

TO: Honorable Mayor Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Lot 4, Phase 1B Office Building in Mountain Vista Resort Subdivision
DATE: March 3, 2016

Summary: Attached is a complete Council Report for the Mountain Vista Resort Subdivision Office Building, including a Purchase and Sales Agreement for the Town to purchase the property from Points of Colorado, Inc. for \$1.5 Million. The Purchase and Sales Agreement is subject to approval by the Avon Town Council by ordinance. The Property, known locally as the Skier Building, would be acquired for use as a Town Hall. The building is 16,273 total square feet on three floors. The interior of the building is unfinished.

Presentation of this comprehensive Council Report is scheduled for a work session on March 8, 2016. Presentation of an ordinance approving the Purchase and Sale Agreement is tentatively scheduled for first reading on March 22 and second reading on April 12, 2016.

Requested Action: Town staff requests direction on any additional information that may be required for Council to fully evaluate and act upon an ordinance to approve the Purchase and Sales Agreement to purchase Lot 4, Mountain Vista Resort Subdivision, Avon, CO.

Thank you, Eric

**COUNCIL REPORT
FOR
MOUNTAIN VISTA RESORT SUBDIVISION
OFFICE BUILDING**

140 West Beaver Creek Boulevard
Mountain Vista Lot 4



March 8, 2016

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Appendices

Appendix 1: Purchase & Sale Agreement

The following Appendices are available electronically at the listed site or may be viewed at the Town Clerk's office during normal business hours:

Appendix 2: *Avon Town Hall Facility Assessment and Space Needs Analysis*, SEH, July 2015
www.avon.org/spaceneedsanalysis

Appendix 3: *Avon West District Town Center Investment Plan*, 2007
www.avon.org/investmentplan

Appendix 4: *Master Plan for Harry A. Nottingham Park Plan*, 2008
www.avon.org/parkmasterplan

Appendix 5: *Planning Review and Update of the Harry A. Nottingham Master Plan, Swift Gulch Master Plan and Lot 5 Development Plan*, 2015
www.avon.org/planningreview

Appendix 6: Building Inspection Report, 2016 www.avon.org/inspectionreport

Appendix 7: Structural Engineering Report, 2016 www.avon.org/engineeringreport

Appendix 8: 2016 Capital Projects Fund www.avon.org/budget

SECTION I EXECUTIVE SUMMARY

FINDINGS

2015 Town Hall Facility Assessment

The *Town Hall Facility Assessment and Space Needs Analysis*, July 12, 2015, was prepared for the Avon Town Council, by consultants Short Elliott Hendrickson, Inc. (SEH). The SEH *Analysis* concluded:

“At a minimum, to satisfy building upgrade requirements and meet the future space needs, a major building remodel will be required to address the sheer number and extent of issues in the existing shell and interior spaces. As well, we recommend full replacement of all MEP systems and components to meet the programming needs of the departments. It is likely more cost prohibitive to correct all the deficiencies than to build a new facility.”

SEH Assessment, Page 18

Skier Building is Lease Cost Option to Address Present Town Hall Facility Deficiencies

- The Mountain Vista Office Building and Police Department at the Joint Public Safety Facility is the least cost option.
- No new taxes or tax rate increases are needed for the relocation

Adopted Plans & Planning Review/Update for the Existing Town Hall Site; Potential New Uses

- The *2006 Avon Comprehensive Plan* expressly identified a community goal to relocate the Town Hall and redevelop the existing Town Hall site.
- The *Avon West Town Center District Plan, 2007*, found the Town Hall building too small for its current use, outdated and lacking energy efficiency. The plan envisioned a new Town Hall that spanned both sides of a new Main Street (Fire Station and portion of parking lot and town park) to serve as a civic anchor. A larger program of commercial/retail, offices, civic uses, affordable and market rate housing was proposed for the mixed-use Town Hall facility.

Since adoption of the *District Plan* the Town experienced a severe recession like the rest of the country and new commercial development on the Main Street Mall did not occur as expected. The Town recently completed improvements to the Main Street pedestrian mall to advance its on-going commitment to activate this core area of Town. . The Mountain Vista Office Building meets the goals of the *District Plan*: support Town Hall relocation, provides for office spaces and a civic anchor in close proximity to the library, recreation center and the park and makes the current site available for a dynamic use.

- The *Harry A. Nottingham Master Plan, 2008*, was adopted showing the relocation of Town Hall and new uses at the park.

- Stan Clauson and Associates, consultants to the Town, facilitated a public process to consider future development on Town owned properties. The resulting work was presented to Council and the public in the *Planning Review & Update - Harry A. Nottingham Park Master Plan, Swift Gulch Master Plan & Lot 5 Development Plan*, November 15, 2015. The document recommended:
 - Locating the Police Department at Buck Creek in a Joint Public Safety Facility.
 - Utilizing the Mountain Vista Office Building for the balance of Town Hall functions. The report found the location has broad support and is a preferred location to house the Town’s other office, Court, community and meeting needs.
 - That the current Town Hall site be repurposed for potential uses, including but not limited to enhancing the soccer field and park amenities, new convention space, recreational uses, parking, performance space, etc.

Main Street Mall Anchor & Synergy

It is an opportune time to work the developers of Lot B and the Seasons’ renovation project to bring a synergistic program to the Mountain Vista Office Building. Town Hall office functions and community meeting activity at this location will serve an important anchor for this vibrancy.

SECTION SUMMARY

Section II Chronology of Events

The listing follows the directives, studies and decisions of the Town Council beginning on January 27, 2015, which supported the work for a purchase agreement for the Mountain Vista Office Building.

Section III Purchase and Sale Agreement

| | |
|-----------------|---|
| Purchase Price: | \$1,500,000 |
| Building Uses: | Administrative and court offices, Courtroom/Council Chambers, meeting rooms and community space |
| Closing Date: | June 16, 2016 |

Additional information is provided on sale terms, including an access easement which would allow Points of Colorado and Starwood access, utilities, support for a subterranean parking garage abutting the Mountain Vista Office Building foundation, and crediting for shared open space. The Lot 4 Easement is intended to preserve all of Starwood’s development rights under the existing PUD which were based on access, site coverage and the existing configuration of Lot 4.

Section IV Town Hall Facility Assessment & Space Needs Analysis, July 2015

The comprehensive *Town Hall Facility Assessment & Space Needs Analysis (Assessment)* was developed by Short Elliott Hendrickson, Inc. (SEH), at the request of Town Council. The *Assessment* reported on the deficiencies of the current building and estimated the current space shortages for staff working space. Future staff space needs were projected. Six facility planning options on three sites were prepared, with a cost budget developed for each scenario.

The *Assessment* found the current Town Hall building to be in need of a major remodel or replacement. The cost budget analysis, with current pricing for the Police Department at the proposed relocation to the

Joint Public Safety Facility, plus the purchase and finish of the Mountain Vista Office Building was shown to be the least cost option.

Section V Master Plans, Review & Updates, Zoning & Subdivision

Relevant master plans and the recent updated planning review are submitted in the section. Current adopted plans envision the relocation of the existing Town Hall. No PUD or zoning amendment would be required for the Town to use the property for a Town Hall. Lot 4, where the Mountain Vista Office Building sits, along with a portion of Lot 5 surrounding Lot 4 must be subdivided to create a consolidated lot that can be separated from the remainder of the Lot C PUD development and associated declarations.

Section VI Parking Requirements

The Town of Avon is able to meet the Mountain Vista Office Building parking demand on site and in the vicinity on adjacent Town owned property and rights-of-way, as allowed for by the Town's Code.

Section VII Renovation & Relocation Options

Bringing the *Avon Town Hall Facility Assessment and Space Needs Analysis, Planning Review and Update for Harry A. Nottingham Park Master Plan, Swift Gulch Master Plan, Lot 5 Development Plan* together with the locational decision for the Police Department at Buck Creek, facility options and costs for the balance of Town Hall are presented. The comparison shows the Mountain Vista Office Building-Joint Public Facility/Police Department to be the least cost option.

Section VIII Building Inspection and Structural Report

The Mountain Vista Office Building was inspected by Eagle Eye Inspectors and KRM Consultants provided a current structural observation. No significant problems were identified, however, HVAC system inspection showed two items not working. With the plan to replace the HVAC for the needed system for full build-out, staff did not recommend fixing the items, but rather noticing Points of Colorado of the operational failure in the units.

Section IX Funding and Development Schedule

Funds for building acquisition are available in the current 2016 Capital Projects Fund. Construction, FF&E and contingencies to finish the building are available in the Urban Renewal Fund. No new taxes or tax rate increases are required for the full project.

Should Town Council approve the purchase of the Mountain Vista Office Building, development of the building for use as a Town Hall could be completed by May 1, 2017.

SECTION II CHRONOLOGY OF EVENTS

2.1 JANUARY 27TH: Ad Hoc Committee/Study Group Recommended

At the Council's January 27, 2015, meeting, Mayor Jennie Fancher recommended the formation of an ad hoc committee/study group to further explore the acquisition of the Mountain Vista Office Building and examine whether or not it makes sense to acquire the building. The individuals recommended to be members of the committee were Mark Kogan, Phil Struve and Councilor Sarah Smith Hymes. It was also stated that any community members interested in participating in the ad hoc committee/study group should email Virginia Egger or Jennie Fancher. Angelo Loria, Dominic Mauriello, Brian Sipes joined the committee as well.

The ad hoc group assisted with the RFQ process and selection of SEH to conduct a facility assessment and space needs analysis.

2.2 APRIL 28TH: IGA Approved for Joint Public Safety Facility

Town Council approved an Intergovernmental Agreement (IGA) between the Town of Avon and the Eagle River Fire Protection District (ERFPD), which set forth the terms and conditions for the design, construction, ownership and operation of a joint fire and police station facility (PSF) on Nottingham Road between Swift Gulch and Buck Creek Roads (Buck Creek Site). The IGA also detailed the conditions of Avon's loan to the ERFPD.

2.3 AUGUST 25TH: Options for Town Hall – Locations, Estimated Costs & Financing

The *Avon Town Hall Facility Assessment and Space Needs Analysis* is completed by SEH, consultant to the Town. The consultant met with Council in a study session on August 25th, and reviewed the *Assessment and Analysis*.

Also, at the meeting, the staff memo identified the schedule for Stan Clauson Associates work to evaluate land use options for Tract G, which includes the current Town Hall, Fire Station sites, park and Town Center West District; including time frame to make a decision on the location for the Avon Police Department.

2.4 OCTOBER 13TH: Study Session – Tract G, Swift Gulch and Lot 5 Development Options, including Public Safety and Town Hall Locations, Financing Options and Decision Schedule

Consultants presented the *Preliminary Findings Report* at the public Study Session.

- The consultant and participants at the charette recommended:
 - The Police Department be located at Buck Creek
 - Town Hall's other departments be located at the Mountain Vista Office Building; or, if the building is not available at the Fire Station once vacated by the ERFPD
 - The current condition of Town Hall requires a renovation or relocation in the near future
 - Opportunities to repurpose the site of other park uses favored relocation
 - The Mountain Vista Office Building was the favored location, with the Fire station being noted as an alternate location
- Moving forward with a new URA bond, which could generate upwards of \$6,000,000 in new revenues; tenant finish of the Mountain Vista Office Building is an eligible cost

2.5 OCTOBER 13TH: Executive Session

Council met in Executive Session : DISCUSSION OF THE PURCHASE AND ACQUISITION OF A REAL PROPERTY INTEREST UNDER C.R.S. §24-6-402(2)(A) AND A CONFERENCE WITH THE TOWN ATTORNEY FOR THE PURPOSE OF RECEIVING LEGAL ADVICE UNDER C.R.S. §24-6-402(2)(B) RELATED TO SUCH REAL PROPERTY DISCUSSION AND FOR THE PURPOSE OF DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCTING NEGOTIATORS, UNDER C.R.S. §24-6-402(2)(E) RELATED TO SUCH REAL PROPERTY DISCUSSION

2.6 OCTOBER 27TH: Study Session – Tract G, Swift Gulch and Lot 5 Development Options, including Public Safety and Town Hall Locations, Financing Options and Decision Schedule

- Stan Clauson consultants presented the final draft of recommended land uses.
- Town Council directed:
 - Buck Creek is the preferred location for the Police Station
 - No changes were proposed for Tract G, with the preferred location for Town Hall being first at the Mountain Vista Office Building
 - Town Hall Repurposing – Councilor Matt Gennett asked that the repurposing of Town Hall for other uses, should Town Hall relocate, be included in future land use planning work, versus demolition

2.7 NOVEMBER 10TH: Modification to the Urban Renewal Plan

The URA Authority Board passed Resolution 15-1 to Adopt Minor Modifications to the Town Center West Urban Renewal Plan

The action specifically allowed the Mountain Vista Office Building to qualify for Urban Renewal funds

2.8 DECEMBER 8TH: Council Meeting

Council sets maximum cost for the Police Department at \$5,540,656; and maximum facility size at 11,300 square feet

Council agrees to final appropriation of design costs

2.9 JANUARY 26TH: Council Meeting

COUNCIL MET IN EXECUTIVE SESSION: DISCUSSION OF THE PURCHASE AND ACQUISITION OF A REAL PROPERTY INTEREST UNDER C.R.S. §24-6-402(2)(A) AND A CONFERENCE WITH THE TOWN ATTORNEY FOR THE PURPOSE OF RECEIVING LEGAL ADVICE UNDER C.R.S. §24-6-402(2)(B) RELATED TO SUCH REAL PROPERTY DISCUSSION AND FOR THE PURPOSE OF DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCTING NEGOTIATORS, UNDER C.R.S. §24-6-402(2)(E) RELATED TO SUCH REAL PROPERTY DISCUSSION

2.10 FEBRUARY 23RD:

COUNCIL PASSES RESOLUTION NO. 16-03 REFERRING A POLICE STATION BALLOT QUESTION TO A SPECIAL ELECTION & FIRST READING OF ORDINANCE NO. 16-02

SECTION III PURCHASE AND SALE AGREEMENT

3.1 Introduction

The Town conducted an appraisal of the building in March, 2014, which calculated a value of \$2,042,500. The Points of Colorado appraisal, during the same time, concluded the value of the property at \$4,195,000. Both estimates assumed no parking would need to be purchased. The Town and seller negotiated a Purchase and Sale Agreement (“PSA”) with price of \$3.2M. The PSA was approved by ordinance, but was subject to approval by ordinance of Certificate of Participation Financing by the Town of Avon. A citizen petition for referendum was submitted for Ordinance 14-18 approving the Certificate of Participation Financing, which Council referred to a special election. Approval of Ordinance No. 14-18 did not pass and the PSA was then terminated.

A new appraisal was not ordered for the negotiation authorized by Town Council. Rather, the Town relied on the assumptions for a calculated value prepared by Mr. Mark Kogan. The set price of \$1.5 million eventually was negotiated.

3.2 The Property

The Property is owned by Points of Colorado, Inc., a Colorado corporation. The purchase is for Lot 4, Mountain Vista Resort Subdivision, including the Phase 1B Office Building in the Mountain Vista Resort Subdivision. Included are all improvements and appurtenances, and the Skier Bronze Statue. Excluded from the purchase are 44 parking spaces designated for the Mountain Vista Office Building and located on other adjacent property owned by Points of Colorado. The Property is being sold in an “as is” condition. Town has been given the opportunity to perform inspections of the building and the title prior to executing the PSA.

3.3 Purchase and Sale Agreement

The PSA is attached to this report (See Appendix 1). Specific terms in the PSA are highlighted as follows:

Purchase Price: \$1,500,000

Deposit: \$75,000

Closing Date: June 16, 2016

Inspections: No right of inspection, Property is to be purchased “as is”. Town has already conducted inspections and inspection updates prior to signing the PSA. The inspections are discussed in Section VIII of this Report.

Right of First Refusal: The Property would be subject to a Right of First Refusal for 3 years that would allow Points of Colorado to repurchase the Property for \$1.5 Million if sold by the Town.

Lot 4 Easement: The Property would be subject to an easement on the undeveloped portions of Lot 4 (meaning the area of Lot 4 outside the existing building footprint) which would allow Points of Colorado and Starwood access, utilities, support for a subterranean parking garage abutting the Mountain Vista Office Building foundation, and crediting for shared open space. The Lot 4 Easement

is intended to preserve all of Starwood's development rights under the existing PUD which were based on access, site coverage and the existing configuration of Lot 4.

Common Interest Community Exclusion: Lot 4 would be excluded from the Mountain Vista Resort common interest community, and therefore, would not be subject to assessments or costs related to this common ownership interest community.

Conditions Precedent to Closing: There are several conditions that must be satisfied before each party is required to closing on the Property, highlighted as follows:

- The Avon Town Council must adopt an Ordinance approving the PSA. [NOTE: the adoption of an Ordinance is subject to the public process in accordance with the Avon Home Rule Charter. Adoption of an Ordinance is subject to the discretion of the Avon Town Council members after conducting public hearings. If the Avon Town Council does not adopt an ordinance then the \$75,000 Deposit would be returned to the Town.]
- Town must approve a subdivision replat of Lots 2C, 4 and 5 to create the Lot 4 configuration for purchase as requested by the Town.
- Lot 4 must be withdrawn from the Mountain Vista Resort common interest community.
- The Agreement and Plan of Merger between Interval Leisure Group and Starwood Vacation Ownership must be completed.

Ordinance Not Subject to Referendum: Avon Home Rule Charter Section 7.2(a) states that ordinances for the acquisition of municipal properties are not subject to referendum. Additionally, the Colorado Court of Appeals ruled in *Friends of Denver Parks v. City and County of Denver*, 327 P.3d 311 (Colo.App.2013) that a real estate contract is an administrative action and is therefore not subject to referendum. An ordinance approving the PSA is not subject to citizen referendum in Avon.

SECTION IV
AVON TOWN HALL FACILITY ASSESSMENT
AND SPACE NEEDS ANALYSIS
Short Elliott Hendrickson, Inc. (SEH)

4.1 Introduction

The Town Council authorized consultant services to conduct a facility assessment and to estimate the space needs for services in the current Town Hall. The firm of Short Elliott Hendrickson, Inc. (SEH) was hired. SEH's report was completed on July 12, 2015 and presented to Town Council on August 26, 2016. The full report is provided in Appendix 2.

4.2 Town Hall Facility Assessment

The SEH Analysis concluded:

“At a minimum, to satisfy building upgrade requirements and meet the future space needs, a major building remodel will be required to address the sheer number and extent of issues in the existing shell and interior spaces. As well, we recommend full replacement of all MEP systems and components to meet the programming needs of the departments. It is likely more cost prohibitive to correct all the deficiencies than to build a new facility.” [SEH Report, Page 18]

The Assessment stated:

- The existing Avon Town Hall facility is out of date with current codes, including ADA accessibility requirements with non-conforming existing conditions that would require extensive remodel to the majority of building shell and floor areas. The ADA deficiencies include inadequate spaces with non-compliant ADA door and turning-area clearances, non-compliant handrails, and non-compliant restrooms, shower and locker facilities. Also currently there is not an accessible access to the basement level, because the elevator only serves the First and Second floors of the building.
- A completely new building designed to meet current codes on the same site, or a newly constructed building on a new site, in order to address every issue will be required.
- In addition to code issues, there are many operational issues that would require total upgrades of systems throughout the building, including HVAC systems, acoustical partitioning, and energy upgrades, to name a few. The atrium area is noted as having skylight leakage into the ceiling of employee offices. The HVAC system is over 30 years old and in need of complete replacement. The systems require continuous maintenance to keep them running.
- It is our recommendation the mechanical systems be replaced to meet the function and operation of the facility.
- The structural condition of the building is in ‘good’ to ‘very good’ condition and the building appears to be performing in an acceptable manner. The leaks and the exterior finishes should be repaired as required to maintain water proofing. It appears that the ceiling in the atrium area was installed with slack in the suspension rod system. In order to cosmetically improve the ceiling, it is recommended to adjust the tension rods as required to level the ceiling tiles.
- International Building Code issues include inaccessible spaces, inadequately sized means of egress, failure to meet life/safety fire codes for an institutional occupancy, and failure to meet energy code requirements.

- The spaces provided by the police and courts are not accessible per the code requirements in ANSI Standards 117.1, 304, 404.2.3.2, 604.8, 606.6, and 608, nor per the ADA Standards for Accessible Design which have many of the same requirements. ADA is a federal law, while ANSI refers to code requirements. Numerous ADA/ANSI Standard Code violations have been noted throughout the building. These include inadequate space requirements, door clearances, turn-around spaces, restroom, shower, and locker room facilities, and countertop heights.
- An institutional occupancy (which includes the holding cells) is required by code to be fully sprinkled. This is a major life safety issue as a person held in these cells would not have the ability to exit the space on their own.
- In order to meet current energy codes, lighting systems would need to be upgraded. Exterior walls would need to have continuous insulation added to them. Windows and doors would have to be replaced with energy efficient double pane

4.3 Space Needs Analysis

The review and projection of space needs through a planning horizon of 2035 for police department square footage; and, year 2025 for all other departments, found the following square footage needs:

| SPACE NEEDS ASSESSMENT - SEH, July 2015 | | | |
|--|------------------|--------------|------------|
| DEPARTMENT | PLANNING HORIZON | CURRENT 2015 | PROGRAMMED |
| Police Department | 2035 | 4,788 | 9,009 |
| All Other Departments | 2025 | 9,007 | 9,092 |
| Building Support | 2025 | 257 | 2,145 |
| TOTAL Net Square Footage | | 14,052 | 20,246 |
| TOTAL BUILDING GROSS (120%) | | | 24,511 |

The proposed relocation of departments into two new facilities is as follows:

| NEW FACILITY SQUARE FEET | | | |
|--|------------------|------------|--------------|
| DEPARTMENT | PLANNING HORIZON | PROGRAMMED | NEW FACILITY |
| Police Department Joint Public Safety Facility @ Buck Creek | 2050 | 9,009 | 10,419 |
| All Other Departments/Meeting Community Space Mountain Vista Office Building | 2025 | 11,237 | 14,733 |

SECTION V
MASTER PLANS, REVIEW & UPDATES,
ZONING & SUBDIVISION

5.1 Master Plans

5.1.1 The *Avon West Town Center District Investment Plan (District Plan)* was completed in August of 2007, with the stated purpose to encourage and facilitate revitalization of the planning area (Appendix 3). Specific to Town Hall, the *District Plan* found the Town Hall building too small for its current use, outdated and lacking energy efficiency. The plan envisioned a new Town Hall that spanned both sides of a new Main Street (Fire Station and portion of parking lot and town park) to serve as a civic anchor. A larger program of commercial/retail, offices, civic uses, affordable and market rate housing was proposed for the facility. Once Town Hall was relocated, the current site would be sold ideally for a high quality hotel. The total projected cost was \$18,400,000, with the goal of recouping monies through the sale of the site for the hotel.

Since adoption of the *District Plan*, voters required that any land sale be approved at the ballot, the full Main Street has been developed the pedestrian mall and the economy has been challenging. The Mountain Vista Office Building meets the goals of the *District Plan*: support Town Hall relocation, provides for office spaces and a civic anchor in close proximity to the library, recreation center and the park and makes the current site available for a dynamic use.

5.1.2 The *Master Plan for Harry A. Nottingham Park, 2008 (Park Plan)* also identifies the relocation of Town Hall from its current site (Appendix 4). A highly collaborative process, the *Park Plan* found that once Town Hall was relocated the current site should be made available to the growth of the park, park support facilities, parking and a performance stage.

5.1.3 The *Planning Review & Update – Harry A. Nottingham Park Master Plan, Swift Gulch Master Plan and Lot 5 Development Plan (Plan Review and Update)* was developed in the fall of 2016 (Appendix 5). Town Council retained Stan Clauson and Associates to assist the community in review all Town-owned Mountain Vista Office Building for future uses. For Town Hall, the Mountain Vista Office Building was identified as a preferred site, followed by the Fire Station.

The *Plan Review and Update* expanded the opportunities for what could happen at the current Fire Station and Town Hall parcels, with adjoining parking lots and parks maintenance buildings. “Strong support was given at the Public Open House as well as in the Council work session for pursuing enhancements to the Park. The support was provided based on the understanding of the greater opportunity in costs of keeping Town Hall at its current location rather than providing community gathering spaces.” Ideas on what would be an approximately 4.5 acre site included field expansion, convention center, mixed use structures, and live/work.

The *Plan Review and Update* is currently being evaluated by the Planning and Zoning Commission for recommendation to the Town Council as a master plan amendment.

5.2 Zoning/PUD Uses

No PUD amendment would be required for the Town to use the Property for a Town Hall.

The Town approved the Lot C PUD Development Plan on February 22, 2000. Allowed uses include retail stores, restaurants, hotels, financial institutions, professional offices and “additional uses determined to be similar to allowed uses in accordance with the intent of this zone district, to be approved by the zoning administrator.” Town Hall use is essentially an office use and determining that Town Hall is an allowed use under the Lot C PUD Development Plan is within the discretion of the zoning administrator.

The only recognized difference in the Avon Development Code is under Table 28-2 where the off-street parking requirement for Commercial Office is three (3) spaces per 1,000 sqft and the off-street parking requirement for Governmental Services and Offices is four (4) spaces per 1,000 sqft. Parking requirements are discussed further in Section VII.

5.3 Subdivision

Acquisition will require a subdivision to create a practical consolidated lot that can be separated from the remainder of the Lot C PUD development and associated declarations. The lot proposed is provided in the Sales and Purchase Agreement. It is 10,840 square feet.

The proposed subdivision as depicted would include the areas around Lot 4 as well as a 10’ setback on the north east and northwest sides of the building.

Sec. 7.16.070 of the Avon Development Code sets forth subdivision procedures. The recommended subdivision will not require public improvements; therefore, the minor subdivision process is applicable. ADC Sec. 7.16.070(d) (2). Minor Subdivisions only require one step approval by the Town Council, after conducting a public hearing, and may be approved by resolution or ordinance. The review criteria for both preliminary and final plat review apply to the minor subdivision process. The building is already constructed on the Property, therefore, the only real issue for consideration is compliance with parking requirements if the Property is purchased and separated from the on-site parking constructed to serve this Property.

SECTION VI PARKING REQUIREMENTS

6.1 Overview of Parking Requirements

Sec. 7.16.070 of the Avon Development Code states that the Development Code is applicable to federal, state, county and municipal governments to the extent permitted by law. Sec. 7.16.070(e)(1) states as the first review criteria that the proposed subdivision shall comply with all applicable use, density, development and design standards in the Development Code. As a result, parking requirements are outlined in Chapter 7.28 of the Avon Development Code and are applicable to Town Hall use of the building.

Table 7.28-2 states the parking requirement is 4 parking spaces per 1,000 square feet of gross floor area for:

- *Public and Institutional Uses*
- *Community Services*
- *Government services, offices and facilities*

Available Parking Requirement Reductions -The Director may determine that a proposed use represents a combination of uses i.e. Government office and community center or Town Hall and Rec Center and apply a 15% reduction.

6.2 Parking Requirements – No additional parking is needed

- **The Mountain Vista Office Building – 55 Spaces**

The total gross floor area of the building is 16,273 square feet. The floor area is then reduced by 10% for the purpose of calculating parking requirements per Sec. 7.28.020(g) (3) which is 14,645 sq.ft. The Code requires 4 parking spaces per 1,000 sq.ft. for government services, which equals 59 parking spaces. 59 total parking spaces are required for Mountain Vista Lot 4. Sec. 7.28.020(g)(4)(ii) allows for the submittal of a parking demand study based on the Institute of Traffic Engineers Parking General Manual which can support further reduction of parking based on mixed uses and shared parking. Mixed-use projects can often support a further reduction of required parking by 15% based on this analysis. The Town Hall facility may be considered part of a mixed-use development grouping along with the Avon Recreation Center and Nottingham Park uses.

6.3 Long Term Parking, including Future Recreation Center Expansion

- **Recreation Center Expansion – 225 - 264 Spaces**

The parking analysis for the existing Recreation Center and Phase 2 Expansion yielded a total demand for 225 - 264 spaces.

- **Total Space Demand Projection: 274 – 321 Spaces**

6.4 Parking: On-Site and Available in the Vicinity: 337 Spaces

- 35 parking spaces are provided in the lot immediately adjacent to the building (owned by the Town and zoned Public) and count toward the minimum required parking
- 25 on-street parking spaces are provided on W Benchmark Road immediately south of the building, but these may not be applied to count toward the parking requirement

- 84 parking spaces are available on the northeast side of the Recreation Center parking lot just west of the building across W Benchmark Road
- 39 additional parking spaces are available on the southwest side of the Recreation Center parking lot
- 39 on-street parking spaces are provided on both sides of Lake Street
- 23 parking spaces are available on the east side of the existing Town Hall building
- An additional 38 parking spaces are available on the west side of the existing Town Hall building
- 14 on-street parking spaces are available along W Benchmark Road on the south side of the Fire station
- 40 new parking spaces may be developed on Benchmark Road, south of The Seasons (Estimated cost \$250,000)

6.5 Alternative Parking Scenarios

Avon's Development Code has well detailed provisions for "off-site parking." Sec. 7.28.020(4) of the Development Code states that the required parking must be on same lot as the building served by the parking, "*except as otherwise provided in this Section.*"

There are two options for off-site parking:

1. Sec. 7.28.020(h) allows off-site parking where the required parking is on a different lot than the lot which contains the building served by the parking if approved by a PUD and if the parking is within 500' of the building served.
2. Sec. 7.28.020(i) defines Public Parking Districts and Facilities and permits a "Public Parking District" to be defined and approved in the Avon Comprehensive Plan which may be owned by the Town. This option is easier and more straightforward to the nature of the project and surrounding Town property and allows the Town to establish a parking plan for the Town properties owned and designate this area a "Public Parking District". Staff finds this scenario to be a reasonable solution to meet the parking requirement and be in conformance with the Town's Development Code.

Recommendation

A total of 337 parking spaces may be designated in a Public Parking District based on the parking counts outlined above. The Town, therefore, should consider, at an appropriate time, a *Comprehensive Plan* update to define a "Public Parking District" comprised of Town properties that include the new Avon Town Hall, Recreation Center, Library, Nottingham Park, current Town Hall and Fire Station site.

SECTION VII RENOVATION & RELOCATION OPTIONS

7.1 Introduction

The Short Elliott Hendrickson, Inc. (SEH) report reviewed six planning options for three sites, including the existing Town Hall site, Fire Station site and the Mountain Vista Office Building. These options were reviewed by the Town Council at the August 26, 2015, presentation of the SEH report. The Council subsequently, through a series of work sessions reviewed the planning work facilitated with the Clauson and Associates, which provided options for the citing of the Police Department and Town Hall. On February 23, 2016, by motion and vote, the Town Council approved a ballot question for the relocation of the Police Department to the Joint Public Safety Facility at Buck Creek, in an amount not to exceed \$6.5M, with debt financing.

7.2 Town Hall Facility Location Options & Estimated Costs

Bringing the *Avon Town Hall Facility Assessment and Space Needs Analysis, Planning Review and Update for Harry A. Nottingham Park Master Plan, Swift Gulch Master Plan, Lot 5 Development Plan* together with the locational decision for the Police Department at Buck Creek, the following table summarizes the facility options and costs for the balance of Town Hall.

The lowest cost Town Hall option is acquisition of the Mountain Vista Office Building at \$1.5M, with final tenant improvements at \$3,091,173, for a total of \$4,591,173. When adding in the Police Department at Buck Creek, the total relocation of all Town Hall uses, with Town Hall at the Mountain Vista Office Building, is projected as the least cost option.

TOWN HALL FACILITY LOCATION OPTIONS & ESTIMATED COSTS

Administration, Human Resources, Clerk, Planning, Finance and Engineering
Courtroom, Council Chambers, Meeting and Community Space

| ITEM | Remodel Town Hall 15,500 SF | Demolish Town Hall & Rebuild at Site 13,700 SF | Relocate to Mountain Vista Office Building 14,733 SF | Relocate to Fire Station 13,700 SF |
|---|--------------------------------|--|---|--|
| TOTAL PROJECT | \$ 4,695,744 | \$ 5,846,502 | \$ 4,591,173 | \$ 5,837,989 |
| Demolition for Construction | \$ 378,376 | \$ 364,934 | NA | NA |
| Demolition after Relocation | NA | NA | \$ 133,330 | \$ 133,330 |
| Exterior Improvements | \$ 322,879 | NA | NA | NA |
| Interior Improvements | \$ 2,385,375 | NA | NA | NA |
| New Construction | NA | \$ 3,448,000 | \$ 1,999,630 | \$ 3,639,816 |
| Site Improvements | \$ 48,540 | \$ 134,893 | \$ 14,823 | \$ 240,455 |
| Sub-total Estimated Construction Cost | \$ 3,135,170 | \$ 3,947,827 | \$ 2,014,453 | \$ 4,013,601 |
| General Contractor General Conditions - 5% | \$ 156,759 | \$ 197,391 | \$ 100,723 | \$ 200,680 |
| Total Estimated Construction Costs | \$ 3,291,929 | \$ 4,145,218 | \$ 2,115,176 | \$ 4,214,281 |
| Construction Contingency | \$ 1,191,365 | \$ 1,493,334 | \$ 765,492 | \$ 1,415,758 |
| FF&E | \$ 212,450 | \$ 207,950 | \$ 210,505 | \$ 207,950 |
| Total Building Estimated Costs | \$ 4,695,744 | \$ 5,846,502 | \$ 3,091,173 | \$ 5,837,989 |
| Land + Shell Building Acquisition | NA | NA | \$ 1,500,000 | NA |
| TOTAL ESTIMATED PROJECT COST | \$ 4,695,744 | \$ 5,846,502 | \$ 4,591,173 | \$ 5,837,989 |
| Police Department at Buck Creek | | | | |
| Land Acquisition & Project Costs | \$ 6,343,452 | \$ 6,343,452 | \$ 6,343,452 | \$ 6,343,452 |
| TOTAL ALL TOWN HALL DEPARTMENTS | \$ 11,039,196 | \$ 12,189,954 | \$ 10,934,625 | \$ 12,181,441 |

SECTION VIII
BUILDING INSPECTION REPORT
& STRUCTURAL ENGINEERING LETTER

8.1 Introduction

A commercial *Building Inspection Report*, dated April 21, 2014, was provided for the Town of Avon by Eagle Eye Home Inspections for the Mountain Vista Office Building. At that time, Points of Colorado repaired roof mounted forced air heating/cooling units, which were identified as a deficiency. Small minor repair items and entryway and sidewalk concrete slabs were accepted by the Town for Town repair. The Town also had two structural engineers review the building: Monroe & Newell (October, 2014) and KRM Consultants (December, 2014). Each firm independently concluded, based upon visual observation, the building to be in good structural condition. The building inspection report and structural engineering review were conducted again in February 2016.

8.2 Building Inspection Report – February 21, 2016

Eagle Eye Inspections conducted a thorough inspection of the building and found minor damage consistent with a building that is 15-years old. The inspection revealed two items related to the HVAC system: “North stairwell space heater fails to produce heat when thermostat is On” and “Outside/return air baffles are in varied positions (same position is expected when all thermostats are in one location and all settings are the same). Recommend further evaluation by an HVAC electronics technician.” As staff believes replacement of the HVAC system as part of the interior finishing will be required after, it is not recommended that repairs be made. Considering, however, that there are at least two (2) months of winter left before the intended Closing and in the interest of avoiding any distraction that may arise from HVAC operating issues during the public review process, staff noticed and suggested to Points of Colorado that they inspect the current HVAC system and perform maintenance or repair, if necessary, so that it is fully operational until Closing. There is a small list of other maintenance items Town staff believes are minor and which Town should accept "as is". There are no other inspection issues that are of concern to the Town staff. The complete report is provided in Appendix 6.

8.3 Structural Observation – February 28, 2016

KRM Consultants updated their independent analysis of the structural integrity of the buildings first completed in December 2014. The firm did not find any changes to the structural soundness of the building and did not observe anything unusual that would lead to believe there is a structural concern with the building. The consultant noted that if the Town is concerned with any potential building settlement, a geotechnical engineer can be hired to conduct additional analysis. Staff is not recommending additional analysis because any ground settlement is expected to have already occurred due to the age of the building. The report is found in Appendix 7.

**SECTION IX
FUNDING & DEVELOPMENT SCHEDULE**

9.1 Funding

8.1.1 Purchase of the Mountain Vista Office Building

The adopted 2016 Capital Projects Fund (Appendix 8) includes funds Assigned For: Town Hall Relocation/ Renovation, in the amount of \$1.5 Million.

8.1.2 Building Finishes

The SEH *Avon Town Hall Facility Assessment and Space Needs Analysis* projected all construction costs, FF&E and contingencies to be \$3,091,173. The Avon Urban Renewal Authority has available funding resources to finance the improvements. Certificates of participation would be the expected debt approach.

Acquisition and building finishes do not require any new taxes or tax rate increases.

9.2 Development Schedule

Should Town Council approve the purchase of the Mountain Vista Office Building, the development schedule is projected as follows:

| | |
|----------------------|---------------------------------|
| June 16, 2016 | Real Estate Closing |
| June 21 | Appointment of Design Committee |
| June 21 – November 1 | RFQ for A&E, Design and Bid |
| December – May 1 | Construction |
| May 1, 2017 | Move in |

APPENDIX 1

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is executed by **POINTS OF COLORADO, INC.**, a Colorado corporation (“**Seller**”), and **THE TOWN OF AVON**, a Colorado home rule municipality organized as a home rule city (“**Buyer**”), and shall be effective as of March 3, 2016 (the “**Effective Date**”).

RECITAL:

WHEREAS, Seller desires to sell and Buyer desires to purchase that certain real property located in Eagle County, State of Colorado, and described on Exhibit A attached hereto and incorporated herein by reference (the “**Land**”), which is a portion of the project commonly known as the Skier Building and as the Phase 1B Office Building in the Mountain Vista Resort Subdivision, together with all improvements located thereon and all appurtenances thereto, including but not limited to the Skier Bronze Statue, but excluding any rights to parking or other appurtenant rights within the Mountain Vista Resort common interest community (collectively, the “**Property**”), upon and subject to the terms and conditions of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the terms and conditions contained herein, Buyer and Seller agree as follows:

ARTICLE 1

PURCHASE PRICE AND METHOD OF PAYMENT

1.1 AGREEMENT TO BUY AND SELL. Seller agrees to convey, assign and sell to Buyer, and Buyer agrees to purchase, all of Seller’s right, title and interest in and to the Property, under the terms and conditions contained in this Agreement.

1.2 PURCHASE PRICE. The purchase price for the Property shall be ONE MILLION FIVE HUNDRED THOUSAND U.S. Dollars (\$1,500,000.00) (the “**Purchase Price**”). The Purchase Price is payable as follows:

- (a) Earnest Money. Within three (3) Business Days (as hereinafter defined) after the Effective Date, Buyer shall deposit Seventy-Five Thousand U.S. Dollars (\$75,000) (the “**Deposit**”) in the form of a company check, electronic funds transfer or other immediately available funds, which shall be paid to the Title Company (as defined in Section 3.2) and credited toward the Purchase Price at Closing (as hereinafter defined).
- (b) Payment of Remaining Purchase Price. The remainder of the Purchase Price shall be paid to Seller at the Closing in cash, electronic funds transfer or other funds that are available for immediate withdrawal as a matter of right.

ARTICLE 2 INSPECTION

2.1 INSPECTIONS BY BUYER.

- (a) Seller Deliveries. Seller has previously made available to Buyer (by e-mail delivery or for inspection and copying at Seller's offices during business hours), non-confidential and non-privileged documents in Seller's possession related specifically to the title or condition of the Property as reasonably requested by Buyer, including: surveys, site plans, plats, maps; real property tax reports and bills; soils report(s); utility permits; service contracts and maintenance reports; title reports, policies or commitments (collectively, the "Seller Deliveries"). Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of any third party reports, documents or information contained in the Seller Deliveries. These materials are provided for Buyer's convenience only, and, although Seller represents that it has no current, actual knowledge of material inaccuracy in such materials, Seller makes no other warranty or representation regarding their thoroughness or accuracy.
- (b) Confidentiality of Agreement and Seller Deliveries. Buyer shall keep all Seller Deliveries confidential to the fullest extent permitted in compliance with Colorado laws regarding disclosure of public records. Buyer shall not share such documents with, or provide copies to, any third party (i) other than Buyer's employees and any appraiser, inspector, attorney and other professionals employed to evaluate the physical, financial or legal aspects of the contemplated transaction who agree to be bound by the terms of this Section, or (ii) to the extent Buyer determines, after prior notice affording Seller a reasonable opportunity to protect its interest in maintaining confidential and proprietary information, that disclosure of such documents as public records is required by applicable laws. Seller acknowledges and consents to the public disclosure of this Agreement, the appraisals and building inspections of the Property prepared by Buyer's consultants.

2.2 PHYSICAL CONDITION. Buyer has conducted and completed its physical inspection of the Property.

2.3 [omitted]

2.4 CONVEYANCE OF TITLE AT CLOSING. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller must execute and deliver Seller's Deed (defined below) to Buyer, at Closing, conveying the Property free and clear of all (i) taxes except the real property taxes and assessments for the year of Closing and subsequent years (which shall replace "standard" exception, item 6, of the Title Policy); (ii) any mortgages, deeds of trust, monetary liens, or other security interests incurred by Seller; (iii) "standard" exceptions, items 1, 2, 4, 5 and 6 of the Title Policy; and (iv) Permitted Exceptions.

- (a) The term "**Permitted Exceptions**" means: (i) any matters shown on Exhibit B attached hereto; (ii) any lien, encumbrance, restriction, reservation, or other title

condition arising by or through Buyer; (iii) the rights of third parties in existence as of the Closing Date of which Buyer has actual knowledge and which the Buyer has expressly consented in writing; (iv) the inclusion of the Property in any special taxing district; (v) the covenant of a Right of First Refusal (defined below) found in this Agreement; (vi) the Lot 4 Easement (defined below); and (vii) any additional encumbrances or other title matters intended to be created under this Agreement in forms consented to by both Seller and Buyer.

- (b) Buyer has obtained and delivered to the Title Company (defined below), a survey of the Property, dated October 7, 2014 (as may be updated prior to Closing), prepared by Marcin Engineering LLC and certified to Seller, Buyer and the Title Company, in sufficient form to: (i) permit the Title Company to remove the standard survey exception (no. 3), and (ii) satisfy the Town of Avon requirements for the Replat of Lots 2C, 4 and 5, Mountain Vista Resort Subdivision (the "Survey").
- (c) The "Right of First Refusal" means Buyer's covenant and grant to Seller of a right of first refusal to purchase the Property during the three (3) years following Closing (the "Refusal Period") subject to the following terms and conditions. Before any sale, conveyance, exchange, or other transfer of all or substantially all of the Property ("Transfer") during the Refusal Period, Buyer will give written notice to Seller promptly after Buyer receives a bona fide written offer from a third party to a Transfer for 110% of the Purchase Price or greater and that Buyer is willing to accept (an "Offer"). Buyer's written notice of the Offer to Seller will include all material terms of the Offer, including the purchase price, conditions to closing, and expected date of closing. Seller will have the option to purchase the Property on the same terms and conditions of the Offer, except that the purchase price will be the Purchase Price set forth in this Agreement, so long as Seller exercises such option by written notice to Buyer given no later than ten (10) Business Days after Buyer's notice of the Offer to Seller. If Seller does not timely exercise its option in writing, then Seller will be deemed to have waived its Right of First Refusal; provided, however, if thereafter the closing of the Offer does not occur on substantially the same terms as the Offer then the Right of First Refusal will be deemed to remain in full force and effect for the remainder of the Refusal Period (or the earlier written notice of another Offer from Buyer). Seller's Right of First Refusal shall not apply to and none of the following will be considered a Transfer under this Section: (i) any ground lease and lease-back granted by or to Buyer in connection with the certificate of participation financing used to obtain necessary funds for interior finishing and other improvements related to the Property, and (ii) any leasehold interest and rights of any lender or trustee established in such certificate of participation financing. Seller will promptly execute, at Buyer's expense, such additional documents as reasonably required to acknowledge such subordination.
- (d) The "Lot 4 Easement" means that easement along, over, beneath and across Lot 4, substantially in the form attached on Exhibit E, granting pedestrian and emergency access, fire lane, utility and storm drainage easements, subterranean support and subsistence, shared open space, and such other matters as required to effectuate the withdrawal of Lot 4 from the common interest community of Mountain Vista Resort,

the Replat of Lots 2C, 4 and 5, Mountain Vista Resort Subdivision, and to maintain Seller's current and future development rights under the PUD Development Plan.

(e) [omitted].

2.5 SPECIAL TAXING DISTRICT DISCLOSURE. BUYER ACKNOWLEDGES THAT THE PROJECT IS PRESENTLY LOCATED IN THE MOUNTAIN VISTA METROPOLITAN DISTRICT. BUYER UNDERSTANDS THAT THE PROJECT MAY BE INCLUDED WITHIN OTHER SPECIAL TAXING DISTRICTS. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF DEBT INCURRED BY A DISTRICT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE ITS INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENT OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES. Buyer hereby acknowledges that under the laws of the state of Colorado any special district may impose property taxes without limit in the future to retire its general obligation debts, notwithstanding its current level of taxation.

2.6 COMMON INTEREST COMMUNITY EXCLUSION. Seller and Buyer acknowledge that the Property is currently included in the Mountain Vista Resort Subdivision and that Seller will amend the Master Declaration for the Mountain Vista Resort common interest community to exclude the Property from the community on or prior to Closing pursuant to Section 3.3 below.

2.7 SELLER'S REPRESENTATIONS AND WARRANTIES. As an inducement to Buyer to enter into this Agreement, and as a part of the consideration therefor, Seller represents to Buyer, its successors and assigns, that:

- (a) Seller is a Colorado corporation formed and in good standing under the laws of the State of Colorado; the execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary company action and proceedings, and no further authorization is necessary on the part of Seller in order to consummate the transactions contemplated herein;
- (b) The execution and delivery of this Agreement by Seller, the performance of any of Seller's obligations hereunder, and the consummation of the transaction contemplated hereby, shall not conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which Seller was organized, any agreement to which Seller is a party or is bound (or to which the Property is bound), or, to the best of Seller's current, actual knowledge, any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over Seller;

- (c) There are no actions, suits, proceedings, judgments, orders, decrees or governmental investigations pending to which Seller is a party that could have a material adverse effect upon Seller's ability to consummate the transaction contemplated by this Agreement;
- (d) Seller has received no written notice that the Property or any condition upon the Property is in violation of any laws, ordinances, rules, regulations or orders (including but not limited to those relating to zoning, building, fire, health and safety and persons with disabilities) applicable to the Property or the operation thereof, or that the Property or any condition upon the Property is not in compliance with the underwriting standards or requirements of any insurance company or Board of Fire Underwriters;
- (e) Seller is not a "foreign person" but is a "United States person" as such terms are defined in Sections 1445 and 7701 of the United States Internal Revenue Code; and
- (f) Seller has not entered into and will not enter into any agreement that provides a right to buy the Property in conflict with Buyer's rights under this Agreement.

Unless Seller gives notice to Buyer of any change in the condition of the Property subsequent to the Effective Date or of any other changed condition that would make any of the representations in this Section inaccurate, incomplete or misleading, the foregoing representations and warranties shall be deemed to be reaffirmed at Closing and to be accurate as of the Closing Date. In the event Seller does give Buyer notice that any of the foregoing representations and warranties are no longer accurate and such change materially and adversely affects Buyer's intended use of the Property (as described in the Ordinance), then Buyer shall have the right to terminate this Agreement by giving Seller written notice of such termination within fifteen (15) Business Days after Buyer received notice of such inaccuracy in Seller's representations and warranties. If Buyer elects to terminate this Agreement then the Deposit shall be returned to Buyer within three (3) Business Days of providing written notice of termination. In addition, if Seller breaches the representation in Section 2.7(f), then, if Buyer elects to terminate this Agreement: (i) the Deposit will be returned to Buyer within three (3) Business Days of providing the notice of termination, and (ii) Buyer shall be entitled to recover all direct costs incurred by Buyer related to this Agreement and conducting due diligence on the Property in an amount not to exceed \$75,000.00. The foregoing representations and warranties shall survive the Closing for a period of ninety (90) days, following the expiration of which no action shall be commenced due to any alleged violation thereof.

2.8 BUYER'S REPRESENTATIONS AND WARRANTIES. As an inducement to Seller to enter into this Agreement, and as a part of the consideration therefor, Buyer represents and warrants to Seller, its successors and assigns, that:

- (a) Buyer is a municipal corporation duly organized and existing under the laws of the State of Colorado and the Home Rule Charter of Avon, Colorado;
- (b) The execution, delivery and performance of this Agreement by Buyer is subject to adoption of an ordinance, without further condition, by the Avon Town Council

- approving this Agreement in accordance with the Town's procedures for the passage of an ordinance (the "**Ordinance**"). The Ordinance will not be further subject to any rights of referendum;
- (c) The execution and delivery of this Agreement by Buyer, the performance of any of Buyer's obligations hereunder, and the consummation of the transaction contemplated hereby, shall not conflict with, result in a breach of, or constitute a default under, the terms and conditions of any agreement to which Buyer is a party or is bound;
 - (d) There are no actions, suits, proceedings, judgments, orders, decrees or governmental investigations pending to which Buyer is a party that could have a material adverse effect upon Buyer's ability to consummate the transaction contemplated by this Agreement;
 - (e) No person holding office of Avon, either by election or appointment, has any interest, either directly or indirectly, in the Property, or has any interest in this Agreement except as such interest may arise in the lawful discharge of the responsibilities of such officer, and upon which officer may be called upon to act or vote;
 - (f) Prior to Closing, Buyer shall neither encumber nor cause any liens to be created against the Property in any way, nor shall Buyer, at any time, record this Agreement or other evidence hereof;
 - (g) Buyer has all necessary funds to purchase the Property; and
 - (h) Buyer acknowledges that the Property does not include parking or any current or future rights to parking within the Mountain Vista Resort Subdivision and Buyer will secure all necessary parking for the Property off-site.

Unless Buyer gives notice to Seller of any changed conditions that would make any of the representations in this Section inaccurate, incomplete or misleading, the foregoing representations and warranties shall be deemed to be reaffirmed at Closing and to be accurate as of the Closing Date. In the event Buyer does give Seller notice that any of the foregoing representations and warranties are no longer accurate, then Seller shall have the right to terminate this Agreement by giving Buyer written notice of such termination within fifteen (15) Business Days after Seller received notice of such inaccuracy in Buyer's representations and warranties and Seller shall be entitled to retain the Deposit. The foregoing representations and warranties shall survive the Closing for a period of ninety (90) days, following the expiration of which no action shall be commenced due to any alleged violation thereof.

2.9 CONDITION OF THE PROPERTY. Buyer acknowledges and agrees that Seller has provided Buyer sufficient opportunity to make such independent factual, physical and legal examinations and inquiries as Buyer deems necessary and desirable with respect to the Property and the transaction contemplated by this Agreement and that Buyer has approved the Property in all respects. The following provisions shall thereupon be applicable and shall survive the Closing or termination of this Agreement:

- (a) Buyer does hereby acknowledge, represent, warrant and agree to and with Seller that, except as otherwise expressly provided in this Agreement or in the deed or other closing documents to be delivered to Buyer at Closing: (i) Buyer is expressly purchasing the Property in its existing condition with respect to all facts, circumstances, conditions and defects; (ii) Seller has no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate Buyer for same; (iii) Seller has specifically bargained for the assumption by Buyer of all responsibility to inspect and investigate the Property and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof; (iv) Buyer has undertaken all such inspections and investigations of the Property as Buyer deems necessary or appropriate under the circumstances as to the condition of the Property and the suitability of the Property for Buyer's intended use, and based upon same, Buyer is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (v) Seller is not making and has not made any warranty or representation with respect to any materials or other data provided by Seller to Buyer (whether prepared by or for the Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property or for any other purpose; and (vi) by reason of all the foregoing, Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property. Without limiting the generality of any of the foregoing, and except as otherwise set forth herein or in the closing documents, Buyer specifically acknowledges that Seller does not represent or in any way warrant the accuracy of any marketing information or documents describing the Property or the information, if any, provided by Seller or any broker to Buyer; and
- (b) **EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN THE CONVEYANCE DOCUMENTS TO BE DELIVERED AT CLOSING, SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO THE PROPERTY, TAX LIABILITIES, ZONING, LAND VALUE, AVAILABILITY OF ACCESS OR UTILITIES, INGRESS OR EGRESS, AVAILABILITY OF PARKING, GOVERNMENTAL APPROVALS, HISTORIC STATUS, THE PRESENCE OF HAZARDOUS MATERIALS OR COMPLIANCE WITH ENVIRONMENTAL LAW OR THE SOIL CONDITIONS OF THE LAND. BUYER FURTHER ACKNOWLEDGES THAT BUYER IS BUYING THE PROPERTY AND IN ITS PRESENT CONDITION AND THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY CONVEYANCE DOCUMENT DELIVERED AT CLOSING, BUYER IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE**

MADE BY SELLER, OR ANY OF ITS EMPLOYEES OR AGENTS WITH RESPECT TO THE LAND OR PROPERTY, AND THAT, IN FACT, NO SUCH REPRESENTATIONS WERE MADE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE CONVEYANCE DOCUMENTS TO BE DELIVERED AT CLOSING; and

- (c) **BUYER ACKNOWLEDGES AND AGREES THAT (I) THE PURCHASE OF THE PROPERTY SHALL BE ON AN “AS IS”, “WHERE IS”, “WITH ALL FAULTS” BASIS, SUBJECT TO WEAR AND TEAR FROM THE EFFECTIVE DATE UNTIL CLOSING, AND (II) SELLER HAS NO OBLIGATION TO REPAIR ANY DAMAGE TO OR DEFECT IN THE PROPERTY, REPLACE ANY OF THE PROPERTY OR OTHERWISE REMEDY ANY MATTER AFFECTING THE CONDITION OF THE PROPERTY.**

ARTICLE 3 CLOSING; CONDITIONS PRECEDENT

3.1 CLOSING DATE. Buyer’s payment of the Purchase Price and the delivery of a deed by Seller (“Closing”) shall occur the earlier of: (a) fifteen days after the satisfaction (or waiver by the party benefiting from such condition) of all conditions set forth in Section 3.3; (b) June 16, 2016; and (c) such date as mutually agreed upon by the parties (the “Closing Date”).

3.2 TIME AND PLACE OF CLOSING. The Closing shall be held at such time and place upon which the parties mutually agree or, in the absence of agreement, shall be held at 10:00 A.M. local time at the offices of the Title Company of the Rockies, Avon (“Title Company”).

3.3 CONDITIONS PRECEDENT TO CLOSING. In addition to the other conditions set forth in this Agreement, the conditions set forth in this Section 3.3 shall be conditions precedent to the parties’ obligation to close hereunder unless waived by the party benefiting from such contingency. Seller will be responsible for all costs and expenses necessary to satisfy and perform the condition in Section 3.3(g) and Section 3.3(h) below. Buyer will be responsible for all costs and expenses necessary to satisfy and perform the conditions in Section 3.3(c) and Section 3.3(e) below. In the event that any condition precedent is not satisfied or performed by the Closing and not waived by the party benefitting from such contingency, then the party benefitting from the contingency may elect to terminate the Agreement, all documents received shall be returned to the party depositing such documents into escrow, and the Deposit will be released to the party benefitting from such contingency.

- (a) As to each party, all obligations to be performed by the other party hereunder prior to the Closing have been fully performed, and there shall be no uncured event of default or event on the part of such other party that would constitute a default of such party.
- (b) As to each party, all of the representations and warranties of the other party set forth in this Agreement shall be true and accurate.
- (c) Adoption of the Ordinance by the Avon Town Council, for the benefit of the Buyer.

- (d) The expiration of 30 days after the second reading finally adopting the Ordinance, for the benefit of the Buyer.
- (e) Approval by the Town of a subdivision replat of Lots 2C, 4 and 5 in the configuration depicted by the red dotted line ("Proposed Property Line (08.06.14)") and including all areas of Lots 2C, 4 and 5 lying to the south and west of such line, as shown on attached Exhibit D: Depiction of Replat of Lots 2C, 4 and 5 (Obermeier Sheykhet Architecture, Sheet SKA-121) for the benefit of Seller.
- (f) [omitted].
- (g) Withdrawal of the Property from the common interest community of Mountain Vista Resort for the benefit of Buyer.
- (h) Consummation of that certain Agreement and Plan of Merger by and among Interval Leisure Group, Inc., Iris Merger Sub, Inc., Starwood Hotels & Resorts Worldwide, Inc. and Vistana Signature Experiences, Inc. (f/k/a Starwood Vacation Ownership, Inc.), for benefit of Seller, provided that the Deposit shall be released to Buyer if Seller elects to terminate the Agreement due to a failure to satisfy this condition precedent.

3.4 DELIVERY OF CLOSING DOCUMENTS BY SELLER. At the Closing, Seller shall execute and deliver the following documents to the Title Company:

- (a) A special warranty deed in substantially the form attached hereto on Exhibit C ("Seller's Deed");
- (b) Seller's settlement statements;
- (c) A certificate that Seller is not a nonresident alien, as defined in the Internal Revenue Code and Treasury Regulations promulgated thereunder, in accordance with Section 1445 of the Treasury Regulations, or such other certificate or document necessary to comply with Section 1445 of the Internal Revenue Code and such documents as are required to comply with Colorado law with respect to withholding from a nonresident seller;
- (d) Standard affidavit and indemnity agreement required by the Title Company to provide the owner's title policy with extended coverage in form and content reasonably acceptable to Seller's counsel;
- (e) Closing instructions, real property tax pro-ration agreement and such additional instruments and documents as may be reasonably required by Buyer or the Title Company in connection with the consummation of the transaction contemplated hereby.

3.5 DELIVERY OF CLOSING FUNDS AND DOCUMENTS BY BUYER. At the Closing, Buyer shall pay the Purchase Price and shall execute and deliver the following documents to the Title Company:

- (a) Buyer's settlement statements;
- (b) Standard affidavit and indemnity agreement required by the Title Company to provide the owner's title policy with extended coverage; and
- (c) Closing instructions, real property tax proration agreement and all other instruments and documents as may be reasonably required by the Title Company or Seller in connection with the consummation of the transaction contemplated hereby.

3.6 SELLER'S CLOSING COSTS. Seller shall pay the following at the Closing:

- (a) The portion of the premium attributable to standard coverage for the owner's title policy issued by the Title Company;
- (b) One-half of the closing fees, if any, charged by the Title Company for handling the Closing;
- (c) If it is necessary to deliver any Closing documents to or on behalf of Seller by courier or overnight delivery, all costs incurred by the Title Company in delivering said items, including, without limitation, the costs of any courier service or postage; and
- (d) Seller's pro-rata share of real property taxes and other expenses under Section 3.8.

3.7 BUYER'S CLOSING COSTS. Buyer shall pay the following closing expenses at the Closing:

- (a) All recording and documentary fees applicable to the Closing and transfer of title;
- (b) The portion of the premium attributable to extended coverage and the premiums for endorsements to the title insurance policy desired by Buyer or its bond holders, if any;
- (c) One-half of the closing fees, if any, charged by the Title Company for handling the Closing;
- (d) If it is necessary to deliver any Closing documents to or on behalf of Buyer by courier or overnight delivery, all costs incurred by the Title Company in delivering said items, including, without limitation, the costs of any courier service or postage;
- (e) Sales tax upon any personal property transferred to Buyer and any transfer tax, fee or assessment coming due as a result of the transfer of title to the Property; and
- (f) Such other charges as are customarily paid by the buyer in a commercial real estate transaction in Eagle County, Colorado.

3.8 PRO-RATIONS AND ADJUSTMENTS.

- (a) Real Property Taxes. All real property taxes and assessments (including any taxes and assessments levied by special taxing districts) levied against the Property shall be

pro-rated as of the date of Closing based on the current assessed valuation and Mill levy, and shall be a final settlement.

- (b) **Utilities Charges.** All utilities service charges for the Property shall be pro-rated as of the date of Closing based on the most recent bill for service, and shall be a final settlement (other than gas service). After the date of Closing, Buyer shall continue to pay within ten days of written request all gas service charges for the Property, using the same pro-ration method as adopted at Closing, until Buyer secures replacement gas service from Public Service Company of Colorado (as described further in Section 3.14 below).
- (c) **Common Interest Community Assessments.** All assessments under the Mountain Vista Resort common interest community, and any other common interest community affecting the Property, shall be pro-rated as of the date of Closing based on the most recent available bill for such assessments, and shall be final settlement.

3.9 CONDUCT OF CLOSING. At the Closing, the Title Company, upon confirming that all funds, documents and other items required by Sections 3.5 through 3.8 of this Agreement have been deposited into escrow and upon delivering to Buyer its unconditional written undertaking (subject to recording the special warranty deed) to issue an ALTA owner's title insurance policy to Buyer in the amount of the Purchase Price subject only to the Permitted Exceptions ("Title Policy"), shall: (i) disburse the remaining Purchase Price in accordance with the settlement sheets approved and executed by the parties; (ii) record the Seller's Deed in the office of the Clerk and Recorder for Eagle County, Colorado; (iii) file the appropriate reporting documents in accordance with Section 3.10 of this Agreement; and (vi) deliver copies of the executed Closing documents to each of the parties.

3.10 REPORTING OF TRANSACTION. The Title Company shall prepare and file, promptly after the Closing contemplated by this Agreement, the required forms with the Internal Revenue Service pursuant to Section 6045(e)(2) of the Internal Revenue Code, as amended.

3.11 DELIVERY OF POSSESSION. Seller shall deliver possession of the Property to Buyer at Closing.

3.12 DELIVERY OF TITLE POLICY. As soon as reasonably practicable after Closing, Seller shall cause the Title Company to deliver the Title Insurance to Buyer in accordance with Section 3.9.

3.13 POST-CLOSING ASSURANCES. From and after Closing, for a period of twelve (12) months, Seller not object to Buyer's petition to exclude Lot 4 from the Mountain Vista Metropolitan District, provided Seller will not be required to incur any expense or liability or breach any pre-existing obligation or duty.

3.14 REPLACEMENT GAS LINE AND METER. No later than Closing, Buyer will approve, execute, and deliver a new gas service work order with Public Service Company of Colorado (dba Xcel Energy) (together with the deposit of any construction allowance) and will cause Public Service Company to install a separate gas line to and separate metering for the Property no later than eight (8) months after Closing, at Buyer's expense.

3.15 PUBLIC ANNOUNCEMENTS. From and after the Effective Date, no party shall make a public announcement regarding the transactions described in this Agreement without the prior written approval of the other party, unless a party is required to make a public announcement under applicable law in which case the party will use reasonable efforts to provide advance notice of such announcement to the other party but no approval will be required of the other party. When applicable, Seller and Buyer will approve the timing, form and substance of any public announcement, which approval shall not be unreasonably withheld.

ARTICLE 4 RISK OF LOSS

4.1 CASUALTY LOSS. Seller shall bear all risk of destruction of or damage to the Property by flood, fire or other casualty until the Closing Date; provided, however, that in the event that the Property is damaged prior to the Closing Date so as to require repair costs in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00), as reasonably estimated by Seller, Buyer may elect to terminate this Agreement by written notice to Seller within ten (10) days after the date of such damage (or the Closing Date, whichever period is shorter), in which event this Agreement shall terminate pursuant to the provisions of Section 5.4. If the damage does not exceed such amount, or if Buyer elects not to terminate this Agreement in accordance with the terms of this Section, the parties shall proceed to Closing notwithstanding such damage and Buyer shall be entitled to a credit, at Closing, equal to the amount of insurance proceeds received by Seller by reason of damage (net of attorneys' fees, court costs and other expenses incurred by Seller in obtaining such insurance proceeds), not to exceed the Purchase Price. To the extent that the amount of such proceeds has not been finally determined and received by Seller as of the Closing, the Purchase Price shall not be adjusted and Seller shall pay to Buyer the net amount of any such insurance proceeds received by Seller following the date of Closing (which obligation shall survive Closing). After the Closing, Buyer shall bear the risk of destruction of or damage to the Property.

ARTICLE 5 DEFAULT AND REMEDIES

5.1 SELLER'S DEFAULT.

- (a) **Failure to Perform Under Agreement.** Except as otherwise provided herein, if, due to circumstances other than Buyer's failure to perform any term or condition of this Agreement binding on it, Seller fails to timely perform any of its obligations under this Agreement or breaches any of the covenants described in Section 3.3 of this Agreement, Buyer shall deliver to Seller a written notice detailing such failure of performance. With respect to monetary defaults, Seller shall have five (5) days from receipt of such notice (or until the Closing Date, whichever first occurs) within which to remedy the failure of performance. With respect to non-monetary defaults, Seller shall have ten (10) days from receipt of such notice (or until the Closing Date, whichever first occurs) within which to remedy the failure of performance. Notwithstanding the foregoing, no curative or grace period shall be applicable to Seller's failure to perform its obligations at Closing.

- (b) **Buyer's Remedies.** If, at the expiration of the applicable curative period, Seller has not cured such failure of payment or performance, Buyer will elect to either: (a) declare this Agreement terminated (in which event the Seller shall promptly return the Deposit to Buyer and, in the event of a breach of the representation in Section 2.7(f), recover Buyer's direct costs up to \$75,000.00); or (b) bring an action against Seller for specific performance in accordance with this Agreement. The option selected by Buyer shall be Buyer's sole and exclusive remedy.

5.2 BUYER'S DEFAULT.

- (a) **Failure to Perform Under Agreement.** If, due to circumstances other than Seller's failure to perform any term or condition of this Agreement binding on it, Buyer fails to timely perform any of its obligations under this Agreement when required by this Agreement, Seller shall deliver to Buyer written notice detailing such failure of performance. With respect to monetary defaults, Buyer shall have five (5) days from receipt of such notice (or until the Closing Date, whichever first occurs) within which to remedy the failure of performance. With respect to non-monetary defaults, Buyer shall have ten (10) days from receipt of such notice (or until the Closing Date, whichever first occurs) within which to remedy the failure of performance. Notwithstanding the foregoing, no curative or grace period shall be applicable to Buyer's failure to deposit the Deposit or to perform its obligations at Closing.
- (b) **Seller's Remedies.** If, at the expiration of such applicable cure periods as set forth above, Buyer has not cured any such default, Seller will retain the Deposit paid to the date of such termination as liquidated damages and not as a penalty. Buyer acknowledges that Seller's actual damages resulting from such default would be extremely difficult and impractical to ascertain and that the Deposit represents a fair approximation of such damages. Retention of the Deposit shall be Seller's sole remedy.

5.3 ATTORNEYS' FEES AND COSTS; WAIVER OF JURY TRIAL. In the event of any litigation between the parties concerning this Agreement or the enforcement of this Agreement (or, in the event of arbitration, if the parties agree to arbitrate any dispute), the prevailing party shall be awarded payment of its costs and expenses relating to such action, including, but not limited to, court costs and reasonable attorneys' fees and expert witness fees incurred by the prevailing party at trial and upon appeal. For the purpose of this Section, the term "prevailing party" shall include a party that withdraws or dismisses a claim in return for payment allegedly due, performance of a covenant allegedly owed, or other consideration substantially satisfying the claim withdrawn or dismissed. In determining which party is the prevailing party in an action, a court or arbitrator may consider the relief sought, the merit of the parties' positions and the degree to which a party prevailed in the action. The provisions of this Section shall survive Closing.

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT

EXECUTED IN CONNECTION HEREWITH OR RELATED HERETO, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

5.4 TERMINATION PRIOR TO CLOSING. In the event of a termination of this Agreement pursuant to any provision of this Agreement, this Agreement shall terminate and, with the exception of provisions that expressly survive termination of this Agreement, each party shall be relieved of any further duties or obligations hereunder. In the event of any termination of this Agreement prior to Closing, Buyer shall promptly return to Seller all documents and other information Seller provided to Buyer for its due diligence purposes, and Buyer shall assign to Seller, at no cost, all of Buyer's right, title and interest, if any (and to the extent such right, title and interest is assignable), in and to and deliver to Seller originals or copies of all third-party reports, studies, inspections, surveys, analyses, documents and other work product obtained by Buyer during its due diligence that are within Buyer's possession and control regarding the Property (excluding attorney-client privileged materials and proprietary financial information). Any such materials will be provided to Seller as provided herein without any representation or warranty whatsoever from Buyer as to the accuracy or completeness of any matters contained therein, and without warranty or representation as to Buyer's right, title or interest therein, if any.

5.5 POST CLOSING DEFAULT. The limitations on the parties' remedies set forth in Sections 5.1 and 5.2 shall not be deemed to prohibit either party from pursuing its remedies available at law or in equity for any breach discovered post-Closing of a representation or warranty that survives Closing under this Agreement; provided, however, any action relating to such breach must be commenced within the time frame expressly set forth in Sections 2.8 and 2.9.

ARTICLE 6 NOTICES

6.1 MANNER OF NOTICE. All notices or demands under this Agreement shall be in writing and shall be deemed given and received according to the following provisions:

- (a) Personal Delivery.** If notice is given by personal delivery, notice shall be deemed to have been given and received on the day of the actual receipt by the receiving party.
- (b) Overnight Courier.** If notice is given by nationally recognized overnight courier service, notice shall be deemed to have been given and received on the first Business Day following its timely deposit with such courier service, delivery fees for next Business Day delivery prepaid. No signature affirming receipt by the receiving party is required. The internal records of the courier service shall be accepted as sufficient evidence of the date of the deposit of the notice with the courier service.
- (c) Postal Service.** In the case notice is given by means of the U.S. Postal Service, notice shall be deemed to have been given and received on the third Business Day after the

deposit of the notice, postage prepaid, certified mail return receipt requested, with the U.S. Postal Service, addressed to the receiving party.

- (d) **E-mail Transmission.** In the case of transmission by e-mail, notice shall be deemed to have been given and received on the day of confirmation of receipt by the recipient of such transmission. Such e-mail transmission, to be considered effective, shall be corroborated by a copy of the e-mail printout showing the e-mail address from which transmitted, the e-mail addresses to which transmitted, the date and the time of such transmission and that the transmission was successful. A copy of any notice of default or termination given by e-mail transmission shall also be delivered by means of overnight courier service.

6.2 ADDRESSES FOR NOTICE. All notices shall be given to the respective parties at the following addresses and numbers, until further written notice given in accordance with this Section:

If to Seller: Points of Colorado, Inc.
 c/o Starwood Vacation Ownership
 Attn: David Weaver
 9002 San Marco Court
 Orlando, Florida 32819
 E-mail: david.weaver@starwoodvo.com

With a copy to: Ballard Spahr LLP
 Attn: Chris Payne
 1225 Seventeenth Street, Suite 2300
 Denver, Colorado 80202
 E-mail: paynec@ballardspahr.com

If to Buyer: Town of Avon
 Attn: Town Manager
 One Lake Street
 P.O. Box 975
 Avon, CO 81620
 E-mail: vegger@avon.org

With a copy to: Town of Avon
 Attn: Town Attorney
 One Lake Street
 P.O. Box 975
 Avon, CO 81620
 E-mail: townattorney@avon.org

**ARTICLE 7
MISCELLANEOUS**

7.1 TIME. Time is of the essence with regard to the performance of the obligations of the parties under this Agreement. If the date for any such performance falls on a Saturday, Sunday or banking holiday, the date of performance shall be extended to the next regular Business Day. Unless expressly stated to be a Business Day, the term “day” in this Agreement shall mean a calendar day. The term “**Business Day**” as used in this Agreement shall mean any day other than a Saturday, Sunday or other day on which banking institutions in the State of Colorado are authorized by law or executive action to close.

7.2 ENVIRONMENTAL LAW. As used in this Agreement, “**Environmental Law**” shall mean any federal, state and local environmental law, ordinance, rule, directive, regulation, binding written interpretation, binding written policy, order, judgment, injunction or decree in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect (i) the Property (or any portion thereof), (ii) the use, ownership, occupancy or operation of the Property (or any portion thereof), (iii) Seller, or (iv) Buyer, relating to protection of human health or the environment, relating to Hazardous Substances and/or relating to liability for or costs of other actual or threatened danger to human health or the environment, and as the same have been amended, modified or supplemented from time to time prior to and are in effect as of the date of this Agreement, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; the Oil Pollution Act of 1990, any state and local environmental law, all amendments and supplements to any of the foregoing and all regulations and publications promulgated or issued pursuant thereto. The term “**Hazardous Substances**” includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, mold, radioactive materials, flammables and explosives, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Property for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.

7.3 ASSIGNMENT. This Agreement is not assignable, without the prior written consent of both Seller and Buyer, which consent may be withheld in the sole discretion of each party.

7.4 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, personal representatives, successors and permitted assigns.

7.5 GOVERNING LAW. This Agreement has been executed in the State of Colorado and shall be governed by the laws of the State of Colorado.

7.6 GENDER AND NUMBER. Any term of gender used in this Agreement shall include all genders and legal entities, and the plural shall include the singular, and the singular shall include the plural, all as the context may require.

7.7 SEVERABILITY. The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision set forth in this Agreement. If any provision is found to violate any law or public policy, the affected provision shall be deemed to be amended to conform with applicable law or public policy while, insofar as possible, retaining the original import of such provision.

7.8 SECTION HEADINGS. The section headings contained in this Agreement are for the purposes of identification only and shall not be considered in construing this Agreement.

7.9 BROKERAGE. Each party acknowledges, represents and warrants to the other that such party has not engaged or utilized the services of any third-party broker, agent or finder in connection with this transaction who shall be entitled to a commission or fee as a result of this Agreement or the consummation of the transaction contemplated herein. Each party agrees to indemnify and hold the other harmless from any damages resulting from a breach of this representation by such party, including reasonable attorneys' fees, costs and expenses of defending a claim.

7.10 ENTIRE AGREEMENT; MODIFICATION OF AGREEMENT. This Agreement is an integrated agreement which supersedes all prior understandings and agreements between the parties with regard to the Property. This Agreement may only be modified by an agreement in writing and signed by both of the parties.

7.11 SURVIVAL OF PROVISIONS AFTER CLOSING. Any provisions of this Agreement which require observance or performance after the date of Closing, shall continue in force and effect following the Closing Date.

7.12 GENERAL COOPERATION. Notwithstanding any other provision of this Agreement to the contrary, and notwithstanding the Closing of the sale of the Property to Buyer, the parties agree in good faith before and after such Closing to execute such further or additional documents, and to take such other actions, as may be reasonably necessary or appropriate to fully carry out the intent and purpose of the parties as set forth in this Agreement.

7.13 NEGOTIATED AGREEMENT; LEGAL COUNSEL. This Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it has been prepared by counsel for one of the parties, it being recognized that Buyer has been represented by legal counsel and has had the opportunity to contribute substantially and materially to the terms and preparation of this Agreement.

7.14 COUNTERPARTS AND EMAIL SIGNATURES. This Agreement may be executed in counterparts, which, taken together, shall constitute the agreement of the parties. Signatures transmitted by electronic mail shall be valid and binding for all purposes. If a party's signature is

transmitted by electronic mail, such party will provide the other party with an originally signed copy of this Agreement within ten (10) days of any request; provided, however, that such party's failure to do so does not affect the validity of this Agreement.

7.15 EFFECTIVE DATE. The Effective Date shall be the date first stated on page 1 of this Agreement, provided that in no event shall this Agreement be effective and binding upon the parties until executed and delivered by both Seller and Buyer. Either party may rescind this offer in writing prior to execution and delivery of this Agreement by both parties, in which case this Agreement shall not become effective.

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as of the Effective Date, regardless of the actual date of execution. This Agreement will not become binding until executed by both parties, including all applicable Avon officials.

Seller:

POINTS OF COLORADO, INC.,
a Colorado corporation

By: 

Name: DENIS EORILL

Title: VICE PRESIDENT

Buyer:

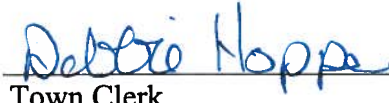
TOWN OF AVON,
a Colorado home rule municipality

By:



Name: Virginia C. Egger
Title: Town Manager

Attest:



Town Clerk

Approved as to Form:


Town Attorney

Exhibit A
to Purchase and Sale Agreement

LEGAL DESCRIPTION

[Lot 4, Mountain Vista Resort Subdivision, Town of Avon, Colorado, according to the Replat of
Lots 2C, 4 and 5, Mountain Vista Resort Subdivision, Town of Avon, Colorado as depicted in
Exhibit D]

Exhibit B
to Purchase and Sale Agreement

EXCEPTIONS

3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. (*)
7. Right of the Proprietor of a Vein or Lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as reserved in United States Patent recorded May 4, 1905, in Book 48 at Page 272 .
8. Restrictions, which do not contain a forfeiture or reverter clause, as contained in instrument recorded April 29, 1985, in Book 411 at Page 960 and February 7, 1990, in Book 522 at Page 721 .
9. Restrictions, which do not contain a forfeiture or reverter clause, as contained in the Deed from Benchmark at Beaver Creek, a limited partnership to Tandora S.A. and Tancura S.A., recorded June 29, 1979, in Book 287 at Page 548.
10. [omitted].
11. Memorandum of Agreement by Vail Associates Investment, Inc., James S. Mandel, Larry D. Doll, Ann Kingsley, Richard D. MacCutcheon and Eade Hopkins recorded March 16, 2000, at Reception No. 724918 and Memorandum of Assignment recorded May 1, 2000, at Reception No. 728546.
12. [omitted]
13. Town of Avon Ordinance No. 02, Series of 2000 Conditionally Approving a PUD Development Plan (Including Development Standards) recorded May 30, 2000, at Reception No. 730844 , and the PUD Development Plan referred to therein as Exhibit "A", filed May 30, 2000 at Reception No. 730845 .
14. Service Plan for Mountain Vista Metropolitan District recorded May 30, 2000, at Reception No. 730923, Order and Decree organizing the Mountain Vista Metropolitan District recorded May 30, 2000, at Reception No. 730924, and Map of District Boundaries recorded December 18, 2009 at Reception No. 200927086.
15. Those terms agreement, provisions, conditions and obligations which are a burden to subject property as contained in Agreement Governing Design, Construction, and Management of Storm Water Detention and Pollution Control Facilities by the Town of Avon, a Colorado home rule municipality and Points of Colorado, Inc., a Colorado corporation recorded June 7, 2000, at Reception No. 731541 .
16. Agreement Regarding Revocable Permit for Construction Access by Points of Colorado, Inc. and Avon Commercial Center LTD. recorded November 16, 2000, at Reception No. 744154.
17. Reciprocal Access Easement Agreement made by and between Points of Colorado, Inc. and Avon Commercial Center, Ltd. recorded November 16, 2000, at Reception No. 744155.
18. Development Agreement by Vail Associates Investments, Inc., Avon Commercial Center Ltd., Shapiro Development Co. and the Town of Avon recorded February 5, 2001, at Reception No. 749431 and Amendment recorded February 5, 2001, at Reception No. 749432 .

19. Storm Sewer and Drainage Easement Agreement by Points of Colorado, Inc. and Avon Commercial Center Ltd. recorded February 5, 2001, at Reception No. 749435.

20. [omitted]

21. [omitted]

22. Trench, Conduit and Vault Agreement between Points of Colorado, Inc. and Holy Cross Energy dated March 28, 2001, and recorded April 10, 2001, at Reception No. 754127.

29. [omitted]

32. Holy Cross Energy Underground Right of Way Easement recorded August 1, 2003, at Reception No. 842641.

33. Trench, Conduit and Vault Agreement made by and between Points of Colorado, Inc., a Colorado corporation and Holy Cross Energy, a Colorado corporation, recorded September 17, 2003 at Reception No. 849973.

NEW: Easements, rights of way and other matters as shown on a Replat of Lots 2C, 4 and 5, Mountain Vista Resort Subdivision, recorded [date to be determined] at Reception No. [to be determined].

(*) Such exceptions will be omitted from this list and from the definition of "Permitted Exceptions" for purposes of this Agreement and the Seller's Deed to the extent the Survey permits the Title Company to remove such exceptions from its Schedule B-Section II Exceptions to the Title Policy and, with regard to use of the Survey as a replat, to the extent such exceptions are superseded by the Replat of Lots 2C, 4, and 5, Mountain Vista Resort Subdivision.

Exhibit C
to Purchase and Sale Agreement

FORM OF SELLER'S DEED

Exhibit C: Form of Special Warranty Deed

EXHIBIT A
Exceptions

[to be inserted upon determination of Permitted Exceptions and include ROFR and Lot 4 Easement]

Exhibit E
to Purchase and Sale Agreement

LOT 4 EASEMENT

WHEN RECORDED MAIL TO:

Christopher Payne, Esq.
Ballard Spahr LLP
1225 17th Street, Suite 2300
Denver, Colorado 80202

LOT 4 EASEMENT AGREEMENT

This Lot 4 Easement Agreement (the “**Agreement**”) is made and entered to as of [____], 2015, to be effective as of the date of recording, by and among Points of Colorado, Inc., a Colorado corporation (“**POC**”), Mountain Vista Resort Subdivision Association, Inc., a Colorado nonprofit corporation (the “**Association**”), and the Town of Avon, a Colorado home rule municipality (“**Lot 4 Owner**”).

RECITALS:

A. POC is the declarant under, that certain Master Declaration for Mountain Vista Resort Subdivision dated as of April 18, 2001, and recorded in the real property records for Eagle County, Colorado (the “**Records**”) on April 18, 2001, at Reception No. 754853 (as amended or supplemented from time to time, the “**Master Declaration**”).

B. The Master Declaration governs certain rights and interests of the owners in and to the real property legally described in the plat for the Mountain Vista Resort Subdivision, recorded in the Records on April 18, 2001 at Reception No. 754852, as such plat has been or may be supplemented or amended from time to time (the “**Plat**”), including without limitation, by the Second Amended Final Plat, a Replat of Lots 4, 2C and 5, recorded on [____], at Reception No. [____] (the “**Lot 4/5 Replat**”). The Master Declaration incorporates the Plat, which, among other things, delineates each “**Master Unit**” or “**Lot**.” The Master Declaration further defines the “**Property**” and “**Master Common Elements**” governed by the Master Declaration. All references herein to the “**Lots**” shall mean the subdivision lots established by the Plat, as such Plat has been or may be supplemented or amended from time to time, including without limitation, by the Lot 4/5 Replat.

C. The Master Declaration also defines the “**Parking Facility**” as the parking garage improvements that are or will be constructed within Lot 5 of Mountain Vista Resort Subdivision. POC may, but will not be required to, construct, install, maintain, operate, repair, inspect, protect, remove, and replace additional improvements to the Parking Facility that encroach upon Lot 4 (the “**Parking Facility Work**”).

D. POC was the prior owner of Lot 4 and is the current owner of Lots 5 and 2C, in addition to other Lots and Master Units. The Association is the entity responsible for the administration of the Master Common Elements subject to the Master Declaration. Lot 4 Owner is the current owner of Lot 4.

E. Prior to the recordation of this Agreement, POC withdrew Lot 4 from the Property governed by the covenants, easements, and other provisions of the Master Declaration. The Property, as amended, is further described on **Exhibit A** attached hereto and incorporated herein and the Property includes that certain area referred to as the “**Undeveloped Area**,” as further described on **Exhibit B** attached hereto and incorporated herein. In connection with such withdrawal and the transfer of Lot 4 from POC to the Lot 4 Owner, the Lot 4 Owner has agreed to grant, along, over, beneath and across Lot 4, easements for pedestrian and emergency access, fire lane, utility and storm drainage easements,

subterranean support and subsistence, shared open space, and such other matters as further described herein.

F. POC, the Association and Lot 4 Owner desire to establish and grant certain easements and to enter into certain agreements, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. **GRANT OF EASEMENTS FOR BENEFIT OF PROPERTY.** Lot 4 Owner hereby grants to POC and the Association the following easements for the benefit of the Property:

(a) a non-exclusive easement and right to enter upon, across, over, and in any portion of the Undeveloped Area for the purpose of pedestrian or emergency access to and from the Property in a manner that does not unreasonably conflict with or restrict the Lot 4 Owner's use of the Undeveloped Area;

(b) a non-exclusive easement upon, across, over, in and under the Undeveloped Area for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity and television or other cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on Lot 4 and to affix and maintain pipes, wires, circuits and conduits under Lot 4. Any utility company using this general easement shall use its best efforts to install and maintain the utilities or services provided without disturbing the uses of the Lot 4 Owner, the Association, and POC; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore any disturbed property to its original condition as soon as possible after completion of its work. Should any utility company furnishing a utility or service covered by this easement request a specific easement by separate recordable document, the Lot 4 Owner shall promptly grant, execute, acknowledge and deliver to the requesting utility company such specific easement;

(c) a non-exclusive easement to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets, driveways, fire lanes, and generally upon Undeveloped Area in the proper performance of their duties;

(d) a non-exclusive easement to enter upon, across, over, in and under any Undeveloped Area for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of Lot 4 so as to improve the drainage of water on or across the Property in a manner that does not unreasonably conflict with or restrict the Lot 4 Owner's use of the Undeveloped Area; and

(e) for so long as POC holds an interest in any Lot, such easements, licenses or use rights as POC may request, from time to time, to maintain POC's current and future development rights under the PUD zoning, development standards, and PUD Development Plan applicable to the Property, recorded in the Records on May 30, 2000 at Reception Nos. 730844 and 730845 (as may be amended or supplemented from time to time) in accordance the requirements of the Town of Avon (including any requirements of governmental agency incorporated into the Town requirements) in a manner that does not unreasonably conflict with or restrict the Lot 4 Owner's use of the Undeveloped

Area. Such easements shall specifically include, but not be limited to, any public rights-of-way, fire lanes, and shared open space.

2. GRANT OF EASEMENTS IN CONNECTION WITH THE PARKING FACILITY.

(a) Subject to and on the terms and conditions set forth in Section 3 below, Lot 4 Owner hereby grants to POC and the Association: (i) the non-exclusive easement for encroachment and right to attach to and use the existing sub-adjacent foundation improvements located on Lot 4 as a common wall and for the support of the Parking Facility as may be hereafter constructed on Lot 4; (ii) a non-exclusive easement in, on, under, over and across such Undeveloped Area as are reasonably necessary to construct, install, maintain, operate, repair, inspect, protect, remove and replace the Parking Facility; (iii) a non-exclusive right of ingress and egress to enter upon the Undeveloped Area with such equipment as is reasonably necessary to perform the Parking Facility Work; (iv) a non-exclusive easement for sub-adjacent and lateral support in, on, upon and under such portions of Lot 4 as are necessary for the support of any Parking Facility now or hereafter constructed on Lot 5 and Lot 4; and (v) a non-exclusive right upon, across, over, in and under Undeveloped Area for ingress and egress and for installation, replacement, repair and maintenance of Parking Facility elevator shafts and stairwells.

(b) Subject to and on the terms and conditions set forth in Section 3 below, POC and the Association hereby grants to the Lot 4 Owner a non-exclusive easement for sub-adjacent and lateral support in, on, upon and under such portions of the Parking Facility as are necessary for the support of any improvements now or hereafter constructed on Lot 4.

3. PARKING FACILITY WORK.

(a) Any Parking Facilities Work shall be performed by or on behalf of POC at no cost or expense to Lot 4 Owner, in a workmanlike manner, and in accordance with all applicable laws, rules, regulations, ordinances and building codes, as well as the restrictions herein, pursuant to good, generally prevailing construction management practices and procedures that, to the extent reasonably feasible, will avoid or reasonably minimize any undue resulting disturbances or interferences with the use and enjoyment of the affected portions of Lot 4. POC shall coordinate with the Lot 4 Owner with respect to the timing and phasing of such work so as to coordinate it to the extent reasonable and appropriate with the operation of Lot 4. If any Parking Facilities Work is expected to result in the closure of any portion of the access to or from Lot 4, POC shall secure the written approval of the Lot 4 Owner prior to the commencement of any such Parking Facilities Work; provided, however, if the Parking Facilities Work is required to correct a condition that may result in injury to persons or damage to property, POC shall only be required to give such notice as may be reasonable under the circumstances and no written approval shall be required.

(b) POC shall pay or cause the payment of all sums owing for or in connection with any Parking Facilities Work undertaken by, through or under it in a prompt and timely fashion, so that no claim for mechanics' liens or any other payment claims shall be asserted against Lot 4. If a mechanic's lien is recorded against Lot 4 as a result of the Parking Facilities Work, POC shall have the right to contest such lien claim provided that it shall promptly obtain the release of the affected Lot 4 property interests from such lien claim, whether by discharge or bonding.

(c) POC shall require that any contractors and/or engineers engaged to perform the Parking Facilities Work on Lot 4 carry and maintain at all time during the performance of such work, general commercial liability insurance, professional liability insurance, if applicable, workers compensation insurance and such other types of insurance coverages, in such amounts as are

customarily maintained by prudent contractors and engineers performing similar work, which shall name Lot 4 Owner as an additional insured, shall not be subject to cancellation or material modification except on not less than thirty (30) days' prior written notice, and shall be written by solvent and responsible insurance companies licensed to do business in the State of Colorado.

(d) In the event of damage to any improvements on Lot 4 caused by POC or its contractors, POC shall, at no cost or expense to Lot 4 Owner, promptly repair such damage to a condition substantially the same or better than the condition that existed prior to such damage.

4. INDEMNITY. POC shall indemnify Lot 4 Owner and its agents, officers, directors, servants and employees, of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever arising out of or related to any loss, cost, damage or injury, including death of any person or damage to property of any kind, resulting from: (i) any Parking Facility Work performed by, through or under POC; or (ii) the use, exercise or enjoyment by POC of any easement, license or use right granted by the Lot 4 Owner herein. Lot 4 Owner shall indemnify POC and the Association and their respective agents, officers, directors, servants and employees, of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever arising out of or related to any loss, cost, damage or injury, including death of any person or damage to property of any kind, resulting from any use, exercise or enjoyment by the Lot 4 Owner of any easement granted by POC herein. This indemnity will also apply to and include costs and expenses, including reasonable legal fees, incurred by the indemnified parties in connection with any indemnified matter. In no event, however, will the foregoing indemnities apply to (a) any loss to the extent of any insurance proceeds available under any insurance policy carried by an indemnified party, (b) the extent of the negligence, willful misconduct or breach of this Agreement by any indemnified party; but the foregoing indemnities shall be applied in accordance with generally prevailing laws governing contributory negligence and governmental immunity.

5. NON-EXCLUSIVE. Except as otherwise expressly provided to the contrary in this Agreement, Lot 4 Owner reserves the right to use all portions of Lot 4, including for the installation, maintenance, repair, inspection, protection, removal, replacement and operation of any portions of the improvements on Lot 4, the Association reserves the right to administer all portions of the Master Common Elements of the Property, and POC reserves all its rights as declarant under the Master Declaration and as owner of Lots 5 and 2C, including for the installation, maintenance, repair, inspection, protection, removal, replacement and operation of any portions of the improvements thereon.

6. SUCCESSORS AND ASSIGNS; AGREEMENT TO RUN WITH THE LAND. The provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the parties, including without limitation all parties having or acquiring any right, title or interest in Lot 4 or the Property.

7. REPRESENTATIVES. The Association and its management company shall be the only representatives entitled to act on behalf of the owners and any other occupants of the Property (other than POC), and any actions taken by the Association or its management company shall be absolutely binding on them (but not on POC). Except to the extent POC assigns any of its rights, obligations or interests in this Agreement to the Association, for as long as POC retains an ownership interest in any Lot or Master Unit within the Property, it shall continue to represent its interests with respect to this Agreement. Lot 4 Owner and its agents shall be the only representatives entitled to act on behalf of the owner of Lot 4. Lot 4 Owner acknowledges and agrees that the Association may delegate to its management company, the right to exercise the rights and perform the obligations of the Association under this Agreement, and POC and the Association acknowledge and agree that the Lot 4 Owner may delegate to its agents, the right to exercise the rights and perform the obligations of the Lot 4 Owner under this Agreement.

8. TERMINATION. This Agreement may not be terminated except by a written termination executed by each of the parties and recorded in the Records.

9. ARBITRATION/DISPUTE RESOLUTION/ATTORNEYS' FEES. Any controversy, claim or dispute arising out of or relating to this Agreement shall be resolved through binding arbitration conducted in accordance with the rules of the Judicial Arbiter Group in the State of Colorado or such other rules as the parties may mutually agree in writing. Any award rendered in such arbitration may be entered and will be enforceable in any court in the State of Colorado or in any court having jurisdiction over the party against whom judgment is sought to be enforced. In no event shall any remedies of a party include the right of such party to terminate this Agreement as a result of the alleged or actual breach of this Agreement by the other party. In connection with any arbitration or court proceeding, the prevailing party shall be entitled to recover reasonable attorneys' and paralegal fees and costs, including arbitration costs and fees. Neither party shall under any circumstances be responsible for indirect, consequential or punitive damages.

10. NOTICES. Any communication, notice or demand of any kind whatsoever which a party may be required or may desire to give to or serve upon any other party shall be in writing and delivered by personal service (including express or courier service), by a reputable national or international overnight courier such as Federal Express, or by registered or certified mail, postage prepaid, return receipt requested, in any case addressed as follows:

If to POC: Points of Colorado, Inc.
 c/o Starwood Vacation Ownership, Inc.
 9002 San Marco Court
 Orlando, Florida 32819
 Attn: [_____]

With a copy to: [_____]

If to the Lot 4 Owner: Town of Avon
 One Lake Street
 P.O. Box 975
 Avon, Colorado 81620
 Attention: Town Manager

With a copy to: [_____]

If to the Association: Mountain Vista Resort Subdivision Association, Inc.
 160 West Beaver Creek Boulevard
 Avon, Colorado 81620
 Attention: President

With copies to: Starwood Vacation Ownership, Inc.
 9002 San Marco Court
 Orlando, Florida 32819
 Attention: Legal Department

Any party may change its address for notice by written notice given to the other in the manner provided in this Section and recorded in the Records. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service, one (1) day after the

date of dispatch, if by overnight courier, or three (3) business days (a day other than a Saturday, a Sunday or a legal holiday in of the U. S. Federal government, or of the States of Colorado or Florida) after being placed in the U.S. Mail, if mailed.

11. RIGHT TO ASSIGN. POC may assign this Agreement and/or its rights and obligations. if any, hereunder in whole or in part, to the Association as a Master Common Element, in which event POC shall be released from and have no obligations of any kind arising out of or in connection with this Agreement with respect to the rights and obligations so assigned. Lot 4 Owner may assign its rights and obligations in whole or in part to such persons or entities who acquire all of Lot 4 or the areas of Lot 4 affected by the easements granted hereunder, in which event Lot 4 Owner shall be released from and have no obligations of any kind arising out of or in connection with this Agreement with respect to the rights and obligations so assigned. Any such assignment by a party shall become effective upon recordation of an assignment and assumption agreement in the Records.

12. OTHER EASEMENTS. The rights of the parties are subject to any and all easements now in existence recorded in the Records with respect to Lot 4 or the Property.

13. FURTHER ASSURANCES. Each party shall execute such documents and take such further actions as may be reasonably requested by the other to carry out the intents and purposes of this Agreement.

14. MISCELLANEOUS.

(a) Counterparts. This Agreement may be executed in several counterparts, and each counterpart shall constitute one agreement binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or to the same counterpart.

(b) Entire Agreement. This Agreement (including the exhibits referred to herein, all of which are hereby incorporated into this Agreement), contains the entire agreement of the parties with respect to the subject matter hereof and no prior written or oral agreements shall have any force or effect or be binding upon the parties; provided, however, the easements granted hereunder are in addition to and not in lieu of any easements set forth in the Plat, all of which easements remain in full force and effect.

(c) Modification and Changes. This Agreement may only be changed or modified by an agreement in writing signed by each of the parties, or their respective successors or assigns.

(d) Binding Effect. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

(e) Headings. Captions contained in this Agreement are inserted only as a matter of convenience and for reference. Such captions in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

(f) Partial Invalidity In the event that any one or more of the phrases, sentences, clauses or Sections contained in this Agreement shall be declared invalid or unenforceable by order, decree or judgment of any court having jurisdiction, or shall be or become invalid or unenforceable by virtue of any applicable law, the remainder of this Agreement shall be construed as if such phrases, sentences, clauses or Sections had not been inserted except when such construction (i) would operate as an undue hardship on a party or (ii) would constitute a substantial deviation from the general intent and purposes of the parties as reflected in this Agreement. In the event of either (i) or (ii) above, the

parties shall use their best efforts to negotiate a mutually satisfactory amendment to this Agreement to circumvent such adverse construction.

(g) Governing Law. The terms and provisions of this Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Colorado, without regard to any choice of laws principles.

(h) No Waiver. The failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

(i) Construction. Whenever the singular number is used in this Agreement and, when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders, and vice versa.

(j) No Merger. The easements created hereunder shall not merge with any fee interest owned by any party hereto, either presently or in the future, but shall remain separate and distinct property rights, unless and until relinquished in accordance with law and written evidence of such release is executed by the parties hereto, or their respective successors and assigns, and recorded in the Records.

(k) No Public Dedication. Nothing herein shall be deemed to be a gift or dedication of all or any portion of Lot 4 or the Property for the general public, of for any public use or purpose whatsoever.

(l) No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the parties have executed this Lot 4 Easement Agreement to be effective as of the date first written above.

POINTS OF COLORADO, INC., a Colorado corporation

By: _____
[], its []

STATE OF FLORIDA)
) SS.
COUNTY OF ORANGE)

The foregoing Lot 4 Easement Agreement was acknowledged before me this _____ day of [], 2015, by [], as [] of POINTS OF COLORADO, INC., a Colorado corporation, on behalf of the corporation. She is personally known to me.

(NOTARY SEAL)

(Notary Signature)

(Notary Name Printed)
NOTARY PUBLIC

**MOUNTAIN VISTA RESORT SUBDIVISION
ASSOCIATION, INC., a Colorado nonprofit
corporation**

By: _____
[], its []

STATE OF FLORIDA)
) SS.
COUNTY OF ORANGE)

The foregoing Lot 4 Easement Agreement was acknowledged before me this _____ day of [], 2015, by [], as [] of Mountain Vista Resort Subdivision Association, Inc., a Colorado nonprofit corporation, on behalf of the corporation. He is personally known to me.

(NOTARY SEAL)

(Notary Signature)

(Notary Name Printed)

NOTARY PUBLIC

**TOWN OF AVON,
a Colorado home rule municipality**

By: _____
Jennie Fancher, Mayor

By: _____
Virginia C. Egger, Town Manager

Attest: _____
By: Debbie Hoppe, Town Clerk

Approved as to Form:

Eric J. Heil, Town Attorney

EXHIBIT "A"
TO
LOT 4 EASEMENT AGREEMENT

Legal Description of Property Subject to Master Declaration

Lots 1, 2A, 2B, 2C, 3, and 5, Mountain Vista Resort Subdivision, a resubdivision of Lot C, a Final Plat and Resubdivision of Lots B and C, Avon Center at Beaver Creek, Benchmark at Beaver Creek, Amendment No. 4, according to the Plat for Mountain Vista Subdivision, recorded April 18, 2001, at Reception No. 754852, as such plat has been or may be supplemented or amended from time to time, including without limitation, by the Second Amended Final Plat, a Replat of Lots 4, 2C, and 5, recorded [] at Reception No. [],
County of Eagle, State of Colorado.

Exhibit A

EXHIBIT "B"
TO
LOT 4 EASEMENT AGREEMENT
Description of Lot 4 Easement Areas
[to be attached]

Exhibit B

Dear Mayor Fancher and members of the Town Council,

This letter is in support of your purchase of the Mountain Vista Office Building (AKA Skier Building). The new negotiated purchase price removes the one slight hesitation I had when this was previously proposed and now I believe it would be foolish to miss this opportunity.

Briefly, here is why this is a no-brainer:

- **Meets the goals of the west town center plan** – The master plan contemplated moving town hall to the fire station site, but the goal was to help activate the mall and make the peoples building part of the overall resurgence of the mall. As a member of the West Town Center District Investment Plan (Let's just call this the WTCP) committee I can say that the location was less important because we never imagined that the skier building would be available. In fact, this may be a more ideal location because town hall will become a central part of the mall without taking up a lot of retail frontage due to the building's triangular shape.
- **Activates the mall** – This building has been vacant for far too long and it is serving to discourage other development. Vacancies such as this were cited in the Wyndham development plan as a reason to forgo the WTCP required ground level retail. Making this building town hall signifies the town's commitment to this area and the activity generated will help keep this area active and attract other activities. This is the perfect location to start a renaissance!
- **Financially Prudent** – The price to acquire this building is far less than what a new building would cost. Given that the WTCP calls for the town hall to move and the cost to build anywhere else or to renovate the existing town hall is far more, this is really a smart decision.
- **Frees up the current town hall site for other civic uses** – The newly revised Nottingham Park Master Plan shows many exciting opportunities that would be possible if the town hall was not in the way. Let's give these ideas a chance to grow.

Perhaps the most attractive thing about this location to me is that it symbolically represents a partnership between the people's government and the retail and lodging business engine that drives our economy. No longer segregated, these groups are joined by location in the same way town halls have historically been on town squares. Synergy is the name of the game and we should be looking for ways to build off of and support each other to propel Avon into the next century!

Sincerely,

brian sipes, aia, leed ap

SIPES ARCHITECTS
a u t h e n t i c + s u s t a i n a b l e + m o d e r n

175 williams st, suite 204

po box 153

mintum co 81645

970.390.0607



Debbie Hoppe

From: Susan Gruber <grubersr@gmail.com>
Sent: Tuesday, March 08, 2016 8:11 AM
To: Avon Council Web
Subject: PSF and purchase of Skier Building

I wish to communicate my support for building the proposed Public Safety Facility. I appreciate the extensive research, planning and collaboration that the TOA and other parties have contributed to this important and forward-looking effort.

I also am strongly in favor of the purchase of the Avon Skier Building at the newly attractive price. I am confident that the acquisition of this property will benefit the town.

Thank you for your continued work on behalf of the citizens of Avon.

Respectfully,
Susan W. Gruber
2355 Saddle Ridge Loop
Avon, CO 81620

Sent from my iPad

Debbie Hoppe

From: Carrie Foster <icecreamlady55@gmail.com>
Sent: Tuesday, March 08, 2016 8:42 AM
To: Avon Council Web
Subject: Congratulations on owning Skier Building

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Dear Town of Avon,

My name is Carrie Foster and I have lived in Avon on and off for 30 years. I currently reside in Wildridge I have owned an ice cream truck/vending business for 15 of those years. This summer I am excited to be a mobile vendor at the park. my 2 children were born here, they attended local schools here, college and now my daughter Kelsey is active member of our community who loves to attend amazing events here in Avon.

I am proud of Avon, I always said it was the little town that could. There has long been opposition to any type of growth from a certain minority. Avon has huge potential to develop WITH the support of the local residents.

The fight to get Performance Pavilion built was well worth it. The buzz that it has created for our town is beyond financial measure. The relocation of the town offices adds to the vibrancy of the image we are trying to create.

My hope and belief is that it will also help to ignite Main Street Mall, which quite frankly is very difficult to do. I give my complete support to the Avon Town Council on the purchase of the Skier Building. Newly renamed, no more Mountain Vista.....a tease, as we have no mountain vista from that location. Creativity and experimentation will attract people to that area especially music and ice cream!

Uses for old building? Public bathrooms, for sure. YWCA, YMCA, Scouts, Clubs, table tennis table, youth group etc.

Best Regards
Carrie Foster

Preston Neill

From: David Courtney <david@beaverliquors.com>
Sent: Tuesday, March 08, 2016 12:53 PM
To: Avon Council Web
Subject: Skier Buiding

Follow Up Flag: Follow up
Flag Status: Flagged

I am writing this to let you know I support the Town of Avon purchasing and moving in the skier building. This decision makes financial sense, not only are we getting the building at a fair price but freeing up the valuable space on the lake could generate revenue. I hope everyone is on board with this!! It's a no brainer!!!

David Courtney
Beaver Liquors

Preston Neill

From: Clyde hanks <chanks4548@aol.com>
Sent: Tuesday, March 08, 2016 12:05 PM
To: Avon Council Web
Subject: Support for the Purchase of the Skier Building

Follow Up Flag: Follow up
Flag Status: Completed

Dear Council -

My name is Clyde Hanks and I have been a full time resident of Avon for over 12 years. Based on my visits to Town Hall and my discussions with other Avon residents, it has become very clear to me that the town desperately needs a new location for the Town Hall. The current cramped and declining spaces simply are not adequate for the needs of a growing and vital town such as Avon.

I urge the council to continue on its path to purchase and renovate the Skier Building to meet this need. Several points clearly support this initiative:

- The town has negotiated a dramatically lower price for the building that is lower than what it would cost to build or purchase another location.
- The building has been vacant for many years and should become an active building in the heart of Avon. Any retail that might open on the first floor would add to the vitality of the area.
- That the town has found a way to accomplish the the purchase and renovation without raising taxes speaks to excellent negotiations, financial planning and the growing prosperity of the town. It also demonstrates a sensitivity to the concerns of the town residents to keep taxes as low as possible.
- The location of the Skier Building would keep Town Hall central to the town and accessible to residents.

I applaud the council and staff for their tireless efforts to find an excellent and financially responsible solution to the needs for a new Town Hall. I support your initiative and I hope that all residents of Avon will also support this excellent effort.

Clyde Hanks

Sent from my iPad

Preston Neill

From: Natalie Schroeder <snid@comcast.net>
Sent: Tuesday, March 08, 2016 7:50 AM
To: Avon Council Web
Subject: Thank you Avon town council

Follow Up Flag: Follow up
Flag Status: Flagged

Avon Town Council,

Thank you for listening to the community, doing your homework and determining the space needs for staff, and determining the condition of the existing town hall. After all of this work was completed you were able to turn around and negotiate the "Skier Building" for an unbelievable price. In addition I think it is exciting to think of what could happen on the site where town hall sits today, such a great location and a great amenity for our community.

I think you did great work.

Thank you again,

Natalie Schroeder
Avon Resident since 1990

Preston Neill

To: Jennie Fancher
Subject: RE: Avon

From: Doris Bailey <dbailey@slifer.net>
Subject: Avon
Date: March 7, 2016 at 11:04:12 AM MST
To: "jfancher@avon.org" <jfancher@avon.org>

Dear Jennie, I don't know you but glad I feel comfortable addressing our mayor by her first name! After sitting on Rte. 6 this morning for a very long time, nudging my way East, all I wanted was my Vail Daily and for some dumb reason I didn't pick it up early as I usually do. Now, safe and warm in my office I've read my morning paper. This note is to let you know I was adamantly opposed to Avon's previous plan to purchase the "Skier Building" but am indeed pleased with current thought that accompanies this new plan. I know it's a lengthy process from start to finish, but I will indeed be supportive of the process in hopes we can relocate "Town" with a more efficient and suitable environment and at the same time provide more "play area" for both locals and visitors. Congratulations! I hope the studies and solutions ahead move smoothly.

Happy Trails

Ahead, Doris



DORIS BAILEY | Broker Associate

Slifer Smith & Frampton Real Estate

970.477.5722 | 866.433.6088 efax

Westin Riverfront | vailrealestate.com



From: Dave Dantas [<mailto:dave@dwdantas.com>]

Sent: Monday, March 07, 2016 6:32 PM

To: Virginia Egger; Jennie Fancher

Subject: Skier Building Purchase

Avon Town Council,

The Avon Town Council is making a very good decision to purchase the Skier Building for \$1.5m . It is an ideal location for Town Hall. Ownership of the Skier Building gives the Town of Avon many options in the future. The existing Town Hall location can become more park, parking, a private public partnership to build convention center, employee housing or something great that this Town Council and citizens have not come up with yet. If the fire station moves from its current location more opportunities are created.

Vacant commercial land in the West Downtown area does not exist. If it did it would not be possible to acquire land and build to the current completion level of the Skier Building for \$1.5m.

I would like to thank Peter Buckley, Mark Kogan, David Standjord, Angelo Loria and others who got involved and saved the Town of Avon \$1.7m.

Regards,
Dave Dantas

Preston Neill

From: Sarah Smith Hymes
Sent: Tuesday, March 08, 2016 3:30 PM
To: Avon Council Web
Subject: Skier and Public Safety Building

Follow Up Flag: Follow up
Flag Status: Flagged

Sarah,

After reviewing the fact sheets and attending the Wildridge meeting a few weeks ago, I am in favor of the purchase of the Skier building and I support the need for new safety facilities.

Thank you,

Pat Nolan