

After recording, please return to:  
Town of Carbondale  
c/o Town Manager  
511 Colorado Ave.  
Carbondale, CO 81623

### AGREEMENT TO RELOCATE RESTRICTIVE COVENANT

(to release Parcel 1, American Tree and Cement Subdivision Exemption, Town of Carbondale, Colorado  
from restrictive covenant and to establish covenant against  
Lots 1, 9 and 10, Town Center Subdivision, Filing No. 2, Town of Carbondale, Colorado)

This Agreement to Relocate Restrictive Covenant ("Agreement") is made this 12<sup>th</sup> day of November, 2019 by and between PICKWICK HOLDINGS, LLC, a Colorado limited liability company ("Owner"), with an address of 329 Main St. Carbondale CO and the TOWN OF CARBONDALE, COLORADO, a Colorado home rule municipal corporation, with an address of 511 Colorado Ave., Carbondale, CO 81623 ("Town").

A. A Declaration of Restrictive Covenant dated March 21, 2003 (the "2003 Restrictive Covenant") was executed and recorded by Carsam Realty Ten, Ltd., a Texas limited partnership (the "Original Declarant"), in favor and for the benefit of the Town, which Declaration was recorded in the Garfield County, Colorado real property records on March 25, 2003, in Book 1450 on Page 83, Reception No. 623534.

B. Pursuant to the 2003 Restrictive Covenant, a restrictive covenant was placed upon Parcel 1, as depicted on the plat of the American Tree and Cement Subdivision Exemption, which plat was recorded in the Garfield County, Colorado real property records on July 22, 1997 as Reception No. 51134 (this property is further described on Exhibit A to the 2003 Declaration) (the "American Tree Property"). This covenant that was placed upon the American Tree Property pursuant to the 2003 Restrictive Covenant was for the purpose of securing the Original Declarant's obligations to provide deed-restricted affordable housing units related to the future development of the Town Center Subdivision, as described and approved by the Town pursuant to Ordinance No. 9, Series of 2003, which Ordinance was recorded in the Garfield County, Colorado real property records on March 25, 2003, Reception No. 623538. The 2003 Restrictive Covenant was a specific requirement of Section 7 of the Subdivision Improvements Agreement for Town Center Subdivision Filing No. 1, dated March 11, 2003, and recorded in the real property records of Garfield County, Colorado on March 25, 2003, Reception No. 623531 (the "Filing No. 1 SIA").

C. The 2003 Restrictive Covenant was subsequently amended by a document entitled "Consent to Transfer of Restricted Property and Amendment of Restrictive Covenant" dated July 17, 2007 and recorded in the real property records of Garfield County, Colorado, on July 25, 2007, as Reception No. 729014.

D. In 2004, the Town approved Phase 2 of the Town Center Subdivision pursuant to Ordinance No. 31, Series of 2004, which Ordinance was recorded in the real property records of Garfield

County, Colorado as Reception No. 668232. In connection with this further approval, the Town and the Original Declarant executed a second agreement entitled Subdivision Improvements Agreement for Town Center Subdivision, Filing No. 2, which Agreement was dated December 14, 2004 and recorded in the real property records of Garfield County, Colorado on February 4, 2005 as Reception No. 668234 (the "Filing No. 2 SIA"). Pursuant to Paragraph 7.d of the Filing No. 2 SIA, the parties reiterated the Original Declarant's obligation to secure its affordable housing obligations related to the Town Center Subdivision by its placement of a restrictive covenant upon the American Tree Property pursuant to the 2003 Declaration. However, said Paragraph 7.d further provided that:

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 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. Owner, which presently holds title to the American Tree Property and all remaining undeveloped lots within the Town Center Subdivision, is the successor-in-interest to the Original Declarant. No affordable housing units have been deed-restricted within the Town Center Subdivision as of the date of this Agreement.

F. Pursuant to a letter to the Town dated October 11, 2019, pursuant to Paragraph 7.d of the Filing No. 2 SIA, Owner has requested that the restrictive covenant that was placed upon the American Tree Property pursuant to the 2003 Restrictive Covenant be fully released and discharged, and that instead an equivalent restriction be placed upon Lots 1, 9 and 10, Town Center Subdivision Filing No. 2, for the purpose of continuing to secure the completion of all required deed-restricted affordable housing units associated with development of the Town Center Subdivision.

G. The Town is willing to permit the release of the 2003 Restrictive Covenant against the American Tree Property upon condition that an equivalent covenant be placed upon Lots 1, 9 and 10, Town Center Subdivision, Filing No. 2, according to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good consideration, the sufficiency of which is acknowledged, the Owner and the Town further agree as follows:

1. The above recitals are incorporated herein by reference.
2. Owner agrees and acknowledges that, as the successor-in-interest to the Original Declarant, Owner has assumed all remaining obligations of the original Owner pursuant to all applicable Town of Carbondale approvals for the Town Center Subdivision, including in particular all outstanding developer obligations set forth in Section 7 of the Filing No. 1 SIA and Section 7 of the Filing No. 2 SIA.

3. Pursuant to the 2003 Restrictive Covenant, the Town hereby agrees that this document shall be considered a written instrument, signed by the Owner and the Town, notarized as required for the execution of deeds, and specifically referring to the 2003 Restrictive Covenant, stating that other security acceptable to the Town has been provided by the Owner. As such, upon mutual execution of this Agreement, and recording of the same in the real property records of Garfield County, Colorado, the 2003 Restrictive Covenant against the American Tree Property shall be and is hereby released and fully discharged by the Town.

4. In lieu of the security originally posted pursuant to the 2003 Deed Restriction, Owner hereby agrees to impose a replacement restrictive covenant against Lots 1, 9 and 10, Town Center Subdivision Filing No 2, as such lots are described on the Final Plat recorded in the real property records of Garfield County, Colorado, on February 4, 2005, as Reception No. 668233 ("the Replacement Restricted Properties"), according to the following terms:

a. Owner hereby declares that the Replacement Restricted Properties shall not be sold, conveyed or otherwise transferred, except as provided in this Agreement, or until such time as the Owner has satisfied its obligations to provide deed restricted community housing relating to Town Center as expressly set forth in Section 7 of the Filing No. 1 SIA and Section 7 of the Filing No 2. SIA, and the covenant is thereafter extinguished and released as hereinafter provided.

b. Owner hereby represents and warrants to the Town that, as of the date of this Agreement, the Replacement Restricted Properties are all each free and clear of all financial encumbrances. After recordation of this Agreement, Owner may grant a deed of trust, mortgage or other security interest in the Replacement Restricted Property, so long as the same is junior to this Agreement and would not, upon foreclosure of such security instrument, extinguish or modify the restrictive covenant established hereby against the Replacement Restricted Properties. However, Owner shall not grant any security interest in the Replacement Restricted Properties without the Town's consent, which shall be granted in the circumstances set forth in this paragraph.

c. This Agreement and the restrictive covenant established against the Replacement Restricted Properties hereby shall be deemed a covenant which shall run with and burden the Replacement Restricted Properties for the benefit of the Town, and shall be specifically enforceable by the Town. In the event that the Town should ever commence litigation or other proceeding to enforce the terms of this Agreement, and if the Owner's breach of this Agreement is established in such proceeding, then the Owner shall be responsible to pay the Town's attorneys' fees, expenses, and other court costs incurred in such proceeding.

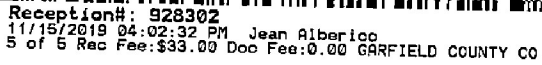
d. This Agreement and the restrictive covenant herein established against the Replacement Restricted Properties may be released and extinguished only by a written instrument, signed by the Owner and the Town, notarized as required for the execution of



deeds, specifically referring to this Agreement as it is recorded in the real property records of Garfield County, Colorado, stating that the purposes of the restrictive covenant established herein have been satisfied, or that other security acceptable to the Town has been provided by the Owner, and the restrictive covenant hereby established against the Replacement Restricted Properties pursuant to this Agreement is therefore fully released and discharged. Upon its execution, such instrument shall be recorded in the real property records of Garfield County, Colorado, and from and after such recording, the restrictive covenant established against the Replacement Restricted Properties herein shall be fully extinguished and discharged and shall no longer be considered a burden or encumbrance upon the Replacement Restricted Properties.

By \_\_\_\_\_  
Manager

Notary Public




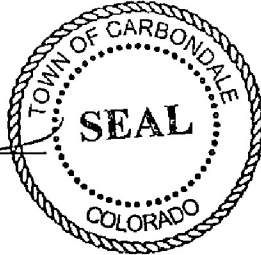
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Town of Carbondale/Pickwick Properties LLC  
November 12, 2019  
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THE TOWN OF CARBONDALE, COLORADO  
a Colorado home rule municipal corporation

By   
Mayor

ATTEST:

  
Town Clerk



STATE OF COLORADO    }  
                               } ss.  
COUNTY OF GARFIELD }

Subscribed and sworn to before me this 12 day of November, 2019 by  
Dan Richardson as Mayor and Catherine Derby as Town Clerk of the Town of  
Carbondale, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

My commission expires:

SHEIJA BINSHABAN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20194026023  
MY COMMISSION EXPIRES JULY 10, 2023

Notary Public