



2011

# Minturn Council Meeting

Wednesday February 2, 2011

**Work Session** **5:30pm**  
(Town Center)

**Regular Session:** **7:00pm**  
(Town Center)

**Council Goals:**

**TOP FIVE COUNCIL PRIORITIES:**

- Transit
- Sidewalks
- Annex School Dist property
- Community communications strategy
- Enforce zoning laws



## **Agenda**

**MEETING OF THE MINTURN TOWN COUNCIL**  
**Minturn Town Center, 302 Pine Street**  
**Minturn, CO 81645 • (970) 827-5645**

**Wednesday February 2, 2011**

**Work Session - 5:30pm**  
**Regular Session – 7:00pm**

**MAYOR – Gordon “Hawkeye” Flaherty**  
**MAYOR PRO TEM – George Brodin**

**TOWN MANAGER – Jim White**  
**TOWN CLERK/TREAS – Jay Brunvand**

**COUNCIL MEMBERS:**

Shelley Bellm  
Earle Bidez  
Jerry Bumgarner  
Aggie Martinez  
John Rosenfeld

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

### **Work Session – 5:30pm**

- Discussion of information transfer between the Town Council and the Planning Commission – Cerimele (15min)
- Discussion/Action – Final draft for Open Fire Ordinance & Nuisance Ordinance discussion – Cerimele (15min) **PG 1**
- Downtown Colorado In c Plan & Community Revitalization Plan. – Cerimele (45 min) **PG 4**

### **Regular Session – 7:00pm**

#### **1. Call to Order**

- a. Roll Call
  - b. Pledge of Allegiance
- 2. Approval of Agenda**
    - Items to be Pulled or Added
  - 3. Minturn Liquor Authority**
    - Consideration of a new Hotel/Restaurant liquor license for Magustos, Inc; 101 Main Street; Eric Cregon, Owner/Manager – Brunvand (20min) **PG 11**
  - 4. Approval of Minutes and Action Report**
    - January 5, 2011 **PG 61**
    - Action Item Report **PG 66**
  - 5. Public comments on items, which are NOT on the agenda (5 minute time limit per person).**
  - 6. Special Presentations/Citizen Recognition**
    - Get list of Volunteers and Residents to be recognized
      - i. Susana Miranda **PG 67**
      - ii. Recognition for Holiday Donations
        1. Vail Dispatch
        2. Salvation Army
        3. Anonymous Community Donators
  - 7. Town Manager's Report PG 68**
  - 8. Town Council Comments**

**PUBLIC HEARINGS AND ACTION ITEMS**

- 9. Discussion/Action – Notification of Applicant Appeal of Design Review Board Decision - Cerimele PG 72**

**GENERAL IMPROVEMENT DISTRICT**

- 10. Convene as GID Board**
- 11. Approval of Agenda**
- 12. Review and Approval of November 3, 2010 GID Board Meeting minutes. PG 73**
- 13. Financial Matters**

- Discuss and consideration for approval of the Minturn GID Resolution 2011-02-01 an application for Exemption from Audit – Brunvand (5min) **PG 75**

#### **14. Other Business**

- Next GID Board Meeting set for November 2, 2011 7:00pm at the Minturn Town Center, 302 Pine Street, Minturn, CO 81645 – Brunvand (5min)

#### **15. Adjourn as GID Board; convene as Minturn Town Council**

### **FUTURE AGENDA ITEMS**

#### **16. Next Meeting**

- Discussion/Action – Resolution establishing annexation eligibility of the Eagle County School District Maloit Park Parcels No. 1 & 2 – Cerim ele (15min each) – Feb 16
- Work Session Discussion/update from David Kleinkopf

#### **17. Future Meeting**

- Eva Wilson – Transportation discussion. Mar 16, 2011
- Discussion/Action – 2009 IBC
- County Commissioners to attend Minturn Council Meeting – April 6 (work session in a prior meeting to develop agenda)

#### **18. Set Future Meeting Dates**

##### a) Council Meetings:

- February 16, 2011
- March 2, 2011
- March 16, 2011

##### b) Planning & Zoning Commission Meetings:

- February 9, 2011
- February 23, 2011
- March 9, 2011

##### c) Other Dates:

#### **19. Adjournment**

### **Work Session**

#### **20. Town Council Goals**

- Entry Signage at the north and south ends of Town, as well as coinciding signage for Little Beach Park

- Sidewalks
- Focus and strengthen special events
- Phase II of the Eco Trail
- Coordinated Marketing Plan
- Transit

Post Office Box 309  
302 Pine Street  
Minturn, CO 81645  
Phone: 970-827-4272  
Fax: 970-827-7420



Town Council  
Mayor – Gordon “Hawkeye” Flaherty  
Mayor Pro Tem – George Brodin  
Councilwoman – Shelley Bellm  
Councilman – Jerry Bumgarner  
Councilman – Aggie Martinez  
Councilman – Earle Bidez  
Councilman – John Rosenfeld

To: Minturn Town Council  
Cc: Jim White, Town Manager  
From: Chris Cerimele, Town Planner  
Re: Open Burning Regulations  
Date: January 28, 2011

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The Town Council requested a final review of the proposed outdoor burning regulations and asked staff to make corrections to any section of the Minturn Municipal Code that would be in conflict with the new regulations. The following sections of the MMC currently deal with outdoor burning in Minturn. Minor revisions are suggested to eliminate conflicts and for further clarification.

Existing:

**Sec. 7-4-90. Burning; nuisance declared.**

No person shall set fire or burn any garbage, rubbish or waste material or any hay, grass clippings or other combustible materials except wastepaper, in any ash pit or other receptacle or upon the ground. Any such act is a nuisance because of smoke and odor. (Prior code 10-310)

Proposed

**Sec. 7-4-90. Burning; nuisance declared.**

**No person shall set fire or burn any garbage, rubbish, waste material, yard debris or any other combustible material in the Town of Minturn. Any such act is a nuisance because of smoke and odor. The only exception to this regulation is the burning of a small recreational fire in accordance with the currently adopted edition of the International Fire Code.**

Existing:

**Sec. 7-8-70. Burning of refuse.**

The burning of refuse in any burning device is not permitted. (Prior code 7-117)

Proposed- no changes are proposed.

Existing:

**Sec. 7-8-80. Open burning.**

(a) Open burning is not permitted.

(b) Exceptions may be granted with the approval of the Fire Chief under the following conditions:

(1) When conducted for the purpose of Fire Department training.

(2) When conducted for the purpose of removing a fire hazard and then only with the written concurrence of the Fire Chief.

(3) When otherwise lawfully conducted as a small fire, bonfire or barbecue in conjunction with recreational activity. (Prior code 7-118)

Proposed:

**Sec. 7-8-80. Open burning.**

(a) Open burning is not permitted.

~~(b) Exceptions may be granted with the approval of the Fire Chief under the following conditions:~~

~~(1) When conducted for the purpose of Fire Department training.~~

~~(2) When conducted for the purpose of removing a fire hazard and then only with the written concurrence of the Fire Chief.~~

~~(3) When otherwise lawfully conducted as a small fire, bonfire or barbecue in conjunction with recreational activity. (Prior code 7-118)~~

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These are the proposed regulations pertaining to recreational fires in the Town of Minturn. Once finalized, these will be adopted as an amendment to the 2009 International Fire Code.

## **Section 307**

### Recreational Fires

**307.1 General.** A person shall not kindle or maintain or authorize to be kindled or maintained any open burning unless conducted in accordance with this section.

**307.1.1 Prohibited burning.** Outdoor burning that will be offensive or objectionable due to excessive smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. Open burning of rubbish containing paper products, garbage, solid waste, rubber or other petroleum based products (including tires), building material, roofing material, animal carcasses, plastics, tree limbs and leaves, and lawn clippings shall be prohibited.

**307.2.1 Extinguishment Authority.** The Eagle River Fire Protection District and Minturn Police Department are authorized to order the extinguishment of any recreational fire that creates or adds to a hazardous or objectionable situation.

**307.3 Location.** The location for recreational fires shall not be less than five (5) feet from any property line and ten (10) feet from any structure.

**307.3.1 Fires within the 30' river setback.** No recreational fires shall be permitted within thirty (30) feet of the high water mark of any live stream in the Town of Minturn. Portable cooking devices may be used in this area; however, the dumping of ash in the river or setback area is prohibited.

**307.4 Attendance.** Recreational fires and portable outdoor fire places shall be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher complying with Section 906 with a minimum 4-A rating or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.

**307.5 Additional Requirements.** The following restrictions shall apply to all recreational fires and portable outdoor burning devices:

1. All recreational fires shall be extinguished no later than 11:00 pm.
2. No recreational fire shall exceed three feet in diameter or two feet in height.
3. Only natural wood which has not been painted, varnished or coated with a similar material, has not been pressure treated with a preservative and does not contain resins or glues as in plywood or other composite wood products shall be used for a recreational fire.

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Councilman – John Rosenfeld

To: Minturn Town Council  
Cc: Jim White, Town Manager  
From: Chris Cerimele, Town Planner  
Re: Overview of OZ Community Revitalization Plan and Downtown Colorado  
Inc. Report  
Date: January 28, 2011

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Oz Architecture was retained by the Town of Minturn in 2006 to complete a long range visioning document for Minturn. The document titled *Minturn Revitalization Plan – Vision Guide*, was originally intended to be used as a guide for implementing improvement projects throughout town that would be possible due to revenue received from the Battle Mountain project. As stated in the plan introduction, the purpose of the document is to illustrate the overall vision for the future of the Town of Minturn that enables the town, property owners & citizens to make informed strategic decisions about future development and public improvements.

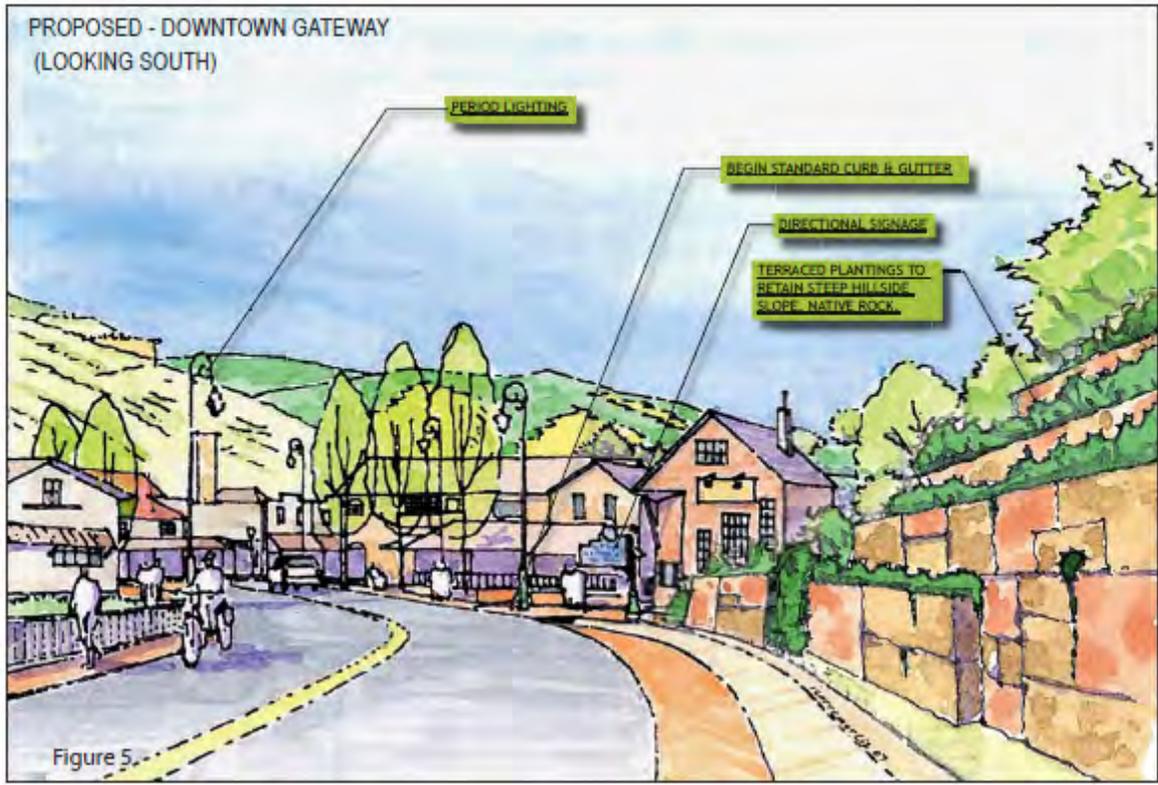
Oz held a series of community and focus group meetings throughout the winter and spring of 2007. The initial community meeting was used to gather citizen input on their current impressions of the Town and their future ideas for Minturn. The focus group meetings were held to gather specific input on the following topics: *Visual Arts; Parks/Recreation/Open Space/Trails; Traffic/Parking; Senior Population Issues; Economic Development; and Architectural Character/Historic Preservation*. The information gathered at these meetings was used to develop a series of concept plans that integrated the ideas presented at these meetings. The following is an overview of the major concepts presented in the Community Revitalization Plan.

### North and South Gateway

The intent of these gateways is to celebrate the Town and welcome visitors to our community.

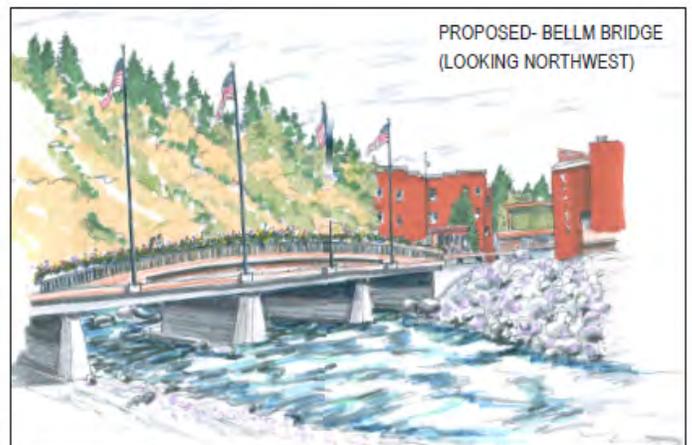
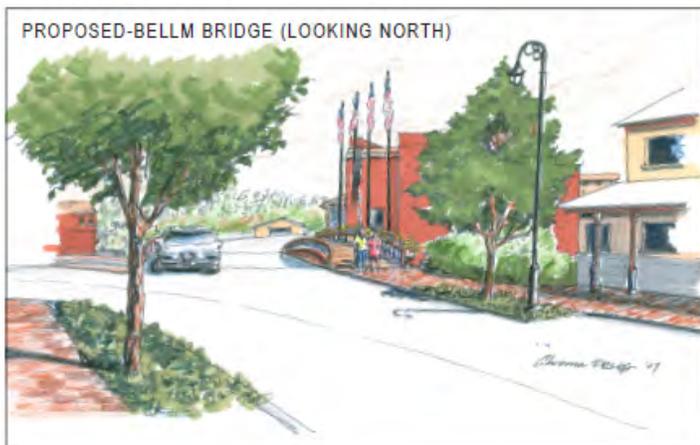
## Downtown Gateway

The plan calls for new lighting and a terraced retaining wall constructed from native stone.



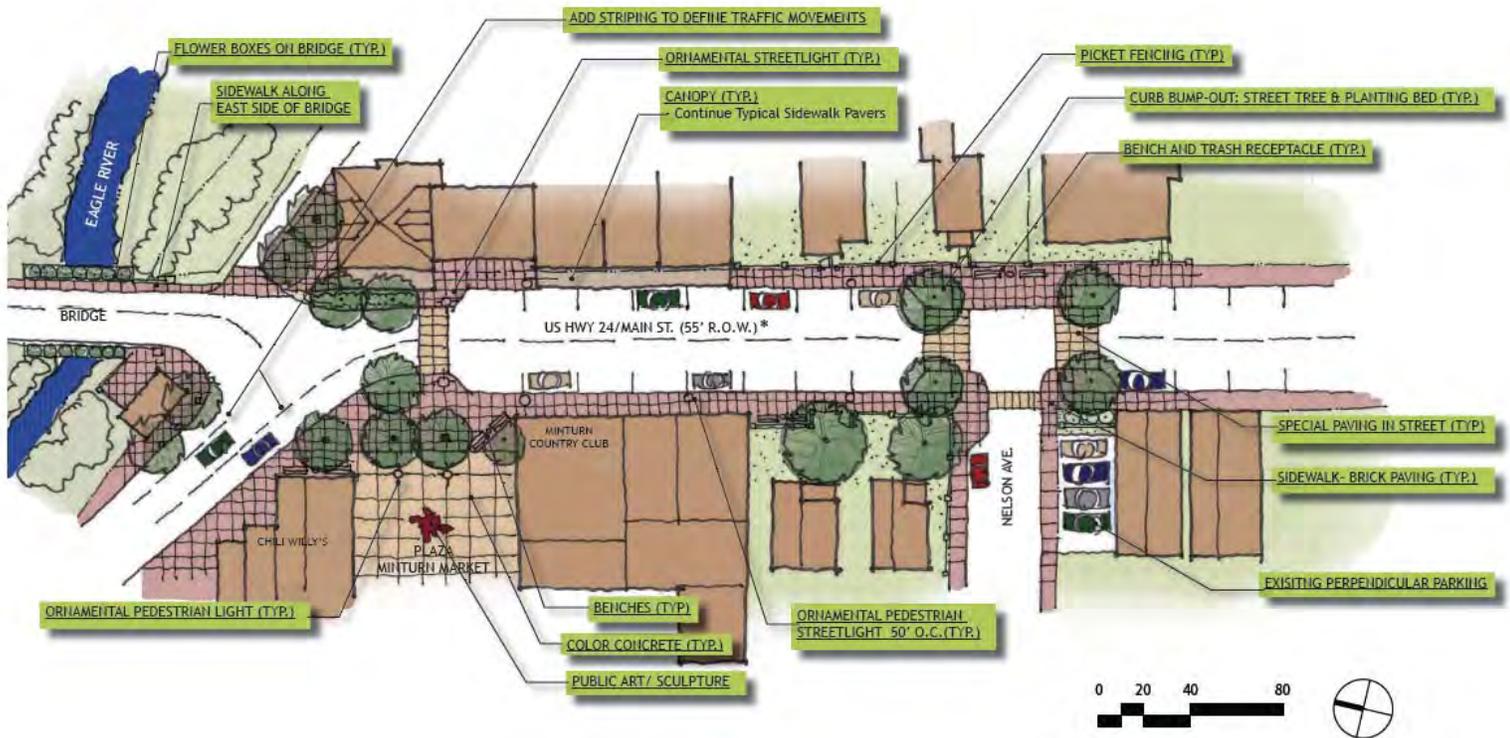
## Bridge Concept

Design objectives are to enhance the appearance and pedestrian facilities on each bridge by imparting a unifying theme and character.



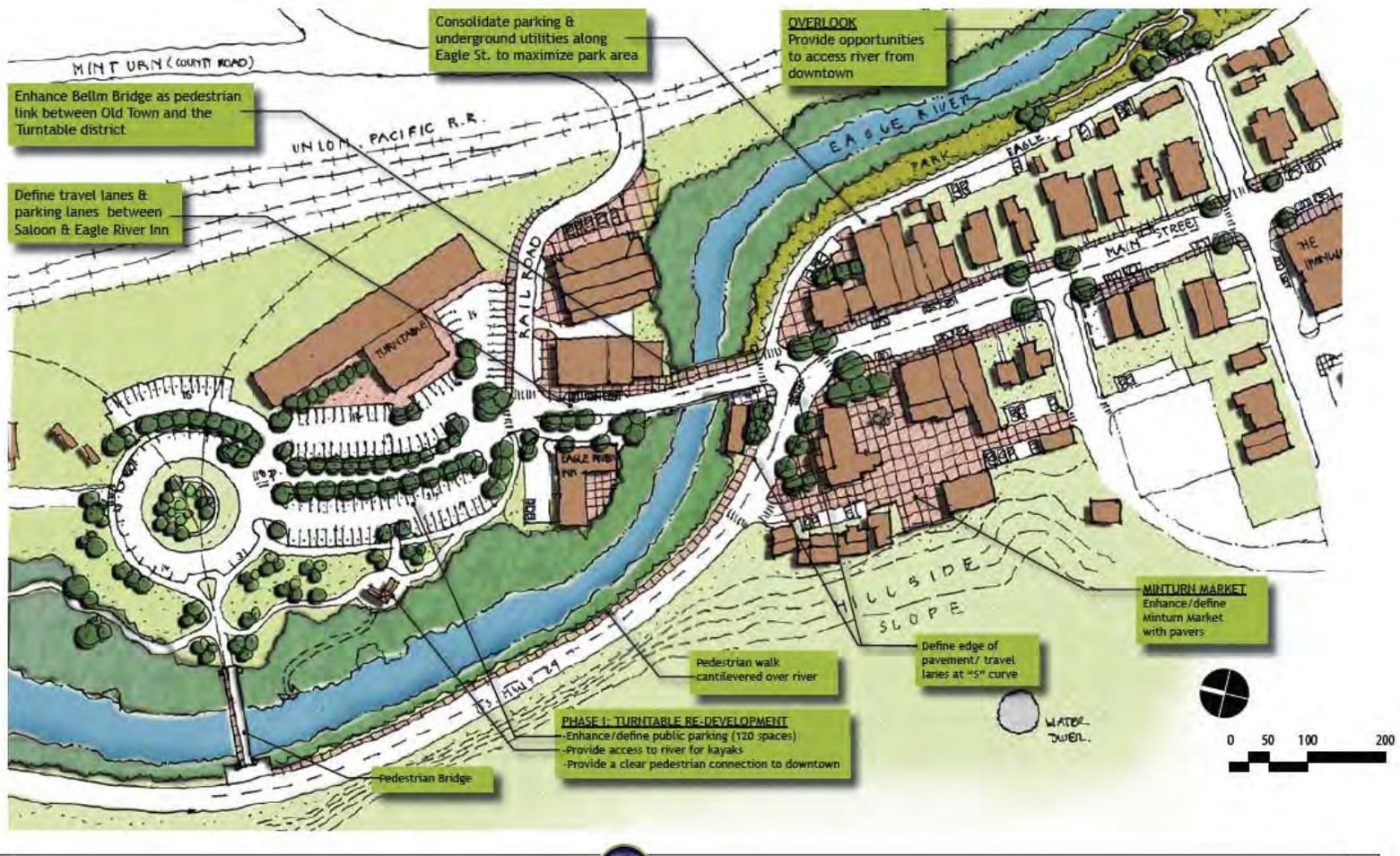
# Downtown Streetscape Concept

The improvements shown in the plan are recommended as enhancements to existing conditions in the downtown area. Recommended improvements include: cohesive street lighting, public art, plantings and “bulb-outs” to enhance pedestrian safety. A “bulb-out” is an extension of the sidewalk into the street that decreases the distance a pedestrian must travel to reach the other side of the street.



## "Heart of Minturn" Concept

Some of the ideas called out in this concept include increasing access to the Eagle River, undergrounding utilities on Eagle Street, and enhancing the municipal parking lot.



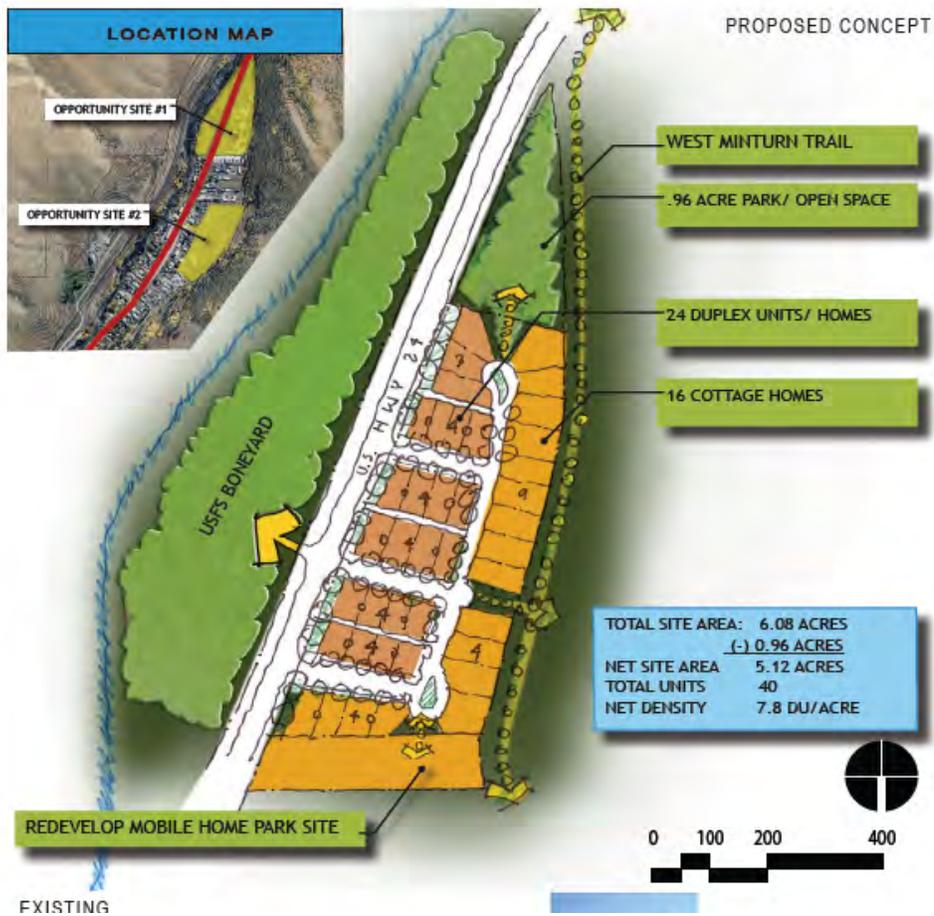
## Minturn Recreation Area

This plan calls for a community building / recreation center on an 11 acre parcel near the public work facility that was deeded to the Town from Vail Resorts for recreational purposes. It also calls for the completion of Little Beach Park. This involves construction of an entrance feature and restroom facility near the upper entrance.

## Opportunity Sites

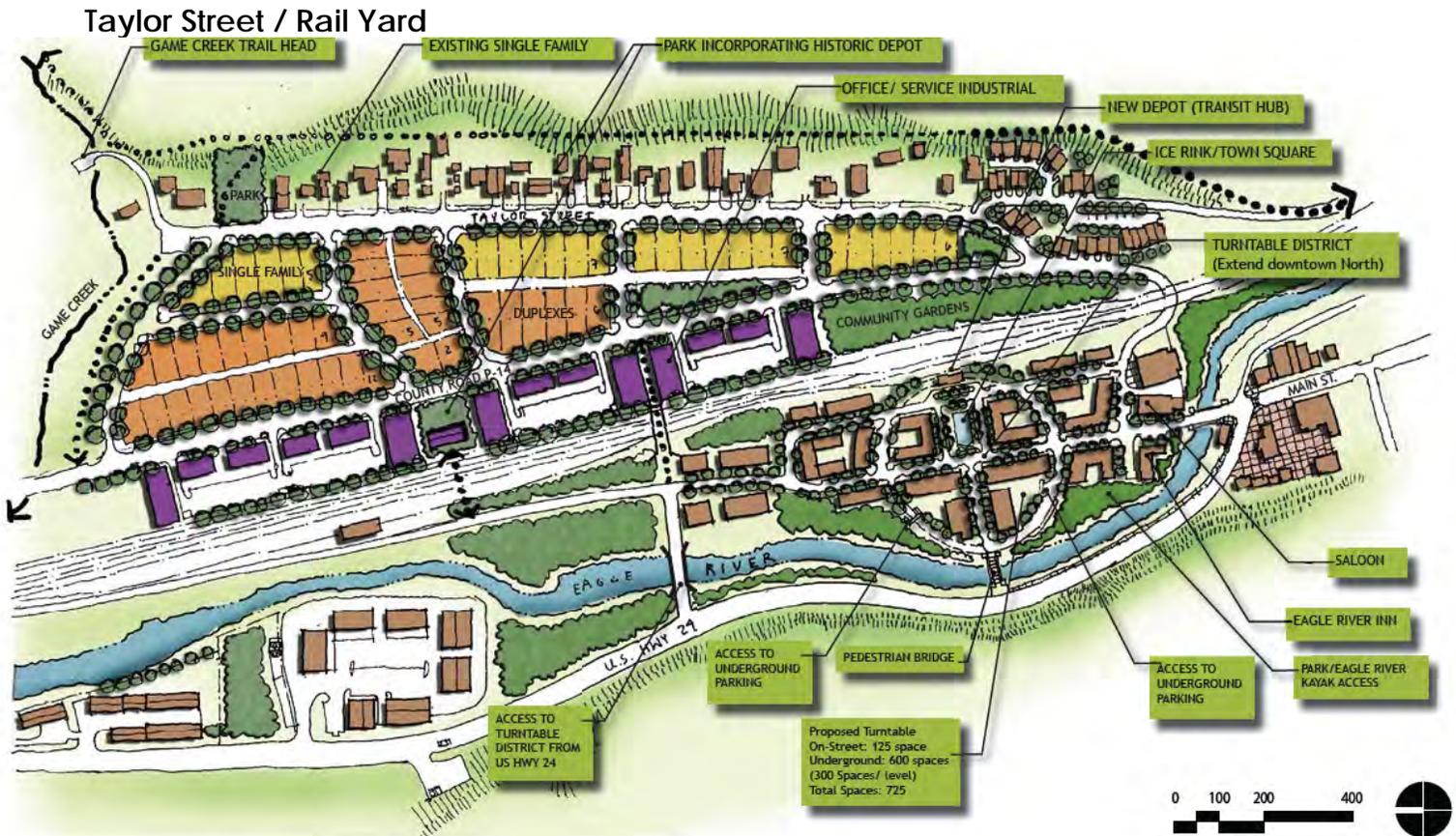
Oz Architecture also identified three areas in town for redevelopment. These include the USFS housing compound and bone yard area, Taylor St /rail yard area and the Martin Creek area.

## USFS housing compound and bone yard area



## Martin Creek





## Downtown Colorado Inc. – Community Revitalization Partnership

### Executive Summary

In December 2009, the Town of Minturn requested a Community Revitalization Partnership (CRP) team visit from Downtown Colorado, Inc. (DCI) for May 24-25, 2010. The purpose of the CRP visit was to bring a team of consultants specializing in downtown and community revitalization to provide tools, insights, and direction to help the host community with its downtown revitalization goals. In anticipation of this visit, the Town of Minturn completed a comprehensive plan, planned focus groups, and provided extensive background information about the history and status of Minturn’s downtown revitalization efforts and the issues facing the community.

Upon arrival in the community, team members were given a presentation of the history of downtown and then toured the town. Afterward, the team met with the town staff for lunch, and then held four well-attended focus group sessions with community stakeholders and interested citizens. The purpose of the focus groups was to hear directly from citizens about the issues facing the downtown and the community as a whole; and to answer questions team members may have about the perceptions, strengths, weaknesses, and opportunities that relate to the downtown.

On day two, team members gathered to discuss their observations and formulate recommendations. That evening, team members presented their findings in the form of a PowerPoint presentation and question and answer session open to the community at-large.

Some of the key recommendations from the report include the following:

- Identify one organization for representing the downtown
- Expand opportunities for collaboration to reduce duplication of efforts and costs for implementation
- Create volunteer recognition program
- Focus on quality events for locals first
- Remind the Eagle River Valley about Minturn – invite these locals back to Town.
- Educate the community on the Town’s history
- Promote heritage tourism - capitalize on Minturn’s rich history
- Partner with other organizations to promote Minturn
- Create a cohesive marketing strategy
- Consider a bike sharing program for locals and visitors
- Provide training opportunities for business owners
- Develop a “shop local” campaign
- Continue plans for the installation of cohesive signage throughout Town
- Install planters, benches, trash bins and bicycle racks throughout the Town
- Facilitate public education efforts
- Consistently enforce Town regulations
- Resurface streets and enhance sidewalks when funding becomes available
- Adopt a capital improvements plan
- Complete the second phase of the Eco Trail into the downtown area.
- Designate a location to display Minturn’s complete history
- Utilize Little Beach Park

## Summary

Both documents provide valuable information for the staff and elected officials to use when contemplating future projects and strategies for improving the Town. Many of these ideas are currently being pursued such as sidewalk improvements and gateway signage. The land use patterns that were identified in the opportunity sites in the Oz plan have been incorporated into the 2009 Community Plan. Furthermore, Michelle Metteer has taken an active role in working with local businesses and the Minturn Community Fund on developing new events and creating a festive atmosphere in our downtown area. The success of recent events and the positive attitude of the residents and business owners is evidence that our early efforts are having a positive effect.



TOWN OF MINTURN  
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Minturn, Colorado 81645-0309  
970-827-5645 Fax: 970-827-4049  
treasurer@minturn.org

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**FROM THE DESK OF  
JAY BRUNVAND, TREASURER/FINANCE**

**MEMORANDUM**

To: Mayor and Town Council  
CC: Jim White, Town Manager  
Date: 1/25/11 11:14 AM  
RE: Liquor License Hearing

During the February 2<sup>nd</sup> Council meeting you will consider a Hotel Restaurant liquor license application. The establishment is to be located at 101 Main Street and operated under the name Magustos.

- My office received the application on December 29, 2010. State statutes require this application to be held for 30 days minimum prior to a public hearing. The hearing tonight gives us 35 days.
- Public Notice for the hearing was published in the Vail Daily on January 12, 2011 with appropriate time to cover the publishing requirements of at least 10 days.
- The physical property was posted on December 30, 2010 with a sign not less than 10 days prior to the hearing giving the proper site notice.
- As of this writing I have received no letters regarding the proposal either pro or con. In the event letters are received I will have them at your seats for the Council Meeting.

The license being requested is to allow the sale of Malt, Vinous, and Spirituous alcohol for consumption on sight consumption by the glass.

Currently the Town of Minturn has one 3.2 (Shop and Hop) located to the north approximately 3 blocks north, and 1 liquor store and three Hotel Restaurant licenses located within a radius of several blocks both to the North and South of the proposed licnsc. This site has also held a Hotel/Restaurant license for many years under different ownership.

Following is the process that we use for a Liquor Liccnsc Public Hearing. Staff recommends the Council use the following agenda in order to best accomplish all the items required by State Law.

1. Open the Liquor License Authority
2. Open the Public Hearing and Roll Call
3. Announce the application and introduce the Town staff members who will handle the staff presentation for the record. This will be Jay Brunvand, Allen Christensen, and Lorenzo Martinez; Eric Cregon is the applicant.
4. The Town Treasurer will present the case as it stands and present any letters from the citizens, pro or con, for the official record.
5. Allow Police Chief Lorenzo Martinez the floor for his report and concerns.
6. Allow the applicant time to present, clarify, and comment.
7. Call for anyone present wishing to address the Liquor Authority with regards to the proposed license application. The concerned citizen must state their name and address for the official record.
8. Close the public hearing
9. Allow the Authority time to discuss and clarify as needed.
10. Motion and Vote

Staff is recommending approval of the license application. The recommended motion would be:

"I move to approve the Hotel/Restaurant liquor license application for Magustos LLC, Eric Cregon, Owner/Manager as presented with the following conditions:

- As a minimum the licensee, manager and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served. This condition is recommended to be met prior to opening and updated as needed with documentation provided to the Minturn Police Dept.
- That the Liquor Authority emphasize the requirement of operating an orderly establishment."

Please contact me if you have any questions, jay.

**TOWN OF MINTURN  
LIQUOR LICENSING AUTHORITY**

Follow-up findings and report for application of a Hotel and Restaurant Liquor License.

Owner Name and Address: Magustos LLC, P. O. Box 1043 Minturn, Co 81645

Establishment Name and Address: Magustos LLC, 101 Main St Minturn, CO 81645

**TO THE ABOVE APPLICANT AND OTHER INTERESTED PARTIES;**

Pursuant to Colorado Revised Statutes, 12-47-312(1), the applicant is hereby advised that with regard to the application for a Hotel and Restaurant Liquor License, an investigation has been made, and based on the results thereof, the following has been determined:

That the application was filed on December 29, 2010 in the Town Clerk/Treasurer's office and a public hearing has been scheduled for Wednesday February 2, 2011. In accordance with C.R.S. 12-47-311(1) the Town must hold the application for not less than 30 days; this hearing date represents 35 days.

That the premise being considered has previously operated with a liquor license. This location will be a new Hotel and Restaurant licenses as opposed to a transfer of an existing license.

That the Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on Thursday December 30, 2010 at least 10 days prior to the hearing, and that the publication of the hearing was published in a newspaper of general circulation on January 12, 2011 at least 10 days prior to the Public Hearing.

That from the evidence submitted the applicant is leasing the premises where the proposed liquor license will be utilized from Minturn Realty, Inc., and that Minturn Realty, Inc. is the lawful owner of the premises. Further, the premise lease exceeds the term of the proposed license as required by Colorado State Law.

That selling liquor in the manner currently proposed in the application is not in violation of the zoning codes as stated in the Minturn Municipal Building Code – Chapter 16. This section states that for a Commercial Use less than 2,500 sqft is a use by right. This establishment is leasing approximately 2,500 sqft. and that the Minturn Planning Department has confirmed this operation will not require a Conditional Use and has sufficient parking as per Minturn Code.

That pursuant to C.R.S. 12-47-313(1)(d) – Restrictions for applications for new license, the building where the applicant proposes to exercise the privilege of selling liquor at retail does not appear to be within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.

That Minturn Police Chief Martinez has conducted a background investigation on Eric Matthew Cregon, the owner and manager of Magustos. During this investigation, Chief Martinez did not find any unresolved issues that would preclude Mr. Cregon from obtaining a liquor license. Although, Chief Martinez recommends approval by the Minturn Town Council he has also recommended the following conditions to be placed on the license approval:

- As a minimum the licensee, manager and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served. This condition is recommended to be met prior to opening and updated as needed with documentation provided to the Minturn Police Dept.
- That the Liquor Authority emphasize the requirement of operating an orderly establishment.

The public hearing on this application will be held on Wednesday, February 2, 2011 at 7pm in the Council Chambers of the Minturn Community Center, 302 Pine St, Minturn, CO. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to this application, including all matters set forth herein.

The applicant is advised and encouraged to read a copy of the State of Colorado Liquor and Beer Codes and Regulations.

Local Liquor Licensing Authority  
Minturn Town Treasurer

\_\_\_\_\_ Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.  
Jay Brunvand

**COLORADO LIQUOR  
 RETAIL LICENSE APPLICATION**

NEW LICENSE     TRANSFER OF OWNERSHIP     LICENSE RENEWAL

• ALL ANSWERS MUST BE PRINTED IN BLACK INK OR TYPEWRITTEN  
 • APPLICANT MUST CHECK THE APPROPRIATE BOX(ES)  
 • LOCAL LICENSE FEE \$ \_\_\_\_\_  
 • APPLICANT SHOULD OBTAIN A COPY OF THE COLORADO LIQUOR AND BEER CODE (Call 303-370-2165)

1. Applicant is applying as a  
 Individual  
 Corporation  
 Partnership (Includes Limited Liability and Husband and Wife Partnerships)  
 Limited Liability Company  
 Association or Other

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation    Fein Number  
 MAGUSTOS LLC    [REDACTED]

2a. Trade Name of Establishment (DBA)    State Sales Tax No.    Business Telephone  
 MAGUSTOS       (970) 390-7194

3. Address of Premises (specify exact location of premises)  
 101 MAIN ST

City    County    State    ZIP Code  
 Minturn    Eagle    CO    81645

4. Mailing Address (Number and Street)    City or Town    State    ZIP Code  
 PO BOX 1043    Minturn    CO    81645

5. If the premises currently have a liquor or beer license, you MUST answer the following questions:  
 Present Trade Name of Establishment (DBA)    Present State License No.    Present Class of License    Present Expiration Date

LIAB	SECTION A	NONREFUNDABLE APPLICATION FEES	LIAB	SECTION B (CONT.)	LIQUOR LICENSE FEES
2300	<input checked="" type="checkbox"/>	Application Fee for New License .....	1905	<input type="checkbox"/>	Resort Complex License (City) .....
2302	<input checked="" type="checkbox"/>	Application Fee for New License - w/Concurrent Review .....	1986	<input type="checkbox"/>	Resort Complex License (County) .....
2310	<input type="checkbox"/>	Application Fee for Transfer .....	1988	<input type="checkbox"/>	Add Related Facility to Resort Complex ... \$ 75.00 X Total
			1990	<input type="checkbox"/>	Club License (City) .....
			1991	<input type="checkbox"/>	Club License (County) .....
			2010	<input type="checkbox"/>	Tavern License (City) .....
			2011	<input type="checkbox"/>	Tavern License (County) .....
			2012	<input type="checkbox"/>	Manager Registration - Tavern .....
			2020	<input type="checkbox"/>	Arts License (City) .....
			2021	<input type="checkbox"/>	Arts License (County) .....
			2030	<input type="checkbox"/>	Racetrack License (City) .....
			2031	<input type="checkbox"/>	Racetrack License (County) .....
			2040	<input type="checkbox"/>	Optional Premises License (City) .....
			2041	<input type="checkbox"/>	Optional Premises License (County) .....
			2045	<input type="checkbox"/>	Vintners Restaurant License (City) .....
			2046	<input type="checkbox"/>	Vintners Restaurant License (County) .....
			2220	<input type="checkbox"/>	Add Optional Premises to H & R .....
			2370	<input type="checkbox"/>	Master File Location Fee .....
			2375	<input type="checkbox"/>	Master File Background .....

DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY

LIABILITY INFORMATION					
County	City	Industry Type	License Account Number	Liability Date	License Issued Through (Expiration Date)
				FROM	TO
State -750 (999)	City 2180-100 (999)	County 2190-100 (999)	Managers Reg -750 (999)		
Cash Fund New License 2300-100 (999)		Cash Fund Transfer License 2310-100 (999)		TOTAL	
				\$	.

## APPLICATION DOCUMENTS CHECKLIST AND WORKSHEET

**Instructions:** This check list 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.

### ITEMS SUBMITTED, PLEASE CHECK ALL APPROPRIATE BOXES COMPLETED OR DOCUMENTS SUBMITTED

#### I. 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.
- E. Additional information may be required by the local licensing authority.

#### II. DIAGRAM OF THE PREMISES

- A. No larger than 8 1/2" X 11".
- B. Dimensions included (doesn't have to be to scale). Exterior areas should show control (fences, walls, etc.).
- C. Separate diagram for each floor (if multiple levels).
- D. Kitchen - identified if Hotel and Restaurant.

#### III. PROOF OF PROPERTY POSSESSION

- A. Deed in name of the Applicant ONLY (or)
- B. Lease in the name of the Applicant ONLY.
- C. Lease Assignment in the name of the Applicant (ONLY) with proper consent from the Landlord and acceptance by the Applicant.
- D. Other Agreement if not deed or lease.

#### IV. BACKGROUND INFORMATION AND FINANCIAL DOCUMENTS

- A. Individual History Record(s) (Form DR 8404-I).
- B. Fingerprints taken and submitted to local authority. (State authority for master file applicants.)
- C. Purchase agreement, stock transfer agreement, and or authorization to transfer license.
- D. List of all notes and loans.

#### V. CORPORATE APPLICANT INFORMATION (If Applicable)

- A. Certificate of Incorporation (and/or)
- B. Certificate of Good Standing if incorporated more than 2 years ago.
- C. Certificate of Authorization if foreign corporation.
- D. List of officers, directors and stockholders of parent corporation (designate 1 person as "principal officer").

#### VI. PARTNERSHIP APPLICANT INFORMATION (If Applicable)

- A. Partnership Agreement (general or limited). Not needed if husband and wife.

#### VII. LIMITED LIABILITY COMPANY APPLICANT INFORMATION (If Applicable)

- A. Copy of articles of organization (date stamped by Colorado Secretary of State's Office).
- B. Copy of operating agreement.
- C. Certificate of Authority (if foreign company).

#### VIII. MANAGER REGISTRATION FOR HOTEL AND RESTAURANT, TAVERN LICENSES WHEN INCLUDED WITH THIS APPLICATION

- A. \$75.00 fee.
- B. Individual History Record (DR 8404-I).

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

7. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state);  
 (a) been denied an alcohol beverage license?    
 (b) had an alcohol beverage license suspended or revoked?    
 (c) had interest in another entity that had an alcohol beverage license suspended or revoked?    
 If you answered yes to 7a, b or c, explain in detail on a separate sheet.

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

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

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

11. Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?  
 Ownership  Lease  Other (Explain in Detail)

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

Landlord, <u>Minturn Realty LLC</u>	Tenant <u>MAGUSTOS LLC</u>	Expires <u>12-31-15</u>
--	-------------------------------	----------------------------

Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11". (Doesn't have to be to scale)

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

NAME	DATE OF BIRTH	FEIN OR SSN	INTEREST

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

13. Optional Premises or Hotel and Restaurant Licenses with Optional Premises  
 Has a local ordinance or resolution authorizing optional premises been adopted? Yes  No

Number of separate Optional Premises areas requested. \_\_\_\_\_ (See License Fee Chart)

14. Liquor Licensed Drug Store applicants, answer the following:  
 (a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy? COPY MUST BE ATTACHED. Yes  No

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

16. Brew-Pub License or Vintner Restaurant Applicants answer the following:  
 (a) Has the applicant received or applied for a Federal Permit? Yes  No   
 (Copy of permit or application must be attached)

17a. Name of Manager (for all on-premises applicants) ERIC CREGON (If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an Individual History Record (DR 8404-1). Date of Birth 10-7-70)

17b. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number. Yes  No

18. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue? If yes, provide an explanation and include copies of any payment agreements. Yes  No

19. If applicant is a corporation, partnership, association or limited liability company, applicant must list ALL OFFICERS, DIRECTORS, GENERAL PARTNERS, AND MANAGING MEMBERS. In addition applicant must list any stockholders, partners, or members with OWNERSHIP OF 10% OR MORE IN THE APPLICANT. ALL PERSONS LISTED BELOW must also attach form DR 8404-1 (Individual History record), and submit finger print cards to their local licensing authority.

NAME	HOME ADDRESS, CITY & STATE	DOB	POSITION	% OWNED*

\*If total ownership percentage disclosed here does not total 100% applicant must check this box  
 Applicant affirms that no individual other than those disclosed herein, owns 10% or more of the applicant

**Additional Documents to be submitted by type of entity**

- CORPORATION     Cert. of Incorp.     Cert. of Good Standing (if more than 2 yrs. old)     Cert. of Auth. (if a foreign corp.)  
 PARTNERSHIP     Partnership Agreement (General or Limited)     Husband and Wife partnership (no written agreement)  
 LIMITED LIABILITY COMPANY     Articles of Organization     Cert. of Authority (if foreign company)     Operating Agrmt.  
 ASSOCIATION OR OTHER    Attach copy of agreements creating association or relationship between the parties

Registered Agent (if applicable)

ERIC CREYON

Address for Service

PO Box 1043 101 MAiest mintura

**OATH OF APPLICANT**

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

Authorized Signature

*[Signature]*

Title

OWNER

Date

12-23-10

**REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY/COUNTY)**

Date application filed with local authority

12/29/10

Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1) C.R.S.)

2/2/11

**THE LOCAL LICENSING AUTHORITY HEREBY AFFIRMS:**

That each person required to file DR 8404-1 (Individual History Record) has:

- Been fingerprinted ..... Yes No  
 Been subject to background investigation, including NCIC/CCIC check for outstanding warrants .....

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

(Check One)

- Date of inspection or Anticipated Date \_\_\_\_\_  
 Upon approval of state licensing authority.

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

Local Licensing Authority for

Telephone Number

- TOWN, CITY  
 COUNTY

Signature

Title

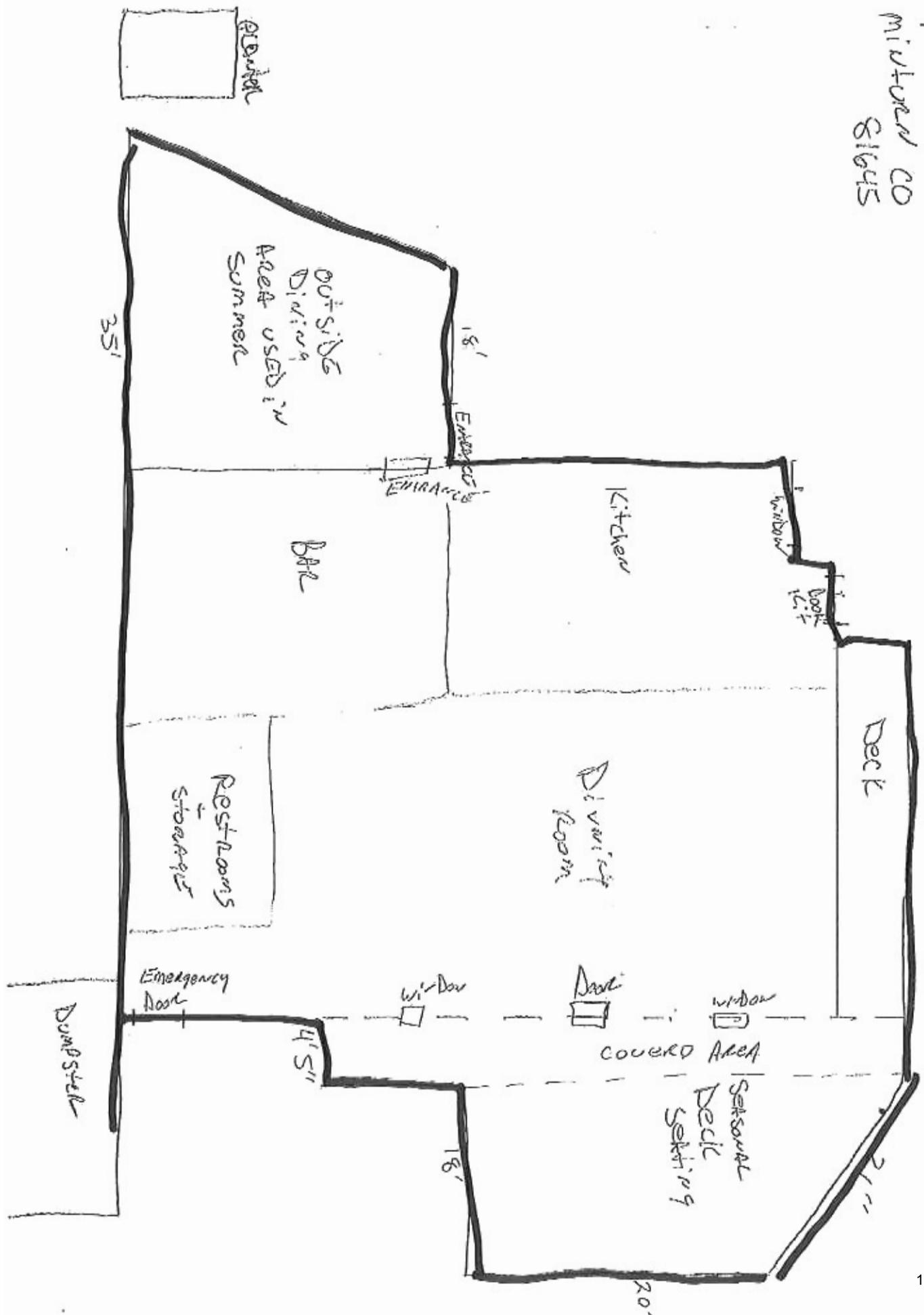
Date

Signature (attest)

Title

Date

101 MAIN ST.  
MILWAUKEE CO  
81645



## INDIVIDUAL HISTORY RECORD

To be completed by each individual applicant, all general partners of a partnership, and limited partners owning 10% (or more) of a partnership; all officers and directors of a corporation, and stockholders of a corporation owning 10% (or more) of the stock of such corporation; all limited liability company **MANAGING** members, and officers or other limited liability company members with a 10% (or more) ownership interest in such company and all managers of a Hotel and Restaurant or a Tavern License.

**NOTICE:** This individual history record provides basic information which is necessary for the licensing authority investigation. All questions must be answered in their entirety or your application may be delayed or not processed. **EVERY** answer you give will be checked for its truthfulness. A deliberate falsehood or omission will jeopardize the application as such falsehood within itself constitutes evidence regarding the character of the applicant.

1. Name of Business <b>MAGUSTOS</b>				
2. Your Full Name (last, first, middle) <b>CREGON ERIC MATTHEW</b>			3. List any other names you have used. —	
4. Mailing address (if different from residence) <b>PO BOX 1043</b>			Home Telephone <b>970-390-7194</b>	
5. List all residence addresses below. Include current and previous addresses for the past five years.				
	<b>STREET AND NUMBER</b>	<b>CITY, STATE, ZIP</b>	<b>FROM</b>	<b>TO</b>
Current	<b>206 Eagle St</b>	<b>Red Cliff CO 81649</b>	<b>Oct 2010</b>	<b>Present</b>
Previous	<b>143 monument st</b>	<b>Red Cliff CO 81649</b>	<b>Nov 2004</b>	<b>Oct 2010</b>
6. List all current and former employers or businesses engaged in within the last five years (Attach separate sheet if necessary)				
	<b>NAME OF EMPLOYER</b>	<b>ADDRESS (STREET, NUMBER, CITY, STATE, ZIP)</b>	<b>POSITION HELD</b>	<b>FROM TO</b>
	<b>MANGOS mt. Grill</b>	<b>166 1/2 Eagle St Red Cliff CO 81649</b>	<b>OWNER</b>	<b>Oct-99 Present</b>
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
	<b>NAME OF RELATIVE</b>	<b>RELATIONSHIP TO YOU</b>	<b>POSITION HELD</b>	<b>NAME OF LICENSEE</b>
	<b>NONE</b>			
8. Have you ever applied for, held, or had an interest in a State of Colorado Liquor or Beer License, or loaned money, furniture or fixtures, equipment or inventory, to any liquor or beer licensee? If yes, answer in detail. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
<b>OWNED MANGOS MOUNTAIN GRILL FOR 12 YEARS POSSESSED A LIQUOR LICENSE FOR 12 YEARS</b>				
9. Have you ever received a violation notice suspension or revocation, for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the U.S.? If yes, explain in detail. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? Include arrests for DUI and DWAI. (If yes, explain in detail.)

Yes  No

see separate sheet

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (if yes, explain in detail.)

Yes  No

12. Have you ever had any STATE issued licenses suspended, revoked, or denied including a drivers license? (if yes, explain in detail.)

Yes  No

see separate sheet

**PERSONAL AND FINANCIAL INFORMATION**

Unless otherwise provided by law in 24-72-204 C.R.S., information provided below will be treated as CONFIDENTIAL.

Colorado liquor licensing authorities require the following personal information in order to determine your suitability for licensure pursuant to 12-47-307 C.R.S.

13a. Date of Birth	b. Social Security Number SSN	c. Place of Birth	d. U.S. Citizen?
		Bryantown Beach FL	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
e. If Naturalized, State where	f. When	g. Name of District Court	
h. Naturalization Certificate Number	i. Date of Certification	j. If an Alien, Give Alien's Registration Card Number	k. Permanent Residence Card Number
l. Height	m. Weight	n. Hair Color	o. Eye Color
5'10	175	Brown	Brown
p. Sex	q. Race	r. Do you have a current Driver's License? If so, give number and state	
M	White	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

**14. Financial Information.**

a. Total purchase price \$ \_\_\_\_\_ (if buying an existing business) or investment being made by the applying entity, corporation, partnership, limited liability company, other \$ \_\_\_\_\_

b. List the total amount of your investment in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases and fees paid \$ 15,000

c. Provide details of investment. You must account for the sources of ALL cash (how acquired). Attach a separate sheet if needed.

Type: Cash, Services or Equipment	Source: Name of Bank; Account Type and Number	Amount
CASH \$15,000	Revenue By out for MAGYOS	\$15,000

**d. Loan Information (attach copies of all notes or loans)**

Name of Lender and Account Number	Address	Term	Security	Amount

15. Give name of bank where business account will be maintained; Account Name and Account Number; and the name or names of persons authorized to draw thereon.

ALPINE BANK, MAGYOS LLC  
ERIC CREGON

**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.

Authorized Signature	Title	Date
	OWNER	12-16-10

## Individual History Record

### Explanation sheet

10. I was arrested in Florida 2 times I am not totally positive on dates the first time was in Sunrise Fl. For assaulting an officer I believe it was 1991 maybe 1992 a got a deferred sentence for it. The second time was 1995 for assault. And I got a dwai in Colorado in 2005 and was not arrested.

12. I had my license suspended for the DWAI in 2005 for 6 months I believe. It may have been 1 month.

### Liquor License App.

### Explanation Sheet

10. I owned a liquor license until June of 2010 for MMG2 LLC it expired and the business is to be closed under my name as of January 1 2011 and we are not currently selling alcohol of any kind. My license # was 42-32258 I held a license at that address for 3 years under DBA Mangos mountain grill and have had one there since October of 1999

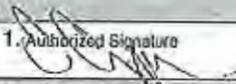
**REPORT OF CHANGES 21**

DO NOT WRITE IN THIS SPACE

**CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP  
 Liquor and 3.2 Beer Licenses**

(2355)  LLC/PARTNERSHIP  
 (2350)  CORPORATION

SEE INSTRUCTIONS AND  
 FEE SCHEDULE ON PAGE 2

1. Corporate/L.L.C./Partnership Name <i>MAYUSTOS LLC</i>		2. State Tax Account Number <i>X</i>		3. State Liquor License Number <i>V</i>	
4. Trade Name <i>MAYUSTOS</i>		5. Telephone Number <i>X</i>			
6. Address of Licensed Premises <i>101 MAIN ST</i>		City <i>MINTURN</i>		State ZIP Code <i>CO 81645</i>	
7. Mailing Address if different than above <i>PO BOX 10413</i>		City <i>MINTURN</i>		State ZIP Code <i>CO 81645</i>	
8. LIST ALL officers, directors (corporation) or Managing Members (L.L.C.) or General Partner(s). Each Officer, Director, Managing Member or Partner MUST FILL OUT a DR 8404-1 (Individual History Record).					
Position Held	Names	Home Address	DOB	Replaces	
<i>OWNER</i>	<i>ERIC CREGAN</i>	<i>206 EAGLE ST REDCLIFF CO</i>	<i>10/7/70</i>		
9. LIST ALL 10% (or more) Stockholders or 10% (or more) Members or 10% (or more) Limited Partners. Each person listed Must Fill out a DR 8404-1 (Individual History Record)					
Stockholders/Members/Partners owning 10% (or more) of business	% Owned	Home Address	DOB	Replaces	
<i>ERIC CREGAN</i>	<i>100</i>	<i>206 EAGLE ST</i>	<i>10/7/70</i>		
10. Registered Agent <i>ERIC CREGAN</i>		Address For Service <i>APRX 10413 MINTURN 101 MAIN ST MINTURN CO 81645</i>			
<b>OATH OF APPLICANT</b> <i>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>					
11. Authorized Signature 		Title <i>OWNER</i>		Date <i>12-23-10</i>	
<b>REPORT OF LOCAL LICENSING AUTHORITY</b> The foregoing changes have been received and examined by the Local Licensing Authority.					
12. Local Licensing Authority For					
Signature		Title		Date	
Agent				Date	
DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY					
LIABILITY INFORMATION					
License Account Number	Period	Cash Fund	TOTAL		
		<i>-100 (999)</i>			

## INSTRUCTIONS

### CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP REPORT of CHANGES

**NOTE: ENCLOSE A CHECK PAYABLE TO THE AUTHORITY WHERE THIS APPLICATION WILL BE FILED FOR \$100.00 FOR EACH PERSON LISTED IN SECTIONS 8 AND 9 ON THE APPLICATION. MASTERFILE APPLICANTS MUST INCLUDE A FEE OF \$250.00 FOR EACH PERSON LISTED PAYABLE TO THE COLORADO DEPARTMENT OF REVENUE. (Application filed directly to the state)**

**NOTE:** If you are a Limited Liability Company (LLC), or a Partnership (Limited, General, or Husband and Wife) check box 2355. For Corporations check box 2350.

Attach the following supporting documents to the Report of Changes Application:

- Certificate of Incorporation (or) Date stamped Articles or, Partnership Agreement (Limited and General Partnerships)
- Certificate of Good Standing dated within the last two years
- Certificate of Authority (only if a foreign corporation)
- Copies of minutes of meetings by the Corporation, Limited Liability Company or Partnership supporting the changes reflected on the front of this application. This includes letters of resignation, or appointment of any officers, or directors of a Corporation, or any managing member or members of a Limited Liability Company, or any general or limited partner in a Partnership (including husband and wife partnerships).
- **NOTE:** If the Licensee as listed on Line 1 has a sole stockholder that is a Corporation, or LLC, or Partnership, attach a letter designating one officer, or managing member or the general partner to be the "principal person" for the applicant. This person **MUST ALSO** fill out a DR8404-1 (Individual History Record) and submit fingerprints for background investigation.

This application and all supporting documents must **FIRST BE FILED WITH, AND APPROVED BY, THE LOCAL LICENSING AUTHORITY (CITY, TOWN, COUNTY)**. Applications will not be accepted unless all applicable questions are fully answered, all supporting documents correspond exactly with the name of the applicant.

1. List the name of the Corporation or Limited Liability Company or Partnership
2. List the State Sales Tax Number.
3. List the Applicant's State Liquor License Number.
4. List the Trade name of the business.
5. List the area code and telephone number of the business.
6. List the complete address, City, State and Zip Code, of the licensed premises.
7. List your mailing address if different than number 6 above.
8. List all officers, directors of a corporation, or all managing members of the LLC, or General Partners of Limited or General Partnerships. List the person's Position, Home Address, Date of Birth and the name of the person being replaced (if applicable).
9. List all 10% (or more) stockholders or members or Partners, and indicate ownership percentage, Home Address, Date of Birth, and the name of the person they purchased ownership interest from (if applicable).
10. List the name and address for service of the Registered Agent.
11. A person authorized to sign on behalf of the Applicant must sign the application, list their title, and the date the application was signed.
12. To be filled out by the local licensing authority only. List the name of the authority and indicate if the authority is a county, town/city. Then sign the application, list your title and attest the city/county officials signature and date the application.

## LLC Operating Agreement

This is a Limited Liability Company Operating Agreement (the "Agreement") made on the 15<sup>th</sup> day of November, 2010. The Members in this agreement are as follows:

Eric Cregon

The Members to this Agreement agree to the following:

### Name:

This Limited Liability Company will be known as Magustos LLC (the "LLC").

### The LLC:

- a) The Members have formed a Limited Liability Company.
- b) The terms and conditions of their LLC will be outlined in this Agreement.
- c) If the Agreement is executed, the LLC Operating Agreement will be in effect on 11/22/2010.
- d) The LLC will only be terminated as outlined in this Agreement.
- e) The LLC's primary place of business will be 101 Main St., Minturn, Colorado, 81645.
- f) The LLC will be governed under the laws of the state of Colorado.
- g) The LLC's primary purpose is To cook food and make drinks for the public working as a restarunt.

### Contributions:

The Members will make an initial contribution to the LLC as follows:

Eric Cregon : \$20,000.00 in Cash

Contributions will be submitted no later than 12/31/2011. All capital contributions are final unless all Members give written consent of withdrawal. All contributions will be deposited into a joint capital account.

### Interest:

The Members' ownership interest in the LLC will be as follows:

Eric Cregon : 100%

### Costs:

The Members will share costs according to the following percentages:

Eric Cregon : 100%

- The following Members will be able to sign checks from any joint Member account:  
Eric Cregon

### **New Members:**

The LLC will amend this agreement to include new Members upon the written and unanimous vote of all Members.

The name of the LLC may be amended if a new Member is added to the LLC upon the written and unanimous vote of all Members.

### **Withdrawal or Death:**

The Members hereby reserve the right to withdraw from the LLC at any time. Should a Member withdraw from the LLC because of choice or death, the remaining Members will have the option to buy out the remaining shares of the LLC. Should the Members agree to buy out the shares, the shares will be bought in equal amounts by all Members. The Members agree to hire an outside firm to assess the value of the remaining shares. The Members will have 60 days to decide if they want to buy the remaining shares together and disperse them equally. If all Members do not agree to buy the shares, individual Members will then have the right to buy the shares individually. If more than one Member requests to buy the remaining shares, the shares will be split equally among those Members wishing to purchase the shares. If all Members agree by unanimous vote, the LLC may choose to allow a non-Member to buy the shares thereby replacing the previous Member.

If no individual Member(s) finalize a purchase agreement by 60 days, the LLC will be dissolved.

The name of the LLC may be amended upon the written and unanimous vote of all Members if a Member is successfully bought out.

### **Dissolution:**

Should the LLC be dissolved by majority vote or otherwise, the LLC will be liquidated, and the debts will be paid. All remaining funds after debts have been paid will be distributed based on the percentage of ownership interest outlined in this Agreement.

### **Amendments:**

- Amendments may be made hereto upon the unanimous and written consent of all Members.
- Amendments must be expressly written and have the original signatures of all Members.

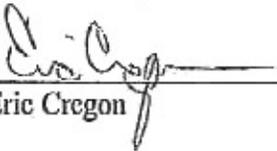
**Settling Disputes:**

All Members agree to enter into mediation before filing suit against any other Member or the LLC for any dispute arising from this Agreement or LLC. Members agree to attend one session of mediation before filing suit. If any Member does not attend mediation, or the dispute is not settled after one session of mediation, the Members are free to file suit. Any law suits will be under the jurisdiction of the state of Colorado.

All Members signed hereto agree to the above stated Agreement.

Signed this 15<sup>th</sup> day of December, 2010

Signature:

  
Eric Cregon



Colorado Secretary of State  
 Date and Time: 11/22/2010 11:03 PM  
 ID Number: 20101638608  
 Document number: 20101638608  
 Amount Paid: \$50.00

Document must be filed electronically.  
 Paper documents will not be accepted.

Document processing fee  
 Fees & forms/cover sheets  
 are subject to change.

\$50.00

To access other information or print  
 copies of filed documents,  
 visit [www.sos.state.co.us](http://www.sos.state.co.us) and  
 select Business Center.

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Organization**

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

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

**Magustos LLC**

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

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

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

Street address

**101 Main St**

*(Street number and name)*

**Minturn**

*(City)*

**CO**

*(State)*

**81645**

*(ZIP/Postal Code)*

**United States**

*(Province -- if applicable)*

*(Country)*

Mailing address

*(leave blank if same as street address)*

**Po Box 250**

*(Street number and name or Post Office Box information)*

**Red Cliff**

*(City)*

**CO**

*(State)*

**81649**

*(ZIP/Postal Code)*

**United States**

*(Province -- if applicable)*

*(Country)*

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

Name

*(if an individual)*

**Oregon**

*(Last)*

**Eric**

*(First)*

**Matthew**

*(Middle)*

*(Suffix)*

**OR**

*(if an entity)*

*(Caution: Do not provide both an individual and an entity name.)*

Street address

**206 Eagle St**

*(Street number and name)*

**Red Cliff**

*(City)*

**CO**

*(State)*

**81649**

*(ZIP Code)*

Mailing address  
(leave blank if same as street address)

PO Box 250

(Street number and name or Post Office Box Information)

Red Cliff

(City)

CO

(State)

81649

(ZIP Code)

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

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

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

Name  
(if an individual)

Oregon

Eric

Matthew

(Last)

(First)

(Middle)

(Suffix)

OR

(if an entity)

(Caution: Do not provide both an individual and an entity name.)

Mailing address

PO Box 250

(Street number and name or Post Office Box Information)

Red Cliff

(City)

CO

(State)

81649

(ZIP/Postal Code)

United States

(Province - if applicable)

(Country)

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

- The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in

(Mark the applicable box.)

- one or more managers.

OR

- the members.

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

- There is at least one member of the limited liability company.

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

- This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are

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

**Notice:**

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

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

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

<u>Oregon</u>	<u>Eric</u>	<u>Matthew</u>	
<small>(Last)</small>	<small>(First)</small>	<small>(Middle)</small>	<small>(Suffix)</small>
<u>PO Box 250</u>			
<small>(Street number and name or Post Office Box information)</small>			
<hr/>			
<u>Red Cliff</u>	<u>CO</u>	<u>81649</u>	
<small>(City)</small>	<small>(State)</small>	<small>(ZIP/Postal Code)</small>	
<u></u>	<u>United States</u>		
<small>(Province - if applicable)</small>	<small>(Country)</small>		

*(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).

# COLORADO SALES TAX / WAGE WITHHOLDING ACCOUNT APPLICATION

Department Use Only

INSTRUCTIONS FOR THIS FORM ARE IN THE PUBLICATION CR 0101

<b>A 1. REASON FOR FILING THIS APPLICATION</b> <input checked="" type="checkbox"/> Original Application <input type="checkbox"/> Change of Ownership <input type="checkbox"/> Additional Location																													
Do you have a Department of Revenue Account Number? <input type="checkbox"/> Yes <input type="checkbox"/> No   IF Yes, Account # _____																													
<b>2. Indicate Type of Organization</b> <input type="checkbox"/> Individual <input type="checkbox"/> Limited Liability Partnership (LLP) <input type="checkbox"/> Estate/Trust <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Liability Limited Partnership (LLLP) <input type="checkbox"/> Government <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Corporation/S' Corp. <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Limited Liability Company (LLC) <input type="checkbox"/> Association <input type="checkbox"/> Non-profit																													
<b>B 1a. Taxpayer Name (Owner, Partners or Corporate Name) (Last, First, Middle)</b> MAGUSTOS LLC																													
1b. Taxpayer ID (Requirements—see page 2) _____																													
2a. Trade Name/Doing Business As (if applicable, and for informational purposes only) MAGUSTOS																													
2b. FEIN 27-4030851																													
2c. SSN _____																													
<b>Physical place of business</b>																													
3a. Principal Place of Business 101 MAIN ST																													
City MINTURN																													
State CO																													
ZIP Code 81645																													
3b. County Eagle																													
3c. If business is within limits of a city, what city? MINTURN																													
3d. Telephone (970) 390-7194																													
<b>Mailing address</b>																													
4a. Name (Last, First, Middle) CREGON ERIC MATTHEW (MAGUSTOS LLC)																													
4b. Telephone (970) 390-7194																													
4c. Mailing Address PO BOX 1043																													
City MINTURN																													
State CO																													
ZIP Code 81645																													
5. List Specific Products and/or Services you Provide and EXPLAIN IN DETAIL. (See page 2, section B5 for additional space) Food AND BEER, WINE, LIQUOR FOR RESALE RESTAURANT, BAR																													
Do you sell motor vehicle tires? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   Is your business in a special taxing district? <input type="checkbox"/> Yes <input type="checkbox"/> No   Do you rent out items for 30 days or less? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																													
6a. Owner/Partner/Corp. Officer (Last, First, Middle) CREGON ERIC MATTHEW																													
6b. Title OWNER																													
6c. FEIN 27-4020851																													
6d. SSN 264-87-5177																													
6e. Telephone (970) 390-7194																													
6f. Address (Residence, P.O. Box, or Street) PO BOX 1043																													
City MINTURN																													
State CO																													
ZIP Code 81645																													
7a. Owner/Partner/Corp. Officer (Last, First, Middle) _____																													
7b. Title _____																													
7c. FEIN _____																													
7d. SSN _____																													
7e. Telephone _____																													
7f. Address (Residence, P.O. Box, or Street) _____																													
City _____																													
State _____																													
ZIP Code _____																													
<b>If you acquired the business in whole or in part, complete the following:</b>																													
8a. Prior Taxpayer Name _____																													
8b. Date of Acquisition _____																													
8c. Address _____																													
City _____																													
State _____																													
ZIP Code _____																													
<b>C 1. <input type="checkbox"/> If Seasonal, mark each business month</b> <input type="checkbox"/> Jan. <input type="checkbox"/> April <input type="checkbox"/> July <input type="checkbox"/> Oct. <input type="checkbox"/> Feb. <input type="checkbox"/> May <input type="checkbox"/> Aug. <input type="checkbox"/> Nov. <input type="checkbox"/> Mar. <input type="checkbox"/> June <input type="checkbox"/> Sept. <input type="checkbox"/> Dec.																													
2a. Filing Frequency: If sales tax collected is: <input type="checkbox"/> \$15.00/month or less—Annually <input type="checkbox"/> Under \$300/month—Quarterly <input checked="" type="checkbox"/> \$300/month or more—Monthly <input type="checkbox"/> Wholesale only—Annually																													
2b. First Day of Sales (Mo/Day/Yr) 2-01-2011																													
Revenue Registration Account Number (DEPT. USE ONLY) _____																													
3. Indicate which applies to you: <input checked="" type="checkbox"/> Retail-Sales <input type="checkbox"/> Wholesaler <input type="checkbox"/> Charitable <input type="checkbox"/> Retailers-Use																													
<b>D 1. Filing Frequency: If wage withholding amount is</b> <input checked="" type="checkbox"/> \$1-\$6,999/Year—Quarterly <input type="checkbox"/> \$50,000+/Year—Weekly <input type="checkbox"/> Withholding <input type="checkbox"/> \$7,000-\$49,999/Year—Monthly   Must file by Electronic Funds Transfer (EFT)																													
2. Oil/Gas <input type="checkbox"/> Withholding																													
3a. First Day of Payroll, if applicable (Mo/Day/Yr) NA																													
3b. Payroll Records Telephone (970) 390-7194																													
3c. Payroll Records Location (List Address) 206 EAGLE ST RED CLIFF CO 81649																													
<b>E FEES (see page 2)</b>																													
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Period Covered From To</th> <th>Code</th> <th>Description</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>Mo 12/2011 to Mo 12/2011</td> <td>0020-810</td> <td>State Sales Tax Deposit (355)</td> <td>\$ 50.00</td> </tr> <tr> <td>Mo 12/2011 to Mo 12/2011</td> <td>0080-750</td> <td>Sales Tax License (999)</td> <td>\$ 16.00</td> </tr> <tr> <td>Mo 12/2011 to Mo 12/2011</td> <td>0100-750</td> <td>Wholesale License(999)</td> <td>\$</td> </tr> <tr> <td>Mo 12/2011 to Mo 12/2011</td> <td>1000-750</td> <td>Wage Withholding (999)</td> <td>\$ 0.00</td> </tr> <tr> <td>Mo 12/2011 to Mo 12/2011</td> <td>0160-750</td> <td>Charitable License (999)</td> <td>\$</td> </tr> <tr> <td colspan="3" style="text-align: right;"><b>MAKE CHECKS PAYABLE TO:</b></td> <td><b>TOTAL \$ 66.00</b></td> </tr> </tbody> </table>		Period Covered From To	Code	Description	Amount	Mo 12/2011 to Mo 12/2011	0020-810	State Sales Tax Deposit (355)	\$ 50.00	Mo 12/2011 to Mo 12/2011	0080-750	Sales Tax License (999)	\$ 16.00	Mo 12/2011 to Mo 12/2011	0100-750	Wholesale License(999)	\$	Mo 12/2011 to Mo 12/2011	1000-750	Wage Withholding (999)	\$ 0.00	Mo 12/2011 to Mo 12/2011	0160-750	Charitable License (999)	\$	<b>MAKE CHECKS PAYABLE TO:</b>			<b>TOTAL \$ 66.00</b>
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Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80261-0009																													
<b>F I declare under penalty of perjury in the second degree that the statements made in this application are true and complete to the best of my knowledge.</b>																													
SIGNATURE of Owner, Partner, or Corporate Officer Required _____ Title OWNER																													
Date 12-16-10																													

(continues on reverse side of this page.)

See page 2 for Return Check Policy

## RETAIL RENTAL AGREEMENT AND LEASE

THIS RETAIL LEASE ("Lease"), dated as of the 1st day of January 2011, is executed by MINTURN REALTY, INC., a Colorado Corporation ("Landlord"), with its principal business mailing address at P.O. Box 130, Minturn, Colorado 81645, and MAGUSTOS LLC, a Colorado Limited Liability Company ("Tenant"), with its principal business office at 101 Main Street, Minturn, Colorado 81645. In consideration of the terms, covenants and conditions set forth below, Landlord and Tenant agree as follows:

1. **DEVISE OF PREMISES:** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following:

That part of Lots numbered One (1), Two (2), and Three (3) in the Block lettered "A" in Mackedon and Rathburn's Subdivision of the Town of Minturn, Eagle County, Colorado, and more particularly described as follows:

That portion of said Lots lying and being Southerly of U.S. Highway Twenty-Four (24) beginning at a point whence the Southwest corner of said Lot One (1) bears S. 71 40' W. 76 feet; thence along a curve left radius 180.8 feet to tangent, thence along tangent 13.3 feet; thence along curve right, radius 234.6 feet to the West boundary of said Lot Number Three(3); thence S. 18 20' E. 60 feet; thence N. 71 40' East 76 feet to the place of beginning.

and including:

A parcel of land 15 feet of even width lying adjacent to and Southeasterly of Lot Number One (1), Block A, Mackedon and Rathburn's Subdivision of the Town of Minturn, Eagle County, Colorado, extending Southwesterly from U.S. Highway Number Twenty-four (24) to the Southwesterly line of said Lot One (1) extended Southeasterly 15 feet. The Northeasterly line of said strip of land being the Southwesterly line of U.S. Highway Number Twenty-four (24).

Tenant shall also have the right to use the parking facilities around the building, without charge throughout the Initial Term and any Option Period (both as defined in Section 2 below). Landlord will supply sufficient parking to abide to the Town of Minturn Ordinances for a minimum of 120 seats. If additional parking is needed by Town of Minturn Ordinances, tenant will need to make arrangements with the governing entity to accommodate the requirement, i.e. municipal parking.

The actual location and approximate rentable area of the Premises (the "Rentable Area") is 2680 square feet.

2. **TERM:**

(a) **Initial Term.** The initial term of this Lease (the "Initial Term") shall commence on January 1, 2011 (the "Commencement Date") and the end on December 31, 2015 (the "Expiration Date"). The initial term shall end at the Expiration Date unless sooner terminated or extended pursuant to the terms of this lease.

(b) **Option Periods.** Tenant shall have the option to extend the term of this Lease for two (2) option periods of four (4) years each period (the "Option Periods") commencing the day immediately following the expiration of the Initial Term. If both options are exercised this Lease terminates on December 31, 2023. Tenant shall exercise this option by giving written notice to Landlord in accordance with Section 33 below at least sixty (60) days before the expiration of the Initial Term or subsequent Option Period. Tenant's option under this Section 2(b) shall be contingent upon the following:

(i) That at the time of exercise of the option, an event of default, as defined in Section 25 below, shall not have occurred and be continuing.

During the Option Periods, all of the terms, covenants and conditions of this Lease shall be and remain in full force and effect, except that Tenant shall have no right to a further extension or renewal of the term of this Lease.

(c) Lease Year. As used in this Lease, the term "Lease Year" shall be defined as follows:

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

(ii) For Lease Years after the first Lease Year, the 12-month period beginning on the next day following the expiration of the preceding Lease Year. If the term of this Lease shall end prior to the last day of a Lease Year, the final Lease Year under this Lease shall be deemed to end on the day the term of this Lease ends.

### 3. RENT:

YEAR ONE: January 1, 2011 through June 30, 2011 the fixed rent shall be no dollars (\$0.00). Commencing July 1, 2011 through December 31, 2011 the fixed rent shall be twelve dollars and no/100ths (\$12.00) per square foot, equaling two thousand six hundred eighty dollars and no/100ths (\$2,680.00). The total actualized rent for 2011 shall be sixteen thousand eighty dollars and no/100ths (\$16,080.00) payable in advance in equal monthly installments as described above.

YEAR TWO: January 1, 2012 through December 31, 2012 the fixed rent shall be thirteen dollars and no/100ths (\$13.00) per square foot, equaling two thousand nine hundred three dollars and 33/100ths (\$2,903.33). The total actualized rent for 2012 shall be thirty-four thousand eight hundred-forty dollars and no/100ths (\$34,840.00) payable in advance in equal monthly installments.

YEAR THREE: January 1, 2013 through December 31, 2013 the fixed rent shall be fourteen dollars and no/100ths (\$14.00) per square foot, equaling three thousand one hundred twenty-six dollars and 66/100ths (\$3,126.66). The total actualized rent for 2013 shall be thirty-seven thousand five hundred twenty dollars and no/100ths (\$37,520.00) payable in advance in equal monthly installments.

YEAR FOUR: January 1, 2014 through December 31, 2014 the fixed rent shall be fifteen dollars and no/100ths (\$15.00) per square foot, equaling three thousand three hundred fifty dollars and no/100ths (\$3,350.00). The total actualized rent for 2014 shall be forty thousand two hundred dollars and no/100ths (\$40,200.00) payable in advance in equal monthly installments.

At the end of the fourth year the First Option Period shall commence pursuant to the terms and conditions of Section 2(b) above.

YEAR FIVE: January 1, 2015 through December 31, 2015 the fixed rent shall be sixteen dollars and no/100ths (\$16.00) per square foot, equaling three thousand five hundred seventy three dollars and 33/100ths (\$3,573.00). The total actualized rent for 2015 shall be forty two thousand eight hundred eighty dollars and no/100ths (\$42,880.00) payable in advance in equal monthly installments.

YEAR SIX: January 1, 2016 through December 31, 2016 the fixed rent shall be seventeen dollars and no/100ths (\$17.00) per square foot, equaling three thousand seven hundred ninety-six dollars and 67/100ths (\$3,796.67). The total actualized rent for 2016 shall be forty-five thousand five hundred sixty dollars and no/100ths (\$45,560.00) payable in advance in equal monthly installments.

YEAR SEVEN: January 1, 2017 through December 31, 2017 the fixed rent shall be eighteen dollars and no/100ths (\$18.00) per square foot, equaling four thousand twenty dollars and no/100ths (\$4,020.00). The total actualized rent for 2018 shall be forty-eight thousand two hundred forty dollars and no/100ths (\$48,240.00) payable in advance in equal monthly installments.

YEAR EIGHT: January 1, 2018 through December 31, 2018 the fixed rent shall be eighteen dollars and no/100ths (\$19.00) per square foot, equaling four thousand two hundred forty three dollars and 33/100ths (\$4,243.33). The total actualized rent for 2018 shall be fifty thousand nine hundred twenty dollars and no/100ths (\$50,920) payable in advance in equal monthly installments.

At the end of the eight year the Second Option Period shall commence based on the terms and conditions of section 2(b) above.

#### 4. TAXES AND OPERATING COSTS

(a) Tenant's Obligation. Tenant shall promptly pay, when due, all Taxes (as defined below, and including, without limitation, Operating Costs (as defined below) charged or attributable to the Premises. If such Taxes and Operating Costs relating to the Premises are billed to Landlord, Tenant shall promptly pay or reimburse Landlord for the amount payable or paid therefore, upon Landlord's notification to Tenant of such amount payable or paid.

(b) Estimated Payments and Adjustment. During each calendar year during the term of this Lease, Tenant shall pay to Landlord semiannually, on the first day of March and September of each year, with payments of Minimum Rent under Section 3(a), 1/2 of Landlord's estimate of the Taxes and Operating Costs relating to the Premises for the calendar year. These estimated semi-annual payments shall be subject to adjustment as soon as the actual Taxes and Operating Costs for that calendar year can be determined by Landlord, and Landlord shall provide Tenant with a reasonably detailed statement of any such adjustment ("Landlord's Statement"). If the amount of Taxes and Operating Costs as shown on Landlord's Statement exceeds the sum previously paid by Tenant pursuant to this Section 4, as earlier estimated, then within 30 days after receiving Landlord's Statement, Tenant shall pay the deficiency to Landlord. If Landlord's Statement indicates that Landlord has received more than the amount of Taxes and Operating Costs actually owed by Tenant, Landlord shall apply the excess first to reduce the amount payable by Tenant during the remaining portion of the Lease term for Taxes and Operating Costs. Landlord may return the balance, if any, to Tenant; or, at Landlord's option, Landlord may apply such excess to any unsatisfied obligation of Tenant to Landlord.

(c) Definitions. As used in this Section:

(i) "Taxes" shall mean all of the following imposed with respect to the Premises by any governmental or quasi-governmental authority or other entity with taxing or assessment powers:

- (A) General and special real estate taxes and assessments, including, without limitation, special district or improvement assessments and any interest payable with respect to installment payments of such taxes and assessments;
- (B) Any water charges, sewer charges, vault charges and garbage collection or recycling taxes;
- (C) Any business or other type of license fee, tax or assessment incurred by Landlord with respect to the Premises;
- (D) Any tax imposed upon this transaction; and
- (E) All taxes specifically imposed in lieu of any such taxes, as provided below.

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

Taxes shall also include all of Landlord's expenses, including, but not limited to, attorneys' fees, incurred by Landlord in any effort to minimize Taxes, whether by contesting proposed increases in assessments or by any other means or procedure appropriate in the circumstances. Landlord shall have the exclusive right to contest any assessments of Taxes.

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

(ii) "Operating Costs" shall mean all costs, charges and expenses payable by Landlord that are attributable to the ownership, operation, maintenance, repair the Premises, specifically including trash removal and snow removal and related snow roof maintenance. Tenant shall directly pay all water and sewer, utilities and other expenses relating to interior maintenance and heating of the premises. Landlord shall be responsible for all capital improvements that it may, in its sole discretion, to perform or construct. Operating Costs shall not include any costs, charges or expenses included in Taxes or any renting commissions.

(d) Review of Taxes and Operating Costs Determination. If Tenant wishes to dispute Landlord's determination of Operating Costs for any calendar year or the calculation of any Additional Rent due under this Section, Tenant shall give Landlord written notice of such dispute within 45 days after receipt of notice from Landlord of the matter giving rise to the dispute. If Tenant does not give Landlord such notice within such time, Tenant shall have waived its right to dispute such determination or calculation. In the event Tenant disputes any such determination or calculation, Tenant shall have the right to inspect Landlord's accounting records at Landlord's accounting office, and if, after such inspection, Tenant still disputes such determination or calculation, a certification as to the proper amount made by Landlord's independent certified public accountants shall be final and conclusive. Tenant agrees to pay the cost of any copies of Landlord's records, and any other expenses related to Tenant's inspection. Tenant shall also pay the cost of any such certification by Landlord's certified public accountant unless it is determined that Landlord's original certification was in error (in Landlord's favor) by more than 5% of the final, audited charge to Tenant for Operating Costs. Notwithstanding the pendency of any dispute under this Section 4 (d), Tenant shall make payments based upon Landlord's determination or calculation until such determination or calculation has been established under this Section 4(d) to be incorrect.

(e) Proration for Partial Calendar Year. If the term of this Lease commences after the beginning of or expires before the end of a calendar year, any amount payable by Tenant under this Section 4 with respect to that calendar year shall be adjusted proportionately on a daily basis.

(f) Payment After Lease Expiration or termination. Tenant's obligation to pay any deficiency between (i) Tenant's share of estimated Taxes and Operating Costs for the last calendar year of the term, and (ii) Tenant's share of actual Taxes and Operating costs, determined after adjustment as contemplated under this Section 4 above, shall survive the expiration or earlier termination of this Lease. If any adjustment based on actual Taxes and Operating Costs for the final calendar year of the term reflects amounts due and payable to Tenant, Landlord shall refund to Tenant such amount within a reasonable time after Landlord determines the amount owed to Tenant; or, at Landlord's option, Landlord shall apply such amount toward payment of any unsatisfied obligation of Tenant to Landlord.

(g) Tenant's Personal Property Taxes. Tenant shall pay before delinquency any and all taxes, assessments, license taxes, fees and other charges levied, assessed or imposed and which become payable during the term of this Lease upon Tenant's operations at, occupancy of or conduct of business at the Premises or upon Tenant's leasehold improvements, equipment, inventory, furniture, appliances, trade fixtures and any other personal property of any kind installed or located at the Premises. If the taxing authorities fail to render a separate tax bill with respect to any or all of such property, Landlord shall reasonably allocate to such property a portion of such taxes attributable to the Premises. Tenant shall pay such amount to Landlord promptly upon receipt of a written statement of such allocation.

(h) Exemption from Sales Tax Lien. As provided in Colo. Rev. Stat. § 39-2-205(3), as amended from time to time, the Premises and all of the improvements and installations made or owned by Landlord, and all other improvements (other than Tenant's trade fixtures) made to or installed in the Premises (whether constructed by, for or at the expense of Landlord or Tenant), all of which shall be deemed property owned by Landlord, shall be exempt from any lien for sales and use taxes otherwise imposed by the taxing authorities of the State of Colorado. In order to secure this exemption from the date of execution of this Lease, upon execution of this Lease, Landlord and Tenant shall execute a memorandum of this Lease for filing with the Colorado Department of Revenue, such memorandum to be in the form prescribed by that Department.

## 5. USE OF PREMISES; CONDUCT OF BUSINESS.

(a) Use; Tenant's Exclusive Rights to Such Use. Tenant shall use and occupy the Premises for the purpose of retail sales of a bar and restaurant, and for no other purpose, under the trade name of "Chilly Willy's", and under no other name. Tenant shall at all times and in all respects, maintain the property in a first-class and high quality, suitable for a first-class, prestigious ski resort town, and at least equal in quality to respected restaurants of comparable size and nature in the Town of Vail, Colorado, as exist on the date of this Lease. The foregoing shall apply, without limitation, to the furniture and furnishings of the Premises, the attire and appearance of employees, and the management and operation of the Premises in general.

(b) Operation. Tenant shall open for business on the Commencement Date and shall continuously operate all of the Premises during the entire term of this Lease. Tenant agrees to keep the Premises open during reasonable season hours indicative of restaurants in the Eagle Valley. The hours during which all or any part of the Premises are open for business shall be subject to all applicable laws and any governmental or quasi-governmental authority having jurisdiction over the Premises. Whether or not open for business, Tenant shall keep the Premises' show windows and any permitted signs illuminated during such hours as Landlord may reasonably designate; and such windows and signs shall not be illuminated during such hours (when the Premises are not open for business) as Landlord may reasonably designate.

(c) Appearance of Premises. At all times during which the Premises are open for business, Tenant shall have upon the Premises a sufficient number of employees, to serve the Tenant's patrons adequately, and in general Tenant shall employ its best efforts and abilities to produce the greatest possible dollar volume of sales from the Premises within the terms and provisions of this Lease. Tenant shall keep all furniture, carpeting, drapes and other furnishings in the Premises in good repair and reasonable condition at all times. Tenant shall keep the Premises in a neat, clean, safe and sanitary condition at all times. Tenant acknowledges that its obligations under this Lease with respect to the appearance and condition of the Premises are material obligations of Tenant under this Lease.

(d) Signs and Advertising. Any permitted sign shall comply with the requirements of any governmental or quasi-governmental authority having jurisdiction over the Building, and Tenant shall be solely responsible for such compliance. Landlord shall have the right to remove all non-permitted signs without notice to Tenant and at the expense of Tenant.

Tenant shall, at its own expense, maintain all permitted signs and shall, on the expiration or termination of this Lease, and at its own expense, remove all such permitted signs and repair any damage caused by such removal. Tenant's obligation under this Section 5(d) shall survive the expiration or termination of this Lease.

During the last 90 days of the term of this Lease, Landlord shall have the right to place "For Rent" or similar signs upon the Premises.

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

In the event that any official at any time shall contend or declare by notice, violation, order or in any other manner that the Premises are being used for a purpose which is a violation of any permit, certificate of occupancy, statute, ordinance or other requirement of law applicable to the Building or the Premises gives notice of Tenant's violation of any of their rules or regulations applicable to the Premises or the Building, then upon five days' written notice from Landlord or such shorter period as allowed by law, Tenant shall immediately discontinue such use of the Premises.

## 6. QUIET ENJOYMENT.

Landlord covenants and agrees with Tenant that upon Tenant's paying Rent, Rent under this Lease and observing and performing all the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, Landlord shall not disturb Tenant's peaceable and quiet enjoyment of the Premises, subject, nevertheless, to the terms and conditions of this Lease, and to any Mortgage (as defined in Section 21(c) below) and the underlying declarations and other matters mentioned in this Lease.

**7. PREPARATION AND ACCEPTANCE OF PREMISES.**

(a) Landlord's and Tenant's work. Any and all improvements now or in the future situated in or upon the Premises, whether constructed by, for or at the expense of Landlord or Tenant, are and shall be and become a part of the Premises, and Tenant shall have only a leasehold interest therein, subject to all of the terms and conditions of this Lease, except not including all equipment, fixtures, furniture and the front and back antique bars.

(b) Acceptance of Possession. Taking possession of the Premises by Tenant shall be conclusive evidence as against Tenant that the Premises and the Building were in good and satisfactory condition when possession was taken.

**8. ACCESS TO PREMISES.**

(a) Tenant's Rights. By the grant of this Lease, Tenant has the right to Use during the term of this Lease, the Building, subject to the terms and conditions of this Lease.

Tenant, and Tenant's employees, servants, agents, representatives, contractors, and suppliers (collectively, "Tenant's Employees"), and Tenant's invitees and customers shall use the Business Areas only for the purposes and only in the manner intended and in compliance with the terms and conditions referred to above.

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

If the need for repairs or the making of repairs (or both) which Landlord is obligated to effect at Landlord's expense renders a material portion of the Premises unusable and such portion is actually left unused by Tenant for more than two consecutive days, then Tenant shall be entitled to an abatement of Minimum Rent and Taxes and Operating Costs commencing with the third day that the Premises are unusable and not used; provided, however, that Tenant shall not be entitled to any such abatement if the repairs in question (i) arose directly or indirectly from any act or omission by Tenant or any of Tenant's agents, employees, contractors, visitors or licensees, or (ii) arose because of a request by Tenant for an alteration or addition to the Premises which directly or indirectly necessitated the repair, or (iii) were performed by Landlord on Tenant's account following a failure by Tenant to comply with its obligations under this Lease.

Landlord covenants in any event to use reasonable diligence to avoid disruption and inconvenience to Tenant's business and patrons in the course of any exercise of Landlord's right of entry under this Section.

If during the term of this Lease Tenant shall have removed all or substantially all of Tenant's property from the Premises, Landlord may immediately enter and alter, renovate and redecorate the Premises without incurring liability to Tenant for any compensation or damages, and such acts shall not entitle Tenant to any elimination or abatement of rent and shall not have the effect of terminating this Lease or making this Lease void or voidable, absent notice from Landlord to the contrary.

If Tenant shall not be personally present to permit an entry into the Premises at any time when for any reason such an entry shall be necessary or permissible, Landlord or Landlord's agents may forcibly enter the Premises, without rendering Landlord or its agents liable therefore (provided that during such entry Landlord or its agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of this Lease.

Nothing in this Lease, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Premises other than as provided in this Lease.

#### 9. ALTERATIONS BY TENANT.

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

Tenant also agrees to perform and observe all covenants and obligations of Landlord, as the owner of the Premises under the Declaration, as applicable to any such alterations, additions and improvements permitted under this Section 9.

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

All alterations, additions or improvements upon the Premises, including all paneling, partitions and the like (but excluding Tenant's trade fixtures), unless otherwise agreed at the time Landlord's consent is obtained or unless Landlord requests Tenant to remove such items, shall become the property of Landlord, and shall remain upon and be surrendered with the Premises, as a part thereof, at the end of the term of this Lease.

#### 10. MAINTENANCE AND REPAIRS.

Tenant shall take good care of the Premises and the fixtures and improvements comprising the Premise, including, without limitation, any storefront, doors, plate glass windows, heating, ventilating and air-conditioning system, plumbing, pipes, electrical wiring, and conduits; and, at Landlord's direction, Tenant shall perform or allow Landlord to perform maintenance and make repairs, restorations or replacements. Tenant shall perform and observe all covenants and obligations of Landlord, as the owner of the Premises, under the Declaration. Tenant shall also maintain all furniture, furnishings and decorations in, on or about the Premises.

Do to the nature of the building (older Minturn), repairs, maintenance and/or remodeling will be a negotiated item between Landlord and Tenant, as to who will be responsible for the expense. The Landlord will be responsible for all exterior repairs of the Building which will include the roof and structural components.

#### 11. LIENS.

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

(b) Landlord's Rights. At least 30 days prior to the commencement of any regularly scheduled work on the Premises, and reasonably in advance of any other work on the Premises, by or for Tenant or anyone claiming under Tenant, Tenant shall notify Landlord of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work, so that Landlord may avail itself of the provisions of Colo. Rev. Stat. Section 38-22-105(2), as amended from time to time. Before and during any such work on the Premises, Landlord and its agents shall have the right to go upon and inspect the Premises at all reasonable times, and shall have the right to keep posted on the Premises notices such as those provided for by the statute referred to above or to take any further action which Landlord may deem to be proper for the protection of Landlord's interest in the Premises.

(c) No Other Encumbrances. Tenant covenants and agrees not to obtain any financing secured by Tenant's interest in the Premises and not to encumber the Premises or the interest of Landlord or Tenant in the Premises without the prior written consent of Landlord, and to keep the Premises free from all other liens and encumbrances except liens and encumbrances existing upon the Commencement Date or liens and encumbrances created by Landlord.

## 12. DAMAGE OF DESTRUCTION.

### (a) Damage to Premises.

(i) Tenant's Notice of Damage. If any portion of the Premises or other portion of the Building necessary for Tenant's occupancy shall be damaged or destroyed by fire or other casualty, Tenant shall give prompt written notice ("Tenant's Notice of Damage") to Landlord of such damage or destruction (the "Damage").

(ii) Options to Terminate if Damage Substantial. Following receipt of Tenant's Notice of Damage, then, subject to this Section 12 below, Landlord shall promptly proceed to determine the nature and extent of the Damage and to estimate the time necessary to repair or restore the Damage. As soon as reasonably possible, Landlord shall give written notice to Tenant stating Landlord's estimate of the time necessary to repair or restore the Damage ("Landlord's Notice of Repair Time"). If Landlord reasonably estimates that repair or restoration of the Damage cannot be completed within 180 days from the time of Tenant's Notice of Damage, Landlord and Tenant shall each have the option to terminate this Lease. Any option granted under this Section 12(a)(ii) shall be exercised by written notice to the other party given within 10 days after Landlord's Notice of Repair Time. In retrospect Landlord and Tenants agree to jointly try and solve any problems.

In the event either Landlord or Tenant exercises its option to terminate this Lease, the term of this Lease shall expire 10 days after the notice by either Landlord or Tenant exercising such party's option to terminate this Lease. Further, Landlord may refund to Tenant such amounts of Minimum Rent and Additional Rent previously paid by Tenant as may be applicable to the period subsequent to the date of Tenant's Notice of Damage, less the reasonable value of any use or occupation of the Premises by Tenant subsequent to the time of Tenant's Notice of Damage; or, at Landlord's option, Landlord may apply such Minimum Rent and Additional Rent to any unsatisfied obligation of Tenant to Landlord.

(iii) **Obligations to Repair and Restore.** In the event neither party terminates this Lease pursuant to this Section 12 above, this Lease shall continue in full force and effect, and Landlord shall proceed with reasonable diligence to repair and restore those installations and improvements, if any, made to the Premises as Landlord's Work to substantially the same condition as that of such installations and improvements immediately before the occurrence of the Damage. Within 15 days after Landlord has substantially repaired or reconstructed the portion of the Damage that Landlord is obligated to repair or construct, Tenant shall commence to repair or reconstruct so much of the Damage in the Premises as Tenant is obligated to repair under Section 10, including any Damage to those installations and improvements made to the Premises as Tenant's work, and prosecute the same diligently to completion.

There shall be a reduction of Minimum Rent and Taxes and Operating Costs equal to the proportion that the portion of the Rentable Area rendered untenable by the Damage bears to the Rentable Area before the Damage, from the date of the occurrence of the Damage until the date when both the repairs which Landlord is obligated to make are completed sufficiently to enable Tenant to commence its repairs, and Tenant has been allowed a reasonable period of time which is sufficient for the completion of the repairs Tenant is obligated to make with due diligence. In the event of such reduction in Minimum Rent, the reduced Minimum Rent figure shall serve as the threshold sales amount for determining Percentage Rent liability so that Tenant shall pay as Percentage Rent the percentage stated in Section 3(b)(i) of Net Sales in excess of the reduced Minimum Rent payable during the period allowed for repairs and restoration work under this Section 12(a)(iii) above.

(iv) **Limitation on Obligations.** Despite anything contained in this Lease to the contrary, and without limiting Landlord's rights or remedies under this Lease,

- (A) If damage or destruction occurs to all or any part of the Premises by reason of any cause for which there are no insurance proceeds available to Landlord; or
- (B) If the proceeds of insurance are insufficient to pay Landlord for the costs of rebuilding the Premises; or
- (C) If a Mortgagee or other person entitled to the proceeds does not consent to the payment to Landlord of such proceeds for such purpose;

then Landlord may, without obligation or liability to Tenant, terminate this Lease on 30 days written notice to Tenant. On such termination date, Tenant shall vacate the Premises, and Landlord may refund to Tenant such amounts of Minimum Rent and Additional Rent previously paid by Tenant as may be applicable to the period subsequent to the termination date; or, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

### 13. **OBSOLESCENCE.**

If the Town of Minturn or government agency condemns the Premises, Landlord and Tenant will work together to rectify the situation. Also, in the event Landlord decides to sell the Premises, Landlord shall give Tenant written notice of that determination. Upon giving such notice, Landlord shall have the option to terminate this Lease by giving written notice of termination to Tenant within 30 days after it gives Tenant notice of the Landlord's determination.

If Landlord does not terminate this Lease, this Lease shall continue in full force and effect, and, if any reconstruction or renovation of the Building renders all or part of the Premises untenable, the Minimum Rent and Taxes and Operating Costs due under this Lease shall be proportionately reduced during the period of untenability as certified by Landlord's architect. Any such reduction of Minimum Rent shall be in the amount equal to the proportion that the portion of the Rentable Area rendered untenable by the reconstruction or renovation bears to the Rentable Area before the reconstruction or renovation. In the event of such reduction in Minimum Rent, the reduced Minimum Rent figure shall serve as the threshold sales amount for determining Percentage Rent liability, so that Tenant shall pay as Percentage Rent the percentage stated in Section 3(b)(1) of Net Sales in excess of the reduced Minimum Rent payable during the period allowed for reconstruction or renovation of the Building.

If Landlord elects to terminate this Lease, this Lease shall terminate as of the day any reconstruction or renovation of the Premises is commenced or the date on which the sale of the Building is closed, as the case may be. Upon termination, Tenant shall surrender the Premises to Landlord. Landlord may refund to Tenant such amounts of

Minimum Rent and Additional Rent previously paid by Tenant as may be applicable to the period subsequent to the termination date; or, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

#### 14. CONDEMNATION.

##### (a) Definitions.

(i) A "Taking" shall mean the taking of all or a portion of the Premises, Building or Property as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale of all or part of such property under the threat of condemnation.

(ii) A "Substantial Taking" shall mean a Taking of so much of the Premises, Building or Property that the Premises cannot thereafter be reasonably used by Tenant for carrying on, at substantially the same level or scope, the business previously conducted by Tenant on the Premises, or a Taking of so much of the Building or the Property so as to render, in Landlord's judgment, the Building unsuitable for the uses previously conducted there.

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

(b) Termination on Substantial Taking. If there is a Substantial Taking, the term of this Lease shall expire on the date of vesting of title pursuant to such Taking. In the event of termination of this Lease under the provisions of this Section 14(b), Landlord may refund to Tenant such amounts of Minimum Rent and Additional Rent paid by Tenant as may be applicable to the period subsequent to the date of termination of this Lease; or, at Landlord's option, Landlord may apply such amounts to any unsatisfied obligation of Tenant to Landlord.

(c) Restoration on Insubstantial Taking. If there is an Insubstantial Taking, then subject to Section 14(d) below, this Lease shall continue in full force and effect, and Landlord shall cause the Premises to be restored as near as may be reasonably possible to the condition of the Premises prior to the Taking, by repairing or restoring the installations and improvements made to the Premises as part of Landlord's Work. Within 15 days after Landlord has substantially completed its repair and reconstruction work, Tenant shall commence to repair and reconstruct that portion of the Premises for which it is responsible under Section 10 or any other provision of this Lease, including repair and reconstruction of any of Tenant's Work affected by the taking, and prosecute same diligently to completion. Following the date of the Insubstantial Taking, Minimum Rent shall be reduced as appropriate to reflect the reduced Rentable Area.

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

Tenant acknowledges that the foregoing provisions were a material part of the consideration for this Lease.

#### 15. LIMITATION ON LANDLORD'S LIABILITY.

Except as specifically provided in Sections 12, 13 and 14 above, there shall be no abatement of rent or allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance, disturbance, or loss or interruption of business or otherwise, arising from any damage to the Premises or the Building by fire or any other cause, however or by whomever caused, or arising from any repairs, reconstructions, restoration or renovation to the Premises or the Building.

16. INSURANCE.

(a) Landlord's Insurance. During the term of this Lease, Landlord shall provide and keep in force or cause, to be provided or kept in force:

(i) Comprehensive general liability insurance with respect to the Property covering bodily injury, death and damage to property of others; and

(ii) Fire and extended coverage insurance (with coverage at Landlord's option by endorsement or otherwise, for all risks, vandalism and malicious mischief, sprinkler damage, boilers and rental loss) with respect to the Property (excluding those portions of the Premises required to be insured by Tenant pursuant to Section 16(b)).

Such insurance shall be in amounts which Landlord shall from time to time determine reasonable and sufficient, shall be subject to such reasonable deductibles and exclusions as Landlord may deem appropriate, and shall otherwise be on such terms and conditions as Landlord shall from time to time determine reasonable and sufficient. Any insurance provided for in this Section 16 (a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds.

(b) Tenant's Insurance.

(i) Insurance Requirements. Tenant covenants and agrees to obtain on or before the date on which the Tenant commences Tenant's Work, and to keep in full force and effect during the term of this Lease:

(A) Liability Insurance. Comprehensive commercial general liability insurance with respect to the business carried on, in or from the Premises and the use and occupancy thereof, covering bodily injury, death and damage to property of others with endorsements for assumed contractual liability with respect to the Claims (as defined in Section 16(d) below) against which Tenant has agreed to indemnify Landlord, as required below, personal injury operations hazard insurance, broad form property damage insurance and independent contractor's insurance.

(B) Property Damage Insurance. Fire and extended coverage insurance (including sprinkler damage, vandalism and malicious mischief), with respect to those portions of the Premises which Tenant is required to maintain and repair pursuant to Section 10 above, which include all leasehold improvements in the Premises, whether installed by Landlord or Tenant (including, without limitation, the entire storefront, all ceilings, interior walls, floor coverings and glass, and the portion of the heating, ventilating and cooling equipment in, and for the exclusive use of, the Premises) and with respect to all of the Tenant's furnishings, fixtures and personal property in the Premises.

Any policy proceeds shall be used for repair and replacement of the property damaged or destroyed unless this Lease is terminated pursuant to Sections 12 or 13 above.

(C) Workers Compensation Insurance. Workers compensation insurance in accordance with the Workers Compensation Act of Colorado (Colo. Rev. Stat. § 8-40-101 et seq., as amended from time to time), covering all of Tenant's employees. If any services to be performed in Tenant's business operations are subcontracted, Tenant shall require the subcontractor to provide workers compensation insurance for its employees to be engaged in such service.

(D) Dram Shop Insurance. Insurance for all alcohol related risks for the benefit of Landlord and Tenant in amounts and with a company satisfactory to Landlord.

(ii) Insurance Amounts. Insurance obtained by Tenant under this Section 16(b) shall be in amounts which Landlord and any Mortgagee shall from time to time determine as being sufficient (provided that, in any event, insurance under Section 16(b)(i)(A), shall be carried with combined single limits of not less than \$1,000,000 in respect to any one accident or occurrence, and insurance under Section 16(b)(i)(B), shall be carried on a full replacement cost basis subject to only such deductibles and exclusions as Landlord may approve).

(iii) General Requirements. Except as otherwise approved in writing by Landlord, all insurance obtained by Tenant shall be on forms and with insurers selected or approved by Landlord, which approval shall not be

unreasonably withheld; shall name Landlord, and any Mortgagee as additional insured parties, as their interests may appear; shall be written as primary policies, not contributing with and not in addition to coverage that Landlord may carry; and shall provide, by certificate of insurance or otherwise, that the insurance coverage shall not be canceled or altered except upon 30 days prior written notice to Landlord and any Mortgagee.

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

(iv) Evidence of Insurance. Tenant shall obtain and file with Landlord certificates of insurance evidencing the insurance coverage required above and shall deliver such certificates to Landlord on or before the date Tenant commences Tenant's Work and from time to time thereafter as may be reasonably required by Landlord to establish Tenant's insurance coverage.

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

(d) Waiver and indemnification.

(i) Property Loss. All property belonging to Tenant or any occupant of the Premises that is in or on any part of the Property shall be there at the risk of Tenant or of such other person only, and Landlord shall not be liable for any damage to that property or for the theft or misappropriation of the property.

(ii) Indemnity

(A) As used in this Section 16, "Claims" means any claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, judgments and executions.

(B) Tenant agrees that Landlord, any Mortgagee, and their respective agents, officers, directors, servants and employees shall be released at all times to the fullest extent permitted by law, from all claims for any loss, injury or death of any person and for any loss or damage of property which may be suffered by Tenant, Tenant's Employees, or any other person rightfully in the Building for any purpose whatsoever, whether such claims arise from the act, omission or negligence of Landlord, Tenant, Tenant's Employees or any occupant, visitor, or user of the Premises, or any other tenant or occupant of the Building, including without limitation any owner or occupant of a residential unit in the Building, or the operator or any occupant of the hotel condominium unit in the Building.

(C) Tenant hereby indemnifies and agrees to save harmless Landlord and any Mortgagee from and against all Claims which (i) arise from or are in connection with the possession, use, occupation, management, repair, maintenance or control of all or any part of the Premises; (ii) arise from or are in connection with any act or omission or Tenant or Tenant's Employees, licensees, subtenants, heirs, successors, legatees, devisees, and any guarantor of Tenant's obligations under this Lease; (iii) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (iv) result from injury to person or property or loss of life sustained in or about the Premises.

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

Without limiting the generality of the foregoing, the waiver and indemnification by Tenant above shall extend to loss, damage, injury or death resulting from fire, explosion, falling plaster, electricity, gas, odors, noise, water, rain, excessive heat or cold, snow or ice, leak, now, or falling of water, rain, snow or ice from the Building roof, street, subsurface or any other place or from the breakage, leakage,

obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Building, or whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or from other sources.

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

(e) Waiver of Subrogation. Landlord and Tenant release each other and their respective authorized representatives from any claims for damage to the Premises, the Building, and the fixtures, personal property and improvements and alterations of either Landlord or Tenant in or on the Premises and the Building that are caused by or result from risks insured against, or required to be insured against, under this Lease.

Landlord and Tenant shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by the policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against, or required to be insured against, under any insurance policy required by this Lease.

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

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

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

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

## 17. ASSIGNMENT AND SUBLETTING.

(a) Requirement for Landlord's Consent. Tenant shall not assign, convey, mortgage, hypothecate or encumber this Lease or any interest in this Lease or sublet all or any part of the Premises, or suffer or permit all or any part of the Premises to be used by others (any and all of which shall be referred to as a "Transfer"), at any time during the term of this Lease without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld. Any attempted Transfer without Landlord's prior written consent shall be void and shall confer no rights upon any third person, and any assignee, subtenant, licensee, concessionaire or other transferee is hereby notified that such a Transfer is of no force and effect without the prior written consent of Landlord.

(b) "Transfer" Explained. Without limiting the generality of the provisions of Section 17(a) above, "Transfer" shall be deemed to include the following:

(i) If Tenant is a corporation: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the corporate stock or voting securities of Tenant or of any other corporation which results in a change in the voting control of such corporation or which, taken with all such prior transfers, involves more than 10% of the voting securities of such corporation.

(ii) If Tenant is a partnership or joint venture: any merger, dissolution, consolidation or other reorganization of Tenant, or any sale, transfer, pledge or other disposition of the ownership interests of Tenant which results in a change in the voting control of such entity or which, taken with all such prior transfers, involves more than 10% of the ownership interests of such entity.

(iii) Any change of the parties in control of Tenant by any means whatsoever, and any changes, direct or indirect, in the ownership and control of any entities that may directly or indirectly own or control Tenant.

(iv) The granting of a concession or license to operate in or use in any manner any portion of the Premises.

(v) Any transfer, assignment or sale by operation of law and any involuntary assignment of this Lease or any interest of Tenant in this Lease or in the Premises.

(c) Conditions of Consent. Without limiting Landlord's discretion to grant or withhold its consent to a transfer, the parties agree as follows:

(i) Tenant acknowledges that it shall be reasonable for Landlord to deny Tenant's request for an assignment or sublease under the following circumstances:

(A) The use to be made of the Premises by the proposed assignee or sublessee is (1) not generally consistent with the character and nature of all other tenancies in the Building, (2) a use which would be prohibited by any other provision of this Lease; or

(B) The business reputation and financial responsibility of the proposed assignee or sublessee are not reasonably satisfactory to Landlord or in any event not at least equal to those of Tenant as of the Commencement Date.

(ii) If Landlord consents to a sublease of this Lease, Tenant shall pay to Landlord monthly as Additional Rent, together with the monthly installments of Minimum Rent, the excess, if any, of any and all rental amounts collected by Tenant in connection with the sublease over the Minimum Rent, Additional Rent and Percentage Rent payable by Tenant under this Lease (which shall be prorated in the event of a sublease of less than the entire Premises).

(d) Right of First Refusal. In the event Tenant, at any time, desires to assign its interest in this Lease and shall receive a bona fide written offer that Tenant is willing to accept, then, prior to accepting the offer, Tenant shall notify Landlord of such facts and shall deliver to Landlord a copy of the offer, and Landlord shall have the right to acquire Tenant's interest in this Lease and all of Tenant's other assets subject to the offer on substantially the same terms and conditions in the offer. Specifically, Landlord shall have the right to match any financing or other non-cash payment terms in the offer by tendering the cash equivalent of the offer price. In all events, Landlord shall have a period of 45 days from Landlord's receipt of Tenant's notice and a copy of the offer during which to decide whether Landlord will elect to exercise its right of first refusal. Landlord shall exercise its right of first refusal, if at all, by written notice to Tenant of Landlord's election to exercise such right.

If Landlord exercises such right, the closing of the assignment to Landlord of Tenant's interest in this Lease shall occur on the date specified in the offer or the first business day occurring seven days after the date of Landlord's notice of exercise, whichever is later. Landlord may require Tenant to assign this Lease to a nominee, affiliate, designee or assignee of Landlord.

If Landlord does not exercise its right of first refusal in any instance, then subject to the other provisions of this Section 17, Tenant shall be free to assign its interest in this Lease only to the party making the offer to Tenant and only for the price and upon the terms and conditions specified in the offer.

If Tenant shall not make such assignment within 45 days after the end of the 45-day period referred to above, Tenant shall be required to comply with all provisions of this Section (and first offer to assign its interest under this Lease to Landlord) prior to any assignment of this Lease.

(c) Transfer Documents. Each Transfer to which Landlord has consented shall be by an instrument in writing and shall be executed by the transferor and the transferee in each instance in such manner that it may be recorded (at Landlord's sole election) in the real property records of Eagle County, Colorado. One copy of such written instrument so executed shall be delivered to Landlord. Tenant shall reimburse Landlord for Landlord's expenses and attorneys' fees incurred in conjunction with the review and documentation of any Transfer for which Landlord's consent is requested. In all events such payment by Tenant shall be not less than \$250 per transfer.

(f) Reservations of Rights. If any Transfer shall occur, with or without Landlord's prior consent, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or other transferee, and apply the net amount collected to the rent reserved in this Lease, but no such Transfer or collection shall be deemed a waiver of the provisions of this Section 17, or the acceptance of the assignee, subtenant or other transferee as the tenant under this Lease, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this Lease. The consent by Landlord to a Transfer shall not relieve Tenant from primary liability under this Lease or from the obligation to obtain the express consent in writing of Landlord to any further Transfer.

18. UTILITIES. Landlord has provided at points in or near the Premises the facilities necessary to enable Tenant to obtain for the Premises water, electricity, telephone and sanitary sewer services.

Tenant covenants and agrees to pay all charges for water, sewage disposal, gas, electricity, light, heat, power, telephone or other utility services used or consumed in, or supplied to, the Premises, whether such charges are billed directly to Tenant or Landlord. Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such facilities are supplied to the Premises.

If after the Commencement Date Tenant desires to install any equipment which shall require additional utility facilities or facilities of a greater capacity than those provided by Landlord, such installation shall be subject to prior written approval by Landlord of Tenant's plans and specifications for the installation.

The determination of the costs for any such utilities shall, at the option of Landlord, be made either by a separate meter installed by Tenant at its expense, or an allocation by Landlord to Tenant on an equitable basis.

All utilities required by Tenant and not provided by Landlord, as set forth above, shall be contracted for by Tenant in Tenant's own name with the appropriate utility suppliers. Tenant shall pay for all such utilities as from to time invoiced by the suppliers of such utilities.

Landlord shall not be liable to Tenant for damages or otherwise if any utility becomes unavailable from any public utility company or other utility supplier or distributor, or in the event of any interruption in any utility service caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a termination of this Lease or an eviction of Tenant.

19. END OF TERM. Upon the expiration or earlier termination of this Lease, or on the date specified in any demand for possession by Landlord after any default by Tenant, Tenant covenants and agrees to surrender possession of the Premises to Landlord, in the same condition as when Tenant first occupied the Premises, ordinary wear and tear excepted.

20. HOLDING OVER. If Tenant shall hold over after the expiration of the term of this Lease, without written agreement providing otherwise, Tenant shall be deemed to be a tenant from month to month, at a monthly rental, payable in advance, equal to 200% of 1/12 of the Minimum Rent payable during the last year of the term of this Lease, and Tenant shall be bound by all of the other terms, covenants and agreements including additional rent and

percentage rent of this Lease. Nothing contained herein shall be construed to give Tenant the right to hold over at any time, and Landlord may exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by Landlord, due to Tenant's failure to vacate the Premises and deliver possession to Landlord as provided in this Lease.

## 21. SUBORDINATION AND ATTORNMENT.

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

(b) Subordination to Mortgage; Attornment. Subject to Section 21(e) below, this Lease and Tenant's rights under it are and will remain subject and subordinate to each and every underlying lease, indenture, mortgage, deed of trust or other encumbrance (and all voluntary and involuntary advances thereon) that may now or hereafter encumber all or any interest in the Property, and to all increases, renewals, recasting, modifications, consolidations, participation, replacements, and extensions thereof (collectively referred to as the "Mortgage").

If any Mortgagee becomes the owner of the Property by reason of termination of the underlying lease, foreclosure, or acceptance of a deed in lieu of foreclosure, then at the election of the Mortgagee, Tenant will be bound to such Mortgagee or its designee under all terms and conditions of this Lease, and Tenant will be deemed to have attorned to and recognized such Mortgagee or its designee as Landlord's successor-in-interest for the remainder of the term of this Lease. As used in this Section above, whenever the context allows, the word "Mortgagee" also includes a purchaser of the Property interest in question at a foreclosure sale.

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

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

(e) Tenant's Default. If Tenant fails to execute and deliver any documents as and when required by this Section 21 above, then, notwithstanding any other provision of this Lease, without the requirement of notice from Landlord, such failure will constitute a default under this Lease beyond any applicable grace period, entitling Landlord to the same rights and remedies as if such default were with respect to non-payment of rent.

## 22. STATEMENT OF PERFORMANCE.

(a) Performance by Parties. Tenant covenants and agrees to execute, acknowledge and deliver to Landlord, within 10 days after Landlord's written request, a written statement certifying that this Lease is unmodified (or, if modified, stating the modifications) and in full force and effect; stating the dates to which Minimum Rent, Percentage Rent and Additional Rent have been paid; stating the amount of the security deposit held by Landlord; and stating whether Landlord is in default under this Lease (and, if so, specifying the nature of the default). Tenant agrees that such statement may be delivered to and relied upon by any existing or prospective mortgagee or purchaser of the Premises. Tenant further agrees that a failure to deliver such a statement within 10 days after

written request from Landlord shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord; that there are no uncured defaults by Landlord under this Lease; and that any representation by Landlord with respect to Minimum Rent, Percentage Rent, and Additional Rent and the security deposit are true.

Nothing in this Section 22 shall be construed to grant Tenant any right to terminate this Lease or to abate rent or set off against rent any amounts claimed by Tenant as due from Tenant.

**23. RULES AND REGULATIONS.**

(a) Landlord's Rules. Tenant, Tenant's Employees, and Tenant's licensees and visitors shall abide by the reasonable rules and regulations as Landlord may establish, amend, and supplement from time to time for the use, safety, cleanliness and care of the Premises. Such rules and regulations shall be effective upon notice of same to Tenant from Landlord.

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

**24. SECURITY.** Tenant shall keep on deposit with Landlord at all times after the execution of this Lease, the sum \$1,000.00 as security for the payment by Tenant of the rent and other sums due under this Lease and for the faithful performance of all the terms, conditions and covenants of this Lease. Landlord shall have the right to commingle such deposit with other funds of Landlord.

If at any time Tenant is in default in the performance of any provision of this Lease, Landlord may, but shall not be required to, use such deposit, or so much thereof as may be needed, in payment of any rent or any other sums due under this Lease that are in default, in reimbursement of any expense incurred by Landlord and in payment of the damages incurred by Landlord by reason of Tenant's default; or at the option of Landlord, such deposit may be retained by Landlord as liquidated damages. In any such event, Tenant shall, within five days after written demand from Landlord, immediately remit to Landlord an amount in cash to restore such deposit to its original amount. Notwithstanding the provisions above, if the claims of Landlord exceed the deposit provided for in this Section, Tenant shall remain liable for the balance of those claims. Landlord's rights under this Section 24 shall be in addition to all its other rights and remedies.

In the event all of the deposit has not been utilized as described above, such deposit or as much of the deposit as has not been utilized by Landlord as permitted above, shall be refunded to Tenant, without interest, upon performance of this Lease by Tenant.

Landlord shall deliver the funds deposited by Tenant to the purchaser of Landlord's interest in the Premises in the event Landlord sells such interest, and upon such sale, Landlord shall be discharged from further liability with respect to the deposit. Tenant shall not assign or encumber or attempt to assign or encumber the deposit provided for in this Section 24 except that Tenant may transfer such deposit in the event of a permitted assignment of this Lease.

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

(a) Failure in Payment. The failure by Tenant to pay when due any installment of Minimum Rent, Percentage Rent, or Additional Rent due under the terms of this Lease within ten (10) days after the same shall be due.

(b) Failure in Performance. The neglect or failure by Tenant to perform or observe all of the covenants on Tenant's part to be performed or observed under this Lease, and Tenant shall fail to remedy such neglect or failure within 10 days after Landlord shall have given to Tenant written notice specifying such neglect or failure (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such 10-day period, provided that Tenant commences to remedy such default within such 10-day period and proceeds with reasonable diligence to cure such default), such notice shall additionally contain a clear statement of

the nature of the problem, the action required of the tenant by the landlord to come into compliance, and a good faith estimate of a suitable amount of time (if greater than ten days) to rectify the problem and come into compliance;

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

(d) Vacation or Abandonment. The vacating or abandonment of the Premises (which shall be defined to include, but not be limited to, any absence by Tenant from the Premises for fourteen or more days while otherwise in default under this Lease), or Tenant's locking the Premises so as to prevent the entry by Landlord or its representatives as permitted by the terms of this Lease;

(e) Cessation of Operations. Tenant's removal or attempt to remove any goods or property from the Premises other than in the usual course of business, or Tenant's cessation of its business operations in the Premises for two days or more in any Lease Year (Landlord acknowledging that Tenant will not be in default for closing the Premises for up to 21 days in any full calendar year during the Lease term, as permitted under Section S(b));

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

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

(h) In any event Landlord and Tenant agree to jointly try to solve any problems that arise, amicably.

## 26. LANDLORD'S REMEDIES.

(a) Remedies. If Tenant shall default under this Lease as set forth in Section 25, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether set forth in this Lease or existing at law or equity;

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

If Landlord gives such notice, this Lease and the term hereof as well as the right, title and interest of Tenant under this Lease shall wholly cease and expire in the same manner and with the same force and effect

(except as to Tenant's liability) on the date specified in such notice as if such date were the expiration date of the term of this Lease without the necessity of re-entry or any other act on Landlord's part. Upon any termination of this Lease Tenant shall quit and surrender to Landlord the Premises as set forth in Section 19 above.

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

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

(B) An amount equal to the present worth (as of the date of such termination) of the Minimum Rent, Percentage Rent and Additional Rent which, but for termination of this Lease, would have become due during the remainder of the term, less the fair rental value of the Premises, as determined by an independent real estate appraiser named by Landlord, in which case such Liquidated Damages shall be payable to Landlord in one lump sum on demand and shall bear interest at the Default Rate until paid. For purposes of this clause (B), "present worth" shall be computed by discounting such amount to present worth at a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank nearest to the location of the Building.

If such termination shall take place after the expiration of two or more Lease Years, then, for purposes of computing the Liquidated Damages, the Percentage Rent payable with respect to each Lease Year following termination (including the Lease Year in which such termination shall take place) shall be conclusively presumed to be equal to the average Percentage Rent payable with respect to each complete Lease Year preceding termination. If such termination shall take place before the expiration of two Lease Years, then, for purposes of computing the Liquidated Damages, the Percentage Rent payable with respect to each Lease Year following termination (including the Lease Year in which such termination shall take place) shall be conclusively presumed to be equal to 12 times the average monthly payment of Percentage Rent due prior to such termination; or if Tenant has not paid any Percentage Rent during this period, then the Percentage Rent for each year of the unexpired term shall be a sum equal to 25% of the Minimum Rent.

Termination Damages shall be due and payable immediately upon demand by Landlord following any termination of this Lease pursuant to this Section 26 above.

If this Lease is terminated pursuant to this Section 26 above, Landlord may relet the Premises or any part thereof, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the term of this Lease) and on such terms and conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its absolute discretion, may determine, but Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Premises or any failure by Landlord to collect any rent due upon such reletting.

(ii) Re-entry. Landlord may, without demand or notice, reenter and take possession of the Premises or any part thereof, and repossess the same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed

guilty of any manner of trespass, without prejudice to any remedies for arrears of rent or preceding breach of covenants and without terminating this Lease or otherwise reviewing Tenant of any obligation hereunder. Should Landlord elect to re-enter as provided in this Section 26, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet all or any part of the Premises for such term or terms and at such rental or rentals, and upon such other conditions as Landlord in its absolute discretion may deem advisable, with the right to make alterations and repairs to the Premises.

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

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

(iii) **Payment on Account of Tenant.** If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or shall default in performing any other obligations of Tenant under this Lease, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. Tenant shall repay to Landlord on demand all sums so expended by Landlord with interest at the Maximum Rate. No such payment or expenditure by Landlord shall be deemed a waiver of Tenant's default, nor shall it affect any other remedy of Landlord by reason of such default.

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

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

(b) Bankruptcy Considerations.

(i) **Remedies of Landlord for Bankruptcy Generally.** If this Lease is terminated by Landlord as provided in this Section 26 above, neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession of the Premises. Further, Landlord, in addition to the other rights and remedies available to Landlord, may retain as damages any rent, security deposit, or other money received by Landlord from Tenant or others on behalf of Tenant.

(ii) **Remedies Other than Termination.** If Landlord does not choose to exercise, or by law is not able to exercise, its rights under this Lease upon the occurrence of an event of default described in Sections 25(f) and (g) above, then, in addition to any other relief reserved by or available to Landlord, Landlord shall not be obligated to provide Tenant with any services unless Landlord has received compensation in advance for such services, and the parties agree that Landlord's estimate of the compensation required with respect to such services shall control. Further, neither Tenant, as debtor-in-possession, nor any trustee or other person (in any case, the "Assuming Tenant") shall be entitled to assume this Lease unless, on or before the date of such assumption, the Assuming Tenant does the following:

(A) Cures, or provides adequate assurance that the Assuming Tenant will promptly cure, any default under this Lease;

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

(C) Provides adequate assurance of further performance under this Lease.

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

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

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

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

27. **NO IMPLIED SURRENDER OR WAIVER.** The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease or any of the rules and regulations adopted by the Landlord, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach.

The failure of Landlord to enforce any of Landlord's rules and regulations against Tenant, shall not be deemed a waiver of any or all of such rules and regulations.

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

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

No payment by Tenant, or receipt by Landlord, of a lesser amount than the rent due under this Lease shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy available to Landlord.

Time is of the essence under this Lease.

28. **NO REPRESENTATIONS BY LANDLORD; ENTIRE AGREEMENT.** Landlord and Landlord's agents have made no representations, warranties, agreements or promises with respect to the Premises or the Building except such as are expressed in this Lease. The entire contract of the parties is contained in this Lease

(including the exhibits to it), and there are no promises, agreements, representations, warranties, conditions or understandings, either oral or written, between them, other than as are set forth in this Lease.

29. **LIABILITY OF LANDLORD.** Landlord (and in case Landlord shall be a joint venture, partnership, tenancy-in-common, association, or other form of joint ownership, the members of any such joint venture, partnership, tenant-in-common, association, or other form of joint ownership) shall have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease in the event of a breach or default by Landlord of any of its obligations. Tenant shall look solely to the equity of Landlord in the Premises at the time of the breach or default for the satisfaction of any remedies of Tenant. Such exculpation of liability shall be absolute and without exception.

30. **DEFINITION OF AND ACTIONS BY LANDLORD.**

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

31. **NO PARTNERSHIP.** Despite anything in this Lease to the contrary, Landlord is not and shall not in any way or for any purpose become principal or partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant under this Lease. The provisions of this Lease relating to Percentage Rent are included solely for the purpose of providing a method whereby part of the rentals reserved under this Lease are to be measured and ascertained. The provisions relating to Tenant's fixtures and other work on the interior and exterior of the Premises are included to facilitate Landlord's maintaining architectural control, minimum standards of design and aesthetic value.

32. **REAL ESTATE BROKERS.** Tenant agrees to pay, hold harmless and indemnify Landlord from and against any and all cost, expense, or liability for any compensation, commissions, charges or claims by any broker or other agent with whom Tenant has dealt with respect to this Lease or the negotiation of it, other than any broker named following the signature lines of this Lease below.

33. **NOTICE AND BILLS.**

(a) **Notice to Tenant.** Any notice, demand or communication by landlord to Tenant shall be in writing and must be hand-delivered or served by certified or registered United States mail, postage prepaid, addressed to Landlord at the address specified in the preamble to this Lease.

(b) **Notice to Landlord.** Any notice, demand or communication by Tenant to Landlord shall be in writing and must be hand-delivered or served by certified or registered United States mail, postage prepaid, addressed to Landlord at the address specified in the preamble to this Lease.

(c) **Notices to Holders of Mortgages.** Any notice or other communication given by Tenant to a Mortgagee shall be in writing and must be served by (i) certified or registered United States mail, postage prepaid, addressed as stated in Section 22(b) above or at such other address specified by such holder to Tenant, (ii) by overnight courier service, charges prepaid, addressed as provided above, or (iii) by telecopy transmittal, charges prepaid, addressed as provided above. Any such notice shall be effective upon receipt or, if sooner, on the fourth business day after deposit of the notice in the U.S. mail for delivery pursuant to part (i) in this Section above.

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

34. **RIGHT OF FIRST REFUSAL.**

(a) If Landlord wishes to sell the Leased Premises and receives a bona fide offer therefore from a prospective purchaser, the Tenant shall be given written notice thereof, together with a true copy of such offer. The Tenant shall have the right to purchase such unit upon the same terms and conditions as set forth in such offer; provided, however, that written notice of such election to purchaser together with a matching earnest money deposit is given to the Landlord during the twenty (20) day period immediately following delivery of the notice of bona fide offer and copy of such offer.

(b) If Landlord attempts to sell the Leased Premises without affording the Tenant the right to exercise its right of purchase hereunder, such sale shall be null and void and shall confer no possessory rights, no title or interest whatsoever upon the intended purchaser.

(c) The rights reserved herein shall not affect the rights of Landlord to subject the Leased Premises to a trust deed, mortgage or other security instrument, and this paragraph 34 shall not apply to such transfer.

(d) Failure of or refusal to exercise the right to so purchase shall not constitute or be deemed a waiver of such right to purchase when Landlord or any successor receives any subsequent bona fide offer from a prospective purchaser.

(e) In the event of any default on the part of any owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a bona fide deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this paragraph 34, and the purchaser (or grantee under such deed in lieu of foreclosure) of such unit shall thereupon and thereafter be subject to the provisions of this paragraph 38. If the purchaser following this foreclosure sale (or grantee under deed given in lieu of such foreclosure) sale shall be the then holder of the first mortgage or its nominee, said holder or nominee may thereafter sell and convey the condominium unit free and clear of the provisions of this paragraph 34, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof.

(f) The following transfers are also exempt from the provisions of paragraph 34; provided, however, that further transfers shall be subject thereto except as provided herein:

(i) The transfer by operation of law of a deceased joint tenant's interest of the surviving joint tenant(s).

(ii) The transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy laws.

(iii) The transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners. A transfer of all or part of a partner's or partners' interest between one or more partners and/or to persons becoming partners.

(iv) The transfer of a corporation's interest to the persons formerly owning the stock of the corporation as the result of a dissolution, or a transfer to the resulting entity following a corporate merger, restructuring or consolidation; provided, however, that not less than 50.00% of the beneficial interest of the resulting entity, including but not limited to a Limited Partnership or Limited Liability Company, is owned by the stockholders of the corporation formerly owning the premises.

(h) If Landlord can establish to the satisfaction of the courts that a proposed transfer is not a sale, then such transfer shall not be subject to the provisions of this paragraph 34.

(i) Upon written request of any prospective transferor, purchaser or an existing or prospective mortgagee of any condominium unit, the Landlord shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing that:

(i) With respect to a proposed sale under paragraph 34 hereof, that proper notice was given by the Landlord and that the Tenant did not elect to exercise its right to purchase;

(ii) With respect to a deed to a first mortgage or its nominee in lieu of foreclosure, and a deed from such mortgagee or its nominee, pursuant to section (c) above, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of paragraph 34;

(iii) With respect to any contemplated transfer which is not in fact a sale, that the transfer will not be subject to the provisions of paragraph 34;

(iv) Such a certificate shall be conclusive evidence of the facts contained therein.

### 35. MISCELLANEOUS.

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

(b) Unavoidable Delays. In the event that either party to this Lease is delayed, hindered in, or prevented from the performance of any act required under this Lease by reason of fire, strike, or other casualty or contingency beyond the reasonable control of the party who is so delayed in such performance, then, performance by that party will be excused for the period of the delay, and the period for the performance of such act shall be extended for a period equal to the period of the delay. However, nothing in this Section 38(b) shall operate to excuse Tenant from the prompt payment of rent or any other payments required under this Lease or to extend the term of this Lease, and delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

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

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

(e) Captions. The caption of each Section is added as a matter of convenience only and shall be considered of no effect in the construction of any provision of this Lease.

(f) Exhibits. The exhibits described above and attached to this Lease are incorporated in this Lease by this reference.

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

#### (h) Tenant's Liability.

(i) Joint and several liability. If at any time Tenant is comprised of more than one entity or person, or if Tenant is a partnership, (A) each partner and each legal person is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants and conditions of this Lease to be performed or observed by Tenant; and (B) the term "Tenant" shall mean and include each of them jointly and severally, and the act of or notice from, or notice or refund to, or the signature of, any one or more of them, with respect to the tenancy of this Lease, including without limitation, any renewal, extension, termination or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant. Termination of a partnership-Tenant shall be deemed a permitted assignment jointly to all of the partners, who shall subsequently be governed by clauses (A) and (B) above as if each such former partner had initially signed this Lease jointly as individuals.

(ii) Corporations. If Tenant is a corporation, the authorized officers must sign on behalf of such corporation. This Lease must be executed by the President or a Vice President and the Secretary or Assistant

Secretary unless the Bylaws or a Resolution of the Board of Directors of such corporation otherwise provide, in which event, the Bylaws or a certified copy of the Resolution, as the case may be, must be furnished to Landlord.

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

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

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

(l) Entire Agreement. This Lease supercedes and replaces all prior written and oral agreements between the parties and shall be effective upon signature by all parties.

LANDLORD:  
MINTURN REALTY, LLC a Colorado Limited Liability Company

By: Marka Brenner  
Marka Brenner, President

TENANT:

Magustos LLC, a Colorado Limited Liability Company

By: Eric Cregon Manager/Member  
Eric Cregon Manager/Member

PERSONAL Guarantee

Eric Cregon  
Eric Cregon

Notary Acknowledgement: The above Eric Cregon & Marka Brenner signed before me on 12/22/14

[Signature]  
Exp date: 7-8-14





TOWN OF MINTURN  
P.O. Box 309 (302 Pine Street)  
Minturn, Colorado 81645-0309  
970-827-5645 Fax: 970-827-4049  
treasurer@minturn.org

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**FROM THE DESK OF  
JAY BRUNVAND, TREASURER/FINANCE**

**MEMORANDUM**

To: Chris Crimble, Town Planner  
CC:  
Date: 1/25/11 10:53 AM  
RE: 101 Main St Liquor License

Magustos, Eric Cregon, has submitted an application for a liquor license to be held at 101 Main Street. Please review the applicable municipal codes and verify in writing any concerns you have regarding a liquor establishment at this location as well as any conditions the applicant must fulfill in order to use the building as requested. This would include parking, size of use, neighborhood conditions and others as prescribed in our Municipal Code

Please let me know if you have any questions or concerns, which I may be able to answer. Thanks, jay



- **DISORDERLY CONDUCT-23 JUL 2004** **ECSO REPORT**  
 Deputy Veldheer reported Eric Cregon reported that he and the suspect had been drinking and doing shots together. The suspect reportedly became upset over past issues with Mr. Cregon. Mr. Cregon reported the suspect kept drinking and getting more and more combative. The suspect then hit Mr. Cregon to the left side of his head. Mr. Cregon reported that he stepped back and pulled a knife out of his pocket and told the suspect if he comes at him again he'd use it. Deputy Veldheer reported there were two other persons in the bar at the time, however they were extremely intoxicated. The suspect was charged with Disorderly Conduct.
- **DUI-31 JUL 2005** **AVON PD REPORT**  
 Officer Arndt reported observing a vehicle driven by Eric Cregon, failed to drive in a single lane. Mr. Cregon was subsequently arrested, charged with DUI, DUI PER SE, and FAILED TO DRIVE IN SINGLE LANE. Officer Arndt reported Mr. Cregon stated that he and friends were coming from a party, he was in a hurry to get to the bar before last call was given, and he wanted a drink before his drive home and the bars were closed.
- **ASSAULT IN 2<sup>ND</sup> DEGREE-14 DEC 2006** **ECSO REPORT**  
 Deputy Kohls reported being dispatched to a report a fight that had taken place at Mangos. There, Eric Cregon reported observing a fight between two men at the bar. He pulled the men apart as they wrestled on the ground. As he walked them outside, one of the men turned and threw a punch, striking the other to the jaw. Deputy Kohls reported the injured person was somewhat intoxicated and believed to have suffered a broken jaw. A witness, who was also an employee of Mangos and the reporting person, reported seeing the men drinking at the bar when the fight broke out. The injured person received medical attention and reportedly suffered a fractured left jaw. An arrest warrant was obtained for the suspect, charging him with Assault In 2<sup>ND</sup> Degree resulting in serious bodily injury.
- **ASSAULT IN THE 3<sup>RD</sup> DEGREE-24 MAY 2007** **ECSO REPORT**  
 Deputy Dewey reported being dispatched to a report of an assault that had occurred at Mangos. The reported victim stated he had been assaulted while at Mangos. After follow up it was determined the reported victim was actually the aggressor and had thrown a punch at an employee of Mangos. The suspect was arrested for Disorderly Conduct and False Reporting. The suspect admitted that he was intoxicated at the time, did not actually recall what happened, and was trying to find out why his hand was injured.
- **ASSAULT IN THE 1<sup>ST</sup> DEGREE-06 JUN 2007** **ECSO REPORT**  
 Deputy Wright reported being dispatched to a fight in progress at Mangos. One of suspects reported that he was eating dinner in Mangos when a guy, who was seated at the bar insulted him and challenged him to go outside. Subsequently, a fight occurred just outside. One person suffered serious bodily injury to include a fractured jaw, broken teeth, and lacerations to face. The other person suffered minor injury. The suspects were arrested and charged. Suspect 1 was charged with Assault In The 1<sup>st</sup> Degree and Disorderly Conduct. Suspect 2 was charged with Assault In The 3<sup>rd</sup> Degree and Disorderly Conduct.
- **DISORDERLY CONDUCT-20 SEPT 2009** **ECSO REPORT**

Deputy Best responding to Mangos to assist other Deputies already there. On scene he made contact with a suspect who was intoxicated. Security Guards reported the suspect was spitting beer at persons on the dance floor. The suspect was subsequently charged with Disorderly Conduct and Obstructing A Peace Officer.

- **THEFT-16 APR 2010** **ECSO REPORT**  
Deputy Burner reported being dispatched to a report of theft, which occurred at Mangos. The victim reported being seated inside Mangos with a friend. As they were preparing to pay the bill and leave, they discovered the purse with credit cards stolen.
- **CALLS FOR SERVICE:** In addition to the above listed cases, the Eagle County Sheriff's Office has responded to Mangos Mountain Grill for the following calls between 14 Dec 2006 and 15 Dec 2010
  - **Alarms-27**
  - **Assault-3**
  - **Harassment-2**
  - **Unknown 911 Call-1**
  - **Fight-2**
  - **Welfare Check-1**
  - **Follow Up-11**
  - **Disturbance-1**
  - **Suspicious-3**
  - **Warrant Arrest-1**
  - **Theft-2**
  - **Noise Complaint-1**

We wish to make the following recommendations as to conditions if the Licensing Authority is considering approval:

1. We request that as a minimum the licensee, manager, and a server be T.I.P.S. certified. Additionally a T.I.P.S. certified server be on duty at all times while alcoholic beverages are served. We request this condition to be met prior to opening and updated as needed, with documentation provided to the police department.
2. Receipt of CBI/FBI response of fingerprint cards and that there are no other significant related findings noted.
3. Issues as to Premise Diagram and Individual History Record be addressed with the Town Clerk and corrected if necessary.
4. Liquor Authority emphasize the requirement of operating an Orderly Establishment.



## **Official Minutes**

**MEETING OF THE MINTURN TOWN COUNCIL**  
**Minturn Town Center, 302 Pine Street**  
**Minturn, CO 81645 • (970) 827-5645**

**Wednesday January 5, 2011**

**Regular Session – 6:00pm**

**MAYOR – Gordon “Hawkeye” Flaherty**  
**MAYOR PRO TEM – George Brodin**

**TOWN MANAGER – Jim White**  
**TOWN CLERK/TREAS – Jay Brunvand**

**COUNCIL MEMBERS:**

Shelley Bellm  
Earle Bidez  
Jerry Bumgarner  
Aggie Martinez  
John Rosenfeld

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 4:30pm, Monday through Friday, by contacting the Town Clerk at 970/824-5645 302 Pine St. Minturn, CO 81645

**Regular Session – 6:00pm**

**1. Call to Order**

- a. Roll Call
- b. Pledge of Allegiance

The meeting was called to order by Mayor Flaherty at 6:01 pm.

Those present included: Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Council Members Shelley Bellm, Jerry Bumgarner, John Rosenfeld, and Earle Bidez. (*Note: Aggie Martinez was absent, excused*)

Staff present: Town Manager Jim White, Town Treasurer/Clerk Jay Brunvand, Chief of Police Lorenzo Martinez, Administrative Assistant/Deputy Clerk Michelle Metteer, Planner Chris Cerimele and Attorney Allen Christensen.

## EXECUTIVE SESSION

### **2. Executive Session - Pursuant to CRS 24-6-402(4)(b) for purposes of discussing the Maloit Park Annexation Agreement.**

Motion by Jerry B., second by George B., to convene into executive session pursuant to CRS 24-6-402(4)(b) for purposes of discussing the Maloit Park Annexation Agreement. All voted in favor. (*Note: Aggie Martinez was absent, excused*)

### **3. Executive Session – Action by Council or Direction to Staff as a result of the Executive Session**

Direction to Staff to continue with negotiations and set up a meeting for next month.

### **4. Approval of Agenda**

- Items to be Pulled or Added
  - Add special presentation under section 8
  - Add Discussion/Action Item 13a – Resolution 18
  - Add Discussion/Action Item 13b – Resolution 19

Motion by Shelley B., second by George B., to approve the agenda as amended, all voted in favor. (*Note: Aggie Martinez was absent, excused*)

### **5. Approval of Minutes and Action Report**

- December 15, 2010
- Action Item Report

Motion by George B., second by John R., to approve the minutes of December 15, 2010 as presented, all voted in favor. (*Note: Aggie Martinez was absent, excused*)

### **6. Public comments on items, which are NOT on the agenda (5 minute time limit per person).**

Mr. Frank Lorenti, 1081 Main St, Minturn, noted the 2015 World Alpine Ski Championships will be coming to the valley and he is interested in getting either a committee organized or possibly some organization started early so Minturn is amply prepared.

Transportation enhancement grants were missed that possibly could have been utilized for Minturn. December 2010 was the deadline and it comes up every three years. Reminder, the school annexation is approaching.

### **7. Special Presentations/Citizen Recognition**

- A slideshow showing highlights of some of the programs and events undertaken in 2010 was given to welcome in 2011

## **8. Town Manager's Report**

### **Minturn Middle School/Future Uses**

Several entities have expressed interest in the prospect of developing a joint education and training facility at Minturn Middle School. The premise is that there may be combined or shared community uses of the facility following the closure of the Middle School at its present location.

The school district sent out an RFP on December 15, 2010 to consider re-purposing ideas for the school. Subsequently, all interested parties were required to attend a site visit on December 20, 2010. The RFP proposals are due on January 13, 2011. Several entities may join together to make a proposal, or individual proposals may also be submitted.

### **Radio Tower Contract**

A law suit has now been filed to resolve payment with Pilgrim Communication for all payments, and late fees in arrears. The court date has been set for Friday, January 7, 2011 in the Eagle County District Court in Eagle, Colorado.

### **Signage**

No new developments have taken place over the holiday season. Staff is continuing to work with the USFS on written justification needed to complete the Special Use Permit for our welcome signs. Pending approval from the USFS to install signage on its property, town staff will be working on the construction and final design elements of the sign over the winter in anticipation of installation in the spring.

## **9. Town Council Comments**

Shelley B. recommends everyone check out the updated Town website. It's been updated with improvements and easy reference links.

John R. thanked everyone for coming to the Winter Parade and looks forward to seeing everyone at the next winter parade.

## **PUBLIC HEARINGS AND ACTION ITEMS**

### **10. Discussion/Action – Xcel Energy – White**

Mr. Fred Eggleston gave a presentation on the upcoming pipeline project Xcel will be conducting in order to upgrade a 6" gas line to a 16" gas line. This project will result in the closure of the west lane of HWY 6 beginning in May 2011 and be in service by October. Xcel hopes to keep the construction impact on Minturn at a minimum. No weekend work will take place and lanes will be left drivable at the end of each work day.

### **11. Discussion/Action – Vail Ski & Snowboard Academy– White**

Mr. Aldo Radamus, Vail Ski & Snowboard Academy (VSSA), intends to present a proposal for the Minturn Middle School facility future uses. The proposal will support the Vail Ski & Snowboard School remaining at the Minturn Middle School facility. 75% of the students are local to the area. A resident's facility and conditioning facility would both be additional components to the Middle School facility.

Mr. Frank Lorenti, 1081 Main Street, reminded the Council that the entities looking to use the facility are all tax exempt, and thus, no tax base, but still require many of the Town services, like Police, etc, which costs the Town of Minturn residents additional money.

Traffic concerns were addressed as the hypothetical student enrollments increased over the next 3-5 year period.

Earle B. asked if any traffic studies have been conducted for the area; none that staff was aware of.

Shelley B. discussed the benefits that will continue to be seen by Minturn if the Vail Ski & Snowboard Academy is awarded the proposal. She reminded everyone that with the events being held on the weekends, use of the school by local students, and tourists coming into Town, the benefits will be seen through increased exposure and tax revenue in the local business community.

Jerry B. supports the Vail Ski & Snowboard Academy and their proposal for the facility. Many positive outcomes can result for the Town of Minturn if VSSA is awarded the proposal.

### **12. Discussion/Action – Resolution 1 – 2011 – A Resolution setting the official posting sites for the Town of Minturn – Brunvand**

Motion by Shelley B., second by John R., to approve Resolution 1 Series 2011, A Resolution setting the official posting sites for the Town of Minturn. All voted in favor. (*Note: Aggie Martinez was absent, excused*)

### **13a. Discussion/Action – Resolution 18 – 2010 – A Resolution concerning the Petition for Annexation, Eagle County School District Maloit Park Parcel No. 1.**

Motion by George B., second by Shelley B., to approve Resolution 18 series 2010 - A Resolution concerning the Petition for Annexation, Eagle County School District Maloit Park Parcel No. 1. All voted in favor. (*Note: Aggie Martinez was absent, excused*)

### **13b. Discussion/Action – Resolution 19 – 2010 – A Resolution concerning the Petition for Annexation, Eagle County School District Maloit Park Parcel No. 2.**

Motion by John B., second by Shelley B., to approve Resolution 19 – 2010 – A Resolution concerning the Petition for Annexation, Eagle County School District Maloit Park Parcel No. 2. All voted in favor. (*Note: Aggie Martinez was absent, excused*)

## FUTURE AGENDA ITEMS

### 13. Next Meeting

- Discussion/Action – Resolution establishing annexation eligibility of the Eagle County School District Maloit Park Parcels No. 1 & 2 – Cerimele (15min each) 1/19/2011
- Downtown Colorado Inc Plan & Community Revitalization Plan. – 1/19/11 Work Session – Cerimele (30 min)
- Discussion/Action – Final draft for open fire Ordinance-Worksession- 01/19/2011
- Nuisance Ordinance discussion – 01/19/2011

### 14. Future Meeting

- Discussion/Action – General Improvement District Audit Exemption – 2/2/11 – Brunvand
- Council Goals

### 15. Set Future Meeting Dates

a) Council Meetings:

- January 19, 2011
- February 2, 2011
- February 16, 2011

b) Planning & Zoning Commission Meetings:

- January 12, 2011
- January 26, 2011
- February 9, 2011

c) Other Dates:

- January 17, 2011 – Town Hall Closed (Martin Luther King, Jr)

### 16. Adjournment

Motion by Shelley B., second by John R., to adjourn the meeting at 9:19pm. All voted in favor.

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Mayor Hawkeye Flaherty

ATTEST:

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Town Clerk, Jay Brunvand

**Town of Minturn  
Council Action Item Memo**

**TO:** Staff Members/Council Members  
**FROM:** Jim White/ Town Manager  
**DATE:** February 2, 2011  
**SUBJECT:** Status of Action Items from Town Council Meetings

<b>Action Item</b>	<b>Responsible Party</b>	<b>Progress Report</b>
Water Plant Land Deed: Work with Eagle County School District. Water plant is occupying Maloit Park.	White/Christensen	Public hearing on a Resolution establishing eligibility for annexation scheduled for February 16, 2011 meeting.
Town entry sign: Requirements with USFS being resolved	White/Brodin	Continuing to modify & review design. Reviewing USFS Special Use Permit guidelines a template has been created. Met with local architect to complete design.
Draft open burning regulations as an amendment to the 2009 International Fire Code.	Cerimele	Changes from Dec 15 <sup>th</sup> Council Meeting incorporated in draft report. 01/05/2011
Review Building Fees	Cerimele	Reviewing comparisons with similar size municipalities. Provide recommendation by mid-March.
Draft Medical Marijuana Ordinance-Staff level	Brunvand/Metteer	Follow regulatory schedule to meet July 1 <sup>st</sup> deadline.

P.O. Box 309 ♦ 302 Pine Street  
Minturn, CO 81645  
Phone: 970-827-5645  
Fax: 970-827-5545  
Jay Brunvand, Treasurer/Clerk  
Email: treasurer@minturn.org



TOWN COUNCIL  
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Mayor Pro Tem – George Brodin  
Councilwoman – Shelley Bellm  
Councilman – Earle Bidez  
Councilman – Jerry Bumgarner  
Councilman – Aggie Martinez  
Council – John Rosenfeld

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## AGENDA ITEM COVER SHEET

<b>AGENDA TITLE:</b> Citizen Recognition.
<b>MEETING DATE:</b> February 2, 2011
<b>PRESENTER:</b> Jim White/Michelle Metteer/Lisa Osborne
<ul style="list-style-type: none"><li>• <b>BACKGROUND:</b> The Town of Minturn staff would like to recognize Susana Miranda at the February 2, 2011 meeting for her volunteer services. Susana has been an integral part of this community for many, many years. Most recently, her community involvement has included her spearheading the July 4<sup>th</sup> parade this past summer and assisting with the testing and organizing lights for the Town Christmas Holiday decorations. Susana has also helped with several summer and winter Minturn Markets. Whenever Susana is asked to help with one project or another, she selflessly gives of her time and talent.</li></ul>
<b>CORE ISSUES:</b> N/A
<b>STAFF RECOMMENDATION/MOTION:</b> N/A

**Jim White**  
**Town Manager**  
P.O. Box 309 ♦ 302 Pine Street  
Minturn, CO 81645  
Phone: 970-827-5645  
Fax: 970-827-5545  
Email: [manager@minturn.org](mailto:manager@minturn.org)



**TOWN COUNCIL**  
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**Councilmember – Jerry Bumgarner**  
**Councilmember – Aggie Martinez**  
**Councilmember – John Rosenfeld**

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**To:** Mayor Flaherty and Minturn Town Council  
**From:** Jim White, Town Manager  
**Date:** January 26, 2011  
**Re:** Manager’s Report for the February 2, 2011 Meeting

**Radio Tower Contract/Legal Action**

At the court date on Friday, January 7, 2011 at the Eagle County District Court in Eagle, Colorado, the Town of Minturn was given possession of the tower and all past due rent. Our Town Attorney will provide an update as it becomes available.

**School District RFP Submittals**

RFP’s to consider re-purposing ideas for the Minturn Middle School were turned in on Thursday January 13, 2011. Review of the two proposals is underway this month. A decision on future uses of the school is expected in February. The School Board meets February 9, 2011.

**LaFarge Fence**

La Farge installed a fence to block the visual gateway to its facility and also in an effort to reduce the level of noise coming from the facility while operations are in full swing. Since the installation, the plant has been closed so we will have to wait to determine how successful the fence will prove to be as a noise barrier (photos are included).

**I-70 Coalition**

The Town continues to participate with the I-70 Coalition. At the last meeting on Thursday, January 13, 2011, all participants received a copy of Resolution #TC-1938 from the Transportation Committee awarding \$2.33 million in FASTER State Transit Funds for fiscal year 2011 to the I-70 Mountain Corridor AGS Feasibility Study requested by Region 1 (see copy enclosed). In addition, MOVE Colorado, is reaching out to citizens across the state to build support for implementing a 21<sup>st</sup> Century transportation system in Colorado and to prepare Colorado residents for future transportation investments (see Fact Sheet enclosed).

**Governor Hickenlooper Visited Eagle County**

On Friday, January 14, 2011, Governor Hickenlooper began a series of meetings throughout the state to elicit commentary about economic development. The first meeting was held at the Singletree Community Center in Edwards.

### **Signage**

Preliminary contact has been made with individuals and companies that may be engaged to help with the actual construction of the Town signage. Staff is also continuing to work with the USFS on written justification needed to complete the Special Use Permit for our welcome signs. Pending approval from the USFS to install signage on its property, Town staff will be working on the construction and final design elements of the sign over the winter in anticipation of installation in the spring.

### **Battle Mountain Update**

Anticipating a response from the Environmental Protection Agency (EPA) related to the Battle Mountain project, we have scheduled a return visit from Dave Kleinkopf to provide an update to Town Council. Dave is scheduled to be present at the February 16, 2011 meeting.

### **Changes in Parking Limits/Parking Passes**

Downtown parking restrictions originally this year limited parking in the 100 block from 9am through 4pm, Mondays and Wednesday on the east side of the street, and Tuesdays and Thursdays from 9am through 4pm. Subsequently, parking limits in both the 100 and 200 Blocks of Main Street were reduced to 9am-2pm.

Effective in January, 2011, a pilot program was launched limiting parking restrictions in the 100 Block of Main Street in Minturn, on the same specified days, from only 9am through noon. This pilot program on the 100 Block was introduced to further improve access to local residents and businesses. In addition, parking is provided in the Municipal Lot as Public Works is clearing a section of the Municipal Lot at 6am-7am Monday-Friday. Finally, overnight parking passes will be issued for qualified residents or businesses from the 100 Block beginning January 28, 2011. Written notices of all these changes have been and will be hand delivered.





Post Office Box 309  
302 Pine Street  
Minturn, CO 81645  
Phone: 970-827-4272  
Fax: 970-827-7420



Town Council  
Mayor – Gordon “Hawkeye” Flaherty  
Mayor Pro Tem – George Brodin  
Councilwoman – Shelley Bellm  
Councilman – Jerry Bumgarner  
Councilman – Aggie Martinez  
Councilman – Earle Bidez  
Councilman – John Rosenfeld

To: Minturn Town Council  
Cc: Jim White, Town Manager  
From: Chris Cerimele, Town Planner  
Re: Notification of Applicant Appeal of Design Review Board Decision  
Date: January 28, 2011

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### Background

This agenda item is in regards to an applicant appeal of a Planning Commission / Design Review Board decision. Tom Sullivan, property owner of 115 Nelson Ave., is appealing the Design Review Board’s January 12, 2011 decision to deny his request for an exterior design change to the hotel he is constructing at 115 Nelson Ave. Mr. Sullivan made changes to the approved design by replacing a ground level French door and window on the Williams Street elevation with a single window (see attached drawing). Staff approved Mr. Sullivan’s request to convert the ground level space into an additional hotel room but did not authorize the exterior design changes. The Design Review Board accepted the fact that there would be an extra hotel room but felt very strongly that the building be constructed as it was originally approved.

Per Section 16-21-700 § C -1(Appeals of Planning Commission Decisions - Authority) of the Minturn Municipal Code, the Town Council shall have the authority to hear and decide appeals from any decision, determination or interpretation by the Planning Commission with respect to the provision of this Chapter and the standards and procedures hereinafter set forth.

The procedure for an appeal is outlined in Section 16-21-700 § C-3. This section states, *the filing of such notice of appeal will require the Planning Commission to forward to the Town Council at the next regularly scheduled meeting a summary of all records concerning the subject matter of the appeal and to send written notice to the appellant, applicant and property owners at least fifteen calendar days prior to the hearing. A hearing shall be scheduled to be heard before the Town Council on the appeal within forty calendar days of the appeal being filed.*

### Next Step

The Town Council shall set the date of the appeal hearing for February 16, 2011. Staff will compile all applicable records of the case including submitted plans and meeting minutes and present them to the Town Council prior to the February 16<sup>th</sup> meeting.

**Minturn General Improvement District Meeting Minutes**  
**November 3, 2010**  
**Minturn Town Hall**

Roll call at 10:15 p.m. as the Minturn General Improvement District. (*George Brodin and David Kleinkopf were absent/excused*)

**1. ADMINISTRATIVE MATTERS**

- Approval of Agenda

Motion by Jerry B., second by Earle B., to approve the agenda as presented. All voted in favor. (*Note: George Brodin was excused absent*).

- Review and approve minutes from the March 3, 2010 Board Meeting.

Motion by Jerry B., second by Shelley B., to approve the minutes of March 3, 2010. All voted in favor. (*Note: George Brodin was excused absent*).

- Discuss meeting dates for 2011.
- Future meetings to be scheduled
  - February/March for audit exemption (2/2 or 2/16 or 3/2; Recommend 2/2)
  - Meeting in November for 2012 budget approval (Recommend 11/2)

Motion by Jerry B., second by Shelley B., to set February 2, 2011 as the meeting to approve the Audit Exemption and November 2, 2011 to approve the 2012 GID fiscal budget. All voted in favor. (*Note: George Brodin was excused absent*).

Motion by Aggie M., second by Jerry B., to remove Matt Scherr as GID Board Member and add John Rosenfeld. (*Minturn Mayor Pro Tem George Brodin and, Dave Kleinkopf absent, excused*).

**2. FINANCIAL MATTERS**

- Discuss and consider ratifying appointment of Town Staff to prepare 2011 GID Budget.
- Discussion/Action – 2011 General Improvement District Budget: Public Hearing and Council Comments.

Motion by Jerry B., second by Shelley B., to ratify appointment of the Town staff to prepare the 2011 GID Town budget. All voted in favor. (*Note: George Brodin was excused absent*).

- Discussion/Action – Consider adoption of Resolution No. 2010-11-01 Resolution to Adopt Budget

The Public Hearing was opened by the Chairman.

Mr. Frank Lorenti, 1081 Main Street, asked what the purpose of this fund currently is, given that the original purpose is for the funding of the future recreation center. He again reminded that a

contractual agreement is for the GID to fund the recreation center and other infrastructure items. Putting pressure on the Developer will encourage these options to move forward.

Public hearing closed at 10:20pm.

Motion by Shelley B., second by John R., to approve resolution 2010-11-01. All voted in favor. (*Note: George Brodin was excused absent*).

Motion Earle B., second by Jerry B., to approve the correction to the typo error on page 64. All voted in favor. (*Note: George Brodin was excused absent*).

- Discussion/Action – Resolution No. 2010-11-02 Resolution to Appropriate Sums of Money.

Motion by Jerry B., second by Aggie M., to approve Resolution 2010-11-02 to Appropriate Sums of Money. All voted in favor. (*Note: George Brodin was excused absent*).

- Discuss and consider appointment of Clifton Gunderson, LLP to prepare and file 2010 Application for Audit Exemption.

Motion by Jerry B., second by Shelley B., to appoint Clifton Gunderson, LLP to prepare and file 2010 Application for Audit Exemption. All voted in favor. (*Note: George Brodin was excused absent*).

### **3. LEGAL MATTERS**

- Discuss results of November 2, 2010 election.

### **4. OTHER BUSINESS**

### **5. ADJOURNMENT**

Motion by Jerry B., second by Shelley B., to adjourn the General Improvement District Board meeting at 10:45pm and reconvene as the Minturn Town Council; all voted in favor. (*Note: George Brodin was excused absent*).

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Hawkeye Flaherty, President

ATTEST:

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Jay Brunvand, Secretary

**RESOLUTION NO. 2011-02-01**

**RESOLUTION FOR EXEMPTION FROM AUDIT**

**A RESOLUTION APPROVING AN EXEMPTION FROM AUDIT FOR THE FISCAL YEAR 2010 FOR THE MINTURN GENERAL IMPROVEMENT DISTRICT, EAGLE COUNTY, COLORADO**

WHEREAS, the Board of Directors of the Minturn General Improvement District (“District”) wishes to claim exemption from the audit requirements of Section 29-1-603, C.R.S.; and

WHEREAS, Section 29-1-604, C.R.S. states that any local government where neither revenues nor expenditures exceed five hundred thousand dollars may, with the approval of the state auditor, be exempt from the provision of Section 29-1-603, C.R.S.; and

WHEREAS, neither revenues nor expenditures for the Minturn General Improvement District exceeded \$100,000 for fiscal year 2010; and

WHEREAS, an application for exemption from audit for the Minturn General Improvement District has been prepared by Ms. Susan Opalinski of Clifton Gunderson, LLP, a person skilled in government accounting; and

WHEREAS, said application for exemption from audit has been completed in accordance with regulation issued by the state auditor.

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Directors of the Minturn General Improvement District, Eagle County, Colorado that the application for exemption from audit for the Minturn General Improvement District for the fiscal year ended December 31, 2010, has been reviewed and is hereby approved by a majority of the Minturn General Improvement District Board of Directors; that those members of the Minturn General Improvement District have signified their approval by signing below; and that this resolution shall be attached to, and shall become part of the application for exemption from audit of the Minturn General Improvement District for the fiscal year ended December 31, 2010:

APPROVED AND ADOPTED this 2<sup>nd</sup> day of February, 2011.

MINTURN GENERAL IMPROVEMENT  
DISTRICT

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

Attest:

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

<u>Type or Print Names of Members of Governing Body</u>	<u>Date Term Expires</u>	<u>Signature</u>
Hawkeye Flaherty	April 2012	_____
George Brodin	April 2012	_____
Earle Bidez	April 2014	_____
Jerry Bumgarner	April 2012	_____
Aggie Martinez	April 2014	_____
Shelley Bellm	April 2014	_____
John Rosenfeld	April 2014	_____