

Attachment #2

DRAFT
5/15/2018

WEST STEAMBOAT NEIGHBORHOODS ANNEXATION AGREEMENT¹

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018, by and between the CITY OF STEAMBOAT SPRINGS, a Colorado municipal corporation ("City") and WEST STEAMBOAT NEIGHBORHOODS, LLC, a Colorado limited liability company ("WSN").

WHEREAS, WSN has the real property, which consists of 150 acres more or less, described in Exhibit "A" ("Property") under contract to purchase and will be the owner of the Property prior to this Agreement becoming effective; and

WHEREAS, the Property is contiguous with the city limits and within the Urban Growth Boundary; and

WHEREAS, WSN intends to petition for the annexation of the Property; and

WHEREAS, the City has determined that it would be in the best interest of the public health, safety, and welfare of its citizens to impose certain terms and conditions on WSN in connection with the annexation of the Property to the City; and

WHEREAS, WSN and City have come to an Agreement with respect to the terms and conditions of the annexation of the Property to the City, all as more fully set forth hereafter.

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. As used in this Agreement, unless the context clearly requires otherwise:

"Annexation Ordinance" shall mean the ordinance adopted by the City Council of the City of Steamboat Springs pursuant to the Municipal Annexation Act of 1965 (Section 31-12-101, et seq., C.R.S.) officially annexing the Property into the City of Steamboat Springs.

¹ APPROVAL OF THIS ANNEXATION AGREEMENT AND THE REGULATING PLAN CONSTITUTES APPROVAL OF A SITE SPECIFIC DEVELOPMENT PLAN THAT CREATES VESTED PROPERTY RIGHTS AND A DEVELOPMENT AGREEMENT THAT EXTENDS THE TERM OF THE VESTED PROPERTY RIGHTS FOR A PERIOD OF MORE THAN THREE YEARS, PURSUANT TO ARTICLE 68, TITLE 24, C.R.S., AS AMENDED.

"Applicable City Ordinances" shall mean all ordinances of the City which regulate the development, subdivision and use of the Property, as in effect from time to time.

"CPI" shall mean the Consumer Price Index, Denver Urban / All Items.

"Development Fee Deed of Trust" shall mean a deed of trust given by WSN to the City for purpose of securing the payment of the water firming fund and transportation firming fund contributions. The Development Fee Deed of Trust shall serve as a trigger so that the title company, in order to secure the release of the Development Fee Deed of Trust, will collect such contributions on behalf of the City, as it would on behalf of a conventional lender. The Development Fee Deed of Trust is attached as Exhibit H.

"Gateway Deed Restriction" shall mean a deed restriction providing that: a) homes or units that are sold shall be owned and occupied by at least one person who works a minimum of thirty (30) hours per week in Routt County; b) an owner may elect not to occupy the home for a period of one year every five (5) years so long as the home is occupied by a person who works a minimum of thirty (30) hours per week in Routt County, including such additional provisions relative to retirement and disability as the City may approve; c) homes or units that are owned by the City, the Yampa Valley Housing Authority, WSN or a private party approved by the City may be leased so long as the home or unit is occupied by a person who works a minimum of thirty (30) hours per week in Routt County and, relative to retirement and/or disability, meets City approved rules; and, d) the deed restriction shall be administered by the Yampa Valley Housing Authority or such other party, including the City itself, as may be designated by City. The Gateway Deed Restriction shall be subordinate to any: i) conventional and/or private equity vertical construction financing on not to exceed twenty-six (26) units at any given time; and ii) purchase money financing. See Gateway Deed Restriction attached as Exhibit C.

"HOA" shall mean the West Steamboat Neighborhoods homeowners association.

"Property" shall mean that certain real property described on the attached Exhibit A.

"Regulating Plan" shall mean document which establishes density, uses, patterns, open space and parks, and primary streets and their general locations within the Property, to be approved by the City pursuant to the requirements and procedures set forth in the TND Standards in effect as of the date this annexation becomes effective.

"Transportation Firming Fund" shall mean a fund to be administered by the City and used for offsite transportation and Core Trail engineering, right of way acquisition, permitting and construction.

"Traditional Neighborhood Development ("TND Standards"): Those sections of the Applicable City Ordinances providing standards and requirements for subdivision and/or development in the "Traditional Neighborhood Design," (TND District) with street types as set forth in Exhibit F, the Steamboat 700 Form-Based Code, Chapter 6, Street and Circulation Standards, excluding the Street and Circulation Regulating Plan ("Chapter 6"). In the event of a conflict between street and circulation standards in the Applicable City Ordinances and Chapter

6, Chapter 6 shall prevail. Collectively, the foregoing shall be referred to as the “TND Standards”.

“Water Firming Fund” shall mean a fund to be administered by the City and used for water engineering, rights acquisition, storage, permitting and/or infrastructure construction.

2. DEVELOPMENT. Upon the annexation to the City, development of the Property shall conform in all respects with the Applicable City Ordinances.

3. PROPOSED USE OF AND RESTRICTIONS ON THE PROPERTY.

3.1 Zoning, Land Use and Development Review. The Property shall be zoned “Traditional Neighborhood Design” (“TND District”) immediately following annexation and development then reviewed pursuant to the TND Standards. Simultaneously with its application for zoning of the Property to TND, the Developer will submit and the City will review a Regulating Plan for the Development pursuant to the TND Standards.

3.2 General Plan of Development. West Steamboat Neighborhoods (WSN) shall generally consist of three neighborhoods – Gateway, Slate Creek, and Emerald – consisting of approximately 450 homes – together with grocery store or similar use abutting Hwy 40 and neighborhood commercial within the Gateway Neighborhood. All three neighborhoods shall have traditional neighborhood patterns consistent with the TND Standards. See Exhibit B, WSN Concept Plan and Unit Mix.

3.3 Gateway. Construction shall begin with Gateway. Gateway may consist of approximately: 198 homes, of which 158 (80%) shall be subject to a local’s deed restriction (the “Gateway Deed Restriction”) and 40 (20%) shall be unrestricted market units. The Gateway Deed Restriction, set forth in Exhibit C shall be recorded in conjunction with sale of the home and be subordinate to: a) any conventional or private equity construction financing on not to exceed twenty-six (26) units at any given time; and b) any purchase money or home equity mortgage financing. One Hundred Eight (108) of the 158 homes subject to the Gateway Deed Restriction shall be in the unit mix and with the targeted pricing set forth in Exhibit D, Gateway Unit Mix. Fifty (50) of the 158 homes subject to the Gateway Deed Restriction shall be, subject to WSN architectural review and control, built and sold by the Yampa Valley Housing Authority on land contributed by WSN pursuant to the Yampa Valley Housing Authority Contribution Agreement attached hereto as Exhibit E. WSN’s obligation is to contribute land to the Yampa Valley Housing Authority and WSN shall not be responsible for building units on the contributed land. In addition, the Yampa Valley Housing Authority homes shall be part of the HOA and responsible for its fair share of HOA operating expenses.

3.4 Slate Creek Neighborhood. Slate Creek Neighborhood shall consist of approximately One Hundred Forty-Five (145) homes. WSN shall set aside twelve (12) acres for dedication to the Steamboat Springs School District for construction of an elementary school.

3.5 Emerald Neighborhood. Emerald Neighborhood shall consist of approximately One Hundred Seven (107) homes.

3.6 Home / Unit Allocation and Timing Homes / Units may be shifted between the three neighborhoods during the development approval process and WSN may, from time to time in response to changing market conditions, seek to amend the general plan of development consistent with the Applicable City Ordinances. Construction of the Slate Creek and Emerald Neighborhoods may commence at any time after Gateway Neighborhood construction has commenced.

4. Real Estate Transfer Assessment

4.1 The Developer shall impose upon the entirety of the Property a private covenant imposing a real estate transfer assessment of one percent (1%) on the gross sales price on the sale of any home and/or residential unit (the "Real Estate Transfer Assessment"), substantially in the form attached hereto as Exhibit F. Transfers of portions of the Property, including individual homes, residential units and/or lots, as between WSN, WSN affiliated entities, the Yampa Valley Housing Authority and/or the Steamboat Springs School District shall be exempt from the Real Estate Transfer Assessment. In the event the Real Estate Transfer Assessment is determined to be invalid, then in such event WSN shall provide an alternate mechanism ("RETA Alternate") to recover normal and customary costs incurred by the City to provide the Property City services typically provided within City limits, including but not limited to police, fire, road maintenance and other City services typically provided within the City limits (the "City Services"), the RETA Alternate being subject to City approval which approval shall not be unreasonable withheld.

4.2 The revenue from imposition of the Real Estate Transfer Assessment, or if applicable RETA Alternate, shall be paid directly to the City for the provision of City Services to the Property.

4.3 The Property will not be subject to any further real property taxes except as may be uniformly charged against all real property located within the City. In the event that the City institutes real property taxes on real property located within the City and such real property taxes apply to the Property and accrue to the general fund which provides City Services, then in such event the Real Estate Transfer Assessment, or if applicable RETA Alternate, on any portion of the Property shall permanently cease and the City shall continue to provide City Services to the Property.

5. UTILITY SERVICE AND PUBLIC IMPROVEMENTS.

5.1 **Extensions of Utility Services and Public Improvements.** WSN shall pay all costs for the design and construction of all public improvements and utility services necessary to serve the Property, including, but not limited to, roads, curbs, gutters, sidewalks, sanitary and drainage sewers, water, street lights, electricity, telephone, gas, and cable television service, in accordance with applicable City or public utility company standards and specifications. WSN shall dedicate to the City and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines and other public improvements, including public streets and

trails, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.

5.2 Reimbursement For Improvements. The Parties agree that WSN shall be entitled to reimbursement of certain costs of construction of certain public water, as described in Paragraph 6(c), and Hwy 40 and Slate Creek Road intersection improvements, as described in Paragraph 10(b). The City agrees that it will require, as a condition of annexation and/or development of any portion of the West Steamboat Area Plan adopted June 19, 2006 (the “Benefited Property”) that WSN will be reimbursed by the developer of such portion of the Benefited Properties a proportionate share of the cost of such dedication or infrastructure which serves a Benefited Property. The proportionate share shall be reasonably determined by the City Council at the time of and as a condition of annexation of a Benefitted Property based upon, without limitation, the benefits received by the Benefited Property, the cost savings to the Benefited Property by WSN’s making of a land dedication, and/or construction of the additional infrastructure, the respective size of the Benefited Property served, physical condition of the infrastructure, prior pro rata allocation to other Benefited Properties of the use of the land dedication or infrastructure, length and capacity of utilities and roadways infrastructure used by the Benefited Property, and the benefit to WSN of such infrastructure. Nothing in this Paragraph shall prohibit WSN from making application to the City pursuant to the requirements of the City’s reimbursement ordinance for reimbursement of expenses not otherwise reimbursable under this Paragraph.

5.3 City Provision of Services. Upon the extension of utility services and public improvements as provided for in Paragraph 5.1 above and acceptance by the City of the utility services and public improvements to be dedicated to the City, the City shall make available and provide all City provided utilities and services to the Property and Units or other improvements served by such utility services and public improvements on the normal and customary basis as such utilities and services are provided and for the normal and customary charges for such utilities and services, except as such charges may be waived by the City as hereinafter provided. Notwithstanding, the City’s commitment to provide such utility services and public improvements shall not extend beyond the vesting term provided in Paragraph 11(b), or any future extension of such term.

6. WATER.

6.1 WSN Contributions. WSN shall contribute:

- (a) Onsite infrastructure as required by the Municipal Code to serve the WSN including water mains, service lines, valves, hydrants, and other necessary appurtenances.
- (b) Prior to issuance of a building permit for the first (1st) home / unit, unless a delay is approved by the Director of Public Works, WSN shall cause to be installed pressure relief valves and boosters as may be required to serve the Property.

- (c) Prior to issuance of a building permit for the first (1st) home / unit, unless a delay is approved by the Director of Public Works, WSN shall cause to be installed, as may be reasonably approved by the Director of Public Works, a secondary 12" water line approximately 2,500 feet along Hwy 40, adequate water service extension through the Overlook property, onsite water tank, or some combination thereof.
- (d) Standard Water Tap Fees All homes / units shall pay standard water tap fees, such amounts due prior to issuance of a building permit as provided in the Applicable City Ordinances.
- (e) Water Firming Fund Contribution All homes not subject to the Gateway Deed Restriction shall pay to the Water Firming Fund an amount initially equal to \$16,000 per home / unit, such amounts due upon closing of the sale of the home / unit. The payment of such amount shall be secured by the Development Fee Deed of Trust. The amount shall be adjusted annually by the CPI.
- (f) The Property, within the current approved scope, will not be subject to any further water dedication requirements (or fee-in-lieu of dedication) as a condition of any City approval, including the City's water dedication policy, adopted as Section 25-77 of the Municipal Code during the vesting term provided in Paragraph 11(b), or any future extension of such term.

6.2 **Water Adequacy.** The City shall, upon receipt of the Regulating Plan showing densities and uses, make a positive adequacy determination pursuant to C.R.S. §29-20-304 provided that demands are substantially equivalent to the current approved scope and the January 27, 2017 Water Demand Report. In the event of a change in such densities or uses, the adequacy determination shall be made based upon the revised density or uses.

6.3 **West Area Tank.** The City shall be responsible for building, at its expense, the West Area Water Tank and completing same within two years of the effective date of this Annexation Agreement, subject to acquisition by the City of the tank site, and appropriation by the City of construction funds.

7. SEWER

WSN Contributions. WSN shall contribute:

- (a) On-site infrastructure as required by the Municipal Code to serve WSN including sewer mains, services, manholes and other necessary appurtenances.
- (b) Standard Sewer Tap Fees All homes / units shall pay standard sewer tap fees, such amounts due prior to issuance of a building permit as provided in the Applicable City Ordinances.
- (c) Easements for adjacent properties to convey gravity-fed wastewater flows to the existing collection system.

- (d) The Property will not be subject to any further sewer related payments as a condition of any City approval during the vesting term provided in Paragraph 11(b), or any future extension of such term. .

8. PARKS, OPEN SPACE AND TRAILS..

The WSN shall contribute:

- (a) Gateway, Slate Creek and Emerald POST program: See Exhibit H, West Steamboat Neighborhoods POST Program.
- (b) POST amenities would be phased accordingly with the development of each neighborhood, and as the Community Development Code requires.
- (c) POST amenities would be owned and maintained by the HOA; however, the City would be given an easement allowing such POST amenities to be used by the public subject to such rules as may be reasonably established by the HOA, which shall be equally applicable to the general public and owners of property in the WSN.
- (d) During the development review process, WSN shall meet Applicable City Ordinances related to natural resource protection to the extent practicable or as permissible through the authorities having jurisdiction.

9. SUSTAINABILITY.

- (a) The homes shall be Energy Star Certified, or an equivalent nationally-recognized certification at the time of construction. LEED certification will not be required for any developments within WSN, however, such certification will be encouraged.
- (b) WSN will explore and innovate with respect to energy conservation, solar orientation, passive solar gain, compact and efficient building envelopes, recycling through construction, indoor air quality, and increased insulation.
- (c) WSN will, over the life of the project, investigate and, where feasible, implement new smart home and construction practice technologies, and solar garden and geothermal technologies
- (d) WSN will encourage the exploration of living classroom along Slate Creek riparian zone, for safe, hands-on scientific exploration.

10. ROADS AND TRANSIT. WSN shall contribute:

- (a) **Funds for Public Works Capital Costs** Prior to issuance of a building permit for the one hundred ninety-ninth (199th) home / unit, unless a delay is approved by the Director of Public Works, **WSN shall pay the City its fair share of \$810,000 to be used for the purchase of new snow removal equipment to be used on the Property and other parts of the City, such equipment consisting of: motor grader; sand truck; front-end loader and cold equipment storage. "Fair Share" shall be determined by the Director of**

Public Works based upon a ratio where the denominator is the sum of approved, unrestricted market units / lots in Sunlight, Overlook and West Steamboat Neighborhoods and the numerator is the number of approved, unrestricted market units / lots in West Steamboat Neighborhoods.

- (b) WSN shall cause to be constructed Hwy 40 and Slate Creek Road intersection improvements as required by CDOT based on their access requirements.
- (c) Secondary Access Prior to issuance of a building permit for the thirty-first (31st) home / unit, , WSN shall cause to be installed secondary emergency access either connecting to Gloria Gossard Parkway or such other location approved by the Fire Chief.
- (d) Transportation Firming Fund All homes not subject to the Gateway Deed Restriction shall pay to the Transportation Firming Fund an amount initially equal to \$9,500, such amounts due upon closing of the sale of the home / unit with such amount allocated to offsite transportation improvements. The payment of such amount shall be secured by the Development Fee Deed of Trust. The amount shall be adjusted annually by the CPI..
- (e) . This obligation shall survive the construction by CDOT or the City of any or all of the offsite transportation or Core Trail improvements.
- (f) WSN shall contribute normal and customary easements for transit stops and turnarounds.
- (g) The Property will not be subject to any further road and transit related payments as a condition of any City approval during the vesting term provided in Paragraph 11(b), or any future extension of such term.

11. VESTED PROPERTY RIGHTS

- (a) **Vested Property Rights** The City will approve the creation of vested property rights for the Property pursuant to the Vested Property Rights Act, C.R.S. §24-68-101 et seq. In the event of conflict between this Agreement and the Vested Property Rights Statute or Municipal Code, this Agreement shall prevail. In recognition of the size of the development contemplated under this Agreement, the substantial investment and time required to complete the development, the potential for phases of the development and the possible impact of economic cycles and varying market conditions during the course of the development, WSN and the City agree that vested property rights are approved under the following conditions: the rights to be vested shall extend only to the permitted uses and densities set forth in the zone districts adopted and approved by the City as described in Paragraph 3 and to the public land dedication, infrastructure, financing, exactions, deed restricted housing and other requirements set forth in this Agreement.
- (b) **Vesting Term** The term of vesting shall be ten (10) years commencing upon the date of recording the Annexation Ordinance and Map. An additional ten (10) years upon issuance of the one hundred eight (108th) deed restricted home / unit certificate of occupancy, for a total of twenty (20) years.

- (c) **Site-Specific Development Plans** WSN and the City agree that the Regulating Plan constitute an approved “site specific development plan” as defined in the Vested Property Rights Statute, and that pursuant thereto, WSN and its successors and assigns shall have vested rights to undertake and complete the development and use of the Property under the terms and conditions thereof during the vesting term established in Paragraph (b) above.

12. ANNEXATION CONTINGENCIES. City and WSN agree that the annexation of the Property and the effectiveness of this Agreement are contingent upon the occurrence of all of the following events, and the annexation and this Agreement shall be effective on the date on which the last of the following events occurs: (a) final approval of this agreement and the Annexation Ordinance; and b) WSN has purchased and is the owner of the Property. Provided, however, that, if all of the foregoing events have not occurred on or before one year from the date hereof, then this Agreement shall be null and void and of no further force or effect.

13. MORATORIA, GROWTH CONTROL, AFFORDABLE HOUSING AND/OR INCLUSIONARY ZONING MEASURES No development moratorium or growth control limitation shall be applied against the Property unless the same is applied throughout the City generally, and which does not, in its structure or application, have a disproportionate impact upon the Property as compared to other properties. For example, but not by way of limitation, a moratorium or growth control limitation on processing of building permits to ten percent (10%) of approved units per year, which would restrict a development with 100 approved units to 10 building permits per year, and the Property (assuming for this example only, 450 approved homes / units) to 45 building permits per year, would not be disproportionately applied to the Property, as the impact of the moratorium is equally felt as a percentage of total approved units. In addition, beyond the commitments in this Agreement, WSN shall not be subject to any further affordable housing contributions and/or assessments, including but not limited to, affordable housing contributions, inclusionary zoning or other similar ordinance or rule intended to address the City’s housing problem.

14. MISCELLANEOUS.

14.1 **Effective Date.** This Agreement is contingent upon the City approval of the annexation and shall become effective as provided for in Paragraph 12.

14.2 **Parties' Authority.** The City and WSN represent that each has the authority to enter into this Agreement according to applicable Colorado law and the City's Home Rule Charter and Ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such party. This Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Agreement are effective.

14.3 **Recording.** This Agreement shall be recorded in the Routt County Clerk and Recorder's Office in order to put prospective purchasers of the Property or other interested parties on notice as to the terms and conditions contained herein.

14.4 **Entire Agreement.** This Agreement and the exhibits hereto represent the entire understanding between the parties, and no other agreement concerning the Property, oral or written, made prior to the date of this Agreement, which conflicts with the terms of this Agreement shall be valid as between the parties.

14.5 **Modification.** This Agreement shall not be modified except in writing executed by all parties hereto.

14.6 **Additional Remedies.** If at any time any material part hereof has been breached by WSN, the City may, in addition to other remedies, withhold approval of any or all building or other permits applied for by WSN on its Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.

14.7 **Binding Effect.** The agreements and covenants as set forth herein shall be binding upon WSN, its successors and assigns, and all persons who may hereafter acquire an interest in the Property, or any part thereof.

14.8 **Severability.** In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

14.9 **Incorporation of Exhibits.** Exhibits A through I, inclusive, which are attached hereto, are incorporated herein by reference.

14.10 **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

14.11 **Notices.** Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If City:

Dan Foote
City Attorney
City of Steamboat Springs
137 10th St.
Steamboat Springs, CO 80487

With A Copy (Which Shall
Not Constitute Notice) To:

Gary Sutor
City Manager
City of Steamboat Springs
137 10th St.
Steamboat Springs, CO 80487

If To WSN:

West Steamboat Neighborhoods, LLC
777 Pearl Street, Suite 200
Boulder, CO 80302
Attn: David G. O'Neil

With A Copy (Which Shall
Not Constitute Notice) To:

Rich Nehls
Packard Dierking
2595 Canyon Blvd., Suite 200,
Boulder, CO 80302

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given on the 2nd day following mailing. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process

14.12 **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by either party waiving such rights.

14.13 **Applicable Law.** This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado.

14.14 **Counterparts.** This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.

14.15 **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

14.16 **Terminology.** Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders.

Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first written above.

CITY OF STEAMBOAT SPRINGS, a Colorado
municipal corporation

By _____
Gary Suiter, City Manager

ATTEST

City Clerk

WEST STEAMBOAT
NEIGHBORHOODS, LLC, a Colorado limited
liability company

By: _____
David G. O'Neil, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ROUTT)

The foregoing instrument was acknowledged before me this _____ day of 2018, by Gary Suiter, as City Manager, Steamboat Springs, a Colorado municipal corporation

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

Subordination and Consent of Mortgagee

Alpine Bank, a Colorado banking corporation, with its principal office located at 2200 S Grand Ave, Glenwood Springs, CO 81601, ("Mortgagee") as the holder of a secured debt in the form of a Deed of Trust made by Steamboat 700, LLC, a Nevada limited liability company, Mortgagor, dated March 19, 2007, in the original principal amount of \$10,000,000.00 (the "Secured Debt"), which is secured by a deed of trust encumbering the Property, which deed of trust is dated March 19, 2007, recorded on March 20, 2007 at Reception Number 653909 in the Records of Routt County, Colorado and amended by that certain Allonge executed in October, 2015 (collectively the "Mortgage"), hereby consents and does subordinate the Mortgage to the terms of the foregoing Annexation Agreement, which Mortgagee has reviewed and approved. Mortgagee agrees that:

- 1. The Mortgage is subordinated and hereafter shall be junior to the Annexation Agreement.
- 2. In the event of the foreclosure of the Mortgage, whether by judicial decree or pursuant to a power of sale, the Annexation Agreement shall not be extinguished but shall survive and continue to encumber the Property.
- 3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns.

MORTGAGEE:

Name of Institution: Alpine Bank, a Colorado banking corporation

By: _____

its: _____

STATE OF COLORADO)

)ss.

COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 2009 by _____ as _____ of Alpine Bank, a Colorado banking corporation.

Witness my hand and official seal.

My Commission Expires: _____.

Notary Public