

**ORDINANCE NO. 7
SERIES OF 2018**

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO, APPROVING THE ISSUANCE OF INDEBTEDNESS IN THE FORM OF A LOAN FROM ANB BANK FOR THE PURPOSE OF REFUNDING OUTSTANDING TOWN BONDS AT A LOWER INTEREST RATE; AUTHORIZING THE EXECUTION OF THE LOAN AGREEMENT AND DELIVERY OF A NOTE TO EVIDENCE THE DEBT; PROVIDING FOR THE PAYMENT AND CANCELLATION OF THE REFUNDED BONDS; AND PROVIDING FOR THE PAYMENT OF THE DEBT FROM A PLEDGE OF THE TOWN'S RECREATION SALES AND USE TAX REVENUES AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE LOAN.

WHEREAS, the Town of Carbondale, Colorado (the "Town"), is a municipal corporation duly organized and operating as a home rule Town under the Carbondale Home Rule Charter (the "Town Charter") and the Constitution and laws of the State of Colorado (certain capitalized terms used in the preamble of this Ordinance are defined in Section 1 hereof); and

WHEREAS, Article X, Section 20 of the Colorado Constitution provides that voter approval in advance is not required to refinance Town bonded debt at a lower interest rate; and

WHEREAS, at an election of the qualified electors of the Town, duly called and held on April 6, 2004, in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the election voted in favor of, inter alia, the issuance of indebtedness and the imposition of taxes for the payment thereof, for the purpose of financing the development, construction and equipment of park and recreation facilities and improvements; and

WHEREAS, on July 14, 2004, the Town issued its Recreation Sales and Use Tax Revenue Bonds, Series 2004 (the "Series 2004 Bonds") in the aggregate principal amount of \$2,200,000, which bonds are currently outstanding in the aggregate principal amount of \$985,000 and may be redeemed at the option of the Town on any date, with thirty days prior written notice to the registered owner of such bonds, upon payment of par and accrued interest to the date of redemption (without redemption premium); and

WHEREAS, on November 10, 2006, the Town issued its Recreation Sales and Use Tax Subordinate Revenue Bonds, Series 2006 (the "Series 2006 Bonds" and, together with the Series 2004 Bonds, the "Refunded Bonds"), in the aggregate principal amount of \$450,000, which bonds are currently outstanding in the principal amount of \$230,000 and may be redeemed at the option of the Town on any date, with thirty days prior written notice to the registered owner of such bonds, upon payment of par and accrued interest to the date of redemption (without redemption premium); and

WHEREAS, the principal of and interest on the Refunded Bonds are payable at UMB Bank, n.a. (as successor in interest to American National Bank) which serves as paying agent for the Refunded Bonds; and

WHEREAS, George K. Baum & Company, Denver, Colorado, acting as placement agent, has presented a proposal to the Board of Trustees (the "Board") of the Town for a loan (the "2018 Loan") from ANB Bank, evidenced by the issuance and delivery of a Note, for the refunding of the Refunded Bonds at a lower interest rate; and

WHEREAS, no member of the Board has a potential conflict of interest in connection with the authorization, issuance or use of proceeds of the 2018 Loan; and

WHEREAS, as provided in the Town Charter and the Constitution and laws of the State of Colorado, which include but are not limited to Title 11, Article 56, C.R.S., and Title 11, Article 57, Part 2, C.R.S., by this Ordinance the Town authorizes the execution of the Loan Agreement and the Note, and delegates to the Mayor or the Mayor Pro Tem of the Town, for a period not to exceed one year, the authority to approve certain financial terms relating to the Note; therefore

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO:

Section 1. Definitions. As used herein, the following capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise (capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement).

"*Interest Rate*" means an annual rate of interest of 2.75% for the Note. The Interest Rate does not include the Default Rate or the Taxable Rate.

"*2018 Loan*" means the loan to be made by the Lender to the Town pursuant to the Loan Agreement.

"*Ballot Issue Authorization*" means the ballot issue approved at the Election.

"*Board*" means the Board of Trustees of the Town.

"*Note*" means the Note, the form of which is set forth as an Exhibit to the Loan Agreement, which is to be executed and delivered by the Town to the Lender to evidence the 2018 Loan.

"*Code*" means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Note or the use of proceeds thereof, unless the context clearly requires otherwise.

"*C.R.S.*" means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“Debt Service Account” means the Town account hereby established for the purpose of paying the principal of and interest on the Note. The Debt Service Account shall be a subsidiary account of the appropriate fund or account of the Town, and separately accounted for by the Town in accordance with the provisions hereof.

“Election” means the Town election held on April 6, 2004.

“Financing Documents” means the Loan Agreement, the Note and all documents and certificates necessary or desirable to effectuate the issuance of the Note and the financing contemplated by this Ordinance.

“Lender” means ANB Bank.

“Loan Agreement” means that certain Loan Agreement, expected to be dated July 25, 2018, by and between the Town and the Lender and pursuant to which the 2018 Loan is to be made to the Town.

“Maturity Date” means December 1, 2024.

“Ordinance” means this Ordinance of the Board, which authorizes the 2018 Loan and approves the execution and delivery of the Financing Documents.

“Paying Agent” means the Finance Director of the Town, who shall perform the function of paying agent with respect to the Note, or any successor appointed in accordance with this Ordinance.

“Recreation Sales and Use Tax” means the 0.5% sales and use tax of the Town, as imposed by the Town pursuant to the Recreation Tax Ordinance and in effect as of July 1, 1996 and extended in perpetuity pursuant to the Election. The term “Recreation Sales and Use Tax” does not include any of the Town’s sales and use tax other than the sales and use tax referenced in the preceding sentence unless otherwise specifically provided by the Board.

“Recreation Sales and Use Tax Fund” means the Recreation Sales and Use Tax Fund established by the Town in accordance with the terms and provisions of the Recreation Tax Ordinance and Section 29 2 111, C.R.S.

“Recreation Tax Ordinance” means Ordinance No. 5, Series of 1996 which was adopted by the Town and approved by the electors, and subsequently extended in perpetuity by the Election on April 6, 2004.

“Redemption Date” means July 25, 2018, or such later date, if necessary, as provided in writing by the Mayor for the payment and cancellation of the Refunded Bonds.

“Refunded Bonds Requirements” means the principal of and interest due in connection with the payment and cancellation of the Refunded Bonds on the Redemption Date.

“Refunding Project” means the payment of the costs of issuance of the Note and the refunding, paying and discharging of the Refunded Bonds Requirements.

“*Sales and Use Tax Ordinances*” means Town Ordinance No. 1, Series of 1971, adopted on January 18, 1971, and Town Ordinance No. 3, Series of 1974, adopted on February 18, 1974.

“*State*” means the State of Colorado.

“*Town*” means the Town of Carbondale, Colorado.

Section 2. *Approval of Loan Agreement and Authorization of the Note.* Pursuant to and in accordance with the Town Charter and the Constitution and laws of the State of Colorado, the Note shall be executed and delivered by the Town for the purpose of paying the costs of the Project. The form of the Loan Agreement setting forth the terms, conditions and details of the Note and the procedures relating thereto, is in its entirety incorporated herein by reference and is hereby approved; all Town officials, agents and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Town under the Financing Documents. The Town shall enter into the Loan Agreement and deliver the Note in substantially the form presented to the Town at or prior to this meeting of the Board with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance.

Section 3. *Receipt of 2018 Loan and Payment of Project Costs.*

(a) ***Disbursement of Loan Proceeds.*** Upon payment of the 2018 Loan to the Town (which is expected to occur on or about July 25, 2018) the Note shall be delivered to, or as directed by, the Lender and the proceeds received by the Town shall be used for the payment of the costs of issuance of the Note and the balance thereof applied to the payment and cancellation of the Refunded Bonds.

(b) ***Payment of Refunded Bonds.*** Subject to the issuance of the Note, the Board does hereby reaffirm its intent to exercise on behalf of and in the name of the Town its option to pay and cancel the Refunded Bonds. The Board hereby reaffirms the direction provided to the Refunded Bonds Paying Agent to give conditional notice for the redemption of the Refunded Bonds in accordance with the requirements of the ordinances authorizing the Refunded Bonds.

Section 4. *Note Details.* The Note shall be issued in an aggregate principal amount of \$1,286,700, shall bear interest at the Interest Rate (but subject to the application of a default rate or taxable rate as may be provided in the Loan Agreement) on the unpaid principal amount, and shall mature on the Maturity Date. Interest shall accrue on the outstanding principal balance of the Note from the date of delivery of the Note and shall be calculated on the basis of an actual/360 day count convention. The Town shall make semi-annual payments of interest and annual payments of principal pursuant to the schedule set forth in the Loan Agreement until the Maturity Date or payment of the principal amount of the Note in full.

Section 5. *Security for the 2018 Loan.*

(a) ***Pledge of Revenues.*** The Town hereby pledges for the payment of the principal of and interest on the Note, and grants a first lien (but not necessarily an

exclusive such lien) for such purpose on the Recreation Sales and Use Tax and the interest earnings thereon.

(b) ***Superior Liens Prohibited.*** The Town shall not pledge or create any other lien on the revenues and moneys pledged pursuant to paragraph (a) of this Section that is superior to the pledge thereof or lien thereon pursuant to such paragraph.

(c) ***Note is a Special, Limited Obligation of the Town.*** The Note is a special, limited obligation of the Town payable solely from the Recreation Sales and Use Tax Fund and secured solely by the sources provided in this Ordinance. The Note shall not constitute a general obligation debt of the Town within the meaning of any statutory or constitutional limitation.

Section 6. *Various Findings, Determinations, Declarations and Covenants.* The Board, having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants that:

(a) ***Compliance with Laws.*** The issuance of the Note and all procedures undertaken incident thereto are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Town Charter and the Constitution and laws of the State.

(b) ***Federal Tax Covenant.*** The Town will not use or permit the use of any proceeds of the Note or any other funds of the Town from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause the Note to be an “arbitrage Note” within the meaning of Section 148 of the Code, or would otherwise cause the interest on the Note to be includible in gross income for federal income tax purposes. The Town will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid by the Town on the Note shall not be includible in gross income for federal income tax purposes under the Code or any other valid provision of law. In particular, but without limitation, the Town represents, warrants and covenants to comply with the following rules unless it receives an opinion of nationally recognized bond counsel stating that such compliance is not necessary: (i) gross proceeds of the Note will not be used in a manner that will cause the Note to be considered a “private activity bond” within the meaning of the Code; (ii) the Note is not and will not become directly or indirectly “federally guaranteed”; and (iii) the Town will timely file Internal Revenue Form 8038G which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

(c) ***Bank Qualification.*** The Town hereby designates the Note as a qualified tax exempt obligation within the meaning of Section 265(b)(3) of the Code. The Town covenants that the aggregate face amount of all tax exempt obligations issued by the Town, together with governmental entities which derive their issuing authority from the Town or are subject to substantial control by the Town, are not reasonably expected to be more than \$10,000,000 during calendar year 2018.

Section 7. *Approval of Miscellaneous Documents.* The appropriate officers of the Town are hereby authorized and directed to execute the Financing Documents. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the Town of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 8. *Supplemental Public Securities Act.*

(a) ***Application of Act.*** Pursuant to § 11-57-204, C.R.S., the Town hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the issuance of the Note.

(b) ***Limitation of Actions.*** In accordance with § 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Note more than thirty days after the date of adoption of this Ordinance.

(c) ***Recourse Against Officers and Agents.*** Pursuant to § 11-57-209, C.R.S., if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Note. Such recourse shall not be available either directly or indirectly through the Board or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Note and as a part of the consideration of their sale or purchase, any person purchasing or selling the Note specifically waives any such recourse.

Section 9. *Amendment of Ordinance.* This Ordinance may not be amended without the prior written consent of the Lender.

Section 10. *Ratification of Prior Actions.* All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or by the officers and employees of the Town directed toward the issuance of the Note for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 11. *Headings.* The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 12. *Ordinance Irrepealable.* After the Note has been issued, this Ordinance shall constitute a contract between the Lender and the Town, and shall be and remain irrepealable until the Note and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 13. *Severability.* It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other

situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

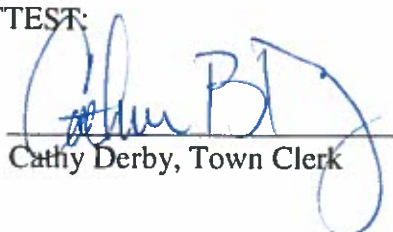
Section 14. Repealer. All orders, bylaws and Ordinances of the Town, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

Section 15. Effective Date. This Ordinance shall take effect thirty days following publication of the notice required in Section 3-3(g) of the Town Charter.

PASSED AND ADOPTED and ordered published this 12th day of June, 2018.

TOWN OF CARBONDALE, COLORADO

By 
Dan Richardson, Mayor

ATTEST:
By 
Cathy Derby, Town Clerk

