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SUBDIVISION IMPROVEMENTS AGREEMENT FOR TOWN CENTER SUBDIVISION, FILING NO. 1

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THIS AGREEMENT is made and entered into between the TOWN OF CARBONDALE, COLORADO ("Town"), and CARSAM REALTY TEN, LTD., a Texas limited partnership ("Developer"), to become effective March 11, 2003, regardless of the date when the parties actually sign it.

1. Recitals.

For the purpose of interpreting and giving effect to this agreement, the Town and the Developer agree to the truth and the accuracy of the following:

a. The Developer is the owner in fee simple of that real property described in Exhibit A attached hereto and incorporated herein by reference, and the real property depicted therein shall be referred to as "the Development".

b. The Developer has submitted to the Town a subdivision application and Final Plat for Filing No. 1 of Town Center Subdivision, and desires the Town to approve the same.

c. The terms of this agreement shall constitute the Subdivision Improvements Agreement between the Town and the Developer. A separate Subdivision Improvements Agreement shall be entered into between the Town and the Developer for Filing No. 2 of Town Center Subdivision.

d. The obtaining of subdivision plat approval for Town Center, Filing No. 1 in favor of the Developer's land will inure to the Developer's benefit.

e. The Developer recognizes and acquiesces in the jurisdiction and the power of the Town to impose the restrictions and conditions required of the Developer in this agreement, joins in the imposition of them, and agrees to perform each and every one of them.

f. On March 11, 2003, the Board of Trustees of the Town of Carbondale, after holding all necessary public hearings, approved Ordinance No. 9, Series of 2003. Said ordinance is recorded as Reception No. 623528 of the Garfield County records, and the terms and conditions thereof are incorporated herein by this reference as if set forth herein verbatim.

Return to:
ROBERT B. EMERSON, PC
86 South Third Street
Carbondale, Co. 81623

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g. The approvals cited above are contingent upon the express condition that all of the obligations and duties created by this agreement and Ordinance No. 9, Series of 2003, are faithfully performed by the Developer.

2. Specific Conditions.

Developer hereby agrees to the following conditions of approval by the Town:

a. That all representations of the Developer made in the application and in statements during the meetings and public hearings before the Town Board of Trustees shall be considered conditions of approval. In the event it is determined by the parties that there is an omission in this Agreement or that this Agreement or other agreement between the parties does not correctly address or include all representations of the Developer, the agreement of the parties, or the conditions of approval by the Town, the parties shall execute an amendment to this Agreement or such other agreement as may be necessary to correct such omitted or incorrect matter.

b. The public improvements associated with each final plat phase shall be secured and constructed in connection with the Final Plat approval for each phase. Filing No. 1 public improvements shall be as shown on Sheet 1 of 2, labeled "Town Center Subdivision Phase 1, Public Improvements revised December 10, 2002."

c. That prior to issuance of any building permit for a building within Town Center, the applicant for such building permit shall pay any applicable Park Development fee and fee in lieu of dedication of land to the Roaring Fork School District as assessed by the Town; provided that such fees shall not be assessed in connection with a building permit application for the existing building on Lot 20 which does not involve the addition of square footage or change the use of the building.

d. That prior to issuance of any building permit for a building within Town Center, the applicant for such building permit shall pay to the Carbondale and Rural Fire Protection District impact fees in accordance with the Fire District's impact fee schedule then in effect; provided that such fees shall not be assessed in connection with a building permit application for the existing building on Lot 20 which does not involve the addition of square footage or change the use of the building.

e. That all development fees, professional fees, and utility fees which are the obligation of the Developer pursuant to Sections 1.30.030 and 13.16.180 of the Carbondale Municipal Code are paid on or before execution hereof by the Town or within thirty (30) days of invoice by the Town.

3. Development Approval - First Phase.

The Town hereby accepts and approves the final subdivision plat of Town Center Subdivision, Filing No. 1, subject to the terms and conditions of this agreement and to the performance of this agreement by the Developer. The Town also approves a variance from Section 17.16.040 Lot and Block Design for Lot 18 of Filing No. 1 which would otherwise require that each Lot have minimum of twenty-five feet (25') of frontage along a dedicated public street and that the use of an easement for principal access is not allowed.

4. Installation of Improvements.

Before installing any of the following improvements, the Developer shall present to the Town plans and specifications prepared by an engineer licensed to practice in Colorado ("Engineered Plans and Specifications"). The Engineered Plans and Specifications shall conform to all of the Town's own written specifications. The Town may hire an engineer of its own choice to review the submittals, and the Developer shall pay the costs of this review. No improvements may be constructed until the Engineered Plans and Specifications have been approved by the Town.

The Developer agrees to pay all costs for the installation of and to install or cause to be installed the improvements hereinafter set forth on or before June 15, 2004, except for those improvements described in subparagraph (c) of this paragraph which shall be installed as provided in said subparagraph. The improvements and the manner and fashion in which the same shall be installed are as follows:

a. Drainage: The overall drainage shall comply with the Drainage Plan prepared by Sopris Engineering dated June 10, 2002. The use of onsite dry wells installed at the time of building construction on each lot is acceptable with the following conditions:

a. Engineering details for the design and construction of onsite dry wells and on site grading shall be reviewed and approved by the Town at the time of building permit for the construction of each building. The design of the drywell systems and on site grading shall reflect the drywell design standards set forth in the HP Geotech letter dated June 6, 2002 and the Drainage Report submitted by Sopris Engineering LLC dated December 21, 2001. All construction shall also comply with the recommendations contained in the Preliminary Geotechnical Study prepared by HP Geotech dated October 10, 2001.

b. A plat note shall be added to each final plat stating that there shall be included with each building permit application a site specific, foundation, grading and drainage plan prepared and stamped by a licensed, professional engineer consistent with the Sopris Engineering and HP Geotech reports referenced which takes into account the Town's concerns regarding the potential for subsidence, high

ground water and moisture protection for below ground facilities which may be presented by the use of dry wells.

c. The declaration of protective covenants for the subdivision shall include a section which provides that in the design review process, the architectural review committee shall advise each applicant of the Town's requirement for the engineered foundation, grading and drainage plan at the time of building permit.

d. Drywells shall be maintained during the construction phase so construction sediment and debris do not plug the drywells.

b. Streetscape Improvements: All street improvements shall continue the theme of the new streetscape along Main Street, including an irrigation system and installation of electrical conduit. The Applicant shall submit a streetscape improvement plan prior to construction of the improvements for review and approval by Town Staff. The Applicant shall submit plans which show the horizontal and vertical location of the irrigation system, electrical conduit, curb and gutter, curb inlets and asphalt replacement prior to construction of the initial sidewalks. The Staff shall approve the final location of those utilities and improvements. The parties acknowledge that the street lights and trees to be located in mid-block may best be installed in connection with construction of a building on the adjacent lot to avoid conflicts with entryways and windows. The engineer's estimate of probable construction costs attached hereto as Exhibit B and discussed more fully in paragraph 17 below includes a separate estimate in the amount of \$7,700.00 for the installation of two street lights and four trees. Notwithstanding anything herein to the contrary, the parties agree that these two street lights and four trees may be installed by either the lot owner or the Developer in connection with construction of a building on the adjacent lot; provided, however, that the Town may require that such street lights and trees be installed by the Developer prior to recording the Final Plat for Town Center, Filing No. 2, if not previously installed.

c. Street Improvements - Asphalt Overlay. As part of the public improvements, the applicant shall provide an asphalt overlay on 4th Street, Colorado Avenue and 6th Street. That portion of the asphalt overlay included as a Phase 1 improvement shall be installed the earlier of (i) no later than nine (9) months after the issuance of a Certificate of Occupancy for a building constructed on Lot 19, or (ii) three (3) years from the date of recording of the Phase 1 Final Plat. The time for installing that portion of the asphalt overlay included as a Phase 2 improvement shall be determined at the time of approval of the Phase 2 Final Plat. The Applicant shall submit additional engineered plans and specifications prior to the installation of any improvements, including a grading and drainage plan. The plans shall be subject to the approval of Town Staff.

d. Sidewalk. The public sidewalk along Colorado Avenue shall be extended to Tract A and a graveled trail shall extend from the terminus of the sidewalk to Sixth Street.

e. Alley. As part of the Filing No. 1 public improvements, the applicant shall improve the entire length of the alley at the south side of the project. Alley improvements shall include dedication of five feet (5') of right-of-way to enable a pavement width of twenty feet (20'), installation of said pavement, undergrounding of electric lines, and relocation of the existing trash dumpsters in the alley to a trash enclosure easement on the property.

f. General Utilities. The utility plan for Filing No. 1 shall be revised prior to recordation of the Final Plat to reflect modifications previously agreed to by the parties and shall be subject to approval by the Town Staff.

g. Water Distribution System. The water distribution system shall include, by way of example, fire hydrants, water lines, and appurtenances, and shall be installed in accordance with Town approved Engineered Plans and Specifications. All four inch water service lines shall be owned and maintained from the service valve at the water main to the building by the Owner(s) of the lot or lots receiving service from such line. In the event any four-inch service line is to provide service to more than one structure, a shared maintenance and use agreement shall be reviewed and approved by the Town at the time of building permit.

h. Sanitary Sewage Collection System. The Sanitary Sewage Collection System, including, by way of example, all sewer mains and laterals, shall be installed in accordance with Town-approved Engineered Plans and Specifications. All sewer service lines shall be owned and maintained from the main sewer line connection to the building by the Owner(s) of the lot or lots receiving service from such line. In the event any service line is to provide service to more than one structure, a shared maintenance and use agreement shall be reviewed and approved by the Town at the time of building permit.

i. Electric. Underground electrical wiring shall be installed in accordance with requirements and plans and specifications approved by Public Service Company of Colorado, and all plans for installation shall be submitted to the Town for its approval prior to installation.

j. Project Lighting. All lighting on the site shall be installed as required by the Town. Design and spacing of parking light standards shall be in accordance with standards approved by the Town.

k. Underground Communication Systems. Underground communication systems shall be installed in accordance with requirements and plans and specifications of U. S. West Communications and T.C.I. Cablevision of Colorado, Inc., as approved by the Town.

l. Signs. All street name signs as required by the Town, and all nonelectric traffic control devices, street painting and signs shall be installed as required by the Uniform Traffic Control Devices Manual and as required and approved by the Town.

m. Gas Distribution System. The natural gas distribution system shall be installed in accordance with the requirements and plans and specifications of K N Energy Company, and shall be submitted to the Town for its approval prior to installation.

n. Dust/Street Cleanup. During construction, the Developer shall comply with all reasonable directives of the Town to suppress dust and shall take steps to require that all construction traffic be free of mud when entering public streets within the Town of Carbondale. The Developer shall promptly clean up such mud or other debris from the construction site on Town streets.

o. Street Cuts. Any street cuts made by the Developer shall be in accordance with the applicable provisions of the Carbondale Municipal Code.

p. Parking. The Developer shall develop forty-one (41) on-street parking spaces, including the upgrade of eighteen (18) existing spaces and the creation of twenty-three (23) new spaces. In accordance with the provisions of Ordinance No. 21, Series of 2001, the applicant shall receive a parking credit of twenty-three (23) spaces, which may be allocated by the applicant among any of the lots within the subdivision by written allocation delivered to the Town at the time of building permit.

q. Mylar As-Builts. Upon completion of the project, two sets of mylar as-builts will be submitted to the Town.

r. Computer Construction Drawings. An electronic computer file of as-built construction drawings in a format acceptable to the Town will be submitted to the Town upon completion.

s. Video Tape of Sewer Line. At completion of sewer line installation a video tape and log showing interior of pipe shall be provided to Town.

5. **Inspections.**

Before commencement of construction of any of the improvements described in paragraph 4 above, the Developer shall present all plans and specifications to the Town for its prior approval.

During the installation by the Developer of the improvements described in paragraph 4 above, the Town may:

- a. Inspect the work in progress with such personnel as the Town deems necessary.
- b. Require the production and inspection of the plans and specifications of the Developer and any contractor or subcontractor working on its behalf in connection with the work in progress.
- c. Require the Developer to obtain and pay for soils composition tests, compaction tests, cement tests, or such other tests of materials and work as may be necessary in the Town's opinion to ensure that the work in progress is being performed according to the Town's specifications, the Engineered Plans and Specifications, and contract documents.
- d. At the Town's election, the Town may contract for an independent contractor to perform inspections of all or any part of the work to be performed by the Developer, in which case the Developer shall reimburse the Town for all costs so incurred.
- e. The Developer shall clearly mark with steel posts all stub-outs for all utilities.

Any Town inspector shall have the authority to immediately order that all infrastructure construction in the Development be suspended if the inspector determines that such a stop work order is needed to protect the Town's interest, or in the event of a violation of this agreement, the Carbondale Municipal Code, or any utility installation requirements. The Town may utilize staff personnel for inspections, or hire an outside inspector, in either case the cost of which will be reimbursed by the Developer.

6. **Phasing.**

Town Center Subdivision may be developed in two phases, with Phase 1 consisting of Lots 17 - 22, on the easterly half of the property, and Phase 2 consisting of Lots 1 - 16 on the westerly half of the property. The applicant shall submit its application for Phase 2 Final Plat approval no later than three (3) years from the date of recording the Phase 1 Final Plat. Prior to development of Lots within Filing 2, the Developer shall retain as many of the existing trees within Filing 2 as practicable and shall control dust and weeds within Filing 2 as required by the Carbondale Town Code.

7. **Affordable Housing.** The Developer shall comply with the following Town Center: Housing Mitigation Plan, which is hereby approved by the Town:

- a. The Developer of Town Center agrees that a minimum of fifteen percent (15%) of the residential dwelling units constructed within the Town Center Subdivision (both Filings 1 and 2 combined) shall be deed restricted for community housing as provided in Town of Carbondale, Ordinance 27, Series of 2001.

b. Because the total number of residential units to be constructed within Town Center is unknown at this time, the initial determination of the required number of deed restricted community housing units will be made at the time of building permit application for each new building constructed within Town Center. That is, if a building permit application proposes to have four or fewer residential units in the building, then no deed restricted community housing units will be required in that building. If, on the other hand, a building permit application proposes to have five or more residential units in a building, then the required number of deed restricted community housing units set forth in Section 15.25.050 of the Carbondale Municipal Code shall apply to that building. If any such calculation results in the determination that a fraction of a unit is required, then the number of required deed restricted community housing units will be rounded up to the nearest whole number, unless, at that time, the Town and the Applicant for such building permit mutually agree to a fee in lieu for any fractional unit. Any unit so constructed and any fee in lieu that is paid shall be counted towards the number of deed restricted community housing units that Developer agrees to provide.

c. No later than the time that a building permit application is submitted for the next to last building to be constructed within Town Center the Developer and the Town shall calculate the total number of residential dwelling units constructed or under construction to date within Town Center and the total number of deed restricted community housing units constructed or under construction within Town Center to determine the deficiency, if any, from the fifteen percent (15%) deed restricted community housing units agreed to by the Developer. If a deficiency is identified, then no later six (6) months from the date of such calculation, the Developer, or its designee, shall commence construction of the necessary number of deed restricted community housing units to makeup the deficiency. Said units, if any, shall be constructed on either the remaining unimproved lot(s) within Town Center or on one of the adjacent properties owned by the Developer, known as the Railroad Parcel or Lot C1, a resubdivision of Parcel C, Fante Subdivision ("Adjacent Properties"). If a deficiency in the number of deed restricted community housing units is identified, then the schedule of affordability mix as set forth in Sections 15.25.050(B) and (C), as applicable, of the Carbondale Municipal Code shall apply to the number of units to be constructed to makeup the deficiency. If the calculation of a deficiency results in a determination that a fraction of a unit is required, then the number of required units shall be rounded up to the nearest whole number, unless the Town and the Developer mutually agree at that time to the payment of a fee in lieu.

d. In order to secure the Developer's agreement that a minimum of fifteen percent (15%) of the residential units constructed within Town Center will be deed restricted community housing units, prior to or at the time of recording the Final Plat for Town Center, Filing No. 1, the Developer shall place a deed restriction on either of the Adjacent Properties, which will run with the subject land for the benefit of the Town, in form acceptable to the Town attorney, prohibiting the sale or other transfer of said property prior to the construction

thereon of the deed restricted community housing units required by this Agreement. At any time, at the Developer's request, the Town agrees that it will release the aforesaid deed restriction on the property so restricted, provided that simultaneously therewith, the Developer shall impose the same deed restriction upon either the other Adjacent Property, or on an undeveloped lot or lots within Town Center which is adequate in size for the construction of the required number of deed restricted community housing units.

e. This Housing Mitigation Plan will be modified by the parties as necessary to conform its terms to any new or modified State law regarding deed restricted affordable housing that may be enacted.

8. Miscellaneous Issues.

a. Compliance with Design Guidelines. All buildings constructed in the Town Center Subdivision shall comply with the design guidelines contained in the Declaration of Covenants, Conditions and Restrictions for Town Center Subdivision. Such design guidelines shall not be modified by the Developer without the written consent of the Town. Furthermore, construction of buildings within Town Center shall comply with any design guidelines ordinance subsequently adopted by the Town.

b. Sprinklers on Lots 10 - 16. All buildings constructed on Lots 10 through 16 in Phase 2 shall be equipped with a sprinkler system on all floors, regardless of use.

c. Outlot 2, Block 20, Townsite of Carbondale. Pursuant to the request of Developer, simultaneously herewith the Town has approved, by administrative review, a boundary line adjustment for Outlot 2, Block 20, Townsite of Carbondale. No later than ninety (90) days from the date hereof, Developer shall cause the said Boundary Line Adjustment Plat to be recorded and shall complete the purchase of said Outlot 2 as reconfigured. Within said ninety (90) day period Developer shall also convey by general warranty deed Outlot 2 to the Town, free and clear of any lien or encumbrance, except that it shall be subject to a perpetual, non-exclusive easement in favor of the public for pedestrian use only. The Developer shall be responsible for constructing improvements on Outlot 2 in connection with construction of all other Filing No. 1 subdivision improvements. The Town and the Developer shall work cooperatively in designing the improvements to be constructed by the Developer on Outlot 2. Prior to construction, the final design of the improvements, which shall be submitted to the Town by the Developer, shall be approved by Town staff, which approval shall be granted provided the submitted design meets the standards of the downtown street scape recently constructed by the Town.

9. Non-Liability Upon Acceptance.

The Town's acceptance of the Engineered Plans and Specifications shall not be deemed an adoption of them or a representation or warranty to the Developer or any other person or entity that the Engineered Plans and Specifications, or any work performed under them, is fit for the purpose intended or otherwise safe.

The Town's acceptance of the Engineered Plans and Specifications, the installation of the improvements described below, or the use and maintenance of such improvements shall not be deemed to be any of the activities listed in C.R.S. 24-10-106(a-1) for which sovereign immunity is waived. No action or inaction by the Town in connection with its approval of this subdivision shall be deemed a waiver of its sovereign immunity.

The Town does not warrant or make any representations whatever concerning the suitability of its infrastructure, water distribution system, street, subbase, or any other device or system owned or controlled by the Town which may be used in improving or serving the Development. Without limiting the foregoing, the Developer assumes the risk of all costs associated with installations for improving or serving the Development as described above and of all costs necessary to improve or serve the Development.

10. Warranties.

Concerning all construction and installation required to be installed by the Developer for public improvements or in any area to be dedicated to the Town, the Developer shall obtain and assign to the Town the complete warranties of contractors and subcontractors hired by or working on behalf of the Developer which shall warrant against all defects in materials and workmanship for a period of two (2) years after the date of acceptance of the work by the Town. All curative work under the warranties shall itself be warranted for an additional one year period or the expiration of the original two (2) year warranty, whichever is greater. If such warranties are not obtained, the Developer shall notify all such contractors or subcontractors involved in such improvements that the Town is to be a beneficiary of such of the work done and that the work shall include the warranties described herein. Upon request of the Town, the Developer shall supply the Town with the lien waivers as to all contractors and subcontractors involved in the installation of such facilities.

Without limiting the foregoing, the Developer shall warrant the installation of the improvements described in paragraph 4 above against all defects in materials and workmanship for a period of two (2) years after the date of acceptance of the work by the Town, and all curative work under this warranty shall itself be warranted for an additional one year period or the expiration of the original two (2) year warranty, whichever is greater.

11. Legal Compliance.

The Developer shall comply with all state, federal and local laws, ordinances, rules, and regulations, including, by way of example, the Carbondale Zoning Code, Title 17 of the Carbondale Municipal Code pertaining to subdivisions, and the ordinances and regulations of the Town relating to streets, water lines, and sewer lines. The Developer, or its successors in interest, shall pay all tap fees for utilities as required by the Town's ordinances and regulations in effect as of the date of application for the tap.

12. Conveyance to Town.

Upon completion and acceptance of those public improvements described in paragraph 4(b), (c), (d) and (e) above, such public improvements shall be the property of the Town, without further action of either party.

13. Certificates and Permits.

No certificate of occupancy shall be issued for or relating to any structure within the Development until full completion by the Developer of all improvements within the Development as described in paragraph 4 above, except for those items set forth in subparagraph 4(c) above. Except as provided in this paragraph, nothing herein shall limit the obligations of the Developer imposed by any of the Town's ordinances concerning the issuance of a certificate of occupancy. Without limiting any of its rights under this agreement, the Town may, but need not, issue certificates of occupancy and grant extensions of time for the completion of construction and the installation by the Developer of any improvement, but only as is provided in paragraph 19 below.

No extension of time for completion shall impair the Town's rights under any instrument of security described in paragraph 17 below, and the parties obligated under such security instrument shall be deemed to have consented to the Town's extension of time whether the Town gives actual notice or not to the party liable on the instrument of security.

14. Improvement Sequence.

Street improvements required to be completed by the Developer shall not be installed until all utility lines to be placed in or under the streets have been completely installed and until all services to individual lots from main lines have been installed.

15. Repairs.

The Developer shall repair and repave all streets and roads damaged by installation of improvements and utilities within the Development, and shall repair and repave all Town owned

property damaged by the installation of improvements or utilities within the development by the Developer or those acting under it or on its behalf.

16. Completion by Town.

In addition to all other remedies, at its option, the Town may undertake all work necessary to install and complete all the improvements which the Developer must complete pursuant to paragraph 4 of this agreement. If the Town does so, the Developer shall pay for all costs expended by the Town, including, but not limited to, costs for materials, labor of Town employees, and labor of non-Town employees utilized on the job, plus fifteen percent (15%) of such costs for overhead and administrative time and costs.

17. Security.

The Developer has prepared engineered plans and preliminary cost estimates for all improvements to be installed by the Developer for the use of the public or in dedicated land, rights-of-way and easements which shall be approved by the Town, prior to the filing of the Subdivision Plat. A copy of the preliminary cost estimates is attached as Exhibit B and incorporated herein by this reference.

To secure its obligations to install the improvements described above, the Developer shall obtain and deliver to the Town a letter of credit in the amount of \$226,000.00 (the amount of engineered cost estimate rounded up to the nearest hundred) for the Town's benefit. The Developer shall pay all costs incurred in obtaining the letter of credit. The letter of credit shall be issued by a State or National chartered commercial bank, shall be in a form and from an institution approved by the Town, and shall, among other things, entitle the Town to draw on the unconditional letter of credit by presentation to the issuing bank of a certificate that the Developer is in default in its obligations to install improvements under this agreement, that a sum certain is required to cure the default, and that the issuing bank shall forthwith deliver the sum certain to the Town.

At the option of the Developer, the Town may accept a cash payment in the amount of \$226,000.00 which shall be used by the Town to cure any default of this agreement by the Developer.

If the Developer fails to install improvements as required above, the Town may pursue its remedy under the letter of credit or cash deposit described above. Nothing herein shall limit any other remedies available to the Town.

As construction progresses, the Developer will be allowed to apply for partial releases of the letter of credit securing payment of the cost of improvements installed and accepted by the Town if the warranties and lien waivers required by paragraph 9 hereof have been received by the Town. The Developer shall provide the Town with a written application stating what improvements have been

completed and the amount of the letter of credit for which partial release is sought. The Developer's engineer shall certify that the improvements for which the partial release of the letter of credit is sought have been installed and completed according to the terms hereof, Engineered Plans and Specifications and all Carbondale Municipal Code requirements. Once reviewed and approved by the Public Works/Utility Departments, the Town Engineer, and any independent inspector hired by the Town, the request will be submitted to the Board of Trustees for final review and approval at the next regularly scheduled Board meeting. If authorized by the Board of Trustees to do so, Town staff may review and approve requests for partial releases of the letter of credit. The documentation associated with any such partial releases shall be in a form approved by the Town. Notwithstanding the foregoing, the Developer shall in no event be entitled to the release of more than eighty percent (80%) of the cost of improvements prior to the completion and acceptance of all improvements required hereunder.

Within thirty (30) days after the Developer has completed all of the Public Improvements required by this Agreement and the work has been approved and accepted by the Town, the entire remaining amount of the security, less an amount equal to ten percent (10%) of the original amount of the security shall be released. The Developer shall be responsible for the condition of the Public Improvements for a period of two (2) years after completion; this shall be guaranteed either through retention of the security as set forth above or the Developer may provide a warranty bond in an amount and in a form acceptable to the Town, which bond would be substituted for release of the entire amount of the security.

18. Ordinances.

Nothing herein shall limit the obligations imposed on the Developer by any ordinance of the Town.

19. Extension of Due Date.

The due date for installation of improvements required in paragraph 4 may be extended for a reasonable time by the Town, after a written request from the Developer and any Guarantors, and after a hearing before the Board of Trustees, if the Developer demonstrates delay occurred through no fault of the Developer and for reasons beyond the Developer's control.

No certificate of occupancy shall be issued during any extension of time granted hereunder for the completion of those improvements described in paragraph 4 above unless specifically approved by the Board of Trustees.

20. Non-Suit.

The Town's approval of this subdivision shall not make it liable for any loss or damage suffered within or by use of the Development for any act, condition or omission occurring or arising

out of or in connection with the Town's approval of this subdivision. Neither the Developer nor anyone acting through it shall attempt to hold the Town liable for any loss or damages arising out of or in connection with the Town's approval of the Development.

21. **Benefit.**

The provisions of this agreement shall bind and inure to the benefit of the parties, their assigns as allowed by this agreement, and their successors in interest of all kinds.

22. **Non-Waiver.**

Any indulgence by the Town to the Developer as to the performance of any portion of this agreement and any waiver by the Town as to the Developer's performance or nonperformance of any part of this agreement shall not be deemed or considered to be an indulgence or waiver of any other part of this agreement or any subsequent nonperformance by the Developer.

23. **Breach by Developer; Town's Remedies.**

In the event of a breach of any of the terms and conditions of this agreement by the Developer, the Board of Trustees shall be notified immediately, and the Town may take such action as the Town deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship, which action may include the following:

a. The refusal to issue to the Developer any building permit or certificate of occupancy, provided, however, that this remedy shall not be available to the Town until after the affidavit described in subparagraph (b) below has been recorded.

b. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or his designee, stating that the terms and conditions of this agreement have been breached by the Developer. At the next regularly scheduled Town Board meeting, the Board of Trustees shall either approve the filing of said affidavit or direct the Town Manager to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no lots or parcels may be sold, conveyed or further developed within the property until the default has been cured; an affidavit signed by the Town Manager or his designee and approved by the Board of Trustees stating that the default has been cured shall remove this restriction.

c. A demand that the security given for the completion of the public improvements be paid or honored.



- d. The refusal to consider further development plans within the property.
- e. Any other right or remedy available at law or in equity.

Unless necessary to protect the immediate health, safety, and welfare of the Town, the Town shall provide the Developer ten (10) days written notice of its intent to take any action under this paragraph during which ten (10) day period, the Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described in subparagraph (b) above has been recorded with the Garfield County Clerk and Recorder, any person dealing with the Developer shall be entitled to assume that no default by the Developer has occurred hereunder unless a notice of default has been served upon the Developer as described above, in which event the Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

24. Indemnification/Insurance.

Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the annexation and rezoning of the property including, without limitation, indemnification against any claims arising under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and any amendments thereof. This indemnification shall include actual attorney's fees and costs incurred in the event that any party brings an action against the Town for any of the approvals described herein. The parties hereto intend not to duplicate any legal services or other costs associated with the defense of any claims against either party described in this section. Therefore, the parties hereto agree to cooperate in full to prevent duplicate expenses incurred as a result of the indemnification herein described. This indemnification shall include the assignment to the Town of the proceeds of any insurance policy insuring the Developer or its successors in interest.

The Developer and any contractor or subcontractor providing labor or materials to the Developer shall cause the Town to be named as an additional insured under the terms of the liability insurance policy maintained by such entity or person. A certificate showing such insurance shall be provided to the Town prior to commencement of any work by said entity or person, which insurance shall not be subject to cancellation or non-renewal without at least fifteen (15) days prior written notice to the Town.

25. Waiver of Defects.

In executing this agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this agreement.

26. Final Agreement.

Subject to the provision of paragraph 2(a) hereof, to the extent that this agreement is in conflict with any prior agreement between the parties, this agreement supersedes and controls with respect to said areas of conflict. In all other respects, said prior agreements shall remain in full force and effect.

27. Modifications.

This agreement shall not be amended, except by subsequent written agreement of the parties.

28. Release of Liability.

It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town of Carbondale Code and Ordinances and the laws of the State of Colorado, and that Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

29. Invalid Provision.

If any provisions of this agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

30. Governing Law.

The laws of the State of Colorado shall govern the validity, performance, and enforcement of this agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

31. Attorney's Fees.

Should this agreement become the subject of litigation to resolve a claim of default in performance by the Developer, if the default of the Developer is established in such proceeding, the Developer shall pay the Town's attorney's fees, expenses, and court costs.



32. **Notice.**

All notices required under this agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Town: Town Manager
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

with copy to: Robert B. Emerson
Attorney at Law
86 South Third Street
Carbondale, CO 81623

Developer: CARSAM REALTY TEN, LTD.
Attn: William G. Smith, Jr.
2425 West Loop South, Suite 300
Houston, TX 77027

with copy to: Lawrence R. Green
Attorney at Law
Balcomb & Green
P. O. Drawer 790
Glenwood Springs, CO 81602

33. **Recording - Obligations Running with Land.**

The Developer shall pay for the cost of recording this agreement and any documents which may be recorded according to the terms of this agreement. The obligations of the Developer to pay tap fees and any other fees to be paid pursuant to the terms of this agreement for any lot in this subdivision or any other obligations of the Developer as set forth herein shall be deemed to be an obligation running with the land as to each separate lot and shall be binding upon the owner of each separate lot.

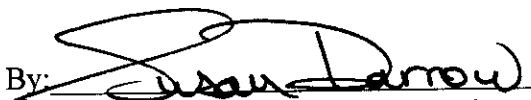
34. **Titles.**

The paragraph titles in this agreement are for convenience only and are not to be used to construe or interpret this agreement.

35. **Estoppel Certificate.**

The Town agrees that it will, at any time and from time to time, within thirty (30) days following receipt of a written request from Developer or an independent third party who is a proposed or existing lender, seller or purchaser of property within the Development, execute, acknowledge and deliver to the party making such request, a statement certifying (i) that this agreement has not been modified, supplemented or amended and is in full force and effect (or if there have been any such modifications, supplements or amendments, reference to the same will be made); and (ii) that to the best of the Town's knowledge and belief, the obligations of the Developer hereunder requiring performance prior to the time of the request, have been performed in compliance with this agreement (or, if there has been default in such performance, reference to the same will be made). Such statement indicating no default in performance shall act as a waiver of any claim by the Town to the extent such claim is based upon facts contrary to those asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts contrary to those contained in the statement, and who has acted in reasonable reliance upon the statement but shall not constitute a waiver of any claims against the Developer. Such statement shall in no event subject the Town to any affirmative liability whatsoever, notwithstanding the negligence or other inadvertent failure of the Town to disclose correct and/or relevant information. Prior to or at the time the Town delivers the statement herein provided for, the party making such request shall pay to the Town its reasonable costs in preparing, executing and delivering such statement.

THE TOWN OF CARBONDALE

By: 
~~Michael Hassig~~, Mayor Pro Tem
Susan Darrow

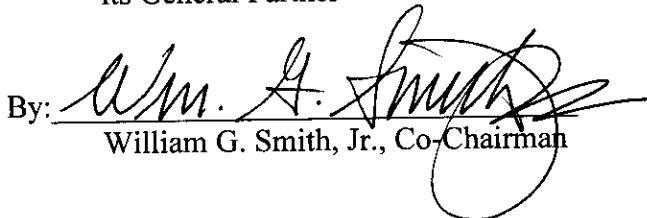
ATTEST:


Suzanne Cerise, Town Clerk



CARSAM REALTY TEN, LTD.,
a Texas limited partnership

By: CSR Carbondale, LLC,
a Texas limited liability company,
its General Partner

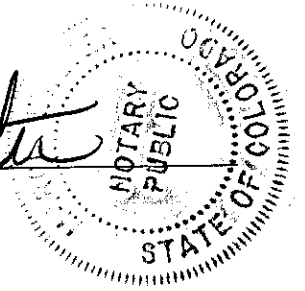
By: 
William G. Smith, Jr., Co-Chairman

STATE OF COLORADO)
) ss.
COUNTY OF Garfield)

The above and foregoing document was acknowledged before me this 20th day of March, 2003, by ^{Susan Darrow} ~~Michael Hassig~~ ^{Pro 4.2m}, as Mayor for the Town of Carbondale and by Suzanne Cerise as Town Clerk for the Town of Carbondale.

Witness my hand and official

Patricia Walter
Notary Public



MY COMMISSION EXPIRES

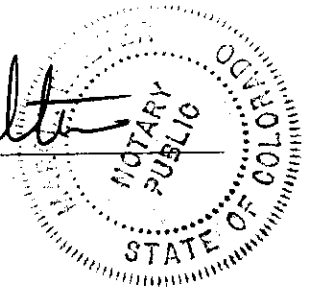
My commission expires: 05/15/2004
My address is: 0139 Meadow Lane AWS

STATE OF COLORADO)
) ss.
COUNTY OF Garfield)

The above and foregoing document was acknowledged before me this 21st day of March, 2003, by William G. Smith, Jr., as Co-Chairman of CSR Carbondale, LLC, a Texas limited liability company, General Partner of CARSAM REALTY TEN, LTD., a Texas limited partnership.

Witness my hand and official

Patricia Walter
Notary Public



My commission expires: May 15, 2004
My address is: 0139 Meadow Ln. AWS

623531 03/25/2003 01:38P B1450 P23 M ALSDORF
20 of 22 R 111.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT A

LOTS 1 AND 3 BERRY EXEMPTION ACCORDING TO THE FINAL PLAT
RECORDED APRIL 11, 1985 AS RECEPTION NO. 360810

TOWN OF CARBONDALE
COUNTY OF GARFIELD
STATE OF COLORADO

TOGETHER WITH

LOTS 1, 2, 3, 4, 5, AND 6
BLOCK 20

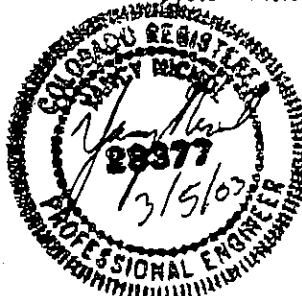
TOWN OF CARBONDALE
COUNTY OF GARFIELD
STATE OF COLORADO

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
PUBLIC IMPROVEMENTS
TOWN CENTER
SE JOB NO. 21141.01
MARCH 5, 2003

EXHIBIT B

ITEM	QUANTITY	UNIT	UNIT COST	COST	
1	MOBILIZATION	1	LS	10,000.00	10,000.00
2	EXCAVATION	4,000	LS	1.00	4,000.00
3	TRAFFIC CONTROL	2,000	LS	1.00	2,000.00
4	SAWCUT REMOVE ASPHALT	250	SY	1.50	375.00
5	3" ASPHALT IN STREET	511	SY	9.50	4,854.50
6	2" ASPHALT OVERLAY	2,705	SY	6.25	16,908.33
7	3" ASPHALT IN ALLEY	442	SY	10.50	4,641.00
8	CLASS 6 ABC	174	CY	25.00	4,360.19
9	CONCRETE C&G	956	LF	16.00	15,296.00
10	CONCRETE DRIVEWAYS	1	EA	3,000.00	3,000.00
11	5' SIDEWALK	3,385	SF	3.00	10,155.00
12	HANDICAP RAMP	1	EA	500.00	500.00
13	8" SDR 35 SEWERLINE	268	LF	30.00	8,040.00
14	4' DIA SEWER MANHOLE	2	EA	2,100.00	4,200.00
15	6" SEWER SERVICE	5	EA	1,200.00	6,000.00
16	SEWER INTERCONNECTION	5	EA	2,500.00	12,500.00
17	8" DIP WATERLINE	596	LF	35.00	20,860.00
18	4" WATER SERVICES	4	EA	1,200.00	4,800.00
19	8" GATE VALVE	7	EA	900.00	6,300.00
20	WATER INTERCONNECTION	4	EA	1,200.00	4,800.00
21	12" ADS N12	23	LF	22.00	506.00
22	INLET STRUCTURES	2	EA	1,400.00	2,800.00
23	DRY WELLS	2	EA	2,700.00	5,400.00
24	4' UTILITY TRENCH ETC	372	LF	11.00	4,092.00
25	3' UTILITY TRENCH ETC	262	LF	8.00	2,096.00
26	ELECTRIC VAULTS	5	EA	500.00	2,500.00
27	UNDERGROUND ELECTRIC PRIMARY	1	LS	22,500.00	22,500.00
28	3' GAS SECONDARY	283	LF	8.00	2,264.00
29	STREET LIGHTS	3	EA	2,500.00	7,500.00
30	TREES	3	EA	500.00	1,500.00
31	STREET LIGHT CONDUIT	800	LF	1.50	1,200.00
32	IRRIGATION PIPE	800	LF	5.00	4,000.00
33	STREETSCAPE BRICK PAVING	770	SF	5.00	3,850.00
34	WALK TO MAIN STREET	500	SF	3.00	1,500.00
SUBTOTAL					205,298.02
CONTINGENCY 10%					20,529.80
TOTAL					225,827.82

NOTE: No onsite storm drain system included in estimate.



NOTE: This opinion of probable construction cost was prepared for budgeting purposes only. Sopris Engineering, LLC cannot be held responsible for variances from this estimate as actual costs may vary due to bid and market fluctuations.

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 21 of 22 R 111.00 D 0.00 GARFIELD COUNTY CO

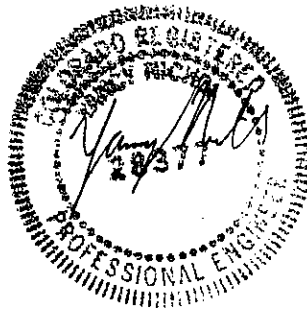
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
ADD TREES STREET LIGHTS WITH BUILDING CONSTRUCTION
PUBLIC IMPROVEMENTS

TOWN CENTER
SE JOB NO. 21141.01
MARCH 5, 2003

EXHIBIT B

	ITEM	QUANTITY	UNIT	UNIT COST	COST
1	STREET LIGHTS	2	EA	2,500.00	5,000.00
2	TREES	4	EA	500.00	2,000.00
	SUBTOTAL				7,000.00
	CONTINGENCY 10%				700.00
	TOTAL				7,700.00

623531 03/25/2003 01:38P B1450 P25 M ALSDORF
22 of 22 R 111.00 D 0.00 GARFIELD COUNTY CO



NOTE: This opinion of probable construction cost was prepared for budgeting purposes only. Sopris Engineering, LLC cannot be held responsible for variances from this estimate as actual costs may vary due to bid and market fluctuations.