

**AGENDA
ANACONDA-DEER LODGE COUNTY
SPECIAL COMMISSION MEETING
6 PM THURSDAY, AUGUST 13, 2020
WEBEX CONFERENCE**

Everyone is respectfully asked to follow these few Commission Rules of Procedure:

- **Please turn off or silence all cell phones and electronic devices that you are not using for this meeting.**
- **Please mute microphones unless you are speaking to eliminate background noise.**
- Call in users will be on mute until discussion or public comment
- **Please address all comments to the Commissioners and state your full name and address**
- Be courteous to all participants, allow one speaker to speak at a time
- **If able please use the raise the virtual hand when appropriate to speak and then un-raise your hand**
- If you can use the chat box, please send in questions and comments.
- **Be Mindful that all participants will be able to hear and see everything, and the meetings are recorded**

Webex Meeting

Meeting Number: 925464969

Meeting password: ADLC0420

Join by phone: +1-855-797-9485 US Toll free (Will require Meeting Number listed above)

Join from a video system or application:

Dial [925464969@montana.webex.com](tel:925464969@montana.webex.com)

You can also dial 173.243.2.68 and enter your meeting number

Join using Microsoft Lync or Microsoft Skype for Business:

Dial [925464969.montana@lync.webex.com](tel:925464969.montana@lync.webex.com)

I. Unfinished Business

A. Revolving Loan Agreement between for the hotel between Show Me Anaconda, LLC and Anaconda-Deer Lodge County. (Mortgage Exhibit D of Revolving Loan Agreement)

At this time the Commission could take action to approve the Revolving Loan Agreement for the Hotel between Show Me Anaconda, LLC and Anaconda-Deer Lodge County. (Mortgage Exhibit D of Revolving Loan Agreement)

B. Economic Development Grant Agreement for the Hotel.

At this time the Commission could take action to approve the Economic Development Grant Agreement for the Hotel.

II. Miscellaneous

- Commissioner Mike Huotte:
- Commissioner Steve Gates:
- Commissioner Paul Smith
- Commissioner Terry Vermeire:
- Commissioner Kevin Hart:
- CEO Bill Everett:
- CA Ben Krakowka:

III. **Public Comment** – This is the time for members of the public to comment on items **NOT** appearing on this agenda that **fall within the Commission's jurisdiction.**

IV. ADLC Public Meeting Dates

V. Adjournment

2020

Anaconda-Deer Lodge County Public Meetings

PHASE II: Boards are to limit group size (less than 50) and maintain social distance.

Board Vacancies can be viewed on the A-DLC website: <https://adlc.us>

August 13, 2020 10:00 a.m. DUI Task Force Meeting
Community Service Center – 118 E. 7th St.

August 13, 2020 - p.m. Special Commission Meeting
Webex

August 13, 2020 - 8:00 p.m. Tri-County Fair Board Meeting
Weed Board Building, 422 Fairgrounds Rd., Deer Lodge

August 13, 2020 - 4:30 p.m. Greenway Service District Board Meeting
Butte Pioneer Technical – 1101 S. Montana St.

August 17, 2020 - 6 p.m. Planning Board Meeting
Courthouse Courtroom

August 17, 2020 – 7:30 p.m. Search and Rescue Meeting
Search and Rescue Building – 1902 Smelter Road

August 18, 2020 - 6 p.m. Commission Meeting
Webex

August 20, 2020 – 6 p.m. Potential Special Commission Meeting
Webex

August 20, 2020 -- 7:00 p.m. Wise River Fire District
Wise River Fire Hall

August 25, 2020 - 6 p.m. Commission Work Session
Webex

August 26, 2020 - 7 a.m. Airport Board Meeting
Bowman Field

August 27, 2020 - 5:00 p.m. Board of Health Meeting
Community Service Center – 118 E. 7th St.

REVOLVING LINE OF CREDIT AGREEMENT

This **Revolving Line of Credit Agreement** (the "Agreement") is made this ____ day of _____, 2020 (the "Effective Date"), by and between **Show Me Anaconda, LLC**, a Montana limited liability company, of 2900 Harrison Ave., Butte, Montana 59701 ("Borrower"), and **Anaconda Deer Lodge County**, of 800 Main Street, Anaconda, Montana 59711 ("Lender"). Borrower and Lender are collectively referred to herein as the "parties," and each a "party."

Recitals:

A. On _____, the parties executed an Agreement to Sell and Purchase wherein Lender agreed to sell to Borrower, and Borrower agreed to purchase from the Lender, the following real property in Anaconda Deer Lodge County, Montana (collectively, the "Real Property"):

- (i) Lots 1F, 1G, 1H, and 1I of the East Yards Frontage Minor Subdivision, Anaconda Deer Lodge County, as may be adjusted by a mutually agreeable boundary relocation currently being conducted, totaling approximately 14 acres (the "Phase One Property"), and
- (ii) Three additional lots, totaling approximately 6 acres along Polk Street, south of Union Avenue. This parcel will be created as part of a mutually agreeable subdivision and boundary location (the "Phase Two Property").

B. On _____, the parties executed a Grant Funding Agreement wherein Lender agreed to provide Borrower grant funding in an amount not to exceed \$1,000,000 according to the terms, conditions, and covenants contained therein (the "Grant").

C. Borrower desires to obtain a revolving line of credit from Lender, and Lender desires to extend a revolving line of credit to Borrower, pursuant to the terms and conditions of this Agreement.

FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. **Line of Credit.** Lender hereby agrees to extend a revolving line of credit (the "Credit Line") to make periodic loans to Borrower up to the aggregate principal amount of \$2,000,000 (the "Credit Limit"). Each such loan shall be an "Advance" made in accordance with paragraph 5 below.

2. **Term.** Borrower shall not be entitled to obtain an Advance, and Lender shall not be obligated to make an Advance, on the Credit Line until such time as Borrower has performed its obligations to obtain the Grant in full in accordance with the terms of the Grant (the "Earliest Commencement Date"). At any time on or after the Earliest Commencement Date, Borrower may request an Advance and draw on the Credit Line (the "Commencement Date"). The Agreement terminates on December 31 of the fifth year following the Commencement Date (the "Maturity Date"), unless terminated earlier pursuant to this Agreement.

3. **Promissory Note.** Borrower shall execute and deliver to Lender a Promissory Note in the form attached as **Exhibit A** (the "Note") in the amount of the Credit Limit on the Commencement Date. Each Advance on the Credit Line shall become part of the principal of the Note.

4. **Interest.** Each Advance under this Agreement shall bear interest at 1% per annum (the "Effective Rate").

5. **Advances.** Borrower may from time to time notify Lender in writing of its need to borrow funds pursuant to this Agreement (each an "Advance"). Any notice for an Advance may be in such amount as Borrower may choose; provided, however, any Advance made will not, when added to the outstanding principal balance of all previous Advances, exceed the Credit Limit. Within 5 business days of receipt of such notice, Lender shall forward such funds to Borrower. Lender may refuse to make an Advance if an event of default has occurred and is continuing hereunder either at the time the notice is given or the date the Advance is to be made. Borrower shall use the "Advance Notice" in the form attached as **Exhibit B** for each notice for an Advance. If Borrower is not in default, and subject to the other terms and conditions of this Agreement, Lender shall deliver the funds as prescribed herein. Each Advance shall be recorded on the "Schedule of Advances" attached as **Exhibit C**.

6. **Repayment.** Borrower shall pay accrued interest on the outstanding principal balance on an annual basis commencing on December 31 of the year of the Commencement Date and continuing on December 31 of each year thereafter. The entire unpaid principal balance, together with any accrued interest, shall be due and payable on the Maturity Date. All payments shall be made to Lender at such place as Lender may from time to time designate. All payments received hereunder shall be applied first to accrued interest and then to principal, and in the order provided in this Agreement.

7. **Security/Subordination.** This Agreement and the Note will be secured by a Mortgage on the Phase One Property (the "Mortgage") in the form attached hereto as **Exhibit D**. Lender agrees the Mortgage is and will be subordinate to any security interest to be required by any other lender in connection with the development of the Real Property, and Lender shall so subordinate the Mortgage at the request of Borrower.

8. **Prepayment.** Borrower may prepay any principal due under the Note at any time, without penalty. Unless otherwise directed in writing by Borrower, the prepayment shall be applied to the Advance or Advance(s) based on date by the oldest Advance to the newest Advance if any Advances have the same Effective Rate.

9. **Events of Default.** An event of default will occur if any of the following events occurs (each an "Event of Default"):

- (a) Failure to pay any principal or interest within 30 days after the same becomes due.
- (b) Default by Borrower in the observance or performance of any other covenant or agreement contained in this Agreement, other than a default constituting a separate and distinct Event of Default under this paragraph.
- (c) Filing by Borrower of a voluntary petition in bankruptcy seeking reorganization, arrangement or readjustment of debts, or any other relief under the Bankruptcy Code as amended or under any other insolvency act or law, state or federal, now or hereafter existing.
- (d) Filing of an involuntary petition against Borrower in bankruptcy seeking reorganization, arrangement or readjustment of debts, or any other relief under the Bankruptcy Code as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, and the continuance thereof for 60 days undismissed, unbonded, or undischarged.

10. **Remedies.** Upon the occurrence of an Event of Default, Lender may declare the entire unpaid principal balance, together with accrued interest thereon, to be immediately due and payable without presentment, demand, protest, or other notice of any kind. At Lender's option, Lender may suspend or terminate any obligation it may have to make additional Advances. No failure or delay on the part of Lender in exercising any right, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided at law or in equity.

11. **Notice.** All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as UPS, Federal Express or Airborne, addressed to such party listed herein or to such other address as that party may have specified by prior written notice to the other.

12. **No Assignment.** Neither party shall assign, transfer, or delegate, either in whole or in part, its rights or duties under this Agreement.

13. **Further Assurances.** After execution of this Agreement, each party shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement hereof and give effect to the transactions contemplated by this Agreement.

14. **Attorney Fees.** In the event legal action is required, including the initiation of a suit or action by any party to this Agreement, to enforce any of its terms, it is agreed the prevailing party shall be entitled to recover reasonable attorney fees and costs to be fixed by the arbitrator, or by the court, and on appeal.

15. **Entire Agreement.** This Agreement is the entire agreement of the parties and supersedes previous oral or written agreements.

16. **Legal Effect.** This Agreement shall be governed by the laws of the State of Montana

17. **Time.** Time shall be of the essence of this Agreement.

18. **Amendments and/or Modifications.** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended, modified or terminated orally or in any other manner other than by an instrument in writing signed by all of the parties hereto.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile copy or computer-scanned image, and such copy or scan shall have the same force and effect as an original signature.

[signature page follows]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first written above.

Show Me Anaconda, LLC

By: _____
Mike Johnson, Member

Anaconda Deer Lodge County

By: _____
Bill T. Everett, CEO

Exhibit A

[see form of Promissory Note attached]

PROMISSORY NOTE

\$2,000,000

_____, 2020

FOR VALUE RECEIVED, **Show Me Anaconda, LLC** (“Maker”), promises to pay to the order of **Anaconda Deer Lodge County** (“Holder”), in lawful money of the United States, the principal sum of \$2,000,000 or the aggregate unpaid principal amount of all Advances made by Holder to Maker pursuant to the terms of a Revolving Line of Credit Agreement dated _____, 2020 (the “Loan Agreement”), whichever is less, together with interest thereon from the date each Advance is made until paid in full, at the interest rate equal to 1%, as follows:

Maker shall pay accrued interest on the outstanding principal balance under the Note on an annual basis commencing on December 31st of the year of the Commencement Date and continuing on December 31st of each year thereafter, with the entire unpaid principal balance, together with any accrued interest, payable on the Maturity Date.

All capitalized terms used herein but not defined herein have the meanings ascribed to such terms in the Loan Agreement. Holder and Maker recognize that the Holder’s rights and the Maker’s performance under the Loan Agreement are related to Holder’s desire to extend credit to Maker pursuant to the terms and conditions of this Note. Due to the relationship between the Loan Agreement and the parties’ respective rights and obligations thereunder, the parties desire to coordinate and link certain provisions of the Loan Agreement with the provisions of this Note.

Prepayments of principal may be made by Maker at any time without penalty. All payments received hereunder shall be applied first to accrued interest and then to principal as provided under the Loan Agreement.

This Note and the Agreement are secured by the Mortgage. Lender agrees to subordinate the Mortgage as provided in the Loan Agreement. This Note shall become due and payable at the option of Holder immediately upon Maker’s default under, or failure to comply with any of the terms, covenants, conditions or agreements contained in, the Loan Agreement. If a default occurs under this Note, such default shall constitute a default of Maker under the Loan Agreement.

Waiver by Holder of any default by Maker shall not constitute a waiver by Holder of a subsequent default. Failure by Holder to exercise any right, power or privilege which Holder may have by reason of a default by Maker shall not preclude the exercise of such right, power or privilege so long as such default remains uncured or if a subsequent default occurs.

Maker agrees to pay all costs of collection, including a reasonable attorney fee as provided in the Loan Agreement.

This Note is made and executed under, and is in all respects to be governed by, the laws of the State of Montana.

Show Me Anaconda, LLC

By: _____
Mike Johnson, Member

“Maker”

Exhibit B

[see form of Advance Notice attached]

ADVANCE NOTICE

This **Advance Notice** is made _____, by **Show Me Anaconda, LLC** ("**Borrower**") pursuant to that certain Revolving Line of Credit Agreement dated _____, 2020 (the "**Loan Agreement**") by and between Borrower and **Anaconda Deer Lodge County** ("**Lender**"). All capitalized terms used herein but not defined herein have the meanings ascribed to such terms in the Loan Agreement.

Borrower hereby certifies, represents and warrants to Lender that as of the date hereof:

1. **No Default.** There is no default by Borrower under the Loan Agreement.
2. **Request for Advance.** Borrower requests an Advance to the Credit Line in the amount of \$ _____.
3. **Effective Rate.** The Effective Rate for the Advance made by this request is 1%.
4. **Credit Limit.** The aggregate of all outstanding Advances, including the Advance made by this request, will not exceed the Credit Limit.

Show Me Anaconda, LLC

By: _____
Mike Johnson, Member

"Borrower"

By its signature hereto, Lender
accepts Borrower's request:

Dated: _____.

Anaconda Deer Lodge County

By: _____
Bill T. Everett, CEO

"Lender"

Exhibit C

[see form of Schedule of Advances attached]

SCHEDULE OF ADVANCES

*Advance No.:	Date:	Amount of Advance:	Effective Rate of Advance:
1.	___/___/___	\$ _____	1%
2.	___/___/___	\$ _____	1%
3.	___/___/___	\$ _____	1%
4.	___/___/___	\$ _____	1%

*(add additional Advances as applicable)

Exhibit D

[see form of Mortgage attached]

After recording, return to:
Michael Grayson
Grayson Law Firm
112 E. Commercial Ave.
P.O. Box 907
Anaconda, MT 59711

MORTGAGE

This **Mortgage** (the "Mortgage") is dated _____ and is by and between **Show Me Anaconda, LLC**, a Montana limited liability company, of 2900 Harrison Ave., Butte, Montana 59701 ("Mortgagor"), and **Anaconda Deer Lodge County**, of 800 Main Street, Anaconda, Montana 59711 ("Mortgagee"),

WITNESSETH: Mortgagor hereby irrevocably mortgages to Mortgagee, its successors and assigns, the following properties (collectively, the "Premises"):

A. **Real Property:** The following described real property, now owned or hereafter acquired:

Real property in the Anaconda Deer Lodge County, Montana, described as follows:

Lots 1F, 1G, 1H, and 1I of the East Yards Frontage Minor Subdivision, Anaconda Deer Lodge County, as adjusted by a pending boundary relocation, totaling approximately 14.17 acres.

together with all buildings, fixtures, and improvements thereon and all tenements, hereditaments, privileges and appurtenances thereto, and all rents, issues, royalties and profits therefrom.

FOR THE PURPOSE OF SECURING: (a) payment of that Promissory Note and Revolving Line of Credit Agreement (the "Loan Agreement") given by Mortgagor to Mortgagee of even date herewith for the principal sum of \$2,000,000 with interest and other charges thereon, under which the final payment is due on the Maturity Date (as defined within the Loan Agreement); (b) performance of each agreement and covenant of Mortgagor contained herein and in all of the obligations described herein; and (c) any and all extensions, renewals, modifications, substitutions, or replacements of any and all of the foregoing. All of the obligations described above shall be included in the term "Note" whenever and wherever that term is used in this Mortgage.

TO PROTECT THE SECURITY OF THIS MORTGAGE, AND FOR OTHER PURPOSES, IT IS AGREED:

1. **Mortgagor Warranties.** Mortgagor represents and warrants to Mortgagee that:
(a) Mortgagor is the lawful owner of marketable fee simple title to the Premises free and clear of

all mortgages and liens, except a lien real estate taxes not yet due; and (b) this Mortgage and the Note have been duly and validly executed and delivered by Mortgagor.

2. **Escrows.** If requested by Mortgagee, Mortgagor agrees to pay to Mortgagee, in addition to any other payments secured hereby, on dates specified by Mortgagee, an amount estimated by Mortgagee to be sufficient to pay, as they become due, all taxes, assessments, water charges and other charges upon the Premises and all insurance premiums on policies of insurance required hereunder. Such amounts shall be held by Mortgagee without interest and applied to the payment of such taxes, assessments, insurance premiums and other charges. Upon any default hereunder, Mortgagee may, at Mortgagee's option, apply any amounts held pursuant to this paragraph to the indebtedness secured hereby.

3. **Payment of Impositions.** Mortgagor shall pay when due and before any penalty all taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein, or the indebtedness secured hereby ("Impositions"), and will upon demand furnish to the Mortgagee proof of the payment of any such Impositions.

4. **Insurance.** Mortgagor shall obtain and maintain continuously in effect with respect to the Premises policies of insurance against such risks, in such amounts and with such companies satisfactory to Mortgagee, with a mortgagee clause satisfactory to Mortgagee. Policies or certificates evidencing the insurance shall be deposited with Mortgagee. Each policy shall provide that the insurer will not cancel, refuse to renew, or materially modify the policy without giving at least 30 days advance written notice to Mortgagee.

5. **Liens.** Mortgagor shall keep the Premises free from statutory liens of every kind. Mortgagee acknowledges that Mortgagor may require additional funding for construction on the Premises. Mortgagee expressly agrees to subordinate the Mortgage to any third-party construction finance lender at the request of the Mortgagor or as otherwise provided in the Loan Agreement.

6. **Maintenance.** Mortgagor agrees to keep and maintain the Premises in good condition, repair and operating condition free from any waste or misuse, and to comply with all requirements of law, municipal ordinances, regulations, restrictions, and covenants affecting the Premises and their use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises and all fixtures therein which may become damaged or destroyed to their condition prior to any such damage or destruction. Mortgagor will not, without the prior consent of Mortgagee, remove, alter, or demolish any building on the Premises. Mortgagee may enter upon and inspect the Premises at any reasonable time and effect whatever repairs or replacements the Mortgagee may reasonably require to maintain the Premises in good condition (provided the Mortgagee shall have no duty to make inspections and shall not incur any liability or obligation for making or not making any inspections).

7. **Condemnation and Insurance Actions and Proceeds.** Mortgagor shall immediately notify Mortgagee of the commencement of any condemnation proceedings, actual or threatened, affecting the Premises or of any loss that may be covered by insurance. Mortgagor hereby assigns to Mortgagee any insurance proceeds and any award for property taken and for damages to remaining property, in connection with an actual or threatened condemnation proceeding, whether fully adjudicated or settled, and such proceeds and awards (less expenses of collection) shall, at the option of Mortgagee, be applied to the indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises. Mortgagee shall have full authority, but shall not be obligated, to make proof of loss and adjust and collect insurance and to intervene in any condemnation proceeding in the name of Mortgagor and settle, collect and receive any award from the condemning authorities. Any insurer or condemning authority is hereby authorized and

directed to make payment directly to Mortgagee. Any expenses incurred by Mortgagee in intervening in any action or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds.

8. **Protection of Security.** If Mortgagor defaults hereunder in any respect, or if Mortgagee in its sole judgment and discretion deems it necessary to expend funds, appear in actions or take other action to protect the full security interest intended to be created by this instrument, then Mortgagee, without obligation to do so, without notice to or demand upon Mortgagor, and without releasing Mortgagor from any obligation hereof, may make such appearances, expend such funds and take such action as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Premises for such purposes. Mortgagor will on demand reimburse Mortgagee for all amounts expended, including reasonable attorneys' fees, pursuant to this paragraph, together with interest thereon at the rate applicable under the Note after maturity of principal.

9. **Assignment of Rents.** Mortgagor hereby assigns to Mortgagee all rents, issues, royalties and profits of the Premises, provided that Mortgagor shall have the right to collect all such rents, issues, royalties and profits, but only as they become due and payable and only until Mortgagor defaults hereunder in any respect, at which time Mortgagee shall have the right, with or without taking possession of the Premises, to collect the same, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby. Nothing contained herein, nor the exercise of rights hereunder by Mortgagee, shall be construed or considered an affirmation of any tenancy, lease or option, nor an assumption of liability under, nor subordination of the lien or charge of this Mortgage to, such tenancy, lease or option.

10. **Powers of Mortgagee.** Without affecting the liability of any person, including Mortgagor, for the payment of any indebtedness secured hereby or the lien of this Mortgage on the remainder of the Premises for the full amount of any indebtedness unpaid, Mortgagee is empowered as follows: Mortgagee may from time to time, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon: (a) release any person liable for the payment of any of the indebtedness; (b) extend the time or otherwise alter the terms of payment of any of the indebtedness; (c) alter, substitute or release any property securing the indebtedness; or (d) accept any additional security or resort to any security in such order as Mortgagee may determine; (e) consent to the making of any map or plat of the Premises; (f) join in granting any easement or creating any restrictions thereon; (g) join in any subordination or other agreement affecting this Mortgage or the lien or charge thereof; or (h) release all or any part of the Premises.

11. **Due on Sale or Encumbrance.** If all or any part of the Premises or any interest therein is sold, conveyed, transferred or further mortgaged or encumbered, or if the rents of the Premises or any part thereof are assigned, or if all or any part of the ownership interest in Mortgagor is transferred, assigned, or pledged, or if any person other than Mortgagor and Mortgagee obtains any interest in or right to acquire the Premises, without the prior written consent of Mortgagee, Mortgagee may, at Mortgagee's option, declare all indebtedness secured hereby immediately due and payable, in full together with any applicable prepayment premiums (if no prepayment privilege exists at that time, then with the prepayment premium provided in the Note at the earliest day on which the indebtedness secured hereby could be prepaid) provided, however, the granting of a leasehold interest of three years or less, not containing an option to purchase, shall not be cause for such acceleration. Mortgagee shall exercise such option to accelerate by mailing notice of acceleration to Mortgagor within 60 days after Mortgagee has actual knowledge of one of the events mentioned above. Failure by Mortgagor to pay the accelerated balance within 30 days after written notice from Mortgagee shall constitute an Event of Default hereunder.

Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

12. **Events of Default.** If any one or more of the following events (the “Events of Default”) shall occur:

- (a) Default in the punctual payment of any payment of money required to be made pursuant to the Note, or in any payment of money to be made pursuant to this Mortgage, or any other instrument securing the Note,
- (b) Default by Mortgagor under any terms, covenants and conditions of this Mortgage, the Note, or of any other instrument securing the Note, not involving the payment of money, or
- (c) Any representation or warranty made by Mortgagor to Mortgagee in connection with the loan secured hereby proves to be untrue in any material respect,

then, in any such case, the Mortgagee or its attorney, may, at its option, without further written notice to the Mortgagor, declare the principal of and the accrued interest on the Note and all sums advanced hereunder, with interest, to be immediately due and payable, and thereupon the Note, including both principal and all interest accrued thereon, and including any prepayment premium then applicable, and all sums advanced hereunder and interest thereon, shall be and become immediately due and payable without presentment, demand or further notice of any kind.

13. **Mortgagee's Remedies.** Upon the happening of any Event of Default entitling the holder of the Note to accelerate its maturity, or in case the principal of the Note shall have become due and payable, whether by lapse of time or by acceleration, then and in every such case the holder of the Note may:

- (a) Proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in the Note, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedies. Mortgagee may be the purchaser at any foreclosure sale, and Mortgagee shall have the right to credit upon the amount of its bid at sale the amount payable to Mortgagee out of the net proceeds of the sale.
- (b) Pursuant to the power of sale hereby granted, sell the Premises in accordance with the laws of Montana. The Premises shall be sold either as a whole or in such parcels and in such order as designated by Mortgagee.
- (c) In any action to foreclose, appoint a receiver of the rents, issues and profits of the Premises as a matter of right and without notice, with power to collect the rents, issues and profits of the Premises due and coming due during the pendency of such action, without regard to the value of the Premises or the solvency of any person or persons liable for the payment of the Note involved in the action. Mortgagor, for itself and any subsequent owner or owners, hereby waives any and all defenses to the application for a receiver as above provided, and hereby specifically consents to such appointment without notice; but nothing herein contained is to be construed to deprive Mortgagee of any other right, remedy or privilege it may now have under the law to have a receiver appointed. The provision for the appointment of a

receiver of the rents and profits is made an express condition upon which the loan evidenced by the Note is made.

14. **Costs of Invoking Remedies.** Except as may be otherwise provided herein, Mortgagor agrees to pay to Mortgagee the costs and expenses, including reasonable attorney and paralegal fees, incurred by Mortgagee: (a) in instituting, prosecuting or defending any court action in which Mortgagor does not prevail, if the action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof, including but not limited to an action to obtain possession of the Premises after exercise of the power of sale granted hereunder; and (b) in attempts, which fall short of instituting an action or commencing foreclosure, to secure performance hereof.

15. **Waivers and Cumulative Rights.** Waiver by Mortgagee of any default by Mortgagor, or acceptance of payment in default or partial payment, shall not constitute a waiver by Mortgagee of any continuing or subsequent default. Failure by Mortgagee to exercise any right, power, privilege or remedy which Mortgagee may have by reason of a default by Mortgagor shall not preclude the exercise of such right, power, privilege or remedy so long as the default remains uncured or if a subsequent default occurs. Each right, power, privilege and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power, privilege and remedy available to Mortgagee at law or in equity, or under any other agreement, and each and every right, power, privilege and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee and such exercise shall not be a waiver of the right to exercise at any time thereafter any other right, power, privilege or remedy.

16. **Governing Law.** This Mortgage and all rights and indebtedness secured hereby shall be governed by the laws of Montana.

17. **Severability.** The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

18. **Time.** Time shall be of the essence of this Mortgage.

19. **Notices.** Any notices which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail to the respective addresses as set forth herein, or to such other places any party hereto may hereafter by notice in writing designate, shall constitute service of notice.

20. **Binding on Successors, Headings, Words and Phrases.** Subject to the "Due on Sale or Encumbrance" paragraph hereof, this Mortgage shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, lessees, licensees, tenants, successors and assigns. All obligations of Mortgagor hereunder are joint and several. The term "Mortgagee" shall include the owner and holder, including any pledgee, of the Note. The headings of the paragraphs are for convenience only and shall not be construed as limiting in any way the scope of the provisions hereof.

[signature page follows]

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

Show Me Anaconda, LLC

By: _____
Mike Johnson, Member

“Mortgagor”

STATE OF MONTANA)
 : ss.
County of _____)

This instrument was acknowledged before me on _____, by Mike Johnson, member of **Show Me Anaconda, LLC**, a Montana limited liability company.

(SEAL)

GRANT FUNDING AGREEMENT

This **Grant Funding Agreement** (this "Agreement") is dated this ___ day of _____, 2020, by and between **Show Me Anaconda, LLC**, a Montana limited liability company, of 2900 Harrison Ave., Butte, Montana 59701 (the "Recipient"), and **Anaconda Deer Lodge County**, of 800 Main Street, Anaconda, Montana 59711 (the "County").

Recitals:

A. The County owns the following real property in Anaconda Deer Lodge County, Montana (collectively, the "Real Property"):

- (i) Lots 1F, 1G, 1H, and 1I of the East Yards Frontage Minor Subdivision, Anaconda Deer Lodge County, as may be adjusted by a mutually agreeable boundary relocation currently being conducted, totaling approximately 14 acres (the "Phase One Property"), and
- (ii) Three additional lots, totaling approximately 6 acres along Polk Street, south of Union Avenue. This parcel will be created as part of a mutually agreeable subdivision and boundary location (the "Phase Two Property").

B. On August 4, 2020, the parties executed an Agreement to Sell and Purchase wherein the County agreed to sell to Recipient, and Recipient agreed to purchase from the Lender, the Real Property.

C. Recipient intends to build a hotel on the Phase 1 Property (the "Project"), as set forth in Recipient's Proposal to the County dated April 9, 2020.

D. The County administers, oversees and provides grant funding in connection with development of property within Anaconda Deer Lodge County, Montana.

E. The County believes that the Project provides a valuable service to the Montana community and is consistent with the goals and mission of the County and desires to support the Project, including by providing the Recipient with Grant Funds (defined below) for use in connection with the Project as set forth in this Agreement.

F. The parties agree that the Project is an economic development project (a hotel and lodging project) that will contribute to property tax revenues of the County.

FOR VALUABLE CONSIDERATION, IT IS AGREED:

1. **Recitals.** The foregoing recitals are made a part of this Agreement and are hereby incorporated by this reference.

2. **Grant Funds.** The County shall make \$1,000,000 in grant funds available to Recipient according to the terms provided herein (the "Grant Funds").

3. **Transfer of Grant Funds.** The County will distribute the Grant Funds to Recipient on a dollar-for-dollar basis with funds contributed by Recipient in the development of the Project until the Grant Funds are distributed in full. The County shall pay the Grant Funds to Recipient by check or wire transfer to an account designated by Recipient promptly upon proof of the Recipient's contribution of funds for use in the development of the Project. Recipient will use such Grant Funds in furtherance of the Project. The County hereby represents and warrants to Recipient that the County has the right and authority to transfer the Grant Funds to Recipient in

accordance with this Agreement and such transfer will not violate any of the terms, restrictions, or conditions of the grants or donations underlying such Grant Funds.

4. **Report Required.** Recipient shall make a written report to the County detailing how the grant funds were expended on the Project within one (1) year of receipt of said funds.

5. **Project Operation.** The parties acknowledge and agree that, as between the parties hereto, Recipient is responsible for the development, administration, oversight and operation of the Project, and except as otherwise agreed in a separate agreement, the County is not at all involved in or responsible for the Project. The County agrees to execute and deliver such additional documents and take such additional actions as may reasonably be requested by Recipient in order to comply with applicable laws, regulations and policies. This paragraph shall survive the execution and delivery of this Agreement and consummation of the transaction contemplated hereby.

6. **Relationship.** This Agreement is not intended to create, and does not create, any relationship between the County and Recipient of principal and agent, joint venture, partnership, or independent contractor or service provider.

7. **Notice.** All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as UPS, Federal Express or Airborne, addressed to such party listed herein or to such other address as that party may have specified by prior written notice to the other.

8. **No Assignment.** Neither party shall assign, transfer, or delegate, either in whole or in part, its rights or duties under this Agreement.

9. **Further Assurances.** After execution of this Agreement, each party shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement hereof and give effect to the transactions contemplated by this Agreement.

10. **Attorney Fees.** In the event legal action is required, including the initiation of a suit or action by any party to this Agreement, to enforce any of its terms, it is agreed the prevailing party shall be entitled to recover reasonable attorney fees and costs to be fixed by the arbitrator, or by the court, and on appeal.

11. **Entire Agreement.** This contract is the entire agreement of the parties and supersedes previous oral or written agreements.

12. **Legal Effect.** This Agreement shall be governed by the laws of the State of Montana

13. **Time.** Time shall be of the essence of this Agreement.

14. **Amendments and/or Modifications.** Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended, modified or terminated orally or in any other manner other than by an instrument in writing signed by all of the parties hereto

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile copy or computer-scanned image, and such copy or scan shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first written above.

Show Me Anaconda, LLC

By: _____
Mike Johnson, Member

Anaconda Deer Lodge County

By: _____
Bill T. Everett, CEO