



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: January 5, 2021:

ORIGINATING DEPARTMENT: Administration	PRESENTED BY: Erin Kelley
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ITEM:

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

BACKGROUND:

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

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

STAFF RECOMMENDATION:

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

SUGGESTED MOTIONS:

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

Colorado Liquor Retail License Application

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

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

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

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

2a. Trade Name of Establishment (DBA) **MojoEatery** State Sales Tax Number **94527339** FEIN Number **██████████**
Business Telephone **(719) 207-3230**

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

City **Salida** County **Chaffee** State **Co** ZIP Code **81201**

4. Mailing Address (Number and Street) **142 Old Stage Rd** City or Town **Salida** State **Co** ZIP Code **81201**

5. Email Address **andrew-misty@mojoseatery.com**

6. If the premises currently has a liquor or beer license, you must answer the following questions
Present Trade Name of Establishment (DBA) Present State License Number Present Class of License Present Expiration Date

Section A

Nonrefundable Application Fees*

- ☒ Application Fee for New License\$1,550.00
☒ Application Fee for New License w/Concurrent Review\$1,650.00
☐ Application Fee for Transfer\$1,550.00

Section B

Liquor License Fees*

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

Section B (Cont.)

Liquor License Fees*

- ☐ Liquor-Licensed Drugstore (County)\$312.50
☐ Lodging & Entertainment - L&E (City)\$500.00
☐ Lodging & Entertainment - L&E (County)\$500.00
☒ Manager Registration - H&R Beer and wine\$75.00
☐ Manager Registration - Tavern\$75.00
☐ Manager Registration - Lodging & Entertainment\$75.00
☐ Manager Registration - Campus Liquor Complex\$75.00
☐ Optional Premises License (City)\$500.00
☐ Optional Premises License (County)\$500.00
☐ Racetrack License (City)\$500.00
☐ Racetrack License (County)\$500.00
☐ Resort Complex License (City)\$500.00
☐ Resort Complex License (County)\$500.00
☐ Related Facility - Campus Liquor Complex (City)\$160.00
☐ Related Facility - Campus Liquor Complex (County)\$160.00
☐ Related Facility - Campus Liquor Complex (State)\$160.00
☐ Retail Gaming Tavern License (City)\$500.00
☐ Retail Gaming Tavern License (County)\$500.00
☐ Retail Liquor Store License-Additional (City)\$227.50
☐ Retail Liquor Store License-Additional (County)\$312.50
☐ Retail Liquor Store (City)\$227.50
☐ Retail Liquor Store (County)\$312.50
☐ Tavern License (City)\$500.00
☐ Tavern License (County)\$500.00
☐ Vintners Restaurant License (City)\$750.00
☐ Vintners Restaurant License (County)\$750.00

* Note that the Division will not accept cash

Questions? Visit: www.colorado.gov/enforcement/liquor for more information

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

License Account Number	Liability Date	Liability Information	Total
		License Issued Through (Expiration Date)	\$

Application Documents Checklist and Worksheet

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

Items submitted, please check all appropriate boxes completed or documents submitted

I. Applicant information

- ☒ A. Applicant/Licensee identified
- ☒ B. State sales tax license number listed or applied for at time of application
- ☒ C. License type or other transaction identified
- ☐ D. Return originals to local authority (additional items may be required by the local licensing authority)
- ☐ E. All sections of the application need to be completed
- ☐ F. Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application

II. Diagram of the premises

- ☒ A. No larger than 8 1/2" X 11"
- ☒ B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.)
- ☐ C. Separate diagram for each floor (if multiple levels)
- ☐ D. Kitchen - identified if Hotel and Restaurant
- ☒ E. Bold/Outlined Licensed Premises

III. Proof of property possession (One Year Needed)

- ☐ A. Deed in name of the applicant (or) (matching question #2) date stamped / filed with County Clerk
- ☒ B. Lease in the name of the applicant (or) (matching question #2)
- ☐ C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant
- ☐ D. Other agreement if not deed or lease. (matching question #2)

IV. Background information (DR 8404-I) and financial documents

- ☒ A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members)
- ☒ B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved state vendor. **Do not complete fingerprint cards prior to submitting your application.**
The Vendors are as follows:
IdentoGO – <https://uenroll.identogo.com/>
Phone: 844-539-5539 (toll-free)
IdentoGO FAQs: <https://www.colorado.gov/pacific/cbi/identification-faqs>
Colorado Fingerprinting – <http://www.coloradofingerprinting.com>
Appointment Scheduling Website: <http://www.coloradofingerprinting.com/cabs/>
Phone: 720-292-2722 Toll Free: 833-224-2227
- ☐ C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license
- ☒ D. List of all notes and loans (Copies to also be attached)

V. Sole proprietor/husband and wife partnership (if applicable)

- ☒ A. Form DR 4679
- ☒ B. Copy of State issued Driver's License or Colorado Identification Card for each applicant

VI. Corporate applicant information (if applicable)

- ☐ A. Certificate of Incorporation
- ☐ B. Certificate of Good Standing
- ☐ C. Certificate of Authorization if foreign corporation (out of state applicants only)

VII. Partnership applicant information (if applicable)

- ☐ A. Partnership Agreement (general or limited).
- ☐ B. Certificate of Good Standing

VIII. Limited Liability Company applicant information (if applicable)


- ☒ A. Copy of articles of organization
- ☒ B. Certificate of Good Standing
- ☐ C. Copy of Operating Agreement (if applicable)
- ☐ D. Certificate of Authority if foreign LLC (out of state applicants only)

IX. Manager registration for Hotel and Restaurant, Tavern, Lodging & Entertainment, and Campus Liquor Complex licenses when included with this application

- ☐ A. \$75.00 fee
- ☐ B. Individual History Record (DR 8404-I)
- ☐ C. If owner is managing, no fee required

Name	Type of License	Account Number													
<p>7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):</p> <p style="margin-left: 20px;">a. Been denied an alcohol beverage license? <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p style="margin-left: 20px;">b. Had an alcohol beverage license suspended or revoked? <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p style="margin-left: 20px;">c. Had interest in another entity that had an alcohol beverage license suspended or revoked? <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>If you answered yes to 8a, b or c, explain in detail on a separate sheet.</p> <p>9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail. <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary? <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p style="text-align: right;">or</p> <p style="text-align: right;">Waiver by local ordinance? <input type="checkbox"/> <input type="checkbox"/></p> <p style="text-align: right;">Other: _____</p> <p>11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>13 a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016? <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>13 b. Are you a Colorado resident? <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee. <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement? <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p style="margin-left: 20px;"><input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____</p> <p style="margin-left: 20px;">a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border-bottom: 1px solid black;">Landlord <div style="text-align: center;">Parcel 2 LLC</div></td> <td style="width: 33%; border-bottom: 1px solid black;">Tenant <div style="text-align: center;">Andrew Modrzejewski</div></td> <td style="width: 34%; border-bottom: 1px solid black;">Expires <div style="text-align: center;">5/1/2025</div></td> </tr> </table> <p style="margin-left: 20px;">b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16. <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p style="margin-left: 20px;">c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".</p> <p>16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%; border-bottom: 1px solid black;">Last Name</td> <td style="width: 25%; border-bottom: 1px solid black;">First Name</td> <td style="width: 15%; border-bottom: 1px solid black;">Date of Birth</td> <td style="width: 20%; border-bottom: 1px solid black;">FEIN or SSN</td> <td style="width: 15%; border-bottom: 1px solid black;">Interest/Percentage</td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> </table> <p>Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.</p> <p>17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted? <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p style="text-align: right;">Number of additional Optional Premise areas requested. (See license fee chart) <input type="text"/></p> <p>18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.</p> <p>19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:</p> <p style="margin-left: 20px;">a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? <input type="checkbox"/> <input type="checkbox"/></p> <p style="margin-left: 20px;">If "yes" a copy of license must be attached.</p>			Landlord <div style="text-align: center;">Parcel 2 LLC</div>	Tenant <div style="text-align: center;">Andrew Modrzejewski</div>	Expires <div style="text-align: center;">5/1/2025</div>	Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage					
Landlord <div style="text-align: center;">Parcel 2 LLC</div>	Tenant <div style="text-align: center;">Andrew Modrzejewski</div>	Expires <div style="text-align: center;">5/1/2025</div>													
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage											

Name	Type of License	Account Number		
20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation				
a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
c. How long has the club been incorporated?				
d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:				
a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		Yes <input type="checkbox"/> No <input type="checkbox"/>		
22. Campus Liquor Complex applicants answer the following:				
a. Is the applicant an institution of higher education?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
b. Is the applicant a person who contracts with the institution of higher education to provide food services?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
If "yes" please provide a copy of the contract with the institution of higher education to provide food services.				
23. For all on-premises applicants:				
a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record				
- DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details.				
b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application				
- DR 8000 and fingerprints.				
Last Name of Manager		First Name of Manager		
24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
25. Related Facility - Campus Liquor Complex applicants answer the following:		Yes <input type="checkbox"/> No <input type="checkbox"/>		
a. Is the related facility located within the boundaries of the Campus Liquor Complex?				
If yes, please provide a map of the geographical location within the Campus Liquor Complex.				
If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.				
b. Designated Manager for Related Facility- Campus Liquor Complex				
Last Name of Manager		First Name of Manager		
26. Tax Information.				
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.				
Name	Home Address, City & State	DOB	Position	%Owned
ANDREW MODRZEJENSKI	1000 S. 10TH AVE, CO 81201	11/11/1978	CHIEF/OWNER	40.75
MISTY MODRZEJENSKI	1000 S. 10TH AVE, CO 81201	11/11/1978	OWNER/MANAGER	40.75
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above.				
** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)				
** If total ownership percentage disclosed here does not total 100%, applicant must check this box:				
<input checked="" type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.				

Name		Type of License	Account Number	
Oath Of Applicant				
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.				
Authorized Signature 		Printed Name and Title ANDREW MORITZEWSKI CHEF/OWNER		Date 11/18/20
Report and Approval of Local Licensing Authority (City/County)				
Date application filed with local authority		Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application)		
The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:				
<input checked="" type="checkbox"/> Fingerprinted <input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants				
That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license				
(Check One)				
<input type="checkbox"/> Date of inspection or anticipated date _____ <input type="checkbox"/> Will conduct inspection upon approval of state licensing authority				
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?				Yes No <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?				<input type="checkbox"/> <input type="checkbox"/>
NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.				
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?				<input type="checkbox"/> <input type="checkbox"/>
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. Therefore, this application is approved.				
Local Licensing Authority for		Telephone Number		<input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title	Date	
Signature	Print	Title	Date	



448 East 1st Street, Suite 112
SALIDA, CO 81201

PHONE 719-539-4555
FAX 719-539-5271

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

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

A hearing on the application received November 25, 2020 will be held before the Local Licensing Authority of the City of Salida, Colorado at the hour of 6:00 p.m., or as soon thereafter as may be heard, on Tuesday, January 5, 2021, remotely through the GoToWebinar application via the following direct link:

<https://attendee.gotowebinar.com/register/2923586433681497360>

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

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

LOCAL LICENSING AUTHORITY


Erin Kelley, City Clerk

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

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

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

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

LOCAL LICENSING AUTHORITY

Erin Kelley, City Clerk

FRIDAY, DECEMBER 4, 2020

approximately 74.3
in size from
and on-site
s will serve
the 100-year

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

PUBLIC NOTICE

1. MAX. THERMOSTAD (A/F & DIFFERENCE, °F)
2. FLOOR SQR. (SQR. PER CHIMNEY)
3. ELECT. HEAT WATERS HEATER
4. BTU. HEATING CAPACITY * FLOOR AREA(S) HEATED NORMALLY
5. FURNACE CAPACITY (CUBIC FT. PER HOUR) CASE
6. ADD. NOTES (SEE TABS. 10-15)

- EXT LIGHT

1 - DIMOTES 1-4R PWR. ADJUSTLY
(PWR. ADJ. & ADJ.4)

2 - DIMOTES 2-4R PWR. ADJUSTLY
(PWR. ADJ. & ADJ.4)

I. Occupancy Classification: Chapter 3
 A. 142 Old Stage Road
 Assembly Group A-2 Restaurant

II. Construction Type: Chapter 6
 A. Table 601 Type V-3
 B. Five-eighth Rating of Exterior Wall
 144 Old Stage/142 Old Stage (B/A) - interior
 property line: < 5'-0" = 2' bow wall existing

II. Construction Types Chapter 6
 A. Table 601: Type V-B
 B. Fire-resistant Rating of Exterior Wall
 144 Old Sage/142 Old Sage (B/A): interior
 property line; $< 5'-0"$ = 2 hour wall enclosing

III. General Building Heights & Areas: Chapter 5
A. Heights, stories, and areas
a. Table 504.3 Allowable Building Height
VB: A (NS) = 40'-0"
b. Table 504.4 Allowable No. of Stories
VB: A-2 (NS) = 1 story
c. Table 504.2 Allowable Area
VB: A-2 (NS) = 6,000 sq ft > 700' sq ft

IV. Fire Protection Systems: Chapter 9

B. Section 903 Automatic Sprinkler Systems

a. 903.2.1.2 Group A-2 - Not required -
 < 5,000 sq. ft. < 100 occupants, on level of
 discharge

C. Section 907 Fire Alarm - Not required

D. Section 906 Fire Extinguishers

a. 906.1 Where required

A-2; 1 required within 30'-0" of cooking

Means of Egress:
Occupant Load: Chapter 10, Table 1004.1.2
Waiting/Seating: 861 sq. ft. = 13 occupants
196 sq. ft. 8/15 net = 3 occupants
Commercial Kitchen:
340 sq. ft./200 gross = 2 occupants
13 occupants
Inside Total:
Outside seating: 560 sq. ft./15 net = 37 occ;
Pais Access: Section 1006, Table 1006.2.1

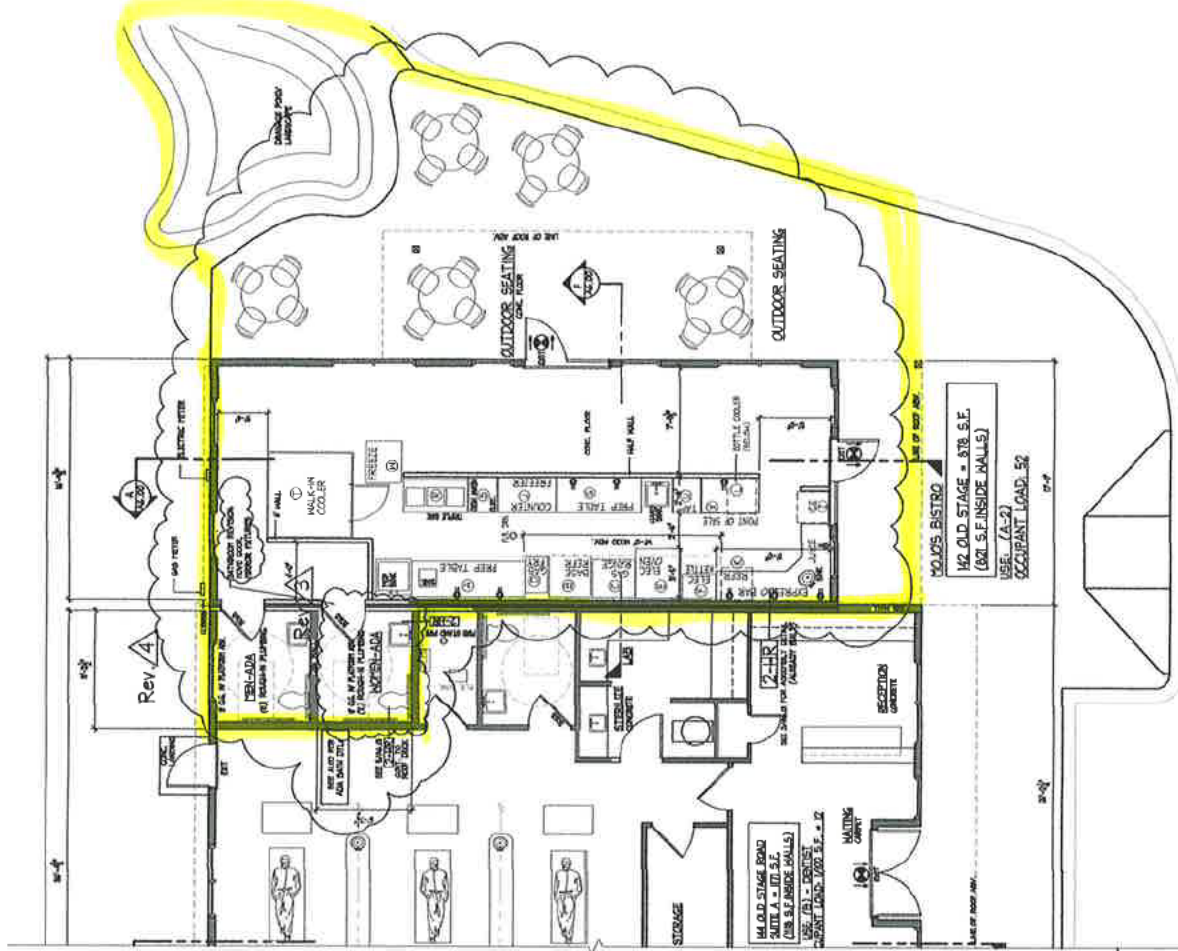
e. A-2:
 <49 occupants
 Common path of egress: 75'-0"
 Number of exits: 1 required

VL Accessibility: Chapter 11
A. 1103 Scoping requirements
1. Approach, enter and exit facility. Accessible

2. Accessible restrooms in unit entrance.

WC: Male: 1/75 = 26/75 = 1 WC required
Female: 1/75 = 26/75 = 1 WC required
Lavatory: Both: 1/200 = 26/200 = 1 lav/263 required

Provide one Utility sink



1 FLOOR PLAN
N/A SCALE: 1/8" = 1'-0"

	Rev. A7-15-20 New From Truck
DRINK BTL: T. POLAROID	Rev. W6-1-19 INTERIOR BUILD-OUT
REVISED BY: S. MERTINGTON	Rev. S2-7-1-19 LO-HSE & BATHROOMS
	Rev. A3-2-15-19 Add Table & Chairs Use

TWO RIVERS COMMONS; PARCEL 2 -TENANT FINISH
142 & 144 OLD STAGE RD.
SALIDA, CO 81201

June 1, 2020

COMMERCIAL LEASE -

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

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

approximately 878 square feet in a retail center situated in the City of Salida, Colorado, 142 Old Stage Road, being a part of a retail building located at 144 and 142 Old Stage Road and legally described as:

Lot 13 of the Two Rivers Subdivision in Salida, Colorado

Together with the following:

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

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

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

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

4. **DEPOSIT:** The Lessee has deposited with Lessor, and will keep on deposit at all times during the term of this Lease and any extensions thereof, the sum [REDACTED] IN [REDACTED] ([REDACTED]), as security for payment by the Lessee of all the terms, conditions, and covenants of this Lease and also as security for those damages which Lessee may cause. Said deposit shall not bear interest accruing to the benefit of the Lessee. The Lessor may apply the deposit to cure any default under the terms of the Lease and shall account to Lessee for the balance. Lessee may not apply the deposit hereunder to the payment of rent received hereunder or the performance of other obligations.

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

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

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

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

[REDACTED]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. **ENVIRONMENTAL PROVISIONS:** Lessee, prior to the Commencement Date, shall obtain all permits necessary for Lessee to operate its business, and shall thereafter continue to comply with all city, county, state, and federal laws applicable to Lessee's business and Hazardous Materials (as defined herein). Lessee shall not discharge any chemicals or other Hazardous Materials into the sewer system or sanitary sewer or Shopping Center drains, and if Lessee does so, Lessee shall immediately report same to the appropriate city and state authorities.

Lessee agrees that at the expiration or other termination of this Lease, the Premises will not be in violation of any city, county, state or federal law, ordinance or regulation relating to environmental conditions on, under or about the Premises, including, but not limited to, soil and groundwater conditions, which shall have been caused by Lessee's negligence or unlawful acts, and Lessee shall submit Lessee's affidavit to Lessor to such effect. If there is such contamination, Lessee shall, at its own cost, promptly cause said contamination to be removed and furnish Lessor with a closure letter from the Colorado Department of Health showing the removal of all contamination.

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

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

17. ALTERATIONS AND LESSEE FINISH:

See Additional Provisions section

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

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

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

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

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

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

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

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

18. **MECHANICS' LIENS:** Lessee agrees that at no time during the term of this Lease will it cause a lien or encumbrance of any kind or nature to come into existence against the Premises. If Lessee causes a lien or encumbrance to be filed against the Premises, Lessee shall promptly discharge said lien or encumbrance, and if the lien or encumbrance has not been removed within thirty (30) days from the date it is filed or recorded against the Premises, Lessee agrees that it will deposit with Lessor in cash or a satisfactory bond an amount sufficient to satisfy the claim of the person or concern filing the lien or encumbrance, and shall leave the same on deposit with Lessor until said lien is discharged. In the event Lessor is included in any litigation regarding a claimed lien, Lessee shall hold Lessor harmless and indemnify Lessor from any and all liability, costs, attorney's fees, and other charges incurred by Lessor in connection with such litigation.

19. **ACCESS** The Lessor and/or his agents or employees shall have the right at any time to enter the Premises to inspect and examine same or to make such repairs, additions or alterations as it may deem necessary or proper for the safety, improvement or preservation thereof, and shall at all times have the right, at its election, to make such alterations and changes to other portions of said building as it may from time to time deem necessary and desirable.

20. **SUBLETTING:** Lessee agrees that it will not sublet all or part of the demised Premises, nor assign this Lease, or any interest therein, nor sell or transfer its business without first obtaining the prior written consent of Lessor, which consent shall not be unreasonably withheld. Should such a transfer or sale occur, Lessee shall be required to pay to Lessor a one-time non-refundable fee of \$750.00 to defray the costs of reviewing the request.

21. **CONTINUED USE:** It is the essence of this Lease that the Lessee shall occupy and use the Premises for the purpose hereinabove specified, continuously and uninterruptedly, during the full term of this Lease and any extensions thereof, unless Premises are rendered unleaseable by reason of fire or unavoidable casualty.
22. **PARKING:** Lessor hereby grants to Lessee, its customers and invitees, the non-exclusive right for and during the term of this lease and any extension thereof to use the parking area, driveways and walkways, such use to be in common with the Lessor and all Lessees of the Lessor, their customers, agents and invitees except at such time as the parking lot or any other part of the common area is being cleaned, repaired or replaced. Nothing herein shall grant the Lessee the right to use any such parking area, driveway or walkway for storage, promotion or sales purposes, or to obstruct or impede pedestrian and vehicular traffic thereon.
23. **SIGNS:** Lessee shall not erect, paint, or cause to be placed upon the Premises or the building of which the Premises are part any exterior or window signs, lettering, or other advertising media without prior written consent of Lessor. Lessee agrees not to use any types of advertising or promotion which might be objectionable to, or disturb the enjoyment of, other Lessees, such as loud speakers, music, etc., which broadcasts in such a manner as to be heard outside the demised Premises.
24. **INSURANCE:** Lessee shall not carry any stock of goods or do anything on or about the Premises which will, in any way, tend to increase the insurance rates on said Premises. Lessee agrees not to store any flammable or toxic substances or chemicals excluding acetone and those other products commonly used in the Lessee's business, provided that all such materials are stored in proper containers and in the amounts set forth above, in or around the Premises, not to overload existing electrical wiring, or to cause any other potential hazard to the Premises or the building of which it is part .
- Lessee agrees to obtain, at its sole expense, insurance to cover all exterior doors, glass windows, and plate glass in the demised Premises, insurance thereon to insure the same against breakage, theft or other damage and to carry liability insurance upon the demised Premises of not less than \$1,000,000.00 or such other limits as Lessor and/or his insurance company may from time to time require. Lessors shall not carry insurance for loss by fire, water, theft, vandalism or any loss by any cause whatsoever to Lessee's leasehold improvements, belongings and possessions. Lessee shall furnish a Certificate of Insurance to Lessor evidencing compliance with the foregoing insurance requirement. Said Certificate shall have a thirty (30) day notice of cancellation clause and shall name Parcel 2, LLC and Salida Rentals, LLC as additional named insureds.
25. **REPLACEMENT OF BUILDING:** The Lessor shall keep the building of which the demised Premises are a part insured against any loss or damage by fire and further agree that if the building on which the demised Premises are a part is damaged or destroyed by fire or any other cause, so long as said damage is not directly attributable to the negligence of the Lessee, the Lessor will proceed with all due diligence to restore the same to the condition as it existed before such damage or destruction, and as soon as possible thereafter, provided, however, that, in the opinion of the Lessor the building is not so badly damaged that it is not feasible to rebuild or repair same. In that case, the Lessor shall have the right to terminate this Lease instead of rebuilding the improvements. If, because of fire or other casualty, the Premises are rendered unleaseable, then and in that event, rent shall abate until the Premises are restored to their former condition.

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

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

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

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

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

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

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

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

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

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

34. **ATTORNEY'S FEES:** Lessee agrees to pay all costs and attorney's fees resulting from reason of any breach or default of this Lease by Lessee.
35. **WAIVER:** No waiver of any breach of one or more conditions of the covenants of this Lease by the Lessor shall be deemed to imply or constitute a waiver of any succeeding or any other breach hereunder.
36. **AMENDMENT OR MODIFICATION:** Lessee acknowledges that he has not relied upon any statements, representations, agreements or warranties, except as are expressed herein. No agreement or modification of this Lease shall be binding or valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Lease. Verbal arrangements and agreements are not binding.
37. **HOLDING AFTER TERMINATION:** It is mutually agreed that if after the expiration of this Lease Lessee shall remain in possession of the Premises without a written agreement to such holding, then such holding shall be deemed to be a holding upon a month to month rental, equivalent to one hundred twenty per cent (120%) of the last monthly rental payment provided for herein, payable in advance on the same day of the month as hereinabove provided; all other terms and conditions of this Lease remaining the same. Lessor may place or caused to be placed a "For Lease" sign on the premises sixty (60) days prior to the end of the Lease term.
38. **BROKERAGE:** None
39. **DISCLAIMER:** lessor and lessee expressly disclaim any implied warranty that the leased premises are suitable for Lessor's intended commercial purpose, and Lessor's obligation to pay rent hereunder is not dependent upon the condition of the leased premises or the performance by lessor of its obligations hereunder, and, except as otherwise expressly provided herein, lessee shall continue to pay the rent, without abatement, demand, setoff or deduction, notwithstanding any breach by lessor of its duties or obligations hereunder, whether express or implied.
40. **BINDING EFFECTS:** It is agreed that the covenants and conditions contained herein shall be

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

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

41) ADDITIONAL PROVISIONS:

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

SIGNATURE PAGE

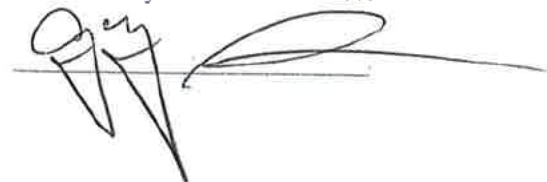
EXECUTED IN DUPLICATE this 1ST day of June, 2020 by and between:

LESSOR:



LESSEE:

Individually and as Guarantor





Document must be filed electronically.
Paper documents are not accepted.
Fees & forms are subject to change.
For more information or to print copies
of filed documents, visit www.sos.state.co.us.

Colorado Secretary of State
Date and Time: 07/21/2020 09:10 AM
ID Number: 20201619014
Document number: 20201619014
Amount Paid: \$50.00

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Organization

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

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

MojosEateryLLC

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

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

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

Street address

142 old stage road

(Street number and name)

salida

(City)

CO

(State)

81201

(ZIP/Postal Code)

United States

(Country)

(Province – if applicable)

Mailing address

(leave blank if same as street address)

(Street number and name or Post Office Box information)

(City)

(State)

(ZIP/Postal Code)

(Province – if applicable)

(Country)

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

Name

(if an individual)

Modrzejewski

(Last)

Andrew

(First)

Thomas

(Middle)

(Suffix)

or

(if an entity)

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

Street address

1140 F street

(Street number and name)

Salida

(City)

CO

(State)

81201

(ZIP Code)

Mailing address

(leave blank if same as street address)

(Street number and name or Post Office Box information)

(City) CO (State) _____
(ZIP Code)

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

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

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

Name
(if an individual) Modrzejewski Andrew Thomas
(Last) (First) (Middle) (Suffix)
or

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

Mailing address 1140 F street
(Street number and name or Post Office Box information)
Salida CA 81201
(City) (State) (ZIP/Postal Code)
United States
(Province - if applicable) (Country)

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

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

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

(Mark the applicable box.)

☐ one or more managers.

or

☒ the members.

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

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

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

☐ This document contains additional information as provided by law.

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

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

The delayed effective date and, if applicable, time of this document is/are _____
(mm/dd/yyyy hour:minute am/pm)

Notice:

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

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

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

<u>Modrzejewski</u>	<u>Andrew</u>	<u>Thomas</u>	
<small>(Last)</small>	<small>(First)</small>	<small>(Middle)</small>	<small>(Suffix)</small>
<u>1140 F street</u>			
<small>(Street number and name or Post Office Box information)</small>			
<hr/>			
<u>Salida</u>	<u>CO</u>	<u>81201</u>	
<small>(City)</small>	<small>(State)</small>	<small>(ZIP/Postal Code)</small>	
<u>United States</u>			
<small>(Province – if applicable)</small>		<small>(Country)</small>	

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

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

Disclaimer:

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

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

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

MojosEateryLLC

is a

Limited Liability Company

formed or registered on 07/21/2020 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20201619014 .

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

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 07/27/2020 @ 09:10:13 in accordance with applicable law. This certificate is assigned Confirmation Number 12490354 .



Jena Griswold

Secretary of State of the State of Colorado

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

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF DOCUMENT FILED

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

Articles of Organization

with Document # 20201619014 of
MojoEateryLLC

Colorado Limited Liability Company

(Entity ID # 20201619014)

consisting of 3 pages.

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

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 07/27/2020 @ 09:06:39 in accordance with applicable law. This certificate is assigned Confirmation Number 12490340 .



Jena Griswold

Secretary of State of the State of Colorado

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

**OPERATING AGREEMENT
MOJOSEATERYLLC
A COLORADO LIMITED LIABILITY COMPANY**

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

WITNESSETH:

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

**I
FORMATION OF COMPANY**

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

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

**II
PURPOSES AND GOALS**

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

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

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

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

III CAPITAL CONTRIBUTIONS

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

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

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

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

IV MEMBERS' ACCOUNTS; ALLOCATION OF PROFIT AND LOSS; DISTRIBUTIONS

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

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

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

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

4.4. *Distributions of Assets.*

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

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

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

V

RULES RELATING TO THE MEMBERS

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

5.2 *Voting of Members.*

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

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

5.3. *Meetings of Members.*

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

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

5.3.3. Special meeting of the Members may be called by at least one-half (½) of all of the Members entitled to vote at the meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI BOOKS

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

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

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

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

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

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

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

VII DISSOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VIII EXPULSION OF A MEMBER

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

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

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

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

IX

BANKRUPTCY OF A MEMBER

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

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

X

VOLUNTARY RESIGNATION OF A MEMBER

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

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

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

XI DEATH OF A MEMBER

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

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

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

XII TRANSFER OF A MEMBER'S INTEREST

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

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

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

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

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

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

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

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

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

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

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

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

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

12.5. *Prohibited Transfers.* Any purported Transfer of a Membership Interest that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Company is required to recognize a Transfer that is not a Permitted Transfer (or if the Company, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the Membership Interest transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Membership Interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the transferor or transferee of the Membership Interest may have to the Company.

In the case of a Transfer or attempted Transfer of a Membership Interest that is not a Permitted Transfer, the parties engaging or attempting to engage in the Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of the indemnified Members may incur (including, without limitation, incremental tax liabilities, lawyers' fees and expenses) as a result of the Transfer or attempted Transfer and efforts to enforce the indemnity granted by this Agreement.

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

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

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

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

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

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

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

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

XIII MEMBERS' COVENANTS

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

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

XIV MEDIATION

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

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

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

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

14.1.4. Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator

concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

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

XV MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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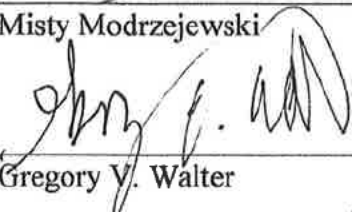
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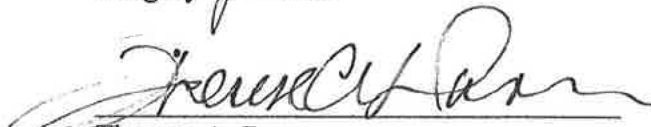
Andrew Thomas Modrzejewski



Misty Modrzejewski



Gregory V. Walter



Therese A. Dunn