



TOWN OF AVON, COLORADO
TOWN OF AVON MEETINGS FOR TUESDAY, MARCH 22, 2016
AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM
REGULAR MEETING BEGINS AT 5:05 PM
AVON TOWN HALL, ONE LAKE STREET

AVON LIQUOR LICENSING AUTHORITY MEETING BEGINS AT 5:00 PM (SEE SEPARATE AGENDA PAGE 3)

REGULAR MEETING BEGINS AT 5:05 PM

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT – COMMENTS ARE WELCOME ON ITEMS NOT LISTED ON THE FOLLOWING AGENDA**
- 4. PRESENTATION OF A PROCLAMATION FOR ONE BOOK ONE VALLEY (MAYOR JENNIE FANCHER)**
- 5. PRESENTATION OF A CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING (CAFR) TO ASSISTANT TOWN MANAGER SCOTT WRIGHT AND FINANCE MANAGER VALERIE BARRY ON BEHALF OF THE FINANCE DEPARTMENT (MAYOR JENNIE FANCHER)**
- 6. ACTION ITEMS**
 - 6.1. REVIEW AND ACTION ON RESOLUTION 16-09 IN SUPPORT OF EAGLE RIVER FIRE PROTECTION DISTRICT BALLOT QUESTION A (MAYOR JENNIE FANCHER)
 - 6.2. MOTION TO CONTINUE THE PUBLIC HEARING FOR THE SECOND READING OF ORDINANCE No. 15-11, AN ORDINANCE AMENDING THE AVON MUNICIPAL CODE TABLE 7.16-1 AND SECTION 7.16.060(H)(1) CONCERNING AMENDMENTS TO WILDRIDGE PUD APPLICATIONS (PLANNING DIRECTOR MATT PIELSTICKER)
 - 6.3. MOUNTAIN STAR WATER TANK**
 - 6.3.1. **PUBLIC HEARING** ON RESOLUTION 16-06, A RESOLUTION ADOPTING FINDINGS THAT THE MOUNTAIN STAR TANK PROPERTY ANNEXATION PETITION IS ELIGIBLE FOR ANNEXATION (TOWN ATTORNEY ERIC HEIL)
 - 6.3.2. FIRST READING OF ORDINANCE 16-04, AN ORDINANCE APPROVING THE ANNEXATION OF THE MOUNTAIN STAR TANK PROPERTY (TOWN ATTORNEY ERIC HEIL)
 - 6.3.3. FIRST READING OF ORDINANCE 16-05, AN ORDINANCE APPROVING A COMPREHENSIVE PLAN AMENDMENT AND THE ZONING OF THE MOUNTAIN STAR TANK PROPERTY IN THE PUBLIC FACILITIES ZONE DISTRICT (TOWN ATTORNEY ERIC HEIL)
 - 6.3.4. REVIEW AND ACTION ON THE 2016 CAPITAL PROJECT IMPLEMENTATION AGREEMENT BETWEEN THE UPPER REGIONAL WATER AUTHORITY, THE MOUNTAIN STAR ASSOCIATION AND THE TOWN OF AVON SPECIFICALLY CONCERNING THE CONSTRUCTION OF A NEW 270,000 GALLON POTABLE WATER STORAGE AND DELIVERY TANK (TOWN ATTORNEY ERIC HEIL)
 - 6.4 FIRST READING OF ORDINANCE 16-03, AMENDING CHAPTER 3.08 OF THE AVON MUNICIPAL CODE TO ENACT SECTION 3.08.037 TO PROVIDE A TEMPORARY SALES TAX CREDIT FOR THE INSTALLATION OF RENEWABLE ENERGY COMPONENTS (TOWN ENGINEER JUSTIN HILDRETH)



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6.5 FIRST READING OF ORDINANCE 16-06, APPROVING A PURCHASE AND SALE AGREEMENT OF THE PHASE 1B OFFICE BUILDING, MOUNTAIN VISTA RESORT SUBDIVISION (TOWN ATTORNEY ERIC HEIL)

6.6 CONSENT AGENDA

6.6.1 RESOLUTION 16-07 APPROVING EASEMENTS FOR THE METCALF BIKE CLIMBING LANE CONSTRUCTION PROJECT (TOWN ATTORNEY ERIC HEIL)

6.6.2 MINUTES FROM MARCH 8, 2016 MEETING (TOWN CLERK DEBBIE HOPPE)

7. WORK SESSION

7.1. REVIEW AND DIRECTION IN REGARDS TO ALLOWING ONE OR MORE FOOD TRUCKS TO OPERATE ON TOWN PROPERTY AND RIGHT-OF-WAYS; AND, TO ALLOW ONE OR MORE MOBILE VENDOR CARTS TO OPERATE AT NOTTINGHAM PARK AT DESIGNATED LOCATIONS

(FESTIVAL AND SPECIAL EVENTS DIRECTOR DANITA DEMPSEY)

7.2. REVIEW AND ACTION ON A REQUEST TO SET A DATE FOR A TOWN CLEAN-UP DAY ON MAY 14TH AND FUNDING OF \$3,500 (COUNCILORS MEGAN BURCH AND SARAH SMITH HYMES)

8. WRITTEN REPORTS

8.1. MONTHLY FINANCIALS (BUDGET ANALYST KELLY HUITT)

9. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

9.1. COLORADO ASSOCIATION OF SKI TOWNS (MAYOR JENNIE FANCHER)

10. MAYOR & COUNCIL COMMENTS

11. ADJOURNMENT



TOWN OF AVON, COLORADO
TOWN OF AVON MEETINGS FOR TUESDAY, MARCH 22, 2016
AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM
AVON TOWN HALL, ONE LAKE STREET

CALL TO ORDER AND ROLL CALL

1. APPROVAL OF AGENDA

2. PUBLIC COMMENT

3. PUBLIC HEARING SPECIAL EVENTS PERMIT

3.1. APPLICANT NAME: BEAVER CREEK RESORT COMPANY OF COLORADO

EVENT NAME: BEAVER CREEK RODEO SERIES

EVENT DATES: JUNE 23, 30, JULY 7, 14, 28, AUGUST 4 & 11, 2016; 4 PM UNTIL 10 PM

LOCATION: TRAER CREEK LOT 1

EVENT MANAGER: ANNA ROBINSON

PERMIT TYPE: MALT, VINOUS & SPIRITUOUS LIQUOR

4. MINUTES FROM MARCH 8, 2016

5. ADJOURNMENT



REPORT FOR AVON LIQUOR LICENSING AUTHORITY

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Meeting Date: March 22, 2016
Agenda topic: SPECIAL EVENTS PERMIT APPLICATION – PUBLIC HEARING

ACTION BEFORE COUNCIL

The Town Council serving as the Local Liquor Licensing Authority will consider a Special Events Permit Application for the upcoming Beaver Creek Rodeo Series. A public hearing is required before final action is taken.

APPLICANT NAME: BEAVER CREEK RESORT COMPANY OF COLORADO
EVENT NAME: BEAVER CREEK RODEO SERIES
EVENT DATES: JUNE 23, 30, JULY 7, 14, 28, AUGUST 4 & 11, 2016; 4 PM UNTIL 10 PM
LOCATION: TRAER CREEK LOT 1
EVENT MANAGER: ANNA ROBINSON
PERMIT TYPE: MALT, VINOUS & SPIRITUOUS LIQUOR

PROPOSED MOTION

I move to approve (or deny stating the reasons for denial) the Special Event Permit for the Beaver Creek Rodeo Series.

BACKGROUND

The applicant has submitted the appropriate materials required by the State of Colorado Liquor Enforcement Division and all materials are in order. Beaver Creek Resort Company of Colorado is applying for malt, vinous, spirituous liquor permit to serve/sell beverages at the seven day rodeo series (dates & times listed above). The Traer Creek Lot 1 premise has been posted with notice of the public hearing for this application. The event manager will be present to answer question about the application. There are local liquor licensing fees associated with the special event permit; the applicant has submitted the appropriate local fees.

Special Events permits are issued by the Local Licensing Authority to allow particular types of organizations, municipalities, and political candidates to sell, serve or distribute alcohol beverages in connection with public events. Because of their temporary nature, needs and desires (reasonable requirements of the neighborhood) are not considered by the licensing authorities as a condition of issuance. Applications are made directly with the local licensing authority having jurisdictions over the place of the event. Article 48 of Title 12 regulates the issuance of special events permits. Note that these permits may only be issued for prescribed hours during the day and for not more than 15 days in any one calendar year.

SPECIAL EVENTS PERMIT APPLICATIONS ATTACHMENTS:

The applicants for the special events permit have submitted the following materials:

- ✓ Application for a Special Events Permits (State form DR 8439)
- ✓ Alcohol Management Plan
- ✓ Diagram where liquor will be served
- ✓ Certificate of Good Standing
- ✓ Proof of Insurance
- ✓ Police Report on Background Checks

APPLICATION FOR A SPECIAL EVENTS PERMIT

Department Use Only

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NONPROFIT
AND ONE OF THE FOLLOWING (See back for details.)

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> SOCIAL | <input type="checkbox"/> ATHLETIC | <input type="checkbox"/> PHILANTHROPIC INSTITUTION |
| <input type="checkbox"/> FRATERNAL | <input type="checkbox"/> CHARTERED BRANCH, LODGE OR CHAPTER | <input type="checkbox"/> POLITICAL CANDIDATE |
| <input type="checkbox"/> PATRIOTIC | <input type="checkbox"/> OF A NATIONAL ORGANIZATION OR SOCIETY | <input type="checkbox"/> MUNICIPALITY OWNING ARTS FACILITIES |
| <input type="checkbox"/> POLITICAL | <input type="checkbox"/> RELIGIOUS INSTITUTION | |

LIAB TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:

- 2110 ☒ MALT, VINOUS AND SPIRITUOUS LIQUOR \$25.00 PER DAY
2170 ☐ FERMENTED MALT BEVERAGE (3.2 Beer) \$10.00 PER DAY

DO NOT WRITE IN THIS SPACE

LIQUOR PERMIT NUMBER

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE
Beaver Creek Resort Company of Colorado

State Sales Tax Number (Required)
12-25794-0000

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL CANDIDATE
(Include street, city/town and ZIP)

26 Avondale Lane, Suite #118C
PO Box 5390, Avon, CO 81620-5390

3. ADDRESS OF PLACE TO HAVE SPECIAL EVENT
(Include street, city/town and ZIP)

Traer Creek
Lot 1, Avon, CO

NAME	DATE OF BIRTH	HOME ADDRESS (Street, City, State, ZIP)	PHONE NUMBER
4. PRES./SEC'Y OF ORG. or POLITICAL CANDIDATE Elizabeth Jones		0243 Apache Court, Gypsum, CO 81637	970-274-1278
5. EVENT MANAGER Anna Robinson		53 Columbine Circle #3, Avon, CO 81620	970-445-8154
6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES HOW MANY DAYS? _____		7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES TO WHOM? _____	

8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED? ☐ Yes ☐ No

LIST BELOW THE EXACT DATE(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

Date	Hours	From	To	Date	Hours	From	To	Date	Hours	From	To	Date	Hours	From	To
June 23, 30				July 7, 14, 28				Aug 4, 11							
	From	4:00 p.	10:00 p.		From	4:00 p.	10:00 p.		From	4:00 p.	10:00 p.		From	4:00 p.	10:00 p.

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

SIGNATURE 	TITLE Administrator	DATE 2/25/16
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REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY OR COUNTY)

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

LOCAL LICENSING AUTHORITY (CITY OR COUNTY) Town of Avon	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY	TELEPHONE NUMBER OF CITY/COUNTY CLERK (970) 748-4001
SIGNATURE	TITLE	DATE

DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY

LIABILITY INFORMATION

License Account Number	Liability Date	State	TOTAL
		-750 (999)	\$

(Instructions on Reverse Side)

APPLICATION INFORMATION AND CHECKLIST

THE FOLLOWING SUPPORTING DOCUMENTS MUST BE ATTACHED TO THIS APPLICATION FOR A PERMIT TO BE ISSUED:

- ☒ Appropriate fee.
- ☒ Diagram of the area to be licensed (not larger than 8 1/2" X 11" reflecting bars, walls, partitions, ingress, egress and dimensions.
Note: If the event is to be held outside, please submit evidence of intended control, i.e., fencing, ropes, barriers, etc.
- ☒ Copy of deed, lease, or written permission of owner for use of the premises.
- ☒ Certificate of good corporate standing (NONPROFIT) issued by Secretary of State within last two years; or
- ☐ If not incorporated, a NONPROFIT charter; or
- ☐ If a political Candidate, attach copies of reports and statements that were filed with the Secretary of State.

- ☐ APPLICATION MUST FIRST BE SUBMITTED TO THE LOCAL LICENSING AUTHORITY (CITY OR COUNTY) AT LEAST THIRTY (30) DAYS PRIOR TO THE EVENT.
- ☐ THE PREMISES TO BE LICENSED MUST BE POSTED AT LEAST TEN (10) DAYS BEFORE A HEARING CAN BE HELD. (12-48-106 C.R.S.)
- ☐ AN APPROVED APPLICATION MUST BE RECEIVED BY THE LIQUOR ENFORCEMENT DIVISION AT LEAST TEN (10) DAYS PRIOR TO THE EVENT.
- ☐ CHECK PAYABLE TO THE COLORADO DEPARTMENT OF REVENUE

(12-48-102 C.R.S.)

A Special Event Permit issued under this article may be issued to an organization, whether or not presently licensed under Articles 46 and 47 of this title, which has been incorporated under the laws of this state for the purpose of a social, fraternal, patriotic, political or athletic nature, and not for pecuniary gain or which is a regularly chartered branch, lodge or chapter of a national organization or society organized for such purposes and being non profit in nature, or which is a regularly established religious or philanthropic institution, and to any political candidate who has filed the necessary reports and statements with the Secretary of State pursuant to Article 45 of Title 1, C.R.S. A Special Event permit may be issued to any municipality owning arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities.

If an event is cancelled, the application fees and the day(s) are forfeited.

**Beaver Creek Resort Company
Alcohol Management Plan
For the 15th Annual Beaver Creek Rodeo 2016**

Event Name and Dates

Beaver Creek Rodeo Series at Traer Creek
June 23, 30, July 7, 14, 28, August 4, 11, 2016
4pm – 10pm

Location

The alcohol area applied for under this permit is located in Traer Creek Lot 1. (See maps)

Boundaries

The physical boundaries will consist of fence, barricades and tents. Beaver Creek security and special events staff will police within the physical boundaries and monitor access points.

Entrances and Exits

There are three (3) entrances/exits into the permit area, each approximately 6-10 feet wide. The gates will have signs on the inside saying "No Alcoholic Beverages Beyond This Point."

Staffing / Education / Training

The alcohol staff and security will be coordinated by the Beaver Creek Resort Company. Security and alcohol staff managed under the direction of Jim Clancy, Director of Public Safety for Beaver Creek and William Kerst, Supervisor of Public Safety. We will be using a minimum of at least two (2) people at each access point plus have a floating staff of 2-4 people. Beaver Creek security will staff alcohol-pouring locations with TIPS-trained staff for both pouring and conducting legal age identification. All operations will be overseen by Mr. Clancy and Mr. Kerst.

Action Plans / Control of the Premises

In the event that someone appears intoxicated at the venue, our Public Safety and alcohol management staff will see that the individual is removed from the premises and released to a responsible party that is in a sober and responsible state. In the event that the individual doesn't have a responsible party available to escort him or her from the venue or is uncooperative, we will see that the Town of Avon Police Department is contacted and release that individual under Police supervision. In the event that someone is requesting another drink and or is seen to be in a state nearing intoxication, we will see that the individual is refused further alcohol service and or utilize the above mentioned procedures to remove them from the venue.

Beer/Alcohol Service

Beer and alcohol will be served at designated tent locations. All staff pouring alcohol will be certified TIPS trained staff. At the alcohol booths there will be signs stating "You Must Have Legal ID to Purchase Alcohol." There will be alcohol staff and/or security at each entrance who will not allow alcohol to be brought in or taken out of the permitted area.

Food Service/Sanitation

All food service stations or vendors will be equipped with State and County approved hand sanitation stations. All vendors serving food, which may be susceptible to food born illnesses,

are required to know and utilize every possible means in preventing possible contamination, not limited to maintaining proper temperatures and storage of potentially hazardous foods in compliance with Colorado health requirements.

Wrist Bands

No person will be allowed to drink or purchase alcohol unless they are wearing a wrist band. Wristbands will be allocated from designated alcohol service locations/tents. Qualified service staff will conduct legal verification for anyone suspected of being legally underage and allocate wristbands accordingly.

Legal Identification Forms

As proof of age for purchasing alcoholic beverages, the alcohol management team will verify age using one of the following forms of ID:

- Valid Driver's license;
- Valid State-issued ID card;
- U.S. active-duty military ID
- Passport
- Alien registration card or green cards.

Cup Size/Price

Beer and Margaritas will be served in cups no larger than 16-oz. size. Wine will be served in cups no larger than 6 oz. size. All liquor sales will be conducted via either cash or coupon exchange at the liquor tents.

Liquor Liability Insurance

Beaver Creek Resort Company has a \$2,000,000 General Liability policy in effect with Liquor Liability for the rodeo events.

Operating Date and Hours:

Requested hours of operation for the rodeo events are from 4pm to 10 p.m.; however, we anticipate liquor will be made available for sale to the public between the hours of 5pm to 8pm.

Estimated Number of Attendees

Approximately 1,500 per night

Will any temporary structures such as bleachers, stages, tents, platforms, etc. be utilized at the event?

YES X *Proper notification is required. Eagle County Building Department.*
NO

Will it be necessary to close any public streets to accommodate traffic or activities for the event?

YES *Proper notification is required. Eagle County Sheriff's Office.*
NO X

Is there a separate contract for sanitation and recycling?

YES ☒
NO ☐

Does the event anticipate VIP's, celebrities or special guests?

YES ☐ *Proper notification is required. Eagle County Sheriff's Office.*
NO ☒

Will there be amplified music, public address systems or other noise impacts?

YES ☒ *Music and announcing from 5pm – 8pm.*
NO ☐

Will there be fires, fireworks or pyrotechnics at the event?

YES ☐
NO ☒

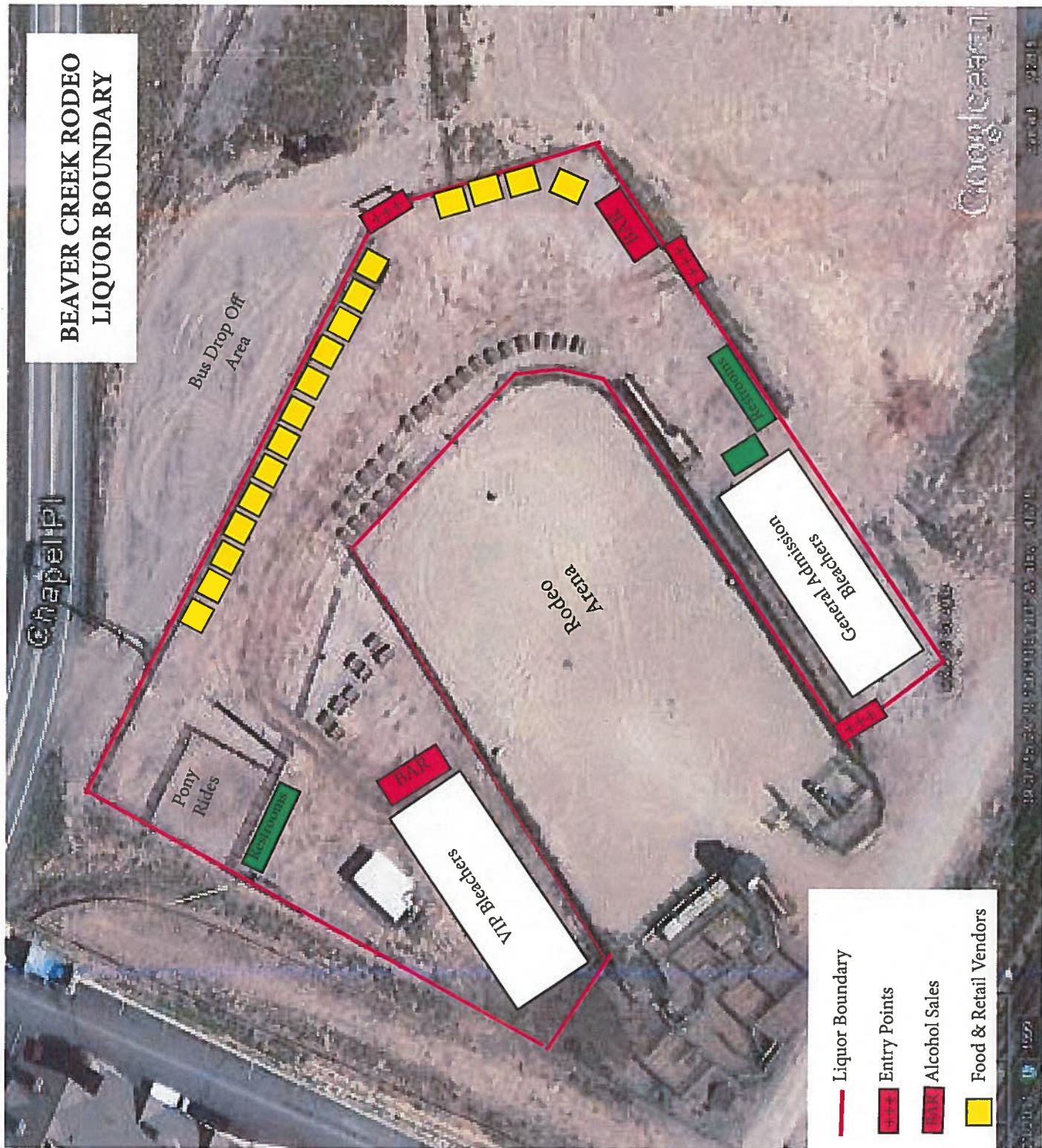
Will the event take place near any residential neighborhoods?

YES ☐
NO ☒

Describe the parking areas available for attendees, and whether public transportation will be utilized.

Two parking areas directly across from the Rodeo grounds will be utilized for attendees, and one parking area adjacent to Rodeo grounds will be utilized for staff, vendors, and VIPs. BC Buses will bring guests from the Resort.

BEAVER CREEK RODEO LIQUOR BOUNDARY



OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

BEAVER CREEK RESORT COMPANY OF COLORADO

is a

Nonprofit Corporation

formed or registered on 05/04/1979 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871371898 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/22/2016 that have been posted, and by documents delivered to this office electronically through 02/23/2016 @ 16:55:54 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 02/23/2016 @ 16:55:54 in accordance with applicable law. This certificate is assigned Confirmation Number 9516482 .



A handwritten signature in blue ink, reading 'Wayne W. Williams', is written over a horizontal line.

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/14/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Wright Group Services 1873 S Bellaire St Ste 600 Denver CO 80222	CONTACT NAME: Julia Lukyanenko	
	PHONE (A/C, No, Ext): 303-226-0178 FAX (A/C, No): 303-861-7502	
	E-MAIL ADDRESS: jlukyanenko@twgsgservices.com	
INSURED Beaver Creek Resort Company of Colorado P.O. Box 5390 Avon CO 81620	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: PHILADELPHIA INSURANCE CO.	18058
	INSURER B: PINNACOL ASSURANCE	41190
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 945321600

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			PPK1325950	4/26/2015	4/26/2016	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			PHPK1325842	4/26/2015	4/26/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			PUB497324	4/26/2015	4/26/2016	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	4005095	9/1/2015	9/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000
A	Liquor Liability			PPK1325950	4/26/2015	4/26/2016	Aggregate 1,000,000 Each Occurance 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

Town of Avon
PO Box 675
Avon CO 81620

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**Avon Police Department
Liquor License Application**

Individual Name(s): Elizabeth Jones
Anna Robinson

Name of Business: Beaver Creek Resort Company of Colorado

Type of License: ☐ Hotel & Restaurant
☒ Special Event Permit

Event Name: Beaver Creek Rodeo Series
Date of Event: June 23&30, July 7&14, August 4&11 2016;
4:00 PM to 10:00PM

Location of Business: Traer Creek Lot 1
Avon, Colorado 81620

Date Received: 03/10/2016

Photographs/Fingerprints: ☐ On File
☒ *Special Event – N/A*

Investigation by: ☐ Detective Sergeant Jonathan Lovins
☒ Detective Jeremy Holmstrom

Date: 03/16/2016

CBI Criminal Investigation (attached): No Colorado arrest records.

Local Criminal Investigation: No problems noted.

Comments: Nothing of concern.

Liquor Code Violations in the past calendar year: ☐ Yes ☒ No
If yes, explain: _____

Smoking violation in the past calendar year: ☐ Yes ☒ No
If yes, explain: _____

☒ Background investigation conducted with no problems and or areas of concern.

N.C.I.C. database not accessed on this applicant.

Investigation Time: 2 hours.

Administration Time: 1 hour.

*RAJ
3-16-16*



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, MARCH 8, 2016
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER AND ROLL CALL

Start Time 00:02

Chairman Fancher called the meeting to order at 5:02 p.m. A roll call was taken and Board members present were Sarah Smith Hymes, Scott Prince, Megan Burch, Buz Reynolds, Jake Wolf. Matt Gennet was absent. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Assistant Town Manager Scott Wright, Police Chief Bob Ticer, Planning Manager Matt Pielsticker, Town Engineer Justin Hildreth, Executive Assistant Preston Neill and Town Clerk Debbie Hoppe.

2. APPROVAL OF AGENDA

There were no changes to the agenda.

3. PUBLIC COMMENT – COMMENTS ARE WELCOME ON TOPICS NOT ON THE AGENDA

No public comments made.

4. PUBLIC HEARING SPECIAL EVENTS PERMIT

Start Time 01:00

4.1. Applicant Name: Bright Future Foundation

Event Name: Après Avon Spring Concerts

Event Dates: March 18 & 25, 2016; 12:00 p.m. until 10:00 p.m.

Location: Main Street Mall and Possibility Plaza

Event Manager: Casey Angel

The application was presented with no concerns. Chairman Fancher opened the public hearing and no comments were made. Vice Chairman Wolf moved to approve the Special Event Permit for the Après Avon Spring Concert; Board member Reynolds seconded the motion and it passes unanimously by those present. Board member Gennett was absent.

5. MINUTES FROM FEBRUARY 9, 2016

Start time 02:59

Vice Chairman Wolf moved to approve the Minutes from February 9, 2016; Board member Prince seconded the motion and it passed unanimously by those present. Board member Gennett was absent.



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, MARCH 8, 2016
AVON TOWN HALL, ONE LAKE STREET

6. Adjournment

There being no further business to come before the Board, the meeting adjourned at 5:05 p.m.

RESPECTFULLY SUBMITTED:

Debbie Hoppe, Town Clerk

APPROVED:

Jennie Fancher

Jake Wolf

Matt Gennett

Megan Burch

Albert "Buz" Reynolds

Scott Prince

Sarah Smith Hymes

OFFICIAL PROCLAMATION

ONE BOOK, ONE VALLEY, 2016

A Valley-wide reading program sponsored by the

Towns of Avon, Eagle, Gypsum, Minturn, Red Cliff and Vail

WHEREAS, community-read programs have united and uplifted hundreds of cities and principalities throughout the United States of America; and,

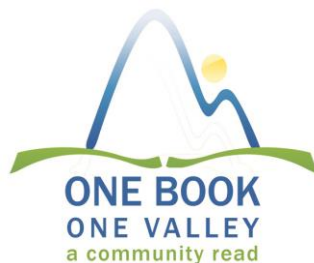
WHEREAS, the book “We Are Called to Rise” by Laura McBride (writer, community college teacher and graduate of Yale who resides in Las Vegas, NV) is McBride’s first novel and was partially completed during her residency at Yaddo; and,

WHEREAS, this Eagle Valley community read will feature book talks & discussions, film showings, special related programs such as a writing workshop, art programs, letter writing class and stress management seminar hosted by the partnering organizations, and a special guest appearance by the author; and,

WHEREAS, the Vail Public Library, in collaboration with the Eagle Valley Library District, Colorado Mountain College, and the Bookworm of Edwards have resolved to bring this valley-wide reading program to the citizens of Eagle County; and,

WHEREAS, the One Book, One Valley initiative will encourage literacy and shared enjoyment of reading throughout Eagle County,

NOW, THEREFORE, we, Kim Langmaid, Council Member, Town of Vail; Jennie Fancher, Mayor, Town of Avon; George Brodin, Mayor Pro Tem, Town of Minturn; Kevin Brubeck, Trustee, Town of Eagle; Geoff Grimmer, Trustee, Town of Eagle; Anuschka Bales, Mayor Pro Tem, Town of Red Cliff; Kathy Chandler-Henry, Eagle County Commissioner; Jeanne McQueeney, Eagle County Commissioner, do hereby promote the One Book, One Valley initiative and officially announce and promote the novel “We Are Called to Rise” to all Eagle County residents for their enjoyment and the enjoyment of all.





Government Finance Officers Association
203 N. LaSalle Street - Suite 2700
Chicago, IL 60601

Phone (312) 977-9700 Fax (312) 977-4806

11/04/2015

NEWS RELEASE

For Information contact:
Stephen Gauthier (312) 977-9700

(Chicago)--The Certificate of Achievement for Excellence in Financial Reporting has been awarded to **Town of Avon** by the Government Finance Officers Association of the United States and Canada (GFOA) for its comprehensive annual financial report (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

An Award of Financial Reporting Achievement has been awarded to the individual(s), department or agency designated by the government as primarily responsible for preparing the award-winning CAFR. This has been presented to:

Finance Department, Town of Avon

The CAFR has been judged by an impartial panel to meet the high standards of the program including demonstrating a constructive "spirit of full disclosure" to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.

The GFOA is a nonprofit professional association serving approximately 17,500 government finance professionals with offices in Chicago, IL, and Washington, D.C.



**RESOLUTION 16-09
IN SUPPORT OF
EAGLE RIVER FIRE PROTECTION DISTRICT
BALLOT QUESTION A**

WHEREAS, the elected Board of Directors of Eagle River Fire Protection District has referred a ballot question to the voters in their District which seeks to generate funds for needed capital improvement projects through the issuance of voter-authorized municipal bonds;

WHEREAS, Eagle River Fire Protection District provides fire protection to Eagle County communities from Tennessee Pass to Wolcott, serving as the largest fire protection agency in Eagle County;

WHEREAS, the construction of a new fire station in Edwards and a joint public safety facility in Avon, to be utilized by Eagle River Fire Protection District and Avon Police, would greatly improve the District's response times and allow for better strategic positioning of critical apparatus;

WHEREAS, creation of a training facility in Minturn would allow Eagle River Fire Protection District personnel and equipment to remain within the District while conducting necessary training, so the staff can remain available to respond to calls;

WHEREAS, the Board of Directors of the Eagle River Fire Protection District has chosen to put on the May 3, 2016 Special District General Election Ballot a proposal to fund the construction of these important public safety facilities;

WHEREAS, the Avon Town Council recognizes the essential contributions of the Eagle River Fire Protection District to our community's public safety and protection of property and the enhanced emergency protection offered by the construction of these important public safety facilities;

WHEREAS, the Avon Town Council believes it to be in the best interest of the citizens of the Town of Avon and in the Eagle River Fire Protection District to support this ballot proposal, numbered A, and urge voters to cast an affirmative YES vote on Ballot Question A; and

WHEREAS, the Colorado Fair Campaign Practices Act expressly authorizes local governments to pass a resolution taking a position of advocacy and reporting the passage and of and distributing the resolution through established and customary means by C.R.S. §1-45-117(1)(b)(III).

NOW THEREFORE, the Avon Town Council, hereby **RESOLVES TO SUPPORT THE EAGLE RIVER FIRE PROTECTION DISTRICT BALLOT QUESTION A**. The Avon Town Council further Resolves to direct the Town Clerk to post and publish this Resolution in the established, customary manner as the posting and publishing of other resolutions.

ADOPTED March 22, 2016 by the AVON TOWN COUNCIL

By: _____
Jennie Fancher, Mayor

Attest: _____
Debbie Hoppe, Town Clerk



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Matt Pielsticker, Planning Director
Meeting Date: March 14, 2016
Agenda Topic: Motion to Continue the Public Hearing and Second Reading of Ordinance No. 2015-11 - An Ordinance Amending Avon Municipal Code Table 7.16-1 and Section 7.16.060(h)(1) Concerning Lot Split PUD Amendment to Wildridge PUD

I respectfully ask that the Public Hearing and Second Reading of Ordinance No. 2015-11 - An Ordinance Amending Avon Municipal Code Table 7.16-1 and Section 7.16.060(h)(1) Concerning Lot Split PUD Amendment to Wildridge PUD be continued to the April 12th Council meeting. I am not able to attend the March 22nd meeting due to a training conflict, which could not be rescheduled, and feel that my presence at the meeting may be important in answering questions which may arise. Thank you.

PROPOSED MOTION

I move to continue the Public Hearing and Second Reading of Ordinance No. 2015-11 to the April 12, 2016, Town Council meeting.

TO: Honorable Mayor Jennie Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Mountain Star Water Storage Tank Site Annexation:
Res. No. 16-06 Finding Property Eligible for Annexation and
Ord. No. 16-04 Annexing the Property
DATE: March 17, 2016

SUMMARY: The Upper Eagle River Water Authority has submitted an application to annex the 5 acre water storage tank site adjacent to the Mountain Star development into the Town of Avon ("**Property**"). This water storage tank site has a long history that dates back to the original approvals of the Mountain Star development. The preferred water storage tank site was identified on Forest Service land to the north and uphill of the Mountain Star development (see the Town of Avon Land Exchange Map). The Upper Eagle River Water Authority acquired this site along with other water storage tank sites from the U.S. Forest Service as part of the multi-party land exchange that was completed several years ago. The use of the property is intended for the construction of a water storage tank to serve the Mountain Star development. It is generally the practice and preference to annex lands into a municipality that include public infrastructure serving development in the municipality.

ANNEXATION PROCESS: The Town follows the annexation process in the Municipal Annexation Act of 1965. The process began with the receipt of a complete annexation petition and the adoption of a resolution to initiate the process. The Town Council previously approved Resolution No. 16-02 Initiating the Annexation process and setting the statutorily required public hearing for March 22, 2016. A schedule of actions for the annexation process is re-printed below.

ANNEXATION FINDINGS: The Town Council is required to determine if the Property is eligible for annexation before proceeding to act upon an ordinance actually annexing the Property. The statutory requirements include a minimum of 1/6 contiguity between the Property and the boundaries of the Town of Avon and a determination that a "community of interest" exists. The statutory annexation process allows annexation properties to be described in a series parcels which each meet the 1/6 contiguity requirement thereby allowing any property that touches a municipal boundary to meet this requirement. The subject Property is described in two parcels, which considered in series meets the 1/6 contiguity requirement. Resolution No. 16-06 states the findings that the Property is eligible for annexation, finds that a "community of interest exists" because the Property is for the construction of public infrastructure to serve a residential development within the Town of Avon, finds that no annexation election is required because the owner of 100% of property is petitioning for annexation and finds that no additional terms or conditions are imposed on the annexation.

PROPOSED MOTION: "I move to approve Resolution No. 16-06 FINDING THAT THE MOUNTAIN STAR WATER TANK SITE PROPERTY IS ELIGIBLE FOR ANNEXATION."

ANNEXATION ORDINANCE: Ordinance No. 16-04 Annexing the Mountain Star Water Tank Site Property is presented for Council consideration. Adoption of an ordinance is the final step of the annexation process. There are no conditions, terms or agreements directly associated with the action to annex this Property. There is a 2016 Capital Projects Implementation Agreement associated with this property for the funding and construction of a water storage tank. In addition, the Town Council is required

to zone any property that is annexed within 90 days of annexation. An ordinance approving the zoning and accompanying Comprehensive Plan amendment is presented as a separate action item.

PROPOSED MOTION: “I move to approve Ordinance No. 16-04 Annexing the Mountain Star Water Storage Tank Site Property on first reading.”

SCHEDULE OF ACTIONS:

Town Council: Resolution Initiating Annexation process (Set Hearing for Mar. 22)	February 9, 2016
Publish Notice of Hearing (4 consecutive weeks)	Feb 16, Feb, 23, Mar 1 and Mar 8
Deadline for Notice of Public Hearing by Planning Commission on Zoning	Feb 19
Send Notice by Registered Mail to BOCC, County Attorney, Special Districts and School (25 days in advance)	Feb 26 (last date)
Planning Commission: Public Hearing - Review of Zoning	March 1
Deadline to Post Notice of Public Hearing on Zoning	March 11
Public Hearing: Resolution to Adopt Finding that Property is Eligible for Annexation Public Hearing: 1 st Reading of Ordinance to Annex Property Public Hearing: 1 st Reading of Ordinance to Zone Property	March 22
Public Hearing: 2 nd Reading of Ordinance to Annex Property Public Hearing: 2 nd Reading of Ordinance to Zone Property	April 12
Record Ordinances and Annexation Maps	May 12

Thank you, Eric

Attachments: Resolution No. 16-06
Ordinance No. 16-04
Annexation Petition and Annexation Map



RESOLUTION NO. 16-06

**FINDING THAT THE MOUNTAIN STAR WATER TANK SITE PROPERTY IS
ELIGIBLE FOR ANNEXATION**

WHEREAS, Upper Eagle River Water Authority, has filed a petition for annexation, and the Avon Town Council has adopted **Resolution No. 2016-02 INITIATING ANNEXATION OF THE MOUNTAIN STAR WATER TANK SITE PROPERTY, FINDING THE PETITION FOR ANNEXATION TO BE IN SUBSTANTIAL COMPLIANCE, AND SETTING A PUBLIC HEARING**; and

WHEREAS, the Town Council of the Town of Avon held a public hearing on March 22, 2016, after providing required notice in accordance with C.R.S. §31-12-108; and,

WHEREAS, the Town Council of the Town of Avon desires to set forth its findings regarding the Petition for Annexation of the Mountain Star Water Tank Site Property in accordance with C.R.S. §31-12-110;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF AVON, the following:

SECTION 1. ELIGIBILITY. The Town Council finds that the requirements of C.R.S. §31-12-104 and §31-12-105 have been met. Specifically, the Town Council finds that the perimeter Mountain Star Water Tank Site Property is one sixth contiguous with the Town of Avon and further finds that a community of interest exists because the property will provide a site for essential water system infrastructure serving the Mountain Star PUD area, a residential development within the Town of Avon.

SECTION 2. NO ELECTION REQUIRED. The Town Council finds that the no election is required because the Upper Eagle River Water Authority is the owner of 100% of the property petitioning for annexation.

SECTION 3. NO ADDITIONAL TERMS OR CONDITIONS. The Avon Town Council finds that no additional terms or conditions are to be imposed on the annexation of the Mountain Star Water Tank Site Property.

ADOPTED March 22, 2016 by the AVON TOWN COUNCIL

By: _____
Jennie Fancher, Mayor

Attest: _____
Debbie Hoppe, Town Clerk



**TOWN OF AVON, COLORADO
ORDINANCE NO. 16-04**

ANNEXING THE MOUNTAIN STAR TANK SITE PROPERTY

WHEREAS, on January 25, 2016 the Upper Eagle River Water Authority, filed with the Town Clerk for the Town of Avon ("Town") the petition for annexation ("Petition") requesting that the Town Council of the Town ("Town Council") commence proceedings to annex to the Town certain unincorporated tract or tracts of land located in Eagle County, Colorado, and described on **Exhibit A: Legal Description of the Mountain Star Tank Site Property** attached hereto and incorporated herein by this reference (the "Annexation Property"); and

WHEREAS, the Town Council, by Resolution Number 16-02, and by Resolution Number 16-06, has determined with regard to the Petition that, pursuant to Section 31-12-110, C.R.S.: (1) the applicable parts of Sections 31-12-104 and 31-12-105, C.R.S., have been met; (2) an election is not required under Sections 31-12-107(2) or 31-12-112, C.R.S.; and (3) no additional terms and conditions are to be imposed on the Petition; and

WHEREAS, annexation proceedings to annex the Annexation Property have not commenced for annexation of all or part of the Annexation Property to another municipality; and

WHEREAS, the Town Council finds that it is in the best interests of the Town to annex the Property to the Town; and

WHEREAS, the Town Council held a public hearings on March 22, 2016 and April 12, 2016, received all evidence and testimony presented with regard to the annexation of the Annexation Property at such public hearings; and at the conclusion of such public hearings the Town Council considered such evidence and testimony so introduced, and by this Ordinance sets forth its findings of fact and conclusions, stated as follows:

THE TOWN COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS:

- 1.** The submission, processing, consideration and approval of the Petition have fully met and complied with all applicable laws and regulations of the State of Colorado and the Town, including, without limitation, Article II, Section 30 of the Colorado constitution and Sections 31-12-101 through 31-12-123, C.R.S.
- 2.** All public hearings concerning whether the Town should annex the Annexation Property have been held and conducted in accordance with all applicable laws and regulations of the State of Colorado and the Town.

3. All notices required for the public hearings at which the Town Council considered the Petition were properly and timely published, posted or mailed in accordance with all applicable laws and regulations of the State of Colorado and the Town.

4. In order to encourage well-ordered development to the Town, it is desirable that the Annexation Property be annexed to the Town.

5. The annexation of the Annexation Property to the Town is in the best interests of the public health, safety and general welfare of the people of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO that:

Section 1. Annexation. The Annexation Property as described on the annexation map and accompanying Petition is hereby annexed into the Town of Avon, Colorado. Specifically, Tracts WT-1 and WT-2 are annexed in series such that WT-1 is annexed first and WT-2 is annexed second, thereby annexing the entire Annexation Property.

Section 2. Executing and Filing Documents. The Mayor and Town Clerk are hereby authorized to execute all necessary documents to complete the annexation of the Annexation Property. As required by statute, the Town shall:

- (a) File one copy of the annexation map with the original of this Ordinance in the office of the Town Clerk for the Town; and
- (b) File for recording three certified copies of this Ordinance and of the map of the area annexed containing a legal description of such area with the Clerk and Recorder of Eagle County, Colorado.

Section 3. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it has passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 4. Effective Date. This Ordinance shall take effect thirty (30) days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 5. Safety Clause. The Town Council hereby finds, determines and declares this Ordinance is promulgated under the general police power of the Town of Avon, that it is

promulgated for the health, safety and welfare of the public and this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING on March 22, 2016 and setting such public hearing for April 12, 2016 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on April 12, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

**PETITION FOR ANNEXATION
UPPER EAGLE REGIONAL WATER AUTHORITY
MOUNTAIN STAR WATER TANK SITE PROPERTY**

TO THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO:

The undersigned ("**Petitioner**"), in accordance with the Municipal Annexation Act of 1965 as set forth in Article 12, Title 31, Colorado Revised Statutes ("**C.R.S.**"), as amended and as in effect on the submission date set forth below ("**Annexation Act**"), and in accordance with **Chapter 7.36 Annexation and Disconnection Procedures** of the Avon Municipal Code, hereby submits this Petition for Annexation ("**Petition**") to the Town Council of the Town of Avon, Colorado ("**Town Council**"), to annex to the Town of Avon ("**Town**") the unincorporated territory located in the County of Eagle, State of Colorado, which property is more particularly described in **Exhibit A: Legal Description of Mountain Star Tank Site Property** attached hereto and incorporated herein by reference ("**Property**").

In support of this Petition, Petitioner alleges that:

1. Annexation of the Property into the Town of Avon is desirable and necessary.
2. The requirements of C.R.S. §31-12-104 and §31-12-105 have been met.
3. Not less than one-sixth (1/6) of the perimeter of the Property is contiguous with the Town's current municipal boundaries.
4. A community of interest exists between the Property and the Town.
5. The Property is integrated with or is capable of being integrated with the Town.
6. The signer of this Petition comprises the landowner of more than fifty percent (50%) of the territory included in the area proposed to be annexed, exclusive of streets and alleys.
7. The signer of this Petition comprises the landowner of one hundred percent (100%) of the territory included in the area proposed to be annexed, exclusive of streets and alleys, as landownership is defined for the purposes of C.R.S. §31-12-107(1)(g).
8. This Petition is accompanied by four copies of an annexation map containing, among other things, the following information:
 - a. A written legal description of the boundaries of the Property;
 - b. A map showing the boundary of the Property;
 - c. Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or lots and blocks;
 - d. Next to the boundary of the Property, a drawing of the contiguous boundary of the City abutting the Property and the contiguous boundary of any other municipality abutting the Property.

9. Upon the annexation of the Property becoming effective, the Property shall become subject to all ordinances, resolutions, rules and regulations of the Town.
10. Except for the terms and conditions of this Petition, which terms and conditions the Petitioner expressly approves and therefore do not constitute an imposition of additional terms and conditions within the meaning of C.R.S. §31-12-107(1)(g), Petitioner requests that no additional terms and conditions be imposed upon annexation of the Property to the Town.

THEREFORE, Petitioner requests that the Town Council of the Town of Avon approve and complete the annexation of the Property pursuant to the provisions of the Municipal Annexation Act of 1965, as amended, and pursuant to Chapter 7.36 of the Avon Municipal Code.

Signature of Land Owner:



Linn Brooks, General Manager
Upper Eagle Regional Water Authority

Date: 1.20.16

**EXHIBIT A: LEGAL DESCRIPTION OF THE
MOUNTAIN STAR WATER TANK SITE PROPERTY**

The legal descriptions for Tracts WT-1 and WT-2, to be serially annexed by the Town of Avon, are as follows:

WT-1

That part of Lot 16, Section 25, Township 4 South, Range 82 West, of the Sixth Principal Meridian, Eagle County, Colorado, according to the Dependent Resurvey conducted 10/5/2012 through 12/10/2012, and accepted 1/31/2013, described as follows:

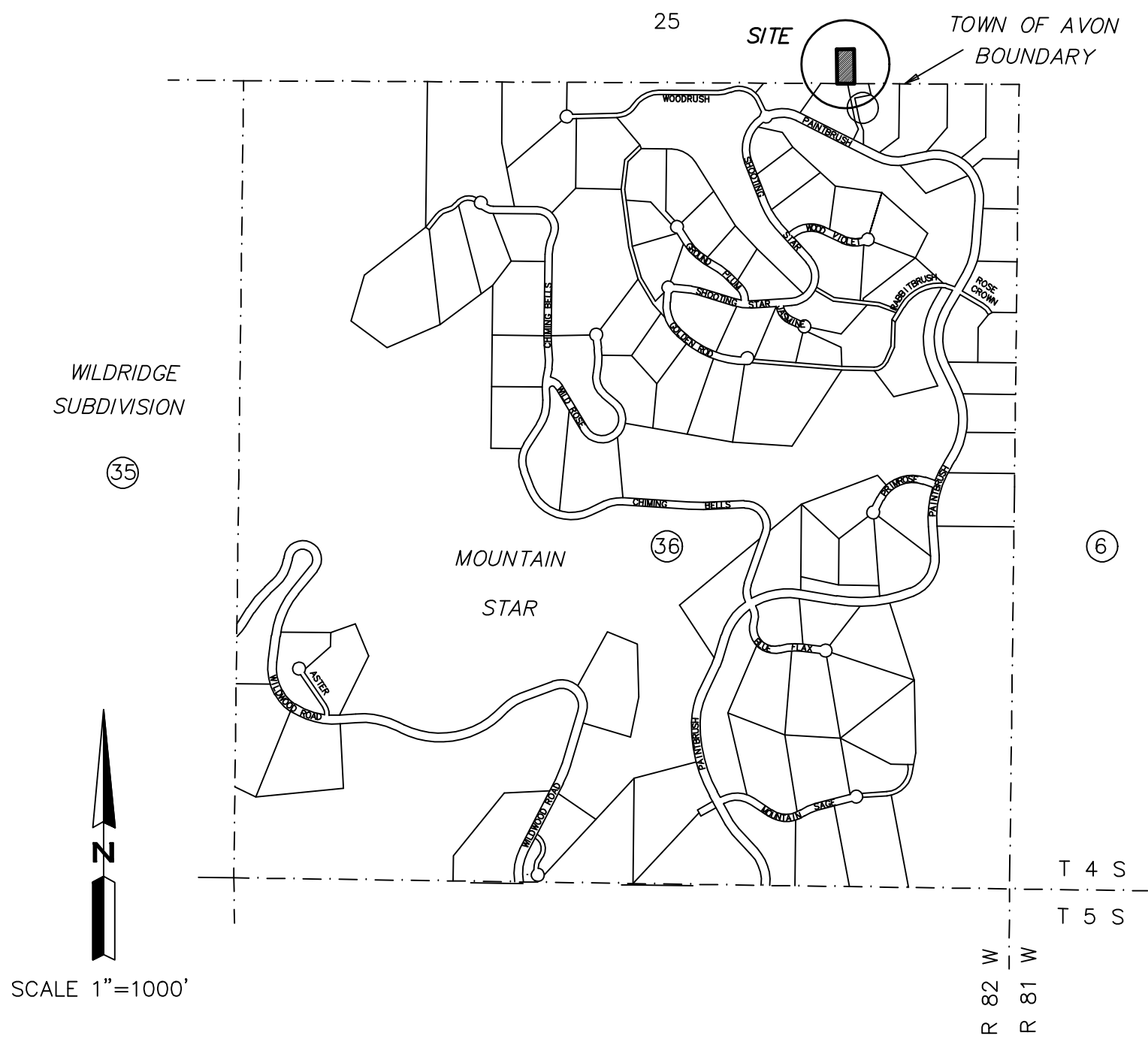
Beginning at the southeast corner of said Lot 16; thence along the southerly line of Lot 16 and the northerly line of the Amended Final Plat of Mountain Star recorded at Reception Number 521519 S89°36'36"W 120.00 feet; thence departing said line N00°21'12"W 240.00 feet; thence N89°36'36"E 120.00 feet to the easterly line of said Lot 16; thence along said easterly line S00°21'12"E 240.00 feet to the point of beginning, containing 0.6612 acres, more or less.

WT-2

That part of Lot 16, Section 25, Township 4 South, Range 82 West, of the Sixth Principal Meridian, Eagle County, Colorado, according to the Dependent Resurvey conducted 10/5/2012 through 12/10/2012, and accepted 1/31/2013, described as follows:

Beginning at a point whence the southeast corner of said Lot 16 bears N89°36'36"E 120.00 feet; thence along the southerly line of Lot 16 and the northerly line of the Amended Final Plat of Mountain Star recorded at Reception Number 521519 S89°36'36"W 82.16 feet to the southwest corner of Lot 16; thence departing said line and along the westerly line of Lot 16 N00°21'12"W 1077.97 feet to the northwest corner of Lot 16; thence along the north line of Lot 16 S89°59'24"E 202.16 feet to the northeast corner of Lot 16; thence along the easterly line of Lot 16 S00°21'12"E 836.53 feet to the northeast corner of Tract WT-1; thence along the north line of said Tract WT-1 S89°36'36"W 120.00 feet to the northwest corner of Tract WT-1; thence along the west line of Tract WT-1 S00°21'12"E 240.00 feet to the point of beginning, containing 4.338 acres, more or less.

ANNEXATION PLAT
TRACT WT1
PART OF LOT 16, SECTION 25
TOWNSHIP 4 SOUTH, RANGE 82 WEST,
6TH PRINCIPAL MERIDIAN, EAGLE COUNTY, COLORADO



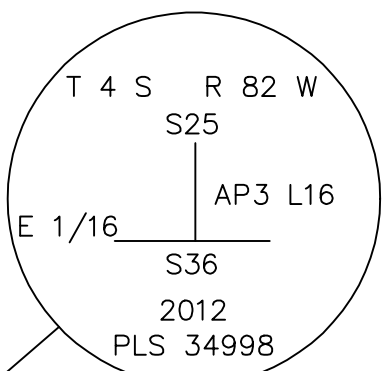
NOTES:

- 1) Date of survey: 9/25/2015
- 2) Surveyor has made no investigation or independent search for amended plats, easements of record (other than platted), encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.
- 3) Notice: according to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect, in no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.
- 4) Bearings for the portion of the property in this annexation lying northerly boundary of The Amended Final Plat Mountain Star are based on the line connecting existing found monuments for the southeast, (AP 4) and southwest, (AP 3) Lot 16, Section 25, T4S, R82W, 6th P.M. being S89°36'36"W, (see drawing).
- 4) (A) Bearings shown were rotated 0° 00' 30" from the BLM Plat accepted 1/31/2013 to match the north boundary line of the Amended Final Plat Mountain Star recorded at Reception Number 521519.
- 5) The purpose of the Annexation Plat is to describe the parcel being included within the corporate limits of the Town of Avon. This drawing in no way represents an actual field survey of the parcel described for annexation. This plat should not be used to locate or establish real property corners for any of the subject parcel.
- 6) Length of parcel contiguous with existing
Town of Avon Boundary - 120.00 feet
Perimeter of this annexation parcel - 720.00 feet
- 7) The U.S. Survey Foot is the lineal unit used for the dimensions on this plat.

PARCEL DESCRIPTION:

That part of Lot 16, Section 25, Township 4 South, Range 82 West, of the Sixth Principal Meridian, Eagle County, Colorado, according to the Dependent Resurvey conducted 10/5/2012 through 12/10/2012, and accepted 1/31/2013 described as follows:
Beginning at the southeast corner of said Lot 16; thence along the southerly line of Lot 16 and the northerly line of The Amended Final Plat Mountain Star recorded at Reception Number 521519 S89°36'36"W 120.00 feet; thence departing said line N00°21'12"W 240.00 feet; thence N89°36'36"E 120.00 feet to the easterly line of said Lot 16; thence along said easterly ine S0°21'12"E 240.00 feet to the point of beginning, containing 0.6612 acres, more or less.

LOT 37
MOUNTAIN STAR
(RN 521519)

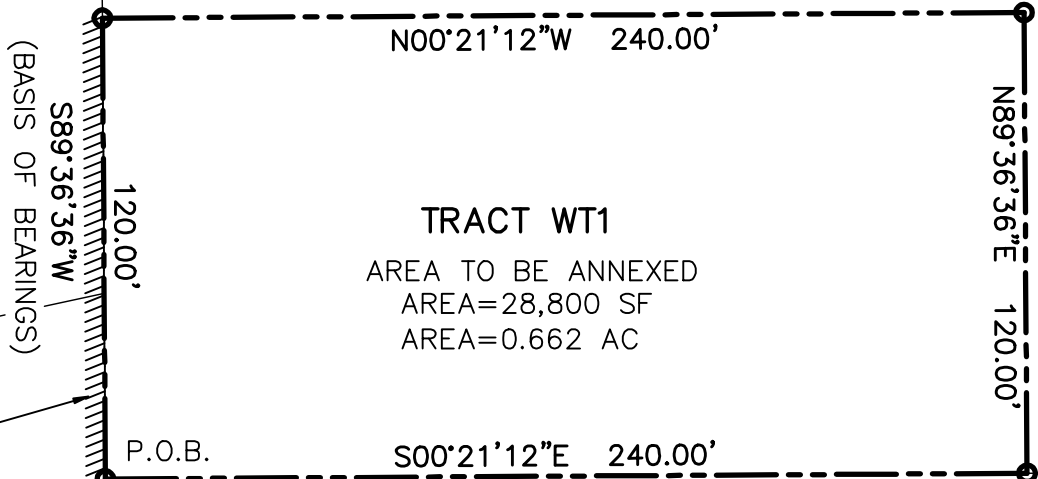


FND. 3 1/2" ALUM. CAP MARKED

LOT 36
MOUNTAIN STAR
(RN 521519)

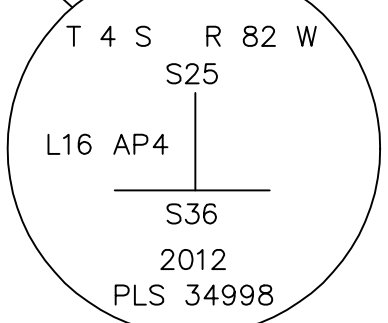
LOT 16, SECTION 25
T4S, R82W, 6TH P.M. EAGLE COUNTY, COLORADO
PER DEPENDENT RESURVEY DATED
10/5/2012 - 12/10/2012

UNPLATTED
WHITE RIVER NATIONAL
FOREST

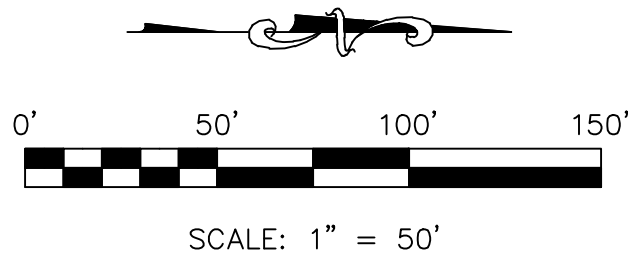


FND. 3 1/2" ALUM. CAP MARKED

TRACT M
MOUNTAIN STAR
(RN 521519)



LOT 35
MOUNTAIN STAR
(RN 521519)



NE COR. SECTION 36
T4S, R82W, 6TH P.M.

CERTIFICATION OF TOWN COUNCIL

The Town Council of the Town of Avon does hereby certify that, having fully complied with the statute of the State of Colorado relating to annexation upon motion made, seconded, and duly adopted Ordinance No. _____ on this _____ day of _____, 2015 formally annexing that parcel described herein and thereby changing the city limits of the Town of Avon.

Mayor, Town of Avon

Clerk

Attest: _____

SURVEYOR'S CERTIFICATE

I, Michael J. Post, do hereby certify that I am a Registered Professional Land Surveyor, in the State of Colorado, that this map was made under my direct supervision, the information shown hereon, is correct to the best of my knowledge and belief and that more than one sixth of the boundary is contiguous with the existing Town of Avon Boundary.

Michael J. Post
Colorado PLS No. 30116

CLERK AND RECORDER'S CERTIFICATE

This plat was filed for record in the Office of the Clerk and Recorder at _____ o'clock ____M, _____, 2015 and is duly recorded at Reception No. _____.

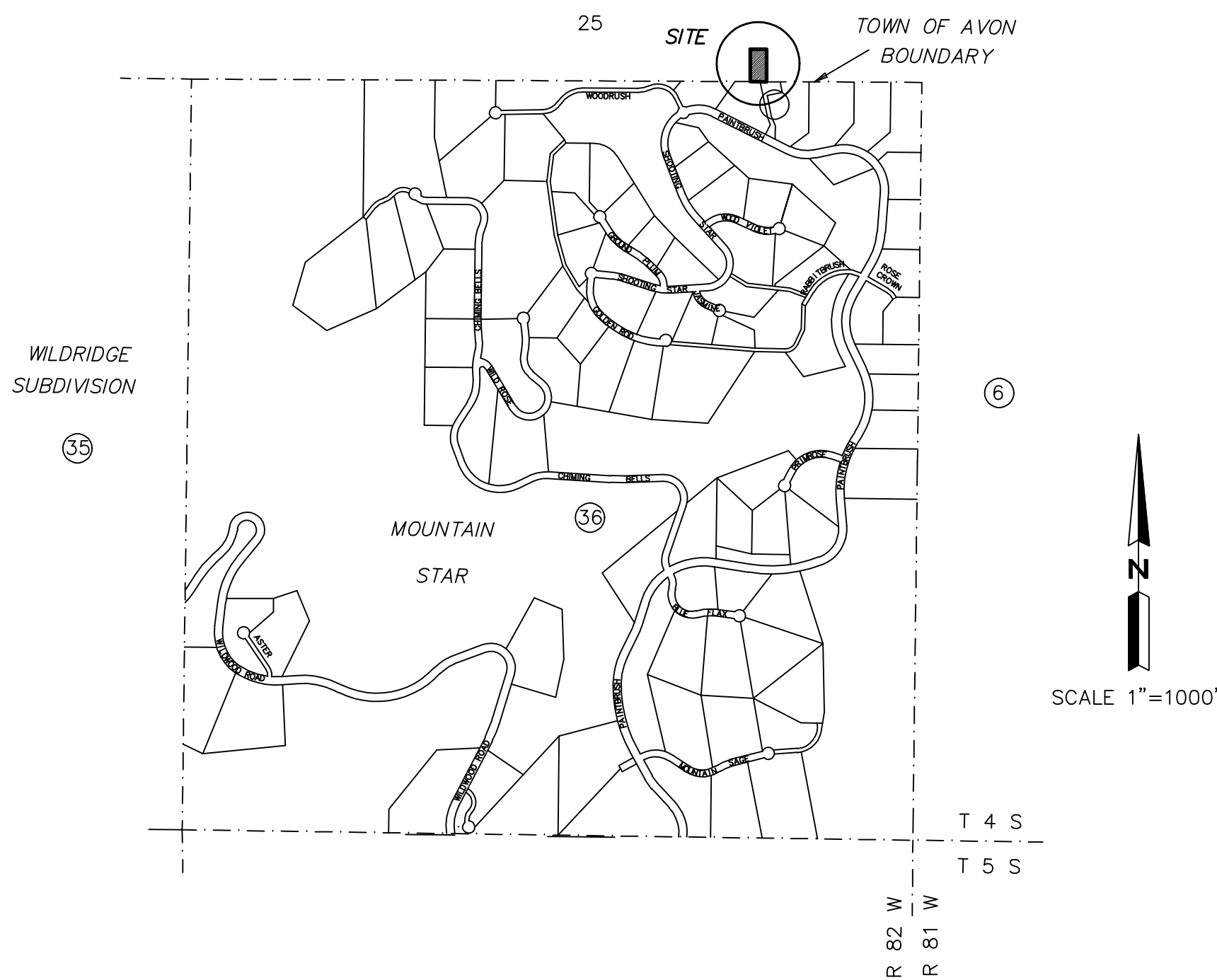
Clerk and Recorder

By: _____
Deputy

EAGLE VALLEY SURVEYING, INC.

41199 HIGHWAY 6 & 24, EAGLE-VALE
P.O. BOX 1230
EDWARDS, CO. 81632
(970)949-1406

ANNEXATION PLAT
TRACT WT-2
PART OF LOT 16, SECTION 25
TOWNSHIP 4 SOUTH, RANGE 82 WEST,
6TH PRINCIPAL MERIDIAN, EAGLE COUNTY, COLORADO

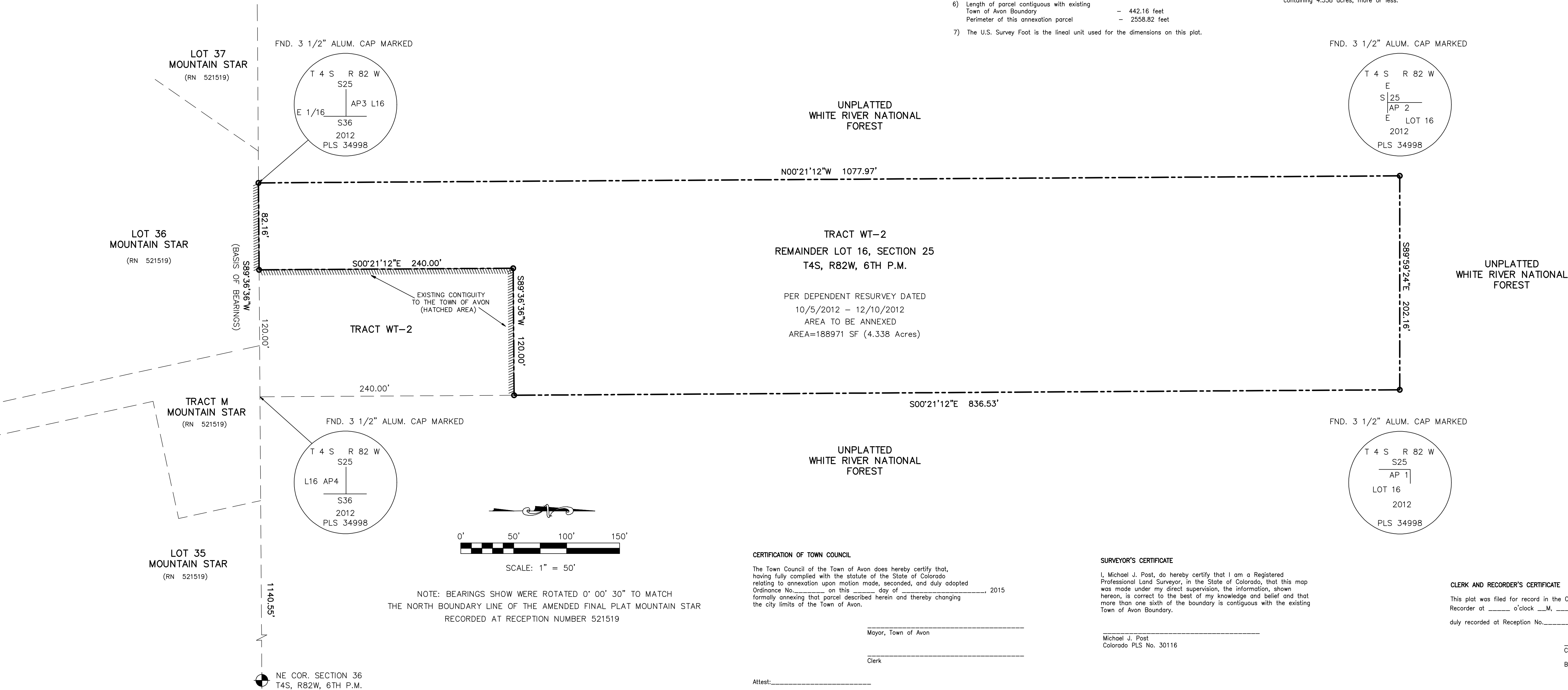


NOTES:

- 1) Date of survey: 9/25/2015
- 2) Surveyor has made no investigation or independent search for amended plats, easements of record (other than platted), encumbrances, restrictive covenants, ownership title evidence, or any other facts that on accurate and current title search may disclose.
- 3) Notice: according to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect, in no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.
- 4) Bearings for the portion of the property in this annexation lying northerly boundary of The Amended Final Plat Mountain Star are based on the line connecting existing found monuments for the southeast, (AP 4) and southwest, (AP 3) Lot 16, Section 25, T4S, R82W, 6th P.M. being S89°36'36"W, (see drawing).
- 4) (A) Bearings shown were rotated 0° 00' 30" from the BLM Plat accepted 1/31/2013 to match the north boundary line of the Amended Final Plat Mountain Star recorded at Reception Number 521519.
- 5) The purpose of the Annexation Plat is to describe the parcel being included within the corporate limits of the Town of Avon. This drawing in no way represents an actual field survey of the parcel described for annexation. This plat should not be used to locate or establish real property corners for any of the subject parcel.
- 6) Length of parcel contiguous with existing
Town of Avon Boundary - 442.16 feet
Perimeter of this annexation parcel - 2558.82 feet
- 7) The U.S. Survey Foot is the lineal unit used for the dimensions on this plat.

PARCEL DESCRIPTION:

That part of Lot 16, Section 25, Township 4 South, Range 82 West, of the Sixth Principal Meridian, Eagle County, Colorado, according to the Dependent Resurvey conducted 10/5/2012 - 12/10/2012, described as follows:
Beginning at a point whence the southeast corner of said Lot 16 bears N89°36'36"E 120.00 feet; thence along the southerly line of Lot 16 and the northerly line of The Amended Final Plat of Mountain Star recorded at Reception Number 521519 S89°36'36"W 82.16 feet to the southwest corner of Lot 16; thence departing said line and along the westerly line of Lot 16 N00°21'12"W 1077.97 feet to the northwest corner of Lot 16; thence along the north line of Lot 16 S89°59'24"E 202.16 feet to the northeast corner of Lot 16; thence along the easterly line of Lot 16 S0°21'12"E 836.53 feet to the northeast corner of Tract WT-1; thence along the north line of said Tract WT-1 S89°36'36"W 120.00 feet to the northwest corner of Tract WT-1; thence along the west line of Tract WT-1 S00°21'12"E 240.00 feet to the point of beginning, containing 4.338 acres, more or less.



EAGLE VALLEY SURVEYING, INC.
41199 HIGHWAY 6 & 24, EAGLE-VALE
P.O. BOX 1230
EDWARDS, CO. 81632
(970)949-1406

CERTIFICATION OF TOWN COUNCIL

The Town Council of the Town of Avon does hereby certify that, having fully complied with the statute of the State of Colorado relating to annexation upon motion made, seconded, and duly adopted Ordinance No. _____ on this _____ day of _____, 2015 formally annexing that parcel described herein and thereby changing the city limits of the Town of Avon.

Mayor, Town of Avon

Clerk

Attest: _____

SURVEYOR'S CERTIFICATE

I, Michael J. Post, do hereby certify that I am a Registered Professional Land Surveyor, in the State of Colorado, that this map was made under my direct supervision, the information shown hereon, is correct to the best of my knowledge and belief and that more than one sixth of the boundary is contiguous with the existing Town of Avon Boundary.

Michael J. Post
Colorado PLS No. 30116

CLERK AND RECORDER'S CERTIFICATE

This plat was filed for record in the Office of the Clerk and Recorder at _____ o'clock _____ M., _____, 2015 and is duly recorded at Reception No. _____.

Clerk and Recorder

By: _____
Deputy

TO: Honorable Mayor Jennie Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Mountain Star Water Storage Tank Site Comprehensive Plan Amendment and Zoning
DATE: March 18, 2016

SUMMARY: The Mountain Star Water Storage Tank property (5 acres) petitioned for annexation into the Town of Avon. In accordance with the Municipal Annexation Act of 1965 the Town is required to zone property annexed into the Town boundaries. The intended development of the property is for a water storage tank serving the Mountain Star PUD residential development. Attached to this memorandum are the application materials and staff's report on the proposed zoning and accompanying comprehensive plan amendment.

PROPOSED MOTION: I move to approve Ordinance No. 16-05 APPROVING AMENDMENTS TO THE TOWN OF AVON COMPREHENSIVE PLAN AND REZONING APPLICATION FOR THE MOUNTAIN STAR TANK SITE PROPERTY on first reading."

Thank you, Eric

Attachments: Ordinance No. 16-05
Staff Report
Avon Planning Commission Resolution No. 16-02
Comprehensive Plan Application
Zoning Application



**TOWN OF AVON, COLORADO
ORDINANCE 16-05**

**APPROVING AMENDMENTS TO THE TOWN OF AVON
COMPREHENSIVE PLAN AND REZONING APPLICATION
FOR THE MOUNTAIN STAR TANK SITE PROPERTY**

WHEREAS, the Upper Eagle River Water Authority submitted a petition for Annexation for properties ("Mountain Star Water Tank Site Property") related to the construction of a water tank;

WHEREAS, the Avon Town Council approved Resolution 2016-02, finding that the Petition for Annexation and annexation map for the Mountain Star Water Tank Site Property is in compliance with statutory requirements;

WHEREAS, the Upper Eagle River Water Authority submitted a Rezoning application in accordance with AMC §7.16.050(a), *Rezoning Review Procedures*, to zone the Mountain Star Water Tank Site Property with the Public Facilities (PF) zone district;

WHEREAS, Avon Town Staff submitted a Comprehensive Plan Amendment application in accordance with AMC §7.16.030, *Comprehensive Plan Amendment*, updating maps to reflect the inclusion and future land use of the Mountain Star Water Tank Site Property;

WHEREAS, the Avon Planning & Zoning Commission held a public hearing on March 14, 2016, after publishing and posting notice as required by law, considered all comments, testimony, evidence and staff reports provided by the Town staff, considered such information prior to formulating a recommendation;

WHEREAS, after conducting the noticed Public Hearing, PZC approved Resolution 16-02 and made the required findings to recommend approval of the applications to the Town Council;

WHEREAS, the Town Council of the Town of Avon held public hearings on March 22, 2016, and April 12, 2016 after posting notice as required by law, considered all comments, testimony, evidence and staff reports provided by the Town staff prior to taking any action on the Application;

WHEREAS, pursuant to AMC §7.16.030(c), *Review Criteria*, and AMC §7.16.050(c), *Review Criteria*, the Town Council has considered the applicable review criteria for a Comprehensive Plan Amendment and Rezoning of the Mountain Star Water Tank Site Property

and found the Application in compliance with the review criteria, and specifically finds that the amendments will promote the health, safety and general welfare of the Avon community; and,

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply with state law, the Avon home rule charter and the Avon Development Code by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies the proposed zoning or other matters in this Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, the following:

Section 1. **Findings.** The Town Council hereby makes the following findings:

- (a) The Comprehensive Plan Amendment and Rezoning applications were reviewed in accordance with AMC §7.16.020, *General procedures and Requirements*.
- (b) The Town Council hereby adopts the findings in the March 14, 2016 Staff Report – Rezoning & Comprehensive Plan Amendment.
- (c) The Town Council hereby adopts the findings in the Planning and Zoning Commission Resolution 16-02 Recommending to the Avon Town Council Approval of Case #REZ16001 and Case #CPA16002, Applications to Rezone the Mountain Star Tank Site Property Public Facilities (PF) and Amend the Comprehensive Plan.
- (d) The Applications were reviewed in accordance with AMC §7.16.030, *Comprehensive Plan Amendment*, and AMC §7.16.050, *Rezonings*, and found to be in substantial compliance with the review criteria.
- (e) The Applications were reviewed concurrently, as permitted by AMC §7.16.020(b)(2), *Concurrent Review*.
- (f) Updates to the Avon Comprehensive Plan ensure that the Rezoning application is “consistent with the Avon Comprehensive Plan,” as required by AMC §7.16.050(c)(2).
- (g) Adjustments to the Official Zoning Map are necessary in order to change the classification of the Mountain Star Water Tank Site Property to Public Facilities (PF) for its intended future use.
- (h) The Mountain Star Water Tank Site Property is suitable for water infrastructure and associated uses, and is not likely to result in significant adverse impacts upon other property in the vicinity.

- (i) Approval of the applications will promote the purposes stated in the Development Code by ensuring the adequate provision of water services and maintaining current and future fire flow demands.

Section 2. Comprehensive Plan Amendments. The Town Council hereby approves amendments to the Town of Avon Comprehensive Plan to amend the Comprehensive Plan Maps to integrate the Mountain Star Water Tank Site Property on the land use maps.

Section 3. Designation of Zone District, Amendment to Official Zoning Map. The Town Council hereby designates the Mountain Star Water Tank Site Property for inclusion in the Public Facilities (PF) zone district and amends the Official Town Zoning Map to reflect this designation.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. Effective Date. This Ordinance shall take effect thirty days after final adoption in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 7. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

[EXECUTION PAGE FOLLOWS]

INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING on March 22, 2016 and setting such public hearing for April 12, 2016 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on April 12, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk


APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

Staff Report – Rezoning & Comprehensive Plan Amendment

March 14, 2016 Planning & Zoning Commission Meeting



Project type	Case #REZ16001 / #CPA16002
Legal description	Lot 16, Section 25, Township 4S, Range 82W
Current Zoning	N/A
Proposed Zoning	Public Facilities (PF)
Address	1875 Paintbrush
Prepared By	Matt Pielsticker, AICP 

INTRODUCTION

The Applicant, The Upper Eagle River Water Authority, has submitted a Rezoning application for a property set to be annexed by the Avon Town Council in April. The request would zone the property Public Facilities (PF) in order to accommodate the construction of a water tank this summer. Town Staff is processing a Comprehensive Plan Amendment application concurrently to acknowledge the location and use of the property on the existing and future land use maps in the Avon Comprehensive Plan.

PROCESS

The Planning and Zoning Commission (“PZC”) will review the Application and conduct a public hearing on March 14, 2016. After conducting a public hearing, PZC will forward a recommendation to Town Council. Subsequently, final action is taken on the applications by Town Council after conducting public hearings and either approval by Ordinance.



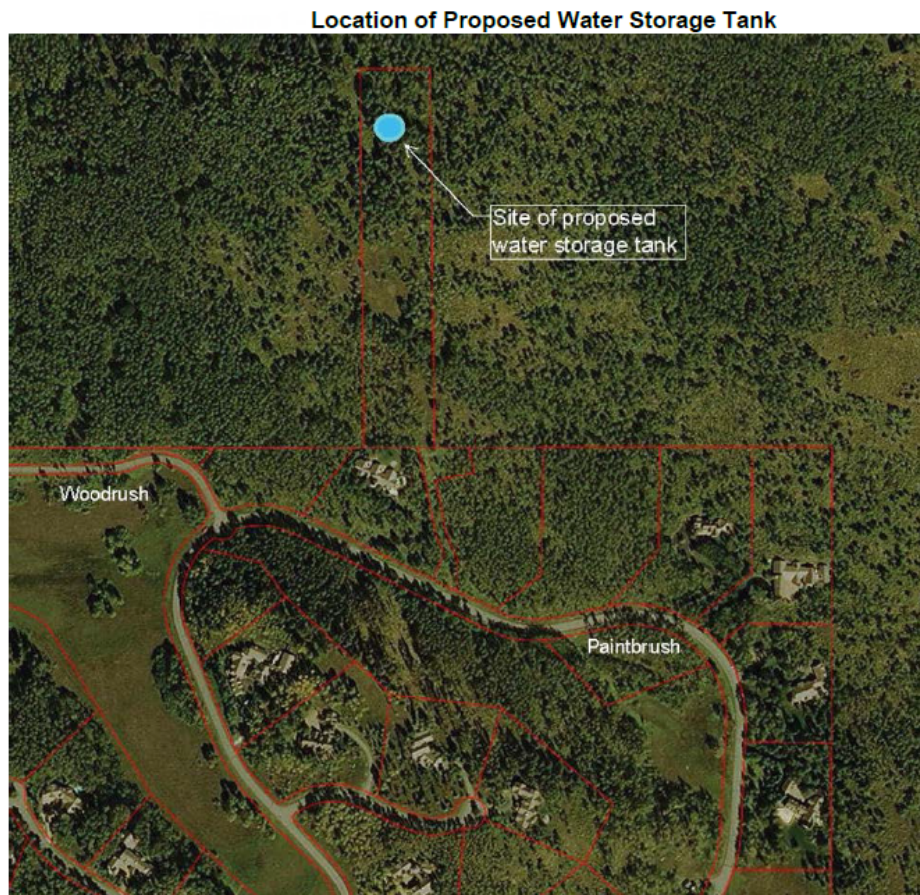
PROPERTY BACKGROUND

The site is currently located on upland land in Eagle County. A Federal Patent for the land was issued to the water authority as a result of the Eagle Valley Land Exchange. The 5 acre site will be annexed into the Town with a separate Ordinance. Access to the site is via an existing access road that extends from the Paintbrush right-of-way through Mountain Star Tract M, both of which are owned by the Mountain Star Homeowner’s Association. An existing access and utility easement exists on Tract M.

PROPERTY DESCRIPTION

The property is composed of two (2) parcels, totaling 5 acres, and contains forested property and an old access road connecting Paintbrush Road with a trail into the USFS lands beyond.

The Property is bounded on the south by Lot 36 with a single family home approximately 1000' from the away from the tank site. To the west, north, and east the site is bordered by USFS property and open space.



REZONING CRITERIA:

The review criteria for zoning amendments are governed by AMC §7.16.050, *Rezoning*s. The PZC shall use the criteria below as the basis for a recommendation on the Rezoning application. Staff responses to each review criteria are provided.

(1) Evidence of substantial compliance with the purpose of the Development Code;

Staff Response: The Application is substantially compliant with the purpose statements of the Development Code by providing for the orderly, efficient use of the Property, while at the same time conserving the value of the investments of owners of property in Town. The Application promotes the health, safety, and welfare of the Avon community by designating the Property with a zone district that will accommodate a water storage facility. The water tank will ensure a safer community by ensuring adequate fire flows in the event of an incident. Additionally, the construction of the tank will “Minimize the risk of damage and injury to people, structures and public infrastructure” as stated in the Purpose provisions of the code.

The entire Purpose statement section from the Development Code (Section 7.04.030 - Purposes) is outlined for reference:

- (a) Divide the Town into zones, restricting and requiring therein the location, erection, construction, reconstruction, alteration and use of buildings, structures and land for trade, industry, residence and other specified uses; regulate the intensity of the use of lot areas; regulate and determine the area of open spaces surrounding such buildings; establish building lines and locations of buildings designed for specified industrial, commercial, residential and other uses within such areas; establish standards to which buildings or structures shall conform; establish standards for use of areas adjoining such buildings or structures;
- (b) Implement the goals and policies of the Avon Comprehensive Plan and other applicable planning documents of the Town;
- (c) Comply with the purposes stated in state and federal regulations which authorize the regulations in this Development Code;
- (d) Avoid undue traffic congestion and degradation of the level of service provided by streets and roadways, promote effective and economical mass transportation and enhance effective, attractive and economical pedestrian opportunities;
- (e) Promote adequate light, air, landscaping and open space and avoid undue concentration or sprawl of population;
- (f) Provide a planned and orderly use of land, protection of the environment and preservation of viability, all to conserve the value of the investments of the people of the Avon community and encourage a high quality of life and the most appropriate use of land throughout the municipality;
- (g) Prevent the inefficient use of land; avoid increased demands on public services and facilities which exceed capacity or degrade the level of service for existing residents; provide for phased development of government services and facilities which maximizes efficiency and optimizes costs to taxpayers and users; and promote sufficient, economical and high-quality provision of all public services and public facilities, including but not limited to water, sewage, schools, libraries, police, parks, recreation, open space and medical facilities;
- (h) Minimize the risk of damage and injury to people, structures and public infrastructure created by wild fire, avalanche, unstable slopes, rock fall, mudslides, flood danger and other natural hazards;
- (i) Achieve or exceed federal clean air standards;
- (j) Sustain water sources by maintaining the natural watershed, preventing accelerated erosion, reducing runoff and consequent sedimentation, eliminating pollutants introduced directly into streams and enhancing public access to recreational water sources;
- (k) Maintain the natural scenic beauty of the Eagle River Valley in order to preserve areas of historical and archaeological importance, provide for adequate open spaces, preserve scenic views, provide recreational opportunities, sustain the tourist-based economy and preserve property values;
- (l) Promote architectural design which is compatible, functional, practical and complimentary to Avon's sub-alpine environment;

(m) Achieve innovation and advancement in design of the built environment to improve efficiency, reduce energy consumption, reduce emission of pollutants, reduce consumption of non-renewable natural resources and attain sustainability;

(n) Achieve a diverse range of attainable housing which meets the housing needs created by jobs in the Town, provides a range of housing types and price points to serve a complete range of life stages and promotes a balanced, diverse and stable full time residential community which is balanced with the visitor economy;

(o) Promote quality real estate investments which conserve property values by disclosing risks, taxes and fees; by incorporating practical and comprehensible legal arrangements; and by promoting accuracy in investment expectations; and

(p) Promote the health, safety and welfare of the Avon community.

(2) Consistency with the Avon Comprehensive Plan;

Staff Response: With the corresponding Avon Comprehensive Plan Amendment, the Application is consistent with the plan and recommendations related to the provision of public services including water.

(3) Physical suitability of the land for the proposed development or subdivision;

Staff Response: The Property is suitable for water storage and a small access roadway. The elevation of the property is at 9,200 feet which is adequate to serve the gravity flow tank. Vegetation on the property consists of aspen and various native grasses with some open meadows.

(4) Compatibility with surrounding land uses;

Staff Response: The area surrounding the parcel is mostly native forest, with single-family home construction to the south. Once the facility is operational, there will be minimal noise from maintenance vehicles monitoring the site on a routine basis. Long term Impacts to wildlife are minimal as documented in the Land Exchange environmental assessment documentation.

(5) Whether the proposed rezoning is justified by changed or changing conditions in the character of the area proposed to be rezoned

Staff Response: The rezoning is justified based on increased water demand in the Mountain Star subdivision to maintain adequate fire flows.

(6) Whether there are adequate facilities available to serve development for the type and scope suggested by the proposed zone compared to the existing zoning, while maintaining adequate levels of service to existing development;

Staff Response: The Property is served through an access easement from a privately owned and maintained roadway.

(7) Whether the rezoning is consistent with the stated purpose of the proposed zoning district(s);

Staff Response: The PF zone district is well suited for construction of a water tank and leaving the property in relatively natural state.

(8) That, compared to the existing zoning, the rezoning is not likely to result in adverse impacts upon the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation, or such impacts will be substantially mitigated;

Staff Response: The property currently has no zoning designation. All of the impacts associated with the construction and on-going maintenance of a water tank were evaluated with biological and wildlife studies. For example, to mitigate impacts to wildlife, construction will only be permitted between April 15 and December 15 for deer and elk range. No adverse impacts are expected, and any minor impacts will be mitigated.

(9) That, compared to the existing zoning, the rezoning is not likely to result in significant adverse impacts upon other property in the vicinity of the subject tract;

Staff Response: Temporary noise during construction will have some impacts to neighboring properties; however, BMPs will be utilized to limit impacts with construction limited from 7am to 6pm Monday through Saturday. Once the tank is constructed there will be very few impacts to other properties in the vicinity. The location of the tank is approximately 175 higher than Paintbrush road and will not be visible.

(10) For rezoning within an existing PUD, consistency with the relevant PUD Master Plan as reflected in the approval of the applicable PUD; and,

Staff Response: The Property is not located in the Mountain Star PUD and this is not applicable.

(11) Adequate mitigation is required for zoning amendment applications which result in greater intensity of land use or increased demands on public facilities and infrastructure.

Staff Response: The zoning amendment will result in minimal impacts to public facilities and infrastructure.

COMPREHENSIVE PLAN AMENDMENT CRITERIA:

The review procedures for a Comprehensive Plan Amendment mimic those of a Rezoning application and therefore the two applications are being reviewed concurrently. The Avon Development Code allows concurrent review pursuant to AMC §7.16.020(b)(2), *Concurrent Review*. According to the AMC §7.16.030(e), PZC shall consider the following criteria in formulating a recommendation to Council:

(1) The surrounding area is compatible with the land use proposed in the plan amendment or the proposed land use provides an essential public benefit and other locations are not feasible or practical;

Staff Response: The land use of the amendment is consistent with existing land uses in the vicinity. Construction of a water tank provides an essential public benefit. The location of this Property is strategic based on elevation and location proximate to the residential lots it will serve.

(2) Transportation services and infrastructure have adequate current capacity, or planned capacity, to serve potential traffic demands of the land use proposed in the plan amendment;

Staff Response: Several alternatives were considered for this water tank, from 235,000 to 5000,000 gallons. The capacity was set to 270,000 gallons, as recommended by an independent engineering study.

(3) Public services and facilities have adequate current capacity, or planned capacity, to serve the land use proposed in the plan amendment;

Staff Response: This facility will serve existing and future demands of the Mountain Star PUD. The plan amendment does not increase development potential in the area.

(4) The proposed land use in the plan amendment will result in a better location or form of development for the Town, even if the current plan designation is still considered appropriate;

Staff Response: The existing water tank on Tract M of Mountain Star will be removed and decommissioned with the construction of this upgraded tank. The location of the tank, approximately 1000' above the existing residential construction, is appropriate.

(5) Strict adherence to the current plan would result in a situation neither intended nor in keeping with other key elements and policies of the plan;

Staff Response: The current Avon Comprehensive Plan does not contemplate the land exchange parcel where the tank will be located; therefore the maps are being updated to show the boundaries of the parcel and open space designation given how the property is intended to be developed.

(6) The proposed plan amendment will promote the purposes stated in this Development Code; and,

Staff Response: As stated above, the Purposes stated in the Development Code are achieved with the siting and development of the property for a water tank.

(7) The proposed plan amendment will promote the health, safety or welfare of the Avon Community and will be consistent with the general goals and policies of the Avon Comprehensive Plan.

Staff Response: The plan amendment will ensure that the Comprehensive Plan is consistent with the zoning application to accommodate the construction of the water

tank. The health, safety, and welfare of the Mountain Star community will be enhanced with a safe, appropriately sized water tank structure.

RECOMMENDATION

Approval

RECOMMENDED MOTION:

“I move to Approve Resolution 16-02, recommending that the Avon Town Council approve Case #REZ16001 and Case #CPA16002, applications to rezone the Mountain Star Water Tank Site Property to the Public Facilities (PF) Zone District and amend the Avon Comprehensive Plan to integrate the Mountain Star Water Tank Site Property on land use maps.”

ATTACHMENTS:

Resolution 16-02

Rezoning Application

Comprehensive Plan Exhibits



**TOWN OF AVON, COLORADO
PLANNING AND ZONING COMMISSION RESOLUTION 16-02**

**A RESOLUTION RECOMMENDING TO THE AVON TOWN COUNCIL APPROVAL OF CASE #REZ16001
and CASE #CPA16002, APPLICATIONS TO REZONE THE MOUNTAIN STAR TANK SITE PROPERTY
PUBLIC FACILITIES (PF) AND AMEND THE COMPREHENSIVE PLAN**

WHEREAS, the Upper Eagle River Water Authority submitted an application to zone the Mountain Star Tank Site Property Public Facilities (PF) zone district, and Town Staff has processed an application to amend the Comprehensive Plan (collectively “the Applications”) to integrate the Mountain Star Water Tank Site Property on land use maps; *and*

WHEREAS, the Avon Planning and Zoning Commission held a Public Hearing on March 14, 2016, where public comments were considered; *and*

WHEREAS, the Planning and Zoning Commission makes the following findings with respect to the Applications:

1. The Applications are desirable to respond to changed conditions in the Mountain Star Subdivision.
2. The Applications were reviewed in accordance with AMC §7.16.030 *Comprehensive Plan Amendment*, and AMC §7.16.050, *Rezoning*s, and found to be in substantial compliance with the review criteria as outlined in the staff report dated March 14, 2015 by Matt Pielsticker.
3. The Applications were reviewed concurrently, as permitted by AMC §7.16.020(b)(2), *Concurrent Review*.
4. The Applications promote the health, safety, and welfare of the Avon community by providing a site to meet current and future fire flow storage requirements for the 88 single-family residential lots in the Mountain Star subdivision.
5. The Application is substantially compliant with the purpose statements of the Development Code by minimizing “*the risk of damage and injury to people, structures and public infrastructure*” as stated in the Purpose provisions of the code.

NOW THEREFORE, BE IT RESOLVED, that the Planning and Zoning Commission hereby recommends that the Town Council of the Town of Avon Approve the Applications as submitted.

**ACCEPTED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, 2016
AVON PLANNING AND ZONING COMMISSION**

SIGNED:

Jim Clancy, Chairperson



**UPPER EAGLE REGIONAL
WATER AUTHORITY**

GOVERNED BY:

The Metropolitan
Districts of:
Arrowhead
Beaver Creek
Berry Creek
EagleVail
Edwards

The Town of Avon

January 25, 2016

Debbie Hoppe, Town Clerk
Town of Avon
1 Lake Street
Avon, CO 81620

Dear Debbie,

I have enclosed separate Annexation Plats for Tract WT-1 and WT-2, together containing 5.00 acres, and, on behalf of the Upper Eagle Regional Water Authority ("Authority"), I hereby request serial annexation of both Tracts to the Town of Avon. I have also enclosed the executed Petition for Annexation from the Authority.

The Authority acquired Lot 16, Section 25, Township 4 South, Range 82 West, 6th Principal Meridian, Eagle County, Colorado by U.S. Patent in 2013, Reception No. 201309275, from the United States of America in the Eagle County Land Exchange for the specific purpose of constructing a water storage tank above the Mountain Star Subdivision in the Town of Avon. In order to complete the permitting process for this new tank, it is appropriate that this property first be annexed to the Town. I request that this property be zoned PF – Public Facilities to be consistent with the proposed use of the property. I also request that the Town waive any fees for review of this Petition for Annexation as it is being submitted by another governmental entity in which the Town is a Contracting Party.

The Authority plans to begin construction of this water storage tank in April 2016. I therefore request expedited consideration and approval of this Petition for Annexation so that this important project can proceed to completion as soon as possible.

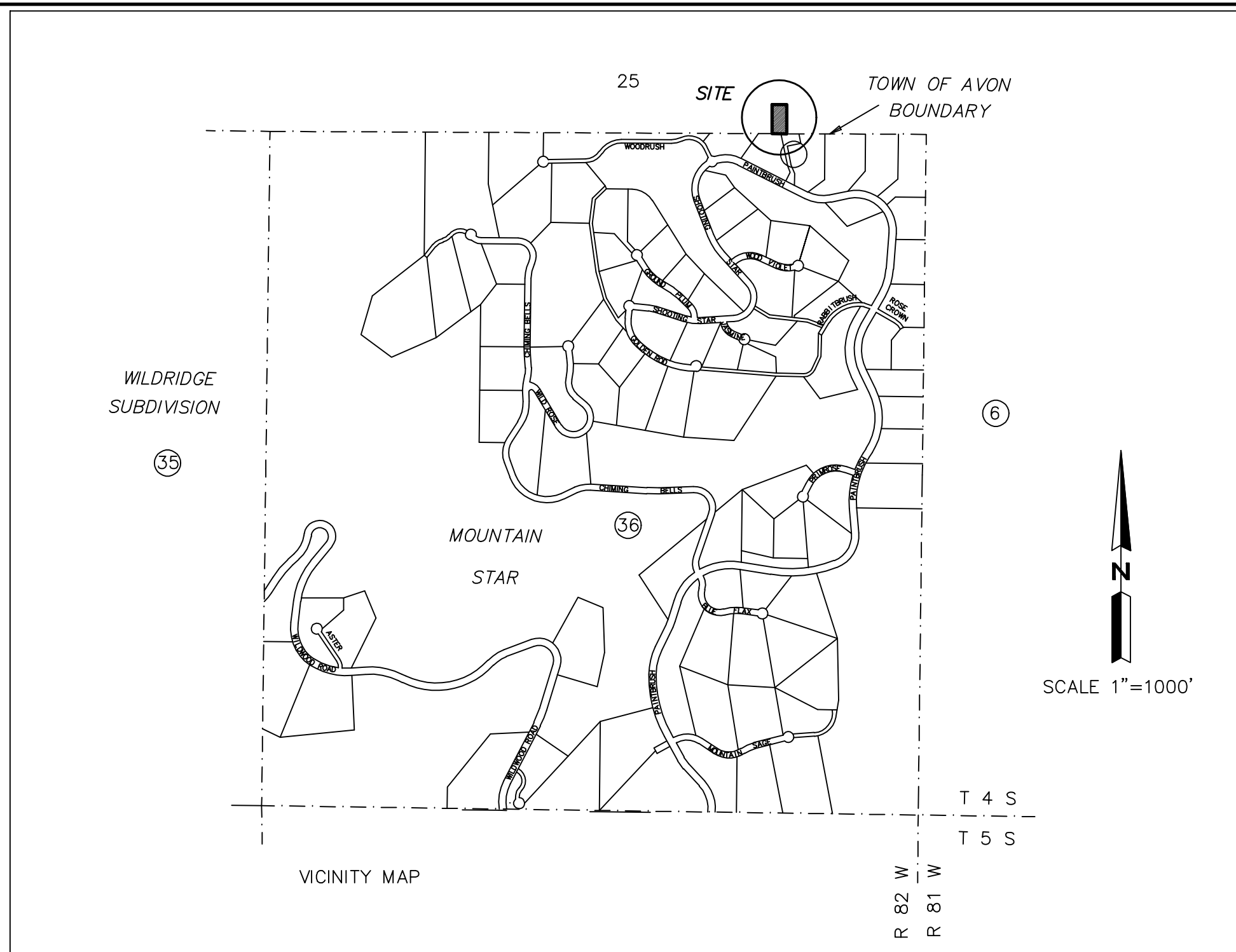
Sincerely,

Jason Cowles, P.E.
Planner, Upper Eagle Regional Water Authority

Enclosures: Land Development Application
Annexation Petition
Annexation Plat
List of Property Owners within 300' of Annexation Parcel
Mailing Envelopes for Adjacent Property Owners

cc: Linn Brooks, General Manager
James P. Collins, General Counsel
Virginia Egger, Town Manager
Matt Pielsticker, Town Planner

ANNEXATION PLAT
TRACT WT-1 & WT-2
PART OF LOT 16, SECTION 25
TOWNSHIP 4 SOUTH, RANGE 82 WEST,
6TH PRINCIPAL MERIDIAN, EAGLE COUNTY, COLORADO



NOTES:

- 1) Date of survey: 9/25/2015
- 2) Surveyor has made no investigation or independent search for amended plats, easements of record (other than plotted), encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.
- 3) Notice: according to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect, in no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown herein.
- 4) Bearings for the portion of the property in this annexation lying northerly boundary of The Amended Final Plat Mountain Star are based on the line connecting existing found monuments for the southeast, (AP 4) and southwest, (AP 3) Lot 16, Section 25, T4S, R82W, 6th P.M. being S89°36'36"W, (see drawing).
- 4) (A) Bearings shown were rotated 0° 00' 30" from the BLM Plat accepted 1/31/2013 to match the north boundary line of the Amended Final Plat Mountain Star recorded at Reception Number 521519.
- 5) The purpose of the Annexation Plat is to describe the parcel being included within the corporate limits of the Town of Avon. This drawing in no way represents an actual field survey of the parcel described for annexation. This plat should not be used to locate or establish real property corners for any of the subject parcel.
- 6) Length of parcel Tract WT-1 contiguous with existing Town of Avon Boundary - 120.00 feet
Perimeter of this annexation parcel - 720.00 feet
- 7) Length of parcel Tract WT-2 contiguous with existing Town of Avon Boundary - 442.16 feet
Perimeter of this annexation parcel - 2558.82 feet
- 8) The U.S. Survey Foot is the lineal unit used for the dimensions on this plat.

WT-1

PARCEL DESCRIPTION:

That part of Lot 16, Section 25, Township 4 South, Range 82 West, of the Sixth Principal Meridian, Eagle County, Colorado, according to the Dependent Resurvey conducted 10/5/2012 through 12/10/2012, and accepted 1/31/2013 described as follows:

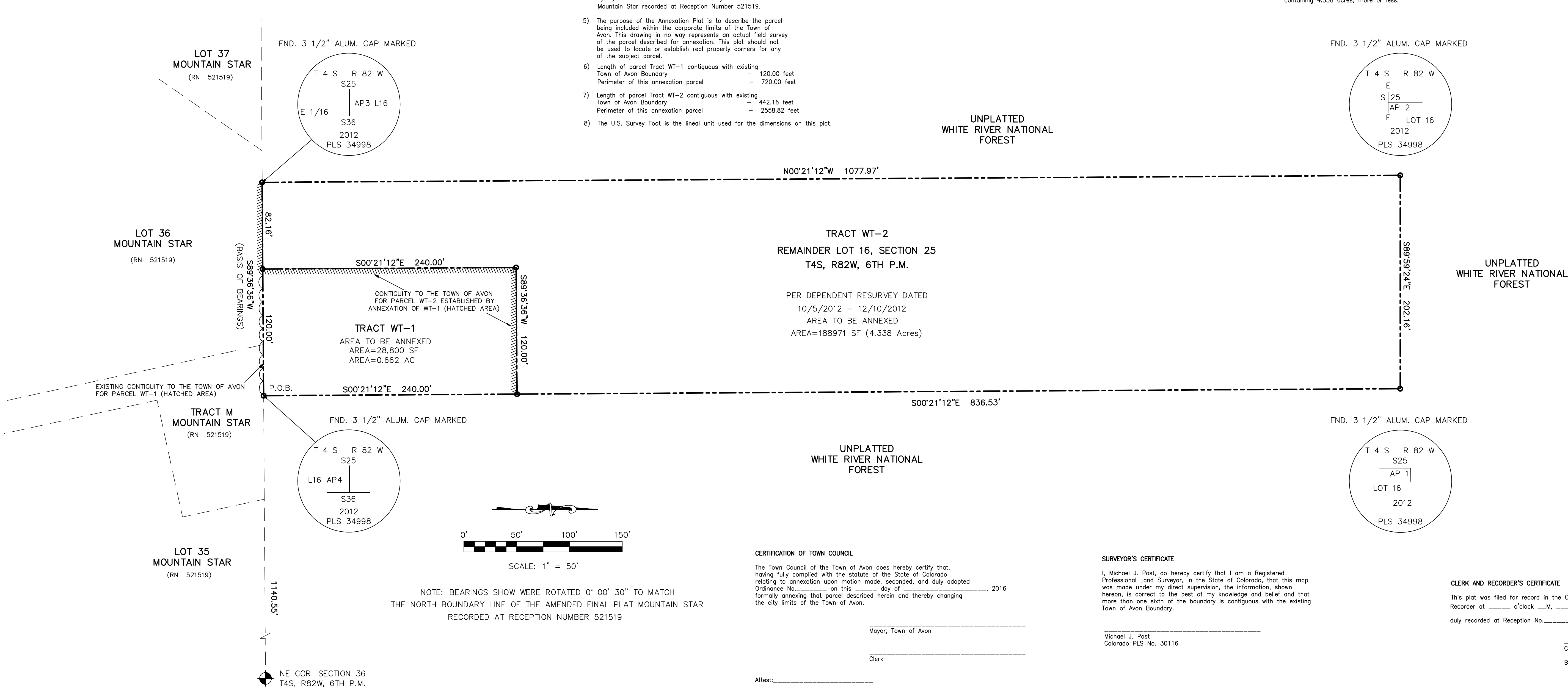
Beginning at the southeast corner of said Lot 16; thence along the southerly line of Lot 16 and the northerly line of The Amended Final Plat Mountain Star recorded at Reception Number 521519 S89°36'36"W 120.00 feet; thence departing said line N00°21'12"W 240.00 feet; thence N89°36'36"E 120.00 feet to the easterly line of said Lot 16; thence along said easterly line S0°21'12"E 240.00 feet to the point of beginning, containing 0.6612 acres, more or less.

WT-2

PARCEL DESCRIPTION:

That part of Lot 16, Section 25, Township 4 South, Range 82 West, of the Sixth Principal Meridian, Eagle County, Colorado, according to the Dependent Resurvey conducted 10/5/2012 - 12/10/2012, described as follows:

Beginning at a point whence the southeast corner of said Lot 16 bears N89°36'36"E 120.00 feet; thence along the southerly line of Lot 16 and the northerly line of The Amended Final Plat of Mountain Star recorded at Reception Number 521519 S89°36'36"W 82.16 feet to the southwest corner of Lot 16; thence departing said line and along the westerly line of Lot 16 N00°21'12"W 1077.97 feet to the northeast corner of Lot 16; thence along the north line of Lot 16 S89°59'24"E 202.16 feet to the northeast corner of Lot 16; thence along the easterly line of Lot 16 S0°21'12"E 836.53 feet to the northeast corner of Tract WT-1; thence along the north line of said Tract WT-1 S89°36'36"W 120.00 feet to the northwest corner of Tract WT-1; thence along the west line of Tract WT-1 S00°21'12"E 240.00 feet to the point of beginning, containing 4.338 acres, more or less.



EAGLE VALLEY SURVEYING, INC.

41199 HIGHWAY 6 & 24, EAGLE-VAIL
P.O. BOX 1230
EDWARDS, CO. 81632
(970)949-1406

CERTIFICATION OF TOWN COUNCIL

The Town Council of the Town of Avon does hereby certify that, having fully complied with the statute of the State of Colorado relating to annexation upon motion made, seconded, and duly adopted Ordinance No. _____ on this _____ day of _____, 2016 formally annexing that parcel described herein and thereby changing the city limits of the Town of Avon.

Mayor, Town of Avon

Clerk

Attest: _____

SURVEYOR'S CERTIFICATE

I, Michael J. Post, do hereby certify that I am a Registered Professional Land Surveyor, in the State of Colorado, that this map was made under my direct supervision, the information shown hereon, is correct to the best of my knowledge and belief and that more than one sixth of the boundary is contiguous with the existing Town of Avon Boundary.

Michael J. Post
Colorado PLS No. 30116

CLERK AND RECORDER'S CERTIFICATE

This plat was filed for record in the Office of the Clerk and Recorder at _____ o'clock ____M., _____, 2016 and is duly recorded at Reception No. _____.

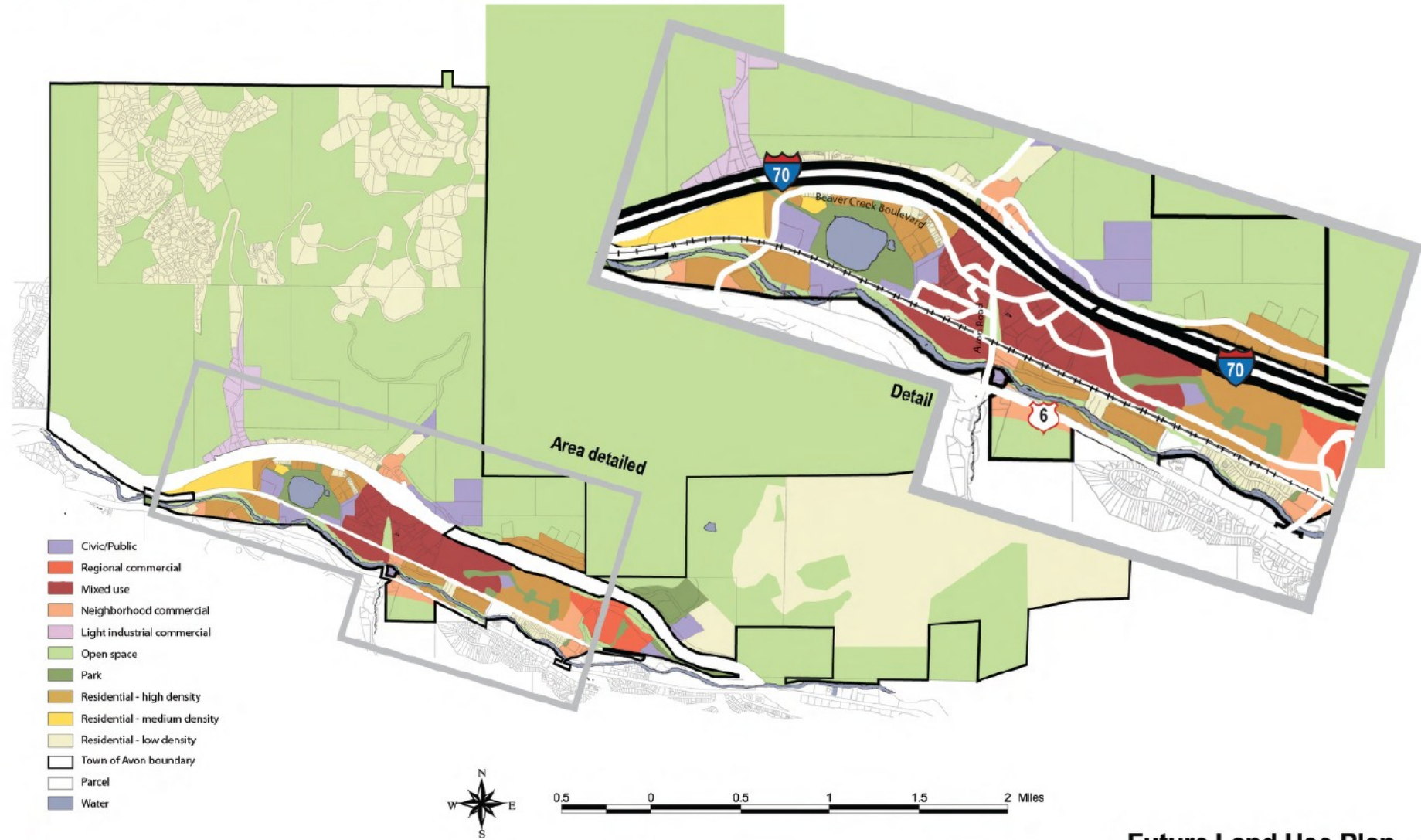
Clerk and Recorder

By: _____
Deputy

TOWN OF AVON COMPREHENSIVE PLAN

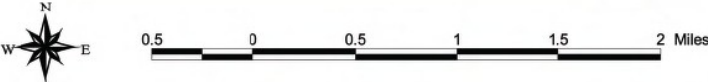
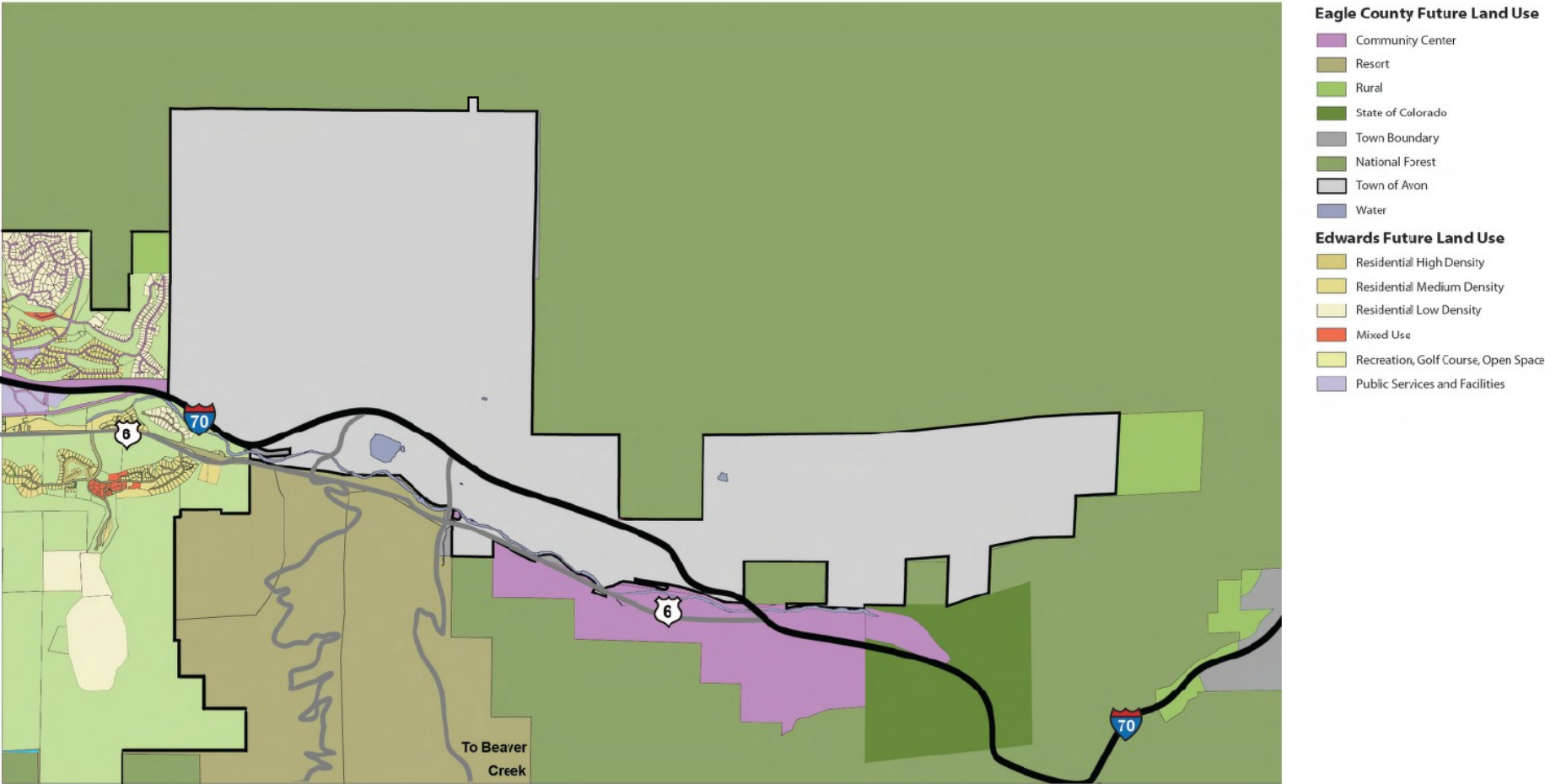


TOWN OF AVON COMPREHENSIVE PLAN



Future Land Use Plan

TOWN OF AVON COMPREHENSIVE PLAN



TOWN OF AVON COMPREHENSIVE PLAN

High Priority Districts

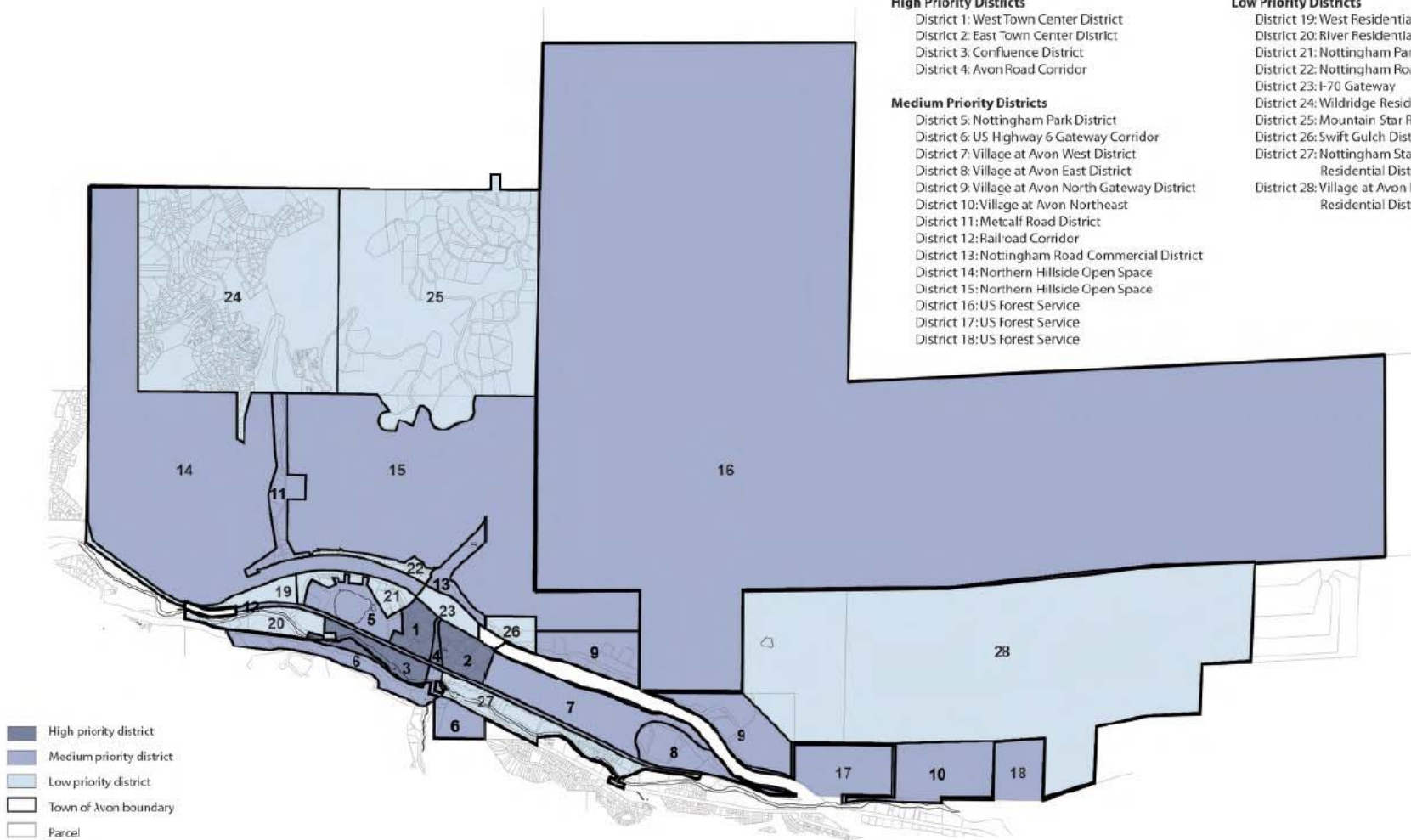
District 1: West Town Center District
District 2: East Town Center District
District 3: Confluence District
District 4: Avon Road Corridor

Medium Priority Districts

District 5: Nottingham Park District
District 6: US Highway 6 Gateway Corridor
District 7: Village at Avon West District
District 8: Village at Avon East District
District 9: Village at Avon North Gateway District
District 10: Village at Avon Northeast
District 11: Metcalf Road District
District 12: Railroad Corridor
District 13: Nottingham Road Commercial District
District 14: Northern Hillside Open Space
District 15: Northern Hillside Open Space
District 16: US Forest Service
District 17: US Forest Service
District 18: US Forest Service

Low Priority Districts

District 19: West Residential District
District 20: River Residential District
District 21: Nottingham Park Residential District
District 22: Nottingham Road District
District 23: I-70 Gateway
District 24: Wildridge Residential District
District 25: Mountain Star Residential District
District 26: Swift Gulch District
District 27: Nottingham Station/Eaglebend Residential District
District 28: Village at Avon Northern Residential District



District Priorities

TO: Honorable Mayor Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Mountain Star Water Storage Tank Project - Capital Project Implementation Agreement
DATE: March 17, 2016

SUMMARY: The Town, Upper Eagle River Water Authority ("Authority") and Mountain Star Association ("MS") have negotiated capital contributions for the construction of a 270,000 gallon water storage tank to serve the Mountain Star PUD development. This memorandum describes the terms of the 2016 Capital Project Implementation Agreement. The Authority is prepared to commence construction of the 270,000 gallon water storage tank in mid-April, pending approval of the Capital Project Implementation Agreement and the approval of the Town's annexation, comprehensive plan amendment, zoning and 1041 review (all scheduled to be completed by the April 12 Town Council meeting).

The concurring vote of 4 Council members is required to approve an agreement, including an intergovernmental agreement less than 10 years in duration.

RECOMMENDATION: Based upon negotiations and direction from Council, the attached Capital Project Implementation Agreement is recommended for approval.

PROPOSED MOTION: I move to approve the 2016 Capital Project Implementation Agreement between the Upper Eagle River Regional Water Authority, the Mountain Star Association ("MS") and the Town of Avon Specifically Concerning the Construction of a New 270,000 Gallon Potable Water Storage and Deliver Tank.

TERMS OF AGREEMENT: The following terms are highlighted and summarized:

- The Water Tank Project ("Project") is estimated to cost \$1,850,216. The Authority is responsible for managing the construction of the Project, including the hiring of contractors.
- The parties are contributing the following funds:

Participant	Participant Share
Authority – Exclusive of Mountain Star LLC funds held by Eagle River Water & Sanitation District ("ERWS&D")	\$135,000
Mountain Star LLC (currently held by ERW&SD)	\$105,000
Town – From Tap Fees previously collected in the Community – Inclusive of Contributions to Date	\$875,707
MS – Inclusive of the Contingency	\$734,509
Estimated Project Costs	\$1,850,216

- The Town's contribution of \$875,707 reflects the total amount of water tap fees collected to date by the Town of Avon from the Mountain Star PUD area.

- The Authority's contribution and Town's contribution are fixed in this Agreement; however, the Town of Avon is agreeing to pledge tap fees revenues received from the Mountain Star PUD development area until March 21, 2036 (20 years). If there are cost overruns, then MS is responsible for the additional costs.
- The parties are agreeing to release and waive any legal claims arising from past agreements concerning the Mountain Star PUD water system and agreements between the Town and Authority concerning water systems.
- MS is agreeing to continue to cooperate with the Authority concerning a water conservation pilot study.

Thank you, Eric

ATTACHMENT A: 2016 Capital Project Implementation Agreement

**2016 CAPITAL PROJECT IMPLEMENTATION AGREEMENT
BETWEEN THE UPPER EAGLE REGIONAL WATER AUTHORITY,
THE MOUNTAIN STAR ASSOCIATION (“MS”) AND THE TOWN OF AVON
SPECIFICALLY CONCERNING THE CONSTRUCTION OF A NEW
270,000 GALLON POTABLE WATER STORAGE AND DELIVERY TANK**

This Capital Project Implementation Agreement (the “Agreement”) is made, effective as of March 22, 2016 (the “Effective Date”) by and between the UPPER EAGLE REGIONAL WATER AUTHORITY, a political subdivision of the State of Colorado formed by intergovernmental agreement, pursuant to C.R.S. § 29-1-204.2 (“Authority”); THE MOUNTAIN STAR ASSOCIATION, a Colorado nonprofit membership corporation (“MS”); and the TOWN OF AVON, a Colorado home rule municipality (“Town”) and hereinafter collectively referred to as the “Parties.”

WHEREAS, the Parties are legally empowered under their respective organizational documents and the laws of the State of Colorado to enter into this Agreement; and

WHEREAS, the Parties agree that in the overall context of the improvement and upgrade by the Authority of the potable water supply system that serves the Mountain Star Community (defined below) located in the Town and the County of Eagle, Colorado, there is a need to construct, install and make operational a new water storage and supply tank, as originally anticipated in the Water Service Mainline Extension Agreement, dated May 14, 1993, hereinafter referred to as the “Project”; and

WHEREAS, the Authority has determined that the appropriate size of the new tank is 270,000 gallons; and

WHEREAS, the Authority has requested the financial participation in the Project by the Town and MS as described herein; and

WHEREAS, the Town and MS have agreed to additional financial terms concerning the remittance to MS of Tap Fees (as defined below) collected both in the past and in the future by the Town from properties lying within the Mountain Star subdivision, more specifically described as those properties encumbered by the Declaration of Covenants, Conditions, Restrictions and Easements for Mountain Star made the 19th day of November 1993 by Mountain Star Limited Liability Company, a Wyoming limited liability, as supplemented by the First, Second, Third, Fourth, Fifth and Sixth Supplemental Declarations thereto, all recorded in the office of the Eagle County, Colorado Clerk and Recorder’s Office (the “Community”); and

WHEREAS, the Authority has requested MS’s funding assistance for this Project in the amount of Seven Hundred and Thirty-four Thousand Five Hundred and Nine Dollars (\$734,509); and

WHEREAS, the Mountain Star owners have cooperated with the Authority to implement conservation measures and have reduced overall water usage during the irrigation season of May through September by 30% over the past five years; and

WHEREAS, based on the foregoing, MS hereby agrees to financially participate in the Project conditioned on adherence to the terms and conditions set forth herein; and

WHEREAS, based on the foregoing, the Town hereby agrees to financially participate in the Project conditioned on adherence to the terms and conditions set forth herein; and

WHEREAS, Authority has secured a commitment of additional funds from Mountain Star LLC in the amount of approximately \$105,000 held currently by the Eagle River Water & Sanitation District as a full and final settlement of all obligations, if any, of Mountain Star LLC; and

WHEREAS, the Parties have budgeted capital funding to perform their obligations under this Agreement; and

WHEREAS, the Parties wish to state herein their understanding as to how the Project will be financed and implemented;

NOW THEREFORE, as full consideration for and in furtherance of the goals and intents and purposes of this Agreement, the Parties hereby agree as follows:

1. Purpose.

The purpose of this Agreement is to memorialize MS's agreement to financially participate in the Project and to establish the process by which MS's participation will be accomplished. The total eligible costs associated with the Project, include but are not limited to design, acquisition of necessary design, permitting, engineering, construction management and construction (collectively "Eligible Project Costs") are estimated in the amount of One Million Eight Hundred Fifty Thousand Two Hundred Sixteen Dollars (\$1,850,216). The Eligible Project Costs include a "Guaranteed Maximum Price" contract ("GMP Contract") negotiated by the Authority in the amount of One Million Five Hundred Eighty Thousand Five Hundred Twenty Six Dollars (\$1,580,526) inclusive of an eight percent (8%) contingency (the "Contingency"). The actual Eligible Project Costs expended for the Project shall be the "Actual Project Cost." Eligible Project Costs shall not include the overhead or other internal costs and expenditures of any participant. No participant will be entitled to include in-kind costs for credit or project cost purposes.

2. MS Contribution.

The actual matching funds to account for dollars contributed by the Town and the Authority is initially Seven Hundred and Thirty-four Thousand Five Hundred and Nine Dollars (\$734,509) to be paid directly to the Authority in accordance with Paragraph 4 and 5 of this Agreement (the "MS Contribution").

3. Allocated Shares of Estimated Project Costs.

The Estimated Project Costs and agreed upon allocated shares of the same, between the Parties and other participants, are set forth in the table below.

The Estimated Project Costs shown in table below are based upon the GMP Contract for this Project negotiated by the Authority through an integrated project delivery process. The Estimated Project Costs are shown in **Exhibit A** attached hereto and incorporated herein by this reference.

Participant	Participant Share
Authority – Exclusive of Mountain Star LLC funds held by Eagle River Water & Sanitation District (“ERWS&D”)	\$135,000
Mountain Star LLC (currently held by ERW&SD)	\$105,000
Town – From Tap Fees previously collected in the Community – Inclusive of Contributions to Date	\$875,707
MS – Inclusive of the Contingency	\$734,509
Estimated Project Costs	\$1,850,216

If the Actual Project Cost is less than the Estimated Project Costs, then MS shall receive the entire Project savings regardless of whether from the base amount of the aforementioned contributions or from the Contingency. MS’s share of the Project savings shall be paid over to MS within sixty days after the date of the final accounting for Actual Project Costs as required by Paragraph 9 below.

The Authority certifies that the above sources and amounts of funds are the sole and only sources and amounts available to fund the Estimated Project Costs which are eligible for reimbursement from MS in accordance with this Agreement. The Authority acknowledges and agrees that if additional funding sources or amounts are made available to the Authority for the Project, then MS’s financial commitment will be reduced, dollar for dollar, from the Eligible Project Costs amount.

4. Project Contribution Payments.

The Town’s and MS’s obligation to fund their respective Contribution shall be contingent on the Authority entering into the GMP Contract for the completion of the Project. The Authority shall provide MS and the Town with written confirmation that the GMP Contract has been executed together with a copy of the same.

Upon satisfaction of the requirements of this paragraph 4 above, the Authority, the Town and MS shall each contribute their share of the overall Estimated Project Costs as set forth in Paragraph 3. In that regard, the Authority shall deposit its share of the Project funds together with the Mountain Star LLC contribution, into an account designated for the Project, and the Town and MS shall pay to the Authority, for deposit into the same account their share of the Eligible Project Costs.

The Authority shall maintain full and complete records of Actual Project Costs incurred in accordance with generally accepted accounting principles and will assure that MS shall have the right to audit the Authority’s financial records related to the Project during construction of the Project and up to three (3) years after completion of the Project.

Any change orders that would exceed the GMP Contract price shall be pursuant to and based upon changes to the GMP Contract, properly applied for and approved by the Authority's Board of Directors; provided that prior to approval of any one change order in excess of five thousand dollars (\$5,000) the Authority shall provide to the MS Representative (identified in Paragraph 11B) with the application for and justification of the same. Any comments of MS promptly provided shall be considered by the Authority and given fair weight in accordance with Paragraph 7, below; provided that the final decision regarding the same shall be the Authority's to make in the exercise of its reasonable discretion.

In the event that, and as and when the Actual Project Costs exceed the Estimated Project Costs, Authority may make periodic requests for additional funds from MS, no more often than every thirty days, and MS shall deposit with Authority the requested amount within five (5) business days.

Except as described below as between the Town and MS, neither the Town nor Authority shall have any obligation to commit any additional funds in the event that the Actual Project Costs exceed the Estimated Project Costs. This Agreement establishes Authority's and the Town's maximum contribution toward the completion of the Project.

5. Project Implementation.

Project construction shall begin on April 15, 2016 and the Authority anticipates the Project will be substantially completed on November 15, 2016 (pending delays due to inclement weather). The Authority will implement and oversee the Project, inclusive of the retention of any necessary consultants and contractors to perform the work necessary to complete the Project.

The Authority shall cause the Project to be completed in accordance with the applicable laws, rules, and regulations of all governmental entities having proper jurisdiction over the Project.

The Authority shall keep accurate records of the progress of the Project and the Authority shall provide status reports to the Town and MS on a regular basis (a minimum of every other month after execution of this Agreement), including progress updates, notice of any problems related to the Project and a record of the payments made to contractor(s). Said status reports shall include updates to the Actual Project Costs expended and the remaining costs projected to be expended through the Project completion, and shall note any variances (change orders) from the Estimated Project Costs, as well as any adjustments to the time schedule for Project completion.

Upon completion of the Project, the Authority will add the new tank and the associated systems to the list of "Authority's Obligations" in Appendix C of the Master Service Agreement of 1998 and the 2015 Authority Agreement, and in accordance with said Agreements it shall be the sole responsibility of the Authority to operate, maintain, repair, replace, and upgrade the integrated water system serving the Community in the future. Nothing in this Agreement shall be interpreted or construed to place any financial responsibility or liability upon MS for future capital needs with respect to said system, nor any other systems or

capital projects whether initiated by the Town, the Authority or any other provider of services within the Community.

6. Liability.

Neither the Town nor MS shall be liable for any claims, demands, losses, damages, expenses, injuries, and liabilities arising from the death or injury of any person or persons, including any claims of the Authority or other funding entities, or from any damage to or destruction of property caused by or in connection with the Project, or any negligent act or omission of the Authority, any other funding entities or the Project contractor.

7. Good Faith and Fair Dealing.

The Town, MS and the Authority agree that all parties shall have a duty to each other in the performance of this Agreement which shall include, but not be limited to, the highest duties of good faith, fair dealing, disclosure of all information to each other as described herein, avoidance of conflicts of interest, and avoidance of the appearance of conflicts of interest in carrying out the goals and objectives of this Agreement.

8. Insurance.

The Town, MS and the Authority shall insure themselves separately against liability, loss and damages arising out of the operation of and performance under this Agreement and the construction, use or operation of the Improvements. The Authority shall assure that the contractor selected to perform the GMP Contract retains all insurance coverages required by any law as well as those that are customary in the industry.

9. Term of Agreement and Termination.

This Agreement shall be effective as of the Effective Date identified above and shall, except as set forth in Paragraph 12, below, terminate upon the completion and close out of the Project and a final accounting of the Actual Project Costs being provided by the Authority to the Town and MS. The Town and the Authority have appropriated and have on hand the funds described in this Agreement.

Any party shall have the right to terminate this Agreement after thirty (30) days written notice to the other party in the event of a default which is not cured within twenty (20) days after delivery of the written notice of default. Termination shall not be effective if reasonable action to cure the breach has been taken by the defaulting party before the effective date of the termination, and such actions are pursued diligently to a successful completion within twenty (20) days from inception of the actions. If such actions are not successful within said period of time, the non-defaulting party shall have the right to terminate this Agreement upon written notice to the other parties.

In the event of termination, the Authority shall settle all accounts with the Town and MS related to the Project.

The Authority's accounting obligations, the Authority's assurance of compliance with applicable laws, the Authority's preservation of records pertaining to the Project, and the Authority's obligations and responsibility described in Paragraph 5 upon completion of the Project shall survive termination of this Agreement. The Town's obligations under Paragraph 12, below, shall survive termination of this Agreement.

10. Assignment.

No Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Parties. Any attempt to assign this Agreement in the absence of such written consent, shall be null and void *ab initio*.

11. Project Management.

A. Authority Representative.

The Authority hereby designates: Jason Cowles (with an email address of jcowles@erwsd.org) as the Authority's representative to coordinate all communication with MS related to the Project, including issues arising under this Agreement.

B. MS Representative.

MS hereby designates Steve Coyer (with an email address of scoyer@hotmail.com) as MS's representative to coordinate all communication with the Authority related to the Project, including issues arising under this Agreement.

C. Town Representative.

The Town hereby designates: Justin Hildreth, Town Engineer (with an email address of jhildreth@avon.org) as the Town's representative to coordinate all communication with the Authority related to the Project, including issues arising under this Agreement.

12. Town Tap Fee Recovery and Remittance.

As further consideration for MS participating in the Total Actual Costs, for the period of twenty (20) years from the Effective Date, as and when collected via development of properties within the Community, in order to further compensate MS for its participation in the Project the Town shall pay to MS any and all Tap Fees received by the Town from builders or owners within the Community. Payment shall be made within thirty (30) days of collection. For purposes of this paragraph, "Tap Fees" shall be defined as any fee collected (1) as a condition to and for the privilege of the connection of any water service line to the water system serving the Community, and (2) as a result of a change of use of any property previously connected to the water system serving the Community. Nothing in this paragraph shall be deemed to be a limitation on the Town's legislative authority to fix or amend the Town's fees and charges assessed for the use of the water system serving the Community; provided that the Town shall (1) use its best efforts to maintain the current Tap Fee amount during the term hereof, (2) will in any event assess Tap Fees within the Community in the same manner as it assesses

Tap Fees against similarly situated users throughout the Town, and (3) shall diligently pursue the collection of any and all Tap Fees that become due and payable under the Town's rules and regulations as they exist from time to time. Tap Fees paid the Authority directly for the water service it provides to the Community and to any applicable water service are specifically excluded from the payment obligations set forth in this Paragraph 12. Town's obligation to remit and pay to MS Tap Fees received by the Town shall expire on March 21, 2036, provided that Town shall remit to MS any Tap Fees received on or prior to March 21, 2036."

13. Release and Waiver of Claims. Upon completion of the Project, Town, Authority and MS hereby forever waive and release any claims which may be asserted by or against any of the Parties to this Agreement concerning the Water Service Mainline Extension Agreement, dated May 14, 1993, the Master Service Agreement of 1998, the 2015 Authority Agreement, and any other agreement by, between or among the Parties concerning the water system, water service and water storage tanks serving the Mountain Star Planned Unit Development in Avon, CO. This Paragraph 13 shall survive termination of this Agreement.

14. Water Conservation. MS will: (i) continue to remind the owners of, and enforce, their responsibility to comply with MS's Design Guidelines regarding irrigation practices, (ii) continue to participate in the Authority's pilot study in cutting irrigation usage, (iii) continue to encourage compliance by all owners with all water demand management regulations established system-wide by the Authority, and (iv) support the Authority's efforts to work with owners who are operating above acceptable water usage guidelines (100,000 gallons per year per SFE unless the Authority implements a different system-wide guideline) in order to establish new irrigation practices that will bring the specific usage into an acceptable range.

15. Miscellaneous.

It is the intention of the Parties that the Authority shall be, and remain, an independent contractor. The Parties do not intend and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture or agency of any kind.

Any Party in default under this Agreement shall pay the reasonable attorney's fees of the other party incurred in order to enforce its rights under this Agreement.

This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the parties to this Agreement, the exclusive venue for dispute resolution shall be the District Court for and in Eagle County, Colorado.

This Agreement shall inure to the benefit of, and be binding upon the parties to this Agreement and their respective successors and permitted assigns. This Agreement is solely between and for the benefit of the Town, MS and the Authority, and no design consultant, contractor, any subcontractor nor any other person is a third-party beneficiary to or under this Agreement.

This Agreement contains the entire agreement of the Parties with respect to its subject matter. Any amendments or modifications to this Agreement must be in writing executed by the Parties in order to be valid and binding. Each Party to this Agreement

represents and warrants that they have made full disclosure of any and all contingencies, conditions, or reimbursement agreements related to their financial participation in the Project as described in Paragraph 3 above.

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

The Town and the Authority are political subdivisions of the State of Colorado and, as such, (1) with the exception of Avon's obligation to pay Tap Fees to MS as described in Paragraph 12 above which shall be considered a special fund obligation of the Town, any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) no consultants, contractors or subcontractors shall have lien rights against the Parties, nor against any property lying within the boundaries of the Parties in the event of nonpayment of any amount due under this Agreement.

The Town and the Authority and their respective elected officials, directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, §§24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.

No elected official, director, officer, agent or employee of the Town, MS or the Authority shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

From and after the Effective Date, MS shall use its best efforts to promote and encourage compliance of its members with any and all duly adopted and generally applicable Authority rules and regulations including without limitation those applicable to irrigation within the Community.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Capital Project Implementation Agreement as of the day and year first above written.

TOWN OF AVON

AUTHORITY – UPPER EAGLE RIVER WATER AUTHORITY

THE MOUNTAIN STAR ASSOCIATION

EXHIBIT A

Mountain Star Water Storage Tank
60% Design Budget Estimate
February 9, 2018



Design & Permitting Budget		
Alpine Engineering (Civil Engineering)	\$	51,500
SGM (Structural Engineering)	\$	50,080
Eagle Valley Surveying (Surveying and Platting)	\$	10,180
Michael West & Associates (Geotechnical Engineering)	\$	9,760
Russ Sasakura Engineering (Instrumentation & Controls)	\$	6,000
Aslan Construction (Pre-Construction Services)	\$	25,000
Subtotal Design Budget	\$	152,520
Construction Budget		
Alpine Engineering (Construction Engineering)	\$	24,000
SGM, Inc. (Construction Engineering)	\$	33,170
Geotechnical Engineering (Materials Testing - QA/QC)	\$	30,000
Holy Cross Electric (Purchase of Electric Materials)	\$	30,000
270,000 gallon Water Storage Tank and All Appurtenances	\$	1,463,450
Construction Contingency (8%)	\$	117,076
Subtotal Construction Budget	\$	1,697,696
Total Proposed Project Budget (Design + Construction Subtotals)	\$	1,850,216
Revenues		
Mountain Star Tap Fees	\$	875,707
Authority Contribution	\$	135,000
Mountain Star LLC Contribution	\$	105,000
Subtotal Revenues	\$	1,115,707
Requested Contribution from Mountain Star HOA	\$	734,509

Notes:

1. Water Tank Construction costs based on 60% design estimate provided by Aslan Construction.
2. 8% Contingency included in Aslan GMP proposal for potential construction cost overruns and design changes.



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Justin Hildreth, Town Engineer
Meeting Date: March 8, 2016
Agenda Topic: Ordinance 16-03, Amending Chapter 3.08 of the Avon Municipal Code to Enact Section 3.08.037 to Provide a Temporary Sales Tax Credit for the Installation of Renewable Energy Production Components

ACTION BEFORE TOWN COUNCIL

To review and approve, approve with changes, or deny Ordinance 16-03 regarding a sales tax credit on components for production of energy from renewable sources and to direct Staff to waive planning and building permit fees for such facilities.

PROPOSED MOTION

I move to approve Ordinance No. 16-03, An Ordinance Amending Chapter 3.08 of the Avon Municipal Code to Enact Section 3.08.037 to provide a Temporary Sales Tax Credit for the Components for Production of Energy from Renewable Sources and a waiver of planning review and building permit fees for renewable energy projects.

BACKGROUND:

At the November 8, 2015 Town Council meeting, Staff presented Ordinance 15-10, a sales tax credit for solar panel installations. Town Council did not approve the Ordinance, requesting additional information regarding other renewable energy programs and inquired about including all renewable energy sources to the ordinance. There are several programs available for residential homeowners interested in production of energy from renewable energy sources as outlined below:

Residential Federal Tax Credit: A taxpayer may claim a credit of 30% of qualified expenditures for a system that serves a dwelling unit located in the United States that is owned and used as a residence by the taxpayer. Qualified expenditures include labor costs for on-site preparation, assembly or original system installation, and piping or wiring to connect a system to the home.

State Sales Tax Exemption: The State of Colorado exempts sales taxes on components for Production of Energy from Renewable Energy Sources (C.R.S. §39-26-724) including but not limited to wind, solar thermal systems, and biogas production systems. The state sales tax exemption does not include solar photovoltaic or geothermal systems.

Holy Cross Rebates: Holy Cross Energy provides a substantial rebate program for installing energy efficient fixtures such as LED lights, timers, VFDs, insulation, windows, and solar water heaters. Holy Cross also has a rebate program for installing renewable energy power systems that includes back metering of excess electricity.

Energy Smart Program at Walking Mountains:

- Residential Program: All Town of Avon homeowners and renters have access to this program which provides subsidized or free (based on income) Energy Assessments that include safety testing and comprehensive home energy analysis, and installation of energy saving measures such as LED's, thermostats, and insulation. The program also provides access to incentives (rebates/financing) in order to assist homeowners with the installation of energy efficient improvements and photovoltaic systems.
- Commercial Program: Through a relationship with Holy Cross Energy, we are able to provide free energy coaching and assistance to small and medium sized businesses within the town of Avon. Services include site visits, bid reviews, contractor referrals, and assistance with applying for rebates to maximize and leverage all available rebates.
- Funding for these programs is provided by the Eagle County Eco-Build fund, similar to the new Avon Exterior Energy Offset Program (EEOP fund), and support from Holy Cross Energy.

Town of Avon Incentives: The Town recently adopted the EEOP to encourage the use of alternative renewable energy generation at developments using snowmelt systems. The EEOP imposes a \$16/SF fee on snowmelt systems unless 50% of the energy required is renewable energy generated on-site. The Town of Avon can implement several incentives programs to promote the production of renewable energy including waiving building permit fees and planning fees and rebating sales taxes on components of renewable energy systems. The attached Ordinance 16-03 proposes implementing these waivers and tax credits.

COMPLIANCE WITH COMPREHENSIVE PLAN

Goal H.4 of the Avon Comprehensive Plan states a community goal to, "Conserve environmental resources to ensure their most efficient use." The Ordinance would provide a temporary financial incentive to promote the installation of energy from renewable sources by providing a temporary tax credit and waiving planning and permit fees. This temporary sales tax credit would apply to all components for production of renewable energy systems for residential, commercial, industrial and public facility uses. Renewable energy systems can include solar photovoltaic, solar thermal, wind and geothermal. The state provides a sales tax exemption for biogas systems but is not recommended for the Town of Avon because biogas systems are associated with large agriculture facilities which are not envisioned in the Town.

FINANCIAL IMPACT

In 2015, the Town issued four (4) building permits for the installation of solar panels. The tax credit for the installation of \$15,000 in solar panel materials would amount to a savings of **\$600** for the taxpayer. Assuming the average installation of solar panel materials is \$15,000 and there are four installations per year for a total sale of \$60,000 in materials then the sales tax credit would be **\$2,400**. The installation of \$200,000 in solar panel materials would result in a sales tax credit of **\$8,000**. Also, waiving of four planning permit fees at \$75/each and four building permit fees at \$150/each would total **\$900** per year of lost revenue.

EXHIBITS

Ordinance 16-03



**TOWN OF AVON, COLORADO
ORDINANCE NO. 16-03**

**AMENDING CHAPTER 3.08 OF THE AVON MUNICIPAL CODE TO ENACT
SECTION 3.08.037 TO PROVIDE A TEMPORARY SALES TAX CREDIT FOR
THE INSTALLATION OF RENEWABLE ENERGY PRODUCTION
COMPONENTS**

WHEREAS, pursuant to C.R.S. §31-15-103 and §31-15-104, and pursuant to the home rule powers of the Town of Avon (“Town”), the Town Council has the power to make and publish ordinances necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of its inhabitants;

WHEREAS, Goal H.4 of the Town of Avon Comprehensive Plan states a community goal to “Conserve environmental resources to ensure their most efficient use.”;

WHEREAS, the Town Council finds that a temporary sales tax credit to provide an incentive to encourage the installation of renewable energy production components in Avon will promote a community goal to conserve environmental resources and will thereby promote the health safety and general welfare of the Avon community; and,

WHEREAS, approval of this Ordinance on First Reading is intended only to confirm that the Town Council desires to comply the requirements of the Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on First Reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO the following:

Section 1. **Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. **Section 3.08.037 Enacted.** Chapter 3.08 Sales Tax of the Avon Municipal Code is hereby amended by enacting a new **Section 3.08.037 Temporary tax credit for Renewable Energy Production Components** to read as follows:

“3.08.037 Temporary Tax Credit for Renewable Energy Production Components.

Notwithstanding any other provision of this Chapter, there shall be granted a temporary sales tax credit to each person owing tax on the sale of components used in the production of electricity, generation of heat or cooling of air, from a renewable energy source, including but not limited to wind, solar, solar thermal systems, and geothermal energy systems, provided that this temporary

tax credit shall commence on the effective date of this ordinance and shall continue until December 31, 2018, whereupon this temporary tax credit shall automatically expire unless extended by adoption of an ordinance. Neither the ability of the Town to grant the temporary tax credit nor the termination of the credit shall constitute a tax increase, the imposition of a new tax or a tax policy change."

Section 3. Codification Amendments. The codifier of the Town's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 4. Non-severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid or enforceable, such invalidity or effect shall render the entire ordinance void and not effective, it being the intention of the Council that is this all provisions of this Ordinance are not severable and that Council would not have adopted this Ordinance if any provision of this Ordinance is invalid or not effective. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 6. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

[EXECUTION PAGE FOLLOWS]

INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING on March 22, 2016 and setting such public hearing for April 12, 2016 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on April 12, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

TO: Honorable Mayor Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Ordinance No. 16-06 Approving a Purchase and Sale Agreement for the Mountain Vista Office Building
DATE: March 17, 2016

SUMMARY: This memorandum provides an overview of Ordinance No. 16-06 Approving the Purchase and Sale Agreement for Lot 4, Mountain Vista Resort Subdivision, Town of Avon, Colorado ("**MVO Building**"). Attached is a memorandum from Virginia Egger, Town Manager, addressing financing and programming of the MVO Building for Town Hall administrative office use and Ordinance No. 16-06 Approving the Purchase and Sale Agreement.

TERMS OF PURCHASE AND SALE AGREEMENT: A Purchase and Sale Agreement ("**Purchase Agreement**") has been negotiated with the Seller, Points of Colorado, Inc. The Purchase Agreement is subject to approval by Ordinance of the Avon Town Council. Both the Town, as Buyer, and the Seller may terminate the Purchase Agreement if the Avon Town Council does not approve the Purchase Agreement by ordinance. Specific terms of the Purchase Agreement are highlighted below.

Overall, the sale is characterized by a new subdivision plat to create and describe Lot 4 as its own independent parcel and by the exclusion of Lot 4 and MVO Building ("Property") from the Mountain Vista Resort common interest community. This is for the purpose of creating an autonomous property that is independent from the covenants and governance of the common interest community. The Property would remain subject to the Mountain Vista PUD (aka Tract C, Avon Center at Beaver Creek Development) zoning and development plan, which permits office use for this portion of the PUD development.

RECITAL: Property Description, Inclusions and Exclusions: The Property is the MVO Building along with the underlying land and a small strip of land surrounding the building. A subdivision replat has been prepared to create the 10,840 sq.ft. parcel of land as shown in the Purchase Agreement. The subdivision replat qualifies as a minor subdivision and therefore will be presented to Council for approval at second reading of Ordinance No. 16-06. The bronze statue of the skier in front of the building is included in the sale. Parking within the Mountain Vista Resort common interest community is excluded from the sale.

¶1.2 Purchase Price. The agreed Purchase Price is \$1.5 Million. A deposit of \$75,000 has been tendered to the Avon office of Title Company of the Rockies. The deposit of \$75,000 may be returned to the Town under the following circumstances:

1. The Avon Town Council does not take final action on an ordinance approving the Purchase Agreement and tenders notice of the Town's election to terminate the Purchase Agreement prior to Closing.
2. One of the Conditions Precedent for the benefit of the Town as Buyer or for the benefit of Seller is not satisfied by the Closing date and the Town and Seller do not extend the Purchase Agreement beyond the Closing date to permit the satisfaction of such condition.

¶2.1 Inspections by Buyer: The Town has conducted building inspections prior to signing the Purchase Agreement. Buyer's physical inspection is not a condition of Closing.

¶2.4(a) Permitted Exceptions: The Title Insurance commitment has been reviewed and specific title exceptions have been identified as items to be addressed and deleted from the title commitment or to be

included as permitted exceptions. So long as the title matters identified for deletion as a condition precedent to Closing are removed as exclusions to the Buyer's Title Insurance, the Closing is not subject to further title review.

¶2.4(c) Right of First Refusal: The Seller has a Right of First Refusal for a period of 3 years after the Closing.

¶2.4(d) Lot 4 Easement: The Property will be subject to an easement over, across and beneath Lot 4 for continued pedestrian access, emergency access, fire lane, utilities, shared open space and other matters for the purpose of preventing any negative impact to the development rights on the remainder of the PUD Plan (Lots 1-3 and the re-platted Lot 2C and Lot 5).

¶3.1 Closing Date. The Closing Date is scheduled to occur on June 16, 2016. Once the Conditions Precedent are satisfied, Closing can occur on an earlier date as mutually determined by the parties. This could potentially occur as early as 30 days after final adoption of the ordinance approving the Purchase Agreement.

¶3.3 Conditions Precedent to Closing. This paragraph sets forth certain matters which must be satisfied as a condition precedent to Closing. **¶3.3(c)** is a condition precedent that the Avon Town Council must approve the Purchase Agreement by ordinance.

There are a number of items which must be addressed between approval of the Purchase Agreement and the Closing, including certain actions required to address title exceptions and other conditions precedent to Closing.

Thank you, Eric

ATTACHMENT A: Ordinance No. 16-06 and the Purchase and Sale Agreement

ATTACHMENT B: Council Report For Mountain Vista Resort Subdivision Office Building



**TOWN OF AVON
ORDINANCE 16-06**

**AN ORDINANCE APPROVING THE PURCHASE AND SALE
AGREEMENT FOR LOT 4, MOUNTAIN VISTA RESORT SUBDIVISION,
TOWN OF AVON, COLORADO**

WHEREAS, the Town of Avon and Points of Colorado, Inc., have mutually signed a Purchase and Sale Agreement, with an effective date of March 3, 2016, ("Purchase and Sale Agreement") for the acquisition and sale of property in Avon, Colorado, described as 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 ("Property");

WHEREAS, Section 2.1 of the Avon Home Rule Charter provides that the Town Council may acquire real property interests and Colorado Revised Statutes section 31-15-101(1)(d) provides that municipalities may acquire and hold real property;

WHEREAS, Paragraph 3.3(c) of the Purchase and Sale Agreement provides that a condition precedent to the closing is that the adoption of an ordinance by the Avon Town Council to approve the Purchase and Sale Agreement;

WHEREAS, the Town Council finds that acquisition of this Property supports the Avon West Town Center District Plan, including **K. TOWN HALL**, which states, "*The existing Town Hall is too small for the current Town needs, is outdated and lacks a high level of energy efficiency.*" and which depicts the location of a new Town Hall facility on the "Main Street" (the Avon pedestrian mall);

WHEREAS, the Town Council finds that acquisition of the Property shall promote the health, safety, prosperity, convenience and general welfare of the Avon community by providing administrative facilities to meet current and projected future needs of the Town; and,

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply with the requirements of the Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to provide public comment on this Ordinance and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, the following:

Section 1. **Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Purchase and Sale Approved. The Purchase and Sale Agreement attached as **Exhibit A: Purchase and Sale Agreement** is hereby approved and, subject to the terms and conditions precedent set forth in the Purchase and Sale Agreement, the Town Council approves the acquisition of the Property.

Section 3. Mayor and Town Clerk Authorized to Execute Documents. The Mayor and Town Clerk are authorized to execute and attest to documents related to acquisition and encumbrance of the Property in accordance with the terms set forth in the Purchase and Sale Agreement approved in this Ordinance and take such other actions as may be reasonably necessary to implement the actions in this Ordinance. The Mayor, Town Manager and Town Attorney may collectively review and approve the documents contemplated in the Purchase and Sale Agreement, extend deadlines contemplated in the Purchase and Sale Agreement, and correct typos, grammatical errors, cross-reference errors, and revisions which do not alter the substantive terms of the Purchase and Sale Agreement approved in this Ordinance.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Effective Date. This Ordinance shall take effect thirty days after the date of final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 6. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. Publication by Posting. The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

[Signature page follows]

INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING on March 22, 2016 and setting such public hearing for April 12, 2016 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on April 12, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

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

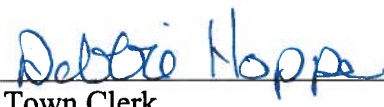
Buyer:

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 D
to Purchase and Sale Agreement

DEPICTION OF REPLAT OF LOTS 2C, 4 AND 5

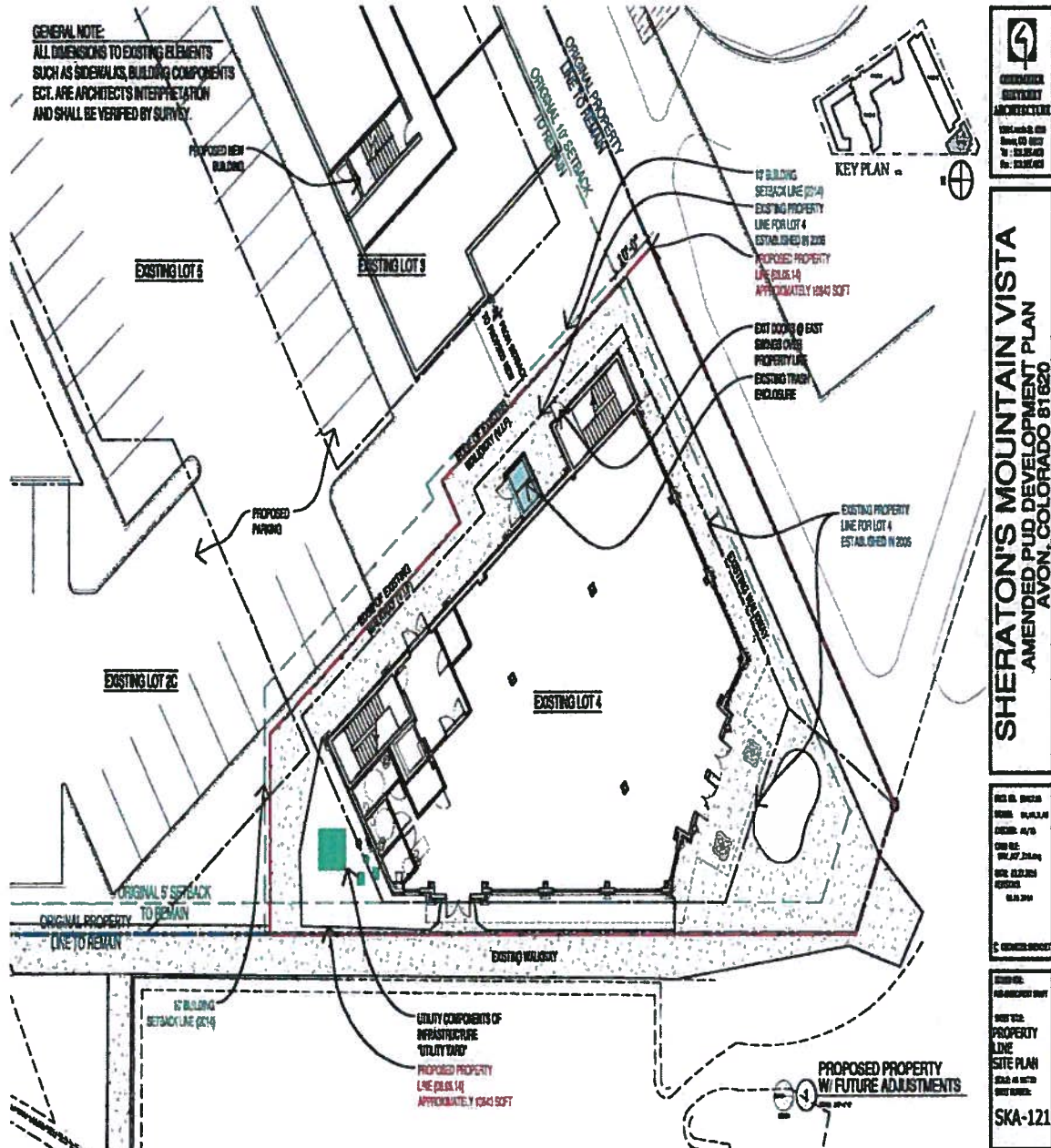


Exhibit E
to Purchase and Sale Agreement

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

Exhibit B

ATTACHMENT B

COUNCIL REPORT
FOR
MOUNTAIN VISTA RESORT SUBDIVISION
OFFICE BUILDING

140 West Beaver Creek Boulevard
Mountain Vista Lot 4



March 22, 2016

TABLE OF CONTENTS

- I. Executive Summary
- II. Chronology of Events
- III. Purchase and Sale Agreement
- IV. *Avon Town Hall Facility Assessment and Space Needs Analysis*, SEH, August 25, 2015
- V. Master Plans, Review & Updates, Zoning & Subdivision Matters
- VI. Renovation & Relocation Options
- VII. Parking Requirements
- VIII. Building Inspection Report & Structural Engineering Report
- IX. Funding & Development Schedule

Appendices

Appendix 1: See Eric Heil Cover Memo attachment

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 met 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 provided with Ordinance 16-07, in this packet. 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 includes funds Assigned For: Town Hall Relocation/Renovation, in the amount of \$1.5 Million. (See Appendix 8)

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. Tax increment bonds 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



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Jim Horsley, Project Engineer
Eric Heil, Town Attorney
Meeting Date: March 22, 2016
Agenda Topic: Resolution No. 16-07, Approving Easements for the Metcalf Road Bicycle Climbing Lane Construction Project

ACTION BEFORE COUNCIL

Review and approve Resolution No. 16-07, Approving Easements for the Metcalf Road Bicycle Climbing Lane Construction Project.

PROPOSED MOTION

I move to approve Resolution No. 16-07, Approving Easements for the Metcalf Road Bicycle Climbing Lane Construction Project.

DISCUSSION

The Metcalf Road Bicycle Climbing Lane Project consists of road widening to accommodate a 4' to 6' wide bicycle climbing lane in the uphill lane between Nottingham Road and Wildwood Road. Also included in the project are drainage improvements through the commercial area on the lower east side and an asphalt overlay. The attached easement agreements allow the selected contractor and the Town the right of access to property to construct, repair, and maintain underground and aboveground drainage facilities. Proposed drainage facilities will be constructed within the existing Town right-of-way however access to private property will be required to construct and to tie in minor grading changes. Temporary Construction Easement Agreements are required for Lots #33, #34, #35, #36, and #37. The term of the temporary construction easements shall begin on April 1, 2016 and expire on December 31, 2016. A permanent drainage easement on Lot #33 will remain in place and is required for access to and maintenance of an existing storm drainage structure near the Nottingham Road intersection. The project will be bid in April with construction taking place this summer. The Town Attorney has reviewed and approved the Agreements.

ATTACHMENTS:

Resolution No. 16-07



RESOLUTION NO. 16-07
APPROVING EASEMENTS FOR THE METCALF ROAD BICYCLE CLIMBING
LANE CONSTRUCTION PROJECT

WHEREAS, the Avon Town Council has determined that the construction of a bicycle climbing lane on Metcalf Road and the construction of related drainage improvements will improve the public safety of Metcalf Road and will promote the goals of the Avon Comprehensive Plan;

WHEREAS, the construction project will require a permanent easement and certain temporary construction easements and Section 2.1 of the Avon Home Rule Charter provides that the Town Council may acquire real property interests and Colorado Revised Statutes section 31-15-101(1)(d) provides that municipalities may acquire and hold real property; and

WHEREAS, the Town Council finds that approval of the attached Easement Agreement and Temporary Construction Easement Agreements will promote the health, safety, prosperity, convenience and general welfare of the Avon community by facilitating the construction of the Metcalf Road Bike Climbing Lane and valuable drainage improvements.

NOW THEREFORE, the Avon Town Council, hereby **RESOLVES** to approve the following Easement Agreements which are attached to this Resolution:

Lot 33 – Easement Agreement with Beck Family Partnership, Ltd.;

Lot 33 – Temporary Construction Easement Agreement with Beck Family Partnership, Ltd.;

Lot 34 – Temporary Construction Easement Agreement with Dennis E. Havlik Revocable Trust
– Bonnie J. Havlik Revocable Trust;

Lot 35 – Temporary Construction Easement Agreement with ASC LLC;

Lot 36 – Temporary Construction Easement Agreement with Vail Valley Auto Body Inc.; and

Lot 37 – Temporary Construction Easement Agreement with Metcalf U-Stor-It LLC.

ADOPTED March 22, 2016 by the AVON TOWN COUNCIL

By: _____
Jennie Fancher, Mayor

Attest: _____
Debbie Hoppe, Town Clerk

AFTER RECORDING RETURN TO:

Thomas M. List, Esq.
Moye White LLP
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80202

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Easement Agreement”) is made this ____ day of _____, 2016 between Beck Family Partnership, Ltd., a Colorado limited partnership (“Owner”), whose address is PO Box 4030, Vail, Colorado 81658, and the Town of Avon, a Colorado home rule municipal corporation (“Town”), whose address is P.O. Box 975, Avon, Colorado 81620.

WITNESSETH:

1. That for and in consideration of the covenants and agreements herein set forth, the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration in hand paid by the Town to the Owner, the receipt and adequacy of which is hereby acknowledged, the Owner hereby grants, sells and conveys to the Town, its successors and assigns, a non-exclusive perpetual easement and right-of-way (“Easement”) upon a portion of the land legally described as Lot 33, Block 1, Benchmark at Beaver Creek, Amendment 4 (“Owner Parcel”), and comprised of approximately 369 square feet of land being more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Easement Parcel”) to construct, install, operate, maintain, repair, reconstruct, replace, inspect and remove, at any time and from time to time, public roadway improvements, including all underground, surface and streetscape appurtenances thereto, and to improve and maintain a suitable slope or grade, together with a right-of-way for access on, along, and in all of the described Easement across those certain lands which are situate in the Town of Avon, County of Eagle, State of Colorado. Other than the right to construct, maintain and repair drainage improvements pursuant to the terms and conditions of this Easement Agreement, this Easement Agreement is not intended to benefit the general public and shall not be construed as creating rights in and for the benefit of the general public, nor shall it be construed to be a dedication to the general public or for the public use.

2. The Owner further grants to the Town:

(a) The right from time to time to enlarge, improve, reconstruct, relocate and replace any improvements, slopes and grades, or other structures constructed hereunder with any other number or type of utility facilities, slopes and grades, or other structures either in

the original location or at any alternate location or locations all of which shall be entirely within the Easement Parcel; provided that such enlargement, improvement, reconstruction, relocation and replacement as aforesaid shall not in any manner interfere with the use by Owner of the Owner Parcel.

(b) the right to grant licenses and franchises within the Easement Parcel to common utility providers in a similar manner and subject to similar terms, conditions and standards that the Town may grant to utility providers in other Town right-of-ways, provided, however, Town shall provide to Owner written notice and a copy of any such license or franchise agreement for the Easement Parcel;

(c) the right to conduct all activities within the Easement Parcel which a municipality may lawfully conduct within public right-of-ways, including, but not limited to, enforcement of municipal traffic code and parking code provisions and application of street access standards; and

(d) the right to mark the location of the Easement Parcel by suitable markers set in the ground; provided that permanent markers shall be placed in locations which will not interfere with any use Owner shall make of the Owner Parcel.

3. Owner reserves the right to use the Owner Parcel and the Easement Parcel for purposes which will not interfere with Town's full enjoyment of the rights hereby granted. The parties further agree that the Owner's use of the Easement Parcel shall be subject to the following restrictions and conditions:

(a) Owner shall not erect or construct any building or other permanent structure, or drill or operate any well, or construct any permanent obstruction, or subtract from or add substantially to the ground level, or allow the installation of utilities not already in place, in the Easement Parcel without obtaining the specific written permission of the Town, which permission shall not be unreasonably withheld, conditioned or delayed.

(b) Owner shall take no action which would impair or in any way modify the earth cover over, or the lateral, or subjacent support for the aforementioned improvements and appurtenances within the Easement Parcel without obtaining the specific written permission of the Town, which permission shall not be unreasonably withheld, conditioned or delayed.

(c) Owner shall take no action nor shall otherwise knowingly permit any activity, event, or permanent or temporary structure which interferes with the movement of pedestrian, non-motorized or vehicular traffic, emergency vehicle access, access for maintenance or inspection, and other lawful purposes within the Easement Parcel in

which the Town may use right-of-ways generally.

4. Town agrees that plans for construction of any improvements within the Easement Parcel will be provided to Owner prior to commencement of construction. To the fullest extent permitted by law, Town will indemnify, defend and hold Owner harmless from all causes of action, claims, suits, judgments, losses, actual damages and costs (including without limitation reasonable attorneys' fees) incurred by the Owner or then current owners of the fee title to the Owner Property as a result of the use of the Easement Parcel by the Town, its officers, employees, contractors, agents or invitees or any other person and/or the negligence or willful misconduct on the part of Town, its officers, employees, contractors, agents or invitees in carrying out the obligations of the Town under this Easement Agreement. This indemnification provision shall survive termination or expiration of this Easement Agreement. Except as otherwise provided herein, nothing in this Easement 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. The Town covenants that neither it nor its employees, agents, contractors or representatives shall dispose of, generate, manufacture, release or store environmentally hazardous substances on or about the Easement Parcel.

5. The Town, its employees, agents, contractors and representatives, shall be prohibited from taking any action or omission that subjects the Easement Parcel to liens of any kind, including, but not limited to, construction, mechanic's or materialmen's liens (collectively, "Liens"). In the event the Easement Parcel or the balance of the Owner Parcel becomes subject to any such Liens directly or indirectly through the action or inaction of the Town, its employees, agents, contractors, or representatives, the Town shall discharge and bond off any such Liens within five (5) days of the imposition of any such Liens, and the failure to do so shall permit Owner to pursue all of its rights and remedies under this Easement Agreement, at law, or equity.

6. The Town shall insure the Easement Parcel and include the same in its commercial general liability policies, which policies shall be maintained in commercially reasonable amounts. Owner shall be named as an additional insured and Town shall deliver to Owner the certificate of insurance naming Owner as an additional insured not less frequently than annually.

7. The parties agree that neither party has made or authorized any agreement with respect to this Easement Agreement other than as expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either party, or its agents or employees, hereto.

8. Owner, for itself, its successors and assigns, does covenant, grant, bargain, and agree to and with the Town, its heirs and assigns, that at the time of the unsealing and delivery of these presentments, Owner is well seized of the Easement above conveyed, has good and marketable title in fee simple to the Easement Parcel, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, subject to any easements, liens, claims, reservations, covenants, conditions and restrictions of public record or which are obvious from a physical inspection of the Easement Parcel.

9. Whenever used herein, the singular number shall include the plural, the plural the singular; and the use of any gender shall be applicable to all genders. All of the covenants herein contained shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

10. The Owner or then current owners of the fee title to the Owner Property shall, at all times during the term of this Easement Agreement, have the right to mortgage or encumber that portion of the Easement Parcel which it owns, as well as all of its right, title and interest hereunder, in favor of and as additional security to the holder of a mortgage or deed of trust relating to the Owner Property; provided, however, that the Easement Parcel shall not be impaired by any foreclosure or deed in lieu of foreclosure of such security interest relating to the Owner Property.

11. The term of this Easement Agreement shall be perpetual; provided, however, this Easement Agreement shall terminate in its entirety and shall be of no further force or effect upon (i) the recording of a written termination of this Easement Agreement signed by the Town and the Owner or then current owners of the fee title to the Owner Property, (ii) a breach by Town of the terms and conditions of this Easement Agreement (beyond notice and reasonable cure period), or (iii) Town shall abandon the Easement Parcel. Upon such termination, the Easement Parcel will revert to the Owner or then current owners of the fee title to the Owner Property.

12. The parties agree that this Easement Agreement shall be duly recorded in the office of the Clerk and Recorder of Eagle County, State of Colorado.

13. The parties agree that this Easement Agreement contains the entire understanding and agreement between the parties and cannot be amended, modified or supplemented in any way, except by written agreement executed by all parties, or the applicable successors and assigns, and duly recorded in the office of the Clerk and Recorder of Eagle County, State of Colorado.

14. If any provision of this Easement Agreement shall be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality, or enforceability of any other provision of this Easement Agreement, and there shall be substituted for the affected provision(s)

a valid and enforceable provision(s) as similar as possible to the affective provision(s).

15. This Easement Agreement shall be governed by the laws of the State of Colorado.

16. In the event any party commences any action or proceeding against any other party in order to enforce the provisions hereof, such party's remedies shall be limited to injunctive relief and damages for the alleged breach of any of the provisions hereof, and neither party shall have the right to terminate this Easement Agreement, except as set forth in Section 11, above. The prevailing party in any such action (as may be specifically determined by a court of competent jurisdiction) shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

17. This Easement Agreement may be executed in counterparts with the same effect as if all the parties had executed the same instrument.

18. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), or by registered or certified mail, postage prepaid, return receipt requested, addressed to Owner at the address(es) designated below, or to the Town at the address(es) designated below. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) upon confirmed transmission if sent by facsimile transmission, provided such transmission is prior to 5:00 p.m. on a business day (if such transmission is after 5:00 p.m. on a business day or is on a non-business day, such notice will be deemed given on the following business day), (ii) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (iii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs.

If to Owner: Beck Family Partnership, Ltd.
Attn: Andy Beck
P.O. Box 4030
Vail, Colorado 81658

with simultaneous
copies to:

Moye White LLP
Attn: Thomas M. List, Esq.
16 Market Square, 6th Floor
1400 16th Street

Denver, CO 80202

If to Town: Town of Avon
One Lake Street
P.O. Box 975
Avon, CO 81620
Attn: Town Engineer

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have set their hands hereto on the day and year first above written.

BECK FAMILY PARTNERSHIP, LTD.
a Colorado limited partnership

By: _____
Its: _____

[illegible]

Subscribed and sworn to before me this _____ day of _____, 2016, by _____ as _____[Title].

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

Notary Public

TOWN OF AVON

By: _____
Jennie Fancher, Mayor

ATTEST:

Debbie Hoppe, Town Clerk

STATE OF COLORADO }
 } ss.
COUNTY OF EAGLE }

The foregoing document was subscribed and sworn to before me this _____
day of _____, 2016, by Jennie Fancher as Mayor and Debbie Hoppe as Town Clerk of the
Town of Avon.

Witness my hand and seal. My commission expires: _____

Notary Public

**LEGAL DESCRIPTION
FOR PERMANENT DRAINAGE EASEMENT**

A parcel of land located in Lot 33, Block 1, Benchmark at Beaver Creek, Amendment No. 4, as recorded in Book 274 at Page 701 under Reception Number 171107, at the Office of the Clerk and Recorder of Eagle County, Colorado and being more particularly described as follows:

The True Point of Beginning being at the southwest corner of Lot 33 and the easterly right of way line of Metcalf Road and the northerly right of way line of Nottingham Road;

Thence N20°47'07"W along said easterly right of way line of Metcalf Road and the west line of Lot 33 a distance of 31.25 feet to a point;

Thence S55°39'34"E a distance of 41.24 feet to a point on the south line of Lot 33 and the north right of way line of Nottingham Road and on a non-tangent curve to the left having a radius of 4808.78 feet;

Thence 23.72 feet along said curve through a central angle of 00°16'57" and a chord bearing S75°28'22"W a distance of 23.72 feet to the True Point of Beginning.

The above parcel contains 369 square feet (0.009 acres) more or less;



Date: February 1, 2016

Prepared by: John D. McMahan P.L.S. 37934
Colorado Licensed Professional Land Surveyor
On behalf of Inter-Mountain Engineering
IME Project Number: 15-0011

DENVER OFFICE

9618 Brook Hill Lane | Lone Tree, CO 80124 | Phone: 303.948.6220 | Fax: 303.790.4499

VAIL VALLEY OFFICE

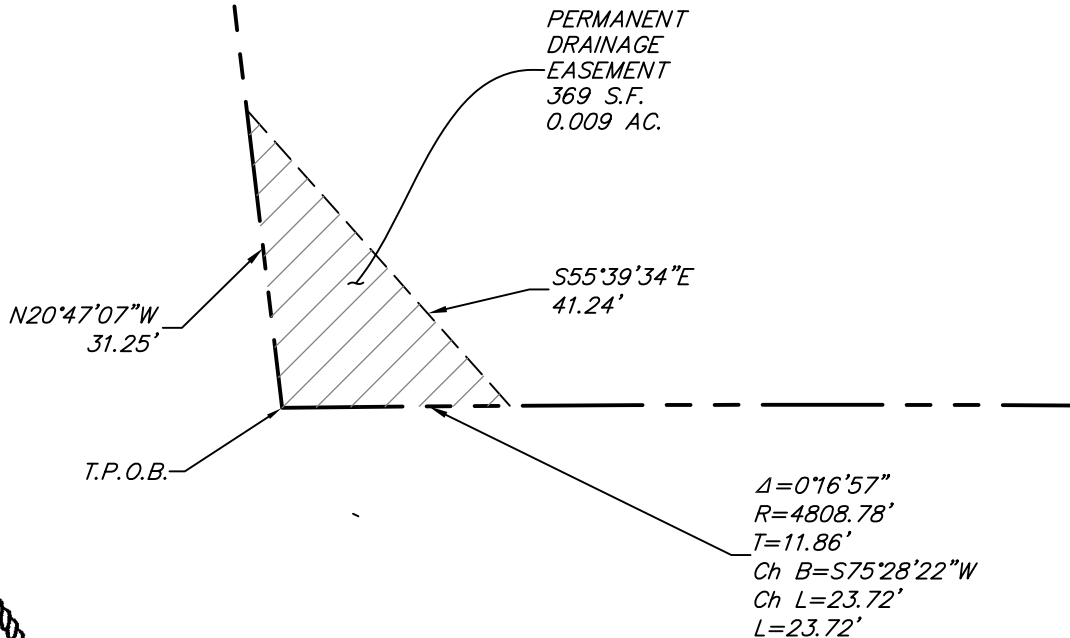
40801 U.S. Highway 6, Suite 203 | PO Box 978 | Avon, CO 81620 | Phone: 970.949.5072 | Fax: 970.949.9339



SCALE
1 INCH = 20 FEET

METCALF ROAD (50' R.O.W.)

LOT 33
BENCHMARK AT
BEAVER CREEK
(RECEPTION NO. 171107)



NOTTINGHAM ROAD (50' R.O.W.)

LEGEND

T.P.O.B. INDICATES THE TRUE POINT OF BEGINNING

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



NOTE:
THIS DOCUMENT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



Inter-Mountain
ENGINEERS & Surveyors
Civil Engineers & Surveyors
40801 US HWY 6&24, SUITE 303, BOX 978, AVON, CO 81620 PH: (970) 949-5972
6551 S. REVERE PARKWAY, SUITE 106, CENTENNIAL, CO 80111 PH: (303) 948-6220

PERMANENT DRAINAGE EASEMENT

LEGAL EXHIBIT

LOT 33, BLOCK 1
BENCHMARK AT BEAVER CREEK
TOWN OF AVON, EAGLE COUNTY, COLORADO

DRAWN BY: SPF

SCALE: 1"=20'

DATE ISSUED: 2-1-16

PROJECT NO. 15-0011

EXHIBIT **B**

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: Beck Family Partnership, Ltd., a Colorado limited partnership (“Owner”), whose address is PO Box 4030, Vail, Colorado 81658, in consideration of Ten Dollars (\$10.00), to be paid upon providing written notice of commencement of construction by the Town, and other good and valuable consideration, does hereby grant, bargain, sell and convey to TOWN OF AVON (“Town” or “Grantee”), a Colorado home rule municipality, whose address is P. O Box 975, Avon, Colorado 81620, a non-exclusive temporary construction easement, subject to the terms and conditions contained in this Temporary Construction Easement Agreement (“Easement Agreement”) for the purpose of establishing and maintaining site grades and drainage compatible with the 2016 Metcalf Road Bicycle Climbing Lane Project over and across the tract of land described in paragraph 1 below.

The parties further agree as follows:

1. Owner is the owner of that certain real property described as Lot 33, Benchmark at Beaver Creek, Amendment No. 4, 0780 Nottingham Road, Avon, Colorado (“Property”). Owner grants to the Town a temporary construction easement on a portion of the Property for the purpose of constructing the improvements as described in Exhibit A attached hereto (“Easement Parcel”). The term of this temporary construction easement shall begin on April 1, 2016, and shall automatically expire and be of no further force or effect on December 31, 2016 (“Term”). Notwithstanding the foregoing, this Easement Agreement shall terminate in its entirety and shall be of no further force or effect upon (i) the recording of a written termination of this Easement Agreement signed by the Town and the Owner or then current owners of the fee title to the Property, (ii) a breach by the Town of the terms and conditions of this Easement Agreement (beyond notice and reasonable cure period), or (iii) the Town shall abandon the Easement Parcel. Upon such termination, the Easement Parcel will revert to the Owner or then current owners of the fee title to the Property.

2. Town agrees that it will provide written notice of commencement of construction to the Owner prior to commencement of construction. Town shall tender payment in the amount of Ten Dollars (\$10.00) as the stated monetary consideration above along with tendering the written notice of commencement of construction and reimbursement to Owner of attorney’s fees incurred in negotiating this Easement Agreement in the sum of \$_____. In the event that Owner seeks improvements to the remainder of the Property during the Term which conflict with the terms of this Easement Agreement, Town agrees to consider modifications to this Easement Agreement that accommodate Owner’s desire to improve the Property while allowing the Town to use the Easement Parcel to construct the improvements described in Exhibit A pursuant to the terms of this Easement Agreement.

3. To the fullest extent permitted by law, Town will indemnify, defend and hold Owner harmless from any and all causes of action, claims, suits, judgments, losses, actual damages and costs (including without limitation reasonable attorneys' fees) incurred by the Owner or then current owners of the fee title to the Owner Property as a result of the use of the Easement Parcel by the Town, its officers, employees, contractors, agents or invitees or any other person and/or the negligence or willful misconduct on the part of Town, its officers, employees, contractors, agents or invitees in carrying out the obligations of the Town under this Easement Agreement. This indemnification provision shall survive termination or expiration of this Easement Agreement.

4. The Town, its employees, agents, contractors and representatives, shall be prohibited from taking any action or omission that subjects the Easement Parcel or the Property to liens of any kind, including, but not limited to, construction, mechanic's or materialmen's liens (collectively, "Liens"). In the event the Easement Parcel or the balance of the Property becomes subject to any such Liens directly or indirectly through the action or inaction of the Town, its employees, agents, contractors, or representatives, the Town shall discharge and bond off any such Liens within five (5) days of the imposition of any such Liens, and the failure to do so shall permit Owner to pursue all of its rights and remedies under this Easement Agreement, at law, or equity.

5. The Town agrees that it will not dispose of, generate, manufacture, release or store environmentally hazardous substances (other than *de minimis* amounts) on or about the Property, and that any fill deposited shall not contain any environmentally hazardous substances. To the fullest extent permitted by law, Town will indemnify, defend and hold Owner harmless from any and all causes of action, claims, suits, judgments, losses, actual damages and costs (including without limitation reasonable attorneys' fees) incurred by Owner or then current owners of the fee title to the Property as a result of any introduction of environmentally hazardous materials in breach of this Paragraph 5 by the Town, its officers, employees, contractors, agents or invitees or any other person. The indemnification provision contained in this Paragraph 5 shall survive termination or expiration of this Easement Agreement.

6. Upon completion of construction of the Metcalf Road Bicycle Climbing Lane Project, all materials placed by the Town on the Property (including construction materials and debris) will be removed from the Property, at the Town's sole cost and expense, and the Property will be returned to the same condition as existed prior to the Town's permitted use of the Easement Parcel, except as specified in the attached Construction Plans. If the Town fails to return the Property to the condition that existed prior to the Town's use of the Property or fails to grade and establish drainage for the Property consistent with the attached Construction Plans, the Town will promptly reimburse Owner for any and all costs reasonably incurred by Owner in returning the Property to its prior condition or in establishing grading and drainage on the Property

consistent with the attached Construction Plans. The Town shall take no action which would impair or in any way modify the earth cover over, or the lateral, or subjacent support for the aforementioned improvements and appurtenances within the Easement Parcel without obtaining the specific written permission of the Owner, which permission shall not be unreasonably withheld, conditioned or delayed. The Town shall take no action nor shall otherwise knowingly permit any activity, event, or permanent or temporary structure which interferes with the movement of pedestrian, non-motorized or vehicular traffic, emergency vehicle access, access for maintenance or inspection, and other lawful purposes within the Easement Parcel.

7. The construction documents for the Metcalf Road Bicycle Climbing Lane Project will include the Property in the project limits, and the contractor will be required to provide general liability insurance in commercially reasonable amounts, covering all construction activity on the Property, consistent with the remainder of the Metcalf Road Bicycle Climbing Lane Project site, which general liability insurance shall name Beck Family Partnership, Ltd., as an additional insured. The Town shall deliver the certificate of insurance naming Beck Family Partnership, Ltd., as an additional insured prior to its use of the Easement Parcel.

8. All notices, requests, demands, and other communications required or permitted to be given under this Easement Agreement shall be in writing and sent to the addresses set forth below. Each communication shall be deemed duly given and received: (i) as of the date and time the same is personally delivered with a receipted copy; (ii) if delivered by U.S. Mail, certified mail, return receipt requested, upon delivery to the intended recipient, or on the date of the first refused delivery, if applicable; or (iii) if given by nationally recognized or reputable overnight delivery service, on the next day after receipted deposit with same.

Owner: Beck Family Partnership, Ltd.
Attn: Andy Beck
P.O. Box 4030
Vail, Colorado 81658

with simultaneous
copies to: Moyer White LLP
Attn: Thomas M. List, Esq.
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80202

Town of Avon: Town of Avon
One Lake Street
P.O. Box 975

Avon, CO 81620
Attn: Town Engineer

9. During the Term, Owner reserves all rights attendant to its ownership of the Property including, but not limited to: (a) the use and enjoyment of the Property for all purposes insofar as such use is consistent with and does not impair any grant herein contained, and (b) the right of Owner or then current owners of the fee title to the Property to sell and convey the Property or mortgage or encumber the Property in favor of and as additional security to the holder of a mortgage or deed of trust relating to the Property; provided, however, that the Easement Parcel shall not be impaired by any foreclosure or deed in lieu of foreclosure of such security interest relating to the Property.

10. Owner covenants and agrees that it has good title to the Property and that it has good and lawful right to grant this Easement Agreement, subject to any easements, liens, claims, reservations, covenants, conditions and restrictions of public record or which are obvious from a physical inspection of the Property.

11. In the event of any dispute resulting in litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses reasonably incurred by it in connection with the enforcement of this Easement Agreement, including reasonable attorneys' fees and costs in connection therewith. This provision shall survive termination of this Easement.

12. This instrument is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Easement Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this agreement properly executed by the Parties. No oral representation of any kind preceding the date of this Easement Agreement by any officer, employee, or agent of Owner at variance with the terms and conditions of this Easement Agreement, or with any written amendment to this Agreement, shall have any force or effect nor bind the Owner. This Easement Agreement and any amendments to it shall be binding upon the parties and their successors and assigns. If any provision of this Easement Agreement shall be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality, or enforceability of any other provision of this Easement Agreement, and there shall be substituted for the affected provision(s) a valid and enforceable provision(s) as similar as possible to the affective provision(s).

13. Each and every term, condition, or covenant of this Easement Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable state or federal law. Such applicable law as may be amended from time to time, is expressly

incorporated into this Easement Agreement as if fully set out by this reference. Venue for any action arising out of this Easement Agreement shall be in the District Court in the County of Eagle, Colorado.

14. The benefits and burdens of the Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15. This Easement Agreement may be executed in counterparts with the same effect as if all the parties had executed the same instrument.

IN WITNESS WHEREOF, the Owner has executed this Temporary Construction Easement Agreement on the date first written above.

By:_____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____.

Witness my hand and official seal.

My commission expires:_____

Notary Public

Easement Agreement accepted and approved by the Town of Avon.

By:_____
Jennie Fancher, Mayor

Date:_____

Attest:_____
Debbie Hoppe, Town Clerk

**LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT**

A parcel of land located in Lot 33, Block 1, Benchmark at Beaver Creek, Amendment No. 4, as recorded in Book 274 at Page 701 under Reception Number 171107, at the Office of the Clerk and Recorder of Eagle County, Colorado and being more particularly described as follows:

Commencing at the southwest corner of Lot 33 and the easterly right of way line of Metcalf Road and the northerly right of way line of Nottingham Road;

Thence N20°47'07"W along said easterly right of way line of Metcalf Road and the west line of Lot 33 a distance of 31.25 feet to the True Point of Beginning of the parcel herein described;

Thence continuing N20°47'07"W along said easterly right of way line of Metcalf Road and the west line of Lot 33 a distance of 137.96 feet to a point;

Thence N69°12'53"E a distance of 10.00 feet to a point;

Thence S20°47'07"E a distance of 152.31 feet to a point;

Thence N55°39'34"W a distance of 17.49 feet to the True Point of Beginning;

The above parcel contains 1,452 square feet (0.033 acres) more or less;



Date: February 1, 2016

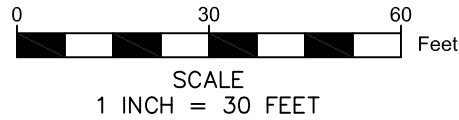
Prepared by: John D. McMahan P.L.S. 37934
Colorado Licensed Professional Land Surveyor
On behalf of Inter-Mountain Engineering
IME Project Number: 15-0011

DENVER OFFICE

9618 Brook Hill Lane | Lone Tree, CO 80124 | Phone: 303.948.6220 | Fax: 303.790.4499

VAIL VALLEY OFFICE

40801 U.S. Highway 6, Suite 203 | PO Box 978 | Avon, CO 81620 | Phone: 970.949.5072 | Fax: 970.949.9339



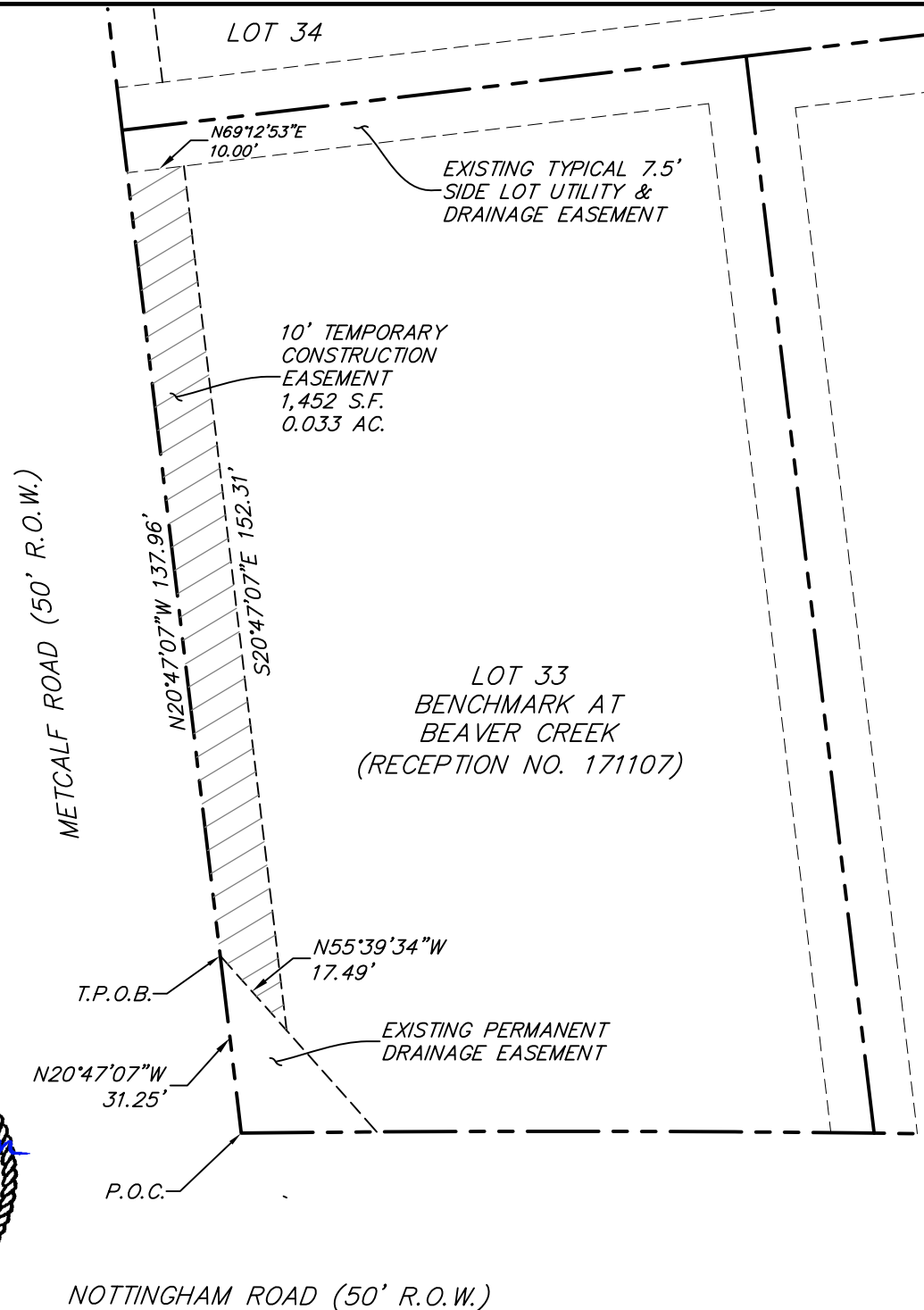
NOTE:
THIS DOCUMENT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

LEGEND

T.P.O.B. INDICATES THE TRUE POINT OF BEGINNING

P.O.C. INDICATES THE POINT OF COMMENCEMENT

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



TEMPORARY CONSTRUCTION EASEMENT

LEGAL EXHIBIT

LOT 33, BLOCK 1
BENCHMARK AT BEAVER CREEK
TOWN OF AVON, EAGLE COUNTY, COLORADO

DRAWN BY: SPF
SCALE: 1"=30'
DATE ISSUED: 2-1-16

PROJECT NO.
15-0011

EXHIBIT
B

Inter-Mountain
ENGINEERS & Surveyors
Civil Engineers & Surveyors
40801 US HWY 68-24, SUITE 303, BOX 978, AVON, CO 81620 PH: (970) 949-5972
6551 S. REVERE PARKWAY, SUITE 106, CENTENNIAL, CO 80111 PH: (303) 948-6220

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: Dennis E. Havlik Revocable Trust – Bonnie J. Havlik Revocable Trust, (Grantor), whose address is PO Box 1007, Avon, CO 81620-1007, Avon, Colorado, in consideration of Ten Dollars (\$10.00), to be paid upon providing written notice of commencement of construction by the Town, and other good and valuable consideration, does hereby grant, bargain, sell and convey to TOWN OF AVON (“Town” or “Grantee”), a Colorado home rule municipality, whose address is P. O Box 975, Avon, Colorado 81620, a non-exclusive temporary construction easement, subject to the terms and conditions contained in this Temporary Construction Easement Agreement (“Easement Agreement”) to establish and maintain site grades and drainage compatible with the 2016 Metcalf Road Bicycle Climbing Lane Project over and across the tract of land described in paragraph 1 below.

The parties further agree as follows:

1. Grantor owns Lot 34, Benchmark at Beaver Creek, Amendment No. 4, 0080 Metcalf Road, Avon, Colorado (“Property”). Grantor grants to the Town a temporary construction easement for the purpose of constructing the improvements as described in Exhibit A attached hereto. The term of this temporary construction easement shall begin on April 1, 2016, and shall expire and be of no further force or effect on December 31, 2016 (“Term”).

2. Town agrees that it will provide written notice of commencement of construction to the Grantor prior to commencement of construction. Town shall tender payment in the amount of Ten Dollars (\$10) as the stated monetary consideration above along with tendering the written notice of commencement of construction. In the event that Grantor seeks improvements to the Property during the Term which conflict with this Temporary Construction Easement Agreement, Town agrees to consider modifications to this easement agreement that accommodate Grantor’s desire to improve the Property while allowing the Town to construct the improvements described in Exhibit A.

3. To the extent permitted by law, the Town indemnifies and holds Grantor harmless against any claims or liabilities related to the Town’s activities on the Property pursuant to the easements granted hereunder. The Town, its planners, engineers, surveyors, architects and other agents and consultants shall be prohibited from taking any action or omission that subjects the Property to liens of any kind, including, but not limited to, construction, mechanic’s or materialmen’s liens (collectively, “Liens”). In the event that the Property becomes subject to any such Liens directly or indirectly through the action or inaction of the Town, its planners, engineers, surveyors, architects or other agents or consultants, the Town shall discharge or bond off any such Liens within five (5) days of the imposition of any such Liens and failure to do so shall constitute a default hereunder. This provision shall survive termination of the easement granted hereunder.

4. The Town agrees that it will not dispose of, generate, manufacture, release or store environmentally hazardous substances (other than *de minimis* amounts) on or about the Property, and that any fill deposited shall not contain any environmentally hazardous substances.

5. Upon completion of construction of the Metcalf Road Bicycle Climbing Lane Project, all materials placed by the Town on the Property (including construction materials and debris) will be removed from the Property, at the Town's sole cost and expense, and the Property will be returned to the same condition as existed prior to the Town's use of the Property, except as specified in the attached Construction Plans. If the Town fails to return the Property to the condition that existed prior to the Town's use of the Property or fails to grade and establish drainage for the Property consistent with the attached Construction Plans, the Town will promptly reimburse Grantor for any and all costs reasonably incurred by Grantor in returning the Property to its prior condition or in establishing grading and drainage on the Property consistent with the attached Construction Plans.

6. The construction documents for the Metcalf Road Bicycle Climbing Lane Project will include the Property in the project limits, and the contractor will be required to provide general liability insurance, covering activity on the Property, consistent with the remainder of the Metcalf Road Bicycle Climbing Lane Project site, which insurance shall name Dennis E. Havlik Revocable Trust – Bonnie J. Havlik Revocable Trust as an additional insured. The Town shall deliver the certificate of insurance naming Dennis E. Havlik Revocable Trust – Bonnie J. Havlik Revocable Trust as an additional insured prior to its use of the Property.

7. All notices, requests, demands, and other communications required or permitted to be given under this Easement Agreement shall be in writing and sent to the addresses set forth below. Each communication shall be deemed duly given and received: (i) as of the date and time the same is personally delivered with a receipted copy; (ii) if delivered by U.S. Mail, certified mail, return receipt requested, upon delivery to the intended recipient, or on the date of the first refused delivery, if applicable; or (iii) if given by nationally recognized or reputable overnight delivery service, on the next day after receipted deposit with same.

Grantor: Dennis E. Havlik Revocable Trust –
Bonnie J. Havlik Revocable Trust
PO Box 1007
Avon, CO 81620-1007

Town of Avon: Town of Avon
One Lake Street
P.O. Box 975
Avon, CO 81620
Attn: Town Engineer

9. Grantor reserves all rights attendant to its ownership of the Property including, but not limited to: (a) the use and enjoyment of the Property for all purposes insofar as such use is consistent with and does not impair any grant herein contained, and (b) sell and convey the Property or any portion of it subject to this Easement Agreement.

10. Grantor covenants and agrees that it has good title to the Property and that it has good and lawful right to grant this Easement Agreement, subject to any easements, liens, claims, reservations, covenants, conditions and restrictions of public record or which are obvious from a physical inspection of the Property.

11. In the event of any dispute resulting in litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses reasonably incurred by it in connection with the enforcement of this Easement Agreement, including reasonable attorneys' fees and costs in connection therewith. This provision shall survive termination of this Easement.

12. This instrument is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Easement Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this agreement properly executed by the Parties. No oral representation of any kind preceding the date of this Easement Agreement by any officer, employee, or agent of Grantor at variance with the terms and conditions of this Easement Agreement, or with any written amendment to this Agreement, shall have any force or effect nor bind the Grantor. This Easement Agreement and any amendments to it shall be binding upon the parties and their successors and assigns.

13. Each and every term, condition, or covenant of this Easement Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable state or federal law. Such applicable law as may be amended from time to time, is expressly incorporated into this Easement Agreement as if fully set out by this reference. Venue for any action arising out of this Easement Agreement shall be in the District Court in the County of Eagle, Colorado.

14. The benefits and burdens of the Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Construction Easement Agreement on the date first written above.

By: _____

Date: 03/1/2016

STATE OF Colorado)
) ss.
COUNTY OF Eagle)

The foregoing instrument was acknowledged before me this 1st day of

March

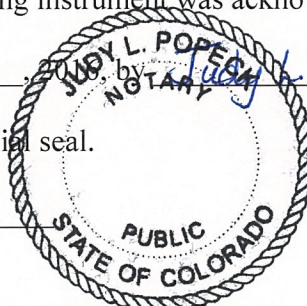
by

Judy L. Popeck

Witness my hand and official seal.

My commission expires: 2/10/19

Judy L. Popeck
Notary Public



Easement Agreement accepted and approved by the Town of Avon.

By: _____

Jennie Fancher, Mayor

Date: _____

Attest: _____

Debbie Hoppe, Town Clerk

**LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT**

A parcel of land located in Lot 34, Block 1, Benchmark at Beaver Creek, Amendment No. 4, as recorded in Book 274 at Page 701 under Reception Number 171107, at the Office of the Clerk and Recorder of Eagle County, Colorado and being more particularly described as follows:

Commencing at the southwest corner of Lot 34 and the easterly right of way line of Metcalf Road;

Thence N20°47'07"W along said easterly right of way line of Metcalf Road and the west line of Lot 34 a distance of 7.5 feet to the True Point of Beginning of the parcel herein described;

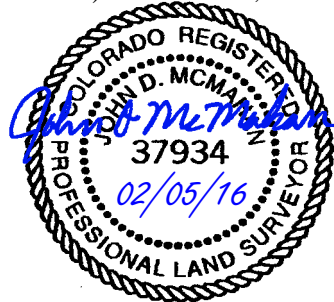
Thence continuing N20°47'07"W along said easterly right of way line of Metcalf Road and the west line of Lot 34 a distance of 115.00 feet to a point;

Thence N69°12'53"E a distance of 8.00 feet to a point;

Thence S20°47'07"E a distance of 115.00 feet to a point;

Thence S69°12'53"W a distance of 8.00 feet to the True Point of Beginning;

The above parcel contains 920 square feet (0.021 acres) more or less;



Date: February 1, 2016

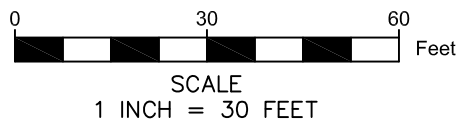
Prepared by: John D. McMahan P.L.S. 37934
Colorado Licensed Professional Land Surveyor
On behalf of Inter-Mountain Engineering
IME Project Number: 15-0011

DENVER OFFICE

9618 Brook Hill Lane | Lone Tree, CO 80124 | Phone: 303.948.6220 | Fax: 303.790.4499

VAIL VALLEY OFFICE

40801 U.S. Highway 6, Suite 203 | PO Box 978 | Avon, CO 81620 | Phone: 970.949.5072 | Fax: 970.949.9339

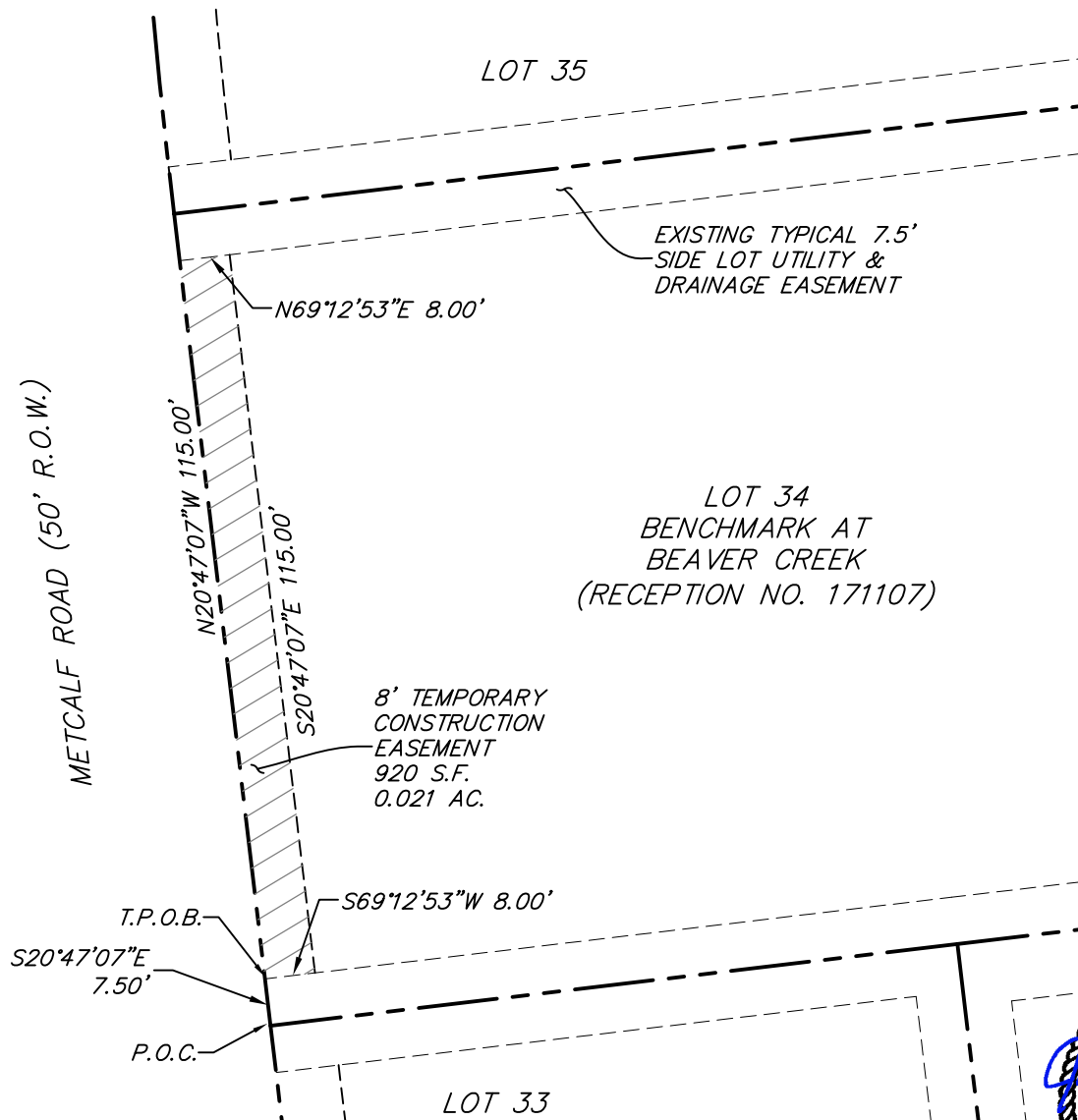


LEGEND

T.P.O.B. INDICATES THE TRUE POINT OF BEGINNING

P.O.C. INDICATES THE POINT OF COMMENCEMENT

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



NOTE:
THIS DOCUMENT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



LEGAL EXHIBIT	
LOT 34, BLOCK 1	
BENCHMARK AT BEAVER CREEK	
TOWN OF AVON, EAGLE COUNTY, COLORADO	
DRAWN BY:	SPF
SCALE:	1"=30'
DATE ISSUED:	2-1-16
PROJECT NO.	15-0011
EXHIBIT	B

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: ASC LLC, (Grantor), whose address is PO Box 1529, Avon, Colorado 81620-1529, in consideration of Ten Dollars (\$10.00), to be paid upon providing written notice of commencement of construction by the Town, and other good and valuable consideration, does hereby grant, bargain, sell and convey to TOWN OF AVON ("Town" or "Grantee"), a Colorado home rule municipality, whose address is P. O Box 975, Avon, Colorado 81620, a non-exclusive temporary construction easement, subject to the terms and conditions contained in this Temporary Construction Easement Agreement ("Easement Agreement") to establish and maintain site grades and drainage compatible with the 2016 Metcalf Road Bicycle Climbing Lane Project over and across the tract of land described in paragraph 1 below.

The parties further agree as follows:

1. Grantor owns Lot 35, Benchmark at Beaver Creek, Amendment No. 4, 0090 Metcalf Road, Avon, Colorado ("Property"). Grantor grants to the Town a temporary construction easement for the purpose of constructing the improvements as described in Exhibit A attached hereto. The term of this temporary construction easement shall begin on April 1, 2016, and shall expire and be of no further force or effect on December 31, 2016 ("Term").

2. Town agrees that it will provide written notice of commencement of construction to the Grantor prior to commencement of construction. Town shall tender payment in the amount of Ten Dollars (\$10) as the stated monetary consideration above along with tendering the written notice of commencement of construction. In the event that Grantor seeks improvements to the Property during the Term which conflict with this Temporary Construction Easement Agreement, Town agrees to consider modifications to this easement agreement that accommodate Grantor's desire to improve the Property while allowing the Town to construct the improvements described in Exhibit A.

3. To the extent permitted by law, the Town indemnifies and holds Grantor harmless against any claims or liabilities related to the Town's activities on the Property pursuant to the easements granted hereunder. The Town, its planners, engineers, surveyors, architects and other agents and consultants shall be prohibited from taking any action or omission that subjects the Property to liens of any kind, including, but not limited to, construction, mechanic's or materialmen's liens (collectively, "Liens"). In the event that the Property becomes subject to any such Liens directly or indirectly through the action or inaction of the Town, its planners, engineers, surveyors, architects or other agents or consultants, the Town shall discharge or bond off any such Liens within five (5) days of the imposition of any such Liens and failure to do so shall constitute a default hereunder. This provision shall survive termination of the easement granted hereunder.

4. The Town agrees that it will not dispose of, generate, manufacture, release or store environmentally hazardous substances (other than *de minimis* amounts) on or about the Property, and that any fill deposited shall not contain any environmentally hazardous substances.

5. Upon completion of construction of the Metcalf Road Bicycle Climbing Lane Project, all materials placed by the Town on the Property (including construction materials and debris) will be removed from the Property, at the Town's sole cost and expense, and the Property will be returned to the same condition as existed prior to the Town's use of the Property, except as specified in the attached Construction Plans. If the Town fails to return the Property to the condition that existed prior to the Town's use of the Property or fails to grade and establish drainage for the Property consistent with the attached Construction Plans, the Town will promptly reimburse Grantor for any and all costs reasonably incurred by Grantor in returning the Property to its prior condition or in establishing grading and drainage on the Property consistent with the attached Construction Plans.

6. The construction documents for the Metcalf Road Bicycle Climbing Lane Project will include the Property in the project limits, and the contractor will be required to provide general liability insurance, covering activity on the Property, consistent with the remainder of the Metcalf Road Bicycle Climbing Lane Project site, which insurance shall name ASC LLC as an additional insured. The Town shall deliver the certificate of insurance naming ASC LLC as an additional insured prior to its use of the Property.

7. All notices, requests, demands, and other communications required or permitted to be given under this Easement Agreement shall be in writing and sent to the addresses set forth below. Each communication shall be deemed duly given and received: (i) as of the date and time the same is personally delivered with a receipted copy; (ii) if delivered by U.S. Mail, certified mail, return receipt requested, upon delivery to the intended recipient, or on the date of the first refused delivery, if applicable; or (iii) if given by nationally recognized or reputable overnight delivery service, on the next day after receipted deposit with same.

Grantor: ASC LLC
PO Box 1529
Avon, CO 81620-1529

Town of Avon: Town of Avon
One Lake Street
P.O. Box 975
Avon, CO 81620
Attn: Town Engineer

9. Grantor reserves all rights attendant to its ownership of the Property including, but not limited to: (a) the use and enjoyment of the Property for all purposes insofar as such use is consistent with and does not impair any grant herein contained, and (b) sell and convey the Property or any portion of it subject to this Easement Agreement.

10. Grantor covenants and agrees that it has good title to the Property and that it has good and lawful right to grant this Easement Agreement, subject to any easements, liens, claims, reservations, covenants, conditions and restrictions of public record or which are obvious from a physical inspection of the Property.

11. In the event of any dispute resulting in litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses reasonably incurred by it in connection with the enforcement of this Easement Agreement, including reasonable attorneys' fees and costs in connection therewith. This provision shall survive termination of this Easement.

12. This instrument is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Easement Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this agreement properly executed by the Parties. No oral representation of any kind preceding the date of this Easement Agreement by any officer, employee, or agent of Grantor at variance with the terms and conditions of this Easement Agreement, or with any written amendment to this Agreement, shall have any force or effect nor bind the Grantor. This Easement Agreement and any amendments to it shall be binding upon the parties and their successors and assigns.

13. Each and every term, condition, or covenant of this Easement Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable state or federal law. Such applicable law as may be amended from time to time, is expressly incorporated into this Easement Agreement as if fully set out by this reference. Venue for any action arising out of this Easement Agreement shall be in the District Court in the County of Eagle, Colorado.

14. The benefits and burdens of the Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Construction Easement Agreement on the date first written above.

By: [Signature]

Date: 2-24-16

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 24th day of February, 2016, by Krista Jaramillo

Witness my hand and official seal.

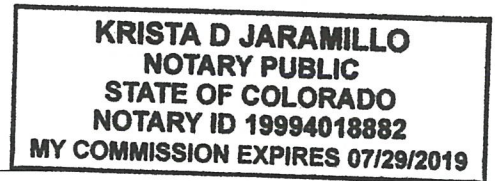
My commission expires: 7/29/19

[Signature]
Notary Public

Easement Agreement accepted and approved by the Town of Avon.

By: _____
Jennie Fancher, Mayor

Date: _____



Attest: _____
Debbie Hoppe, Town Clerk

**LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT**

A parcel of land located in Lot 35, Block 1, Benchmark at Beaver Creek, Amendment No. 4, as recorded in Book 274 at Page 701 under Reception Number 171107, at the Office of the Clerk and Recorder of Eagle County, Colorado and being more particularly described as follows:

Commencing at the southwest corner of Lot 35 and the easterly right of way line of Metcalf Road and on a curve to the right having a radius of 1156.18 feet;

Thence 7.51 feet along said curve and easterly right of way line of Metcalf Road through a central angle of $00^{\circ}22'19''$ and a chord which bears $N20^{\circ}35'58''W$ a distance of 7.51 feet to the True Point of Beginning;

Thence continuing along said easterly right of way of Metcalf Road on a curve to the right having a radius of 1156.18 feet;

Thence 110.30 feet along said curve and easterly right of way line of Metcalf Road through a central angle of $05^{\circ}27'57''$ and a chord which bears $N17^{\circ}40'50''W$ a distance of 110.26 feet to a point;

Thence $N75^{\circ}25'27''E$ a distance of 10.00 feet to a point on a non-tangent curve to the left having a radius of 1146.18 feet;

Thence 109.21 feet along said curve through a central angle of $05^{\circ}27'34''$ and a chord which bears $S17^{\circ}40'50''E$ a distance of 109.17 feet to a point;

Thence $S69^{\circ}12'53''W$ a distance of 10.00 feet to the True Point of Beginning;

The above parcel contains 1,098 square feet (0.025 acres) more or less;



Date: February 1, 2016

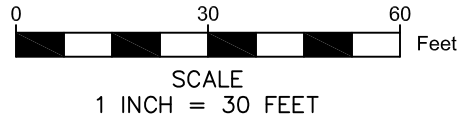
Prepared by: John D. McMahan P.L.S. 37934
Colorado Licensed Professional Land Surveyor
On behalf of Inter-Mountain Engineering
IME Project Number: 15-0011

DENVER OFFICE

9618 Brook Hill Lane | Lone Tree, CO 80124 | Phone: 303.948.6220 | Fax: 303.790.4499

VAIL VALLEY OFFICE

40801 U.S. Highway 6, Suite 203 | PO Box 978 | Avon, CO 81620 | Phone: 970.949.5072 | Fax: 970.949.9339



LEGEND

T.P.O.B. INDICATES THE TRUE POINT OF BEGINNING

P.O.C. INDICATES THE POINT OF COMMENCEMENT

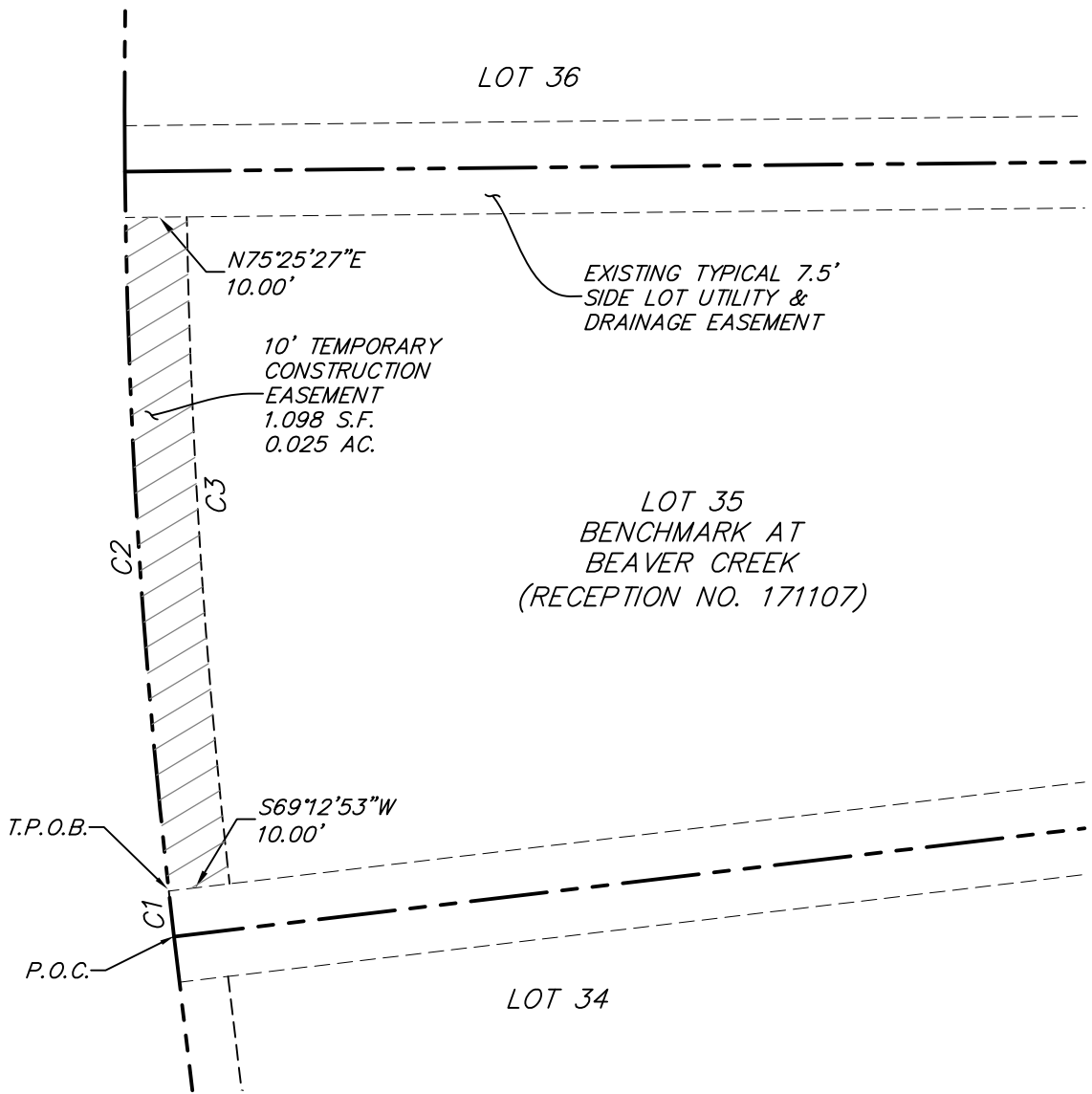
NOTE:

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IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



METCALF ROAD (50' R.O.W.)



CURVE TABLE						
CURVE	DELTA	LENGTH	RADIUS	CHORD	CH BEARING	TANGENT
C1	0° 22' 19"	7.51'	1156.18'	7.51'	N20° 35' 58"W	3.75'
C2	5° 27' 57"	110.30'	1156.18'	110.26'	N17° 40' 50"W	55.19'
C3	5° 27' 34"	109.21'	1146.18'	109.17'	S17° 40' 50"E	54.65'

TEMPORARY CONSTRUCTION EASEMENT

LEGAL EXHIBIT

LOT 35, BLOCK 1
BENCHMARK AT BEAVER CREEK
TOWN OF AVON, EAGLE COUNTY, COLORADO

DRAWN BY:	SPF
SCALE:	1"=30'
DATE ISSUED:	2-1-16
PROJECT NO.	15-0011
EXHIBIT	B

**Inter-Mountain**
ENGINEERS & SURVEYORS

40801 US HWY 68-24, SUITE 303, BOX 978, AVON, CO 81620 PH: (970) 949-5972
6551 S REVERE PARKWAY, SUITE 106, CENTENNIAL, CO 80111 PH: (303) 945-6220

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: Vail Valley Auto Body Inc. DBA Rich's Auto Body, (Grantor), whose address is PO Box 2083, Avon, Colorado 81620-2083, in consideration of Ten Dollars (\$10.00), to be paid upon providing written notice of commencement of construction by the Town, and other good and valuable consideration, does hereby grant, bargain, sell and convey to TOWN OF AVON ("Town" or "Grantee"), a Colorado home rule municipality, whose address is P. O Box 975, Avon, Colorado 81620, a non-exclusive temporary construction easement, subject to the terms and conditions contained in this Temporary Construction Easement Agreement ("Easement Agreement") to establish and maintain site grades and drainage compatible with the 2016 Metcalf Road Bicycle Climbing Lane Project over and across the tract of land described in paragraph 1 below.

The parties further agree as follows:

1. Grantor owns Lot 36, Benchmark at Beaver Creek, Amendment No. 4, 0120 Metcalf Road, Avon, Colorado ("Property"). Grantor grants to the Town a temporary construction easement for the purpose of constructing the improvements as described in Exhibit A attached hereto. The term of this temporary construction easement shall begin on April 1, 2016, and shall expire and be of no further force or effect on December 31, 2016 ("Term").

2. Town agrees that it will provide written notice of commencement of construction to the Grantor prior to commencement of construction. Town shall tender payment in the amount of Ten Dollars (\$10) as the stated monetary consideration above along with tendering the written notice of commencement of construction. In the event that Grantor seeks improvements to the Property during the Term which conflict with this Temporary Construction Easement Agreement, Town agrees to consider modifications to this easement agreement that accommodate Grantor's desire to improve the Property while allowing the Town to construct the improvements described in Exhibit A.

3. To the extent permitted by law, the Town indemnifies and holds Grantor harmless against any claims or liabilities related to the Town's activities on the Property pursuant to the easements granted hereunder. The Town, its planners, engineers, surveyors, architects and other agents and consultants shall be prohibited from taking any action or omission that subjects the Property to liens of any kind, including, but not limited to, construction, mechanic's or materialmen's liens (collectively, "Liens"). In the event that the Property becomes subject to any such Liens directly or indirectly through the action or inaction of the Town, its planners, engineers, surveyors, architects or other agents or consultants, the Town shall discharge or bond off any such Liens within five (5) days of the imposition of any such Liens and failure to do so shall constitute a default hereunder. This provision shall survive termination of the easement granted hereunder.

4. The Town agrees that it will not dispose of, generate, manufacture, release or store environmentally hazardous substances (other than *de minimis* amounts) on or about the Property, and that any fill deposited shall not contain any environmentally hazardous substances.

5. Upon completion of construction of the Metcalf Road Bicycle Climbing Lane Project, all materials placed by the Town on the Property (including construction materials and debris) will be removed from the Property, at the Town's sole cost and expense, and the Property will be returned to the same condition as existed prior to the Town's use of the Property, except as specified in the attached Construction Plans. If the Town fails to return the Property to the condition that existed prior to the Town's use of the Property or fails to grade and establish drainage for the Property consistent with the attached Construction Plans, the Town will promptly reimburse Grantor for any and all costs reasonably incurred by Grantor in returning the Property to its prior condition or in establishing grading and drainage on the Property consistent with the attached Construction Plans.

6. The construction documents for the Metcalf Road Bicycle Climbing Lane Project will include the Property in the project limits, and the contractor will be required to provide general liability insurance, covering activity on the Property, consistent with the remainder of the Metcalf Road Bicycle Climbing Lane Project site, which insurance shall name Vail Valley Auto Body Inc. DBA Rich's Auto Body as an additional insured. The Town shall deliver the certificate of insurance naming Vail Valley Auto Body Inc. DBA Rich's Auto Body as an additional insured prior to its use of the Property.

7. All notices, requests, demands, and other communications required or permitted to be given under this Easement Agreement shall be in writing and sent to the addresses set forth below. Each communication shall be deemed duly given and received: (i) as of the date and time the same is personally delivered with a receipted copy; (ii) if delivered by U.S. Mail, certified mail, return receipt requested, upon delivery to the intended recipient, or on the date of the first refused delivery, if applicable; or (iii) if given by nationally recognized or reputable overnight delivery service, on the next day after receipted deposit with same.

Grantor: Vail Valley Auto Body Inc. DBA Rich's Auto Body
PO Box 2083
Avon, CO 81620-2083

Town of Avon: Town of Avon
One Lake Street
P.O. Box 975
Avon, CO 81620
Attn: Town Engineer

9. Grantor reserves all rights attendant to its ownership of the Property including, but not limited to: (a) the use and enjoyment of the Property for all purposes insofar as such use is consistent with and does not impair any grant herein contained, and (b) sell and convey the Property or any portion of it subject to this Easement Agreement.

10. Grantor covenants and agrees that it has good title to the Property and that it has good and lawful right to grant this Easement Agreement, subject to any easements, liens, claims, reservations, covenants, conditions and restrictions of public record or which are obvious from a physical inspection of the Property.

11. In the event of any dispute resulting in litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses reasonably incurred by it in connection with the enforcement of this Easement Agreement, including reasonable attorneys' fees and costs in connection therewith. This provision shall survive termination of this Easement.

12. This instrument is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Easement Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this agreement properly executed by the Parties. No oral representation of any kind preceding the date of this Easement Agreement by any officer, employee, or agent of Grantor at variance with the terms and conditions of this Easement Agreement, or with any written amendment to this Agreement, shall have any force or effect nor bind the Grantor. This Easement Agreement and any amendments to it shall be binding upon the parties and their successors and assigns.

13. Each and every term, condition, or covenant of this Easement Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable state or federal law. Such applicable law as may be amended from time to time, is expressly incorporated into this Easement Agreement as if fully set out by this reference. Venue for any action arising out of this Easement Agreement shall be in the District Court in the County of Eagle, Colorado.

14. The benefits and burdens of the Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Construction Easement Agreement on the date first written above.

By: [Signature]

Date: 2-17-16

STATE OF Colorado)
) ss.
COUNTY OF Eagle)

The foregoing instrument was acknowledged before me this 17th day of February, 2016, by Judy L. Popeck.

Witness my hand and official seal.

My commission expires: 2/10/19

Judy L. Popeck
Notary Public



Easement Agreement accepted and approved by the Town of Avon.

By: _____
Jennie Fancher, Mayor

Date: _____

Attest: _____
Debbie Hoppe, Town Clerk



EXHIBIT A

LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT

A parcel of land located in Lot 36, Block 1, Benchmark at Beaver Creek, Amendment No. 4, as recorded in Book 274 at Page 701 under Reception Number 171107, at the Office of the Clerk and Recorder of Eagle County, Colorado and being more particularly described as follows:

Commencing at the southwest corner of Lot 36 and the easterly right of way line of Metcalf Road and on a curve to the right having a radius of 1156.18 feet;

Thence 7.50 feet along said curve and easterly right of way line of Metcalf Road through a central angle of $00^{\circ}22'18''$ and a chord which bears $N14^{\circ}23'24''W$ a distance of 7.50 feet to the True Point of Beginning;

Thence continuing along said easterly right of way of Metcalf Road on a curve to the right having a radius of 1156.18 feet;

Thence 62.50 feet along said curve and easterly right of way line of Metcalf Road through a central angle of $03^{\circ}05'50''$ and a chord which bears $N12^{\circ}39'20''W$ a distance of 62.49 feet to a point;

Thence $N11^{\circ}06'25''W$ a distance of 82.74 feet to a point;

Thence $N89^{\circ}52'54''E$ a distance of 10.19 feet to a point;

Thence $S11^{\circ}06'25''E$ a distance of 80.80 feet to a point on a curve to the left having a radius of 1146.18 feet;

Thence 61.89 feet along said curve through a central angle of $03^{\circ}05'38''$ and a chord which bears $S12^{\circ}39'14''E$ a distance of 61.89 feet to a point;

Thence $S75^{\circ}25'27''W$ a distance of 10.00 feet to the True Point of Beginning;

The above parcel contains 1,440 square feet (0.033 acres) more or less;



Date: February 1, 2016
IME Project Number: 15-0011

Prepared by: John D. McMahan P.L.S. 37934
Colorado Licensed Professional Land Surveyor
On behalf of Inter-Mountain Engineering

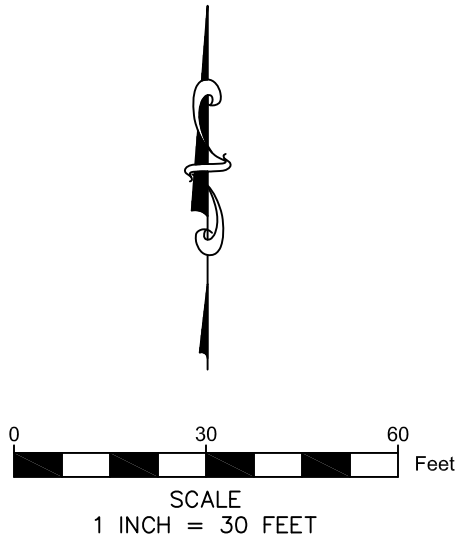
DENVER OFFICE

9618 Brook Hill Lane | Lone Tree, CO 80124 | Phone: 303.948.6220 | Fax: 303.790.4499

VAIL VALLEY OFFICE

40801 U.S. Highway 6, Suite 203 | PO Box 978 | Avon, CO 81620 | Phone: 970.949.5072 | Fax: 970.949.9339

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LEGEND

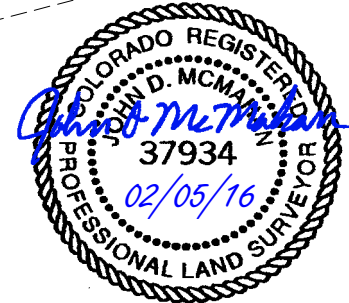
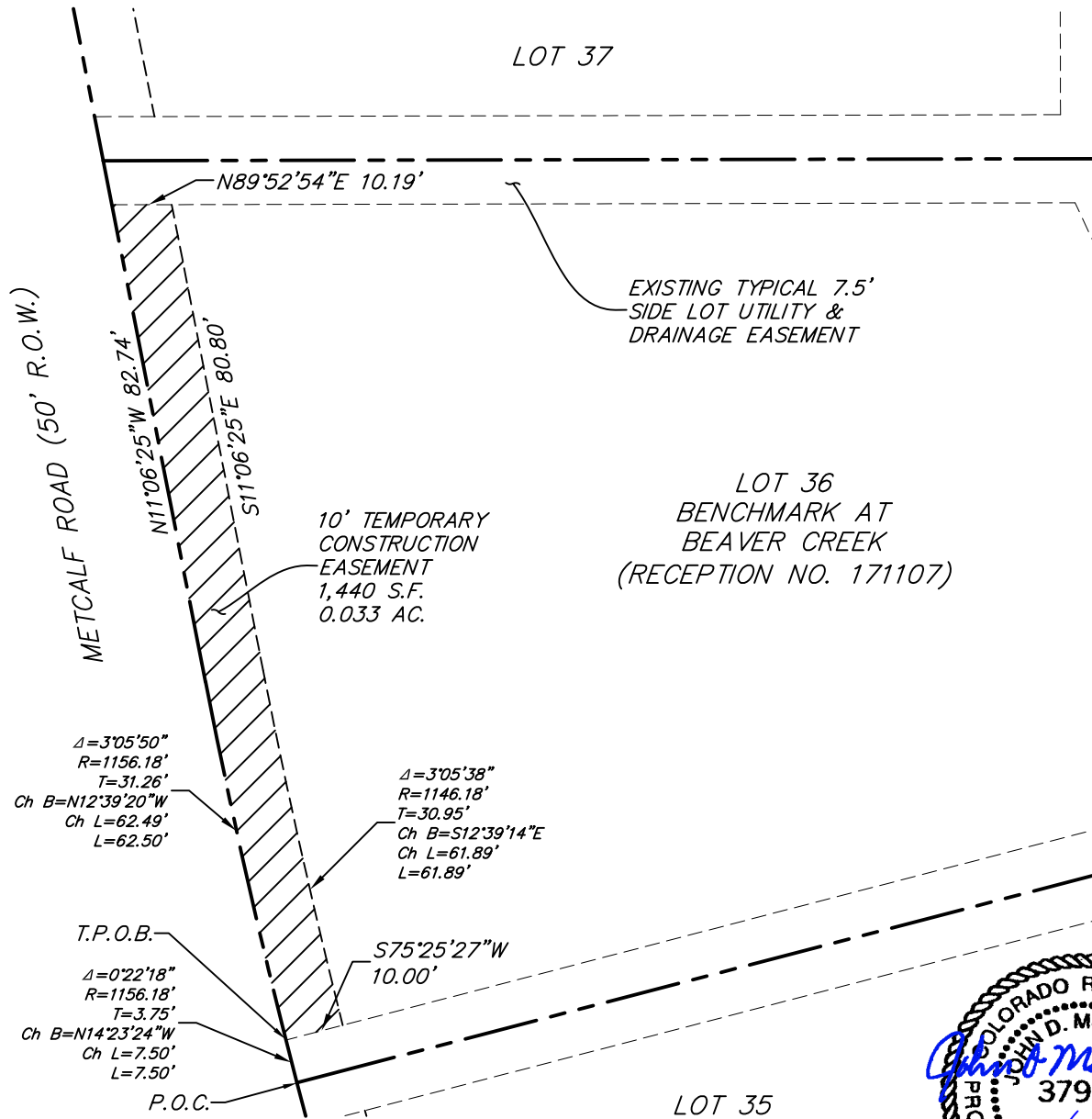
T.P.O.B. INDICATES THE TRUE POINT OF BEGINNING

P.O.C. INDICATES THE POINT OF COMMENCEMENT

NOTE:

THIS DOCUMENT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



Inter-Mountain
ENGINEERS & Surveyors
Civil Engineers & Surveyors
40801 US HWY 6&24, SUITE 305 BOX 978 AVON, CO 81620 PH: (970) 949-5972
6551 S. REVERE PARKWAY, SUITE 106 CENTENNIAL, CO 80111 PH: (303) 948-6201

TEMPORARY CONSTRUCTION EASEMENT

LEGAL EXHIBIT

LOT 36, BLOCK 1
BENCHMARK AT BEAVER CREEK

TOWN OF AVON, EAGLE COUNTY, COLORADO

DRAWN BY: SPF
SCALE: 1"=30'
DATE ISSUED: 2-1-16

PROJECT NO.
15-0011

EXHIBIT
B

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: Metcalf U-Stor-It LLC, (Grantor), whose address is Four Seasons Private Residences, 1133 14th Street Unit 2800, Denver, Colorado 80202-2252, in consideration of Ten Dollars (\$10.00), to be paid upon providing written notice of commencement of construction by the Town, and other good and valuable consideration, does hereby grant, bargain, sell and convey to TOWN OF AVON (“Town” or “Grantee”), a Colorado home rule municipality, whose address is P. O Box 975, Avon, Colorado 81620, a non-exclusive temporary construction easement, subject to the terms and conditions contained in this Temporary Construction Easement Agreement (“Easement Agreement”) to establish and maintain site grades and drainage compatible with the 2016 Metcalf Road Bicycle Climbing Lane Project over and across the tract of land described in paragraph 1 below.

The parties further agree as follows:

1. Grantor owns Lot 37, Benchmark at Beaver Creek, Amendment No. 4, 0140 Metcalf Road, Avon, Colorado (“Property”). Grantor grants to the Town a temporary construction easement for the purpose of constructing the improvements as described in Exhibit A attached hereto. The term of this temporary construction easement shall begin on April 1, 2016, and shall expire and be of no further force or effect on December 31, 2016 (“Term”).
2. Town agrees that it will provide written notice of commencement of construction to the Grantor prior to commencement of construction. Town shall tender payment in the amount of Ten Dollars (\$10) as the stated monetary consideration above along with tendering the written notice of commencement of construction. In the event that Grantor seeks improvements to the Property during the Term which conflict with this Temporary Construction Easement Agreement, Town agrees to consider modifications to this easement agreement that accommodate Grantor’s desire to improve the Property while allowing the Town to construct the improvements described in Exhibit A.
3. To the extent permitted by law, the Town indemnifies and holds Grantor harmless against any claims or liabilities related to the Town’s activities on the Property pursuant to the easements granted hereunder. The Town, its planners, engineers, surveyors, architects and other agents and consultants shall be prohibited from taking any action or omission that subjects the Property to liens of any kind, including, but not limited to, construction, mechanic’s or materialmen’s liens (collectively, “Liens”). In the event that the Property becomes subject to any such Liens directly or indirectly through the action or inaction of the Town, its planners, engineers, surveyors, architects or other agents or consultants, the Town shall discharge or bond off any such Liens within five (5) days of the imposition of any such Liens and failure to do so shall constitute a default hereunder. This provision shall survive termination of the easement granted hereunder.

4. The Town agrees that it will not dispose of, generate, manufacture, release or store environmentally hazardous substances (other than *de minimis* amounts) on or about the Property, and that any fill deposited shall not contain any environmentally hazardous substances.

5. Upon completion of construction of the Metcalf Road Bicycle Climbing Lane Project, all materials placed by the Town on the Property (including construction materials and debris) will be removed from the Property, at the Town's sole cost and expense, and the Property will be returned to the same condition as existed prior to the Town's use of the Property, except as specified in the attached Construction Plans. If the Town fails to return the Property to the condition that existed prior to the Town's use of the Property or fails to grade and establish drainage for the Property consistent with the attached Construction Plans, the Town will promptly reimburse Grantor for any and all costs reasonably incurred by Grantor in returning the Property to its prior condition or in establishing grading and drainage on the Property consistent with the attached Construction Plans.

6. The construction documents for the Metcalf Road Bicycle Climbing Lane Project will include the Property in the project limits, and the contractor will be required to provide general liability insurance, covering activity on the Property, consistent with the remainder of the Metcalf Road Bicycle Climbing Lane Project site, which insurance shall name Metcalf U-Stor-It LLC as an additional insured. The Town shall deliver the certificate of insurance naming Metcalf U-Stor-It LLC as an additional insured prior to its use of the Property.

7. All notices, requests, demands, and other communications required or permitted to be given under this Easement Agreement shall be in writing and sent to the addresses set forth below. Each communication shall be deemed duly given and received: (i) as of the date and time the same is personally delivered with a receipted copy; (ii) if delivered by U.S. Mail, certified mail, return receipt requested, upon delivery to the intended recipient, or on the date of the first refused delivery, if applicable; or (iii) if given by nationally recognized or reputable overnight delivery service, on the next day after receipted deposit with same.

Grantor: Metcalf U-Stor-It LLC
Four Seasons Private Residences
1133 14th Street Unit 2800
Denver, CO 80202-2252

Town of Avon: Town of Avon
One Lake Street
P.O. Box 975
Avon, CO 81620
Attn: Town Engineer

9. Grantor reserves all rights attendant to its ownership of the Property including, but not limited to: (a) the use and enjoyment of the Property for all purposes insofar as such use is consistent with and does not impair any grant herein contained, and (b) sell and convey the Property or any portion of it subject to this Easement Agreement.

10. Grantor covenants and agrees that it has good title to the Property and that it has good and lawful right to grant this Easement Agreement, subject to any easements, liens, claims, reservations, covenants, conditions and restrictions of public record or which are obvious from a physical inspection of the Property.

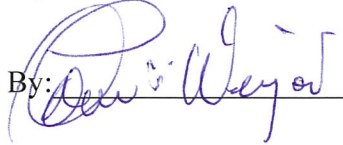
11. In the event of any dispute resulting in litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses reasonably incurred by it in connection with the enforcement of this Easement Agreement, including reasonable attorneys' fees and costs in connection therewith. This provision shall survive termination of this Easement.

12. This instrument is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Easement Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this agreement properly executed by the Parties. No oral representation of any kind preceding the date of this Easement Agreement by any officer, employee, or agent of Grantor at variance with the terms and conditions of this Easement Agreement, or with any written amendment to this Agreement, shall have any force or effect nor bind the Grantor. This Easement Agreement and any amendments to it shall be binding upon the parties and their successors and assigns.

13. Each and every term, condition, or covenant of this Easement Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable state or federal law. Such applicable law as may be amended from time to time, is expressly incorporated into this Easement Agreement as if fully set out by this reference. Venue for any action arising out of this Easement Agreement shall be in the District Court in the County of Eagle, Colorado.

14. The benefits and burdens of the Easement Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Temporary Construction Easement Agreement on the date first written above.

By: 

Date: 2/12/16

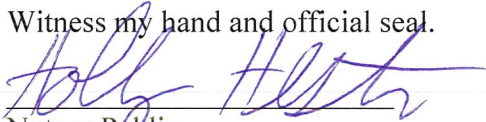
STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

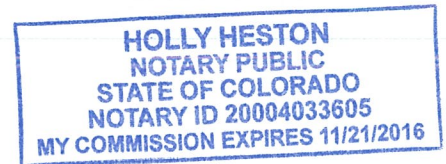
The foregoing instrument was acknowledged before me this 12TH day of

FEBRUARY, 2016, by ALAN WIGOD.

Witness my hand and official seal.

My commission expires: 11/21/2016


Notary Public



Easement Agreement accepted and approved by the Town of Avon.

By: _____
Jennie Fancher, Mayor

Date: _____

Attest: _____
Debbie Hoppe, Town Clerk

**LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT**

A parcel of land located in Lot 37, Block 1, Benchmark at Beaver Creek, Amendment No. 4, as recorded in Book 274 at Page 701 under Reception Number 171107, at the Office of the Clerk and Recorder of Eagle County, Colorado and being more particularly described as follows:

Commencing at the southwest corner of Lot 37 and the easterly right of way line of Metcalf Road;

Thence N11°06'25"W along said easterly right of way line of Metcalf Road and the west line of Lot 37 a distance of 7.64 feet to the True Point of Beginning of the parcel herein described;

Thence continuing N11°06'25"W along said easterly right of way line of Metcalf Road and the west line of Lot 37 a distance of 162.99 feet to a point;

Thence N89°52'54"E a distance of 10.19 feet to a point;

Thence S11°06'25"E a distance of 162.99 feet to a point;

Thence S89°52'54"W a distance of 10.19 feet to the True Point of Beginning;

The above parcel contains 1,630 square feet (0.037 acres) more or less;



Date: February 1, 2016

Prepared by: John D. McMahan P.L.S. 37934
Colorado Licensed Professional Land Surveyor
On behalf of Inter-Mountain Engineering
IME Project Number: 15-0011

DENVER OFFICE

9618 Brook Hill Lane | Lone Tree, CO 80124 | Phone: 303.948.6220 | Fax: 303.790.4499

VAIL VALLEY OFFICE

40801 U.S. Highway 6, Suite 203 | PO Box 978 | Avon, CO 81620 | Phone: 970.949.5072 | Fax: 970.949.9339

LOT 38

N89°52'54"E 10.19'

EXISTING TYPICAL 7.5'
SIDE LOT UTILITY &
DRAINAGE EASEMENT

LOT 37
BENCHMARK AT
BEAVER CREEK
(RECEPTION NO. 171107)

10' TEMPORARY
CONSTRUCTION
EASEMENT
1,630 S.F.
0.037 AC.

METCALF ROAD (50' R.O.W.)

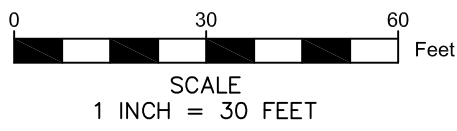
N11°06'25"W 162.99'

S11°06'25"E 162.99'

N11°06'25"W
7.64'

S89°52'54"W 10.19'

LOT 36



LEGEND

T.P.O.B. INDICATES THE TRUE POINT OF BEGINNING

P.O.C. INDICATES THE POINT OF COMMENCEMENT

NOTE:

THIS DOCUMENT DOES NOT REPRESENT A MONUMENTED SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.



40801 US HWY 6&24, SUITE 303, BOX 978, AVON, CO 81620 PH: (970) 949-5972
6551 S. REVERE PARKWAY, SUITE 106, CENTENNIAL, CO 80111 PH: (303) 948-6220

TEMPORARY CONSTRUCTION EASEMENT

LEGAL EXHIBIT

LOT 37, BLOCK 1
BENCHMARK AT BEAVER CREEK
TOWN OF AVON, EAGLE COUNTY, COLORADO

DRAWN BY: SPF

SCALE: 1"=30'

DATE ISSUED: 2-1-16

PROJECT NO.
15-0011

EXHIBIT
B



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, MARCH 8, 2016
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER & ROLL CALL

Mayor Fancher called the meeting to order at 5:05 p.m. A roll call was taken and Council members present were Jake Wolf, Buz Reynolds, Megan Burch, Scott Prince and Sarah Smith Hymes. Matt Gennett was absent. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Town Engineer Justin Hildreth, Police Chief Bob Ticer, Planning Director Matt Pielsticker, Human Resources Director Lance Richards, Recreation Director John Curutchet, Public Works Director Gary Padilla, Executive Assistant to the Town Manager Preston Neill and Town Clerk Debbie Hoppe.

2. APPROVAL OF AGENDA

There were no changes to the agenda.

3. PUBLIC COMMENT

Michael Cacioppo commented

4. PRESENTATION – AVON POLICE DEPARTMENT LIFESAVING AWARDS (POLICE CHIEF BOB TICER)

START TIME 00:10:35

5. ACTION ITEMS

START TIME 00:17:51

5.1. PUBLIC HEARING AMPLIFIED SOUND PERMIT APPLICATION FOR APRÈS AVON SPRING CONCERTS ON POSSIBILITY PLAZA ON THE MAIN STREET MALL (PEAK PERFORMANCE INC. – MIKE O'BRIEN)

Mayor Fancher opened the Public Hearing and no comments were made. Mayor Pro Tem Wolf moved to approve the Amplified Sound Permit Application for the *Après Avon Spring Concerts* on Friday, March 18 and Friday, March 25, 2016, as presented; and to condition the application with the Town Manager being able to require the producer to lower the volume of the amplified sound, when, in her discretion, the music is louder than appropriate for the surrounding properties; Councilor Burch seconded the motion and it passed unanimously by those present. Councilor Gennett was absent.

5.2. FIRST READING OF ORDINANCE NO 15-11, AN ORDINANCE AMENDING THE AVON MUNICIPAL CODE TABLE 7.16-1 AND SECTION 7.16.060(H)(1) CONCERNING AMENDMENTS TO WILDRIDGE PUD APPLICATIONS – CONTINUED FROM NOVEMBER 17, 2015 (PLANNING DIRECTOR MATT PIELSTICKER)

Beverly McBride, Tab Bonidy, Michael Cacioppo, David Strandjord, Phil Stuve, Dominic Mauriello commented.

Councilor Prince moved to approve Ordinance 2015-11 (**Exhibit A**), thereby approving Case #CTA15001, an application for a code text amendment pertaining to the Wildridge Subdivision, to add a new Section 7.16.060(h)(1)(iii) *Amendments to Wildridge PUD* to the Avon Development Code and edit Table 7.16-1 accordingly, together with the findings of fact with minor clerical corrections only as directed by Council; Councilor Reynolds seconded the motion and it passed on a 5 to 1 vote. Mayor Pro Tem Wolf voted no. Councilor Gennett was absent.



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, MARCH 8, 2016
AVON TOWN HALL, ONE LAKE STREET

5.3. PUBLIC HEARING RESOLUTION 16-05, APPROVING A MINOR PUD AMENDMENT TO THE RIVERSIDE PUD
(PLANNING DIRECTOR MATT PIELSTICKER)

Councilor Prince recused himself due to a conflict.

Mayor Fancher opened the Public Hearing and Dominic Mauriello commented. Councilor Smith Hymes moved to approve Resolution 16-05, A Resolution approving a Minor PUD Amendment Application to the Riverside PUD with the additional language as presented in the zoning analysis under proposed zoning. Direction was provided to the applicant and Town staff to ensure that it does not fall within the 100 year flood plain; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present. Councilor Prince was absent from vote. Councilor Gennett was absent.

5.4. PUBLIC HEARING – FOR THE POLICE DEPARTMENT AT THE PUBLIC SAFETY FACILITY - SECOND READING OF ORDINANCE NO. 16-02, AUTHORIZING THE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS OF THE TOWN, AND IN CONNECTION THEREWITH AUTHORIZING THE LEASING OF CERTAIN TOWN PROPERTY AND THE EXECUTION AND DELIVERY BY THE TOWN OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, A DISCLOSURE CERTIFICATE, A PRELIMINARY OFFICIAL STATEMENT AND OTHER DOCUMENTS AND MATTERS RELATING TO CERTAIN CERTIFICATES OF PARTICIPATION, SERIES 2016; SETTING FORTH CERTAIN PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HERBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO (TOWN ATTORNEY ERIC HEIL)

Mayor Fancher opened the Public Hearing. Michael Cacioppo, David Stranjord and Mark Kogan commented. Councilor Reynolds moved to approve second and final reading of Ordinance No. 16-02, Authorizing the Financing of Certain Public Improvements of the Town, and in Connection therewith Authorizing the Leasing of Certain Town Property and the Execution and Delivery by the Town of a Site Lease, a Lease Purchase Agreement, a Disclosure Certificate, a Preliminary Official Statement and other Documents and Matters Relating to Certain Certificates of Participation, Series 2016; Setting forth Certain Parameters and Restrictions with Respect to the Financing; Authorizing Officials of the Town to take all action necessary to Carry out the Transactions Contemplated herby; Ratifying actions previously taken; and providing other Matters related thereto; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present. Councilor Gennett was absent.

6. WORK SESSION

START TIME 01:54:44

REVIEW OF A PURCHASE AND SALES AGREEMENT FOR THE TOWN TO PURCHASE THE MOUNTAIN VISTA OFFICE BUILDING FROM POINTS OF COLORADO, INC., FOR \$1.5 MILLION AND COUNCIL REPORT
(TOWN ATTORNEY ERIC HEIL)

Tab Bonidy, Peter Buckley, Kenneth Howell, Michael Cacioppo, David Stranjord, Angelo Loria, Mark Kogan, Robert Matarese, Kathy Ryan, Dominic Mauriello, Phil Stuve and Ruthie Stanley commented.



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, MARCH 8, 2016
AVON TOWN HALL, ONE LAKE STREET

Councilor Gennett arrived at 8:44 p.m.

7. ACTION ITEMS

START TIME 03:54:22

7.1. RESOLUTION 16-04, APPROVING THE UPDATED FEE SCHEDULE FOR ZONING, SUBDIVISION, AND DESIGN AND DEVELOPMENT REVIEW APPLICATIONS (PLANNING DIRECTOR MATT PIELSTICKER)

Mayor Pro Tem Wolf moved to approve Resolution 16-04, a Resolution approving the updated fee schedule for zoning, subdivision and design and development review applications; Councilor Reynolds seconded the motion and it passed unanimously by those present.

7.2. MINUTES FROM FEBRUARY 23, 2016 MEETING (TOWN CLERK DEBBIE HOPPE)

Mayor Pro Tem Wolf moved to approve the minutes from the February 23, 2016 meeting. Councilor Reynolds seconded the motion and it passed unanimously by those present.

8. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

9. MAYOR & COUNCIL COMMENTS

10. ADJOURNMENT

There being no further business to come before the Council, the regular meeting adjourned at 9:25 p.m.

RESPECTFULLY SUBMITTED:

Debbie Hoppe, Town Clerk

APPROVED:

Jennie Fancher

Jake Wolf

Matt Gennett

Megan Burch

Albert "Buz" Reynolds

Scott Prince

Sarah Smith Hymes



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Danita Dempsey, Director of Festivals & Special Events
Virginia C. Egger, Town Manager

Meeting Date: March 22, 2016

Agenda Topic: Review and Direction in Regards to Allowing One or More Food Trucks to Operate on Town Property and Right-of-Ways; and, to Allowing One or More Mobile Vendor Carts to Operate at Harry A. Nottingham Park at Designated Locations

ACTION BEFORE COUNCIL

To review and offer direction in regards to allowing one or more food trucks to operate on Town property and right-of-ways; and/or to allowing mobile vendor carts in the Harry A. Nottingham Park, in designated locations.

PROPOSED MOTION

This is not an action item. If Council determines that food trucks and/or mobile vendor carts are desired, a resolution will be prepared for locations and an ordinance prepared for food trucks. The action items would be presented at the April 12, 2016, Council meeting.

BACKGROUND

Mayor Jennie Fancher and Mayor Pro Tem Jake Wolf asked staff to review and make recommendations whether mobile vending carts should be allowed in Nottingham Park; and, whether food trucks should be permitted on Town property and right-of-ways, respectively. Based upon a staff collaborative review, staff offers the following:

FOOD TRUCKS ON TOWN PROPERTY AND RIGHT-OF-WAYS

Food truck operations are currently allowed on private property under the definition of Temporary Use in AMC 7.24.080 (e) (1) Temporary Structures and (3) Outdoor Sales or Events.

- AMC 7.24.080(f) (1) exempts outdoor sales and events that do not exceed five (5) calendar days in a calendar year; a food truck for up to five (5) days in a calendar year is permissible without Town approval.
- Administrative approval can be given for up to 30 days.
- For longer term operations, Planning and Zoning review and approval is required.
- Over the past couple of years, the Burrito Gondola/Cart on the Westin Plaza was approved on private property. In the code, there is a comprehensive list of review criteria that apply for review of Temporary Uses.

In evaluating the opportunity to permit food trucks in the commercial core on public property, staff completed outreach to local restaurants. Of the ten (10) restaurants contacted by phone and/or email, during the period of March 7 through March 10, 2016, six (6) restaurateurs provided

feedback. The responses were varying in support stating “higher concentration of dining options in Avon will benefit all business”; and, “adding permanent vendor truck/carts would not increase the total sales tax collected for the town, but would negatively affect the individual businesses and might put some out of business”; and, “food trucks kill local restaurants. If that’s your goal, you’ll love them”. Additionally, two restaurants offered the Town should not allow food trucks in the “shoulder season”, when it is already difficult to attract business.

In preparation for Tuesday’s work session, notice of this topic was included in Avon’s regular *Vail Daily* ad on March 21st, and an email of this memo was sent to all restaurants in the commercial core on March 17th.

In considering the potential locations for food trucks, should Council wish to provide permitting, staff evaluated locations based upon:

- 1) If a site provided for easy walkability for patrons of the food truck business;
- 2) The gathering of patrons on adjacent sidewalks would not unduly impede pedestrian traffic flow; and,
- 3) The general carrying capacity of a location when considering vehicular and bus traffic volumes.

As a result, what may be considered an obvious location for a food truck, the parking spaces on West Benchmark in front of the Mall, was eliminated as an area too busy with vehicular and bus traffic, delivery trucks and occasional use for staging events at the Mall. The spaces have also become popular for daily vehicular parking.

In order of priority, the following locations were determined available to accommodate one food truck: See Exhibit A

- Number of Locations - Up to four (4) locations:
 1. Recreation Center West parking lot, west side of the lot closest to the grassy area; *this location would not be available during festivals.*
 2. East Benchmark Road in the current Christy Sports bus pullout. This bus pullout has low ridership and is in proximity to the City Market bus pullout. The location is also next to the Town’s small open space parcel.
 3. West Beaver Creek Boulevard in two (2) on-street parking spaces, located on north side of the Road, in front of the Post Office.
 4. West Beaver Creek Boulevard in two (2) on-street parking spaces located on south side of the Road, in front of Avon Center.
- Months of Operation – January – April Closing of the Ski Area and, July - September
- Regulations

The Town has adopted regulations for Mobile Vendor Carts (MVC) on the Main Street Mall, which can be made applicable to food trucks, with some modifications. The current regulations, which are developed and implemented by the Town Manager, include:

<ul style="list-style-type: none">• Permit Term• Days and Hours of the Operation	<ul style="list-style-type: none">• Permit Area & Refuse Plan• Size and Type of MVC• Signage
---	--

- Fees
- Insurance & Indemnification
- Spaces approved on a first qualified, first permitted basis

VENDOR CARTS IN NOTTINGHAM PARK

Vendors are allowed as peddlers in Nottingham Park through a permitting process. Vendors are not allowed at this time to set up sales in one location. Recommendations to allow permanent daily location, with removal each evening, are as follows:

- Number of locations - Up to four (4) locations
- Locations & Number per Site – See Exhibit B
 1. One cart – North side of the park, near pedestrian bridge in northwest corner of lake.
 2. Two carts – North side of the park, on the east side of the fishing pier, near water's edge.
 3. One cart – South side of the park, near boat docks and across recreational path log cabin; *this location would not be permitted to operate during festivals.*
- Months of Operation – Memorial Day through Labor Day
- Outdoor Use of Amplified Sound – Per AMC 5.24 an Amplified Sound Permit would be required to use a loudspeaker, radio/iPod with speakers, etc. however, considering the level of public activity and enjoyment to all park user's, it is staff's recommendation to not allow amplified sound to emit from MVC's in the park
- Regulations - Mobile Vendor Carts (MVC) regulations adopted for carts on the Main Street Mall

ATTACHMENTS:

Exhibit A – Food Truck Locations on Town Property and Right-Of-Ways

Exhibit B – MVC Locations in Nottingham Park



Location #1 - Recreation
Center West Parking Lot

Location #3 - W.
Beaver Creek Blvd -
Post Office

Location #4 - W. Beaver
Creek Blvd. - Avon
Center

Location #2 - E.
Benchmark Road
Christy Sports

Location #1; one
cart

EXHIBIT B

Location #2; two
carts

Nottingham Lake

Location #3; one
cart

MILLIES LN

LAKE ST

Eagle River



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Councilors Megan Burch and Sarah Smith Hymes
Meeting Date: March 22, 2016
Agenda Topic: Request to Set a Date for a Town Clean-up Day on May 14th and Funding of \$3,500

ACTION BEFORE TOWN COUNCIL

Councilors Megan Burch and Sarah Smith Hymes are requesting the Town Council to set a date for an all-Town clean-up day and to provide funding in the amount of \$3,500 expenses, including an after event gathering in Nottingham Park

PROPOSED MOTION

If Council wishes to proceed on the request, the following motion is offered:

I move to approve the date of May 14th for an all *Town Clean-up Day* and authorize the expenditure of \$2,500 from the General Fund - Community Picnic line item, plus an additional \$1,000 from the General Fund Contingency, for expenses.

BACKGROUND

The Eagle River Watershed Council's 16th Annual Community Pride Hwy Cleanup is scheduled for May 7th. This successful volunteer effort focuses on the highway system and river corridor. In addition to this spring clean-up, the Town of Avon provides an annual residential clean-up service for five (5) business days. Residents are encouraged to clean out most unwanted items and yard waste. Oils, electronic equipment, tires, refrigerators and construction materials are not allowed in the disposal service. The Town Public Works Department picks up items curbside once a resident calls in a request and Vail Honey Wagon has provided complimentary dumpsters. An estimated 85% of residences participate in the program.

One area of the Town, which is not addressed, is our bike paths and street right-of-ways. It seems that a similar volunteer effort could be successful. We are proposing the following schedule, activities and budget to get these areas of Town cleaned.

May 9 – 13th Annual Residential Clean-up Week – Monday – Friday 8:00 a.m. – 5:00 p.m.
May 14th Town of Avon Clean-Up Day – Road, Street and Path ROWs

- 9:00 a.m. – Noon Area Clean-Up – Organized by Neighborhoods
- Noon – 2 p.m. Nottingham Pavilion Luncheon for Volunteers

Budget:	Food	\$2,000
	Advertising	400
	Commodities	800
	Music	300
	Contingency	1,000

Thank you for your consideration.



**FISCAL YEAR 2016
FINANCIAL REPORT**

March 22, 2016

1. Fiscal Year 2016 Financial Report Cover Memo
2. Sales and Accommodations Tax Reports – January 2016
3. Real Estate Transfer Tax Report and Monthly Detail – February 2016
4. Recreation Center Admissions – February 2016
5. General Fund Year-To-Date Expenditures - February 2016
6. Fleet Maintenance Fund Year-To Date Expenditures - February 2016
7. Transit Fund Year-To Date Expenditures - February 2016



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council

From: Kelly Huitt, Budget Analyst

Date: March 15, 2016

Re: Fiscal Year 2016 Financial Report – January/February

Revenues:

SALES TAX

- Sales tax revenue for the month of January is down \$21,506 or -2.81% compared to January 2015, and down -1.42% compared to the budget. This decrease includes \$16,612 from new businesses, and after adjusting for new business growth, -3.29% is the loss in revenue from existing business for the month.
- January sales tax collections are up for the Grocery, Specialty, and Health category at 9.31%, Sporting Goods Rental/Retail is up 9.12%, and Restaurants/Bars increased 6.27% compared to January 2015. However, a few categories had substantial declines: Miscellaneous Retail decreased -11.66%, Other businesses are down -52.94%, Home/Garden is down -14.56% and Service Related entities declined -11.51%. The decrease in existing business growth from Miscellaneous Retail can be partially attributed to two entities being re-categorized. The large decrease in the Service Related category is due to wide variances in returns from interior design and architecture businesses which were unusually low in January 2016. The Other business category is down due to large construction related returns from the Wyndham project in January 2015 totaling \$48,756.

Sales Tax Monthly Totals - January 2016			
Category	2014/2015	Growth	Growth
	Variance	Existing Business	New Business
Home/Garden	(6,237.44)	-16.26%	7.77%
Grocery, Specialty, Health	14,913.10	2.59%	1.84%
Liquor Stores	1,336.60	2.93%	0.00%
Sporting Goods Retail/Rental	8,743.33	5.07%	0.00%
Miscellaneous Retail	(3,307.48)	-9.06%	0.27%
Accommodations	5,819.86	1.92%	0.96%
Restaurants/Bars	17,619.08	11.60%	1.67%
Other	(58,441.12)	-45.93%	0.08%
Service Related	(1,951.84)	-7.30%	1.11%
Total	(\$21,505.91)	-3.29%	1.43%

ACCOMMODATIONS TAX

- Accommodations tax revenue for January is up \$4,064, or 2.47% compared to January 2015, and up 16.74% compared to the monthly budget.
- January 2016 accommodations tax collections are up for Hotels and Timeshares compared to January 2015 by 4.34% and 9.30%, respectively. Vacation Rentals, however, are down -11.29%.

REAL ESTATE TRANSFER TAX

- 2016 real estate transfer tax collections for February equal \$200,850.86, which is an \$115,372 increase over February 2015. The sale of 8 units at the new Brookside Park Signature Lofts makes up \$144,118 of this monthly total.

RECREATION CENTER ADMISSIONS

- February admissions fees at the ARC total \$86,342, a 26.04% increase over February 2015. Year-to-date admissions are 20.86% over 2015, and \$23,415 over the estimated budget.

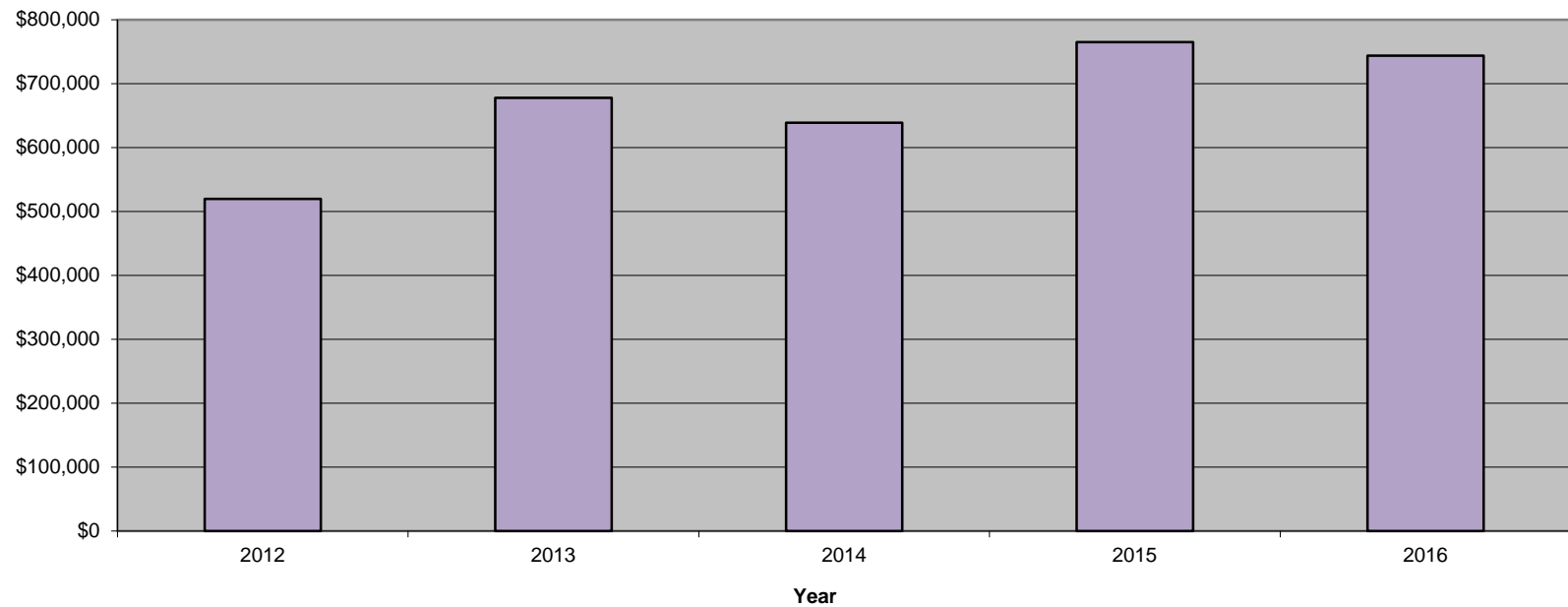
Expenditures:

- General Fund expenditures through February 2016 total 24.92% of the total 2016 budget. These expenditures include the Town's annual insurance premium, \$40,000 for the Winter Wondergrass event, \$25,000 toward the writer's conference, and \$112,110 spent for community grants.
- Fleet expenditures for February are at 16.32% of the total budget. These costs include blanket encumbrances for stock parts and ongoing expenditures such as regularly purchased shop supplies and monthly copier charges.
- Transit funds are 33.73% expended compared to the 2016 budget. These expenditures include a \$135,000 encumbrance for the 2015 people mover bus purchase, as well as \$176,000 for the Town's half of the 2016 gondola operations.

**TOWN OF AVON
SALES TAX
2016 Actual vs. Budget**

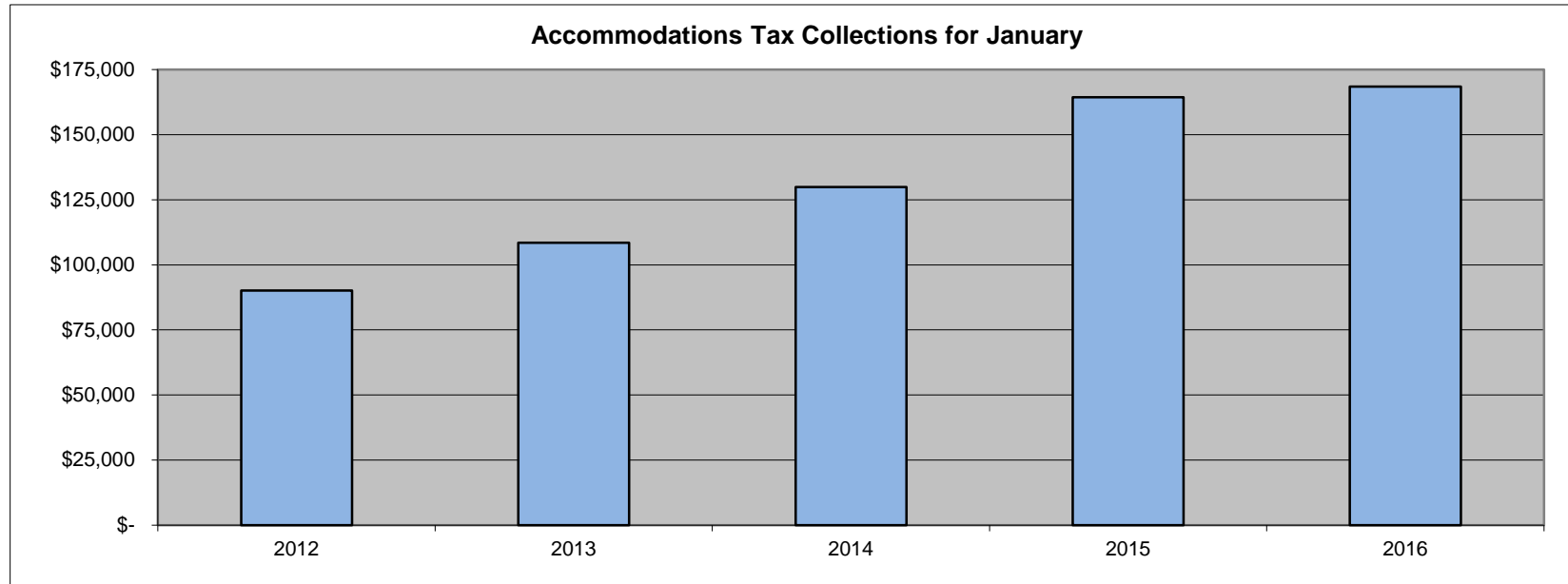
	Actual Collections					Budget	YTD Collections	Budget	% of change
	2011	2012	2013	2014	2015	2016	2016	Variance	from 2015
January	\$ 511,040.76	\$ 519,784.89	\$ 677,943.78	\$ 638,863.27	\$ 765,195.68	\$ 754,412	\$ 743,689.78	\$ (10,722.17)	-2.81%
February	532,903.25	533,546.48	636,702.27	673,722.03	788,999.06	767,268			
March	665,532.70	643,910.29	720,267.31	793,301.96	875,499.53	896,356			
April	305,269.73	304,220.84	307,407.13	381,839.56	403,560.42	412,562			
May	236,424.93	270,082.79	309,938.72	340,332.28	353,840.11	366,107			
June	406,828.27	430,588.57	490,329.18	538,517.31	570,424.51	590,545			
July	452,873.44	472,215.40	537,479.66	570,959.86	601,516.82	638,618			
August	419,977.29	455,439.86	504,332.25	547,085.80	572,647.57	605,764			
September	391,546.49	424,793.75	475,362.88	546,016.59	595,235.68	589,641			
October	299,193.35	341,711.43	356,925.96	417,921.46	423,701.53	445,802			
November	301,407.41	336,060.63	362,460.94	397,935.36	438,315.55	445,009			
December	921,815.61	852,868.64	981,917.79	1,221,263.98	1,159,160.45	1,244,988			
Total	\$ 5,444,813.23	\$ 5,585,223.57	\$ 6,361,067.87	\$ 7,067,759.46	\$ 7,548,096.91	\$ 7,757,072	\$ 743,689.78	\$ (10,722.17)	-2.81%

Sales Tax Collections for January



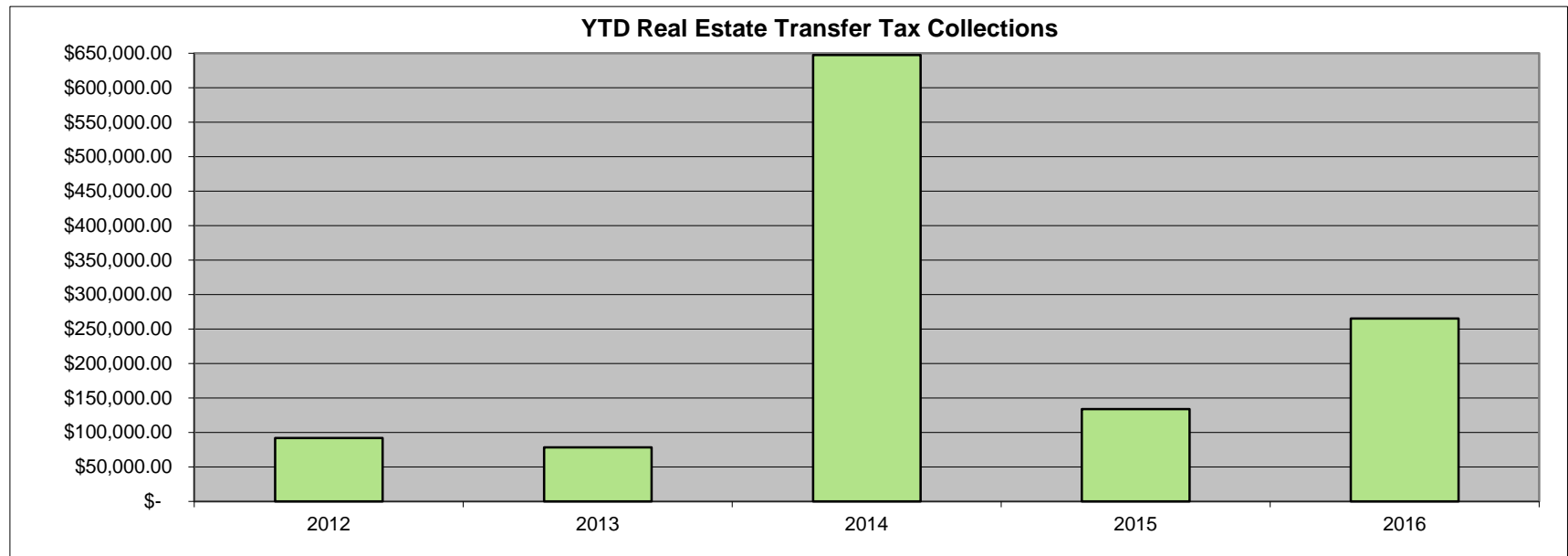
**TOWN OF AVON
ACCOMMODATIONS TAX
2016 Actual vs. Budget**

	Actual Collections					Budget	YTD Collections	Budget	% change
	2011	2012	2013	2014	2015	2016	2016	Variance	2015
January	\$ 85,233.73	\$ 90,118.88	\$ 108,508.43	\$ 129,851.78	\$ 164,361.04	\$ 144,277	\$ 168,424.63	\$ 24,147.30	2.47%
February	114,035.90	106,016.32	137,503.61	150,317.06	175,056.31	170,447			
March	122,145.16	115,043.42	153,208.80	168,597.39	183,650.29	185,351			
April	26,214.58	20,786.24	26,494.49	31,626.02	34,825.13	34,928			
May	15,152.82	16,664.44	24,527.17	21,961.97	28,002.56	26,533			
June	49,999.66	56,012.17	66,578.91	54,232.23	53,397.46	69,938			
July	62,928.07	66,726.73	73,008.92	81,083.01	86,301.22	92,358			
August	52,037.55	58,358.93	67,688.07	71,044.33	75,107.71	80,924			
September	35,521.81	42,245.24	44,661.37	50,840.16	60,417.74	58,324			
October	21,801.56	25,879.51	27,154.53	34,977.59	38,706.72	37,068			
November	24,971.33	22,786.42	28,171.04	32,064.02	34,328.47	35,521			
December	135,984.00	112,759.02	131,361.43	168,944.85	198,421.26	186,556			
Total	<u>\$ 746,026.17</u>	<u>\$ 733,397.32</u>	<u>\$ 888,866.77</u>	<u>\$ 995,540.41</u>	<u>\$ 1,132,575.91</u>	<u>\$ 1,122,226</u>	<u>\$ 168,424.63</u>	<u>\$ 24,147.30</u>	<u>2.47%</u>



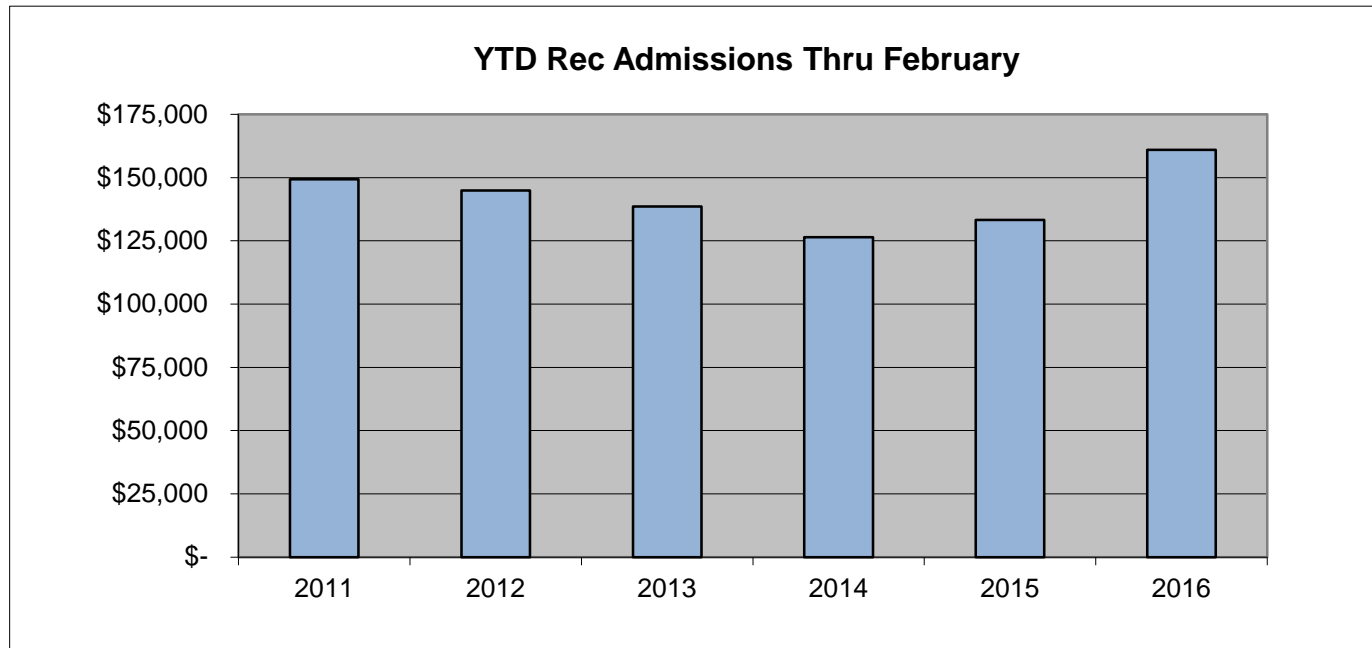
Town of Avon
Real Estate Transfer Tax
2016 Actual vs. Budget

	Actual Collections					Budget 2016	YTD Collections 2016	\$ change 2015	% of change 2015
	2011	2012	2013	2014	2015				
January	\$ 57,540.00	\$ 50,204.00	\$ 22,535.00	\$ 85,126.74	\$ 48,640.40	\$ 50,308	\$ 64,422.00	\$ 15,781.60	32.45%
February	230,705.50	41,750.07	55,872.69	562,219.70	85,479.08	185,960	200,850.86	115,371.78	134.97%
March	187,099.47	84,760.49	125,927.64	50,375.06	168,744.22	117,537			
April	249,482.30	219,195.80	144,437.80	197,656.36	125,266.30	178,341			
May	187,668.62	270,170.12	121,784.12	183,745.60	237,971.08	190,782			
June	49,606.58	169,040.47	90,309.74	220,009.15	294,434.84	156,880			
July	46,707.37	71,057.40	386,434.78	141,051.52	396,838.68	198,546			
August	106,785.21	232,505.93	97,579.70	154,032.32	152,380.93	141,616			
September	140,876.56	96,389.34	157,010.67	267,886.92	291,223.61	181,646			
October	64,005.33	176,889.62	169,839.80	178,044.24	172,855.22	145,112			
November	98,057.44	150,549.86	112,491.82	122,582.66	169,328.38	124,416			
December	198,448.03	145,134.57	83,382.60	1,598,062.92	225,862.90	428,856			
Total	\$ 1,616,982.41	\$ 1,707,647.67	\$ 1,567,606.36	\$ 3,760,793.19	\$ 2,369,025.64	\$ 2,100,000	\$ 265,272.86	\$ 131,153.38	97.79%
Budget							2,100,000.00		
Variance, Favorable (Unfavorable)							\$ (1,834,727.14)		



TOWN OF AVON
RECREATION CENTER ADMISSION FEES
2016 Actual vs. Budget

	2011	2012	2013	2014	2015	Budget 2016	YTD Collections 2016	Budget Variance	% of change from 2015
January	\$ 76,386	\$ 66,113	\$ 70,040	\$ 62,607	\$ 64,723	\$ 67,526	\$ 74,674	\$ 7,148	15.37%
February	72,997	78,782	68,578	63,838	68,506	70,075	86,342	16,267	26.04%
March	78,985	62,670	72,616	77,902	81,664	74,275			
April	59,991	49,982	64,370	61,760	55,452	57,927			
May	47,368	44,880	35,064	43,119	50,067	43,809			
June	49,850	49,442	46,194	55,052	58,431	51,452			
July	70,839	73,067	71,491	61,472	66,400	68,201			
August	68,324	67,510	57,329	63,233	66,389	64,131			
September	40,822	38,141	43,829	36,846	44,719	40,602			
October	52,476	41,588	48,803	75,818	61,167	55,602			
November	93,746	94,044	93,822	29,570	71,384	76,009			
December	80,985	72,059	69,258	77,672	112,201	81,892			
Total	\$ 792,769	\$ 738,277	\$ 741,394	\$ 708,889	\$ 801,102	\$ 751,500	\$ 161,016	\$ 23,415	20.86%



General Fund

February 2016 Expenditures to Date

Department Expenditure Summaries

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
General Government:						
111	Mayor and Town Council	\$ 210,907	\$ 9,374	\$ 42,232	\$ 159,301	24.47%
112	Boards and Commissions	15,300	-	1,578	13,722	10.31%
113	Town Attorney	130,000	125,300	160	4,540	96.51%
115	Town Clerk	135,636	20,100	21,039	94,497	30.33%
121	Municipal Court	124,210	20,016	12,676	91,518	26.32%
131	Town Manager	366,967	-	54,067	312,900	14.73%
133	Community Relations	149,897	10,372	9,880	129,645	13.51%
Total General Government		1,132,917	185,162	141,632	806,123	28.85%
Human Resources Department:						
132	Human Resources	411,819	9,923	59,502	342,394	16.86%
Finance & IT Department:						
141	Finance	812,834	13,956	110,369	688,509	15.30%
143	Information Systems	384,846	18,511	86,441	279,894	27.27%
149	Nondepartmental	398,813	51,912	188,759	158,142	60.35%
Total Finance & IT		1,596,493	84,379	385,569	1,126,545	29.44%
Total General Gov't Departments		3,141,229	279,464	586,703	2,275,062	27.57%
Community Development:						
212	Planning	317,767	18,326	23,246	276,195	13.08%
213	Building Inspection	146,758	3,750	21,101	121,907	16.93%
214	Economic Development	40,600	-	10,000	30,600	24.63%
215	Town Produced Events	314,364	2,400	20,558	291,406	7.30%
216	Signature Event Seed Funding	125,000	25,000	96,500	3,500	97.20%
217	Community Grants	230,150	-	112,110	118,040	48.71%
Total Community Development		1,174,639	49,476	283,515	841,648	28.35%
Police Department:						
311	Administration	658,376	26,617	94,488	537,271	18.39%
312	Patrol	2,331,166	31,983	635,783	1,663,400	28.65%
313	Investigations	263,742	-	40,607	223,135	15.40%
Total Police		3,253,284	58,600	770,878	2,423,806	25.50%
Public Works:						
412	Engineering	273,664	21,876	31,713	220,075	19.58%
413	Roads and Bridges	1,612,864	64,255	241,759	1,306,850	18.97%
415	Parks	1,093,645	27,020	157,909	908,716	16.91%
418	Buildings & Facilities	1,109,892	191,203	171,433	747,256	32.67%
Total Public Works		4,090,065	304,354	602,814	3,182,897	22.18%
Recreation Department:						
514	Administration	238,222	16,548	49,551	172,123	27.75%
515	Adult Programs	58,827	590	6,083	52,154	11.34%
516	Aquatics	427,447	10,463	67,097	349,887	18.14%
518	Fitness	132,740	605	71,843	60,292	54.58%
519	Guest Services	292,090	5,925	46,506	239,659	17.95%
521	Youth Programs	132,412	2,000	12,390	118,022	10.87%
Total Recreation		1,281,738	36,131	253,470	992,137	22.59%
TOTAL OPERATING EXPENDITURES		\$ 12,940,955	\$ 728,025	\$ 2,497,380	9,715,550	24.92%

Fleet Maintenance Enterprise Fund

February 2016 Expenditures to Date

Expenditure Summary

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
EXPENDITURES						
Public Works:						
434	Fleet Maintenance	\$ 1,785,969	\$ 75,298	\$ 216,219	\$ 1,494,452	16.32%
	Total Operating Expenditures	<u>1,785,969</u>	<u>75,298</u>	<u>216,219</u>	<u>1,494,452</u>	<u>16.32%</u>
	TOTAL EXPENDITURES	<u><u>\$ 1,785,969</u></u>	<u><u>\$ 75,298</u></u>	<u><u>\$ 216,219</u></u>	<u><u>\$ 1,494,452</u></u>	<u><u>16.32%</u></u>

Transit Enterprise Fund

February 2016 Expenditures to Date

Expenditure Summary

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
EXPENDITURES						
431	Transit Administration	\$ 239,797	\$ 40,231	\$ 42,361	\$ 157,205	34.44%
432	Transit Operations	1,549,213	3,250	529,432	1,016,531	34.38%
435	Wash Bay	159,486	12,697	29,230	117,559	26.29%
Total Operating Expenditures		1,948,496	56,178	601,023	1,291,295	33.73%
TOTAL EXPENDITURES		<u>\$ 1,948,496</u>	<u>\$ 56,178</u>	<u>\$ 601,023</u>	<u>\$ 1,291,295</u>	<u>33.73%</u>