

This is a re-recording of Ordinance No. 11, Series of 2014, originally recorded as Reception No. 201411333 to correct typographical errors in Exhibit A, Condition No. 7(1) B.

**Town of Basalt, Colorado
Ordinance No. 11
Series of 2014**

ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, AUTHORIZING TRANSFER OF PROPERTY INTERESTS FROM THE TOWN TO THE WILLITS TOWN CENTER (WTC) DEVELOPER AND APPROVING AMENDMENTS TO WTC APPROVAL DOCUMENTS AS NECESSARY TO IMPLEMENT A REVISED DEVELOPMENT PROGRAM TO PERMIT A LIMITED-SERVICES HOTEL, MODIFY AFFORDABLE HOUSING OBLIGATIONS FOR WTC AND REFINE THE PUD PROVISIONS

RECITALS

A. Willits Town Center LLC, as the current Developer of the Willits Town Center PUD filed an application and subsequently submitted additional materials (collectively the "Application") with the Town of Basalt, Colorado ("Town"), for approval of amendments to the Approval Documents for the Willits Town Center PUD. The area included within the application consists of the area defined as Blocks 1-12 and all Tracts as shown on the Plat of Willits Town Center Planned Unit Development, recorded July 25, 2001 as Reception No. 763043, as the same has subsequently been amended and restated, and replatted into Filings and Condominiums.

B. Amendments to the existing approvals for Willits Town Center are being requested by the Developer. The most significant revisions address: 1) several changes to existing approvals in order for the Applicant to build a limited-services hotel on Block 12 with four (4) stories, portions of the hotel located on what is currently Town rights-of-way and hotel parking on what is currently the public parking tract and adjacent roadways; 2) changes to the sequencing, number, and type of affordable housing units required by the approvals; 3) changes regarding the sequencing of the additional 4 affordable housing units to be offered to the Fire District and Town; 4) Other miscellaneous changes including but not limited to, waivers and revisions to the design guidelines and signage requirements, and changes to the Lewis Lane and Tract 5 provisions.

C. The Technical Review Committee ("TRC") considered the application at multiple TRC Meetings. The TRC recommended that the Planning and Zoning Commission

Please return to:
TOWN OF BASALT
101 Midland Avenue
Basalt, CO 81621

recommend to the Town Council that it approve the amendments contained in the Application subject to certain conditions and modifications. The TRC made a finding pursuant to Section 1.11 of the PUD Control Document that the application must proceed as a "two-step" amendment.

D. At a duly-noticed public hearings on February 18, 2014 and March 4, 2014, the Planning and Zoning Commission considered the application and voted to recommend to the Town Council that it approve the amendments contained in the application subject to certain conditions and modifications.

E. At a duly-noticed public hearing on March 11, 2014, the Council considered the Ordinance on first reading, continued and scheduled the public hearing and second reading for this ordinance for March 25, 2014, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

F. At a public hearing and second reading scheduled for March 25, 2014, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicant and members of the public.

G. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. The Town Council finds and determines that the approvals contained in this Ordinance are consistent with the Town Code and the PUD Control Document. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Basalt, Colorado, that, based on the application, reports, evidence, testimony, exhibits and comments from the public, Applicant and Town staff, it hereby makes the following findings of fact and grants the following approvals for the Willits Town Center Planned Unit Development.

A. FINDINGS OF FACT. The Town Council conclusively makes and adopts the findings and conclusions set forth above and below.

1. The application is appropriate for review as a two-step review.
2. The amendments as approved by this ordinance are in general conformity with the intent and purposes of the Development Plan for WTC, as amended.
3. The amendments as included in this ordinance reasonably conform to the intent and purposes of the Basalt Master Plan.

4. Any variations from Town Code or amendments to the Development Plan approved by this ordinance are designed to accomplish the purposes of planned unit developments as described in the Town Code.

5. The amendments to the Development Plan as approved by this ordinance will compliment and be integrated into the existing development in the area and particularly within WTC.

6. The amendments to the Development Plan as approved by this ordinance will not have an adverse environmental impact, excessively increase traffic hazards or congestion, overload utilities or otherwise be detrimental to the general welfare of the community and to the WTC and will not affect in a substantially adverse manner either the enjoyment of land abutting on or across the street from the WTC or the public interest.

7. In accordance with § 24-67-106(3) (b), C.R.S., the modifications, removal or releases as approved by this ordinance are consistent with the efficient development and preservation of the entire planned unit development, do not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the planned unit developer or the public interest and are not granted solely to confer a special benefit on any person.

8. The approvals granted herein by the Town are in accordance with CRS 38-12-301, regarding rental housing. The Developer is voluntarily agreeing to the provisions as a replacement for the for sale requirements included in the current PUD requirements.

8. It is in the best interests of the citizens of the Town of Basalt that this application be approved as described in this ordinance.

B. APPROVAL AND CONDITIONS OF APPROVAL. The Town Council hereby approves the amendments to the Approval Documents subject to the following conditions.

1. The approvals granted hereby are specifically conditioned on and subject to compliance with the conditions included in the attached **Exhibit A** and incorporated herein by this reference. Interpretations of the provisions of this ordinance shall be governed by the parameters of Section 1.11 of the Willits Town Center PUD Control Document (WTC PUD).

2. The Mayor of the Town of Basalt and the Town Clerk are hereby authorized to affirm the approval of the Town Council by signing and delivery for recording a Second Amended and Restated Development Plan PUD Control Document for Willits Town Center

consistent with the purposes and intent of this Ordinance (including as set forth in the Recitals and Exhibits) if it is deemed necessary by the Town Attorney subject to the prior review and approval by the Town Attorney.

3. The Mayor of the Town of Basalt and the Town Clerk are hereby authorized to implement the approval of the Town Council by signing and delivering for recording a revised plat ("Third Amended Plat") if one is determined necessary by the Town Attorney to reflect the approvals and conditions approved by this ordinance after review by the TRC and the Town Attorney.

4. Prior to or simultaneous with the recording of the Third Amended Plat, the Applicant and the Town shall execute and deliver for recording amendments or supplements to the WTC Approval Documents to satisfy compliance with the conditions of approval included in this ordinance. After approval by the Town Attorney, the Mayor and Town Clerk are hereby authorized to execute and deliver any additional amendments to the WTC Approval Documents reasonably necessary to accomplish the purposes and intents of this ordinance.

5. The Third Amended Plat approved hereby includes certain conveyance of interests in Town-owned lands to the Applicant, i.e. certain portions of the rights of way for Lewis Lane and for Market Street, primarily for the hotel building footprint and overhangs. By authorizing execution of the Third Amended Plat, the Town is specifically authorizing the conveyance of property interests to the Applicant in such manner as determined by the Town Attorney. Pursuant to Section 1.3(G), Town Charter, the Town Council by Ordinance may authorize the transfer of Town-owned property interests. The conveyances shall occur immediately prior to or concurrent with the Filing for Block 12. Additionally, the approvals granted hereby allow the Public Parking Tract to be used by a limited service hotel for parking and a portion of the hotel building overhang. Such use shall be evidenced by a document as determined by the Town Attorney executed by the Town and the hotel developer on the terms and conditions described in the attached exhibits.

6. The PUD Control Document included approval of "Plans and Specifications" as defined at Section 1.10(n) thereof. To accommodate the amendments approved hereby. The Applicant shall submit amended Plans and Specifications consistent with the conditions included herein for review and approval by the TRC and the Mid-Valley Metropolitan District before filing the Third Amended Plat.

7. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

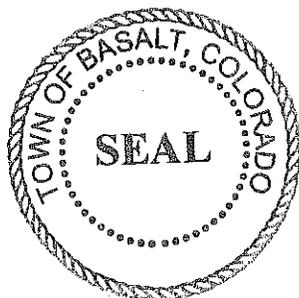
8. In the event that the Applicant and Town Attorney are not able to reach agreement on one or more of the documents approved herein, it shall be brought to the Town Council at a regular or special meeting to review the final terms and conditions thereof.

9. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

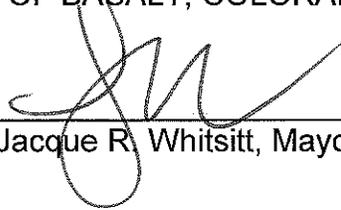
10. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON March 25, 2014, by a vote of 6 to 0 on March 11, 2014.

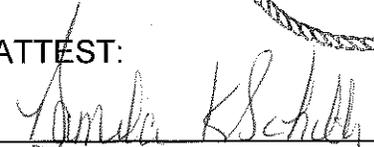
READ ON SECOND READING AND ADOPTED, by a vote of 6 to 0 on March 25, 2014.



TOWN OF BASALT, COLORADO

By: 
Jacques R. Whitsitt, Mayor

ATTEST:


Pamela Schilling, Town Clerk

First Publication: Thursday, March 20, 2014
Second Publication: Thursday, April 3, 2014
Effective Date: Thursday, April 17, 2014

Exhibit A

Representations:

1. The Applicant shall comply with all representations set forth in the Application.
2. The Applicant shall comply with all material representations made in hearings before the Planning and Zoning Commission (P&Z) and Town Council.

Hotel Site Plan, Design, and Development Program:

3. The site plan, design and development program for the hotel are approved as provided in this Exhibit, subject to the conditions set forth herein. The Applicant shall comply with the diagrams presented to the Town Council at its March 11 and 25, 2014 meetings. Minor changes to the hotel design are permitted as addressed in Condition No. 30.
4. The Applicant shall submit a landscaping plan before building permit which demonstrates to the satisfaction of the Town Planner that there is sufficient screening combined with its building enclosure materials and design to ensure that the enclosure over the pool area will not be a light box negatively impacting the single family homes to the south of the hotel. The materials for the pool house require review and approval by the Town Planner to reduce the potential impact of the lighted pool area. Regardless, the Willits Town Center PUD shall comply with the Town's then current lighting ordinance.
5. The building encroachment and overhangs into the Town's right of way required for the proposed hotel footprint are generally accepted. The TRC will be responsible for determining the precise location of the hotel building and overhangs after input from the Applicant to ensure a workable, pleasant streetscape experience on Market Street while minimizing the impact on the Lewis Lane right-of-way and visual impact to the single-family neighborhood. Applicant will prepare and submit to the Town Attorney and TRC for review and approval a Third Amended Plat that reflects the transfers of property interests to allow development of the hotel as approved herein.

Signage:

6. The hotel sign plan submitted by the Applicant and dated 2/25/15 is acceptable with the exception of the wayfinding sign (Sign A1) and lighting. The wayfinding sign shall be moved to the northeast corner of the hotel building so that it is at the north entrance of the public parking tract. The exact location of this sign shall be approved by the TRC to ensure compliance with the Town's policy to maintain at

least five (5) feet of unobstructed sidewalk clearance. The lighting for the signage shall comply with the Town and PUD sign lighting requirements. All sign lighting shall be fully-shielded and down-directed. Additional directional signs with the Element logo can be permitted by the Town Planner within the public parking tract, but no other hotel signs (including logos) are allowed in the Town's property except within the existing Identification Sign on Highway 82 which will include hotel signage as previously approved in the PUD.

Affordable Housing Requirements:

- 7(1). The Applicant shall satisfy the Affordable Housing requirements for the hotel project on Block 12 as described below.
 - A. The Applicant shall deliver to the Town with an executed Subdivision Improvement Agreement a \$500,000 irrevocable standby letter of credit in a form approved by the Town Attorney to secure the construction of deed restricted affordable housing as described herein, at the time that the plat for Block 12 is submitted to the Town for approval. The Town Attorney in his discretion may accept substitute security.
 - B. Except as provided herein, after the recordation of the plat for Block 12 (for a hotel) and the recordation of a plat for Block 7 (which will contain no less than 50 fully-deed restricted units), the Town shall not approve the filing of any other plat in Willits Town Center or any other application for development on any block in Willits Town Center which does not have a recorded filing prior to issuance of certificates of occupancy for no less than 50 fully-deed restricted rental units to be constructed on Block 7. The affordable housing categories for these units shall be as required by the PUD approvals. This requirement of this section is not contingent upon the Applicant's ability to secure the participation of any third party to assist in meeting this requirement. Alternatively, the Town Planner may authorize another plat for development after the plat for Block 7 has been filed, a building permit has been issued for the 50 fully-deed restricted units, and the Applicant has demonstrated to the satisfaction of the Town Manager or his designee that construction activity has mobilized on the site and that financing is in place to reasonably assure that construction will continue to the completion of the affordable housing project.
 - C. If the Applicant obtains building permits for all of the 50 units identified in paragraph B prior to April 1, 2017, the Town will release the letter of credit identified in paragraph A upon the issuance of all such building permits.
 - D. The letter of credit identified in Paragraph A shall provide that if building permits

are not issued for all 50 of the affordable housing units identified in Paragraph B prior to April 1, 2017, the Town in its discretion may draw on the letter of credit, but only for the purpose of building affordable housing units within Willits Town Center unless the parties agree that the funds can be used for affordable housing elsewhere. If the housing is to be built on Block 7 or elsewhere in Willits Town Center, the Applicant shall permit the Town to access that property to the extent necessary for such construction.

- 7(2). The Town intends to contribute no more than \$500,000 towards the construction of the affordable housing identified above, and to enter into a development agreement with the Applicant for that purpose, provided that the following pre-conditions to such grant are satisfied:
 - A. The Applicant shall submit to the Town for review and approval a development budget, financing plan and operating pro forma.
 - B. The information provided to the Town by the Applicant must confirm the need for the Town funds to bridge an identified funding gap.
 - C. The Town must determine that the construction of the affordable housing units is financially viable if the Town makes the grant of not more than \$500,000, considering ranges demonstrated by comparable LIHTC projects and other information.
- 7(3). The development agreement referred to in 7(2) above shall identify the timing and manner in which the Town funds shall be appropriated for the project.
8. The request for delay of offering the additional four (4) housing units to be required to be built and offered for sale to the Fire District and the Town of Basalt is not approved. However, Staff will work with the Applicant and the Fire District to refine the procedures and deadlines for the commitments to purchase one or more of the residential units on Lewis Lane in Block 7 or in subsequent plat filings within the project's build out which could differ from the current requirements.
9. The approvals authorize the TRC to grant waivers to the design guidelines for the buildings including the affordable housing units provided the TRC makes a finding that the underlying design principles in the PUD are satisfied.
10. The developer's total requirement for affordable housing for the current square footage permitted in Willits Town Center is revised to 56 fully-deed restricted dwelling units, not counting the 4 dwelling units to be offered for sale to the Fire District and the Town. This is based on a conversion of one fully-deed restricted unit

counting for two resident occupied units as outlined in the February 28 Kimmel Memorandum. The Applicant's proposal for rental units to constitute all of the 50 proposed AHI units is approved. However, the additional 6 fully deed restricted housing units required beyond the 50 units shall remain for sale units to allow a mix of opportunities unless this amended by the Town Council in the future.

11. The affordable housing requirements of AHI, should it receive tax credits and purchase the units, will prevail over the Town's affordable housing guidelines for rental housing, but the Town's guidelines will control if in the event AHI is not the owner or operator of the housing units.
12. Any legal entity may own the for-rent affordable housing units provided the Town's affordable housing guidelines are satisfied along with the other affordable housing requirements included in the WTC approvals, including those in Ordinance No. 11, Series 2010 regarding the units to be rental housing.

Design Guidelines for Residential Buildings:

13. The approvals authorize the TRC to grant waivers to the design guidelines for Block 7, in order to permit the proposed Block 7 affordable housing development, including but not limited to the maximum building size and the pullback provisions from public streets provided the TRC makes a finding that the underlying design principles in the PUD are satisfied.
14. The Staff and the Developer shall work in good faith to create refinements to the PUD Control Document that are acceptable to both parties. PUD Control Document shall be amended to incorporate additional design guidelines that further refine the existing guidelines for buildings that are entirely residential facing Lewis Lane and Pioneer Street to provide that these buildings serve an effective transition between the single family neighborhoods bordering the PUD and the urban-scaled mixed used development in Willits Town Center. The Applicant and the Town Staff shall also develop acceptable design standards for buildings which are entirely residential within the PUD to provide that these buildings do not conflict with the retail and streetscape experience envisioned for the remainder of the PUD. Provisions in the Control Document will provide that the TRC may elevate the review of such buildings to the P&Z if the TRC concludes that the design being evaluated is not consistent with the principles identified herein. If Staff and the Applicant are not in agreement on the language to be modified in the PUD Control Document, the language will be referred to the P&Z for a decision on the language.

Parking:

15. The Applicant and the Town agree to work in good faith to reach, execute, and implement an agreement to allow public parking in the Block 2 underground garage, with the probable inclusion of one or more other parties to the agreement. The target date for opening the garage for public parking (at hourly/daily rates to be determined) shall be on or before October 1, 2014.
16. Hotel employees are required to park in the Public Parking Tract.
17. The Developer shall maintain the surface parking and landscape improvements constructed for the hotel and the Lewis Lane streetscape improvements required by Revised Exhibit PP of the PUD Control document for Block 12.
18. The Town and Applicant will develop a hotel guest parking plan that allows hotel guests to park overnight on public streets in Willits Town Center. The Hotel Guest Parking Plan will include the following:
 - A. Hotel guests shall be directed to park first in the Public Parking Tract (day or night). Eighty percent (80%) of the usable parking spaces in lot should be assigned to hotel guest parking before hotel guest parking is provided in the street. (Assumes in winter some spaces won't be available as they would be used for snow storage.)
 - B. The Town Public Works Department shall have access to snow storage areas at the perimeter areas and areas adjacent to the public parking tract.
 - C. Nothing herein restricts the Town's control over parking in the Town's streets.
 - D. The Town Attorney will draft an easement or license permitting the public parking tract to be used at no fee for hotel parking for execution by both parties.
19. The Applicant shall develop and implement a parking plan to address Items A through C included in Item IV subsection 4 of the Staff memorandum dated March 4, 2014. The Applicant shall also make recommendations to the Town on Item D of the Staff memorandum to identify the parking restrictions that should apply in the Town's right of way. For clarification, this plan does not include the multi-party solution addressed in Condition No. 15. The plan is required to be submitted and

approved by the Town Planner before a building permit is issued for the next building after the hotel.

Tract 5 Provisions:

20. The Applicants shall install landscaping in Tract 5 per final landscape plans prepared by the Applicant and approved by the Town Planner after input from the Town Horticulturist which further develop the concept of parallel parking on the south side of Lewis Lane adjacent to Tract 5, a sidewalk, and a terraced berm on the Tract 5 Open Space per the recommendations of the P&Z at their March 4, 2014, meeting. The Developer shall maintain the landscaping improvements in Tract 5.

Financial:

21. The Town hereby approves financial assistance for the hotel as follows:
 - A. The Town Attorney is directed to prepare an ordinance containing a ballot question for the November 2014 election for the Council's consideration asking the voters to approve an additional two percent (2%) lodging tax whereby any hotel making capital improvements would receive the additional lodging tax funds collected for that hotel to recoup expenses for capital projects approved by the Town Council for up to 10 years after the improvements are completed or the hotel units have a certificate of occupancy whichever is later. After 10 years the funds would be reserved for the Town's use. The Applicant would not be eligible to receive the lodging tax funds unless the conditions listed in subparagraph C below are satisfied.
 - B. If the ballot question referenced above is not approved by the electorate, then the Town Council intends make a one-time grant of \$500,000 payable to the Applicant for capital improvements needed by the hotel, and directs its staff to include in the 2015 budget for its consideration a \$500,000 lump sum appropriation payable to the Applicant. The Applicant would not be eligible to receive the grant unless the conditions listed in subparagraph C below are satisfied.
 - C. In order for the Applicant to be eligible and receive funds under A or B above for reimbursement of the funds spent for the approved capital improvements:
 - i. The Applicant shall have started construction of the 50 fully-deed restricted affordable housing units referred to in Condition No. 7 before a certificate of occupancy is issued for the hotel. For the purposes of this

ordinance the term started construction shall mean that the plat for Block 7 has been filed, a building permit has been issued for the affordable housing units, and the Applicant has demonstrated to the satisfaction of the Town Manager or his designee that construction activity has mobilized on the site and that financing is in place to reasonably assure that construction will continue to the completion of the affordable housing project; and

ii. The parking agreement referenced in Condition No. 15 has been executed between the Applicant and the Town (and potentially one or more parties) and the garage is open to the public; and

iii. The Applicant demonstrated that the capital improvements are completed and that a building permit has been issued for a hotel.

D. The eligible capital expenses for the limited-services hotel approved under this ordinance include: site work required for the hotel structure on Block 12 including the parking lot improvements on the public parking tract; Tract 5 Landscaping required by Condition No. 20; street, parking and sidewalk improvements required by Exhibit PP of the PUD Control Document for Block 12 and other capital improvements reasonably related to the hotel development as determined by the Town Manager or his designee.

E. The Town's contribution for affordable housing is addressed in Condition No. 7.

22. The exemption from the real estate transfer assessment (RETA 1) for the sale of vacant land for a hotel that was permitted on Block 3, is transferred to Block 12 for a hotel and added as an exemption for RETA 2. The portion of the development on Block 7 which is to be sold and used for the 50 fully deed restricted affordable housing units is also exempted from RETA 1 and RETA 2.

23. The approval documents shall be amended to allow Willits Lane Impact fees to be used for other transportation improvements which benefit the Willits area.

Fire District Review:

24. Before Building permit, the Applicant shall demonstrate compliance with the comments made by the Basalt and Rural Fire Protection District in the letter from Bill Harding dated February 23, 2014.

Final Approval Documents and Other Legal:

25. All WTC approval documents required to execute this approval shall be approved and found acceptable by the Town Attorney and recorded into the public records before a construction permit is issued for the hotel. Except for the recordation of the

Block 12 filing and subdivision improvements agreement which are required prior to building permit, the Town Planner can delay recordation for up to 180 days if substantial progress is being made. All documents that have not been brought into compliance with current approvals are included in this requirement.

26. The Developer shall enter into a new indemnification agreement for Developer work on Town property, including the Public Parking Tract, before a construction permit is issued.
27. The approvals granted herein shall expire in three (3) years if a building permit is not attained by the hotel unless extended by the Town Council.
28. The Applicant shall comply with all other conditions of the prior approvals except as modified herein.
29. The Applicant shall amend the approval notebook(s) required by the original approvals to bring them into compliance with this approval and prior approvals, within 30 days from the filing of the plat for Block 12. The Applicant shall prepare a digital version of the notebook for use by all the parties. The above requirement is permitted to be waived or delayed by the Town Planner.

Minor Amendments:

30. The TRC may review and approve minor amendments to the approval documents necessary to effectuate the intent of the final development approvals, or to make improvements to the design of the hotel or affordable and free-market housing on Block 7 as permitted by the WTC PUD.

Future Development:

31. The Town will address the Applicant's other amendment requests at a later date, once more information is provided, and code provisions are addressed by the Town.