

AGREEMENT RELATING TO THE ANNEXATION OF THE HENDRICK PROPERTY
TO THE TOWN OF CARBONDALE, COLORADO

THIS ANNEXATION AGREEMENT is entered into this 18th day of May, 1994, by and between the TOWN OF CARBONDALE, COLORADO, a Colorado Municipal Corporation (the "Town"), whose address is 76 South Second Street, Carbondale, CO 81623, and HENDRICK RANCH ASSOCIATION, LIMITED LIABILITY COMPANY (the "Landowner"), whose address is 925 Chatfield Road, Aspen, CO 81611.

with

1. Recitals.

For the purposes of interpreting and giving effect to this agreement, the parties agree:

a. The Landowner is the owner in fee simple of that real property described in Exhibit A attached hereto and incorporated herein by reference as if set forth verbatim "Subject Property").

514

b. On or about August 3, 1993, the Landowner submitted to the Town a Petition to annex the Subject Property.

c. The Town enacted a resolution finding the Petition to be in proper order, and set the matter for public hearing on September 28, 1993, and subsequent continued public hearings on December 14, 1993, January 25, 1994, February 2, 1994, February 8, 1994, and February 22, 1994, at which time the public hearing was closed. On May 18, 1994, the Board of Trustees of the Town of Carbondale approved Ordinance No. 14, Series of 1994, approving the annexation of the subject property with conditions.

d. The Landowner desires to amend its Petition to Annex by adding to it the terms of this agreement, and waives all rights, objections, and claims that it may have concerning the formalities of further hearings and notice. The Landowner further waives any claims that may result from any defect concerning the process, hearings, and decision on the Landowner's annexation petition and recognizes and acquiesces to the jurisdiction and the power of the Town to impose the restrictions and conditions hereinafter set forth.

e. No election is needed to annex the Subject Property, the Landowner is the sole owner of the Subject Property, and the Landowner waives all rights to an election.

f. The Town and Landowner mutually agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town upon the Landowner and its successors in connection with the acceptance and favorable action on the Landowners' Petition for Annexation, the Town recognizing and reciting that such matters are necessary to protect, promote and enhance the public welfare.

Town of Carbondale

8002

2. Scope of the Agreement.

a. This agreement is intended to set forth the parties' understanding and agreement as to the annexation of the Subject Property pursuant to the Municipal Annexation Act of 1965, as amended; as to the general nature of the development proposed for the Subject Property; as to the procedures, limitations and standards applicable to the construction of improvements to be installed to serve the Subject Property; as to the responsibilities of the parties for various costs, fees and charges; and to such other matters the parties believe can be adequately addressed at this time.

b. This agreement is not intended to address all of those matters which may be appropriately considered at the time of subdivision and/or development of the Subject Property. The Landowner has submitted a P.U.D. zoning plan for the Subject Property which shall be considered separately by the Town. This agreement shall not be construed as approval of any particular level, scope, density, or type of development on the Subject Property. The Town reserves all rights to review, approve, or deny any proposed zoning and future development on any portion of the Subject Property, in accordance with State law and the ordinances and policies of the Town then in effect.

c. It is not the intention of the parties in any way to diminish or limit the Town's legislative, judicial, quasi-judicial or other non-delegable discretionary powers or to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any items submitted by the Landowner or its assigns including, but not limited to, plans, drawings, reports, security documents, improvements, and conveyances. It is furthermore the expressed intention of the parties that nothing in this agreement shall be construed to void the rights and obligations of the parties as set forth herein, to the extent such rights and obligations are consistent with law. The parties expressly agree they will fully perform this agreement to the extent it is consistent with the law.

d. If any part of this agreement is determined by a court of competent jurisdiction to be in excess of the Town's power and authority, such part shall be unenforceable by either party to this agreement. If any part of this agreement is held to be of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this agreement, which will continue in full force and effect.

3. Annexation.

a. Upon execution of this agreement by the parties, the Town agrees to enact all ordinances necessary to annex the Subject

Property, in accordance with the Colorado Municipal Annexation Act of 1965, as amended.

b. This agreement shall only become effective upon the annexation of the Subject Property in accordance with law. In the event the ordinance annexing the Subject Property does not become finally effective pursuant to Section 31-16-105, C.R.S., for any reason whatsoever, or, at the Town's option, a successful election upon a referendum petition properly filed with respect thereto has been held which disapproves the annexation ordinance, then in either such event, this agreement shall be automatically terminated and shall be null and void *ab initio* without any further action by the parties required. Upon such termination, the parties shall consent to the withdrawal of all applications, petitions, agreements, and other actions submitted or requested concerning the Subject Property. In such event, the parties shall take such actions and make such conveyances as are necessary to restore the parties to their original positions, and neither party shall have any further liability to the other.

4. Vested Rights.

No vested property rights shall accrue to the Landowner by virtue of this agreement and annexation of the Subject Property into the Town of Carbondale. Any vested property right of the Landowner to develop the Subject Property shall be acquired in the manner consistent with applicable law pursuant to a site specific development plan as set forth more fully in C.R.S. 24-68-101 et. seq.

5. Zoning.

The Subject Property shall be zoned according to an ordinance of the Town of Carbondale establishing P.U.D. zoning for the property. In the event that such an ordinance is not approved within ninety (90) days following the date of an ordinance approving this annexation, this agreement shall terminate and be void *ab initio* as set forth in paragraph 3 above. The P.U.D. zoning approval for the subject property shall not exceed a total of 134 units of which 84 may be multi-family units and the balance shall be single-family units. If the entire P.U.D. zoning shall be solely for single-family units, the maximum number of units shall be 90.

6. Development.

The Landowner acknowledges and agrees that the Town of Carbondale has the authority to approve or deny any zoning, development or subdivision proposals for the Subject Property and to impose any conditions in connection therewith. The Landowner irrevocably waives any rights, objections, and claims that it may have now or in the future against the Town arising out of the

procedure utilized or decisions made by the Town with respect to any zoning, development or subdivision applications that may be filed by the Landowner. Further, the Landowner acknowledges and agrees that in the event that approval of any zoning, development or subdivision application is denied or such application is approved with conditions not acceptable to the Landowner, the Landowner or the Town may thereafter take action on the Landowner's Petition to Disconnect as provided for in Section 8 hereof. The Landowner acknowledges and approves the following conditions of development, and agrees that said conditions may be amended in the future by the Town, and other conditions of zoning, development or subdivision may be imposed by the Town in addition to those listed below:

a. **Subdivision Improvements.** In the subdivision or development of the Subject Property, the Landowner hereby agrees to dedicate, develop, and pay for construction of all public improvements and the extension of all required utilities services in accordance with any applicable subdivision improvements agreement and Town ordinances and regulations then in effect. Such improvements may include paving, grading, landscaping, curbs, streets, gutters, sidewalks, road lighting, road signs, flood protection devices, water and sewer lines, sewer line interceptor, parks, irrigation ditches, bike paths, irrigation systems, drainage structures, landscaping, installation of utilities, payment of impact fees, payment of tap fees, providing security for such undertakings, and any other items set forth in the subdivision improvements agreement. Unless otherwise provided in any subdivision improvements agreement, design criteria for such improvements, as well as building sites, parking, parks, landscape areas and open spaces shall be subject to Town approval and shall be part of any final development plan submitted for the Subject Property.

b. **Subdivision Deadlines - Phasing.** The Landowner shall submit a preliminary subdivision plat within one year of the date of P.U.D. approval. The Landowner shall initiate construction of infrastructure items, including water and sewer lines, streets, sidewalks, and other items, within three (3) years of the date of final P.U.D. approval. The subdivision shall be completed in not less than two (2) or more than four (4) phases with approval of the final phase of the subdivision within six (6) years of the date of final P.U.D. approval. All multi-family lots shall be included and some single family lots may be included in the first phase. The phases for the project will be submitted with the preliminary plat for the first phase. For the purpose of this paragraph, the date of final P.U.D. approval shall be the date of approval of an ordinance by the Board of Trustees of the Town of Carbondale approving the Landowner's P.U.D. plan. In addition to the foregoing, the Landowner shall, at least annually, review the status of the development with the Board of Trustees. Notwithstanding the foregoing, the Landowner acknowledges and agrees that the Town may impose shorter deadlines than those set forth above as

a condition of approval of zoning or subdivision. In the event of non-compliance with the terms and conditions of this paragraph, in addition to all other remedies, the Town shall have the right to revoke zoning and/or subdivision approval of the undeveloped portion of the Subject Property following public hearing and notice to the Landowner.

c. **Water Rights.** The Landowner shall convey to the Town at the time of execution of this annexation agreement by special warranty deed conveying all water rights appurtenant to the Subject Property which shall include, without limitation, .3470 cfs of Priority No. 169 and .2965 cfs of Priority No. 408 of the Carbondale Town Ditch. In the event that the Town determines that the amount of water to be conveyed to the Town is insufficient to provide sufficient water for the use of this development, the Town shall have the right to notify the Landowner of the additional water needed, in which case, the Landowner shall obtain and provide the Town with additional water rights as the Town may determine necessary. Said water rights shall be of a type, amount and priority acceptable to the Town and shall be transferred to the Town by special warranty deed on or before the date of approval of a final subdivision plat for any phase of the subdivision of the development. The Landowner shall also provide affidavits as may be determined necessary by the Town setting forth the historic use of water on the property.

d. **Supplemental Water to Replace Non-Irrigation Season Requirements.** The Landowner shall be responsible for securing and maintaining a water allotment contract from the Basalt Water Conservancy District, in the name of the Town, for Ruedi Reservoir storage water in the amount of the non-irrigation season diversion requirements for the proposed development, as determined by a substitute supply plan approved by the state engineer, or in the amount of the non-irrigation season depletions associated with the proposed development as determined pursuant to a court approved plan for augmentation. The Landowner shall bear all costs for securing and maintaining in perpetuity said contract in the appropriate amount of water, and shall also bear all costs and fees assessed by the Basalt Water Conservancy District to the contract allottee in connection with securing any necessary approval of the substitute supply plan and/or plan for augmentation. Under present circumstances, it is the intention of the parties that the amount of water which Landowner shall contract for shall be the non-irrigation season direct diversion requirements attributable to the development in accordance with the Basalt Water Conservancy District substitute supply plan now approved by the state engineer. The projected non-irrigation season diversion requirement for the proposed development is estimated to be 28.01 acre-feet (26.68 + 5% conveyance loss). Accordingly, within ninety (90) days of the date hereof, the Landowner will secure, in the name of the Town, a water allotment contract with the Basalt Water Conservancy District for water stored in Ruedi Reservoir in the amount of 28.01 acre-feet.

Landowner shall maintain the allotment contract in such amount of water until such time as either the Basalt Water Conservancy District, the Landowner, or the Town obtains court approval for a plan for augmentation which allows Ruedi Reservoir water to replace only the non-irrigation season depletions associated with the proposed development. At such time as such a plan for augmentation is approved, the Landowner may reduce the amount of Ruedi Reservoir storage water under the water allotment contract to the amount necessary to cover the depletions associated with the proposed development as determined pursuant to the court approved augmentation plan. The obligation of the Landowner as set forth in this paragraph to enter into a water allotment contract for its direct diversion requirements for the development may be reduced and the Landowner only be required to enter into an allotment contract for its non-irrigation season depletions if the decree entered in Case No. 88CW421 now pending before the Water Court in and for Water Division No. 5 allows the water rights to be conveyed to the Town under this agreement be utilized within the Town for municipal purposes. Furthermore, the obligations in this paragraph may be assumed by a homeowners' association with the prior consent of the Town, which consent shall not be withheld provided the homeowners' association is created under Colorado law with appropriate procedural mechanisms and safeguards that the Town is assured that all sums due from the homeowners' association for the continuation of the appropriate allotment contract will be collected and paid.

e. **Water and Sewer Service.**

(1) **Water and Wastewater Master Plan.** The Landowner acknowledges that the Town of Carbondale has undertaken to formulate a master plan for water and sewer service, which plan will take into consideration the projected needs for this development. The parties expect that there will be significant expansion required of the Town's water and wastewater facilities in order to be able to provide service to this development. The Landowner agrees to participate in the cost of obtaining and completing said water and wastewater master plan on a proportionate basis and shall pay the sum so determined as the Landowner's share of the cost of said master plan within ten (10) days of a request for payment by the Town. The formula for calculating the Landowner's portion of such costs shall be as follows:

(a) Water - The total maximum number of EQRs for the project ÷ the total anticipated EQRs for the water system upon completion of improvements:

(b) Sewer - The total maximum number of EQRs for the project ÷ the total number of EQRs by which the sewer plant capacity is expanded above its present capacity.

Said payment shall be non-refundable.

(2) **Water and Sewer System Expansion-Tap Fees.** The parties acknowledge that in order to provide water and sewer service to this development and to other developments which are now in the planning stage, the Town of Carbondale will be required to significantly expand and improve the Town's present water and sewer treatment facilities and systems and to construct a sewer line interceptor. The cost of such expansion shall be included in water and sewer tap fees. Said fees may be increased over current rates once a determination of the costs of such expansion has been completed. Within ninety (90) days of the date hereof, the Landowner shall enter into an agreement acceptable to the Town which shall provide, among other things, that the Landowner will guarantee payment of water and sewer tap fees for at least 15 EQRs per year with all tap fees for the Subject Property being paid no later than ten (10) years from the date of this agreement. The agreement will provide that if in any year the number of taps purchased exceed 15 EQRs, the Landowner shall be allowed a credit against the guaranteed minimum number of EQRs that must be purchased in subsequent years. The parties recognize and agree that the actual number of EQRs of water and sewer may not be exactly 150 for this project and the Landowner's guarantee of annual payment for a minimum of 15 EQRs will end at final build-out of the project if that occurs prior to ten (10) years from the date of annexation. The agreement shall be an amendment to this annexation agreement and shall provide that the Landowner's obligation as set forth in this paragraph shall be secured by a letter of credit acceptable to the Town. In the event that an agreement is not reached between the Landowner and the Town within said ninety (90) day period, the Landowner will be deemed to be in default hereunder, and the Town will have all rights and remedies as set forth herein, including the right of disconnection as set forth in paragraph 8 hereof. Recording notice of termination pursuant to this paragraph by the Town shall conclusively establish that this agreement is void.

f. **Dry-Up Covenant.** It is contemplated that the development and construction of streets, sidewalks, driveways, parking lots, and single-family and multi-family residential units will result in the dry up of 8.94 acres of lands historically irrigated using the Carbondale Ditch water rights. Accordingly, the Landowner shall execute a dry-up covenant with the Town as part of the Subdivision Improvements Agreement which covenants that at least 8.94 acres of land owned by the Landowner and historically irrigated with the Carbondale Ditch water rights will be permanently and irrevocably removed from irrigation. Said covenant shall be binding on the Landowner, its successors and assigns as a covenant that will run with the land in perpetuity.

g. **Irrigation Ditches.** The location or relocation of irrigation ditches, together with issues relating to ditch improvements and engineering, shall be determined at the time of preliminary plat submittal. The Developer shall bear all expenses

associated therewith and shall obtain approval from ditch owners for any modifications of existing irrigation ditches if required by law or by the Town.

h. Other Utilities. Other utilities shall be provided to the Subject Property in compliance with the rules and regulations of the respective utility companies supplying such utilities and according to the applicable provisions of the Carbondale Municipal Code.

i. School Dedication Fee. The Landowner shall pay school dedication fees as may be required by the Town. All payments of school dedication fees shall be paid directly to RE-1 School District and shall be collected by the Town. The amount of the fees and the manner of payment and other terms and conditions relating to payment of school dedication fees shall be set forth in the Subdivision Improvements Agreement.

j. Parks and Public Open Space. The subdivision plat shall include a dedication of parks and open space as shown on the P.U.D. plat submitted to the Town containing a minimum of 5.38 acres. The Landowner will pay the park development fees set forth in §17.24.020(F) of the Carbondale Municipal Code except that the fees will be paid at the time a building permit is issued for each lot. The Landowner will not be required to provide the Town with a developed park. The layout of parks shall be subject to approval by the Town at the time of preliminary plat submittal.

k. Fire District Impact Fee. The Landowner and the Carbondale and Rural Fire Protection District are currently negotiating an agreement for payment of impact fees to the Fire District. The Carbondale and Rural Fire Protection District has requested that the Town approve and impose a \$235.00 per unit impact fee. The Town may impose a requirement that the Landowner pay an impact fee to the Carbondale and Rural Fire Protection District as a condition of subdivision approval.

l. Bike Path. The Landowner agrees to develop a bike path within the Subject Property as part of the subdivision process. The specifications for said bike path shall be set forth in the Subdivision Improvements Agreement.

m. Oak Run Connection. The Landowner shall within ninety (90) days of the date hereof obtain a perpetual easement in favor of the Town for pedestrian, bicycle, utility and emergency access purposes to connect Oak Run in Crystal Acres Subdivision with a roadway in the Subject Property in a manner acceptable to the Town. If such an easement has not been so obtained, the Landowner will be deemed to be in default hereunder, and the Town will have all rights and remedies as set forth herein, including the right of disconnection as set forth in paragraph 8 hereof. As an alternative to disconnection as a remedy if the Landowner is not

able to obtain said easement, the Town may enter into an agreement with the Landowner whereby the Town would seek to acquire the easement by condemnation with the Landowner paying all of the costs thereof.

n. **Secondary Irrigation System.** The Landowner shall be required to design and install a secondary water system for the development. Engineered plans shall be submitted to the Town for approval as part of the submittal of the preliminary subdivision plat. The system shall be designed to provide untreated water to all of the lots in the development. The Landowner acknowledges that the Town may require a piped and pressurized secondary irrigation system in connection with the development of this property. In the event that the Landowner and the Town are unable to reach an agreement as to the type of secondary irrigation system to be installed in connection with the development of this property, the Landowner will be deemed to be in default hereunder, and the Town will have all rights and remedies set forth herein, including the right of disconnection as set forth in paragraph 8 hereof.

o. **River Access.** The P.U.D. plan and map and the preliminary and final subdivision plats shall provide for public access to the Crystal River by dedication of an area of land acceptable to the Town as public open space.

p. **Fiscal Impact Fees.** The Landowner acknowledges that at the time of annexation, the Town of Carbondale is unable to determine the fiscal impact, if any, of the proposed development on the Town of Carbondale. The Town is presently attempting to analyze the fiscal impact of this and other developments. In connection therewith, the Landowner agrees to reimburse the Town within ten (10) days of receipt of an invoice therefor for its proportionate cost of the preparation of a fiscal impact analysis. The Landowner's proportionate share of the cost of said study shall be 13% of the total cost of said study. The Landowner agrees that the Town may impose an impact fee or other measures so that to the greatest extent possible this development will pay the anticipated fiscal impact that the development creates on the Town. In the event that the Landowner and the Town have not come to an agreement regarding the amount, terms of payment, and other matters relating to such impact fees within one hundred twenty (120) days of the date hereof, the Landowner will be deemed to be in default hereunder, and the Town will have all rights and remedies as set forth herein, including the right of disconnection as set forth in paragraph 8 hereof.

q. **Lift Station.** In the event that the Landowner shall need to make use of the Crystal Village lift station, the Landowner shall do so only with permission of the owner of the lift station and only if the Landowner has entered into an agreement with the Town regarding the Landowner's obligation for maintenance relating

to the Landowner's use of the lift station. If the utilization of another lift station is contemplated by the Landowner, the cost of installation and maintenance thereof shall be the sole responsibility of the Landowner. Any such lift station shall be subject to approval by the Town as part of the subdivision process and the provisions relating to such lift station shall be included in the Subdivision Improvements Agreement.

r. **Sewer Interceptor Line.** The Landowner shall install an oversize sewer line twelve (12) inches in diameter as part of the development of the Subject Property. The subdivision plat of the Subject Property shall provide for an easement for said sewer line at a location to be approved by the Town. The Subdivision Improvements Agreement shall contain a provision allowing the Landowner to recapture the cost of oversizing this sewer line from other users of the line.

s. **Colorado Department of Transportation.** In connection with the submittal of a preliminary subdivision plat, the Landowner shall submit its development plans to the Colorado Department of Transportation for its review. An access permit shall be obtained by the Landowner if required by the Colorado Department of Transportation.

7. Reimbursement of Costs.

Pursuant to Section 1.30.030 of the Carbondale Municipal Code, the Landowner shall pay to the Town the actual cost to the Town for engineering, surveying, legal, and other professional services rendered in connection with the Landowner's Petition for Annexation. Said costs shall be paid within twenty (20) days of passage of the ordinance approving the annexation of the Subject Property.

8. Petition to Disconnect.

Upon executing this agreement, the Landowner shall execute and deliver to the Town a Petition to Disconnect which shall apply for the enactment of an ordinance detaching and disconnecting the Subject Property to be annexed, such disconnection to occur pursuant to C.R.S. 1973, 31-12-501 et seq. The petition for disconnection or detachment shall provide that the Board of Trustees of the Town of Carbondale may act upon such petition and detach all or any part of the Subject Property referred to in such petition at any time if ---

a. The Landowner fails to comply with any of the terms and obligations imposed upon the Landowner by this agreement or any other agreement between the parties; or

b. The Landowner does not submit and prosecute faithfully an application for zoning and subdivision for the entire

Subject Property as set forth herein or as required by the Carbondale Municipal Code; or

c. The annexation of the Subject Property is not completed for any reason beyond the control of the Landowner or the P.U.D. zoning and subdivision are not approved authorizing the densities and zoning set forth above; or

d. The Town cannot feasibly supply water and/or sewer service to the Subject Property.

e. The Board of Trustees shall act upon such petition and detach all or any part of the Subject Property referred to in such petition at any time if the parties do not reach an agreement within the specified periods of time or otherwise comply with the requirements as set forth in Section 6 setting forth development requirements.

All ordinances approving subdivision or P.U.D. zoning and all subdivision agreements and P.U.D. agreements concerning the Subject Property shall be subject to the powers of the Town to disconnect the Subject Property or any part thereof pursuant to this agreement. In the event that disconnection occurs subsequent to the approval of a P.U.D. for the Subject Property and execution of a subdivision agreement, the disconnection shall terminate the subdivision agreement and shall cancel the P.U.D. approval, and the zoning of the Subject Property shall revert to the zoning prior to annexation. In addition, this agreement shall likewise terminate.

The Landowner hereby unconditionally waives whatever rights or claims that may arise by virtue of a delay between the date of filing of the application for detachment and disconnection, on the one hand, and the date on which the Town grants or denies such application by the enactment or refusal to enact an ordinance disconnecting the Subject Property, on the other hand.

9. No Guarantee of Water and Sewer Availability.

The parties acknowledge and agree that the Town of Carbondale does not and cannot guarantee the availability of water or sewer services to the Subject Property until such time as, in the sole discretion of the Town, water and sewer services can economically and reasonably be installed so as to provide services to the inhabitants of the Subject Property where the construction and establishment of such services is economically feasible and can be provided at no additional cost for the same or similar type of services provided the inhabitants within the existing limits of the Town of Carbondale. In addition, there shall be no obligation or duty upon the Town of Carbondale to furnish such water and sewer services in the event of any violation of this agreement by the Landowner. In the event that the Town, in its sole discretion, determines that it is not feasible to provide such water or sewer

services, either of the parties shall have the right to thereafter take action on the Landowner's Petition to Disconnect as provided for in Section 8 hereof. Notwithstanding the foregoing, the Landowner agrees that no improvements of any kind, including installation of utility lines and other matters relating to development of infrastructure items, shall be undertaken until a determination is made by the Town of Carbondale that water and sewer service can economically and feasibly be provided to the Subject Property.

10. Miscellaneous Provisions.

a. **Recording.** This agreement and any amendments to this agreement shall be recorded in the records of the Garfield County Clerk and Recorder, and upon recording shall be deemed a covenant running with all the real property described in Exhibit A, for the benefit of the Town and any real property owned by the Town, or other third parties.

b. **Enabling Ordinance.** To the extent required by law and by the terms of this agreement, the obligations and covenants of the Town are conditional upon the adoption by the Town of appropriate enabling ordinances.

c. **Compliance with Ordinances.** Nothing herein shall limit the obligations of the Landowner to comply with all zoning and subdivision ordinances of the Town of Carbondale, as well as other provisions of the Carbondale Municipal Code. Without limiting the foregoing, nothing in this agreement shall limit the authority of the Town of Carbondale to exercise its power otherwise available over the matters referred to in this agreement.

d. **Future Budgets.** All obligations of the Town imposed by this agreement are subject to future appropriations, and nothing in this agreement shall be deemed a call or demand on a future budget of the Town.

e. **Land Use Prohibition.** Prior to the Landowner's complete fulfillment of all of the obligations imposed on it under this agreement, the Landowner shall not sell, lease, improve, subdivide, apply for a building permit, or apply for a certificate of occupancy for all or any part of the Subject Property.

f. **Publication Costs.** The Landowner shall pay or reimburse the Town for all costs of publication, filing, and recording of all notices and other documents required in connection with the annexation of the Subject Property.

g. **Waiver.** By executing this agreement, the Landowner waives all rights it has concerning defects, if any, of form and substance of this agreement, the formalities whereby it is executed, and acquiesce in the power of the Town to impose on the

Landowner the conditions and requirements of this agreement. The Landowner also waives any defects that may have occurred in the hearing process, decisions by the Board of Trustees, and approval of any ordinances in connection herewith.

h. **Assignment.** This agreement shall not be transferred or assigned without the express written consent of both parties, except that Landowner may sell all or any portion of the Subject Property subject to the terms of this agreement which shall be binding on any purchaser or subsequent owner of all or any portion of the Subject Property as a covenant running with the Subject Property.

i. **Additional Remedies.** The parties to this agreement shall have all rights available at law or in equity to enforce the terms of this agreement, including the right of specific performance. In the event that any action is filed or maintained by any party in relation to this agreement, such action shall be brought in the Garfield County District Court. The prevailing party in any such litigation shall be entitled to its costs and reasonable attorney's fees.

j. **Non-Suit.** The annexation of the Subject Property shall not render the Town liable for any loss or damage that may be suffered by any person or caused to any property as the result of any use of the Subject Property or any act or omission in the Subject Property arising in connection with the annexation of the Subject Property, or with any subsequent approval of a P.U.D. plan or any subdivision plan by the Town.

k. **Breach Waivers.** The failure of either party to act upon or the waiver of any rights concerning the default or breach of all or any part of this agreement by the other party shall not be deemed a waiver on the part of the non-breaching and non-defaulting party of rights concerning any other or subsequent breach.

l. **Landowner's Representations.** This agreement contains all of the understandings, conditions, and agreements between the parties relating to annexation, and no other prior or current representation, oral or written, shall be effective or binding upon the parties, except for any subdivision improvements agreement that may have previously been executed by the parties, and except for representations made by the Landowner, or its agent, at public hearings concerning the Subject Property.

m. **Authority to Sign.** The signatories to this agreement affirm and warrant that they are fully authorized to enter into and execute this agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this agreement have been made.

n. **Guarantee.** Each and every obligation of the Landowner as set forth herein is hereby jointly, severally, and personally and unconditionally guaranteed by Jon Seigle and Frank Taverna.


o. **Binding Effective Agreement.** This agreement, when executed, shall inure to the benefit of and be binding upon the successors in interest and legal representatives of the respective parties hereto, including all purchasers and subsequent owners of the Subject Property, or any part thereof.

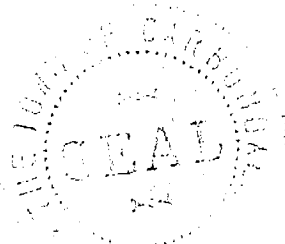
p. **Waiver of Defect.** In executing this agreement, the Landowner waves all rights it may have concerning defects, if any, of the form or substance of this agreement, and the formalities whereby it is executed; concerning the power of the Town to impose conditions on Landowner as set forth herein; and concerning the procedure, substance, and form of the ordinances or resolutions adopting this agreement.

q. **Applicable Law.** This agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability.

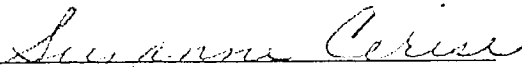
IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the day and year first above written.

TOWN OF CARBONDALE, COLORADO,
A Municipal Corporation, acting
by and through its Board of
Trustees.


By: 
William K. Gray, Mayor

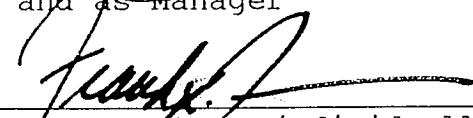


ATTEST:


Suzanne Cerise, Town Clerk

HENDRICK RANCH ASSOCIAT^{ES},
LIMITED LIABILITY COMPANY

By: 
Jon Seigle-individually
and as Manager

By: 
Frank Taverna-individually
and as Manager

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Subscribed and sworn to before me this 24TH day of May, 1994, by William K. Gray and Suzanne Cerise, as Mayor and Town Clerk, respectively, of the Town of Carbondale, Colorado.

Witness my hand and official seal.

Kerry Kagerer
Notary Public

My commission expires: 7-30-97

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

Subscribed and sworn to before me this 16 day of May, 1994, by Jon Seigle, individually and as Manager of Hendrick Ranch Association, Limited Liability Company.

Witness my hand and official seal.

Robert Stewart
Notary Public

My commission expires: 6-9-96

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

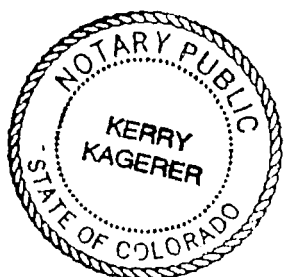
Subscribed and sworn to before me this 17 day of May, 1994, by Frank Taverna, individually and as Manager of Hendrick Ranch Association, Limited Liability Company.

Witness my hand and official seal.

Kerry Kagerer
Notary Public

My commission expires: 10/1/97

051294-town\hendrick.anx-jc



DESCRIPTION

A tract of land situated in Lot 13 of Section 34, Township 7 South, Range 88 West of the 6th P.M. and also in Lot 4 of Section of Section 3 and in Lot 1 of Section 4, Township 8 South, Range 88 West of the 6th P.M., Garfield County, Colorado, and being more particularly described as follows:

Beginning at a street center monument at the centerline intersection of Eighth Street and Euclid Avenue in the Town of Carbondale, Colorado; thence S 89°57'00" E 176.62 feet; thence S 00°03'00" W 826.30 feet; thence N 75°54'00" W 45.70 feet to the true point of beginning; thence along the west line of a parcel of land described in Book 700 at Page 722 of the Records of the Garfield County Clerk and Recorder the following two (2) courses: [1] S 00°35'42" E 460.77 feet; thence [2] S 00°40'59" E 298.46 feet; thence along the south line of said parcel described in Book 700 at Page 722 S 89°57'00" E 35.33 feet; thence N 89°19'15" E 112.93 feet along the south line described in Book 700 at Page 722; thence S 00°03'00" W 239.60 feet to a point on the northerly boundary of a tract of land described in Book 457 at Page 97; thence along said northerly boundary the following two (2) courses: [1] S 87°56'00" W 893.80 feet; thence [2] S 02°04'00" E 14.26 feet to a point on the southerly boundary line of said Lot 4; thence S 88°10'34" W 562.67 feet to the center of the Crystal River; thence N 75°23'42" W 41.40 feet down the center of said Crystal River; thence N 74°50'00" W 443.75 feet down the center of said Crystal River; thence N 00°11'30" E 283.07 feet; thence N 01°27'00" E 81.61 feet; thence N 00°20'30" E 12.21 feet; thence N 71°48'10" E 528.19 feet; thence S 33°08'00" E 286.19 feet; thence N 56°52'00" E 400.00 feet; thence N 33°08'00" W 400.00 feet to a point on the southeasterly boundary line of an access utility and drainage easement described as Reception No. 263837 in Book 461 at Page 509 of the Records of the Garfield County Clerk and Recorder; thence along said southeasterly boundary line on a course bearing N 56°52'00" E 595.08 feet to a point on the southwesterly right-of-way line of Highway No. 133; thence along said right-of-way line for 478.31 feet along the arc of a 1206.00 foot radius non-tangent curve to the left, the chord of which bears S 61°26'31" E 475.18 feet; thence S 75°54'00" E 76.05 feet along said right-of-way line to the true point of beginning.

Said parcel contains 34.348 acres, more or less.