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Town of New Castle Administration Department
450 W. Main Street **Phone:** (970) 984-2311
PO Box 90 **Fax:** (970) 984-2716
New Castle, CO 81647 www.newcastlecolorado.org

Agenda

New Castle Planning & Zoning Commission Regular Meeting Wednesday, January 11, 2012, 7:00 p.m., Town Hall

Pledge of Allegiance, Call to Order, Roll Call, Meeting Notice

1. **Conflicts of Interest** (Disclosures are on file with Town Clerk & Secretary of State)
2. **Citizen Comments on Items NOT on Agenda**
3. **Public Hearing**
 - A. Conditional Use Permit
Purpose: Conditional Use Permit for a fitness center
Legal description: Coal Ridge Subdivision, Lot 1, (Space #2), New Castle, CO
Common Address: 6420 County Road 335, New Castle, CO
Applicant: Brett Payne
Landowner: Brad and Ruth Mollman
Resolution PZ 2012-1
4. **Comments/Reports**
 - B. Items for next Planning and Zoning Agenda
 - C. Commission Comments/Reports
 - D. Staff Reports
5. **Review Minutes of Previous Meetings**
 - E. September 28, 2011 Minutes

Adjournment



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Staff Report
Crossfit Generate Conditional Use Permit
New Castle Planning and Zoning Commission – Hearing – January 11, 2012

Report Date: 12/23/11

Project Information

Name of Applicant: Brett S. Payne dba Crossfit Generate

Applicant's Address/Phone: 539 River View Dr. #1301, New Castle, CO. Telephone – 970.404.2124
E-mail: brett@crossfitgenerate.com

Property Address: 6420 CR 335, New Castle, CO 81647

Property Owner: Brad & Ruth Mollman dba Bramco, LLC

Owner Address/Phone 105 Midvalley Dr., New Castle, CO 81647. Telephone – 970.319.0062
E-mail: mollman@rof.net

Proposed Use: Fitness center/recreation; accessory uses; sale of fitness products

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

Size of Site: Lot 1 = 2.881 acres, Lease space #2 = 2625 sq. ft.

Street Frontage: County Road 335

Existing Zoning: Industrial Zone

Surrounding Zoning: Industrial Zone/Open Space/County Rural

Parking Requirements: For a vocational or commercial school (*see explanation), one (1) space per teacher, plus one (1) space per administrative employee, plus one (1) space per two (2) students

Hours of Operation: Monday – Friday: 5 A.M. to 10 A.M. & 4:30 P.M. to 7:30 P.M.
Saturday: 8 A.M. to 11: A.M.

1 Description of Application:

This application is a request for a conditional use permit for the following uses as listed in the application cover letter:

1. Fitness center/recreation
2. Sale of fitness products

The applicant is seeking approval of a conditional use permit as is provided in the Industrial Zone District. Utilities (water & sewer) are privately owned and jointly maintained by property owners.

II Development Application Contents:

1. Applicant cover letter
2. Site plan (exhibits A-C)
3. Authorization letter from property owner
4. List of property owners within 250 feet
5. Checklist – Conditional Use Permit Application
6. State Sales Tax License
7. Agreement to abide by performance standards
8. Deed of Trust

III Scope and Rationale of the Development Application:

The applicant has applied for a conditional use permit in the Coal Ridge Industrial Subdivision Zone district because this is the only available space in Town that Mr. Payne can rent that can house many more clients than the space he has been renting this past year. It is not financially feasible for Mr. Payne to construct a new facility without incurring enormous financial debt which would include buying/leasing vacant land and obtaining a capitol construction loan. Plus, this would require down time to build a facility and Mr. Payne would not be earning an income during construction. In addition, clients would suffer from a loss of Mr. Payne's services and there is great potential that Mr. Payne would lose the client base he has built up this past year to other fitness centers or individual trainers.

Mr. Payne has incurred a tremendous increase in clients since he opened his fitness center in downtown New Castle (C-1). C-1 allows for recreation as a permitted use. As a result of Mr. Payne's success, he requires much more space. The current location of Crossfit Generate is 303 W. Main St.; this rental space has about 600 square feet of usable area in which to instruct clients. Because of increased membership, Mr. Payne cannot teach a class of over six (6) clients without creating an unsafe environment for his students. The prospective new rental space (Lease space #2) is 2625 square feet and has an office with mezzanine above; it has 875 square feet.

The industrial zone states in 17.52.020 – Description that “The purpose of the industrial district is to provide an area for industrial development in the town with minimal adverse environmental effects on the town.” As stated in the industrial zone district (17.52.050 – Conditional uses), “Any use not specifically defined in the permitted or nonpermitted use categories shall be a conditional use.” A fitness center is not in either category therefore it is subject to the conditional use process.

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

The purpose of a Conditional Use Permit is to determine if the nature of the proposed use is appropriate to the location, character of the surrounding development, traffic capacities of adjacent streets and potential environmental effects among other factors that the Town may deem relevant to the type of land use. Although a fitness center may not be strictly classified as an industrial use, it appears to be generally compatible with surrounding neighbors. In fact, office workers and others from adjacent businesses could potentially benefit from a fitness center that is located close to their place of business.

The industrial zone requirements (17.52.060) state:

- A. All service, fabrication, repair operations and storage of materials shall be enclosed by a fence at least six feet in height. Fences and gates shall be constructed of galvanized chain link.

- B. All loading and unloading of materials shall be conducted on private or town-leased property.
- C. All practical means shall be used to confine odor, noise, glare, and vibration to the site, and to avoid excessive emission of fumes, gases, radiation, liquid waste and smoke.

The operation of a fitness center in the prospective lease space does not violate any of these provisions in the municipal code.

IV Application Issues/Concerns:

Site Plan requirements:

- (1) Adjacent land uses and location of adjacent structures

Staff Comment – The submitted Exhibit B site plan shows the adjacent uses. The building is bounded by Garfield County rural zone on the south side (vacant hillside); Mr. T’s on the west side, Granite and Tile Retailer and Accents on Tops on the east side and to the north across CR 335 is Coal Ridge Park which is owned by the Town of New Castle.

- (2) Boundary and size of lot

Staff Comment – Exhibits A and B site plan describes the boundary and size of lot #1 in the Coal Ridge Industrial Subdivision.

- (3) Boundary location, height and setbacks

Staff Comment – The submitted site plan shows the building location (Exhibit A). Mr. Payne has stated in the color-coded legend that the height of the ceiling is 28 feet. The side setback is indicated on Exhibit A. The front and rear setbacks are not on the exhibits. Regardless, the building would not have obtained and approved building permit and subsequent Certificate of Occupancy without complying with setbacks. The minimum setbacks in this zone district are:

- A. Front: twenty-five (25) feet;
- B. Rear: ten (10) feet;
- C. Side: five (5) feet

- (4) *Off-street parking and loading areas

Staff Comment – The submitted Exhibits A and C site plan shows off-street parking and loading areas. There are no off-street parking requirements for a fitness center in the 17.76.010 but the most similar code provision is (D) Places of Public Assembly (5) states “For a vocational or commercial school, one (1) space per teacher, plus one (1) space per administrative employee, plus one (1) space per two students.” Mr. Payne or a employee will require one (1) space; he does not have an administrative employee anywhere Mr. Payne has noted in his cover letter that “at any given hour of operation we expect from 3 to 10 cars to attend our facility and classes.” There are five (5) dedicated parking spaces in front of the building and additional parking for eight (8) additional overfull parking spaces located along side the access embankment. Further, Mr. Payne states that if he holds a special event on Saturday, he has permission to use twenty (20) more parking spaces along the building of lot 1. It appears that there will be an adequate number of parking spaces for Mr. Payne and his clients

17.76.060 Town Council May Change Number of Spaces

(A) The Town Council may increase or decrease the number of off-street parking spaces in consideration of the following factors:

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

(B) Regardless of a reduction in off-street parking spaces by the Town Council,

adequate space and site design shall be provided to accommodate the standard

(3)

number of spaces for proposed use.

(5) Points of ingress and egress

Staff comment – Shown on Exhibit B site plan. There are two driveways in which to enter and leave the property. Both are equally and easily accessible for large vehicles as the driveways were designed for such specific use.

(6) Service and refuse areas

Staff Comment – Shown on Exhibit A site plan. Garbage containers are personally rented by the tenants. There are no known hazardous materials that will need disposal services.

(7) Signs and exterior lighting

Staff Comment – Exterior lighting is described in the color-code legend (100 watt high pressure sodium wall packs) and are indicated on Exhibit A. Existing lighting is downcast and dark sky compliant. The applicant will be required to comply with sign code provisions in the municipal code.

(8) Fencing, landscaping and screening

Staff Comment – Landscaping and screening is shown on Exhibit A site plan. Fencing is not clearly identified on the exhibits.

(9) Compliance with performance standards

Staff Comment – The applicant has submitted a signed document stating he will comply with all performance standards.

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

Staff Comment – No businesses in the industrial zone district in New Castle are connected to Town water and sewer. They are individually shared septic and well water users. Power poles with electrical lines are shown on Exhibit A site plan. Exhibit A site plan identifies where water storage tanks are buried on the hillside above the building. A buried propane tank is located on the southeast corner of lot 1 on Exhibit A site plan. In the color-coded legend, the applicant states the utility requirements for space B (Lease space #2) is:

- 200 amp. 3-phase, 208 panel
- Propane overhead heat
- 25 pair phone cable

17.84.070 Alterations

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

V Staff Recommendation

The staff recommends approval of the Crossfit Generate Conditional Use Permit with the following conditions:

1. The applicant will contact the Burning Mountains Fire Protection District to determine maximum person capacity of lease space #2 and post a sign indicating same prior to instructing clients. The applicant will also submit from the Fire Marshall a letter to the Town recommending approval of the proposed use of the building.
2. The applicant will comply will all sign code regulations.
3. Except for Saturday, the applicant will obtain written approval from the owners of lot 1 for use of additional parking spaces if he has more than twenty-four (24) students in a class at any

given time.

4. All representations of the applicant in written and verbal presentations submitted to the Town or made at public hearings before the planning commission or Town Council shall be considered part of the application and binding on the applicant.

(4)

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. PZ 2012-1**

A RESOLUTION OF THE NEW CASTLE PLANNING AND ZONING
COMMISSION RECOMMENDING CONDITIONAL APPROVAL OF
A CONDITIONAL USE PERMIT FOR CROSSFIT GENERATE.

WHEREAS, Crossfit Generate (hereinafter “Applicant”) is seeking a Conditional Use Permit for Lot 1 in the Coal Ridge Industrial Subdivision, According to the Final Plat thereof recorded as reception number 571484, 6420 County Road 335 Unit 2 to permit a fitness center; and

WHEREAS, pursuant to § 17.52.050 of the Town’s Municipal Code the uses proposed by Applicant are conditional uses in the industrial zone district, requiring the issuance of a conditional use permit under § 17.84; and

WHEREAS, pursuant to Municipal Code § 17.84.050 the Planning Commission hereby finds that the conditional use permit application:

1. is eligible for conditional review under Section 17.84.040;
2. is generally compatible with adjacent land uses;
3. meets all requirements of Section 17.84.020, is in compliance with this title and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;
4. is consistent with the comprehensive plan;
5. the Town has the capacity to serve the proposed use with fire and police protection; and
6. the property is served by a private water and sewer system

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

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

2. Listing of Approved Uses. The following constitute the permitted uses for this property:

- A. Fitness center and accessory uses including incidental sales of apparel and fitness related products.

3. Recommendation. The Planning and Zoning Commission hereby recommends that the Town Council approve the Applicant’s conditional use permit pursuant to Section 17.84.050 of the New Castle Municipal Code on the following conditions:

A. The Applicant shall comply with all applicable building, residential, electrical and municipal code requirements.

B. The applicant will contact the Burning Mountains Fire Protection District to determine the maximum person capacity of lease space #2 and post a sign indicating same prior to instructing clients.

C. The applicant will submit a letter to the Town from the Fire Marshall that approves the proposed use of lease space #2 prior to instructing clients.

D. The applicant will comply with all sign code regulations of the New Castle Municipal Code.

E. Except for Saturdays, the applicant will obtain written approval from the owners of lot 1 for use of additional parking spaces if he has more than twenty-four (24) students in a class at any given time.

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

G. All representations of the Applicant made verbally or in written submittals presented to the Town in conjunction with the application and before the planning commission or Town Council shall be considered part of the application and binding on the applicant.

THIS RESOLUTION PZ 2012-1 was adopted by the New Castle Planning and Zoning Commission by a vote of ____ to ____ on the 11th day of January, 2012.

NEW CASTLE PLANNING AND
ZONING COMMISSION

By: _____
Chuck Apostolik, Chairman

ATTEST:

Wendy Mead, Deputy Town Clerk

Administration Department
 (970) 984-2311
 Fax: (970) 984-2716
www.newcastlecolorado.org



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

RECEIVED

DEVELOPMENT APPLICATION

NOV 29 2011

Applicant: <u>BRETT S. PAYNE</u>		Town of New Castle, CO
Address: <u>539 River View Dr. 1301</u> <u>New Castle, CO 81647</u>		Phone: <u>(970) 404-2124</u> FAX: E-mail: <u>brett@crossfitgenerate.com</u>
Property Owner: <u>Brad & Ruth Mollman</u>		
Address: <u>105 Midvalley DR</u> <u>New Castle, CO 81647</u>		Phone: <u>970 319 0062</u> FAX: E-mail: <u>mollman@rof.net</u>
Contact Person: <u>BRETT PAYNE</u>		
Address: <u>539 River View Dr #1301</u> <u>New Castle, CO 81647</u>		Phone: <u>(970) 404-2124</u> FAX: E-mail: <u>brett@crossfitgenerate.com</u>
Property Location/Address: <u>6420 COUNTY RD 335</u>		
Legal Description: <u>Coal Ridge Industrial Subdivision</u> <u>Lot 1, Lease space #2,</u> <u>New Castle, CO 81647</u>		Acres: <u>Total Lot = 2.821 acres</u> <u>Space = 2625 ft²</u>
Existing Zone (Not sure? Click here for help): <u>Industrial</u>		
Existing Land Use: <u>Electrical services and construction.</u>		
TYPE(S) OF LAND USE(S) REQUESTED		
<input type="checkbox"/> Pre-Annexation Agreement <input type="checkbox"/> Annexation <input type="checkbox"/> Subdivision (including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations) <input type="checkbox"/> Amended Plat <input type="checkbox"/> Planned Unit Development (including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) <input type="checkbox"/> Floodplain Development Permit <input type="checkbox"/> Lot Line Adjustment or Dissolution <input type="checkbox"/> Site Specific Development Plan/Vested Rights <input type="checkbox"/> Variance <input type="checkbox"/> Zoning <input type="checkbox"/> Zoning Amendment <input type="checkbox"/> Re-zoning <input type="checkbox"/> R-1-HC Identification <input checked="" type="checkbox"/> Conditional Use Permit or Special Review Use Permit <input type="checkbox"/> Other		
This development would create <u>0</u> residences and <u>0</u> square feet of commercial space.		
Applicant must also complete and submit the appropriate checklist for the type of land use requested. Both the applicant and the property owner must sign this application.		
Applicants are encouraged to schedule a pre-application meeting with the Town Administrator and/or Town Consultants prior to submitting this application.		

AGREEMENT TO PAY CONSULTING FEES AND EXPENSES

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

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

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

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

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

SO AGREED this 29 day of NOVEM, 2011.

BRETT S. PAYNE
Applicant (Print Name)

[Signature]
Signature

(970) 404-2124
Telephone

539 River View Dr. #1301 New Castle
Mailing Address

SEE LETTER
Property Owner

Mailing Address If Different From Above

N/A
Relationship to Applicant or Potential Applicant

Type of application: Conditional Use Permit

Property description: _____

Off-Street Parking

17-76-010 General Requirements

(A) At the time of the erection of a new structure or at the time of enlargement of an existing structure, off-street parking spaces and loading areas shall be as provided in this Chapter.

(B) Where square feet are specified, the area measured shall be the floor area primary to the functioning of the particular use of property and shall exclude stairwells, elevator shafts, hallways, ornamental balconies, space occupied by heating, air conditioning or other utility equipment, and space devoted to off-street parking or loading.

(C) The number of employees of a new or expanding business shall be estimated in a manner approved by the Planning Commission, and the number of employees of an established business shall be determined from an examination of employment information presented by the applicants.

(D) Loading areas shall be of adequate size and design to facilitate all loading activities off a public right-of-way.

(E) The Central Business District, as identified on the Town zoning map, may be exempt from the requirements of this Chapter.

Source: Ord. 261, Sec. 15.07.010, 1983

17-76-020 Standards Designated for Each Use

The parking space requirements for each use shall be as follows:

(A) Residential Uses.

(1) For dwelling units, two (2) spaces per dwelling unit (driveway and garage or carport areas are defined as off-street parking space);

(2) For rooming house or boarding house, one (1) space per guest accommodation;

(3) For housing restricted to the aged, disabled, etc., one-half (1/2) space per unit.

(B) Commercial Residential Uses.

(1) For hotels and motels, one (1) space per guest room plus one (1) space per two (2) employees;

(2) For a club or lodge, spaces to meet the combined requirements of the uses being conducted, such as hotel, restaurant, auditorium, etc.

(C) Institutions.

(1) For a nursing home, rest home or home for the aged, one (1) space per three (3) beds;

(2) For a hospital, three (3) spaces per two (2) beds.

(D) Places of Public Assembly.

(1) For a church, one (1) space per three (3) seats;

(2) For a library or reading room, one (1) space per four hundred (400) feet of floor area, plus one (1) space per two (2) employees;

(3) For a preschool nursery, day care school, kindergarten, elementary school or intermediate school, one-and-one-half (1 1/2) spaces per teacher, plus one (1) space per administrative employee;

(4) For a high school, one (1) space per teacher, plus one (1) space per administrative employee, plus one (1) space for each three (3) students or one (1) space per three (3) seats in the main auditorium;

(5) For a vocational or commercial school, one (1) space per teacher, plus one (1) space per administrative employee, plus one (1) space per two (2) students;

(6) For auditoriums and meeting rooms, one (1) space per three (3) seats.

(E) Commercial Amusements.

(1) For a stadium, arena or theater, one (1) space per two (2) seats;

(2) For a bowling alley, five (5) spaces per alley, plus one (1) space per two (2) employees;

(3) For dance halls and skating rinks, one (1) space per fifty (50) feet of floor area, plus one (1) space per two (2) employees.

(F) Commercial.

(1) For a retail store, except as provided in Section 13-16-020(F)(2), two (2) spaces per three hundred (300) square feet of floor space;

(2) For a service or repair shop or a retail store handling exclusively bulky merchandise, such as automobiles and furniture, one and one-half (1 1/2) spaces per three hundred (300) square feet of floor area;

(3) For offices other than medical and dental, one (1) space per three hundred (300) square feet of floor area;

(4) For medical and dental clinics, two (2) spaces per three hundred (300) square feet of floor area, plus one (1) space per two (2) employees;

(5) For an eating or drinking establishment, one (1) space per three (3) seats;

(6) For mortuaries, one (1) space per three (3) seats.

(G) Industrial.

(1) For a storage warehouse, manufacturing establishment, or an air, rail or trucking freight terminal, two (2) spaces per three (3) employees;

(2) For wholesale establishments, one (1) space per employee, plus one (1) space per five hundred (500) square feet of patron serving area.

17-76-030 Maintenance Restrictions

(A) The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner.

(B) No building permit or other permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space.

(C) The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Chapter.

(D) Should the owner or occupant of any lot or building change the use to which the lot or building is put, thereby increasing off-street parking or loading requirements, it shall be unlawful and a violation of this Chapter to begin or maintain such altered use until such time as the increased off-street parking or loading requirements are complied with.

Source: Ord. 261, Sec. 15.07.030, 1983

17-76-040 Standards for Unlisted Uses

Requirements for types of buildings and uses not specifically listed in this Chapter shall be determined by the Town Council after a report and recommendation from the Planning Commission, based upon the requirements of comparable uses listed.

Source: Ord. 261, Sec. 15.07.040, 1983

17-76-050 Multiple-Use Requirements

In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed on the basis of maximum simultaneous use.

Source: Ord. 261, Sec. 15.07.050, 1983

17-76-060 Town Council May Change Number of Spaces

(A) The Town Council may increase or decrease the number of off-street parking spaces in consideration of the following factors:

(1) Probable number of cars owned by occupants of dwellings in the planned unit development;

(2) Parking needs of any nondwelling uses;

(3) Varying time periods of use; and

(4) Whatever joint use of common parking areas is proposed.

(B) Regardless of a reduction in off-street parking spaces by the Town Council, adequate space and site design shall be provided to accommodate the standard number of spaces for proposed use.

Source: Ord. 261, Sec. 15.07.060, 1983

17-76-070 Location of Spaces

Required parking spaces shall be located not farther than three hundred (300) feet from the building or use they are required to serve, measured in a straight line from the building.

Source: Ord. 261, Sec. 15.07.070, 1983

17-76-080 Spaces Not To Be Used for Storage

Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons, and employees only, and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or use.

Source: Ord. 261, Sec. 15.07.080, 1983

17-76-090 Setbacks

Except as provided in Section 13-16-020(A)(1), required parking and loading spaces shall be set back five (5) feet from the front lot line.

Source: Ord. 261, Sec. 15.07.090, 1983

17-76-100 Plans Required for Building Permit

A plan, drawn to scale, indicating how the off-street parking and loading requirements, excluding single dwelling unit areas, are to be fulfilled shall accompany an application for a building permit. The plan shall show all elements necessary to indicate that the requirement is being fulfilled, including the following:

- (A) Delineation of individual parking and loading spaces;
- (B) Circulation area necessary to serve spaces;
- (C) Access to streets and property to be served;
- (D) Grading, drainage, surfacing and subgrading details;
- (E) Other pertinent details.

Source: Ord. 261, Sec. 15.07.100, 1983

17-76-110 Design Standards

(A) Access. Unobstructed, direct and convenient access for vehicles to and from a public street shall be provided for all off-street parking spaces. No off-street parking space shall be served by more than two (2) access ways to any one (1) public street. Access ways shall be designed so as to reduce the number and proximity of access points along highways.

(B) Paving. Except for single-family and two-family dwellings, all access ways between a public street and off-street parking spaces or areas and all off-street parking spaces or areas not covered or enclosed by a garage or carport shall be surfaced with asphalt, concrete, or other similar dustless material. For single-family and two-family dwellings, off-street parking spaces and access ways shall be covered as above or by lawn or grass, with asphalt or concrete parallel driving strips capable of providing a driving surface for a motor vehicle.

(C) **Design of Parking Areas.** The following design standards shall be met for all parking areas provided, whether or not the parking area is required by the Town, except where the parking area is to serve residential and lodging uses only as set forth in [subsection (D)] and fewer than ten (10) parking spaces are provided. Wherever a parking area is provided, the owner or developer shall provide the Town with a scale drawing of each building and the location and layout of off-street parking spaces and areas.

(1) **Access.** Each access way between a public street and the area containing the off-street parking spaces shall be not less than fifteen (15) feet nor more than thirty (30) feet wide at the intersection of the access way with the public street and a divider strip at least six (6) feet long shall be installed if the access way exceeds twenty-five (25) feet in width. Access from any parking area shall be to a public street.

(2) **Parking Area Layout.** Every parking area shall be designed according to the following table. The top line of figures for each parking angle constitutes minimum design standards and the lower two (2) lines constitute higher standards to be employed at the option of the owner or developer. The owner or developer may select the parking angle and the line of figures for such parking angles and then all figures in that line shall become requirements.

Minimum Parking Space and Driveway Requirements

- A = parking angle
- B = stall width
- C = length of stall to curb
- D = aisle width
- E = curb length per stall
- F = width of double row with aisle

A	B	C	D	E	F
10 degrees	9'0"	9.0	12.0	23.0	30.0
	9'6"	9.5	12.0	23.0	31.0
	10'0"	10.0	12.0	23.0	32.0
20 degrees	9'0"	15.0	11.0	26.3	41.0
	9'6"	15.5	11.0	27.5	42.0
	10'0"	15.9	11.0	29.2	42.0
30 degrees	9'0"	17.3	11.0	18.0	45.6
	9'6"	17.8	11.0	19.0	46.6
	10'0"	18.2	11.0	20.0	47.0
45 degrees	9'0"	19.8	13.0	12.7	52.5
	9'6"	20.1	13.0	13.0	53.3
	10'0"	20.5	13.0	14.1	54.0
60 degrees	9'0"	21.0	18.0	10.4	60.0
	9'6"	21.2	18.0	11.0	60.4
	10'0"	21.5	18.0	11.5	61.0
70 degrees	9'0"	21.0	19.0	9.6	61.0
	9'6"	21.2	18.5	10.1	60.9
	10'0"	21.2	18.0	10.6	60.4
80 degrees	9'0"	20.3	24.0	9.6	64.4
	9'6"	21.2	18.0	10.6	60.4
	10'0"	20.5	24.0	9.1	64.3
90 degrees	9'0"	19.0	24.0	9.0	64.0
	9'6"	19.0	24.0	9.5	62.0
	10'0"	19.0	24.0	10.0	62.0

(3) *Screening.* Every parking area shall be adequately screened from adjoining residential uses by a fence or wall not less than three-and-one-half (3 1/2) feet nor more than six (6) feet in height or by a strip at least four (4) feet wide of densely planted trees or shrubs having minimum mature height of three-and-one-half (3 1/2) feet which shall be maintained in good condition at all times and trimmed so as not to exceed six (6) feet in height.

(4) *Landscaping.* At least ten percent (10%) of the total parking area, including access ways, shall be devoted exclusively to landscaping of trees, shrubs, and ground cover which reduce the visual impact and assist in defining onsite traffic movement. Such landscaping shall include, adjacent to any public street, a strip at least four (4) feet wide of densely planted trees or shrubs having a minimum mature height of three and one-half (3 1/2) feet which shall be maintained in good condition at all times and trimmed so as not to exceed six (6) feet in height. Hedges provided to fulfill screening requirements under Section 13-16-110(C)(3) may be counted toward this ten percent (10%) landscaping requirement.

(5) *Lighting.* Security lighting shall be provided in all parking areas used or designed for use during evening hours. The lighting shall not be directed towards any adjacent residential uses or public streets.

(6) *Drainage.* All off-street parking areas and spaces shall be designed and graded to restrict site drainage to a rate no greater than the historical rate, before development, for the 25-year storm or shall include development of a storm drainage system to convey runoff water to a site approved by the Town Engineer. Such drainage plan or system shall be approved by the Town Engineer prior to the construction of the off-street parking.

(7) *Snow Storage.* All off-street parking areas shall include space for snow storage and removal of snow on parking areas when required by the Planning and Zoning Commission and Town Council when the size and location of the parking area are such that no public area is available for snow storage.

Source: Ord. 261, Sec. 15.07.110, 1983

Performance Standards

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

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

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

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

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

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

Source: Ord. 261, Sec. 15.04.090, 1983



CHECKLIST CONDITIONAL USE PERMIT APPLICATION

Authority: New Castle Municipal Code §§16.08.060 & §§17.84.010 et seq.

This is a helpful checklist and is not necessarily all inclusive for all Municipal Code requirements. It is still your responsibility to read and comply with all code requirements. All applications must include a non-refundable Application fee.

Signature

[Handwritten Signature]

Date

11/29/11

The following items must be submitted to the Town Clerk:

- Development Application - Submit 15 copies
- Proof of legal ownership of all property involved
- Names and addresses of all property owners, mineral owners (if new surface development anticipated), and lien holders of all property involved
- Complete site plan, drawn to scale, illustrating:
 - Adjacent land uses and location of adjacent structures, including sidewalks, alleys or streets
 - Boundary and size of site
 - Building location, height and setbacks; include any building modifications that the variance may create
 - Off-street parking and loading areas (see attached)
 - Points of ingress and egress
 - Service and refuse areas
 - Signs and exterior lighting
 - Fencing, landscaping and screening
 - Compliance with performance standards (see attached)
 - Location and size of easements, power poles, fire hydrants, gas lines, water and sewer lines and other items which might impact the property, as well as anticipated utility requirements
- Time schedule for development
- If you believe that any of the above requirements are not applicable, provide a statement explaining why you believe the requirements are not applicable.
- Other information supporting your application
- List of owners of property within 250 feet of your property along with their mailing addresses. Source: Assessors Office.
- \$250.00 Non-refundable Application Fee

Conditional Use Permit Application

CrossFit Generate proposes to use Section 2 of Lot 1 within the Coal Ridge Industrial Subdivision for its place of commercial business operations. We request that the town of New Castle approve our application for a Conditional Use Permit for this site and waive the application fees associated.

Hours of Operation

Our hours of operation are as follows:

Mon- Fri. 5AM - 10 AM. And. 4:30 PM - 7:30 PM

Sat. 8AM. - 11 AM

Parking:

There are 5 approved parking spaces in front of building reserved only for our members. Additional parking includes along side of the access embankment, approximately 8 additional spaces.

At any given hour of operation we expect anywhere from 3 to 10 cars to attend our facility and classes. On Saturdays we sometimes have large events we may have upwards to 25 cars. In this case on Weekends only we are authorized to use the other 20 spaces available along side of the building of Lot #1.

Pollutants:

We have no use hazardous chemical, particulates, or other pollutants.

There is also an absence of such pollutants that are able to contaminate the space and/or cause harm to customers and staff.

Existing Land Use:

Within the building on Lot 1 of the Coal Ridge Industrial Subdivision there are several businesses that are leasing out sections of the building including: A Thrift Store, Electrical Services, Wood Shop, Plumbing Storage and Office, and Construction material Storage. All sections are sectioned off by standard and to code walls and flooring.

Neighbors to the west exist Mr T's, a hardware retailer and service provider. Neighbors to the east exist Accents on Tops, Granite and Tile Retailer and Service Provider.

The Nature of the business:

CrossFit Generate is a fitness service and retail provider. A majority of services are membership based. A Sales Tax License has been assigned and products that are sold generate about \$75.00 in sales taxes each month. Facility will be used as a space to sell goods and provide fitness training.

Products list in detail:

Black High Density Roller. \$30.00

- part of any movement of health is loosening up tight muscles throughout the body. The greatest time to do this is right before a person goes to sleep that way as they sleep at night they have the greatest ability to heal the relaxed muscles. Now members can take home a Roller to in depth message their tight muscles before bed.

Workout and Nutritional Journal. \$30.00

- workout repeat themselves ever now and again.
Completing a workout in less time than it took previously is straight proof of the body getting stronger, greater endurance, and/or greater composition. Keeping track of results and doings is essential for this process. Thus the workout Journal.

Jump Rope. \$30.00

- a double under is spinning the jump rope under the feet 2 times per jump. A speed rope is the best training instrument for successfully learning this skill. Thy can be customized to fit the athlete specifically.

T-Shirt.	\$25.00	1/2 of a Cow Packaged Organic.	\$600
Tennis Balls.	\$6.00	Smoothies.	\$7.85

To whom it may concern:

The owners of the BRAMCO building at 6420 Cty. Rd. 335, New Castle, CO, are pleased to have the opportunity to house Cross Fit Generate for rental purposes. We are impressed with the owners of the business and believe that they will be successful in their venture. We do not believe that it will be a conflict with the basic use of the building.

Please consider the zoning modification for this purpose.

Thank you,

Brad & Ruth Mollman

Owners Bramco LLC

Owners and Addresses of Property Owners within 250ft

From: Jennifer Wilson <jewilson@garfield-county.com>
Date: November 28, 2011 12:48:02 PM MST
To: Brett Lark <brett@crossfitgenerate.com>
Subject: parcel info

Property in Question

1)parcel# 2123-323-05-001

Bramco, LLC

PO Box 737

New Castle , CO 81647

Neighbors to the West

2)parcel# 2123-314-12-001

Burning Mountain Land And Cattle LLC

5175 County Road 335

New Castle , CO 81647

Neighbors to the East

3)parcel# 2123-323-05-002

Four Sprys Investments, LLC

3792 County Road 117

Glenwood Springs , CO 81601

Jennifer Wilson

Garfield County Assessor's Office

DR 0140 (02/16/11)
DEPARTMENT OF REVENUE
DENVER CO 80261-0013

Must collect
taxes for:

SALES TAX

ISSUE DATE:

THIS LICENSE MAY BE CONFISCATED BY THE FOLLOWING LOCAL AGENCY:
CROSSFIT GENERATE

303 W MAIN ST NEW CASTLE CO 81647



CROSSFIT GENERATE
PO BOX 744
NEW CASTLE CO 81647-0744

STATE COLORADO COUNTY GARFIELD RTA

USE ACCOUNT NUMBER
for all references

018727 34-2010

LIABILITY INFORMATION

county city industry type liability date

24-01-31 0005 L 07011

ISSUE DATE

month city year

SEP 06 11

LICENSE VALID TO
DECEMBER 31

2011

THIS LICENSE IS NOT
TRANSFERABLE

Executive Director
Department of Revenue

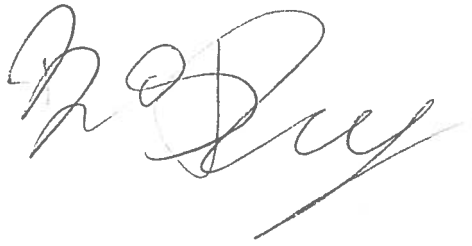


Statement of Unnecessary Items From the Conditional Use Check List

A Development Application and Time Schedule for Development are not applicable to this Conditional Use Application as there shall be no development completed. Only leasing the space is in the agreement and plans between both CrossFit Generate and Brad's Electrical Services Inc.

Brett Lark

CrossFit Generate

A handwritten signature in black ink, appearing to read "Brett Lark". The signature is written in a cursive style with a large, sweeping initial "B".

11/29/2011

17.72.090 - Performance standards.

- A. Smoke. No use shall be permitted in any district unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of smoke.
- B. Particulate Matter. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of particulate matter.
- C. Dust, Odor, Gas, Fumes, Glare or Vibration. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of dust, odor, gas, fumes, glare or vibration.
- D. Radiation Hazards and Electrical Disturbances. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to radiation control.
- E. Noise. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to noise.
- F. Water Pollution. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to water pollution.

I, BRETT PAYNE, HAVE READ AND AGREE TO
THE ABOVE PERFORMANCE STANDARDS SET
FORTH BY THE TOWN OF NEW CASTLE, CO.



11/15/2011

Location of items listed for Conditional Use Permit are color coded as follows:

Building, space dimension:


Height of ceilings - 28' - Eve 24'

Roll up door - 15' high

Length of space - 50'

Width of space - 50'

 Water well

 Sewer line - from septic

 Electrical Lines on easement behind building

 Main water lines - from well access

 Exterior Lighting

100 Watt high pressure sodium wall packs - 22 on exterior

2 parking lot pole lights

 Hydrants -

Water storage tanks buried on hillside above building

Utility Requirements for Space B

200 amp. 3-phase, 208 panel

Propane overhead heat

25 pair phone cable

 Garbage Containers - personally rented by tenants

Fencing/Landscaping as noted

Parking Dimensions as noted on plans

Boundary Size of lot as noted on plans

RECORDATION REQUESTED BY:

Alpine Bank, A Colorado Banking Corporation
Alpine Bank New Castle
810 Castle Valley Boulevard
New Castle, CO 81647

WHEN RECORDED MAIL TO:

Alpine Bank
400 7th Street South
Rifle, CO 81650

SEND TAX NOTICES TO:

BRAMCO, LLC, A COLORADO LIMITED
LIABILITY COMPANY
PO BOX 737
NEW CASTLE, CO 81647

FOR RECORDER'S USE ONLY

DEED OF TRUST

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

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

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

LOT 1

COAL RIDGE INDUSTRIAL SUBDIVISION

ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 27, 2000 AS RECEPTION NO. 571484.

COUNTY OF GARFIELD

STATE OF COLORADO

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

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

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

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

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

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

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

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

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

**DEED OF TRUST
(Continued)**

Loan No: 1350383801

Page 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Insecurity. Lender in good faith believes itself insecure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

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

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

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

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

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

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

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

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

DEED OF TRUST (Continued)

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

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

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

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

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

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

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

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

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

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

GRANTOR:

BRAMCO, LLC, A COLORADO LIMITED LIABILITY COMPANY

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

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF COLORADO)
COUNTY OF GARFIELD) SS

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

By [Signature] Notary Public in and for the State of COLORADO

Residing at
My commission expires 09/06/2010

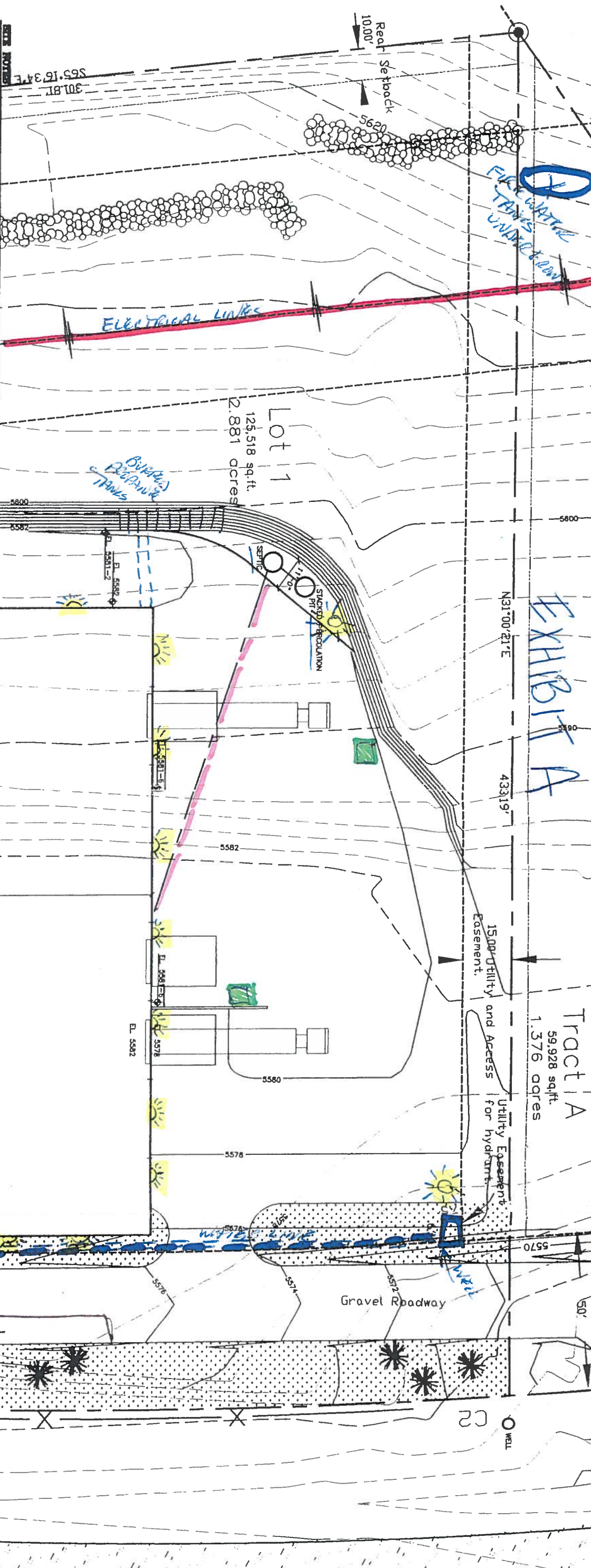
My Commission Expires 09/06/2010

EXHIBIT A

Tract A
59,928 sqft.
1.376 acres

Utility Easement
for hydrant

1500' Utility and Access
Easement.



SITE NOTES

1. PROPERTY LINES AND TOPOGRAPHY SHOWN IS REPRESENTATIVE OF INFORMATION TAKEN FROM A SURVEY BY SURVCO, INC. ENGINEER DATED 7/00. NOTIFY ARCHITECT IMMEDIATELY OF ANY DISCREPANCY OR VARIATION BETWEEN THE DRAWINGS & ACTUAL SITE CONDITIONS.
2. BUILDING FOOTPRINT SHALL BE Laid OUT BY CERTIFIED SURVEYOR WITHIN THE EXCAVATION, PRIOR TO PLACING FOUNDATIONS.
3. CONTRACTOR SHALL HAVE SOILS TEST DONE AT BOTTOM FOOTING BY APPROVED ENGINEER TO BEGINNING CONSTRUCTION.
4. CONTRACTOR SHALL INSURE PROTECTIVE PAVEMENT FROM THE STRUCTURE AT MINIMUM 5% GRADE FOR 10' NORTH THE ARCHITECT LINES AT WHICH PAVING IS NOT POSSIBLE. PONDING OF SURFACE WATERS SHALL NOT BE PERMITTED WITHIN 10' OF THE BUILDING PERIMETER.
5. ALL EXCAVATION, GRADING, AND UNDERDRAIN SYSTEM SHALL FOLLOW RECOMMENDATIONS OF HP GEOTECH.

PLANTING LEGEND

- PERENNIAL WILD FLOWERS
- MAIWE GRASSES - IRRIGATED
- 5 GAL SEA GREEN JUMPER SHRUBS
- 8' PINYON PINE

Garfield County Road 335 (paved asphalt surface)

Doug Harr P.C.
ARCHITECTURE

BRANDT RESIDENCE

Proj: 991
Doc: 2/
Rev: 1

51

S03°24'41"E

Tract A
59,928 sq. ft.
1.376 acres

Mr T's HARDWARE INDUSTRIAL

Unplatted
Town of New Castle
P.O. Box 90
New Castle, CO.
81647

TOWN COUNCIL CERTIFICATE

AT, APPROVED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE,
OF GARFIELD, STATE OF COLORADO, THIS DAY
AD. 2000, FOR FILING WITH THE CLERK AND RECORDER
FIELD COUNTY AND FOR CONVEYANCE TO THE TOWN OF NEW CASTLE THE
DEDICATIONS SHOWN HEREIN, SUBJECT TO THE PROVISIONS THAT
ALL IN NO WAY OBLIGATES THE TOWN OF NEW CASTLE FOR THE FINANCING
STRUCTURING OF IMPROVEMENTS ON LANDS, PUBLIC HIGHWAYS OR EASEMENTS
ED TO THE PUBLIC EXCEPT AS SPECIFICALLY AGREED TO BY THE TOWN
OF THE TOWN OF NEW CASTLE AND FURTHER THAT SAID APPROVAL SHALL

COUNTY (QUAD)

1500' Public Utility and Access Easement
125,518 sq. ft.
2.881 acres

INGRES EGRESS

INDUSTRIAL

Lot 2
70,985 sq. ft.
1.630 acres

GRANT TOPS

Lot 3
47,191 sq. ft.
1.083 acres

EXHIBIT B

50.00' Easement for Public Service Overhead Utility Line. (25' Each side exist. 69kva line as const. and in place) (see plat note #11)

Indicates No. 5 Rebar w/Plastic Cap. PLS No. 27613



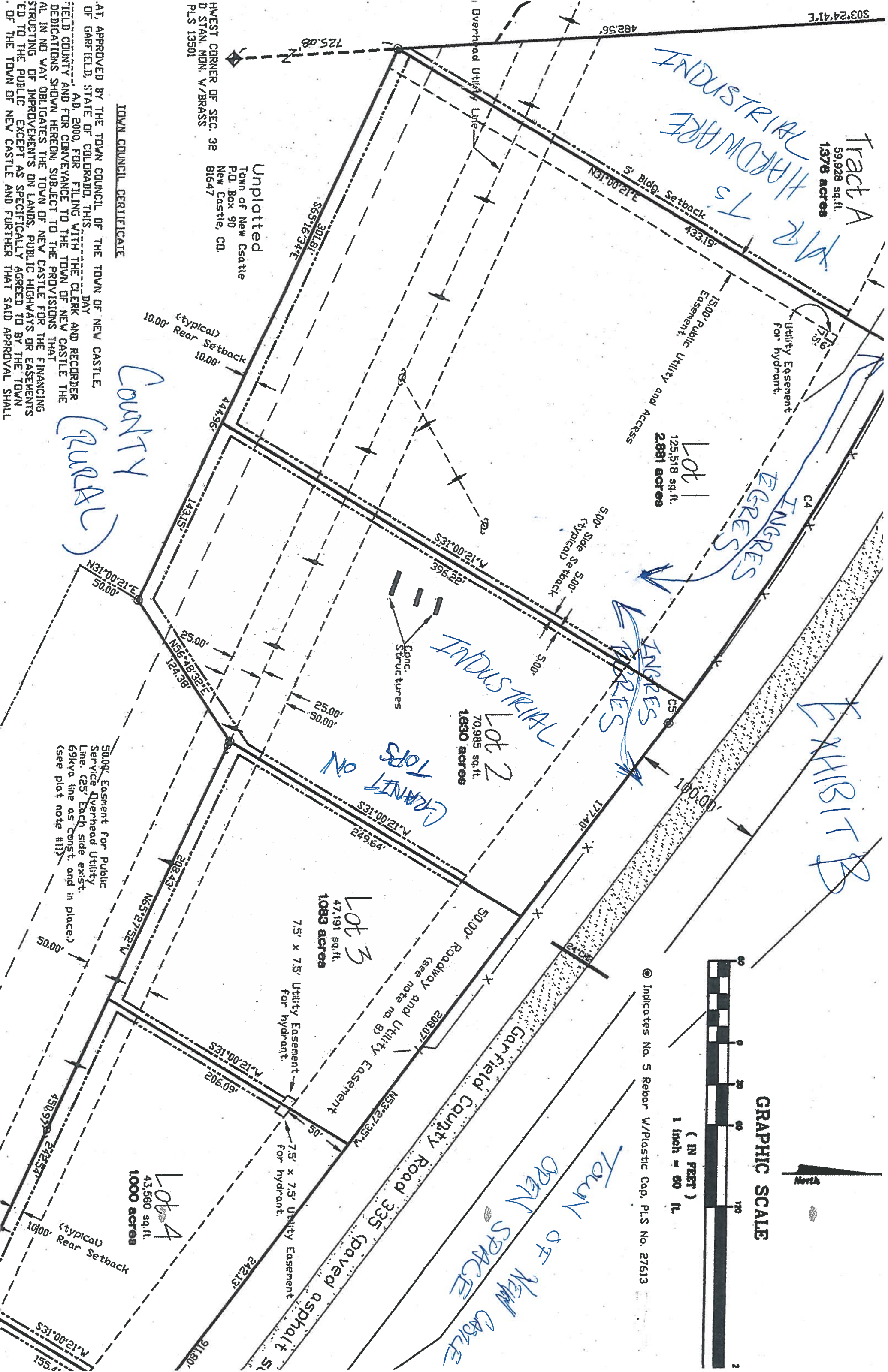
GRAPHIC SCALE

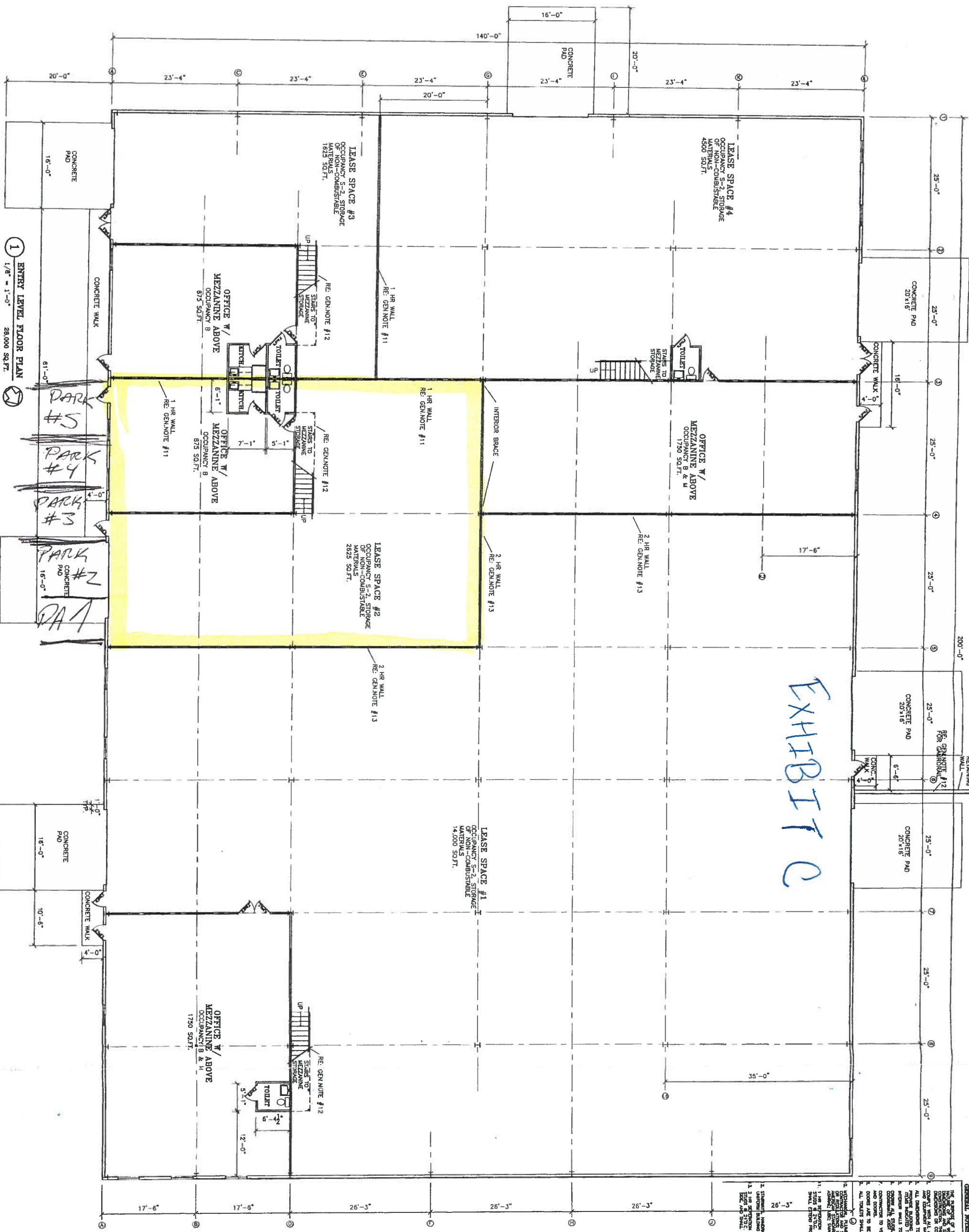
North

Lot 4
43,560 sq. ft.
1.000 acres

TOWN OF NEW CASTLE OPEN OF NEW SPACE

S31°00'13"E





1 ENTRY LEVEL FLOOR PLAN
1/8" = 1'-0" 28,000 SQ. FT.

EXHIBIT C

- GENERAL NOTES**
1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES.
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 8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES.
 9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES.
 10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES.

Proj # 00050
Date 12/8/00
Revision
SHEET A2

BRAMCO BUILDING
NEW CASTLE, COLORADO

Doug Harr P.C. ARCHITECTURE
970-945-1099 FAX 945-8661
826 1/2 Grand Ave., #24
Glenwood Springs, CO 81601

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1 **NEW CASTLE PLANNING & ZONING COMMISSION**
2 **REGULAR MEETING**
3 **September 28, 2011**

4 The Planning & Zoning Commission of the Town of New Castle, County of Garfield,
5 State of Colorado convened into regular session in the Town Hall on September 28,
6 2011 at 7:04pm.

7
8 Commission Chair Aposolik presided.

Commissioners Present:
Commissioner Slack
Commissioner Art Riddile
Commissioner Newberry
Commissioner Graham
Riddile
Commissioner Borgard

Commissioners Absent:
Commissioner Holley

Staff Present:
Tim Cain, Town Planner
Wendy Mead, Deputy Town
Clerk
Davis Farrar, Consultant
Planner
Andy Barton, Town
Administrator, left at 7:20pm
Assistant Town Attorney,
David Smith

9
10 **FINDING AS TO MEETING NOTICE**

11 Deputy Town Clerk Wendy Mead verified that her office gave notice of tonight's
12 meeting in accordance with Resolution TC-2011-1.

13
14 Chair Apostolik introduced the two new commissioners, Graham Riddile and Larry
15 Borgard, to the Commission.

16
17 **CONFLICTS OF INTEREST**

18 No Commissioners reported conflicts of interest with respect to items on tonight's
19 agenda.

20
21 **ITEMS FOR DISCUSSION**

22 Town Administrator, Andy Barton was in attendance at the Commission meeting to
23 discuss the 2012 Town of New Castle budget. Administrator Barton stated the 2012
24 budget will be 2.25 million dollars, compared to the 2008 budget which was 5
25 million dollars. He stated revenues are down in all funds. There are 25 full time
26 employees, compared to 36 in 2009, and the Town is providing the same level of
27 service as in 2009, with fewer people. Property tax valuations will be lower in 2012
28 and 2013, with property values going down.

29
30 He stated that the good news is that sales tax revenue is up over 2010. He also
31 stated that the oil and gas industry is picking up with Antero Resources planning on
32 drilling south of Silt. He stated that the money that the Town receives from the
33 mineral severance tax is used to fill in the deficits in the general fund that the Town
34 would be facing otherwise. Without that money, there would be catastrophic budget
35 cuts resulting in a loss of services which the Town provides.

1 Administrator Barton stated that he was not present to tell the Commission what to
2 do, but to let them know what the budget outlook is for the Town; so the
3 Commission could choose the projects which they wish to review carefully. He
4 would like the Commission to be conservative in the use of the Town's consultants.

5
6 Administrator Barton stated there was concern from one of the Town Councilors
7 and a Planning Commissioner about the Commission reviewing the Comprehensive
8 Plan. The concern was using Consultant Planner Davis Farrar's time for the review.
9 Administrator Barton thought a minor review of the Comprehensive Plan Planner
10 Farrar was proposing would be fine to take place.

11
12 Chair Apostolik asked Administrator Barton if there is a road use tax and about the
13 letter to the editor in the PostIndependent regarding projects being built in Town
14 not using local vendors, such as Mr. T's Hardware Store. Chair Apostolik asked why
15 the Town does not charge a use tax on materials. Staff replied that the Town does,
16 in fact, charge a use tax for materials. Administrator Barton responded to the letter
17 to the editor question about the Town using local vendors by stating that the
18 projects are through entities that are not part of the Town and the entities have
19 their own bidding procedures.

20
21 Planner Cain and Attorney Smith stated that there is a road impact fee but only for
22 the Lakota subdivision which is to be used for improving the Highway 6 and Castle
23 Valley Boulevard intersection. Administrator Barton stated that the Town is working
24 with the State to get funding for improvements and a pedestrian bridge for the I-70
25 interchange area.

26
27 Administrator Barton thanked the Commission for their time.

28
29 **Annual review/discussion/possible modifications of the Town of New**
30 **Castle's Comprehensive Plan**

31 Planner Farrar stated his intention for the update to the Comprehensive Plan was to
32 keep it fresh and in the minds of the Commission. His staff report is attached as
33 exhibit A to these minutes. Planner Farrar stated that the Town has not had the
34 opportunity to "test" the Comprehensive Plan because when the Plan was adopted
35 was when the bottom fell out of the building and housing market.

36
37 Planner Farrar would like to see the County and the municipalities work on putting
38 together an Inter Governmental Agreement to respect each Town's Comp Plan and
39 use them when there are developments outside of Town Limits but within the
40 County. He stated that the County recently adopted the County Comp Plan but it is
41 non-binding.

42
43 Commissioner Art Riddile questioned the location of the new Department of Wildlife
44 facility at the 109 exit off of I-70 at Canyon Creek. He asked whether or not the
45 Town had the opportunity to offer any input on the location of the facility. Planner
46 Cain stated that it is outside the Town limits therefore, the Town would not have

1 had an opportunity to comment on the location. He spoke with the County Planner
2 who stated that the property had already been purchased for the facility by the
3 time the County received the plan, so there was not an opportunity for much
4 feedback on the location. Planner Farrar stated that it would have been nice for the
5 DOW to meet with the Town to see if there would have been anyway for the facility
6 to be located in the Town. He stated it would be a great idea for the Town to write a
7 letter to the State regarding the opportunity to at least have discussed the possibly
8 of having constructed the facility within the Town limits. The Commission directed
9 Planner Cain to present the idea of a letter to Town Council for their input.

10
11 Planner Farrar stated that he was not sure how the Commission wanted to proceed
12 with updates to the Comp Plan, but his intent was to keep it at the top of the pile.
13 Chair Apostolik stated that the Plan has not been tested, he does not think the
14 Commission should spend time updating the plan until there is an opportunity to
15 test the Plan. Planner Farrar stated the Commission could look at implementing
16 some policies from the Comp Plan. Attorney Smith stated that the Commission
17 should verify that the Town is meeting and following the intent of the Comp Plan,
18 which the community helped develop, in the areas of developing future resources,
19 budget and economic development.

20
21 Chair Apostolik asked Planner Farrar if he had any other ideas of updates to the
22 Comp Plan, Planner Farrar stated he had none. Planner Cain stated that the census
23 material should be updated in the Plan, as well as some updates to parks. Chair
24 Apostolik asked if the Plan had to be updated every 10 years. Attorney Smith stated
25 that there no requirement to update the Plan, but it is suggested every 5 to 10
26 years a major update be done. Attorney Smith stated that minor changes such as
27 typos, staff can just do, but formal changes to policies or names need to go through
28 the Commission. The Commission is the final approving body of the Comp Plan.

29
30 Chair Apostolik asked the Commission if they would like to table the discussion for
31 six months and then come back with ideas to update the Comp Plan. The
32 Commission decided to go through the Comp Plan, and send their ideas of what
33 needs to be updated or implemented to Planner Cain. The Commission needs to
34 have their ideas to Planner Cain by October 31, 2011.

35
36 **COMMENTS/REPORTS**

37 Items for next Planning and Zoning Agenda

38 No items for the next two meetings.

39
40 Commission Comments

41
42 Staff Reports

43 Attorney Smith stated that a settlement agreement will be presented to Town
44 Council at the next meeting regarding Castle Valley Filing 9. The subcontractors will
45 recover some of their funds lost in the Castle Valley bankruptcy for work completed.

46

1 Attorney Smith stated he would be meeting with CVR Investors, the new owner
2 Castle Valley Ranch, to finalize Filing 10, which is a 17-lot single family detached
3 home subdivision. CVR Investors would like to finalize the Filing, so they could
4 possibly pull a building permit to build a spec home.

5
6 Deputy Town Clerk Mead presented a pending business list to the Commission, so
7 items that need to be done would not be forgotten.

8
9 Planner Cain stated that an updated zoning map is needed with all the zoning
10 changes and completed filings. SGM would prepare the map and then it would come
11 before the Commission for adoption.

12
13 **REVIEW MINUTES OF PREVIOUS MEETINGS**

14 **Motion** – approve June 8, 2011 meeting minutes as amended- (Apostolik/
15 Borgard). After voice vote, **motion carried.**

16
17 **Adjournment**-8:03pm (Apostolik/A. Riddile)

18
19
20 TOWN OF NEW CASTLE
21 PLANNING & ZONING COMMISSION

22
23
24 _____
25 Chuck Apostolik, Vice Commission Chair

26 ATTEST:

Wendy A. Mead, Deputy Town Clerk