of the proposed work and the names and addresses of the persons supplying labor and materials so that Lessor may avail itself of the provisions of statutes such as §38-22-105(2) of Colorado Revised Statutes (1973, as amended). During and prior to any such work on the Premises, Lessor and its agents shall have the right to go upon the Premises and to post and keep posted thereon notices such as those provided for in said §38-22-105(2) or to take any further action that Lessor may deem to be proper for the protection of Lessor's interest in the Premises.

Lessee covenants and agrees that it will make no structural alterations, material changes, or additions in and to the Leased Premises without the prior written consent of Lessor, which consent will not be unreasonably withheld. Such alterations and changes as approved by Lessor shall be at Lessee's sole expense. All permanent improvements installed by Lessee shall become and remain the property of Lessor, unless otherwise agreed to in writing. All trade fixtures installed by the Lessee and removable without injury to the Building may be removed by the Lessee before or at the expiration of this lease, provided that the Lessee shall repair any damage done to the Building in removing such trade fixtures and shall remain responsible for any such damage. All such changes, additions or alterations shall be made solely at the expense of Lessee; and the Lessee agrees to protect, indemnify and save harmless the Lessor on account of any injury to third persons or property by reason of any such changes, additions or alterations or alter

ABANDONED FIXTURES: Any trade fixtures remaining on the premises 14 days after the termination of the term of this lease or extension thereor shall be deemed abandoned and become the property of the Lessor.

- 18. MECHANICS' LIENS: Lessee agrees that at no time during the term of this Lease will it cause a lien or encumbrance of any kind or nature to come into existence against the Premises. If Lessee causes a lien or encumbrance to be filed against the Premises, Lessee shall promptly discharge said lien or encumbrance, and if the lien or encumbrance has not been removed within thirty (30) days from the date it is filed or recorded against the Premises, Lessee agrees that it will deposit with Lessor in cash or a satisfactory bond an amount sufficient to satisfy the claim of the person or concern filing the lien or encumbrance, and shall leave the same on deposit with Lessor until said lien is discharged. In the event Lessor is included in any litigation regarding a claimed lien, Lessee shall hold Lessor harmless and indemnify Lessor from any and all liability, costs, attorney's fees, and other charges incurred by Lessor in connection with such litigation.
- 19. ACCESS The Lessor and/or his agents or employees shall have the right at any time to enter the Premises to inspect and examine same or to make such repairs, additions or alterations as it may deem necessary or proper for the safety, improvement or preservation thereof, and shall at all times have the right, at its election, to make such alterations and changes to other portions of said building as it may from time to time deem necessary and desirable.
- 20. **SUBLETTING:** Lessee agrees that it will not sublet all or part of the demised Premises, nor assign this Lease, or any interest therein, nor sell or transfer its business without first obtaining the prior written consent of Lessor, which consent shall not be unreasonably withheld. Should such a transfer or sale occur, Lessee shall be required to pay to Lessor a one-time non-refundable fee of \$750.00 to defray the costs of reviewing the request.

- 21. CONTINUED USE: It is the essence of this Lease that the Lessee shall occupy and use the Premises for the purpose hereinabove specified, continuously and uninterruptedly, during the full term of this Lease and any extensions thereof, unless Premises are rendered unleaseable by reason of fire or unavoidable casualty.
- 22. **PARKING**: Lessor hereby grants to Lessee, its customers and invitees, the non-exclusive right for and during the term of this lease and any extension thereof to use the parking area, driveways and walkways, such use to be in common with the Lessor and all Lessees of the Lessor, their customers, agents and invitees except at such time as the parking lot or any other part of the common area is being cleaned, repaired or replaced. Nothing herein shall grant the Lessee the right to use any such parking area, driveway or walkway for storage, promotion or sales purposes, or to obstruct or impede pedestrian and vehicular traffic thereon.
- 23. SIGNS: Lessee shall not erect, paint, or cause to be placed upon the Premises or the building of which the Premises are part any exterior or window signs, lettering, or other advertising media without prior written consent of Lessor. Lessee agrees not to use any types of advertising or promotion which might be objectionable to, or disturb the enjoyment of, other Lessees, such as loud speakers, music, etc., which broadcasts in such a manner as to be heard outside the demised Premises.
- 24. **INSURANCE:** Lessee shall not carry any stock of goods or do anything on or about the Premises which will, in any way, tend to increase the insurance rates on said Premises. Lessee agrees not to store any flammable or toxic substances or chemicals excluding acetone and those other products commonly used in the Lessee's business, provided that all such materials are stored in proper containers and in the amounts set forth above, in or around the Premises, not to overload existing electrical wiring, or to cause any other potential hazard to the Premises or the building of which it is part.

Lessee agrees to obtain, at its sole expense, insurance to cover all exterior doors, glass windows, and plate glass in the demised Premises, insurance thereon to insure the same against breakage, theft or other damage and to carry liability insurance upon the demised Premises of not less than \$1,000,000.00 or such other limits as Lessor and/or his insurance company may from time to time require. Lessors shall not carry insurance for loss by fire, water, theft, vandalism or any loss by any cause whatsoever to Lessee's leasehold improvements, belongings and possessions. Lessee shall furnish a Certificate of Insurance to Lessor evidencing compliance with the foregoing insurance requirement. Said Certificate shall have a thirty (30) day notice of cancellation clause and shall name Parcel 2, LLC and Salida Rentals, LLC as additional named insureds.

25. REPLACEMENT OF BUILDING: The Lessor shall keep the building of which the demised Premises are a part insured against any loss or damage by fire and further agree that if the building on which the demised Premises are a part is damaged or destroyed by fire or any other cause, so long as said damage is not directly attributable to the negligence of the Lessee, the Lessor will proceed with all due diligence to restore the same to the condition as it existed before such damage or destruction, and as soon as possible thereafter, provided, however, that, in the opinion of the Lessor the building is not so badly damaged that it is not feasible to rebuild or repair same. In that case, the Lessor shall have the right to terminate this Lease instead of rebuilding the improvements. If, because of fire or other casualty, the Premises are rendered unleaseable, then and in that event, rent shall abate until the Premises are restored to their former condition.

It is further agreed, however, that the replacement or repair of any portion of the demised premises damaged in connection with any burglary or other forcible entry into the demised premises, or any acts of vandalism, shall be at the sole expense of Lessee.

- 26. GOVERNMENT REGULATIONS: Lessee shall, at all times, operate in compliance with all local, state and federal laws, ordinances, rules, regulations, and codes, pertaining to the Premises and the use thereof, and shall not engage in any activity that is illegal, illicit, in violation of health or zoning regulations or which fails to comply with any such governmental requirements. In addition Lessee shall comply with any and all provisions of the Americans With Disabilities Act (ADA) at Lessees sole expense.
- 27. INDEMNIFICATION: Lessee hereby agrees and covenants to release and hold harmless Lessor and his agents, employees, contractors, heirs, successors and assigns, from any and all claims and damages, for the loss or theft of Lessee's personality and/or which may arise out of accidents or injuries to Lessee, his agents, employees, contractors or patrons on the Premises or on the property of which the demised Premises are a part, which may occur due to any cause or reason. Lessee will hold Lessor and his agents harmless from any claims for damages, no matter how caused, and for every loss, cost, expense or penalty arising out of any accident or injury to any person or property whomsoever or whatsoever.
- 28. LESSORS NOT A PARTNER: No terms, provisions, or conditions of this Lease or any extensions thereof, or matters and things herein set forth shall be construed as creating or constituting the Lessor as partners or joint venturers with the Lessee, nor shall any portion, provision or covenant of this Lease be construed in any manner as making Lessor responsible for the debts, defaults, obligations, or losses of the Lessee. The relationship between said parties shall be that of Lessor and Lessee only.
- 29. NOTICES: Any notice required to be given to Lessor may be sent Certified Mail, postage prepaid, return receipt requested, to that address at which rent is currently payable, or to such other place as Lessor may from time to time designate in writing. Notice to the Lessee may be personally delivered or mailed Certified Mail, postage prepaid, return receipt requested, to the demised Premises.
- 30. **SUBORDINATION:** Lessee agrees that this Lease is, and shall be at all times, subordinate to the lien of any mortgage which Lessor or its assigns shall make covering said Premises or the building of which the Premises are a part, and to any or all advances to be made thereunder to the interest thereon.
- 31. **INSOLVENCY**: Any assignment for the benefit of creditors or by operation of law shall not be effective to transfer any rights herein to the said assignee without the written consent of the Lessor first having been obtained. It is further agreed between the parties that, should Lessee be declared insolvent, or a writ for seizure of the Lessee's property be issued by any court of law, or should a Receiver be appointed for the property of Lessee, whether under the operation of Federal or State statutes, Lessor may, at its option, terminate this Lease and retake possession of the Premises without being guilty in any manner of forcible entry and detainer or trespass, and without the same working any forfeiture of the obligations of Lessee hereunder.
- 32. **BREACH**: At Lessor's option, it shall be deemed a breach of this Lease if Lessee defaults (a) in the payment of rent or any other monetary obligation; or (b) in the performance of any of the

terms and conditions of this Lease. Lessor may elect to cure such default without termination of this Lease or the obligations of Lessee hereinunder.

In the event Lessor elects to terminate this lease, he may do so by giving Lessee three (3) days' written notice requiring payment of all sums due and owing and/or compliance with other terms and conditions of the Lease. If Lessee fails to cure said default within three (3) days, Lessor may, at its option, declare the Lease terminated. Lessor shall be entitled to recover all damages caused by the Lessee's default, including but not limited to, attorney's fees, advertising, rent loss, necessary renovation or restoration of the Premises, leasing commissions and the rent for the balance of the term of the Lease.

If default shall be made in the performance of any of the other covenants or conditions which Lessee is required to observe and to perform, and such default shall continue for twenty (20) days, or if the interest of Lessee under this Lease shall be levied upon under execution or other legal process, or if any petition shall be filed by or against Lessee to declare Lessee a bankrupt, for the reorganization or rehabilitation of Lessee or to delay, reduce or modify Lessee's debts or obligations, or if any petition shall be filed or other action taken to reorganize or modify Lessee's capital structure if Lessee be a corporation or other entity, or if Lessee be declared insolvent according to law, or if any assignment of Lessee's property shall be made for the benefit of creditors, or if a receiver or trustee is appointed for Lessee or any renewals or extensions thereof, then Lessor may treat the occurrence of any one or more of the foregoing events as a breach of this Lease (provided that no such levy, execution, legal process or petition filed against Lessee shall constitute a breach of this Lease if Lessee shall vigorously contest the same by appropriate proceedings and shall remove or vacate the same within twenty (20) days from the date of its creation, service or filing).

If Lessee shall default in the performance of any covenant or provision of this Lease to be performed on Lessee's part, Lessor may, after twenty (20) days' written notice to Lessee, or without notice if in Lessor's opinion an emergency exists, perform the same for the account and at the expense of Lessee. If Lessor shall incur any expense, including reasonable attorney's fees, in instituting, prosecuting, or defending any action of Lessee, Lessee shall reimburse Lessor for the amount of such expense with interest at the rate of eighteen percent (18%) per annum from the date of Lessor's advance or advances therefor. Should Lessee, pursuant to this Lease, become obligated to reimburse or otherwise pay Lessor one or more sums of money pursuant to this article 31, the amount thereof shall be paid by Lessee to Lessor within ten (10) days of Lessor's written demand therefor, and if Lessee fails to make such payment, such failure shall be deemed an event of default as set forth in this Article. The provisions hereof shall survive the termination of this Lease, and shall neither impose a duty on Lessor nor excuse any failure on Lessee's part to perform or observe any covenant or condition in this Lease contained on Lessee's part to be performed or observed.

33. REMEDIES UPON BREACH: In the event of a breach of this Lease by Lessee, Lessor may utilize any one or more of the following described remedies, in addition to all rights and remedies provided at law or in equity:

(a) Lessor may terminate this Lease and forthwith repossess the Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering the Premises, including Lessor's attorney's fees; (ii) the unpaid rent earned at the time of termination, plus interest thereon at the rate of eighteen percent (18%) per annum from the due date; (iii) the

balance of the rent for the remainder of the term less the fair market value of the Premises for said period; (iv) damages for the wrongful withholding of the Premises by Lessee; and (v) any other sum of money and damages owed by Lessee to Lessor. Lessor shall also have the right to recover any and all of the rent abatement or "free rent" given to Lessee at the commencement of this Lease.

(b) Lessor may retake possession of the Premises and shall have the right, but not the obligation, without being deemed to have accepted a surrender thereof, and without terminating this Lease, to relet same for the remainder of the term provided for herein; and if the rent received through such releting does not at least equal the rent provided for herein, Lessee shall pay and satisfy any deficiency between the amount of the rent so provided for and that received through reletting; and, in addition thereto, Lessee shall pay all reasonable expenses incurred in connection with any such reletting, including, but not limited to, the cost of renovating, altering and decorating for an occupant and leasing commissions paid to any real estate broker or agent. Lessor shall also have the right to recover any and all of the rent abatement or "free rent" given to Lessee at the commencement of this Lease.

- 34. ATTORNEY'S FEES: Lessee agrees to pay all costs and attorney's fees resulting from reason of any breach or default of this Lease by Lessee.
- 35. WAIVER: No waiver of any breach of one or more conditions of the covenants of this Lease by the Lessor shall be deemed to imply or constitute a waiver of any succeeding or any other breach hereunder.
- 36. AMENDMENT OR MODIFICATION: Lessee acknowledges that he has not relied upon any statements, representations, agreements or warranties, except as are expressed herein. No agreement or modification of this Lease shall be binding or valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Lease. Verbal arrangements and agreements are not binding.
- 37. HOLDING AFTER TERMINATION: It is mutually agreed that if after the expiration of this Lease Lessee shall remain in possession of the Premises without a written agreement to such holding, then such holding shall be deemed to be a holding upon a month to month rental, equivalent to one hundred twenty per cent (120%) of the last monthly rental payment provided for herein, payable in advance on the same day of the month as hereinabove provided: all other terms and conditions of this Lease remaining the same. Lessor may place or caused to be placed a "For Lease" sign on the premises sixty (60) days prior to the end of the Lease term.

38. BROKERAGE: None

- 39. **DISCLAIMER**: lessor and lessee expressly disclaim any implied warranty that the leased premises are suitable for Lessor's intended commercial purpose, and Lessor's obligation to pay rent hereunder is not dependent upon the condition of the leased premises or the performance by lessor of its obligations hereunder, and, except as otherwise expressly provided herein, lessee shall continue to pay the rent, without abatement, demand, setoff or deduction, notwithstanding any breach by lessor of its duties or obligations hereunder, whether express or implied.
- 40. BINDING EFFECTS: It is agreed that the covenants and conditions contained herein shall be

binding upon and may be legally enforced by both parties, their heirs, executors administrators and/or assigns. All pronouns are to be construed in the masculine or feminine, singular or plural, as applicable.

Should any provision of this Lease be declared invalid in any court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect regardless of said declaration.

41) ADDITIONAL PROVISIONS:

- The Lessor offers to Lessee the Option to Purchase the above space within two (2) years of execution of this Agreement for the price of \$239,000. If the Option to Purchase is exercised, Lawton Eddy shall be the realtor of record and handle the Purchase Agreement.
- Although this lease is executed on June 1, 2020, Lessor shall allow Lessee until September 1 to work within the unit without paying rent (90 days free rent).
- Upon execution of this Lease Agreement, Lessee shall pay the \$2,000 deposit and one month's rent (\$1550) to Lessor as a non-refundable deposit.
- The Lessor agrees to provide to Lessee a budget of \$21,934.00 to complete the following items within the unit (Lessee to coordinate work):
 - Lessor will provide the Electrical Service (trench and conduit from transformer, 200 amp service wire, 200 amp disconnect and panel, 200 amp meter base)
 - Lessor will not provide Electrical Finish (budget of \$7,134 per bid by Antero Electric)
 - Lessor will not provide insulation (budget of \$2500)
 - Lessor will not provide drywall (budget of \$5300)
 - Heat: furnace and ventilation in place. Lessor will not provide gas connection, electrical connection, spiral duct connection, etc. to furnace (budget of \$3,500)
 - Plumbing: rough plumbing for two ADA bathrooms in place. Lessor will not provide fixtures and finish. (budget of \$3,500)

SIGNATURE PAGE

EXECUTED IN DUPLICATE this 15 day of John, 2020 by and between:

LESSOR:

Jon Hohomy

LESSEE: Individually and as Guarantor



Colorado Secretary of State Date and Time: 07/21/2020 09:10 AM ID Number: 20201619014

Document number: 20201619014 Amount Paid: \$50.00

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Organization

filed pursuant to § 7-90-301 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

Document must be filed electronically.

For more information or to print copies

of filed documents, visit www.sos.state.co.us.

Paper documents are not accepted. Fees & forms are subject to change.

MojosEateryLLC

(The name of a limited liability company must contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "l.l.c.", "ltc", or "ltd.". See §7-90-601, C.R.S.)

(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the limited liability company's initial principal office is

Street	add	ress
Succi	auu	11 COS

142 old stage road

	(Street)	number and name)	
	salida	со	81201
	(City)	United S	(ZIP/Postal Code)
	(Province – if applicable)	(Countr)
Mailing address leave blank if same as street address)	(Street number and na	me or Post Office .	Box information)
	(City)	(State)	(ZIP/Postal Code)
	(Province – if applicable)	- (Countr	······································

3. The registered agent name and registered agent address of the limited liability company's initial registered agent are

(if an individual)	Modrzejewski	Andrew	Thomas	
	(Last)	(First)	(Middle)	(Suffix)
or				
(if an entity)				
(Caution: Do not provide both an indivi	dual and an entity name.)			
Street address	1140 F street			
		(Street number and name)		
	Salida	СО	81201	
	(City)	(State)	(ZIP Code)	
Mailing address				
(leave blank if same as street address)	(Street number and name or Post Office Box information)			

	CO		
(City) (State)	(ZIP Code)	

(The following statement is adopted by marking the box.)

X The person appointed as registered agent has consented to being so appointed.

4. The true name and mailing address of the person forming the limited liability company are

Name	Madmaiawahi	6	T 1	
(if an individual)	Modrzejewski (Last)	Andrew (First)	Thomas (Middle)	(C. (C.)
or	(Last)	(First)	(Midale)	(Suffix)
(if an entity) (Caution: Do not provide both an in	dividual and an entity name.)			
Mailing address	1140 F street			
U U	(Street number	and name or Post Of	fice Box information)	
	Salida	CA	81201	
	(City)	(State) United S	(ZIP/Postal Coa	le)
	(Province - if applicable)	(Countr	(1	
 5. The management of the limited liab (Mark the applicable box.) one or more managers. or the members. 	bility company is vested in			
6. (The following statement is adopted by markin There is at least one member of				
7. (If the following statement applies, adopt the s This document contains addition				
8. (Caution: Leave blank if the document de significant legal consequences. Read ins		te. Stating a delay	ed effective date has	

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.) The delayed effective date and, if applicable, time of this document is/are

(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

Modrzejewski	Andrew	Thomas	
1140 F street	(First)	(Middle)	(Suffix)
(Street number	and name or Post Offic	e Box information)	
Salida	СО	81201	
(City)	(State) United St	(ZIP/Postal Co ates .	de)
(Province - if applicable)	(Country)		

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

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,

MojosEateryLLC

is a

Limited Liability Company

formed or registered on 07/21/2020 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 20201619014.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/23/2020 that have been posted, and by documents delivered to this office electronically through 07/27/2020 @ 09:10:13.

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 07/27/2020 @ 09:10:13 in accordance with applicable law. This certificate is assigned Confirmation Number 12490354



novall

Secretary of State of the State of Colorado

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

OFFICE OF THE SECRETARY OF STATE

OF THE STATE OF COLORADO

CERTIFICATE OF DOCUMENT FILED

I, Jena Griswold , as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office, the attached document is a true and complete copy of the

Articles of Organization

with Document # 20201619014 of MojosEateryLLC

Colorado Limited Liability Company

(Entity ID # 20201619014)

consisting of 3 pages.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/23/2020 that have been posted, and by documents delivered to this office electronically through 07/27/2020@09:06:39.

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 07/27/2020 @ 09:06:39 in accordance with applicable law. This certificate is assigned Confirmation Number 12490340



Jusual

Secretary of State of the State of Colorado

OPERATING AGREEMENT MOJOSEATERYLLC A COLORADO LIMITED LIABILITY COMPANY

THIS AGREEMENT is made and entered into to be effective the 21st day of July, 2020, by Andrew Thomas Modrzejewski, Misty Modrzejewski, Gregory V. Walter and Therese A. Dunn (as joint tenants), as the members (the "Members") of MojosEateryLLC, a Colorado limited liability company ("the Company").

WITNESSETH:

IT IS AGREED, in consideration of the promises, covenants, performance, and mutual consideration herein as follows:

I FORMATION OF COMPANY

1.1. Articles of Organization. This Company is organized pursuant to the provisions of the Colorado Limited Liability Company Act and pursuant to Articles of Organization filed with the Secretary of State on July 21, 2020. The rights and obligations of the Company and the Members shall be provided in the Articles of Organization and this Operating Agreement.

1.2. Conflict Between Articles of Organization and this Agreement. If there is any conflict between the provisions of the Articles of Organization and this Operating Agreement, the terms of this Operating Agreement shall control.

II PURPOSES AND GOALS

2.1. The purposes and goals of the Company shall be as follows:

2.1.1. To acquire, finance, purchase, own, hold, operate, manage, lease, sell and in all matters generally deal with property, real and personal, specifically including the ownership and management of a restaurant.

2.1.2. To borrow money and issue evidence of indebtedness in furtherance of any or all of the purposes of the Company and to secure the same, if required, by security agreement, deed of trust, pledge or other lien on all or any part of the Company's real or personal property.

2.1.3. To engage in all activities related or incidental to the above and to have and exercise all of the powers now or conferred subsequently by the laws of the State of Colorado on limited liability companies.

III CAPITAL CONTRIBUTIONS

3.1. *Contributions*. The capital contributions to be made by the Members and with which the Company shall begin business are as follows:

<u>Member Name</u>	Contribution
Andrew Thomas Modrzejewski	See Exhibit "A"
Misty Modrzejewski	See Exhibit "A"
Gregory V. Walter and Therese A. Dunn	See Exhibit "A"
(as joint tenants)	

3.2. Additional Capital Contributions. In the event that the cash funds of the Company are insufficient to meet its operating expenses or to finance new investments deemed appropriate to the scope and purpose of the Company, the Members may make additional capital contributions, in the proportion of their capital contributions upon unanimous consent of the Members. The amount of the additional capital required by the Company and the period during which such additional capital shall be retained by the Company shall be also determined by the Members.

3.3. Loans. In lieu of voting an additional assessment of capital to meet operating expenses or to finance new investments, the Company may, upon unanimous consent of the Members, borrow money from one or any of the Members, or third persons. In the event that a loan agreement is negotiated with a Member, he or she shall be entitled to receive interest at a rate and upon such terms to be determined by the Members, and said loan shall be repaid to the Member, with unpaid interest, if any, as soon as the affairs of the Company will permit. The loan shall be evidenced by a promissory note obligating the assets of the Company. Such interest and repayment of the amounts so loaned are to be entitled to priority of payment over the division and distribution of capital contributions and profit among Members.

IV

MEMBERS' ACCOUNTS; ALLOCATION OF PROFIT AND LOSS; DISTRIBUTIONS

4.1. Allocations Among Members. The profits and gains of the Company shall be divided and the losses, deductions and credits of the Company shall be borne in the same proportions as the Members' Capital accounts as described herein (referred to herein as the Members' "Percentage Interests") which shall be initially as follows:

Member	Percentage Interest
Andrew Thomas Modrzejewski	40.25%
Misty Modrzejewski	40.25%
Gregory V. Walter and Therese A. Dunn	19.5%
(as joint tenants)	

4.2. Capital Accounts. A separate capital account shall be maintained for each Member. The capital accounts of each Member shall initially reflect the amounts specified in Section 3.1, and, if a Member has merely promised to contribute the amount specified in Section 3.1, the Company shall maintain a corresponding subscription receivable on behalf of that Member. No Member shall withdraw any part of his or her capital account, except upon the approval of the Members. If the capital account of a Member becomes impaired, or if he or she withdraws said capital account with approval of the Members, his or her share of subsequent Company profits shall be credited first to his or her capital account until that account has been restored, before such profits are credited to his or her income account. If, during the period when a Member's capital account is impaired or he or she has withdrawn funds therefrom as hereinbefore provided, an additional contribution is required of the Members for the purposes specified in Section 3.2, then the Member with such withdrawn or impaired capital account shall be required to contribute his or her proportionate share of the additional capital contribution and the deficiency then existing in his or her capital account, so as to return the capital account to the same proportion existing as of the date of the additional contribution. No interest shall be paid on any capital contributions to the Company.

4.3. Income Accounts. A separate income account shall be maintained for each Member. Company profits, losses, gains, deductions, and credits shall be charged or credited to the separate income accounts annually unless a Member has no credit balance in his or her income account, in which event losses shall be charged to his or her capital account, except as provided in Section 4.1. The profits, losses, gains, deductions, and credits of the Company shall be distributed or charged to the Members as provided in Section 4.2. No interest shall be paid on any credit balance in an income account.

4.4. Distributions of Assets.

4.4.1. All distributions of assets of the Company, including cash, shall be made in the same allocations among Members as described in this Article IV.

4.4.2. Distributions of assets of the Company may be made to the Members only upon approval by the Members; provided, however, that no distribution of assets may be made to a Member if, after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their capital and income accounts, would exceed the fair value of the Company assets.

4.4.3. A Member has no right to demand and receive any distribution from the Company in any form other than cash.

V RULES RELATING TO THE MEMBERS

5.1 *Admission of New Members.* Additional Members may be admitted upon the unanimous written consent of all Members.

5.2 Voting of Members.

5.2.1. Except as otherwise provided in this Agreement where unanimous vote or consent is required, a Member shall be entitled to vote his or her Percentage Interest on any matter for which Members are required to vote. A Member may vote in person or by proxy at any meeting of Members. All decisions of the Members shall be made by an affirmative vote of seventy-five percent (75%) of all the Members' Percentage Interests at a properly called meeting of the Members at which a quorum is present, or by unanimous written consent of the Members.

5.2.2. Where a Membership Interest is owned by an entity, one individual may vote on behalf of the Membership Interest where authorized by the governing documents of the entity. Where a Membership Interest is owned jointly by more than one individual, one individual may vote and otherwise act on behalf of the jointly owned Membership Interest only upon written authority from all other individuals comprising the joint ownership.

5.3. Meetings of Members.

5.3.1. Meetings of Members may be held at such time and place, either within or without the State of Colorado, as may be determined by the person or persons calling the meeting.

5.3.2. An annual meeting of the Members shall be held at such time and place, either within or without the State of Colorado, as may be determined by the Members.

5.3.3. Special meeting of the Members may be called by at least one-half $(\frac{1}{2})$ of all of the Members entitled to vote at the meeting.

5.3.4. Written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than ten (10) days nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the person calling the meeting, to each Member of record entitled to vote at such meeting. A waiver of notice in writing, signed by the Member before, at, or after the time of the meeting stated in the notice shall be equivalent to the giving of such notice.

5.3.5. By attending a meeting, a Member waives objection to the lack of notice or defective notice unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting. A Member who attends a meeting also waives objection to consideration at such meeting of a particular matter not within the purpose described in the notice unless the Member objects to considering the matter when it is presented.

5.4. *Quorum and Adjournment*. A majority of the Members entitled to vote shall constitute a quorum at the meeting of the Members. In the event there are only two Members, both Members must be present for a quorum. If a quorum is not represented at any meeting of the Members, such meeting may be adjourned for a period not to exceed sixty (60) days at any one

adjournment; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each Member entitled to vote at the meeting.

5.5. *Telecommunication.* Any or all of the Members may participate in an annual, regular, or special meeting of the Members by, or the meeting may be conducted through the use of any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting. Written consent and voting of the Members may be communicated or delivered by any form of electronic communication that provides a manner of verification of delivery and receipt.

5.6. General Powers. Management and the conduct of the business of the Company shall be vested in the Members. The Members will be responsible for the general overall supervision of the business and affairs of the Company. Except where the unanimous written consent of the Members is required, all management decisions shall be made upon affirmative vote of the Members, including, but not limited to:

5.6.1. The Members shall have the duties and responsibilities as described in the Colorado Limited Liability Company Act, as amended from time to time.

5.6.2. The Members will establish charges for services and products of the Company as may be necessary to provide adequate income for the efficient operation of the Company.

5.6.3. The Members, within the budget, will set and adjust wages and rates of pay for all personnel of the Company and will appoint, hire and dismiss all personnel and regulate their hours of work.

5.6.4. Only upon unanimous written consent of the Members, the Members shall execute any instruments or documents providing for the acquisition, mortgage, lease, or disposition of the property of the Company. No Member may encumber any of the Company's assets or pledge any of the Company's assets or earnings without unanimous written consent of the Members. Further, any expenditures of Company funds or contracts pertaining to the business or assets of the Company in amounts exceeding \$15,000.00 shall require unanimous Member approval.

5.6.5. Except as noted above, any debt contracted or liability incurred by the Company shall be authorized by the Members, and any instruments or documents required to be executed by the Company shall be signed by the Members.

5.6.6. The Members shall be responsible for the daily and continuing operations of the business affairs of the Company. Except as expressly set forth herein, all decisions affecting the policy and management of the Company, including the control, employment, compensation, and discharge of employees; the employment of contractors and subcontractors; and the control and operation of the premises and property, including the improvement, rental,

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lease, maintenance, and all other matters pertaining to the operation of the property of the business shall be made by the Members.

5.6.7. The Members may draw checks upon the bank accounts of the Company and may make, deliver, accept, or endorse any commercial paper in connection with the business affairs of the Company.

5.6.8. Upon unanimous written consent of the Members, the Company may lease any portion of the personal property owned by the Company to any party including one or more of the Members or entity affiliated or controlled by any Member.

5.7. Devotion to Duty. The Members shall give reasonable time, attention, and attendance to, and use reasonable efforts in the business of the said Company; and shall, with reasonable diligence exert himself or herself for the joint interest, benefit, and advantage of said Company; and shall truly and diligently pursue the Company objectives.

5.8. Indemnification. The Members, employees, and agents of the Company shall be entitled to be indemnified by the Company to the extent provided in the Colorado Limited Liability Company Act, as amended from time to time, and shall be entitled to the advance of expenses, including attorneys' fees, in the defense or prosecution of a claim against him or her in the capacity of Member, employee, or agent.

VI

BOOKS

6.1 *Location of Records.* The books of the Company shall be maintained at the principal office of the Company.

6.2. Access to Records and Accounting. Each Member shall at all times have access to the books and records of the Company for inspection and copying. Each Member shall also be entitled:

6.2.1. To have true and full information regarding the state of the business and financial condition and any other information regarding the affairs of the Company;

6.2.2. To have a copy of the Company's federal, state and local income tax returns for each year promptly after they are available to the Company; and

6.2.3. To have a formal account of the Company affairs whenever circumstances render an accounting just and reasonable.

6.3. Accounting Rules. The books shall be maintained on a cash basis. The Company shall elect to be treated as a partnership for accounting purposes. The fiscal year of the Company shall be the calendar year. Distributions to income accounts shall be made annually. The books shall be closed and balanced at the end of each calendar year and, if an audit is determined to be

necessary by vote or consent of the Members, it shall be made as of the closing date. The Members shall authorize the preparation of year-end profit and loss statements, balance sheet, and tax returns by a public accountant.

VII

DISSOLUTION

7.1. *Causes of Dissolution*. The Company shall be dissolved upon the occurrence of any of the following events:

7.1.1. At any time by unanimous agreement of the Members;

7.1.2. Upon the occurrence of events or time specified for dissolution in the Articles of Organization;

7.1.3. On the sale of all or substantially all of the assets of the Company.

7.2. Continuation of Business. Notwithstanding any other provisions herein, the Company shall not be dissolved upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a Member.

7.3. Distribution of Assets If Business Is Not Continued. In the event of dissolution of the Company and if the Members do not elect to or are unable to continue the business of the Company, the Members shall proceed with reasonable promptness to sell the real and personal property owned by the Company and to liquidate the business of the Company. Upon dissolution, the assets of the Company business shall be used and distributed in the following order:

7.3.1. Any liabilities and liquidating expenses of the Company will first be paid;

7.3.2. The reasonable compensation and expenses of the Members in liquidation shall be paid;

7.3.3. The amount then remaining shall be paid to and divided among the Members in accordance with Capital Account balances as of the date of the distribution, after giving effect to all contributions, distributions and allocations for all periods.

7.4. Purchase of Deceased or Withdrawn Member's Membership Interest.

7.4.1. If a Member's interest in the Company is terminated pursuant to Article VIII, Voluntary Resignation of a Member, or Article X, Death of a Member (collectively "Withdrawn Member"), the Company shall have the right to purchase the Withdrawn Member's interest in its, his, or her share of Profits and Losses, gains, deductions, credits, cash, other assets and Capital Account ("Membership Interest"). The purchase price of the Withdrawn Member's Membership Interest shall be equal to the Appraised Value of the Withdrawn Member's Membership Interest.

7.4.2. The term "Appraised Value" as used in this Agreement, shall be the dollar amount equal to the product obtained by multiplying (i) the Percentage Interest owned by a Withdrawn Member by (ii) the difference between the "Fair Market Value" of the Company's assets, as determined in accordance with Section 7.4.3., and the liabilities of the Company.

7.4.3. The "Fair Market Value" of the Company's assets shall be determined by an appraiser selected by the Members. The appraiser shall be a member of the Appraisal Institute with no less than ten (10) years experience in appraising commercial businesses, including real property. The cost of the first appraisal shall be paid by the Withdrawn Member or his or her estate. If the Withdrawn Member or his or her representative does not accept the Fair Market Value determined by the appraiser chosen by the Members, the Withdrawn Member or his or her representative shall have the right to have a second appraiser satisfying the requirements stated above appraise the assets of the Company. The cost of the second appraisal shall be paid by the Company. If the Members do not agree with the second appraisal, the non-withdrawing Members and the Withdrawn Member or his or her representative shall choose a third appraiser that will choose between the two appraisals. The third appraiser's determination shall be binding on the Company and its Members. The cost of the third appraisal shall be borne by the Withdrawn Member or his or her company in equal shares.

7.4.4. If the Company elects to purchase the Membership Interest of the Withdrawn Member, it may do so on an installment basis in which not less than ten percent (10%) of the purchase price is paid on the closing date and the remaining interest is paid in equal installments over not more than a ten-year period with interest paid annually and accruing at a rate equal to the prime or base rate of interest, with no prepayment restriction, or on any other terms agreed upon by the unanimous consent of the non-withdrawing Members and the Withdrawn Member.

7.5 Purchase of Terminated Member's Membership Interest. If a Member's interest in the Company is terminated pursuant to Article VIII, Expulsion of a Member, or Article IX, Bankruptcy of a Member, (collectively "Terminated Member"), the Company shall have the right to purchase the Terminated Member's Interest for a purchase price equal to the Terminated Member's Capital Account as of the date the termination became effective. If the Company so elects to purchase, it shall serve notice on the Terminated Member within sixty (60) days after the event of terminated Member's actions, and nothing in this Section is intended to impair the Company's right to recover damages for the Terminated Member's wrongful dissolution of the Company by reason of the Terminated Member's expulsion, wrongful withdrawal, or bankruptcy.

VIII

EXPULSION OF A MEMBER

8.1. *Causes of Expulsion*. A Member shall be expelled from the Company upon the occurrence of any of the following events:

8.1.1. If a Member violates any of the material provisions of this Agreement and written notice is given to the Member signed by all other Members and said alleged violation remains uncured for thirty (30) days; or

8.1.2. If a Member's Membership Interest shall be subject to a charging order or tax lien which is not dismissed or resolved to the satisfaction of the other Members of the Company within thirty (30) days after assessment or attachment.

8.2. Notice of Expulsion. Upon the occurrence of the conditions described in Section 8.1., written notice of expulsion shall be given to the violating Member either by serving the same by personal delivery or by mailing the same by certified mail to his or her last known place of residence, as shown on the books of said Company. Upon the receipt of personal notice, or the date of the postmark for certified mail, the violating Member shall be considered expelled, and shall have no further rights as a Member of the Company, however, the expelled Member's Membership Interest shall remain unaffected except to the extent of any damages incurred by the Company, and the Company shall have the right to purchase the Membership Interest in accordance with Section 7.5. In the event the Company does not purchase the Terminated Member's Membership Interest, the Terminated Member's rights shall be those of an unadmitted assignee under Section 12.6.

IX

BANKRUPTCY OF A MEMBER

9.1. Bankruptcy Defined. A Member shall be considered bankrupt if an Order for Relief is entered by or against the Member under applicable U.S. Bankruptcy Law or if the Member makes an assignment for the benefit of creditors or otherwise takes any proceeding or enters into any agreement for compounding his or her debts other than by the payment of them in the full amount thereof, or is otherwise regarded as insolvent under any Colorado insolvency act.

9.2. Effective Date for Bankruptcy. The Effective Date of a Member's bankruptcy shall be the date that the Members, having learned of the Member's bankruptcy, give notice in writing stating that the Member is regarded as bankrupt under this Agreement, such notice to be served personally or by leaving the same at the place of business of the Company. As of the Effective Date, the bankrupt Member shall remain unaffected except to the extent of any damages incurred by the Company, and the Company shall have the right to purchase the Membership Interest in accordance with Section 7.5. In the event the Company does not purchase the Terminated Member's Membership Interest, the Terminated Member's rights shall be those of an unadmitted assignee under Section 12.6.

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VOLUNTARY RESIGNATION OF A MEMBER

10.1. *Right to Withdraw.* A Member shall have the right to withdraw as a Member of the Company, however only with the consent of all other Members. In the event a Member ceases to work full-time in the business of the Company, for any reason whatsoever, then the

Member shall be deemed withdrawn from the Company as of the date the Member ceases to work full-time in the business of the Company.

10.2. Consequences of Withdrawal. The withdrawing Member shall have only the rights of an unadmitted assignee under Section 12.6, and the Company shall have the right to purchase the withdrawing Member's Membership Interest in accordance with Section 7.4.

XI

DEATH OF A MEMBER

11.1. Death of a Member. On the death of a Member, the Deceased Member's rights as Member of the Company shall cease and terminate; however, the executor or administrator of the decedent, or the heirs of the Deceased Member shall have the rights of an unadmitted assignee under Section 12.6, and the Company shall have the right to purchase the Deceased Member's Membership Interest in accordance with Section 7.4. This Section XI shall not apply upon the death of one individual who holds a Membership Interest in joint tenancy with one or more others.

11.2. Consequences of Death. If the Company elects to purchase the Deceased Member's Membership Interest, the Members shall serve notice in writing of the election, within sixty (60) days after the death of the decedent, on the executor or administrator of the decedent, or, if at the time of the election no legal representative has been appointed, on any one of the known legal heirs of the decedent at the last known address of the heir. In the event the Company has life insurance on the decedent, the amount and method of payment for the Membership Interest of the Deceased Member will be as provided in Section 11.3.

11.3. *Insurance*. The Company may contract for life insurance on the lives of each of the individual Members, in any amount not disproportionate to the value of each Member's Membership Interest. In the event of death of a Member, insurance proceeds paid to the Company will be used to purchase the Membership Interest of the Deceased Member. The purchase price shall be no less than the amount of insurance proceeds received by the Company. The payment of the purchase price to the decedent's representatives or heirs shall be made within thirty (30) days following receipt of the insurance proceeds by the Company. If the surviving Members do not elect to continue the business of the Company, or are unable to do so by law, the proceeds of any life insurance shall be treated as an asset of the Company for liquidation.

XII

TRANSFER OF A MEMBER'S INTEREST

12.1. *Restriction on Transfers.* Except as otherwise permitted by this Agreement, no Member shall transfer, sell or otherwise dispose of all or any portion of its Membership Interest, whether voluntarily or involuntarily ("Transfer"). In the event that any Member pledges or otherwise encumbers all or any part of its Membership Interest as security for the payment of a debt, the pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement

that requires the pledgee or secured party to be bound by all of the terms and conditions of this Article XII.

12.2. *Permitted Transfers.* Subject to the conditions and restrictions set forth in Section 12.3, a Member may at any time Transfer all or any portion of its Membership Interest to (a) the transferor's spouse, executor, administrator, heirs or trustee to whom the Membership Interest is transferred involuntarily by operation of law, or (b) any "Purchaser" (as set forth in Section 12.4.1) and in accordance with Section 12.4 (any such Transfer being referred to in this Agreement as in "Permitted Transfer").

12.3. Conditions to Permitted Transfers. A Transfer shall not be treated as a Permitted Transfer under Section 12.2 unless and until the following conditions are satisfied.

12.3.1. Except in the case of a Transfer involuntarily by operation of law, the transferor and transferee shall execute and deliver to the Company those documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect the Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Article XII. In the case of a Transfer of Interests involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of the Transfer, in form and substance satisfactory to counsel to the Company. In all cases, the Company shall be reimbursed by the transfer and/or transferee for all costs and expenses that it reasonably incurs in connection with the Transfer.

12.4. *Right of First Refusal.* In addition to the other limitations and restrictions set forth in this Article XII, except as permitted by Section 13.2(a)-(c) of this Article, no Member shall Transfer all or any portion of its Membership Interest (the "Offered Interest") unless the Member (the "Seller") first offers to sell the Offered Interest pursuant to the terms of this Section 12.4.

12.4.1. Limitation on Transfers. No Transfer may be made under this Section 13.4. unless the Seller has received a bona fide written offer (the "Purchase Offer") from a person or entity (the "Purchaser") to purchase the Offered Interest for a purchase price (the "Offer Price") denominated and payable in United States dollars at closing or according to specified terms, with or without interest, which offer shall be in writing signed by the Purchaser and shall be irrevocable for a period ending no sooner than the business day following the end of the Offer Period, as defined below.

12.4.2. Offer Notice. Prior to making any Transfer that is subject to the terms of this Section 12.4, the Seller shall give to the Company and each other Member written notice (the "Offer Notice") which shall include a copy of the Purchase Offer and an offer (the "Firm Offer") to sell the Offered Interest to the other Members (the "Offerees") for the Offer Price, payable according to the same terms as (or more favorable terms than) those contained in the Purchase Offer, provided that the Firm Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchase prior to closing, and without regard to

any security (other than the Offered Interest) to be provided by the Purchaser for any deferred portion of the Offer Price.

12.4.3. *Offer Period.* The Firm Offer shall be irrevocable for a period (the "Offer Period") ending at 11:59 p.m., local time at the Company's principal place of business, on the forty-fifth (45th) day following the day of the Offer Notice.

12.4.4. Acceptance of Firm Offer. At any time during the Offer Period, any Offeree may accept the Firm Offer as to all or any portion of the Offered Interest, by giving written notice of acceptance to the Seller and each other Offeree, which notice shall indicate the maximum Percentage Interest that the Offeree is willing to purchase. In the event that Offerees ("Accepting Offerees"), in the aggregate, accept the Firm Offer with respect to all of the Offered Interest, the Firm Offer shall be deemed to be accepted and each Accepting Offeree shall be deemed to have accepted the Firm Offer as to that portion of the Offered Interest that corresponds to the ratio of the Percentage Interest that the Accepting Offerees indicated a willingness to purchase to the aggregate Percentage Interests all Accepting Offerees indicated a willingness to purchase. If Offerees do not accept the Firm Offer as to all of the Offered Interest during the Offer Period, the Firm Offer shall be deemed to be rejected in its entirety.

12.4.5. Closing of Purchase Pursuant to Firm Offer. In the event that the Firm Offer is accepted, the closing of the sale of the Offered interest shall take place within thirty (30) days after the Firm Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and all Accepting Offerees shall execute any documents and instruments as may be necessary or appropriate to effect the sale of the Offered Interest pursuant to the terms of the Firm Offer and this Article XII.

12.4.6. Sale Pursuant to Purchase Offer if Firm Offer Rejected. If the Firm Offer is not accepted in the manner provided above, the Seller may sell the Offered Interest to the Purchaser at any time within thirty (30) days after the last day of the Offer Period, provided that the sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer and provided further that the sale complies with other terms, conditions and restrictions of this Agreement that are not expressly made inapplicable to sales occurring under this Section 12.4. In the event that the Offered Interest is not sold in accordance with the terms of the preceding sentence, the Offered Interest shall again become subject to all of the conditions and restrictions of this Section 12.4

12.5. Prohibited Transfers. Any purported Transfer of a Membership Interest that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the Membership Interest transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Membership Interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of the Membership Interest may have to the Company. In the case of a Transfer or attempted Transfer of a Membership Interest that is not a Permitted Transfer, the parties engaging or attempting to engage in the Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of the indemnified Members may incur (including, without limitation, incremental tax liabilities, lawyers' fees and expenses) as a result of the Transfer or attempted Transfer and efforts to enforce the indemnity granted by this Agreement.

12.6. Rights of Unadmitted Assignees. A person or entity that acquires a Membership Interest but is not admitted as a substituted Member pursuant to Section 12.7 shall be entitled only to allocations and distributions with respect to the Membership Interest in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Colorado Limited Liability Company Act or this Agreement.

12.7. Admission of Substituted Members. Subject to the other provisions of this Article XII, a transferee of a Membership Interest may be admitted to the Company as a substituted Member only upon satisfaction of the conditions set forth in this Section 12.7:

12.7.1. The approval of the Members by unanimous written consent or majority vote of the remaining Members;

12.7.2. The Membership Interest with respect to which the transferee is being admitted was acquired by means of a Permitted Transfer;

12.7.3. The transferee becomes a party to this Agreement as a Member and executes any documents and instruments as the Members may reasonably request to confirm the transferee as a Member and the transferee's agreement to be bound by the terms and conditions of this Agreement; and

12.7.4. The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the Transfer of the Membership Interest.

12.8. Representations Regarding Transfers; Legend. Each Member represents and warrants to the Company that the Member's acquisition of a Membership Interest under this Agreement is made as principal for the Member's own account and not for resale or distribution of the Membership Interest. Each Member further agrees that the following legend may be placed on any counterpart of this Agreement, or any other document or instrument evidencing ownership of a Membership Interest.

THE MEMBERSHIP INTEREST REPRESENTED BY THIS DOCUMENT IS SUBJECT TO FURTHER RESTRICTION AS TO ITS SALE, TRANSFER, HYPOTHECATION, OR ASSIGNMENT AS SET FORTH IN THE OPERATING AGREEMENT AND AGREED TO BY EACH MEMBER.

XIII MEMBERS' COVENANTS

13.1. *Member's Personal Debts.* In order to protect the property and assets of the Company from any claim against any Member for personal debts owed by such Member, each Member shall promptly pay all debts owing by him or her and shall indemnify the Company from any claim that might be made to the detriment of the Company by any personal creditor of such Member.

13.2. Alienation of Membership Interest. No Member shall, except as provided in Article XII, sell, assign, mortgage, or otherwise encumber his or her Membership Interest in the Company or in its capital assets or property; or enter into any agreement of any kind that will result in any person, firm, or other organization becoming interested with him or her in the Company; or do any act detrimental to the best interests of the Company.

XIV

MEDIATION

14.1. *Mediation.* If a dispute or deadlock arises between the parties in their capacities as Members concerning any material provision of this Agreement, and the parties are unable to resolve the dispute within a reasonable time, the dispute shall be referred to mediation by request made in writing by one party upon the other. Within ten (10) days of the receipt of such request, the parties shall select a single trained and impartial mediator. Unless otherwise agreed upon in writing by all parties to the dispute, the venue shall be in Chaffee County, Colorado. The cost of the mediator shall be borne equally by the parties regardless of outcome. Mediation shall then proceed in accordance with the following guidelines.

14.1.1. The purpose of the mediation is to (1) promote discussion between the parties; (2) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (3) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy.

14.1.2. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as required by the mediator.

14.1.3. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoen by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a party.

14.1.4. Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

14.1.5. In the event either condition expressed in subparagraph 13.1.4 above occurs, and the parties are unable to resolve the dispute through mediation, then the parties shall be entitled to pursue whatever appropriate legal recourse they have to resolve the dispute.

XV

MISCELLANEOUS PROVISIONS

15.1. *Inurement.* This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns, and each person entering into this Agreement acknowledges that this Agreement constitutes the sole and complete representation made to him or her regarding the Company, its purpose and business, and that no oral or written representations or warranties of any kind or nature have been made regarding the proposed investments, nor any promises, guarantees, or representations regarding income or profit to be derived from any future investment.

15.2. *Modification.* This Agreement may be modified from time to time as necessary only by the written agreement of the Company, acting through the unanimous written consent of its Members.

15.3. Independent Counsel. The Members acknowledge that Powell & Murphy, P.C. represents Gregory V. Walter and Therese A. Dunn, and the Company and other Member(s) are hereby advised their right to seek independent counsel in regard to this Agreement and their Membership Interests if so desired.

15.4. Severability. The provisions of this Agreement are severable and separate, and if one or more is voidable or void by statute or rule of law, the remaining provisions shall be severed therefrom and shall remain in full force and effect.

15.5. *Governing Law.* This Agreement and its terms are to be construed according to the laws of the State of Colorado.

15.6. *Counterparts.* This Agreement may be executed in counterparts and each such counterpart shall be deemed an original of the Agreement for all purposes.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day first above written.

MEMBERS:

6 Andrew Thomas Modrzejewski Misty Modrzejewski Gregory V/. Walter Therese A. Dunn



CITY OF SALIDA 448 E 1st Street, Suite 112 SALIDA, CO. 81201

719-530-2630

LIQOUR LICENSE PETITION

WE THE UNDERSIGNED, BEING CITIZENS OF THE STATE OF COLORADO, AND OF THE AGE OF 21 OR OLDER ARE AWARE THAT <u>MOJOS EATERY LLC</u> dba <u>MOJOS EATERY</u> IS APPLYING FOR A

 BEER AND WINE
 LIQUOR LICENSE TO SELL

 BEER AND WINE
 FOR SALE BY THE DRINK FOR

 CONSUMPTION ON THE PREMISES AT 142 OLD STAGE ROAD

 SALIDA, CHAFFEE COUNTY COLORADO, AND ARE IN FAVOR

 OF SUCH LICENSE BEING ISSUED TO
 MOJOS EATERY LLC

 at 142 OLD STAGE ROAD SALIDA, CO 81201

Print name	Address	Phone	Signature	Yes	No
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Item 7. Sharen Kybik 6820 C.R. 104 Lot 3 Salida Store reason Whatter 410 H STILL Salida Lo 81201 8 HILLSIDEPT. SALLO CO 81201 <u> 924 W. Zrol St. Salida, Ce 81201</u> 20. Box 376 SALIDA CO 8/201 326 The Rivers RJ Salida, CO. 81201 953 W. 3rd Salida (0 8120] 324 Two Rivers Rd Salida (0 8120] 14401d Staye Rd Solida (O BIZOI 103 B St Salida, CO 8 120 herioa Kina madelyne Felsch 814 CR 48 Howard, CD 81233 - NICHOLAS BOYDEN 113 E SACKETT. AVE SALLOA 81201



Meeting Date: January 5, 2021

ORIGINATING DEPARTMENT: Administration, Community Development PRESENTED BY: Nina P. Williams

<u>ITEM</u>: Ordinance 2020-13, Approving the Transfer and Conveyance of Real Property, ocated at M Street and W. Third Street, from the City of Salida to the Chaffee Housing Trust

BACKGROUND:

The subject property, owned by the City, is located at the corner of M Street and W. Third Street and is approximately 16,769 square feet, or .38 acre.

On August 18, 2020, City Council adopted <u>Ordinance 2020-10</u>, rezoning a portion of the property from R-1 (Single Family Residential District) to R-2 (Medium Density Residential District), and <u>Ordinance 2020-11</u>, vacating a portion of E. Crestone Avenue, which then became a part of the subject property.

On November 23, 2020, the Planning Commission approved, with conditions, a limited impact review for a new six-unit affordable residential development, to consist of 4 separate buildings, including a duplex, a primary residence with an attached ADU, and two single-family dwellings.

Subsequently, the City administratively approved the lot line elimination between the two-City owned lots at M Street and W. Third Street, resulting in a single lot.

The Plat of the subject property and lot was recorded with the Chaffee County Clerk and Recorder on December 9, 2020, at Reception No. 465349.

On December 16, 2020, the morning after approval on first reading, the surveyor notified the Community Development department of a minor inconsistency error in the description of the subject property. These changes were insubstantial – a matter of inches along the border of E. Crestone Avenue and just under two feet at the east corner of the property. No other surrounding properties are/were impacted. This correction was then administratively processed, and a Correction Plat was recorded on December 23, 2020 at Reception No. 465875. Prepared by Landmark Surveying & Mapping, this is included in the packet for your reference. The legal description, attached as Exhibit A, has also been updated to reflect that correction.

Pursuant to Council's direction, the City Attorney will ensure that the proper conditions, terms and agreements are recorded when the property is transferred from the City to the Chaffee Housing Trust (CHT). This will ensure the timely construction of the residential units, for sale or rental to households earning at or below 80% of the Area Median Income (AMI) in perpetuity.

In addition, the actual transfer and conveyance of the property will not occur until the relevant improvements within M Street are completed. The City will be responsible for relocating the water line at M Street, and for the reconstruction and paving of M. Street. CHT will pay for the relocation of the sewer line from East Crestone Avenue to M Street before the property transfer, and will complete the construction of sidewalks along M and W. Third Street prior to the issuance of Certificate of Occupancy.



ORIGINATING DEPARTMENT: Administration, Community Development

PRESENTED BY: Nina Williams

Fiscal Note:

Estimates for the City's responsible portion of the right-of-way improvements, still yet to be bid, are between \$90,000 and \$115,000. Other costs, including engineering and design, surveying and appraisals, were around \$12,000.

The appraised land value for the two original City-owned lots was \$122,000.

STAFF RECOMMENDATION:

Due to the rapidly increasing cost of living over the last few years, the Salida City Council has consistently advocated and adopted, as an essential priority and fundamental goal, the increased development and availability of affordable housing for the City's workforce. After a lengthy public process over the last two years, with community input, Council has identified this property as potential for an affordable housing development, and specifically tasked staff with pursuing the necessary applications and drafting for same.

Staff recommends approving Ordinance 2020-13.

SUGGESTED MOTION:

A City Councilperson should make a motion to "Approve Ordinance 2020-13, Approving the Transfer and Conveyance of Real Property, Located at the Intersection of M Street and W. Third Street, from the City of Salida to the Chaffee Housing Trust, and Authorizing the Execution of Certain Agreements for Said Sale, on second reading" followed by a roll call vote.

CITY OF SALIDA, COLORADO ORDINANCE NO. 13 (Series of 2020)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING THE TRANSFER AND CONVEYANCE OF REAL PROPERTY, LOCATED AT THE INTERSECTION OF M STREET AND W. THIRD STREET, FROM THE CITY OF SALIDA TO THE CHAFFEE HOUSING TRUST, AND AUTHORIZING THE EXECUTION OF CERTAIN AGREEMENTS FOR SAID SALE

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 § 31-15-713, the City, acting by and through its City Council ("Council"), possesses the authority to sell and dispose of real estate owned by the City by ordinance, where the real property was not used or held for park purposes or any governmental purpose; and

WHEREAS, the City owns certain real property within the City at the intersection of M Street and W. Third Street (the "Property"), more particularly described in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, over the last few years, the City Council has consistently adopted as an essential priority and fundamental goal the increased development and availability of affordable housing for the City's workforce; and

WHEREAS, in furtherance of these goals, the City and the Chaffee Housing Trust are negotiating agreements under which the City will convey the Property to Chaffee Housing Trust for the purpose of constructing a new six unit residential development, which will be for sale or rental to households earning at or below 80% of the Area Median Income (AMI) in perpetuity; and

WHEREAS, the City Council finds and determines that the Property has not been a public park, and is not, or has not been, used or held for any governmental purpose; and

WHEREAS, the City Council therefore desires to approve the transfer and conveyance of the Property conditioned upon execution of a development agreement and the completion of certain improvements at M Street and W. Third Street.

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

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

Section 2. <u>Conveyance of real property.</u> Pursuant to Colorado Revised Statutes § 31-15-713, the City Council hereby approves the conveyance and transfer of the real property described on Exhibit A, to the Chaffee Housing Trust, and authorizes and directs the Mayor to execute a quit claim deed and such other instruments as necessary to effect such conveyance, in form approved by the City Attorney.

Section 3. <u>Development Agreement Approved</u>. In connection with the sale of Property approved by Section 2 above, and in order to ensure the timely construction of the new six unit residential development, for sale or rental to households earning at or below 80% of the Area Median Income (AMI) in perpetuity, the City Council hereby authorizes and directs the Mayor to execute a development agreement and any associated documents, in form approved by the City Attorney.

<u>Section 4.</u> Conditions of Approval of Sale of Property. The transfer and conveyance of property and execution of deed approved by Section 2 above is expressly contingent upon the satisfaction of all of the following conditions precedent: (1) the execution of a development agreement, and any associated documents, in form approved by the City Attorney; (2) the completion of improvements at M Street and W. Third Street, including (a) the relocation of sewer line from East Crestone Avenue to M Street (final cost to be paid for by Chaffee Housing Trust prior to transfer); (b) relocation of water line within M Street (to be paid for by City); and (c) reconstruction and paving of M Street, meeting alignment and grades approved by Public Works (to be paid for by City).

<u>Section 5.</u> <u>Severability</u>. 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 15, 2020, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this _____ day of _____, 2020 and set for second reading and public hearing on the 5th day of January, 2021.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 5th day of January, 2021.

City of Salida

Mayor P.T. Wood

ATTEST:

City Clerk/Deputy City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION OF A TRACT OF LAND

A PORTION OF STRIP "C" OF EDDY BROTHERS ADDITION AND THE VACATED PORTION OF CRESTONE AVENUE EAST, CITY OF SALIDA, CHAFFEE COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER OF LOTS 3 AND 4 OF SAID STRIP "C" AND THE SOUTHWESTERLY RIGHT-OF-WAY OF WEST 3RD STREET, BEING MARKED BY A 1 ½" ALUMINUM CAP STAMPED LS 37937, FROM WHENCE THE INTERSECTION OF THE SOUTHWESTERLY RIGHT-OF-WAY OF WEST 3RD STREET AND THE NORTHWESTERLY RIGHT-OF-WAY OF L STREET, BEING MARKED BY A 1 ½" ALUMINUM CAP STAMPED LS 16117, BEARS SOUTH 40°47′47" WEST, A DISTANCE OF 150.56 FEET;

THENCE SOUTH 43°56'04" WEST, ALONG THE COMMON LINE OF SAID LOTS 3 AND 4, A DISTANCE OF 93.61 FEET TO A POINT BEING MARKED BY A 1 ¾" STEEL DISC STAMPED LS 6753;

THENCE NORTH 46°03'38" WEST, A DISTANCE OF 150.05 FEET TO THE COMMON LINE OF LOTS 6 AND 7 OF SAID STRIP "C", BEING MARKED BY A 1 ¾" STEEL DISC STAMPED LS 6753;

THENCE NORTH 42°46′42″ EAST, ALONG SAID LINE OF LOTS 6 AND 7, A DISTANCE OF 9.19 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF CRESTONE AVENUE EAST AS VACATED, BEING MARKED BY A 1 ½″ ALUMINUM CAP STAMPED LS 6753;

THENCE NORTH 18°40'56" EAST, A DISTANCE OF 60.01 FEET TO THE NORTHERLY RIGHT-OF-WAY OF CRESTONE AVENUE EAST AS VACATED AND THE SOUTHEASTERLY RIGHT-OF-WAY OF M STREET, BEING MARKED BY A 1 1/2" ALUMINUM CAP STAMPED LS 16117;

THENCE NORTH 49°04'00" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY OF M STREET, A DISTANCE OF 46.05 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY OF WEST 3RD STREET, BEING MARKED BY A 1 1/2" ALUMINUM CAP STAMPED LS 16117;

THENCE SOUTH 40°49'45" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY OF WEST 3RD STREET, A DISTANCE OF 172.44 FEET TO THE POINT OF BEGINNING.

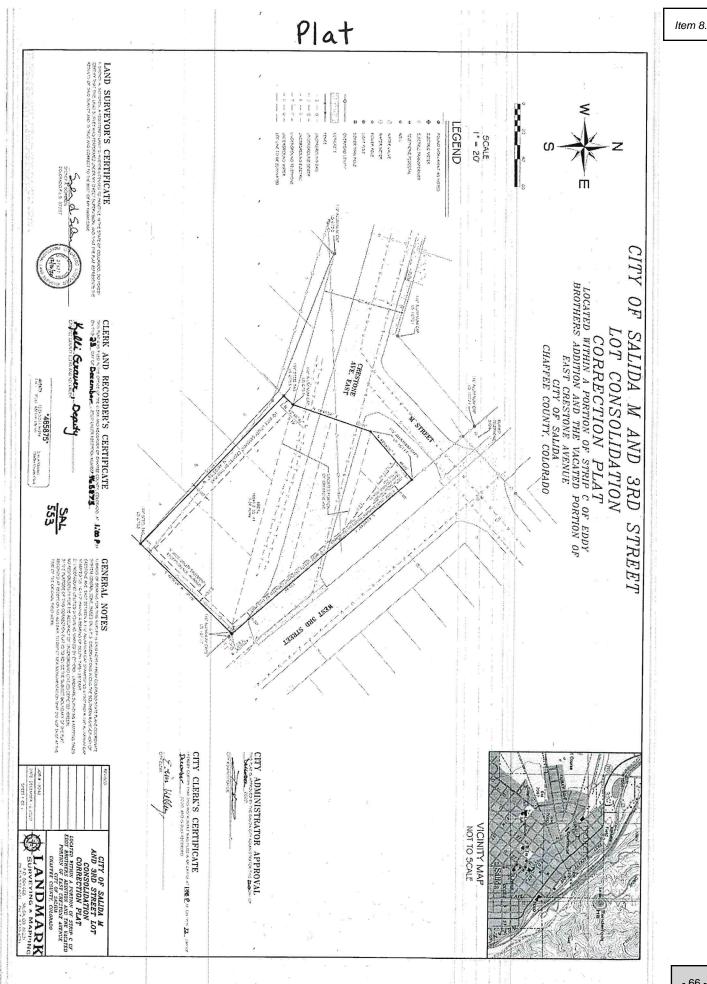
CONTAINING 16849 SQUARE FEET, OR 0.39 ACRES, MORE OR LESS.

PREPARED BY:



EXHIBIT B Informational graphic of Property





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CITY COUNCIL ACTION FORM

Department	Presented by	Date
Administration	Drew Nelson - City Administrator	January 5, 2021

ITEM

Ordinance 2020-14 – An Ordinance of the City Council of the City of Salida, Colorado, Approving a Lease of Real Property, Located at 232 G Street, From the City of Salida to Rivian, LLC, and Authorizing the Execution of a Charging Station Lease Agreement in Connection Thereto, Second Reading and Public Hearing

BACKGROUND

As the City Council is aware, the City of Salida was approached by Rivian, LLC, manufacturers of electric vehicles (EVs) about the possibility of leasing a portion of property owned by the City to install an EV charging station as part of Rivian's new "adventure network". Staff, including the City Attorney and Public Works Director, were provided direction for negotiations with Rivian representatives to establish lease parameters in line with the City Council's goals for cultivating additional EV charging stations throughout the community. After looking at multiple sites, the negotiators identified the existing parking lot between 2nd and 3rd Streets, adjacent to Safeway and the Monarch Spur Trail, as an ideal location for siting the EV charging station infrastructure.

The terms of the lease (attached hereto) include the following-

- Rivian will construct eight (8) charging stations within the lease area. The construction of these charging stations, along with their appurtances, will occupy an area that currently contains eighteen (18) existing parking spaces. However, it should be noted that the majority of loss of parking will be to accommodate a Rivian vehicle towing a trailer.
- Four (4) of the charging stations will be Level 3 chargers, which are capable of quickly charging most EVs in approximately an hour. The Level 3 chargers are currently proposed to be exclusively for the use of Rivian vehicles only. The remaining four (4) charging stations will be Level 2 chargers, which require more time to charge EVs (a full charge can take many hours). The Level 2 chargers will be open to use by any EV driver of any

Item 9.



CITY COUNCIL ACTION FORM

Department	Presented by	Date
Administration	Drew Nelson - City Administrator	January 5, 2021

type of car (Chevrolet, Tesla, etc.). Rivian reserves the right to allowing all EVs to utilize the Level 3 chargers, at Rivian's discretion.

- A one-time payment of \$50,000 to the City for leasing the site, along with a one-time payment of \$2,700 to the City for the purpose of installing six (6) trees along the Monarch Spur Trail for aesthetic improvements.
- Rivian has agreed that following construction of the charging station, they will resurface the entire City-owned parking lot between 2nd and 3rd Streets with a "slurry seal" to ensure long-term viability of the parking surface.

The initial term of the lease will be for ten (10) years, with an automatic renewal for another five (5) years unless either party provides notice of termination.

FISCAL NOTE

\$50,000 in revenues to the City of Salida, along with \$2,700 that will be designated for tree plantings to help beautify the site.

STAFF RECOMMENDATION

The City Council has regularly expressed its goals of expanding and improving access to EV charging stations throughout Salida to encourage the expansion of EV use in our community in an effort to combat the effects of climate change and reduce greenhouse gas emissions. Staff believes that this lease is another incremental step to increase the viability of EVs replacing carbon-emitting vehicles from our transportation inventory. In addition, Rivian's vehicle mix includes trucks and sport utility vehicles, which many visitors to Salida and Chaffee County prefer to drive for purposes of recreation and entertainment. Enticing Rivian drivers to visit Salida and Chaffee County will encourage more spending in our community as well as increase recognition of Salida's reputation as a recreation-focused destination.

Staff recommends approval of Ordinance 2020-14 and the accompanying Charging Station Lease Agreement.



CITY COUNCIL ACTION FORM

Department	Presented by	Date
Administration	Drew Nelson - City Administrator	January 5, 2021

SUGGESTED MOTION

Following a public hearing, a City Councilperson should make a motion to approve Ordinance 2020-14 on second reading, followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO ORDINANCE NO. 14 (Series of 2020)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, APPROVING A LEASE OF REAL PROPERTY, LOCATED AT 232 G STREET, FROM THE CITY OF SALIDA TO RIVIAN, LLC, AND AUTHORIZING THE EXECUTION OF A CHARGING STATION LEASE AGREEMENT IN CONNECTION THERETO

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, consisting of approximately 2,900 square feet on the property commonly known as 232 G Street, Salida, Colorado 81201, located between W. 3rd Street and W. 2nd Street, and more specifically described and referred to within Lease Agreement, attached hereto as **Exhibit A** (the "Property"); and

WHEREAS, over the last few years, the City Council has consistently adopted as an important policy goal sustainability and improving the City's carbon footprint, lowering energy consumption and increasing energy efficiency; and

WHEREAS, in furtherance of these goals, the City Council has caused to be negotiated a Charging Station Lease Agreement with Rivian, LLC to manage and operate a parking facility with Level 3 and Level 2 electric vehicle charging spaces for a term of ten (10) years, with one (1) five (5) year renewal period; and

WHEREAS, the City Council therefore desires to enter into the Charging Station Lease Agreement with Rivian, LLC, attached hereto as **Exhibit A**, finding that the lease of the Property will benefit the City, its carbon footprint, its citizens and its customers.

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

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

<u>Section 2.</u> <u>Lease Approved.</u> Pursuant to Colorado Revised Statutes § 31-15-713, the City Council hereby accepts and approves the Charging Station Lease Agreement between the City of Salida and Rivian, LLC, attached hereto as **Exhibit A**.

<u>Section 3.</u> <u>Execution of Lease Agreement</u>. The City Council authorizes the Mayor on behalf of the City to execute the 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 Lease Agreement, in accordance with the terms of this Ordinance.

<u>Section 4.</u> <u>Severability</u>. 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 15, 2020, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this _____ day of _____, 2020 and set for second reading and public hearing on the 5th day of January, 2021.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 5th day of January, 2020.

City of Salida

Mayor P.T. Wood

ATTEST:

City Clerk/Deputy City Clerk

EXHIBIT A

Charging Station Lease Agreement between City of Salida and Rivian, LLC



RIVIAN

RIVIAN ADVENTURE NETWORK CHARGING STATION LEASE AGREEMENT

CHARGING STATION LEASE AGREEMENT

This **RIVIAN LEASE AGREEMENT** (this "**Agreement**") is effective as of ______, 2020 (the "**Effective Date**"), by and between RIVIAN, LLC, a Delaware limited liability company ("**Rivian**"), and <u>City of Salida</u>, a Colorado governmental entity ("**Landlord**"). Rivian and Landlord are also each a "**Party**" and together the "**Parties**".

The Parties hereby agree as follows:

1. Notices.

1.1 All notices or other communications provided for under this Agreement will be in writing and deemed properly given and received (A) five (5) business days after being mailed, if sent by certified mail, postage prepaid, return receipt requested, (B) two (2) business days after being sent by overnight delivery service; or (C) the same business day after being sent via email, if sent by 5:00 PM PST, all to the following addresses:

If to Rivian:	Rivian, LLC c/o Facilities 13250 N. Haggerty Rd Plymouth, MI 48170 Attention: Sr. Real Estate Manager – Charging Network leaseadmin@rivian.com
	-and- [TBD] for 24/7 tech support
With a copy to:	Rivian, LLC 13250 N. Haggerty Rd Plymouth, MI 48170 Attention: Associate General Counsel–Real Estate and Construction legal@rivian.com
If to Landlord:	City of Salida The Touber Building 448 E. First Street, Suite 112 Salida, Colorado 81201 Attention: Mayor
With a copy to:	Nina P. Williams, Esq. c/o Murray Dahl Beery Renaud LLP 710 Kipling Street, Suite 300 Lakewood, CO 80215 nwilliams@mdbrlaw.com

1.2 Each Party will have the right to designate other or additional addresses or addresses for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

2. Parking Spaces & Parking Facility.

2.1 Landlord hereby leases to Rivian, for the Term (as defined below) of this Agreement, each of the parking spaces (each, a "**Parking Space**"; collectively, the "**Parking Spaces**" or the "**Leased Areas**") consisting of approximately 2,900 square feet on the property commonly known as 232 G St, Salida, CO 81201, which are depicted on <u>Exhibit A</u> attached hereto (the "**Property**") and further described in this Section 2.1. Each Parking

Space will include both an ingress and egress thereto. Landlord acknowledges that each Parking Space shall include sufficient square footage to comply with the Americans with Disability Act of 1990 and applicable state and local laws and regulations. In addition, set forth in **Exhibit A** are the minimum specifications required by Rivian to build-out the Parking Spaces, and Landlord hereby covenants that such specifications will be present as soon as the Leased Areas are accessed by Rivian pursuant to Section 2.6 below, and will remain fully present and usable during the Term of this Agreement. Set forth below are the total Leased Areas and the various categories of Parking Spaces contained within the Leased Areas that leased to Rivian, as well as the quantity of each such Parking Space as in effect on the Effective Date hereof:

- (i) *18* existing parking spaces and associated land contained within the square footage set forth in the preceding paragraph, which may be used for the Rivian spaces set forth below and related infrastructure.
- (ii) Within such Leased Areas, there shall be 8 Rivian parking spaces in total, which shall consist of:
 - a. *4 Rivian Level 3 Charging Spaces* Each such Parking Space will be fully outfitted with the Fixtures (as defined below) and have fully-functioning Charging Stations (as defined below). All types of vehicles will be permitted to park in any of these spaces; and
 - b. *A Rivian Level 2 Charging Spaces* Each such Parking Space will be fully outfitted with the Fixtures and fully-functioning Charging Stations, but will be open to any vehicle that seeks to park in any of these spaces or utilize the charging stations in any of these spaces,; and

2.2 The Rivian Level 3 Charging Spaces will be identified by appropriate visual display pursuant to the provisions set forth in Section 7 below. Notwithstanding anything hereunder to the contrary, Rivian shall have the right to decide, in its sole discretion, whether the Rivian Level 3 Charging Spaces shall be open solely to Rivian electric vehicles or to all electric vehicles, and Rivian shall have the right to change the status of all or some of the Rivian Level 3 Charging Spaces on five (5) days' written notice to the Landlord. During any such applicable notice period, Rivian will undertake the necessary installation/conversion process, all at Rivian's cost and expense, and Landlord will cooperate with Rivian during each such transition.

2.3 Intentionally omitted.

2.4 If, during the Term of this Agreement, any other parking space on the Property previously designated and assigned to another electric vehicle company or charging company shall become available for redesignation (the "**Re-Designation Spaces**"), Landlord shall, before notifying any other tenants on the Property thereof, promptly provide Rivian with a right of first refusal to add such space(s) to its other Parking Spaces. Upon Rivian's being notified in writing (the "**ROFR Notice**") as to the availability of any Re-Designation Spaces (which notification shall include a detailed description of the location of the parking spaces as well as their current conditions), Rivian shall have ten (10) days (the "**ROFR Period**") to confirm that Rivian desires to lease all or some of the Re-Designation Spaces referenced in Landlord's ROFR Notice spaces or decline the opportunity of doing so. If Rivian shall decide to lease any of the Re-Designation Spaces, Rivian shall confirm the same in writing to Landlord prior to the expiration of the ROFR Period and advise Landlord as to the category of Parking Space in which Rivian intends to transform the Re-Designation Space. As soon as practicable following Rivian's delivery of its confirmation to Landlord, the Parties will enter into an amendment to this Agreement which updates **Exhibit A** by memorializing the addition of any Re-Designated Space(s) that are leased by Rivian pursuant to this Section 2.4.

2.5 During the Term of this Agreement, and unless otherwise restricted by applicable laws and regulations, Landlord will ensure, to the extent reasonably practicable, that Rivian as well as its contractors and vendors have unrestricted and unfettered access to the Property and the Leased Areas twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year. Landlord will keep the Leased Areas in "broom clean" condition, and the Property well maintained and in good repair, including the removal of all snow, ice and any other debris.

2.6 As soon as commercially practicable following the Parties' execution of this Agreement, Rivian will enter the Property, take possession of the Leased Areas and begin its installation, configuration, preparation and adaptation of the Rivian Level 3 Charging Spaces, Rivian Level 2 Charging Spaces and Prepped Spaces. Rivian will undertake to provide Landlord with seventy-two (72) hours advance notice before Rivian intends to take possession of the Leased Areas.

2.7 Rivian shall use and occupy the Leased Areas during the Term for electric vehicle charging stations and other incidental purposes (e.g., delivery/pick-up port for sold and serviced Rivian electric vehicles). All use of the Leased Areas by Rivian shall comply with applicable codes, laws, and ordinances.

2.8 If, during the Term, Landlord shall have to relocate any of the Parking Spaces from the locations identified in **Exhibit A** to another location on the Property, Landlord agrees that: (i) all costs and expenses associated with such re-location, including all outfitting and installation costs shall be borne solely by Landlord, which shall be by reimbursement to Riviar; (ii) Rivian shall perform all outfitting and installation or shall have sole discretion to approve contractors or installers; (iii) Landlord will only relocate the Parking Spaces to a similarly situated area on the Property bearing the same or better accessibility and conditions; (iv) Landlord will only effectuate the relocation once the replacement infrastructure (i.e., Fixtures and Charging Stations) are fully operational in the replacement Parking Space(s) as confirmed in writing by an authorized Rivian representative; (v) Landlord shall provide Rivian at least ninety (90) days advance written notice of its relocation plan, and full support and cooperation during such relocation; and (vi) Rivian shall not be required to cease operations at the existing Parking Spaces until the new Parking Spaces are operable and open to vehicles pursuant to this Agreement.

2.9 Time is of the essence in this Agreement.

3. Construction; Alteration.

3.1 Upon delivery of possession of the Leased Areas to Rivian, Rivian shall, at its sole expense, as soon as practicable, undertake the construction of the Leased Areas in the manner described in Exhibit B attached hereto. The improvements include various trade fixtures (the "Fixtures") and charging stations ("Charging Stations") that Rivian will affix or otherwise install to the Rivian Level 3 Charging and Prepped Parking Spaces, all as described in **Exhibit B**. Excepting as described in **Exhibit B** hereof, Rivian shall not make or permit to be made any further alterations, changes in or additions to the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), unless such changes constitute updates and upgrades to any of the Fixtures and/or charging stations previously installed. In furtherance of the foregoing, as part of the initial construction contemplated in this paragraph, Rivian shall at its reasonable cost pave and restripe the other portions of the Property (which shall include the entire with of the public lot from 2nd Street to 3rd Street that is part of the Property) as detailed in Exhibit A and Exhibit B (or as approved in subsequent construction plans) in accordance with the City of Salida Standard Specifications for Construction, Section 02740, 3.9- Emulsified Aggregate Slurry (provided such obligation shall not [i] require Rivian to pave such area with anything beyond slurry and a seal coat, and [ii] extend to any area of the Property not already designated as a parking field as of the Effective Date).

4. Maintenance.

4.1 Rivian shall be responsible for maintaining the Fixtures and the operability of the Charging Stations installed within each Parking Space, including without limitation regular inspections, upgrades and updates as and when released by Rivian. Rivian will ensure the Charging Stations installed within each of the Rivian Level 3 Charging Spaces and/or Rivian Level 2 Charging Spaces are capable of delivering the various charging options offered by Rivian to its electric vehicle drivers. Additionally, any extraordinary maintenance of the Leased Areas, and associated costs, which are directly attributable to Fixtures/Charging Stations shall be the responsibility of, and borne by, Rivian. Notwithstanding the foregoing, Landlord's normal responsibility to

maintain the common areas of the Property shall also apply to the Leased Areas, such as for snow removal and garbage collection. Landlord agrees, pursuant and subject to the provisions of the following paragraph, to notify Rivian at least 7 business days (or as soon as reasonably practicable) prior to any parking lot maintenance and to coordinate with Rivian to attempt, to the extent reasonably practicable, to ensure that all charging stalls remain available for vehicle charging at all times. Rivian reserves the right, subject to applicable laws and regulations, and at its sole cost, to install security cameras, satellite antennae, connectivity-related hardware and other equipment to remotely monitor the Leased Areas with Landlord's consent, which shall not be unreasonably withheld as to the location of such placement.

4.2 Users of the charging stations shall have access to 24/7/365 toll-free phone support to resolve Service Problems associated with the Charging Stations. Rivian shall ensure that the applicable customer support phone number shall be displayed on or near each charging station. The term "**Service Problem**" means a service problem involving an individual charging station within one of the Rivian Level 3 Charging Parking Spaces that prevents a user from being able to charge his or her Rivian electric vehicle. For the avoidance of doubt, Service Problems do not include problems that are caused by an interruption, curtailment, failure, or defect in the supply or character of utilities furnished to a Charging Station.

5. Fees.

5.1 Landlord hereby acknowledges and agrees that, during the Term of this Agreement, Rivian shall not be charged any fees for the rights granted to it under this Agreement. Landlord further acknowledges and agrees that it shall neither charge a premium parking fee (i.e., a fee over and above standard parking charges) nor a specific charging fee to Rivian electric vehicle drivers seeking to charge their vehicles in any of the Parking Spaces. Notwithstanding the foregoing, within ten (10) business days of the date Rivian starts initial construction of the Fixtures and Charging Stations in the Leased Areas as set forth in Exhibit B, Rivian shall pay to Landlord (i) a one-time fee of \$50,000.00 (Fifty Thousand Dollars) an upfront payment of rent for all Rivian Parking Spaces, and (ii) a one-time fee of \$2,700 which Landlord shall use to plant at least six (6) trees in the City of Salida, with such location(s) to be at Landlord's sole discretion.

6. Utilities.

6.1 Rivian agrees to arrange for and pay the charges for all utility services provided or used in or at the Leased Areas during the Term. Rivian shall pay directly to the utility company the cost of installation of any and all such utility services and shall arrange to have the utility service separately metered. Landlord shall not be responsible for any damages suffered by Rivian in connection with the quality, quantity or interruption of utility service, provided that, the cause of the disruption or damage is/was not due to Landlord's gross negligence or willful misconduct. In addition, if requested by Rivian, Landlord will (at no out of pocket cost to Landlord) support Rivian's application for utility incentives and assist Rivian with any other utility-related requests (including, if applicable, providing any of Rivian's contractors with full access to the Property for purposes of installing or upgrading all electrical systems or equipment). Any incentives given to Landlord by offering electric vehicle charging capabilities within the Property shall be passed along to Rivian to the maximum extent practicable.

7. Visual Displays.

7.1 Rivian will have the right to place signs or other visual displays promoting Rivian's charging services in locations at or about the Property, each of which shall be approved by Landlord (such approval not to be unreasonably withheld, delayed or conditioned). Without limiting or bypassing the foregoing approvals required by Landlord, Rivian shall be permitted to place a sign at the entrance to the Property and prominently within each of the Parking Spaces. The visual displays affixed on or about the Parking Spaces may comprise an information placard as well as signage delineating the Rivian Level 3 Charging Spaces and Rivian Level 2 Charging Spaces from other parking stalls on the Property (provided any Rivian Level 2 Charging or Prepped Spaces shall include signage indicating that such spaces may be used for general parking and all Parking Spaces shall have "30 Minute General Parking" signage). Set forth in **Exhibit C** attached hereto are representative

samples of the visual displays that Rivian intends to employ and install pursuant to this Section 7. Rivian agrees that all visual displays shall be professionally prepared, installed and maintained at Rivian's expense.

8. Landlord's Covenants.

8.1 In addition to Landlord's other covenants, representations and warranties under this Agreement, Landlord represents that is the owner of the Property and that this Agreement does not violate any agreement, lease or other commitment of Landlord. Landlord shall not take any action that would unreasonably impair or interrupt Rivian's use of the Property or Fixtures or Charging Stations, and will provide Rivian with all reasonable cooperation to support and assist Rivian with the installation of the Fixtures or Charging Stations within the Leased Areas (as well as upgrades thereto). Landlord further represents, warrants and covenants that Landlord has obtained or shall obtain prior to the date when Rivian intends to access the Property that any and all consents or approvals required in order for Landlord to grant the rights and perform its obligations under this Agreement, and for Rivian to take the actions contemplated in this Agreement. Landlord agrees to notify Rivian pursuant to Section 1 hereof within a commercially reasonable time if (i) Landlord has knowledge of third-parties impairing or misusing the Property, the Leased Areas or the Fixtures, or Charging Stations, or (ii) it obtains knowledge of a needed repair to the Fixtures or Charging Stations. If non-Rivian vehicles are parked in the Rivian Level 3 Charging Stalls, thereby impairing use of such stalls, or if motorists repeatedly park in the Rivian Level 2 Charging Stalls for greater than the permitted duration (as indicated on the applicable visual displays), then the Parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, without limitation, alternative signage and painted asphalt, which shall be at Rivian's reasonable expense. In addition, in no event will Rivian be responsible or liable for any contamination or environmental conditions not caused by Rivian or Rivian's contractors (collectively "Rivian Parties"), including, without limitation, those that existed at the Property prior to the Effective Date hereof or following Rivian taking possession of the Leased Areas if not placed on the Property by Rivian Parties.

8.2 Non-Disturbance Agreement. Upon Rivian's written request, Landlord (at no charge to Rivian) agrees to obtain and deliver to Rivian a non-disturbance agreement in form and substance reasonably acceptable to Rivian from each existing mortgagee, ground lessor or other security holder whose interest in the Leased Areas is superior to Rivian's interest therein, providing in part, that in the event Landlord defaults under such mortgage, ground lease or security instrument, Rivian's possession of the Leased Areas shall not be disturbed so long as Rivian is not in default of this Lease beyond any applicable cure period. Landlord shall obtain and deliver a non-disturbance agreement within thirty (30) days after written request by Rivian, provided however if Landlord is unable to provide such Non-Disturbance Agreement within such 30-day period but is diligently and in good faith pursing such Non-Disturbance Agreement, then such 30-day period will be extended on a day for day basis, up to an additional 30 days maximum.

9. Intellectual Property.

9.1 **"Rivian Intellectual Property**" means all industrial and other intellectual property rights comprising or relating to: (a) patents; (b) trademarks; (c) internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) trade secrets; and (g) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.

9.2 As between the Parties, Landlord hereby acknowledges that any Rivian Intellectual Property utilized by Rivian to outfit the Leased Areas, shall be and remain the sole and exclusive property of Rivian and/or those of Rivian's Landlords.

9.3 Landlord shall not: (a) take any action that interferes with any of Rivian's rights in or to Rivian's Intellectual Property, including Rivian's ownership or exercise thereof; (b) use Rivian's Intellectual Property in any manner other than to operate charging stations or Fixtures; (c) reverse engineer, decompile, decrypt, extract, or disassemble Rivian's Intellectual Property, Fixtures, or charging stations; (d) remanufacture, rebuild, or tear-down Fixtures or Charging Stations; (e) challenge any right, title or interest of Rivian in or to Rivian's Intellectual Property; (f) make any claim or take any action adverse to Rivian's ownership of Rivian's Intellectual Property; (g) register or apply for registrations, anywhere in the world, for Rivian's trademarks or any other trademark that is similar to Rivian's trademarks or that incorporates Rivian's trademarks; (h) use any mark, anywhere, that is confusingly similar to Rivian's Intellectual Property, charging stations and Fixtures; (j) misappropriate any of Rivian's trademarks for use as a domain name without prior written consent from Rivian; or (k) alter, obscure or remove any of Rivian's trademarks or trademark or copyright notices or any other proprietary rights notices placed on the charging stations or Fixtures, marketing materials or other materials that Rivian may provide.

9.4 Landlord hereby grants Rivian the right to use those name, logos, trademarks and service marks associated with the Property and to notify Rivian vehicle owners/drivers of the availability of the Parking Spaces within the Property. Except as provided in the preceding sentence, no license under any existing or future trademark of either Party, by implication or otherwise, is granted to the other Party under this Agreement. Upon any termination of this Agreement, all licenses granted by either Party to the other under this Section 9 shall immediately terminate.

10. Confidentiality.

10.1 Prior to the parties' execution of this Agreement, Rivian and Landlord entered into the non-disclosure and confidentiality agreement (the "**NDA**") set forth in **Exhibit D** attached hereto and incorporated herein by reference. The provisions set forth in the NDA shall govern the Parties' activities hereunder.

11. Insurance.

11.1 During the Term, Rivian shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance: (i) Statutory Worker's Compensation Insurance; (ii) Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; (iii) Automobile Liability with a combined single limit of \$1,000,000; and (iv) \$1,000,000 in excess liability coverage per occurrence, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad that those contained in the underlying policies. With respect to Rivian's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, Rivian will include Landlord, the City of Salida, as an additional named insured with respect to liability arising out of Rivian's performance under this Agreement. Rivian shall consider its own insurance primary and shall not seek contribution from similar insurance being maintained by the Landlord as to the acts or omissions of Rivian.

11.2 Intentionally omitted.

11.3 The insurance policies required under this Section 0 shall: (1) be issued by insurance companies Leased to do business in the state of Colorado, with a general policyholder's ratings of at least "A-" and a financial rating of at least "Class VIII," in the most current Best's Insurance Reports available on the Effective Date; if the Best's ratings are changed or discontinued, the Parties shall agree to a comparable method of rating insurance companies; and (ii) contain provisions whereby each Rivian's insurers waive all rights of subrogation against Landlord on each of the coverages required herein. From time to time upon request, Rivian shall provide Landlord with a certificate of insurance, evidencing the required coverages. Rivian shall provide Landlord with thirty (30) days' prior written notice of any cancellation.

12. Limitation of Liability; Indemnification.

12.1 IN NO EVENT SHALL EITHER PARTY TOGETHER WITH ITS AFFILIATES, AGENTS, PRINCIPALS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, ARISING IN ANY MANNER FROM ANY CAUSE OF ACTION OR CLAIM RELATING TO OR ARISING EITHER DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED ITS MAXIMUM INSURANCE COVERAGE PURSUANT TO THE COVERAGE AMOUNTS SET FORTH IN THIS SECTION 12 (THE "LIABILITY CAP"). EACH OF RIVIAN AND LANDLORD ACKNOWLEDGES AND AGREES THAT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS SECTION 12 SHALL BE EXCLUDED FROM LIABILITY CAP, AS WELL AS DAMAGES ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

12.2 Except to the extent of any gross negligence or willful misconduct of Landlord, Rivian hereby agrees to indemnify, hold harmless and defend the Landlord (together with Landlord's directors, officers, employees, agents and representatives) from all liability, damages, losses, costs and obligations, including but not limited to damages, court costs and attorneys' fees, on account of or arising out of or alleged to have arisen out of directly or indirectly, any claim of any third-party related to Rivian's use of the Leased Areas in a manner that breaches Rivian's duties and obligations pursuant to this Agreement. Rivian shall promptly remove or bond any liens placed on the Property as a result of any claims for labor or materials furnished to or for Rivian at or for use on the Property.

12.3 Except to the extent of any gross negligence or willful misconduct of Rivian, Landlord hereby agrees to indemnify, hold harmless and defend Rivian (together with Rivian's directors, officers, employees, agents and representatives) from all liability, damages, losses, costs and obligations, including but not limited to damages, court costs and attorneys' fees, on account of or arising out of or alleged to have arisen out of directly or indirectly, any claim of any third-party related to Landlord's duties and obligations pursuant to this Agreement.

12.4 In the event Rivian discovers any Hazardous Materials (as defined below) in the Leased Areas during Rivian's initial work as set forth in Exhibit B (the "Initial Work"), during an alteration permitted under this Agreement, or at any other time on the surface of the Leased Areas, Rivian shall promptly notify Landlord. In the event Hazardous Materials were not installed or brought into the Leased Areas by Rivian and do not exist in their natural state and are required to be removed from the Leased Areas by applicable law, Landlord shall promptly, at its sole expense or remove, transport and dispose of such Hazardous Materials in the manner prescribed by applicable Federal, State or local law. In the event Landlord elects or is required to perform any work relating to the abatement or removal of Hazardous Materials in the Leased Areas, Landlord shall notify Rivian of Landlord's work schedule. In the event Hazardous Materials are discovered during the Initial Work, the commencement date of this Lease shall be extended for a day for day basis for each day that Landlord is performing its abatement or removal work. If such Hazardous Materials are discovered at any time other time during the term of this Lease, such abatement or removal work is reasonably likely to interfere with Rivian's business or expose Rivian's customers and employees to Hazardous Materials or toxic materials, then (i) Rivian shall be permitted to close for business until Rivian is once again able to reasonably conduct its business in a safe manner, and (ii) at Rivian's option, the Term of this Lease shall be extended for a day for day basis for each day that Landlord is performing its abatement or removal work. For purposes of this paragraph, "Hazardous Materials" shall mean any pollutant, contaminant, waste, hazardous, asbestos containing, toxic or radioactive substance or material subject to regulation under any Federal, state or local laws from time to time.

13. Term; Termination.

13.1 The term of this Agreement will commence on the Effective Date and continue for ten (10) years thereafter "**Initial Term**"). Following the Initial Term, this Agreement will automatically renew for one (1) five (5)-year period unless either Party gives the other Party written notice of termination at least sixty (60) days prior to the end of the then current term (the Initial Term together with any renewal period, collectively, the "**Term**").

a. If either Party breaches this Agreement and fails to cure its breach within thirty (30) days after receiving written notice of that breach from the other Party, then the non-breaching Party may terminate this Agreement by written notice to the other Party. In addition, the appointment of

a receiver or trustee to take possession of all or substantially all of the assets of a Party hereto or a general assignment by a Party for the benefit of creditors, or any action or proceeding commenced by or against a Party under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors (collectively, a "**Bankruptcy Event**") shall entitle the other Party to terminate this Agreement if such Bankruptcy Event is not discharged within sixty (60) days after the date of commencement.

- b. Notwithstanding anything in this Agreement to the contrary, Rivian may terminate this Agreement, at any time and for any reason, without penalty, by providing Landlord with ninety (90) days' prior written notice.
- c. Upon termination of this Agreement, the Parties agree that each Party shall have all of the remedies available at law or in equity if the other Party is in default of its duties and obligations hereunder, or is otherwise the subject of a Bankruptcy Event. In addition, upon any termination of this Agreement: (i) Rivian shall, within thirty (30) days, remove the Fixtures and Charging Stations from the Leased Areas and restore the same to the condition as of the Possession Date, less reasonable wear and tear, (ii)Rivian shall remove all of Rivian's visual displays throughout the Property, and (iii) any Fixtures and/or Charging Stations that remain in the Leased Areas after a period of forty-five (45) days, shall become the property of Landlord, and any reasonable cost to move, repair or repurpose shall be reimbursed.
- d. Upon any termination of this Agreement, the following sections shall survive and remain binding on the Parties 5, 9, 10, 0, 12, 13 and 14.

14. Miscellaneous.

14.1 Publicity. Neither Party will, without the other Party's prior written approval, (i) issue or make, or permit to be issued or made, any public communication of any kind regarding this Agreement or the relationship of the Parties (provided this shall not apply to any [a] required disclosures by any applicable law or [b] required publication or discussion for a public meeting of Landlord); or (ii) use the name or any trademark(s) of the other Party. Notwithstanding the foregoing, during the Term of this Agreement, Rivian may promote the availability of Charging Stations within the Parking Spaces through traditional (i.e., print) and electronic media, including providing the address of the Property and a description thereof.

14.2 Entire Agreement. This Agreement, together with any exhibits hereto, constitutes the entire agreement and understanding of the Parties in connection with the subject matter hereof and it supersedes all discussion, documents and correspondence before the execution of this Agreement. This Agreement may only be amended by written agreement executed by both Parties.

14.3 Waiver. No waiver by a Party of any breach or series of breaches or defaults in performance by another Party, and no failure, refusal, or neglect of a Party to exercise any right, power, or option given to it hereunder or to insist upon strict compliance with the performance of a Party's obligations under this Agreement, will constitute a waiver of the provisions of this Agreement with respect to any subsequent breach.

14.4 Governing Law. To the extent permitted by applicable law, this Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

14.5 Force Majeure. Neither Party will be responsible or liable to the other Party for nonperformance or delay in performance of any of the terms or conditions of this Agreement due to acts or occurrences beyond the reasonable control of the nonperforming or delayed Party, including without limitation, acts of God, terrorism, wars, riots, strikes or other labor disputes, shortages of labor or materials, fires, pandemics, and floods ("**Force Majeure Event**"; *provided, that,* the non-performing or delayed Party provides to the other Party prompt written notice (but in no event more than five (5) days after the Force Majeure Event occurs) of the existence of and the reason for such nonperformance or delay.

14.6 Relationship of the Parties. The Parties are and shall remain independent contractors. This Agreement does not constitute a partnership or establish either Party as the agent, franchisee or legal representative of the other for any purpose, and neither Party has the authority to act for, bind or make commitments on behalf of the other, except as specifically provided for in this Agreement.

14.7 Assignment. Except as set forth herein, neither Party will be entitled to assign this Agreement or delegate any of its duties hereunder without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement a transfer to any of the following shall not constitute an assignment: (i) a parent or subsidiary of Rivian or Landlord, or (ii) any person or entity which controls, is controlled by or under common control with Rivian or Landlord, or (iii) any entity which purchases all or substantially all of the assets of Rivian or Landlord, or (iv) a successor to Rivian or any of the foregoing entities by purchase, merger, consolidation or reorganization (all such persons or entities described in (i), (ii), (iii) and (iv) being sometimes hereinafter referred to as "Affiliates".

14.8 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person other than the parties and their respective successors and permitted assigns.

14.9 Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same document. Any signature to this Agreement transmitted via facsimile (or other electronic means) or other electronic signature will be deemed an original signature and be binding upon the parties hereto (it being agreed that facsimile or other electronic signature will have the same force and effect as an original signature).

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the Effective Date hereof.

RIVIAN:

RIVIAN, LLC

LANDLORD:

CITY OF SALIDA

By:	
Name:	
Title:	

EXHIBIT A

Property Description/ Address; Parking Spaces

Address: 232 G St, Salida, CO 81201



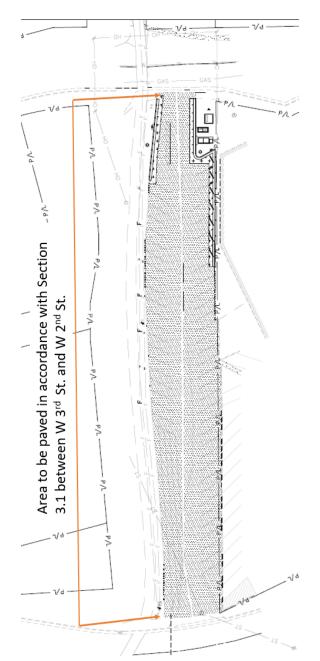


Exhibit A Continued

EXHIBIT B

Construction Activities; Description of Fixtures

Notwithstanding anything to the contrary, Rivian shall submit to Landlord its construction activities and description of fixtures (the "Construction Plans") as such time it submits for construction permits with Landlord. Subject to applicable laws, codes, and ordinances, Landlord shall not unreasonably withhold, condition, or delay its approval of Rivian's Construction Plans.

Level 3 Charger (DCFC)

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RIVIAN
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Preliminary **Rivian DCFC Hardware System**



- CCS connector

- 300 kW chargers capable of output voltages up to 920V - Energy-efficient design via custom-developed Silicon Carbide power electronics

- Cloud-connected automated diagnostics

Mobile app provides property location and GPS navigation to charger, charger status, and notifications - Over-the-air updatable firmware

¢

- ADA compliant - UL certification pending





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DCFC Dispenser

Power Cabinet

minal input	
Phases / Lines	3 Phase
Voltage	480V
Frequency	60 Hz
Power factor	0.99
Efficiency @ full power	≥ 94%
output	
Voltage range	200-920V
Dispenser power	500A
Power (peak / continuous)	300 kW / 300 kW
get dimensions (h x d x w)	
Dispenser	1,778 x 572 x 356 mm
Power Cabinet	2,286 x 1,219 x 1,219 mm
ress protection	IP 55, outdoor use
erating temperature	-35 °C to 55 °C
nicle communication	IEC 61851-23 PLC (CCS / Combo-1)
work connections	4G LTF



Proprietary and Coafidential DO NOT DISTRIBUTE

Level 2 Charger

Preliminary Rivian AC Hardware System

RIVIAN

EY FEATURES		PRELIMINARY TECHNICAL SPI	ECIFICATIONS
		Nominal input	
Charge Speed	11.5 kW chargers compared to common 6.8 or 7.2kW varieties	Input Power Connection	60A
Design	Aesthetic exterior design and SAE J1772 plug provides maximum compatibility	Input Current	48A
Power Balancing	Control via Rivian-developed software maximizes charging within existing utility infrastructure	Voltage	Single Phase 208 / 240V AC
Dashboard	Remotely view and control station settings via a Rivian-developed Site Host Dashboard	Frequency	60 Hz
Plug & Charge	Seamlessly plug in and process payment through ISO 15118 or Rivian's network	Power Factor	99%
Mobile App	Provides property location and GPS navigation to the charger, charger status and notifications	Efficiency	Energy Star Certified
Connected Unit	Allows over-the-air updates to firmware	Pedestal Conduit Window	12"x 12"
Digital Readout ADA Compliant	Provides a user-friendly way to communicate time of sale information	AC output	
JL Certification Pend	ling	Standard Electrical Output	11.5 kW (240V AC @ 48A)
		Target dimensions (h x d x w)	
		Dispenser	413.5 x 143.5 x 196.85 mm
		Other specification	1
		Connector Type	SAE J1772 Type 1 (NA)
		Ingress Protection	IP 54, NEMA 3R, Outdoor Use
		Operating Temperature	-35°C to +50°C
		Vehicle Communication	SAE J1772 / ISO 15118
		Local Area Network	2.4/5 GHz WI-Fi (802.11 a/b/g/n)

EXHIBIT C

Visual Displays

Notwithstanding anything to the contrary, Rivian shall submit to Landlord its visual displays that are associated with the Rivian parking spaces (the "Visual Displays") as such time it submits for construction permits with Landlord. Subject to applicable laws, codes, and ordinances, Landlord shall not unreasonably withhold, condition, or delay its approval of Rivian's Visual Displays.



EXHIBIT D

Non-Disclosure Agreement ("NDA")

Appended Hereto

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Rev M.5

MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this "<u>Agreement</u>") is made this <u>10⁴⁴</u> day of <u>10⁴⁴</u> day of <u>10⁴⁴</u> day of <u>20⁴⁰</u> by and between The City of Salida, Colorado _____, a

with offices at 448 E. First Street, Suite 112 Salida, CO 81201

company with offices at 13250 North Haggerty Road, Plymouth, Michigan 48170.

1. <u>Background</u>. The parties wish to engage in discussions and negotiations concerning a potential business relationship (the "<u>Business Relationship</u>"). In the course of such discussions and/or during the Business Relationship (if applicable), either party may disclose to the other party certain confidential, trade secret, proprietary, and/or private information in connection with the evaluation or performance of the Business Relationship. The parties hereto are entering into this Agreement to ensure the confidentiality of such information. As used herein, the party disclosing such information shall be referred to as the "<u>Disclosing Party</u>" and the party receiving such information shall be referred to as the "<u>Becipient</u>".

2. <u>Confidential Information</u>. The term "<u>Confidential Information</u>" means any information or items, or any part thereof, that is disclosed (whether before or after the date of this Agreement, in writing, verbally or otherwise) by or on behalf of the Disclosing Party to the Recipient, its affiliates or to any of their respective Representatives (as defined below) in connection with the evaluation or performance of the Business Relationship, that (a) is marked as confidential (or as a trade secret, proprietary, private or other similar designation), (b) is identified as confidential when it is disclosed or (c) should reasonably have been understood by the Recipient to be confidential, including (in each case of clause (a), (b) and (c)), but not limited to, marketing data, financial and pricing information, business plans and opportunities, computer programs, source code, object code, technologies, products, know- how, product specifications, designs, prototypes, test data, customer lists and information, current and future marketing plans, current and future research and development and specifications, and related documentation, and any information that reflects the nature of the Business Relationship and the discussions related thereto, and all materials, processes, demonstrations, copies, reproductions, analyses, summaries or combinations derived from, based on or using any of such information or items.

3. Non-Use and Non-Disclosure of Confidential Information. The Recipient shall, and shall cause its affiliates, and its and their respective officers, directors, employees, consultants, accountants, attorneys, other professional advisers and agents (collectively, "Representatives") to, hold the Confidential Information in secrecy and confidence (in a manner consistent with the protection of its own confidential information of a similar nature, and in any event no less than a reasonable standard of care) in accordance with the provisions of this Agreement. The Recipient shall not, and shall ensure that its affiliates and its and their respective Representatives do not, use the Confidential Information for any purpose other than evaluating the Business Relationship and, if applicable, the performance thereof. The Recipient shall not, and shall cause its affiliates and its and their respective Representatives not to, disclose, divulge, use, exploit (whether for its own benefit or the benefit of anyone other than the Disclosing Party), provide or otherwise make available any Confidential Information to any individual, firm, partnership, corporation, or other entity (each, a "Person") other than in accordance with this Agreement and on a need-to-know basis, provided such Persons are bound in writing by confidentiality obligations that are applicable to the Confidential Information and are substantially as restrictive as the terms of this Agreement (or, in the case of accountants and attorneys, are bound by professional obligations of confidentiality), in order to permit those Persons to assist the Recipient in connection with the evaluation or performance of the Business Relationship. Recipient shall notify the Disclosing Party in writing of

EXHIBIT D RIVIAN ADVENTURE NETWORK CHARGING STATION LEASE

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to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable legal fees incurred in such proceeding, including any appeal therefrom.

7. <u>No Representations or Warranties as to Confidential Information</u>. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTY OR REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION AND SHALL HAVE NO LIABILITY TO THE OTHER PARTY RESULTING FROM THE USE, CARE OR CUSTODY OF SUCH CONFIDENTIAL INFORMATION BY THE OTHER PARTY. EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY FROM AND AGAINST ALL CLAIMS, DAMAGES, EXPENSES OR OTHER LOSSES FROM UNAFFILIATED THIRD PARTIES ARISING FROM THE RECIPIENT'S USE, CARE OR CUSTODY OF THE CONFIDENTIAL INFORMATION OR A BREACH OF ITS OBLIGATIONS HEREUNDER.

 <u>No Obligation to Negotiate</u>. Nothing in this Agreement obligates either party to disclose any Confidential Information or to negotiate or consummate any transaction relating to the Business Relationship.

Miscellaneous Provisions.

9.1 <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement. The parties agree that any representation, warranty or condition, written or otherwise, not expressly contained in this Agreement or in an authorized written amendment thereto shall not be enforceable by any party.

9.2 <u>Amendment</u>. This Agreement may be amended or modified only by written instrument executed by both parties hereto.

Governing Law; Jurisdiction. This Agreement shall be construed, interpreted and enforced in 9.3 accordance with the laws of the State of Delaware applicable to contracts to be performed wholly within such State. Any action or proceeding arising out of or relating to this Agreement shall be brought in the federal or state courts located in Wayne County, Michigan, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such action or proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the action or proceeding shall be heard and determined only in any such court and agrees not to bring any action or proceeding arising out of or relating to this Agreement or the Business Relationship in any other court. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

9.4 <u>Notices</u>. Any notice, election, request, demand, consent, approval, walver, or other communication required or permitted by this Agreement shall be sufficient if written in English and delivered personally, or sent by overnight express delivery or courier service with fees paid by sender, delivery confirmation required, and in each case if delivered or addressed to the receiving party's address as set forth in the preamble to this Agreement (and, with respect to Rivian Automotive, LLC, to the attention of its General Counsel) or to such



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: January 5, 2021

ORIGINATING	PRESENTED BY:
DEPARTMENT : Administration	Erin Kelley

ITEM:

Resolution 2021-01 A Resolution Designating the Place for the Posting of Public Notices for City Council meetings and other City business.

BACKGROUND:

At the first meeting of each year, the posting place for public notices is designated. In 2019, Colorado House Bill 19-1087 was passed, which allows municipalities to designate, as its official place for the posting of public notices pursuant to the Open Meetings Law, the local government's website, which are accessible to the public at no charge, with the provision that should there be problems with the website, internet or other, staff can have the option to physically post public notices at the bulletin boards as has been done prior. The City adopted Resolution 2020-01, last year, updating posting places per the bill requirements.

STAFF RECOMMENDATION:

It is recommended that Council approve Resolution 2021-01, designating the City's website the place for the posting of public notices.

SUGGESTED MOTION:

A Councilperson should make a motion to "approve Resolution 2021-01 designating the place for the posting of public notices for City Council meetings and other City business", followed by a second.

Attachments

Resolution 2021-01

CITY OF SALIDA, COLORADO RESOLUTION NO. 01 (Series 2021)

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO DESIGNATING THE PLACE FOR THE POSTING OF PUBLIC NOTICES FOR CITY COUNCIL MEETINGS AND OTHER CITY BUSINESS

WHEREAS, Section 24-6-402(2)(c), C.R.S. of the Colorado Open Meetings Law requires the City to annually designate the place or places at which the City shall post notices of City meetings and other public notices; and

WHEREAS the City Council desires to designate the following place for the posting of public notices for the convenience of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO, that the following public place shall be and is hereby designated for the posting of notices for public meetings and other City business:

- All notices of meetings subject to the Colorado Open Meetings Law shall be posted on this page of the City website at this address: cityofsalida.com, pursuant to C.R.S. Section 24-6-402(2)(c)(III). The City Clerk or his/her designee shall be responsible for posting the required notices no later than twenty-four (24) hours prior to each meeting. All meeting notices shall include specific agenda information, where possible.
- 2. Pursuant to C.R.S. Section 24-6-402(2)(c)(III), should the City Clerk or his/her designee be unable to post a notice online in exigent or emergency circumstances such as a power outage or interruption in internet service that prevents the public from accessing the notice online, said notice shall be posted on the bulletin board located in the lobby at City Hall, 448 East 1st Street, Suite 112, Salida, Colorado and the bulletin board located at the C Street entrance of the Touber Building, 448 East 1st Street, Salida, Colorado.

RESOLVED, APPROVED and ADOPTED this 5th day of January, 2021.

CITY OF SALIDA

[SEAL]

By:

P.T. Wood, Mayor

ATTEST: By:

City Clerk



CITY COUNCIL ACTION FORM

Department	Presented by	Date
Administration	Drew Nelson - City Administrator	January 5, 2021

<u>ITEM</u>

Declaration of Extension of State of Emergency – Covid-19 Action Plan Implementation

BACKGROUND

As we are all quite aware, the worldwide COVID-19 pandemic has created an environment where federal, state and local governments Article XVII, Section 2-17-10 of the Salida Municipal Code states that when it appears to the Mayor that the general health, safety and welfare of the inhabitants of the City are threatened, he or she may declare a state of emergency by proclamation. After conferring with the Chaffee County Public Health, on Friday, March 13th, 2020, such an emergency declaration was approved by Mayor Wood to approve the City of Salida COVID-19 Action Plan. The City Council ratified the emergency declaration on March 17th, 2020, extending until April 25th, 2020. Nine extensions have been granted for the Declaration, with the most recent one ending on January 6th, 2021. Staff has recently worked with Chaffee County Public Health to revise the City of Salida COVID-19 Action Plan to reflect changes to the State of Colorado's COVID-19 Dial, identifying rates of infection, positivity rate, and hospitalizations as data points for moving up or down on the City's Tiered response (a copy of the Action Plan is attached hereto for your review). Currently, the City is at Tier III in the Action Plan, with Chaffee County identified in the Orange Level of the State's COVID-19 Dial.

Section 2-17-30 establishes a term of no more than ten (10) days of for any emergency declaration. It also provides that the City Council may extend any proclamation issued by the Mayor for a period not to exceed forty (40) days by a two-thirds (2/3) vote. As issues related to COVID-19 continue, it is imperative that the City continues to follow the protocols established in the Action Plan.

FISCAL NOTE

No direct costs immediately; however, costs may be incurred as this ever-evolving situation goes forward.



CITY COUNCIL ACTION FORM

Department	Presented by	Date
Administration	Drew Nelson - City Administrator	January 5, 2021

STAFF RECOMMENDATION

Staff recommends approval by the City Council of a Declaration of Extension of Local State of Emergency to implement the City of Salida's COVID-19 Action Plan, as currently established, until February 3rd, 2021, which is one day after the first regular City Council meeting in January.

SUGGESTED MOTION

A City Councilmember should make a motion to approve a Declaration of extension of Local State of Emergency to implement the City of Salida's COVID-19 Action Plan, extending until February 3rd, 2021, followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO EXTENDING A LOCAL STATE OF EMERGENCY REGARDING COVID-19 (CORONAVIRUS DISEASE 2019)

FINDINGS AND CONCLUSIONS:

WHEREAS, COVID-19 is a highly contagious virus that has spread to numerous countries throughout the world, including the United States; and

WHEREAS, the virus may cause serious illness or death in certain cases, particularly for elderly and persons with underlying health conditions; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") declared the worldwide outbreak of COVID-19 a "global pandemic", pushing the threat beyond the "global health emergency" it had announced in January; and

WHEREAS, on March 11, 2020, the Governor of the State of Colorado declared a state of emergency due to the presence of COVID-19 in Colorado; and

WHEREAS, on March 13, 2020, the Board of County Commissioners of Chaffee County declared a Local Disaster Emergency as authorized under C.R.S. § 24-33.5-703(3) to assist local governments in responding to and recovering from emergency events, including emergency epidemics and pandemics; and

WHEREAS, on March 17, 2020, the Salida City Council unanimously approved an initial Local State of Emergency regarding COVID-19, extending until April 25, 2020; and

WHEREAS, on April 21, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until May 6, 2020; and

WHEREAS, on May 5, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until June 3, 2020; and

WHEREAS, on June 2, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until July 8, 2020; and

WHEREAS, on July 7, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until August 4, 2020; and

WHEREAS, on August 4, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until September 2, 2020; and

WHEREAS, on September 1, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until October 7, 2020; and

WHEREAS, on October 6, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until November 4, 2020; and

WHEREAS, on November 2, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until December 2, 2020; and

WHEREAS, on December 1, 2020, the Salida City Council unanimously approved an extension of the Local State of Emergency regarding COVID-19 until January 6, 2021; and

WHEREAS, the Chaffee County Public Health Department anticipates that, due to the contagiousness of the illness and the fact that numerous travelers from around the world visit the County, Chaffee County will see cases of the virus and its transmission within the community; and

WHEREAS, Article XVII, Section 2-17-10 of the Salida Municipal Code authorizes the Mayor to declare a State of Emergency via proclamation when it appears that the general health, safety and welfare of the inhabitants of the City are threatened by general public unrest or riot, or by attack upon the State; and

WHEREAS, Article XVII, Section 2-17-30 allows for the City Council to extend any proclamation issued by the Mayor under Section 2-17-10 to be extended for a period not to exceed forty (40) days by a two-thirds (2/3) vote; and

WHEREAS, the City's current State of Local Emergency proclamation will expire on December 2, 2020, which does not coincide with the Governor of the State of Colorado's Safer-At-Home and in the Vast, Great Outdoors order, which is anticipated to be extended; and

WHEREAS, the cost and magnitude of responding to and recovering from the impact of the COVID-19 virus on local emergency services providers and medical services is anticipated to be far in excess of the community's available resources; and

WHEREAS, in response to the outbreak of COVID-19 in Chaffee County and the Salida community, and in light of the ongoing risk to public health and safety, at this time it is necessary to extend the existing Local State of Emergency.

NOW THEREFORE, IT IS HEREBY DECLARED BY THE SALIDA CITY COUNCIL:

<u>Section 1</u>. The confirmed presence of COVID-19 in Chaffee County constitutes a Local State of Emergency, as defined in Article XVII, Section 2-17-10 of the Salida Municipal Code, not to exceed a term of forty (40) days.

Section 2. The effect of this declaration of Local State of Emergency shall continue the City's COVID-19 Action Plan, revised and effective as of December 1, 2020, attached hereto as Exhibit A, authorizing a tiered approach to proactively respond to changes in the COVID-19 situation as well as reflect the recommendations of our Federal, State, and Local Health Departments.

<u>Section 3</u>. This declaration shall be made effective immediately on January 5, 2020, and shall be in effect until February 3, 2021.

APPROVED, DECLARED AND ADOPTED on this 5th day of January, 2021.

CITY OF SALIDA, COLORADO

[SEAL]

ATTEST:

P.T. Wood, Mayor City of Salida, Colorado

City Clerk



CITY OF SALIDA – COVID-19 ACTION PLAN

Purpose: To provide a comprehensive and tiered Action Plan to City of Salida officials in response to the ongoing COVID-19 pandemic. This Action Plan is intended to slowly escalate to proactively respond to changes in the situation as well as reflect the recommendations of our State and local Public Health Departments. This Action Plan is effective December 1, 2020, until further notice.

Authority: Per Sections 2-17-10 and 2-17-20 of the Salida Municipal Code, when it appears to the Mayor that the general health, safety and welfare of the inhabitants of the City are threatened, he or she may declare a state of emergency proclamation. The proclamation may impose a curfew within the City, may prohibit public or private assemblies, may impose restrictions on movement within the City and may contain other regulations necessary and proper to the maintenance of public peace, order and safety.

<u> Tier I – Level Green/Blue</u>

Heightened Awareness. The Colorado Department of Public Health and Environment (CDPHE) or Chaffee County Public Health Department (CCPH) have indicated that COVID-19 is in the state and are encouraging citizens to be aware and to focus on sanitization and hygiene. CDPHE and/or CCPH has placed Chaffee County in either Level Green or Level Blue on the State's COVID-19 Dial, with Incidence Rates of up to 75 cases per 100,000 residents (or more than 15 cases in Chaffee County per two-week period), or when the percentage of positive tests is below 1.5%.

- Encourage employees to stay home if sick or to go home if exhibiting symptoms while at work. Employees will continue to use sick leave.
- Identify work spaces where employees can temporarily isolate if they are awaiting transportation to their home or medical care.
- Wash hands often, also use hand sanitizer often.
- Face coverings are required in indoor public settings.
- Heightened amount of environmental sanitation Lysol, wipes, environmental germicide sprays, etc.
- Employees should refrain from traveling to conferences and/or meetings in other parts of the Country where cases of COVID-19 are expanding.
- Acquire/Inspect/Issue Personal Protective Equipment (PPE) to selected City Staff (gloves, masks, etc.).

• Meetings of the City Council, and of official City Boards and Commissions, will offer the option for remote attendance and participation.

<u>Tier II – Level Yellow</u>

Statewide Concern. CDPHE and/or CCPH have indicated multiple cases of COVID-19 within the Chaffee County. CDPHE and/or CCPH has placed Chaffee County in Level Yellow on the State's COVID-19 Dial. Incidence Rates are between 75 and 175 cases per 100,000 residents (or between 15 and 35 cases in Chaffee County per two-week period), or when the percentage of positive tests is between 1.5% and 3%. When directed by the Mayor, City Administrator, or their delegate, the City will move its response to Tier II which, in addition to Phase I steps, include:

- Teleworking and staggered shifts authorized. Departments should utilize telework options for a limited number of employees to lessen the impact on Tech Services.
- Meetings of the City Council, and of official City Boards and Commissions, will offer the option to attend and participate remotely, and may take place in person following all physical separation requirements. Attendance by members of the public may occur based on room size/capacity and maintaining 6' of distance between attendees.
- Employees should refrain of physical contact with each other and with members of the public. CDPHE and CCPH recommends a 6' distance of separation.
- Employees should limit or eliminate any outside agency meeting attendance, unless able to be done remotely.
- City Departments should begin to limit internal meetings. Face coverings are required when meeting in person with other employees or while away from one's office or desk.
- Employees who self-identify as high risk (having compromised immune systems, for example) should work from home.
- The City will take direction from CDPHE and CCPH.

<u> Tier III – Level Orange/Red</u>

Chaffee County Concern. Chaffee County Health has indicated <u>multiple</u> rising cases of COVID-19 within Chaffee County, with an Incidence Rate between 175 and 350 per 100,000 residents (or between 35 and 70 cases in Chaffee County per two-week period), or when the percentage of positive tests is between 3% and 5%. CDPHE and/or CCPH has placed Chaffee County in either Level Orange or Level Red of the State's COVID-19 Dial. When directed by the Mayor, City Administrator, or their delegate, the City will move its response to Tier III which, in addition to Phase II steps, include:

- Employees will be directed to stay home (or go home) if they or any family member they live with is exhibiting any symptoms, or if they are high risk.
- Meetings of the City Council, and of official City Boards and Commissions, may take place in person following all physical separation requirements, and with the following limited

restrictions: in-person attendance of the public is limited to only applicants or appellants for quasi-judicial hearings. Remote attendance and participation by all parties, including City Councilmembers and staff, is strongly encouraged.

- Recreation programs shut down, including very limited access to, or closure of, the Salida Hot Springs Aquatic Center, the SteamPlant Event Center, and the Rotary Scout Hut. Specific closure dates shall be established by Department Heads and announced via press release.
- Teleworking and staggered shifts authorized. Departments will continue to roll out additional measures or plans to allow employees to work remotely, when feasible.
- Departments must take additional steps they have identified to limit exposure between employees and between employees and members of the public.
- Reduced staffing in City buildings authorized. Departments will take steps to ensure City buildings are minimally staffed, and public access is very limited. Employees are encouraged to perform all tasks remotely, if possible. Face coverings must be worn at all times, including while in one's office or at one's desk.
- Heightened level of sanitization of spaces including additional germicide spraying.
- Selected City Staff have PPE on hand and begin utilization, as appropriate.
- Public events (other than official meetings of the City Council, or of official City Boards or Commissions) scheduled to take place in City-owned facilities are suspended until further notice. The Salida community is strongly encouraged to engage in social distancing and to postpone or cancel any gatherings where people will congregate in large numbers and/or in close contact with one another.
- Other steps as directed by CDPHE and CCPH.

<u> Tier IV – Level Red/Purple</u>

Full implementation of Response Plan. Tier IV may occur at such time as CDPHE and/or CCPH places Chaffee County in either Level Red or Level Purple on the State's COVID-19 Dial, with Incidence Rates in excess of 350 cases per 100,000 residents in Chaffee County (or more than 70 cases in Chaffee County per two-week period), or when the percentage of positive tests exceeds 5%, or schools are shut down, or hospitalizations exceed bed capacity at health facilities in Chaffee County, or at such other time as Salida deems it to be in the best interest of the organization and/or community. When directed by the Mayor, City Administrator, or their delegate, the City will move its response to Tier IV which, in addition to Phase III steps, include:

 City Buildings minimally staffed, no public access. Public will be directed to conduct business online, if feasible, or by phone. Non-essential services (City Hall Administration, City Hall Finance, Fire Station Administration, Police Station Administration, and Public Works Administration) are closed to the public. Public is encouraged to use digital and telephone communication, website access, online payments, and other ways of communication to conduct business with the City. Masks required at all times.

- In-Person attendance of meetings of the City Council, and of official City Boards and Commissions, shall be heavily restricted to only staff and select Elected or Appointed Officials who are necessary to be present to effectively run meetings. Any attendance and participation by the public, including applicants and appellants for quasi-judicial hearings, shall be conducted remotely only.
- Departments will fully enact Departmental plans. Teleworking options and staggered shift work maximized. Only essential services ongoing, unless able to be provided through employees working remotely.
- Incident Command may be set up locally or in coordination with County Authorities.
- Selected City Staff mandatory use of PPE.
- Other steps as directed by State and Local Health authorities, including support of their efforts.

Mayor P.T. Wood asks that the community remain vigilant during these challenging times. "Chaffee County Public Health has worked very hard to get our community through a tumultuous period while keeping our business community intact. It is critically important that we increase our efforts to limit the spread of the disease to the greatest extent possible as we head into the upcoming winter months. Remember that Chaffee's Got Heart:

- Hang at Home if Sick
- Excel at Handwashing
- Always Wear a Mask in Public
- Respect Social Distancing
- Test if You Have Symptoms

