

**RESOLUTION NO. 14
SERIES OF 2021**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
CARBONDALE, COLORADO, AUTHORIZING THE ACCEPTANCE OF A
DONATION OF REAL PROPERTY
(Town Center Lots)**

WHEREAS, the current owner of Lots 17 and 18, Town Center Filing #1 According to the Plat Thereof Recorded March 25, 2003 as Reception No. 623529, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15 and 16, Town Center Filing #2 According to the Plat Thereof Recorded February 4, 2005 as Reception No. 6682 (all collectively the "Property") has proposed to donate such Property to the Town of Carbondale, subject to a perpetual private, non-exclusive parking easement to be reserved by the current owner in the southeastern portion of Lot 17, Town Center Filing #1 ("Lot 17 Parking Easement"); and

WHEREAS, the Town of Carbondale is willing to accept a deed to confirm such donation, subject to the Lot 17 Parking Easement, provided that in so doing the Town shall assume no maintenance obligations or other liabilities in connection with the Lot 17 Parking Easement; and

WHEREAS, the donation of the Property is to be memorialized by a Special Warranty Deed, and the terms of the Lot 17 Parking Easement will be subject to a related Parking Easement Agreement to be executed by the parties in connection with this proposed donation.

NOW, THEREFORE, BE IT IS RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, THAT:

The Mayor and Town Staff are hereby authorized to take such actions and execute such documents as may be necessary in order for the Town to accept a Special Warranty Deed for the Property to confirm this donation and establish the Lot 17 Parking Easement, including the execution of a Donation Agreement, a Parking Easement Agreement, and all other documents reasonably necessary to confirm the donation, the Lot 17 Parking easement and/or owner's title insurance coverage for the Town related to the Property. All documentation shall be subject to the review and approval of the Town Attorney prior to execution.

INTRODUCED, READ, AND PASSED this 29th day of December, 2021.

TOWN OF CARBONDALE, COLORADO

By: _____

Dan Richardson, Mayor

ATTEST: _____

Catherine Derby, Town Clerk

Kevin Schorzman, Interim Town Manager



AGREEMENT FOR DONATION OF REAL PROPERTY

This Agreement for Donation of Real Property ("Agreement") is made this 30th day of December, 2021 ("Effective Date") by and between BREN SIMON, individually and as sole trustee of the Bren Simon Revocable Trust dated 10/10/1998 (the "Trust"), as amended, and PICKWICK HOLDINGS LLC (collectively, "Grantor") of which the Trust is sole member and the TOWN OF CARBONDALE, COLORADO, a Colorado home rule municipal corporation ("Grantee"). The Grantor and the Grantee are referred to together as the "Parties".

BACKGROUND AND PURPOSE

A. Grantor is the owner of real property in the Town of Carbondale, Colorado legally described as Lots 17 and 18, Town Center Filing #1 According to the Plat Thereof Recorded March 25, 2003 as Reception No. 623529, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15 and 16, Town Center Filing #2 According to the Plat Thereof Recorded February 4, 2005 as Reception No. 668233, County of Garfield, State of Colorado (the "Property").

B. Grantor is willing to donate the Property as a charitable contribution to Grantee to be used by Grantee for exclusively public purposes and Grantee is willing to accept Grantor's donation, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Grantor and Grantee agree as follows:

AGREEMENT

1. Donation. On or prior to December 31, 2021, and in any case to be effective as of the end of the day on December 31, 2021, Grantor shall irrevocably transfer, assign and convey all of the Grantor's right, title and interest in and to the Property at no cost to Grantee except that Grantor shall specifically retain a permanent private parking easement in the southeast portion of Lot 17 large enough for four parking spots. The terms and conditions of the parking easement as well as the legal description for the parking easement will be set forth in a separate Parking Easement Agreement to be entered into by the Parties and recorded after the Property has been donated to the Grantee. The terms of such Parking Easement Agreement shall include, without limitation, Grantor's right to exclusive use and possession of the parking easement and the ability of the Grantee upon prior written agreement with and consent by the Grantor to install utilities, drainage or other improvements underneath or above the parking easement provided such utilities, drainage or other improvements do not materially interfere with Grantor's use of the easement for parking purposes. Grantee shall accept the Property on the terms and conditions of this Agreement. The Grantee agrees and acknowledges that the donation of the Property (except for the retention of the parking easement) by the Grantor is being made for exclusively public purposes and the Grantee agrees to use the Property for exclusively public purposes within the meaning of Section 170(c)(1) of the Internal Revenue Code of 1986, as amended (the "Code"). The Grantee agrees that, to the extent it determines that the Property cannot be used exclusively for public purposes and should be sold, the net proceeds of any such sale shall also be used for exclusively public purposes. Further, the Grantee represents that it is a political subdivision of the State of Colorado within the purview of Section 170(c)(1) of the Code, and that it is eligible to

receive a charitable donation of real property provided the gift is made for exclusively public purposes.

2. Documentation of Donation. Concurrently with the execution of this Agreement, the Grantee has provided the Grantor with a copy of the resolution of the Board of Trustees for the Town of Carbondale approving the Grantee's agreement to accept the donation of the Property (subject to the easement being retained by Grantor). Further at Grantor's request, Grantee will sign and deliver to Grantor an IRS Form 8283 that has been prepared by Grantor, acknowledging receipt of the donation, but Grantor will be solely responsible for stating the value of the donated property on IRS Form 8283.

3. Grantee's Investigation. The Grantee acknowledges that it is accepting the Property solely in reliance on the Grantee's own investigation of the Property and that such Property is in "as is, where is" condition with all faults, defects, latent or otherwise. The Grantor makes no representations or warranties, express or implied, or arising by operation of law, including but not limited to, any warranty as to condition, merchantability, or fitness for a particular use or purpose (including but not limited to the intended use) with respect to any portion of the Property.

4. Title Insurance. Grantor has ordered a title commitment from Title Company of the Rockies ("TCOR"), pursuant to which TCOR has committed to insure the Town of Carbondale's ownership of the Property with owner's title insurance coverage in the amount of \$1,700,000, subject to fulfillment of the various requirements and subject to the title exceptions listed in such title commitment. Closing is contingent on Grantee's satisfaction with the condition of title to the Property prior to closing. The Grantee may elect to obtain, at its sole expense, an owner's policy of title insurance for the Property. Grantor shall reasonably cooperate with any customary seller-side requirements for title insurance to issue to the Grantee.

5. Closing.

5.1 Time and Place. The closing of the conveyance of the Property shall occur at a place and on such date and time mutually agreed upon by the parties, but in no event later than 9:00 pm (Mountain) on December 31, 2021.

5.2 Procedure. On the Closing Date, the following shall occur:

(a) Conveyance: Grantor shall convey the Property to Grantee by Special Warranty Deed, subject to the parking easement and exceptions in the title commitment that Grantee is willing accept. Grantor shall convey and Grantee shall accept the Property in the form of an in-kind donation and charitable gift with no monetary exchange.

(b) Real Property Taxes and Other Assessments: Grantor shall be responsible for paying all real property taxes and all other assessments including HOA assessments, levied against the Property that have accrued through the date of closing including all 2021 property taxes payable to Garfield County in 2022 and any other future property taxes to be associated with the parking easement reserved by Grantor.

(c) Possession: Grantor shall provide Grantee with possession of the Property at closing.

(d) Closing Costs: Grantee shall pay all costs of closing including the owner's title policy, TCOR's real estate closing fee, recording fees and documentary fees, if any.

(e) Donee Acknowledgements: At Closing, the Grantee agrees that it will execute that "Donee Acknowledgement" section of Internal Revenue Service Form 8283 and any other contemporaneous acknowledgment in a form satisfactory to Grantor acknowledging receipt of delivery of the deed to the Property.

6. Publicity. The Grantee shall not publicize the donation or initiate any press releases or other similar voluntary releases of information concerning this transaction to the press or the general public in any manner or form without the prior written approval of Bren Simon or her legal counsel. Notwithstanding the foregoing, the Grantor acknowledges that as a local government entity in Colorado, Grantee is subject to all requirements of the Colorado Open Meetings Law (COML) and the Colorado Open Records Act (CORA).

7. No Goods or Services/Return Benefit. The Grantor confirms that the donation of the Property is being made without any expectation of return benefit, including without limitation receipt of goods or services, in consideration (in whole or in part) of the donation. The Grantee also confirms that no return benefit, including without limitation goods or services, have been or will be provided to the Grantor in consideration (in whole or in part) for the donation, and agrees to provide the Donor with a written acknowledgement to that effect as of the Closing Date.

8. Default.

8.1 Grantor Remedies: If Grantee is in default under this Agreement, Grantor may terminate this Agreement by written notice to Grantee and the parties shall then be released from all obligations under this Agreement.

8.2 Grantee Remedies: If Grantor is in default under this Agreement, Grantee may terminate this Agreement by written notice to Grantor and the parties shall then be released from all obligations under this Agreement.

9. Notices and Other Deliveries. Any notice required or permitted to be delivered by this Agreement shall be deemed properly delivered upon receipt by the party to whom the notice is to be delivered. Notices may be hand delivered, sent by first-class mail, return receipt requested, with postage prepaid, by nationally recognized overnight delivery service, or transmitted by electronic mail, provided the sender can show the recipient's receipt of the electronic mail delivery. Notices shall be addressed and delivered as follows:

If to Grantor:	PICKWICK HOLDINGS LLC c/o Randy Metz 329 Main Street Carbondale, CO 81623 rmetz@parkmetzlaw.com
If to Grantee:	TOWN OF CARBONDALE, COLORADO c/o Interim Town Manager 511 Colorado Avenue Carbondale, CO 81623 kschorzman@carbondaleco.net with copy to: Mark E. Hamilton, Town Attorney Holland & Hart LLP 600 E. Main St., Suite 104 Aspen, CO 81611 mehamilton@hollandhart.com

10. General Conditions. This Agreement shall not be assignable by either party. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives and successors of the parties. Time is strictly of the essence with respect to each and every provision of this Agreement. The laws of Colorado will govern the enforcement and interpretation of this Agreement. No subsequent modification of any of the terms of this Agreement shall be valid or enforceable unless made in writing and signed by the parties. This Agreement, together with the various documents contemplated by this Agreement, including the Special Warranty Deed and Parking Easement Agreement, constitute the entire agreement between the parties relating to Grantor's donation of the Property to Grantee, and supersedes any prior or contemporaneous agreements, representations, understandings or arrangements between the Parties pertaining to the same subject matter, whether oral or written. If any provision of this Agreement is found to be invalid or unenforceable, it may be severed from the Agreement by court order and the remaining provisions of the Agreement shall continue to be binding and effective. Each Party that is not an individual represents that any persons signing this Agreement on its behalf have the power and authority to sign on behalf of such Party and to carry out its obligations hereunder and the transactions contemplated hereby. Each of the Parties, shall, at the reasonable request of any other Party from time to time, execute and deliver such other assignments, transfers, conveyances and other instruments or documents, and do and perform in good faith such other acts as may be necessary or desirable for effecting complete consummation of this Agreement and the transactions contemplated therein, and/or maintaining, perfecting, recording and registering the right, title and interest of the Grantee in and to the Property and Grantor's retention of the parking easement as contemplated hereunder. This Agreement may be executed in counterparts, and electronically transmitted signatures shall have the same effect as original signatures.

[Signature page follows]

GRANTOR:

PICKWICK HOLDINGS LLC
a Colorado limited liability company

By: _____
(Title) Date


Bren Simon, individually and as Trustee of the Bren Simon
Revocable Trust, dated 10/01/1998, as amended

GRANTEE:

THE TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By:  12/29/21
Dan Richardson, Mayor Date

ATTEST:

By:  12-29-21
Cathy Derby, Town Clerk Date
Kevin Schorzman, Interim Town Manager

GRANTOR:

PICKWICK HOLDINGS LLC
a Colorado limited liability company

By: _____

(Title) *Mgt*

Date *12/30/2021*

Bren Simon
Bren Simon, individually and as Trustee of the Bren Simon
Revocable Trust, dated 10/01/1998, as amended

GRANTEE:

THE TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: _____

Dan Richardson, Mayor

Date

ATTEST:

By: _____

Cathy Derby, Town Clerk

Date

ACKNOWLEDGMENT OF RECEIPT OF DEED
(Town of Carbondale, Colorado)

This Acknowledgment of Receipt of Deed (this “**Acknowledgment**”), dated and effective as of this 30th day of December, 2021 (the “**Effective Date**”), is executed by the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (the “**Town of Carbondale**”).

RECITALS

A. Pickwick Holdings LLC, a Colorado limited liability company (the “**Company**”) has: (1) executed a deed (the “**Deed**”) conveying that certain real property as described on Exhibit A (attached hereto and incorporated herein by this reference) to the Town of Carbondale to be effective as of December 31, 2021; and (2) has delivered the Deed to the Town of Carbondale.

B. The Town of Carbondale is executing this Acknowledgment to acknowledge receipt of delivery of the Deed from the Company on the Effective Date.

ACKNOWLEDGMENT

NOW THEREFORE, in furtherance of the foregoing recitals, the Town of Carbondale has caused this Acknowledgment to be executed to acknowledge its receipt of the Deed.

1. **Acknowledgment.** By the execution of this Acknowledgment, the Town of Carbondale hereby acknowledges receipt of the Deed from the Company on the Effective Date.

2. **Electronic Transmission.** The signature to this Acknowledgment transmitted by facsimile, e-mail, or other electronic transmission shall be deemed to be an original signature. A signed copy of this Acknowledgment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Acknowledgment.

IN WITNESS WHEREOF, this Acknowledgment has been duly executed to be effective on the Effective Date.

Town of Carbondale, Colorado, a Colorado home rule
municipal corporation

By: _____

Name: _____

Title: _____



Kevin Schorzman
Interim Town Manager

EXHIBIT A

Lots 17 and 18, Town Center Filing #1 According to the Plat Thereof Recorded March 25, 2003 as Reception No. 623529, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15 and 16, Town Center Filing #2 According to the Plat Thereof Recorded February 4, 2005 as Reception No. 668233, County of Garfield, State of Colorado

As reflected on the Deed, the Company also EXCEPTS and RESERVES unto itself a permanent parking easement in the southeast portion of Lot 17 large enough for four parking spots as reflected on Exhibit B.

EXHIBIT B

Parking Easement

COLORADO AVENUE

TRACT A (MASTER COMMON AREA)

S00°03'00"W 253.03'

108.03'

LOT 17
4,125 sq. ft.

14.00' DRIVEWAY & PRIVATE
ACCESS EASEMENT
(LIMITED COMMON EASEMENT
LOTS 17 & 18)

UTILITY
EASEMENT 14.00'

N89°57'00"W 50.18'

S00°15'00"W 50.00'

24.99'

19.00'

5.00' PUBLIC FOOTSTRAIT EASEMENT
(MASTER COMMON EASEMENT)

S 89°57'00" E 124.99'

100.00'

N00°03'00"E 108.65'

LOT 19
14,905 sq. ft.

THREE STORY
BRICK AND
STUCCO
BUILDING

100.00'

N89°57'00"W 124.82'

100.00'

100.00'

COMMON 140' RESIDENTIAL CENTRAL
COMMON EASEMENT BETWEEN LOT BOUNDARY
AND BUILDING EASEMENT

SET BACK & CAP LS
PLANS

S00°03'00"W 109.46'

73.00'

4TH STREET

SET BACK & CAP
LS PLANS

SET BACK 3.11'

RIGHT-OF-WAY SPECIFIED
IN 1904 CITY CHARTER
PLANS No. 1 & 2

SET BACK & CAP LS PLANS
RENOVATION ELEVATION STRIPS

- 1) CEN
CON
AND
- 2) PLAN
- 3) PLAN
- 4) PLAN
- 5) PLAN
- 6) PLAN
- 7) PLAN

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Town of Carbondale, Colorado
c/o Cathy Derby, Town Clerk
511 Colorado Avenue
Carbondale, Colorado 81623

SPECIAL WARRANTY DEED

THIS DEED is effective December 31, 2021, and is made between PICKWICK HOLDINGS, LLC, a Colorado limited liability company ("Grantor"), whose street address is 329 Main St., Carbondale, CO 81623, and the TOWN OF CARBONDALE, COLORADO, a Colorado home rule municipal corporation ("Grantee"), whose street address is 511 Colorado Ave., Carbondale, CO 81623.

The Grantor for and in consideration of the sum of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells and conveys to the Grantee and the Grantee's successors and assigns forever the following real property, together with any improvements thereon, (the "Property") in the County of Garfield and State of Colorado:

Lots 17 and 18, Town Center Filing #1 according to the Plat thereof recorded March 25, 2003 as Reception No. 6235291; and

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15 and 16, Town Center Filing Subdivision No. 2 according to the Plat thereof recorded February 4, 2005 as Reception No. 668233.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee and the Grantee's successors and assigns forever. The Grantor, for the Grantor and the Grantor's successors and assigns, does covenant, grant, bargain and agree to and with the Grantee and the Grantee's successors and assigns, that at the time of the ensembling and delivery of these presents, the Grantor is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, **except easements, restrictions, reservations, covenants and rights-of-way of record, if any; and the Grantor also hereby EXCEPTS and RESERVES unto itself a permanent parking**

easement upon an 800 s.f. (20 feet wide by 40 feet long) portion of Lot 17, Town Center Filing #1, in the location set forth on Exhibit A, for four parking spaces that are intended to benefit adjacent Lot 19, Town Center Filing #1. The terms and conditions of the reserved parking easement as well as the precise legal description of such easement shall be set forth and governed by a separate Parking Easement Agreement being entered into by Grantor and Grantee that will be recorded subsequent to this Special Warranty Deed.

The Grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the Grantee, and the Grantee's successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof by, through or under Grantor.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

The Property is being conveyed by the Grantor to the Grantee as a contribution or gift made for exclusively public purposes within the meaning of section 170(c)(1) of the Internal Revenue Code of 1986, as amended.

THIS DEED WAS GIVEN FOR NOMINAL CONSIDERATION (LESS THAN \$500), THEREFORE, NO DOCUMENTARY FEE IS PAYABLE.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

PICKWICK HOLDINGS LLC, a Colorado limited liability company

By:

Randy S. Metz, Manager

STATE OF COLORADO)
County of Garfield) ss.
)

The foregoing instrument was acknowledged before me this 30th day of December, 2021, by Randy S. Metz, as Manager of PICKWICK HOLDINGS LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 8/11/2022

Anna Karen Ramirez-Pavon
Notary Public

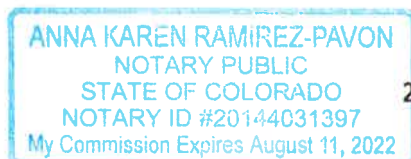


EXHIBIT A

**Attach Parking Easement Exhibit showing 4 10' x 20' parking spaces in southeastern portion of
Lot 17, Town Center Filing No. 1**

	CRH CON AND
1)	
2)	PLH
3)	PLH
4)	PLH
5)	PLH
6)	PLH
7)	KLH

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity¹ named PICKWICK HOLDINGS LLC, a Colorado limited liability company, and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.

2. The type of entity is a:

- ☐ corporation
☐ nonprofit corporation
☒ limited liability company
☐ general partnership
☐ limited partnership
☐ other:

- ☐ registered limited liability partnership
☐ registered limited liability limited partnership
☐ limited partnership association
☐ government or governmental subdivision or agency
☐ trust (Section 38-30-108.5, C.R.S.)

3. The entity is formed under the laws of the State of Colorado.

4. The mailing address for the entity is 329 Main Street, Carbondale, CO 81623.

5. The name and position of the person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity are:

Randy S. Metz, Manager

6.² The authority of the foregoing persons to bind the entity is ☒ not limited ☐ limited as follows:

7. Other matters concerning the manner in which the entity deals with interests in real property:
n/a

Dated: Dec 30, 2021

State of Colorado
County of Garfield

PICKWICK HOLDINGS LLC, a Colorado limited liability company

The foregoing instrument was acknowledged before me this 30th day of December, 2021, by Randy S. Metz, as manager of Pickwick Holdings LLC, a Colorado limited liability company.

By: _____

Randy S. Metz, Manager

Witness my hand and official seal

Commission Expires Aug 11, 2022

Anna Ramirez

¹This form should not be used unless the entity is capable of holding title to real property.

²The absence of any limitation shall be prima facie evidence that no such limitation exists.

³The statement of authority must be recorded to obtain the benefits of the statute.

STATE OF COLORADO)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Randy S. Metz, as Manager of PICKWICK HOLDINGS LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

¹This form should not be used unless the entity is capable of holding title to real property.

²The absence of any limitation shall be prima facie evidence that no such limitation exists.

³The statement of authority must be recorded to obtain the benefits of the statute.