



TOWN OF AVON MEETINGS FOR TUESDAY, AUGUST 9, 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 ___)
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. ACTION ITEMS**
 - 4.1. **PUBLIC HEARING** SECOND READING OF ORDINANCE 16-16, APPROVING A FRANCHISE AGREEMENT WITH COMCAST OF COLORADO VII, LLC FOR THE PROVISION OF CABLE SERVICES IN THE TOWN OF AVON (TOWN ATTORNEY ERIC HEIL)
 - 4.2. REVIEW AND ACTION ON AN APPEAL OF A DENIAL OF A REAL ESTATE TRANSFER TAX APPLICATION FOR PRIMARY RESIDENCE EXEMPTION – MALAIDE LLC (BUDGET ANALYST KELLY HUITT)
- 5. WORK SESSION**
 - 5.1. REVIEW OF OPTIONS AND DIRECTION FOR DEVELOPING A MANAGED PARKING PROGRAM FOR AVON PUBLIC PARKING SPACES FOR 2016/2017 SKI SEASON (PLANNING DIRECTOR MATT PIELSTICKER)
 - 5.2. REVIEW OF BOOTING PRACTICES IN AVON AND COMPARABLE COLORADO MUNICIPALITIES FOR DIRECTION (EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)
- 6. ACTION ITEMS**
 - 6.1. ACTION TO SUBMIT A LETTER TO THE UNITED STATES FOREST SERVICE IN REGARDS TO USFS ROAD 779 (TOWN MANAGER VIRGINIA EGGER)
 - 6.2. FIRST READING OF ORDINANCE 16-14, APPROVING CODE TEXT AMENDMENTS FOR PUBLIC FACILITIES AND TOWN CENTER ZONE DISTRICTS (PLANNING DIRECTOR MATT PIELSTICKER)
 - 6.3. ACTION ON RESOLUTION 16-22 AUTHORIZING THE SUBMITTAL OF A GOCO GRANT APPLICATION AND CERTIFYING THE TOWN OF AVON FUNDING MATCH FOR A NEW PLAYGROUND AT HARRY A. NOTTINGHAM PARK (RECREATION DIRECTOR JOHN CURUTCHET)
 - 6.4. FIRST READING OF ORDINANCE 16-17 TO AMEND DRINKING WATER LEASE WITH THE UPPER EAGLE REGIONAL WATER AUTHORITY (TOWN ATTORNEY ERIC HEIL)
 - 6.5. ACTION ON RESOLUTION 16 –21 TO AMEND THE 2016 TOWN OF AVON CAPITAL PROJECTS FUND BUDGET (ASSISTANT TOWN MANAGER SCOTT WRIGHT)
 - 6.6. ACTION TO AUTHORIZE A PROFESSIONAL SERVICES AGREEMENT TO RETAIN ARCHITECTURAL AND ENGINEERING SERVICES FOR THE NEW TOWN HALL (TOWN ENGINEER JUSTIN HILDRETH)

MEETING AGENDAS & PACKETS ARE FOUND AT: [HTTP://WWW.AVON.ORG](http://www.avon.org)
AGENDAS ARE POSTED AT AVON TOWN HALL, RECREATION CENTER, & AVON PUBLIC LIBRARY
IF YOU HAVE ANY SPECIAL ACCOMMODATION NEEDS, PLEASE, IN ADVANCE OF THE MEETING,
CALL TOWN CLERK DEBBIE HOPPE AT 970-748-4001 OR EMAIL DHOPPE@AVON.ORG WITH ANY SPECIAL REQUESTS.



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6.7. CONSENT AGENDA

- 6.7.1. RESOLUTION 16-23 APPROVING HOLY CROSS ENERGY UNDERGROUND RIGHT-OF-WAY EASEMENT ACROSS LOT B, BUCK CREEK SUBDIVISION, AVON COLORADO AND TRENCH, CONDUIT AND VAULT AGREEMENT (TOWN ENGINEER JUSTIN HILDRETH)
- 6.7.2. APPROVAL OF THE JULY 26, 2016 MINUTES (TOWN CLERK DEBBIE HOPPE)

7. WORK SESSION

- 7.1. REVIEW AND DIRECTION ON REVENUE PROJECTIONS FOR THE 2017-18 BUDGET AND ALLOCATION TARGET OF UP TO \$205,000 FOR COMMUNITY GRANTS (ASSISTANT TOWN MANAGER SCOTT WRIGHT/ EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)

8. WRITTEN REPORTS

- 8.1. GIFT REPORTING – 2016 OUTLAWS & LEGENDS FESTIVAL PASSES (EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)

9. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

- 9.1. UERWA (COUNCILOR SARAH SMITH HYMES)
- 9.2. CLIMATE ACTION PLAN STAKEHOLDERS (COUNCILOR SARAH SMITH HYMES)
- 9.3. AFFORDABLE HOUSING BOARD (COUNCILOR MEGAN BURCH)

10. MAYOR & COUNCIL COMMENTS

11. TOWN MANAGER UPDATE

12. EXECUTIVE SESSION FOR THE FOLLOWING PURPOSES:

- 1. To Determine 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) in Regards to the WinterWonderGrass Festival,
- 2. To discuss the Purchase, Acquisition, Lease, Transfer, or Sale of Real, Personal, or Other Property Interest under C.R.S. §24-6-402(2)(a) and to Determine 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) concerning Conservation of Certain Town Owned Property.
- 3. For a Conference with the Town Attorney for the Purpose of Receiving Legal Advice under C.R.S. §24-6-402(2)(b) and to Determine 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) concerning Eagle Bend Affordable Housing.

13. ADJOURNMENT

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CALL TOWN CLERK DEBBIE HOPPE AT 970-748-4001 OR EMAIL DHOPPE@AVON.ORG WITH ANY SPECIAL REQUESTS.



TOWN OF AVON, COLORADO
TOWN OF AVON MEETINGS FOR TUESDAY, AUGUST 9, 2016
AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF AGENDA

3. PUBLIC COMMENT

4. PUBLIC HEARING SPECIAL EVENTS PERMIT

4.1. APPLICANT NAME: BRIGHT FUTURE FOUNDATION FOR EAGLE COUNTY

EVENT NAME: AVON LIVE!

EVENT DATES: AUGUST 17, 24 & 31, 2016

EVENT TIME: 4:00 P.M. UNTIL 9:00 P.M.

LOCATION: NOTTINGHAM PARK

EVENT MANAGER: CASEY ANGEL

PERMIT TYPE: MALT, VINOUS & SPIRITUOUS LIQUOR

4.2. APPLICANT NAME: BIG HEARTS BIG HANDS

EVENT NAME: SKYLIGHT CREATIVE WRITING RETREAT

EVENT DATES: SEPTEMBER 2-4, 2016

EVENT TIME: 2:00 P.M. UNTIL 9:00 P.M.

LOCATION: NOTTINGHAM PARK

EVENT MANAGER: MICHAEL WELLE

PERMIT TYPE: MALT, VINOUS & SPIRITUOUS LIQUOR

5. PUBLIC HEARING FOR NEW HOTEL AND RESTAURANT LIQUOR LICENSE

5.1. APPLICANT NAME: CTK, LLC D/B/A CHRONIC TACOS

LOCATION: 150 EAST BEAVER CREEK BLVD, UNIT A101

TYPE: HOTEL AND RESTAURANT LIQUOR LICENSE

OWNER: ANTHONY KERRIGONE

MANAGER: CHAD WILKISON

ACTION: RESOLUTION NO. 16-01

6. MINUTES FROM JULY 26, 2016

7. ADJOURNMENT



LIQUOR LICENSING AUTHORITY REPORT

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Meeting Date: August 9, 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 AVON LIVE! 2016 events. A public hearing is required before final action is taken.

Applicant Name: Bright Future Foundation for Eagle County
Event Name: AVON LIVE! 2016
Event Dates: August 17, 24 & 31, 2016
Event Time: 4:00 p.m. until 9:00 p.m.
Location: Nottingham Park
Event Manager: Casey Angel
Permit Type: Malt, Vinous & Spirituous Liquor

PROPOSED MOTION

I move to approve or deny the Special Events Permit application for the upcoming AVON LIVE! 2016 events.

SUMMARY

The applicant has submitted the appropriate materials required by the State of Colorado Liquor Enforcement Division and all materials are in order. Bright Future Foundation for Eagle County is applying for malt, vinous, spirituous liquor permit to serve/sell beverages at the AVON LIVE! 2016 event on August 17, 24 & 31, 2016. The Nottingham park 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.

BACKGROUND

Special Events permits are issued by the Liquor Enforcement Division and 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 type="checkbox"/> SOCIAL | <input type="checkbox"/> ATHLETIC | <input checked="" 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:	DO NOT WRITE IN THIS SPACE
2110 <input checked="" type="checkbox"/> MALT, VINOUS AND SPIRITUOUS LIQUOR \$25.00 PER DAY	LIQUOR PERMIT NUMBER
2170 <input type="checkbox"/> FERMENTED MALT BEVERAGE (3.2 Beer) \$10.00 PER DAY	

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE Bright Future Foundation for Eagle County	State Sales Tax Number (Required) 84-0938374
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2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL CANDIDATE (include street, city/town and ZIP) PO Box 2558 Avon, CO 81620	3. ADDRESS OF PLACE TO HAVE SPECIAL EVENT (include street, city/town and ZIP) Nottingham Park Avon, CO 18620
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NAME	DATE OF BIRTH	HOME ADDRESS (Street, City, State, ZIP)	PHONE NUMBER
4. PRES./SEC'Y OF ORG. or POLITICAL CANDIDATE Dr. Casey Angel, Psy D.		1060 W Beaver Creek Blvd Suite 201, Avon	970-949-7097
5. EVENT MANAGER Dr. Casey Anger, Psy D.		1060 W Beaver Creek Blvd Suite 201, Avon	970-949-7097
6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES HOW MANY DAYS? 8		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
8/17/2016		4:00p	9:00p	8/24/2016		4:00p	9:00p	8/31/2016		4:00p	9:00p

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 Clinical Director	DATE 7/25/2016
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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)	\$.

AVON LIVE! 2016
ALCOHOL MANAGEMENT PLAN

The Avon Concert Series will be held at Nottingham Park in Avon on five evenings: August 7, 10, 17, 24 & 31. The areas to be included in the PREMISES are the Avon Performance Pavilion, the main athletic field and the playground. The PREMISES security will be managed by Lone Star Security personnel and supported by signage defining the rules for the public that relate to alcohol consumption such as “No alcohol beyond this point” and “No Outside Alcohol Allowed”.

Alcohol & ID: Alcohol management will be provided by Optimum Events. The NPO (Bright Futures Foundation) holds and administers the alcohol license/permit for malt beverage, vinous and spirit product. There will be one selling location (see event map) at which the Optimum staff will check for government issued identification for 21+ years of age. If the patron is 21+ years of age, a wrist band will be secured to their wrist for alcohol consumption. The NPO will serve no more than two alcoholic beverages per individual, per purchase.

Alcohol sales will start at 5:00 p.m. and end at 8:30 p.m., at which time Lone Star Security and event staff will sweep the venue to encourage guests to vacate the PREMISES.

Prior to the event all alcohol will be stored in a secure and locked location within the PREMISES. Post-event, any unsold alcohol will be secured and removed from the PREMISES.

Alcohol Delivery & Staff:

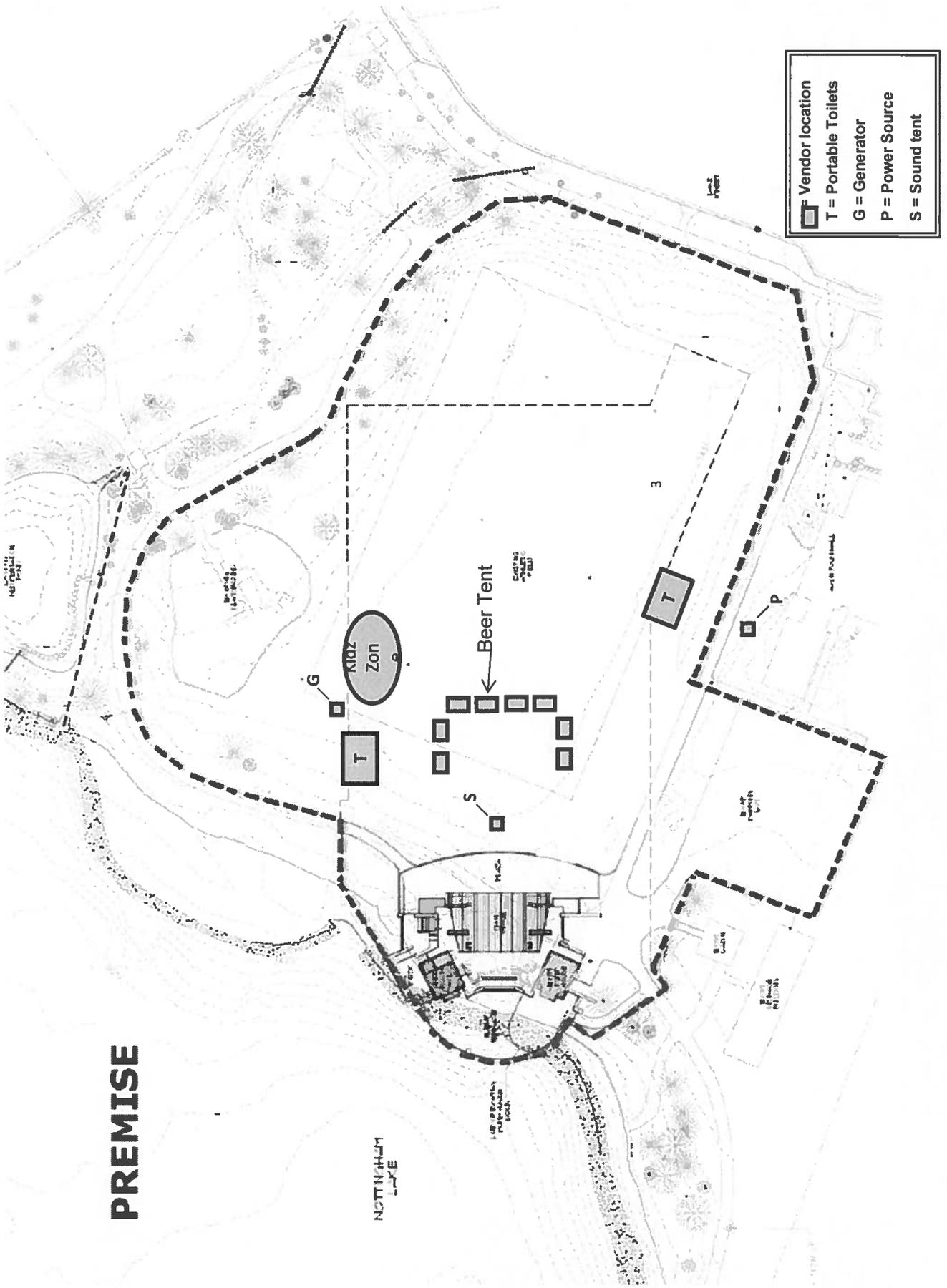
Alcohol Delivery	2pm-4pm
Alcohol Serving Times	5:00pm-8:45pm
Last Call	8:30pm
ID Security	5:00pm – 8:45pm
Service Staff	5:00pm – 9:00pm

Security Personnel & Locations:

There are four (4) Lone Star security personnel on site between the hours of 5:15 p.m. and 9:15 p.m. to ensure outside alcohol is not brought into or removed from the PREMISE. These security personnel will be roaming the premises to ensure a strong presence and proper coverage.

AVON LIVE! 2016 Site Map

PREMISE



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,

Bright Future Foundation for Eagle County

is a

Nonprofit Corporation

formed or registered on 02/24/1984 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 19871559077 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/05/2016 that have been posted, and by documents delivered to this office electronically through 07/11/2016 @ 17:07:46 .

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 07/11/2016 @ 17:07:46 in accordance with applicable law. This certificate is assigned Confirmation Number 9735416 .



A handwritten signature in cursive script that reads 'Wayne W. Williams'.

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)

07/21/2016

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		CONTACT NAME: Mike Koenig	
Rocky Mountain Ins & Financial PO Box 548		PHONE (A/C, No, Ext): (970) 926-7315	FAX (A/C, No): (970) 926-7364
Edwards CO 81632		E-MAIL ADDRESS: mike@rmif.org	
INSURED		INSURER(S) AFFORDING COVERAGE	
Optimum Events & Entertainment P.O. BOX 1644		INSURER A: LLOYDS	NAIC # 524210
Eagle CO 81631		INSURER B: OHIO SECURITY INSURANCE COMPANY	24082
		INSURER C: TOKIO MARINE SPECIALTY INSURANCE	23850
		INSURER D: PINNACOL ASSURANCE	41190
		INSURER E:	
		INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****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 SUBR INSD 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 OTHER:	Y	17LB1035	07/18/2016	07/18/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 Liquor Liability \$ 1,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	BAS56629701	04/10/2016	04/10/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0 <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	Y	PUB509460	07/18/2016	07/18/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 PR/COMP OPS AGG \$ 5,000,000
D	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 N/A	4179577	01/01/2016	01/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Event: Avon Live! Concert Series
Location: Nottingham Park, Avon, CO 81620
Date: August 7, 10, 17, 24 & 31, 2016

Additional Insured:
Town of Avon, it's elected officials, officers and employees as additional insured

CERTIFICATE HOLDER**CANCELLATION**

Town of Avon One Lake Street 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
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AGENCY CUSTOMER ID: _____
LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Rocky Mountain Ins & Financial		NAMED INSURED Optimum Events & Entertainment	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

One Lake Street
Avon, CO 81620

**Avon Police Department
Liquor License Application**

Individual Name(s): Casey Angel

Name of Business: Bright Future Foundation for Eagle County

Type of License: Hotel & Restaurant
 Special Event Permit

Event Name: Boulder Symphony
Date of Event: August 17, 24, &31, 2016 4:00PM to 9:00PM

Location of Business: Nottingham Park
Avon, Colorado 81620

Date Received: 07/27/2016

Photographs/Fingerprints: On File
 Special Event – N/A

Investigation by:
 Detective Sergeant Jonathan Lovins
 Detective Jeremy Holmstrom

Date: 08/02/2016

CBI Criminal Investigation (attached): Clear from Outlaws and Legends application

Local Criminal Investigation: No negtive contacts in the past 12 months

Comments: No problems noted

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.



LIQUOR LICENSING AUTHORITY REPORT

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Meeting Date: August 9, 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 Skylight Creative Writing Retreat. A public hearing is required before final action is taken.

Applicant Name: Big Hearts Big Hands
Event Name: Skylight Creative Writing Retreat
Event Dates: September 2-4, 2016
Event Time: 2:00 p.m. until 9:00 p.m.
Location: Nottingham Park
Event Manager: Michael Welle
Permit Type: Malt, Vinous & Spirituous Liquor

PROPOSED MOTION

I move to approve or deny the Special Events Permit application for the upcoming Skylight Creative Writing Retreat.

SUMMARY

The applicant has submitted the appropriate materials required by the State of Colorado Liquor Enforcement Division and all materials are in order. Big Hearts Big Hands is applying for malt, vinous, spirituous liquor permit to serve/sell beverages at the Skylight Creative Writing Retreat on September 2-4, 2016. The Nottingham park 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.

BACKGROUND

Special Events permits are issued by the Liquor Enforcement Division and 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 type="checkbox"/> SOCIAL | <input type="checkbox"/> ATHLETIC | <input checked="" 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:	DO NOT WRITE IN THIS SPACE
2110 <input checked="" type="checkbox"/> MALT, VINOUS AND SPIRITUOUS LIQUOR \$25.00 PER DAY	LIQUOR PERMIT NUMBER
2170 <input type="checkbox"/> FERMENTED MALT BEVERAGE (3.2 Beer) \$10.00 PER DAY	

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE Big Hearts Big Hands	State Sales Tax Number (Required) 20151561348
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2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL CANDIDATE (include street, city/town and ZIP) PO BOX 4594 Vail, CO 81658	3. ADDRESS OF PLACE TO HAVE SPECIAL EVENT (include street, city/town and ZIP) Nottingham Park 1 Lake Street Avon, CO 81620
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NAME	DATE OF BIRTH	HOME ADDRESS (Street, City, State, ZIP)	PHONE NUMBER
4. PRES./SEC'Y OF ORG. or POLITICAL CANDIDATE Bobby L'Heureux		1014 Main St. - Minturn, CO 81645	860-230-8650
5. EVENT MANAGER Michael R Welle		325 Pine St - Minturn, CO 81645	732-241-5106
6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES HOW MANY DAYS? 3		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	p	m
09/02/2016		2:00	9:00	p	.m.
09/03/2016		02:00	09:00	p	.m.
09/04/2016		02:00	09:00	p	.m.

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 Executive Director / Owner	DATE 07/26/2016
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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)	\$.

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**

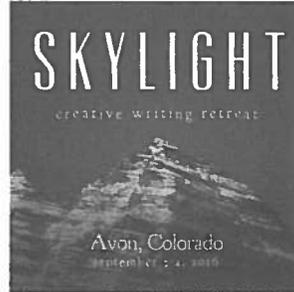
(12-48-102 C.R.S.)

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.

SKYLIGHT CREATIVE WRITING RETREAT

Alcohol Management Plan



ALCOHOL MANAGEMENT PLAN
Submitted Tuesday July 26, 2016
Event Dates – September 2-4, 2016

THE EVENT OVERVIEW

Event Overview:

The first annual Skylight Creative Writing Retreat is a retreat for those honing their craft within the mediums of film, music, prose, journalism, the web and more. Skylight will provide participants with a generous atmosphere of engaging instruction, along with the guidance and space that's necessary to help writers illuminate their words with an artistic and impactful command of language. You will walk away from this weekend a better writer, and from there, the sky's the limit.

The event is being held Friday September 2nd through Sunday September 4th at Nottingham Park in Avon, CO.

EXPERIENCE

Director of Operations, **Michael Welle**, of Minturn, Colorado is a 12 year resident of the Vail Valley. He has over a decade of bar and restaurant management experience in the valley as well as successful event management in WinterWonderGrass, State Bridge Amphitheater, Rancho Del Rio festivals, and many other events around Colorado and the rest of the country. He will be directing the alcohol management of the event.

LICENSED PREMISE

See attached map - perimeter outlined in red.

ENTRANCE / EXITS

There will be one main public entrance for festival patrons located on the south west side of Nottingham Park. Box office, first aid and an information booth will be located near the main entrance. Skylight staff plus Town of Avon volunteers will control the front gate.

STAFFING

Skylight will be onsite with a producer, assistant producer, site operations manager, box office staff, bar manager.

EDUCATION/TRAINING

Anyone pouring alcohol will be certified by an Eagle County accredited program, TIPS or similar. A complete and current list will be provided to the Town of Avon and kept current at all times 14 days prior to the event.

CONTROL OF THE PREMISES

Bike barricade fencing, controlled access points, well lit signage and employee education will deal with the issue of controlling the flow of alcohol on and moving off the property. Brightly colored "21+" wristbands will be applied to each patron upon inspection/approval of ID. ID checking staff will be trained to recognize false ID's and will contact a bar manager to assist on questionable ID's. No one with out a wristband will be served alcohol. Bar staff will be trained to ID anyone that looks questionable whether or not they have a wristband. The staff will have access to the 2015/2016 ID-checking guide stationed through out the id checking booths.

Venue wristbands will be distributed to persons that have government-issued identification that proves that they are twenty-one (21) years or older - general policy is to request identification from anyone wanting a wristband regardless of how old they appear to be. Such wristbands will not only be required to purchase alcohol, but will be required to hold alcohol - Security personnel and bar staff will be briefed on the wristband colors daily and will enforce wristband rules. Unique 21+ wristbands will be used each day with each patron over 21 needing to have their ID's rechecked daily. There will be a zero-tolerance policy for outside alcohol that is smuggled into the event, which will result in immediate ejection. Additionally, there will be a zero-tolerance policy for underage drinking.

General alcohol serving guidelines will state that patrons are only allowed to hold two (2) alcoholic beverages at a time. Patrons that are caught holding more than two (2) alcoholic beverages will receive verbal warnings; repeated incidences with the same patrons may result in ejection from the event. Security personnel will assist personnel serving alcohol in enforcing the two (2) drink policy.

Personnel serving alcoholic beverages have the right to refuse service to any patron – in such cases it is recommended that the patron's wristband be removed and that a black "X" is placed on the top of each hand in permanent marker to prevent the patron from attempting to get another wristband. Patrons refusing to comply with the refusal of service or acting in contravention of a refusal of service may be subject to ejection from the event.

We have the right to refuse entry to anyone who is deemed intoxicated as we know that they are only destined to become a problem. Bags will be checked thoroughly and no outside alcohol will be allowed on the premises.

Patrons that appear to be too intoxicated during entrance screening shall be denied entrance to the venue – depending on their level of intoxication and willingness to comply with instructions to leave, such patrons may have their tickets removed by event personnel to prevent their attempting to enter through another entrance at a later time. Should it become necessary, the event staff will involve local law enforcement and/or medical personnel to perform an evaluation on any patrons appearing to be too intoxicated that have made it to the gate and have been denied entry.

If we deem someone has had too much to drink we will take the following steps: STOP SERVING the person, contact management, offer free food and water, determine if the patron is driving, find them a friend that can safely take care of them and if necessary, alert local authorities.

Alcohol will be stored in lockable vending trucks onsite with overnight security posted.

DAYS AND HOURS OF BAR OPERATION

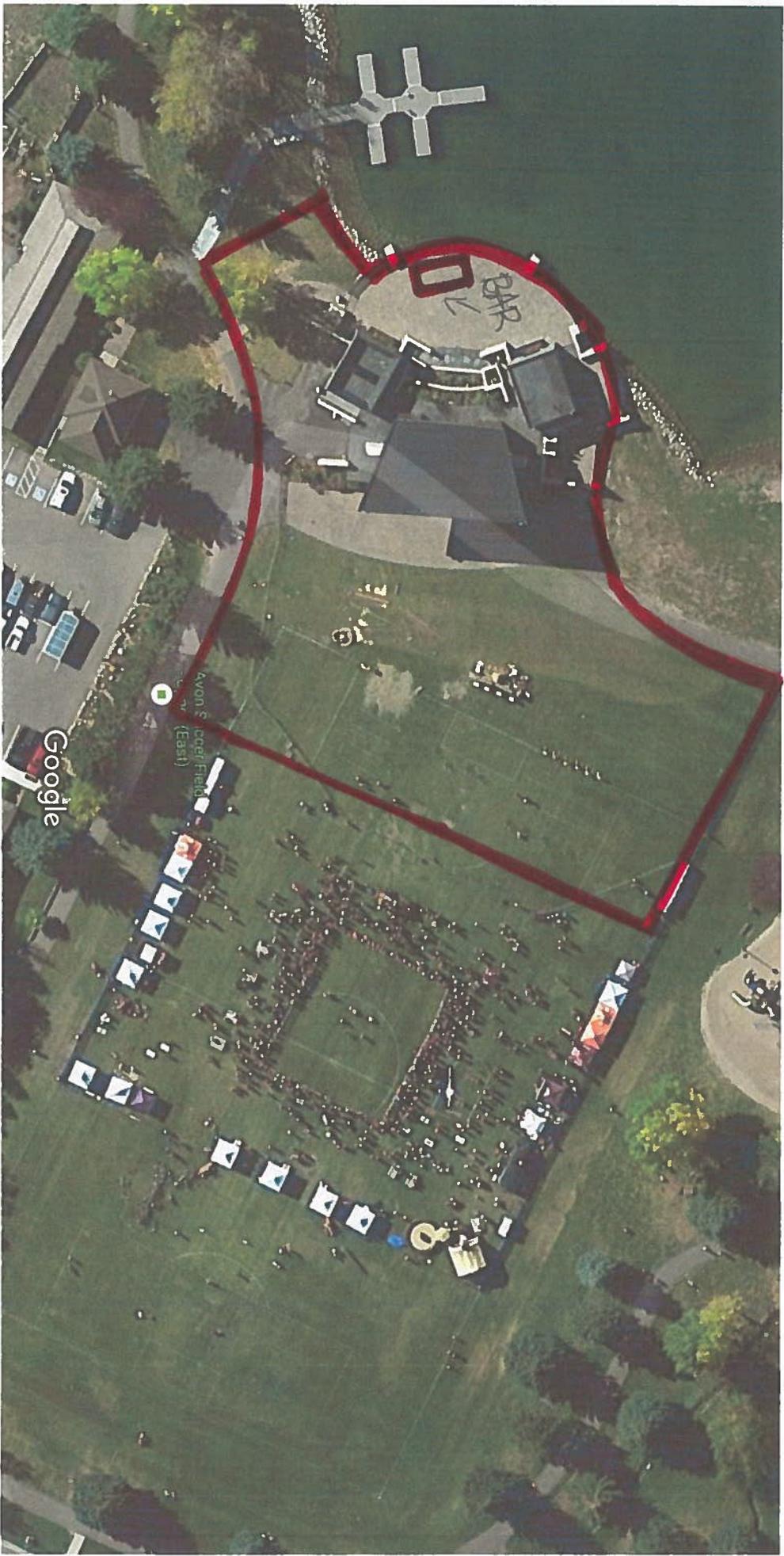
Friday September 2nd – 2:00 pm – 9:00 pm
Saturday September 3rd – 2:00 pm – 9:00 pm
Sunday September 4th – 2:00 pm – 9:00 pm

FOOD SERVICE

Approved and licensed Eagle County food vendors/caterers will be onsite to provide meals during events.

INSURANCE

Insurance certificate will be provided prior hearing.



 - Liquor perimeter

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,

Big Heart Big Hands

is a

Nonprofit Corporation

formed or registered on 08/28/2015 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 20151561348 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 07/22/2016 that have been posted, and by documents delivered to this office electronically through 07/26/2016 @ 09:33:04 .

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 07/26/2016 @ 09:33:04 in accordance with applicable law. This certificate is assigned Confirmation Number 9756867 .



A handwritten signature in blue ink that reads "Wayne W. Williams".

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."

**Avon Police Department
Liquor License Application**

Individual Name(s): Michael Welle
Bobby L'heureux

Name of Business: Big Hearts Big Hands

Type of License: Hotel & Restaurant
 Special Event Permit

Event Name: Skylight Creative Writing Retreat
Date of Event: September 2-4, 2016 2:00pm-9:00pm

Location of Business: Nottingham Park
Avon, Colorado 81620

Date Received: July 27th 2016

Photographs/Fingerprints: On File
 Special Event – N/A

Investigation by:
 Detective Sergeant Jonathan Lovins
 Detective Jeremy Holmstrom

Date: August 2nd 2016

CBI Criminal Investigation (attached): Clear

Local Criminal Investigation: Clear

Comments: No problems noted

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.



REPORT TO AVON LIQUOR LICENSING AUTHORITY

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Meeting Date: August 9, 2016
Agenda Topic: PUBLIC HEARING for new Hotel and Restaurant Liquor License for CTK, LLC d/b/a Chronic Taco's

PROPOSED MOTION

I move to approve Resolution No. 16-01 A Resolution Approving the Application of CTK, LLC d/b/a Chronic Taco's for a Hotel and Restaurant Liquor License.

ACTION BEFORE COUNCIL

Town Council acting as the Local Liquor Licensing Authority is asked to consider the liquor license application for the following new Hotel and Restaurant Liquor License:

Applicant Name: CTK, LLC d/b/a Chronic Tacos
Location: 150 East Beaver Creek Blvd, Unit A101
Type: Hotel and Restaurant Liquor License
Owner: Anthony Kerrigone
Manager: Chad Wilkison

The Colorado Liquor Code provides for the licensing of hotels and restaurants to sell alcohol beverages subject to Section 12-47-111 of the Colorado Liquor Code. A Public Hearing is required prior to taking action on the new Hotel and Restaurant Liquor License.

BACKGROUND

Attached is the "Report of Findings" for this application which was submitted to the applicant on August 1, 2016. The Town Clerk and Town Attorney have reviewed the application for complete information and notice was posted on the premise and published in the Vail Daily as documented in the report of findings. The Avon Police Department has conducted the background investigation on the principals and a report is attached. Please note the Town Attorney will be able to assist with questions related to the review of background information as it relates to the review of the applicant's character.

FINDINGS

A background investigation has been completed by the Avon Police Department and the report indicates Anthony Kerrigone was arrested for DUI and resisting arrest in Cherry Hills, Colorado on December 9th 2015, the CBI record is not showing a final.

On February 21st, 2015, Mr. Kerrigone was contacted by the Eagle County Sheriff's Office after responding to a call for service. Mr. Kerrigone was intoxicated and has gotten into an argument with a roommate. Mr. Kerrigone left the residence and retrieved a handgun from his vehicle. Mr. Kerrigone told Deputies he was in fear of the roommate. Mr. Kerrigone had several other firearms in his vehicle at the time. Deputies took possession of the firearms for safekeeping and issued Mr. Kerrigone a summons for Prohibited Use of a Weapon ECSO case#20015-000318.

The information in the report addresses how the applicant has met the criteria outlined in Section 5.08 Liquor Licenses of the Avon Municipal Code and the State Liquor and Beer Code. The report indicates that the applicant has the burden of proving he/she is qualified to hold the license. The applicant also has the burden of proving that the reasonable requirements of the neighborhood and the desires of the community require the granting of the license. A petition survey has been submitted; this information will assist in the determination of the "desires & needs of the neighborhood". It is noted that the petition signature shows 100% favor for this type of license in this neighborhood.

The applicant has submitted a diagram of the premises. The owner Anthony Kerrigone and manager Chad Wilkison will attend the meeting. The application fees for the liquor licensing have been submitted for both the Town and State of Colorado. If the Authority decides to approve the application, a resolution is attached, which if adopted takes this action.

Attachments

1. Addendum to Memo Outlining Role of Authority for New Liquor License Applications
2. Report of Findings
3. Resolution No. 16-01 Approving the Application of CTK, LLC d/b/a Chronic Taco's for a Hotel and Restaurant Liquor License
4. Colorado Liquor License Application including the following documents as part of the application submittal:
 - 4.1. Shopping Center Lease between CTK, LLC and 150 East Beaver Creek, LLC
 - 4.2. Operating Agreement Diagram of premises
 - 4.3. Diagram of Premises
 - 4.4. Articles of Organization
 - 4.5. Certificate of Good Standing
 - 4.6. Individual History Record & Report from Avon Police Department
5. Petition to Avon Liquor Licensing Authority

1. Addendum to Memo for New Liquor License Applications

Background on the Role of Liquor Licensing Authority in Consideration of New Licenses:

The Avon Town Council acting as the Local Liquor Licensing Authority has the duty to conduct hearings and make findings of fact as to whether to grant or deny a new local liquor license. The State Licensing Authority cannot grant or issue any "new license" until the Authority has first approved the application by conducting a hearing for such license. If the Authority denies the application, the Executive Director of the State of Colorado cannot override its decision. If the Authority approves a license, the State Licensing Authority cannot refuse to issue the license except upon hearing with a 15-day notice to the applicant and the Authority. Once the state license is received by the Town Clerk's Office and the Certificate of Occupancy has been received from the Building Department, the Town and State licenses can be issued.

The Town Clerk, Town Attorney and Police Department handle the review of the liquor license applications administratively. A "Report of Findings" is completed by the Town Clerk & provided the applicants five days prior to the hearing. The Authority members are provided the application materials when it appears on the Liquor Board Agenda. A public hearing is conducted for all new applications. The Local Authority's decision is usually given at the conclusion of the hearing although it may be delayed. The decision must be given in writing within 30 days after the date of the hearing and may follow in the form of a resolution. The motion to approve or disapprove should be explicit stating the exact reasons for denial or approval. A motion to deny a license must be based on evidence presented at the hearing.

The Liquor Code of Colorado provides that in making any decision, the Local Licensing Authority must consider the following before approving or denying the application:

- Facts and evidence resulting from the investigation and any facts brought to the attention of the Authority.
- The reasonable requirements of the neighborhood
- The desires of the inhabitants of the neighborhood.
- The number, type and availability of liquor outlets located in or near the neighborhood under consideration.
- Any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

Requests for licenses may be denied for various reasons such as the applicant is not of good moral character, the applicant's character, record, or reputation is unsatisfactory, or the proposed outlet is within 500 feet of any school.



LOCAL LIQUOR LICENSING AUTHORITY
TOWN OF AVON, COLORADO

RE THE APPLICATION OF)
CTK, LLC D/B/A CHRONIC TACO'S) REPORT OF FINDINGS
150 EAST BEAVER CREEK BLVD. UNIT A101)
AVON, COLORADO)
FOR A HOTEL AND RESTAURANT LIQUOR LICENSE)

TO: THE APPLICANT ABOVE AND OTHER INTERESTED PARTIES
SUBMITTED BY: DEBBIE HOPPE, TOWN CLERK, TOWN OF AVON
DATE: AUGUST 128, 2016

PURSUANT to the Statutes of the State of Colorado, the Ordinances of the Town of Avon, and the Rules and Procedures of the Local Licensing Authority, the applicants are hereby advised that with regard to the application for a Hotel and Restaurant Liquor License filed with the Town Clerk's Office on July 1, 2016, an investigation has been made, and the Report of Findings is as follows:

- 1. The location of the new establishment, CTK, LLC d/b/a Chronic Taco's is 150 East Beaver Creek Blvd. Unit A101, Avon, Colorado.
2. From evidence submitted, the applicant is entitled to possession of the premises as documented by a "Lease Agreement" with a commencement date of February 8, 2016 and executed between 150 East Beaver Creek, LLC. The applicant has submitted a diagram of the premises showing the floor plan of the building referred to as the Avon Plaza Building. The premise is approximately 2,028 square feet in size per the lease.
3. The operation of a restaurant and sale of liquor in this the proposed location is in an area permitted under the applicable zoning laws of the Town of Avon. The applicant has a retail sales tax license and business license from the Town of Avon.
4. The proposed building in which the liquor is to be sold is not located within 500' of any public or parochial school or the principal campus of any college, university or seminary.
5. The appropriate documents, i.e. individual history records & fingerprints, required to conduct the background investigation have been submitted to the Colorado Bureau of Investigation ("CBI") and Avon Police Department. The results of the Avon Police Department on the owners of the restaurant indicate no criminal activities. The final background report from CBI has been received, see below for names of applicants:

Table with 4 columns: Title, Name, Address, Telephone. Rows include Manager Chad Wilkison and Managing Member Anthony Kerrigone.



**LOCAL LIQUOR LICENSING AUTHORITY
TOWN OF AVON, COLORADO**

Cherry Hills Village, CO
80113

6. The applicant has submitted the appropriate application fees to the Town Clerk for costs associated with a new application. If the Hotel and Restaurant License is approved by Avon's Local Liquor Authority, the appropriate executed paperwork will be forwarded to the Liquor Enforcement Division for its approval and issuance of the State license. Upon receipt of the State License, the Town Clerk will issue both the state and town licenses to the owners.
7. The public hearing on this application will be held on August 9, 2016 at 5:00 p.m. in the Council Chambers of the Avon Town Hall, One Lake Street, Avon, Colorado. Public Notice was given regarding said application and scheduled hearing date and was published in the Vail Daily on July 29, 2016 and posted on premises of the proposed location ten days prior to the hearing. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to the application, including all matters set forth herein.
9. The "Neighborhood" has been established by the Avon Liquor Licensing Authority with the adoption of Resolution No. 04-04 on November 23, 2004, defining it as "the neighborhood to be served by any applicant for liquor license of any kind shall be the Town of Avon, including residents of the Town, persons working in the Town and visitors to the Town".
10. At the public hearing, the applicant has the burden of proving he/she is qualified to hold the license applied for, and that his character, record and reputation are satisfactory. The applicant also has the burden of proving that the reasonable requirements of the neighborhood and the desires of the inhabitants of the neighborhood require the granting of the license. And finally, the applicant is required to file with the Town Clerk documentary evidence, thereof, including any surveys and petitions, not later than seven days before the date of the hearing. This petition is included as a part of these findings and shows unanimous support for this "Hotel and Restaurant License" in this location with a total of 28 signatures. The signatures on the petition include people from Avon representing residents as well as signatures from people residing in Eagle County.
11. The applicant is advised to obtain and read a copy of the State of Colorado Liquor and Beer Codes and Regulations and the Town Code Section on Liquor Licenses (Title 5, Chapter 5.08). These regulations can be found on the following websites:
http://www.revenue.state.co.us/liquor_dir/home.asp
http://www.colocode.com/avon/avon_05.pdf

Mailed on August 1, 2016

**PROCEEDINGS OF THE
LIQUOR LICENSING AUTHORITY OF THE
TOWN OF AVON**

**RESOLUTION NO. 16-01
SERIES OF 2016**

A Resolution Approving the Application of CTK, LLC d/b/a Chronic Taco's for a Hotel and Restaurant License

WHEREAS, on August 9, 2016, the Liquor Licensing Authority of the Town of Avon ("the Authority") did receive and consider the application of CTK, LLC whose mailing address is PO Box 119121, Avon, Colorado, for a Hotel and Restaurant License located at 150 E. Beaver Creek Blvd., Unit A101, Avon, Colorado; and

WHEREAS, the Authority finds that Notice of Application was published in the Vail Daily on July 29, 2015 and proof of publication by the publisher of the Vail Daily was received; and

WHEREAS, the Authority finds that the application was in proper form and accompanied by the necessary supplementary evidentiary matter required by law, the regulations of the State of Colorado and the Authority; and

WHEREAS, the application was supported by petitions with signatures that supported the application in full with 100% of persons signing petition in favor of the Hotel and Restaurant License at said location; and

WHEREAS, the neighborhood to be served by the proposed licensee has been determined to be the Town of Avon, including residents of the Town, persons working in the Town and visitors to the Town as stated in Resolution No. 04-04 adopted on November 23, 2004; and

NOW, THEREFORE, THE LIQUOR LICENSING AUTHORITY OF THE TOWN OF AVON DOES FIND:

1. The applicant is of good moral character and reputation.
2. The neighborhood to be served by the applicant is the Town of Avon, including residents of the Town, persons working in the Town and visitors to the Town.
3. There does exist a reasonable requirement in such neighborhood for the type of license for which application is made as shown by the submitted petition.
4. The adult inhabitants of the Town desire that the license be granted.

ADOPTED THE 9th DAY OF August 2016

TOWN OF AVON, COLORADO

Jennie Fancher, Chairman

Debbie Hoppe, Secretary

Colorado Liquor Retail License Application

New License
 New-Concurrent
 Transfer of Ownership

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: www.colorado.gov/enforcement/liquor
- Local License Fee \$ _____

1. Applicant is applying as a/an		<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership (includes Limited Liability and Husband and Wife Partnerships) <input type="checkbox"/> Association or Other	
2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation		FEIN Number	
CTK LLC		47-2537318	
2a. Trade Name of Establishment (DBA)		State Sales Tax Number	Business Telephone
Charlie Tacos		32134483	970-763-8226
3. Address of Premises (specify exact location of premises, include suite/unit numbers)			
150 East Beaver Creek Blvd, Unit A101			
City	County	State	ZIP Code
Avon	Eagle	CO	81620
4. Mailing Address (Number and Street)		City or Town	State ZIP Code
150 East Beaver Creek Blvd, Unit A101		Avon	CO 81620
5. Email Address			
tk5547@yahoo.com			

6. If the premises currently has a liquor or beer license, you must answer the following questions			
Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date

Section A Nonrefundable Application Fees	Section B (Cont.) Liquor License Fees
<input type="checkbox"/> Application Fee for New License \$920.00 <input checked="" type="checkbox"/> Application Fee for New License w/Concurrent Review \$1020.00 <input type="checkbox"/> Application Fee for Transfer \$920.00	<input type="checkbox"/> Liquor Licensed Drugstore (City) \$227.50 <input type="checkbox"/> Liquor Licensed Drugstore (County) \$312.50 <input type="checkbox"/> Manager Registration - H & R \$75.00 <input type="checkbox"/> Manager Registration - Tavern \$75.00
Section B Liquor License Fees	<input type="checkbox"/> Master File Location Fee \$25.00 X _____ Total _____
<input type="checkbox"/> Add Optional Premises to H & R \$100.00 X _____ Total _____ <input type="checkbox"/> Add Related Facility to Resort Complex \$75.00 X _____ Total _____ <input type="checkbox"/> Arts License (City) \$308.75 <input type="checkbox"/> Arts License (County) \$308.75 <input type="checkbox"/> Beer and Wine License (City) \$351.25 <input type="checkbox"/> Beer and Wine License (County) \$436.25 <input type="checkbox"/> Brew Pub License (City) \$750.00 <input type="checkbox"/> Brew Pub License (County) \$750.00 <input type="checkbox"/> Club License (City) \$308.75 <input type="checkbox"/> Club License (County) \$308.75 <input type="checkbox"/> Distillery Pub License (City) \$750.00 <input type="checkbox"/> Distillery Pub License (County) \$750.00 <input checked="" type="checkbox"/> Hotel and Restaurant License (City) \$500.00 <input type="checkbox"/> Hotel and Restaurant License (County) \$500.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City) \$600.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (County) \$600.00	<input type="checkbox"/> Master File Background \$250.00 X _____ Total _____ <input type="checkbox"/> Optional Premises License (City) \$500.00 <input type="checkbox"/> Optional Premises License (County) \$500.00 <input type="checkbox"/> Racetrack License (City) \$500.00 <input type="checkbox"/> Racetrack License (County) \$500.00 <input type="checkbox"/> Resort Complex License (City) \$500.00 <input type="checkbox"/> Resort Complex License (County) \$500.00 <input type="checkbox"/> Retail Gaming Tavern License (City) \$500.00 <input type="checkbox"/> Retail Gaming Tavern License (County) \$500.00 <input type="checkbox"/> Retail Liquor Store License (City) \$227.50 <input type="checkbox"/> Retail Liquor Store License (County) \$312.50 <input type="checkbox"/> Tavern License (City) \$500.00 <input type="checkbox"/> Tavern License (County) \$500.00 <input type="checkbox"/> Vintners Restaurant License (City) \$750.00 <input type="checkbox"/> Vintners Restaurant License (County) \$750.00

Questions? Visit: www.colorado.gov/enforcement/liquor for more information

Do not write in this space - For Department of Revenue use only

Liability Information

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total \$

Application Documents Checklist and Worksheet

Instructions: This checklist should be utilized to assist applicants with filing all required documents for licensure. **All** documents must be properly signed and correspond with the name of the applicant exactly. **All** documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable.

Questions? Visit: www.colorado.gov/enforcement/liquor for more information

Items submitted, please check all appropriate boxes completed or documents submitted	
I.	Applicant information <input type="checkbox"/> A. Applicant/Licensee identified <input type="checkbox"/> B. State sales tax license number listed or applied for at time of application <input type="checkbox"/> C. License type or other transaction identified <input type="checkbox"/> D. Return originals to local authority <input type="checkbox"/> E. Additional information may be required by the local licensing authority
II.	Diagram of the premises <input type="checkbox"/> A. No larger than 8 1/2" X 11" <input type="checkbox"/> B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.) <input type="checkbox"/> C. Separate diagram for each floor (if multiple levels) <input type="checkbox"/> D. Kitchen - identified if Hotel and Restaurant <input type="checkbox"/> E. Bold/Outlined Licensed Premises
III.	Proof of property possession (One Year Needed) <input type="checkbox"/> A. Deed in name of the Applicant (or) (matching question #2) date stamped / filed with County Clerk <input type="checkbox"/> B. Lease in the name of the Applicant (or) (matching question #2) <input type="checkbox"/> C. Lease Assignment in the name of the Applicant with proper consent from the Landlord and acceptance by the Applicant <input type="checkbox"/> D. Other Agreement if not deed or lease. (matching question #2) (Attach prior lease to show right to assumption)
IV.	Background information and financial documents <input type="checkbox"/> A. Individual History Records(s) (Form DR 8404-I) <input type="checkbox"/> B. Fingerprints taken and submitted to local authority (State Authority for Master File applicants) <input type="checkbox"/> C. Purchase agreement, stock transfer agreement, and or authorization to transfer license <input type="checkbox"/> D. List of all notes and loans (Copies to also be attached)
V.	Sole proprietor / husband and wife partnership <input type="checkbox"/> A. Form DR4679 <input type="checkbox"/> B. Copy of State issued Driver's License or Colorado Identification Card for each applicant
VI.	Corporate applicant information (if applicable) <input type="checkbox"/> A. Certificate of Incorporation dated stamped by the Secretary of State <input type="checkbox"/> B. Certificate of Good Standing <input type="checkbox"/> C. Certificate of Authorization if foreign corporation <input type="checkbox"/> D. List of officers, directors and stockholders of Applying Corporation (If wholly owned, designate a minimum of one person as Principal Officer of Parent)
VII.	Partnership applicant information (if applicable) <input type="checkbox"/> A. Partnership Agreement (general or limited). Not needed if husband and wife <input type="checkbox"/> B. Certificate of Good Standing (If formed after 2009)
VIII.	Limited Liability Company applicant information (if applicable) <input type="checkbox"/> A. Copy of articles of organization (date stamped by Colorado Secretary of State's Office) <input type="checkbox"/> B. Certificate of Good Standing <input type="checkbox"/> C. Copy of operating agreement <input type="checkbox"/> D. Certificate of Authority if foreign company
IX.	Manager registration for hotel and restaurant, tavern licenses when included with this application <input type="checkbox"/> A. \$75.00 fee <input type="checkbox"/> B. Individual History Record (DR 8404-I) <input type="checkbox"/> C. If owner is managing, no fee required

7. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years?		Yes	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state):			
(a) Been denied an alcohol beverage license?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Had an alcohol beverage license suspended or revoked?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If you answered yes to 8a, b or c, explain in detail on a separate sheet.			
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Waiver by local ordinance?		or	
Other: _____		<input type="checkbox"/>	<input type="checkbox"/>
11. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?		<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____			
a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:			
Landlord	Tenant	Expires	
<i>150 East Beaver Creek, LLC</i>	<i>CTK LLC</i>	<i>02/2021</i>	
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 13.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".			
13. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.			
Last Name	First Name	Date of Birth	FEIN or SSN
Last Name	First Name	Date of Birth	FEIN or SSN
Interest/Percentage			
Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.			
14. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:		<input type="checkbox"/>	<input type="checkbox"/>
Has a local ordinance or resolution authorizing optional premises been adopted?			
Number of additional Optional Premise areas requested. (See license fee chart)		<input type="text"/>	
15. Liquor Licensed Drug Store applicants, answer the following:			
(a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy?		<input type="checkbox"/>	<input type="checkbox"/>
If "yes" a copy of license must be attached.			
16. Club Liquor License applicants answer the following: Attach a copy of applicable documentation			
(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		<input type="checkbox"/>	<input type="checkbox"/>
(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		<input type="checkbox"/>	<input type="checkbox"/>
(c) How long has the club been incorporated?		<input type="text"/>	
(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		<input type="checkbox"/>	<input type="checkbox"/>
17. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:			
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		<input type="checkbox"/>	<input type="checkbox"/>
18a. For all on-premises applicants. (If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an individual History Record - DR 8404-I)			
Last Name of Manager	First Name of Manager	Date of Birth	
<i>Wilkinson</i>	<i>Chad</i>	<i>6/6/86</i>	
18b. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Name	Type of License	Account Number	
19. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
If yes, provide an explanation and include copies of any payment agreements.			

20. If applicant is a corporation, partnership, association or limited liability company, applicant must list all **Officers, Directors, General Partners, and Managing Members**. In addition, applicant must list any stockholders, partners, or members with **ownership of 10% or more in the Applicant**. All persons listed below must also attach form DR 8404-I (Individual History Record), and submit fingerprint cards to the local licensing authority.

Name	Home Address, City & State	DOB	Position	% Owned
Anthony Kerrigone	6 Sterling Ave. Cherry Hills Village CO, 80113	11/18/70	Managing Member	100

** If Applicant is owned 100% by a parent company, please list the designated principal officer on question #20
 ** Corporations - The President, Vice-President, Secretary and Treasurer must be accounted for on question #20 (Include ownership percentage if applicable)
 ** If total ownership percentage disclosed here does not total 100%, applicant must check this box:

Applicant affirms that no individual other than these disclosed herein, owns 10% or more of the applicant, and does not have ownership in a prohibited liquor license pursuant to Title 47 or 48, C.R.S.

Oath Of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature 	Printed Name and Title Tony Kerrigone Managing Member	Date 8/11/16
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Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority July 1, 2016	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1) C.R.S.) August 9, 2016
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The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) has:

- Been fingerprinted
- Been subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with, and aware of, liquor code provisions affecting their class of license

(Check One)
 Date of inspection or anticipated date _____
 Will conduct inspection upon approval of state licensing authority

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S.

Therefore, this application is approved.

Local Licensing Authority for Town of Avon	Telephone Number (970) 748-4001	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County	
Signature	Print	Title	Date
Signature (attest)	Print	Title	Date

SHOPPING CENTER LEASE
BETWEEN
CTK LLC,
A COLORADO LIMITED LIABILITY COMPANY
AND
150 EAST BEAVER CREEK, LLC
A MISSOURI LIMITED LIABILITY COMPANY
AT
AVON PLAZA, AVON, COLORADO
DATED NOVEMBER ____, 2015

SHOPPING CENTER LEASE

THIS LEASE, made as of the 8th day of ~~November~~ FEBRUARY, 2018, by and between 150 EAST BEAVER CREEK, LLC, a Missouri limited liability company (herein called "Landlord"), and CTK LLC, a Colorado limited liability company (herein called "Tenant").

For and in consideration of the sum of \$10.00 and other valuable considerations, including the mutual covenants and agreements of the parties, Landlord leases to Tenant and Tenant leases from Landlord the premises described herein for the term and subject to the terms and conditions set forth herein.

ARTICLE 1 INTRODUCTORY PROVISIONS

1.1 **FUNDAMENTAL LEASE PROVISIONS.** Certain fundamental provisions are presented in this Section in summary form to facilitate convenient reference by the parties hereto:

- | | | | | | | | | | | |
|---------------|------------------------------|---|---------------|---------------|----------------|-------------|------|--------------|------------|---------|
| (a) | Tenant's Trade Name | Chronic Tacos
(Section 7.1) | | | | | | | | |
| (b) | Term | 60 months.
(Section 3.1) | | | | | | | | |
| (c) | Premises Space Number | Unit A101 | | | | | | | | |
| (d) | GLA in Premises | Approximately 2,028 square feet.
(Section 1.5) | | | | | | | | |
| (e) | Shopping Center | The real property and improvements thereon that are subject to that certain Condominium Map of Avon Plaza Condominium, according to the Condominium Map recorded on _____, 1996, in Book _____ at Page _____ as Reception No. _____, Town of Avon, Eagle County, Colorado (the "Condominium Map") and as defined in and described in the Condominium Declaration for Avon Plaza Condominiums recorded on December 30, 1996, in Book 714 at Page 926 as Reception No. 610903, as amended (the "Declaration"). | | | | | | | | |
| (f) | Tenant's Proportionate Share | Tenant's proportionate share shall be 100%. | | | | | | | | |
| (g) | Minimum Rent | Months / annual / monthly / per square feet payable monthly, plus applicable sales tax (Section 4.2)

<table border="0" style="margin-left: 40px;"><tr><td style="text-align: center;"><u>Months</u></td><td style="text-align: center;"><u>Annual</u></td><td style="text-align: center;"><u>Monthly</u></td><td style="text-align: center;"><u>MPSE</u></td></tr><tr><td style="text-align: center;">1-60</td><td style="text-align: center;">\$50,700.000</td><td style="text-align: center;">\$4,225.00</td><td style="text-align: center;">\$25.00</td></tr></table> | <u>Months</u> | <u>Annual</u> | <u>Monthly</u> | <u>MPSE</u> | 1-60 | \$50,700.000 | \$4,225.00 | \$25.00 |
| <u>Months</u> | <u>Annual</u> | <u>Monthly</u> | <u>MPSE</u> | | | | | | | |
| 1-60 | \$50,700.000 | \$4,225.00 | \$25.00 | | | | | | | |
| (h) | Commencement Date | the date on which Landlord delivers the Premises to Tenant. | | | | | | | | |
| (i) | Rent Commencement Date | The earlier of: (i) the date Tenant opens for business in the Premises; and (ii) the date that is ninety (90) days after the Commencement Date. Landlord and Tenant agree to execute an agreement, substantially in the form attached hereto and made a part hereof as Exhibit "E", setting forth the Commencement Date, the Rent Commencement Date, and Expiration Date of the Lease. The parties hereto shall execute said agreement within ten (10) days after written request by the other to execute _____ said _____ agreement.
(Section 3.1) | | | | | | | | |

- (j) Use

Tenant will throughout the Term operate the Premises solely for the operation of a fast-casual restaurant serving breakfast, lunch and dinner with menu items consisting primarily of tacos, burritos, quesadillas, nachos, salads, chips and salsa and the ancillary sale of alcoholic beverages for on-premises consumption only and other items offered substantially in all other stores operating under the Tenant's Trade Name. Tenant may also sell promotional items displaying the Tenant's logo (including, but not limited to, t-shirts, caps and mugs and proprietary sauces and beverages). Tenant may alter Tenant's menu during the term to sell periodic promotion items or to sell additional menu items to be consistent with other Chronic Tacos restaurant locations. Tenant shall be permitted to offer samples of the Tenant's products on or in front of the storefront counter.
- (k) Guarantor(s) (if none, so state)

TONY KERRIGONE
- (l) Default Rate

The lesser of eighteen percent (18%) per annum or the maximum lawful rate of interest under the laws of the state in which the Premises is located.
- (m) Security Deposit

\$4,225.00
(Section 26.1)
- (n) Landlord's Leasing Agent and cooperating Broker (if any)

N/A
(Section 25.5)
- (o) Address for Notice

To Landlord:

150 East Beaver Creek, LLC
c/o Hoffmann Commercial Real Estate, LLC
8000 Maryland Avenue, Suite 610
Clayton, Missouri, 63105

With a copy to:

Berger, Cohen & Brandt, L.C.
8000 Maryland Ave., Suite 1550
Clayton, MO 63105
Attn: Guy N. Brandt

To Tenant:

6 STERLING AVE FLOOR, CHERRY HILLS, CO 80113
- (p) Common Elements

The common elements and those portions of the Shopping Center as may be designated by Landlord or the Condominium Map, the Declaration and/or the Association from time to time as common elements for the use of the occupants of the Shopping Center.
- (q) Additional Articles:

Additional articles numbered 1 through 4 (inclusive) are included on Exhibit "C", Addendum to Lease, attached hereto and made a part hereof.

LEASE PROVISIONS

1.2 REFERENCES AND CONFLICTS. References appearing in Section 1.1 are to designate some of the other places in this Lease where additional provisions applicable to the particular Fundamental Lease Provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions contained in Section 1.1 shall be construed to incorporate all of the terms provided for under such provisions, and such provisions shall be read in conjunction with all other provisions of this Lease applicable thereto. If there is any conflict between any of the Fundamental Lease Provisions set forth in Section 1.1 and any other provision of this Lease, the latter shall control

1.3 EXHIBITS. The following drawings and special provisions are attached hereto as exhibits and hereby made a part of this Lease:

- (a) Exhibit "A"- Site Plan of the Shopping Center and Floor Plan of the Premises.
- (b) Exhibit "B"- Description of Tenant's Work and work to be performed by Landlord, if any, in the Premises.
- (c) Exhibit "C"- Addendum to Lease.
- (d) Exhibit "D"- Shopping Center Signage Criteria.
- (e) Exhibit "E"- Commencement and Expiration Date Agreement.
- (f) Exhibit "F"- Guaranty.
- (g) Exhibit "G"- Outdoor Seating Area.

1.4 ASSOCIATION MATTERS; TENANT'S RIGHTS IN COMMON ELEMENTS. The Declaration establishes a condominium unit owners' association (the "Association") for purposes of governing the condominium units and common elements in the Shopping Center. By the grant of this Lease, and pursuant to the terms of the Declaration, Tenant has the right to use during the term of this Lease, in common with other owners of condominium units, tenants and occupants of the Shopping Center, and others, those portions of the Shopping Center as are or may in the future be designated by Landlord or the Condominium Map, the Declaration, and/or the Association, from time to time as common areas or general common elements for the use of the occupants of the Shopping Center (any such areas referred to herein as the "Common Elements"), subject to the terms and conditions of this Lease, and all rules and regulations of Landlord, and the Association. The Common Elements within the Shopping Center, as well as the Premises, shall be shown on the Map, or described in the Declaration. Tenant, and Tenant's employees, servants, agents, representatives, contractors and suppliers, and Tenant's invitees and customers shall use the Common Elements only for the purposes and only in the manner and in compliance with the terms and conditions referred to above. The Association may at any time and from time to time, change the shape, size, location, number, height, and extent of the improvements constituting the Common Elements, and eliminate or add any improvements to any portion of Common Elements and add land thereto, or eliminate land therefrom. Tenant recognizes that Tenant's use and occupancy of the Premises are subject to the Declaration, and to the Articles of Incorporation, Bylaws and rules and regulations of the Association, provided, however, that the obligations with respect to the expenses payable by Tenant are governed exclusively by this Lease. Tenant agrees to abide by all of its obligations as a tenant of a condominium unit governed by the documents listed above, as they may from time to time exist. Tenant shall have none of the rights (including, but not limited to, voting rights) of a condominium unit owner under the Declaration or otherwise of a member of the Association, and all such rights are and shall remain the rights of Landlord or its assignee.

1.5 GROSS LEASABLE AREA.

(a) At the Commencement Date, GLA means, with respect to the Premises, the number of square feet set forth in Section 1.1(d).

(b) If additions or deletions are made to the Premises or condominium units within the Shopping Center owned by Landlord and it becomes necessary to determine the GLA of the modified space, GLA is defined as the actual number of square feet of area on all levels for the exclusive use and occupancy by the occupant thereof, including, without limitation, any mezzanines used for the sale of goods or services and any basements and balconies (but excluding Common Elements) measured from the exterior face of exterior walls, the exterior face of service

ARTICLE 4 RENT

4.1 TENANT'S AGREEMENT TO PAY RENT. Beginning on the Rent Commencement Date, Tenant hereby agrees to pay Minimum Rent and Additional Rent. The term "Rent" includes the Minimum Rent and Additional Rent.

4.2 MINIMUM RENT. The minimum amount of rent Tenant shall pay Landlord for each Lease Year is the amount set forth in Section 1.1(g) (the "Minimum Rent"). Minimum Rent for the period from the Rent Commencement Date to the first day of the month following such date shall be prorated on a daily basis and shall be payable with and in addition to the first installment of Minimum Rent. Tenant shall pay Minimum Rent for each Lease Year (as defined in Section 4.3 hereinbelow) in twelve (12) equal monthly installments, in advance, on the first day of each calendar month, without demand, deduction or offset. The first installment of Minimum Rent shall be due on execution of this Lease by Tenant.

4.3 LEASE YEAR DEFINED. The "First Lease Year" means the period beginning on the Rent Commencement Date and ending on the last day of the twelfth full calendar month thereafter. "Lease Year" means each successive twelve (12) month period after the First Lease Year occurring during the Term.

4.4 ADDITIONAL RENT. Tenant shall pay, as additional rent (herein sometimes collectively called "Additional Rent"), all sums of money or charges of whatsoever nature (except Minimum Rent) required to be paid by Tenant to Landlord pursuant to this Lease, whether or not the same is designated as "Additional Rent." Without limiting the generality of the foregoing, Additional Rent shall include all assessments (of any kind or nature, including, without limitation, annual, supplementary, extraordinary, special, and other assessments) imposed by the Association that are attributable to the Premises.

4.5 WHERE RENT PAYABLE AND TO WHOM; NO DEDUCTION; LATE CHARGE. Rent payable by Tenant under this Lease shall be paid to Landlord on or before the first day of each month, without prior demand therefor (except where such prior demand is expressly provided for in this Lease), without any deductions, set offs or counterclaims whatsoever, at the place to which notices are to be sent to Landlord pursuant to Section 1.1(o) or to such payee and at such place as may be designated by Landlord to Tenant in writing at least ten (10) days prior to the next ensuing Minimum Rent installment payment date. If any payment of Rent or other charges due hereunder is not received by Landlord in good funds by its due date, Tenant will pay to Landlord a late charge of five percent (5%) of the amount due.

ARTICLE 5 TAXES AND ASSESSMENTS

5.1 TAXES. Tenant shall pay to Landlord, as Additional Rent, all real estate and other ad valorem taxes and assessments of every kind and nature (including, but not limited to, general and special assessments, foreseen as well as unforeseen) imposed with respect to the Premises. Such taxes and assessments are collectively called the "Taxes." With respect to any assessments, which may be paid in annual installments, only the amount of such annual installment (with appropriate proration for any partial Lease Year) and statutory interest shall be included within the computation of the annual Taxes for the Lease Year in question.

5.2 PAYMENT BY TENANT. The tax payment required under this Section shall be paid by Tenant, at the times and in the manner provided in Section 8.8, in equal consecutive monthly installments in such amounts as are estimated and billed for each fiscal tax period by Landlord. The first such installment shall be due and payable by Tenant on the Commencement Date. Taxes for the first and last tax year in the Term shall be prorated. After Taxes are paid, Landlord will notify Tenant of the amount of Taxes payable by Tenant. If the aforesaid monthly payments for a given period are greater than the Taxes payable for such period, Tenant shall receive a credit from Landlord for the excess or, if the Lease has terminated, Landlord will refund such difference to Tenant within thirty (30) days after the Taxes are paid by Landlord. If it is determined that said payments are less than the Taxes payable for such period, Tenant shall pay Landlord the difference within thirty (30) days after notice from Landlord.

5.3 RENT TAX. Should any governmental taxing authority acting under any present or future law, ordinance or regulation levy, assess or impose a tax, excise or assessment (other than an income or franchise tax) upon or against or measured by the Rent, or any part of it, Tenant shall pay such tax, excise and/or assessment when due or shall on demand reimburse Landlord for the amount thereof, as the case may be. In the event any governmental taxing authorities offers discounts for the early payment of any assessment or tax levied that is paid by Landlord, Tenant

shall be entitled to the discounted amount offered even if Landlord does not pay said assessment or tax in a timely manner to receive discounts.

5.4 **CONTEST OF TAXES.** Taxes shall also include all of Landlord's expenses, including, but not limited to, attorneys', consultants' and accountants' fees, incurred by Landlord in any effort to minimize Taxes, whether by contesting proposed increases in assessments or by any other means or procedure appropriate in the circumstances. Landlord shall have the exclusive right to contest any assessments of Taxes.

ARTICLE 6 **TENANT'S CONDUCT OF BUSINESS**

6.1 **HOURS.** Tenant agrees that, from and after the Commencement Date, Tenant will keep its entire store in the Premises open for business with the public daily during such hours as are customary in the Shopping Center, but in no event shall Tenant be required to be open for business on New Year's Day, Christmas, Independence Day, Thanksgiving or Easter, or before 10:00 a.m. or after 6:00 p.m. on any day. The requirements of this Section shall not be applied when the Tenant is prevented from operating by strike, casualty, governmental regulation, or other cause beyond the reasonable control of Tenant.

ARTICLE 7 **USE OF PREMISES**

7.1 **SOLE USE AND TRADE NAME.** Tenant shall use the Premises for the purpose specified in Section 1.1(j) and for no other purpose whatsoever and shall conduct its business in the Premises solely under the trade name specified in Section 1.1(a). Tenant shall not use the Premises for any purpose that would be in violation of an existing agreement between Landlord and another Shopping Center tenant which grants that other tenant an exclusive right to sell a good or service.

7.2 **REQUIREMENTS AND RESTRICTIONS.** Tenant agrees that it:

(a) will not, without Landlord's consent, conduct or permit to be conducted any auction, fire, bankruptcy or going-out-of-business sales, or similar type sale, in connection with the Premises; provided, however, that this provision shall not restrict the absolute freedom of Tenant to determine its own selling prices nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales;

(b) will not use or permit the use of any apparatus for sound reproduction or transmission or of any musical instrument in such manner that the sounds so reproduced, transmitted or produced shall be audible beyond the interior of the Premises; will not utilize an advertising medium within the Shopping Center which can be seen, heard or experienced outside the Premises, including, but not limited to, flashing lights, searchlights, loudspeakers, phonographs, radio or television; will not display, paint or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Shopping Center; will not distribute, or cause to be distributed, in the Shopping Center any handbills or other advertising devices; and will not conduct or permit any activities that might constitute a nuisance;

(c) will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Premises; will not cause or permit strong, unusual, offensive or objectionable noise, odors, fumes, dust or vapors to emanate or be dispelled from the Premises; will not burn trash or store or permit accumulations of any trash, garbage, rubbish or other refuse outside of the Premises except in compactors or other receptacles approved by Landlord;

(d) will not load or permit the loading or unloading of merchandise, supplies or other property, nor ship, nor receive, outside the area and entrance designated therefor by Landlord from time to time; will not permit the parking or standing, outside of said area, of trucks, trailers or other vehicles or equipment engaged in such loading or unloading in a manner to interfere with the use of any Common Elements or any pedestrian or vehicular use and good shopping center practice; will use its best efforts to complete or cause to be completed all deliveries, loading, unloading and services to the Premises prior to 10:00 a.m. each day;

(e) will not paint or decorate any part of the exterior of the Premises, or change the architectural treatment thereof, or install any visible protective devices such as burglar bars or security shutters or window tinting, without first obtaining Landlord's written approval; and will remove promptly upon order of Landlord any paint, decoration or protective device which has been applied to or installed upon the exterior of the Premises without Landlord's prior approval, or take such other action with reference thereto as Landlord may direct;

(f) will keep the inside and outside of all glass in the doors and windows of the Premises clean; will not place or maintain any merchandise, vending machines or other articles in the vestibule or entry of the Premises except as provided in Article I, Paragraph 1.1(j) hereof, on the footwalks adjacent thereto or elsewhere on the exterior thereof; will maintain the Premises at its own expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; and will keep refuse in proper containers on the interior of the Premises until removed from the Premises;

(g) will comply with all laws, rules, regulations, orders and guidelines relating to the Premises and the Common Elements, including without limitation, those imposed by the Association, and will not use or permit the use of any portion of the Premises for any unlawful purpose;

(h) will not place, permit or maintain on the exterior walls or roof of the Premises any sign, advertising matter, decoration, lettering, insignia, emblems, trademark or descriptive material (herein called "Signs") and will not permit any Signs to remain or be placed on any window or door of the Premises unless the same have been approved in writing by Landlord and the Association, if required; and will maintain any and all Signs as may be approved in good condition and repair at all times, Landlord reserving the right to do so at Tenant's expense if Tenant fails to do so after five (5) days' notice from Landlord; and will, at Tenant's expense, determine, apply for, and fully comply with all applicable governmental, municipal, and town approvals and permits. Tenant acknowledges that it will install its approved Signs within thirty (30) days from date of possession of the Premises.

(i) will keep the display windows in the Premises electrically lighted and any and all electric signs lighted during all other periods that a majority of tenants are open for business in the Shopping Center;

(j) will not use the sidewalks adjacent to the Premises, or any other Common Elements or space outside of the Premises, for the sale or display of any merchandise or for other business, occupation or undertaking; and

(k) will not cause or permit any violation of the Americans with Disabilities Act (the "ADA") to occur on, or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction of use of rentable or usable space, damages arising from the adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultation fees and expert fees) that arise during or after the Term as a result of such violation(s).

7.3 EFFECT ON ASSOCIATION'S INSURANCE. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene the policies of any Association to which the Premises is subject insuring against loss or damage by fire or other hazards, or which will prevent the Association from procuring such policies in companies acceptable to Landlord, or which will cause an increase in the insurance rates upon any portion of the Shopping Center. If Tenant violates any prohibition provided for in the first sentence of this Section, Landlord may, without notice to Tenant, correct the same at Tenant's expense. Tenant agrees to pay to Landlord as Additional Rent on demand the amount of any increase in premiums for insurance resulting from any violation of the first sentence of this Section, even if Landlord shall have consented to the doing of or keeping of anything on the Premises which constitutes such a violation (but the payment of such Additional Rent shall not entitle Tenant to violate the provisions of the first sentence of this Section).

ARTICLE 8 **COMMON ELEMENTS**

8.1 USE BY TENANT; MAINTENANCE. Tenant and its employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged during the Term to use the Common Elements for their respective intended purposes in common with other persons. All Common Elements, including, without limitation, parking areas, driveways, entrances and exits, plazas, sidewalks, building exteriors and other facilities furnished by the Association in, on or near the improvements of which the Premises are a portion, shall at all times be subject to the exclusive control and management of the Association pursuant to the Declaration, and Landlord shall have no responsibility therefor.

8.2 ASSOCIATION CONTROL. The Association shall at all times during the Term have the sole and exclusive control, management and direction of the Common Elements, and may at any time and from time to time during the Term exclude and restrain any person from use or occupancy thereof. The rights of Tenant in and to the Common Elements shall at all times be subject to the rights of others to use the same in common with Tenant.

The Association may at any time and from time to time close all or any portion of the Common Elements to make repairs or changes and, to the extent necessary in the opinion of the Association to prevent a dedication thereof or the accrual of any rights to any person or to the public therein. The Association may close temporarily any or all portions of the Common Elements to discourage non-customer parking and use and to do and perform such other acts in and to the Common Elements as, they shall determine to be advisable with a view to the improvement of the convenience and use thereof by occupants and tenants, their employees and invitees.

8.3 RULES AND REGULATIONS. Tenant agrees to comply with such reasonable rules and regulations as Landlord or the Association may deem necessary or advisable for the proper efficient use, operation and maintenance of the Common Elements.

8.4 CHANGES TO COMMON ELEMENTS. The Association shall have the right, at any time, and from time to time, to change the size, location, elevation, and/or nature of the Common Elements.

8.5 EMPLOYEE PARKING. Landlord and the Association may from time to time designate a particular parking area or areas to be used by its tenants. If it does so, Tenant and its employees shall park their vehicles only in those portions of the Shopping Center designated for that purpose.

8.6 LANDLORD, ASSOCIATION AND USE OF COMMON ELEMENTS. Landlord and the Association shall at all times have the right to utilize the Common Elements, or any part thereof, for promotions, exhibits, outdoor shows, displays, automobile and other product shows, the leasing of kiosks and food facilities, landscaping, decorative items, and any other use which, in the judgment of the applicable entity, tends to attract customers to or benefit the customers of the Shopping Center.

8.7 COMMON ELEMENT COSTS. "Common Element Costs" means all costs incurred in a manner deemed by Landlord or the Association, as applicable, to be reasonable and appropriate and for the best interests of the Shopping Center in connection with the operation, maintenance, repair and replacement of the Common Elements, including, but not limited to, the costs and expenses of:

(a) operating, maintaining, repairing, replacing, lighting (including, without limitation, the cost of the electricity therefor), providing security for, cleaning, painting and striping of, and removing debris from, the Common Elements; compacting and removing garbage and trash from the Shopping Center, maintaining and repairing ducts, conduits and similar items, fire protection systems, utility, sprinkler and security alarm systems, storm and sanitary drainage systems and other utility systems, signs and decorations on and off the Shopping Center site, directional signs and markers, and on- and off-site traffic regulation and control signs and devices;

(b) premiums for workers' compensation insurance and plate glass insurance for glass exclusively serving the Common Elements;

(c) reserves for deferred repairs and maintenance;

(d) planting, replanting and replacing flowers, shrubbery, plants, trees and other landscaping, and all water used to irrigate flowers, shrubbery, plants, trees and other landscaping located on Common Elements;

(e) repair, maintenance and replacement of the parking areas;

(f) cost of pest control for the Common Elements;

(g) maintenance, repair, replacement and inspection of all machinery and equipment used in the operation, maintenance or security of the Common Elements and all personal property taxes and other charges incurred in connection with such equipment;

(h) music program services and loudspeaker systems (whether rented or purchased), including the electricity therefor;

(i) personnel, including, without limitation, security and maintenance people to implement the operation, maintenance and repair of the Common Elements; the manager, his secretary and the management bookkeeper or bookkeepers (including, without limitation, the payroll, payroll taxes and employee benefits of such implementing personnel, manager, secretary and bookkeepers); and

- (j) management and administrative fees.

Notwithstanding the foregoing, the Common Element Costs shall not include depreciation of costs or expenses in connection with the original construction and installation of the Common Elements or Common Element Costs which are classified as capital expenditures under generally accepted accounting principles.

Tenant understands, acknowledges and agrees that Common Element Costs may be incurred in the form of regular, special and other assessments levied by the Association against the Premises, and that any such assessments of the Association shall be Common Element Costs as defined by this Lease.

8.8 TENANT'S PAYMENT OF COMMON ELEMENT COSTS. Tenant agrees to pay to Landlord, as Additional Rent, Tenant's Common Element Costs in the following manner:

(a) Tenant shall pay Landlord on the Commencement Date and on the first day of each calendar month of the Term thereafter an amount estimated by Landlord to be Tenant's monthly Common Element Costs. Landlord may adjust said amount at the end of any calendar month on the basis of Landlord's experience and reasonably anticipated costs.

(b) Within ninety (90) days following the end of each calendar year, Landlord shall furnish Tenant a statement covering such year just ended, certified as correct by an authorized representative of Landlord showing the Common Element Costs for such year and the payments made by Tenant with respect to such year. If Tenant's liability for such costs is less than Tenant's payments so made, Tenant shall be entitled to a credit of the difference or, if such liability is greater than Tenant's said payments, Tenant shall pay Landlord the difference within thirty (30) days after receipt of such statement.

(c) To the extent that Common Element Costs are not separately assessed as a cost directly attributable to the Premises but are based on Tenant's pro rata share of shared costs, Common Element Costs shall be determined based on Tenant's Proportionate Share.

ARTICLE 9 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL MATTERS

9.1 RESTRICTION ON USE. Tenant shall not use or permit the use of the Premises for the generation, storage, treatment, use, transportation, handling or disposal of any chemical, material or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by any governmental authority, or which, even if not so regulated, may or could pose a hazard to the health or safety of persons on the Premises or other tenants or occupants of the Shopping Center or property adjacent thereto, and no such chemical, material or substance shall be brought onto the Premises without the Landlord's express written approval. Tenant agrees that it will at all times observe and abide by all laws and regulations relating to the handling of such materials and will promptly notify Landlord of (a) the receipt of any warning notice, notice of violation, or complaint received from any governmental agency or third party relating to environmental compliance and (b) any release of hazardous materials on the Premises. Tenant shall carry out, at its sole cost and expense, any remediation required as a result of the release of any hazardous substance by Tenant or by Tenant's agents, employees, contractors or invitees, from the Premises. Notwithstanding the foregoing, the Tenant shall have the right to bring on to the Premises reasonable amounts of cleaning materials and the like necessary for the operation of the Tenant's business, but Tenant's liability with respect to such materials shall be as set forth in this Article.

9.2 INDEMNIFICATION. Tenant agrees to indemnify and save the Landlord, the Association, their agents, affiliates, officers, directors and employees (all of such entities and persons being referred to herein individually as "Indemnified Person" and collectively as "Indemnified Parties") harmless from any and all liability, demands, costs, actions, causes of action and claims whatsoever, including attorneys' fees, resulting from any environmental contamination on the Premises caused by Tenant or its agents, contractors, employees or invitees, including the cost of remediation and defense of any action for any violation of the provisions of Section 9.1.

9.3 SURVIVAL. The provisions of this Article shall survive the termination of this Lease.

ARTICLE 10 ALTERATIONS TO PREMISES

10.1 ALTERATIONS; MEZZANINES; DAMAGES. Tenant shall make no structural alterations, additions or changes in or to the Premises without Landlord's prior written consent, and without the approval of the Association, if such approval is required by the Declaration. In no event shall Tenant make or cause to be made any

penetration through any roof, floor or exterior or corridor wall without the prior written consent of Landlord and the Association. Tenant shall be responsible for any and all damages resulting from any alteration, addition or change Tenant makes, whether or not appropriate consent therefor was obtained. Any and all structural alterations, additions and changes made to the Premises which are consented to by Landlord and the Association shall be made under the supervision of a competent architect or competent licensed structural engineer and in accordance with plans and specifications approved in writing by the Landlord before the commencement of the work and all necessary governmental approvals and permits, which approvals and permits Tenant shall obtain at its sole expense. All work with respect to any alterations, additions and changes must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of the work. Any work done by Tenant without any required consent shall be returned to its original condition at Tenant's expense upon request by Landlord, the obligation for which shall survive the termination or expiration of this Lease.

10.2 COMPLIANCE WITH LAWS. Any permitted changes, alterations and additions made by Tenant shall be performed strictly in accordance with applicable laws, rules, regulations and building codes relating thereto, including, without limitation, any and all rules of the Association. Tenant shall have the work performed in such a manner so as not to obstruct the access to the Premises or to the premises of any other tenant or obstruct the Common Elements.

10.3 INSURANCE AND RECONSTRUCTION. In the event Tenant shall make any alterations, additions or changes to the Premises, none of such alterations, additions or changes need be insured by Landlord under such insurance as Landlord may carry upon the Premises (if any), nor shall Landlord be required under any provisions of this Lease to reconstruct or reinstall any such alterations, additions or changes in the event of casualty loss.

ARTICLE 11 LIABILITY, INDEMNITY AND INSURANCE

11.1 LANDLORD'S LIABILITY. Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of any persons or damage to any property on or about the Shopping Center or the Premises from any cause whatsoever, unless caused by Landlord's sole gross negligence.

11.2 INDEMNIFICATION BY TENANT. Tenant hereby agrees to indemnify, defend and save Landlord harmless from all claims, actions, demands, costs and expenses and liability whatsoever, including reasonable attorneys' fees, on account of any damage or liability occasioned in whole or in part by any use or occupancy of the Shopping Center or the Premises or by any act or omission of Tenant, its agents, contractors, servants, employees or invitees. Tenant shall not be liable for damage or injury occasioned by the gross negligence or willful acts of the Landlord or its agents, contractors, servants or employees unless such damage or injury arises from perils against which Tenant is required by this Lease to insure and then only to the extent of such insurance.

11.3 MUTUAL WAIVERS. Landlord and Tenant hereby waive any rights they may have against each other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their property, the Premises, its contents, or arising from any risk covered by fire and extended coverage insurance. The parties hereto each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, as the case may be.

11.4 TENANT'S INSURANCE.

(a) **Insurance Requirements.** Tenant covenants and agrees to obtain on or before the Commencement Date, and to keep in full force and effect during the term of this Lease:

1. **Liability Insurance.** Comprehensive commercial general liability insurance with respect to the business carried on, in or from the Premises and the use and occupancy thereof, covering bodily injury, death and damage to property of others with endorsements for assumed contractual liability with respect to the claims against which Tenant has agreed to indemnify Landlord, as required above, personal injury insurance, premises operations insurance, products/completed operations hazard insurance, broad form property damage insurance and independent contractor's insurance.

2. **Property Damage Insurance.** Fire and extended coverage insurance (including sprinkler damage, vandalism and malicious mischief), with respect to those portions of the Premises which Tenant is required to maintain and repair pursuant to Article 11 below, which include all leasehold improvements in the Premises, whether installed by Landlord or Tenant (including, without limitation, all ceilings, interior walls, floor coverings and glass and the

portion of the heating, ventilating and cooling equipment in, and for the exclusive use of, the Premises) and with respect to all of the Tenant's furnishings, fixtures and personal property in the Premises.

Any policy proceeds shall be used for repair and replacement of the property damaged or destroyed unless this Lease is terminated pursuant to Article 12 below.

3. Worker's Compensation Insurance. Worker's compensation insurance in accordance with the Worker's Compensation Act of Colorado (Colorado Revised Statutes §8-40-101 et seq., as amended from time to time), covering all of Tenant's employees. If any services to be performed in Tenant's business operations are subcontracted, Tenant shall require the subcontractor to provide worker's compensation insurance for its employees to be engaged in such service.

4. Plate Glass Insurance. Self-insurance by Tenant covering all plate glass in the Premises.

5. Liquor Liability Insurance. Notwithstanding any other insurance required to be carried by Tenant hereunder, Tenant shall obtain, maintain, and keep in full force and effect, at Tenant's sole cost and expense, an additional liability insurance policy protecting both Landlord and Tenant against any liability arising out of the sale or service of alcoholic beverages within the Premises. Such policies shall be in a content and form satisfactory to Landlord, and in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00), or such other amount as Landlord may from time to time reasonably require, insuring Tenant, and as additional insureds, Landlord and Landlord's affiliates. Such policy shall provide that not less than thirty (30) days written notice be given to Landlord before any such policy is canceled or substantially changed to reduce the insurance provided thereby. Such policy shall be primary and non-contributing, with or in excess of any insurance carried by Landlord. The aforesaid insurance may be combined with any other insurance Tenant is required to carry under this Lease, on the condition that such insurance provides the specific coverage aforesaid with respect to the sale or service of alcoholic beverages. In the event Tenant shall fail to procure such insurance, Landlord shall have the right, but not the obligation, to procure such insurance on behalf of Tenant; and, in such event, Tenant shall reimburse Landlord for the costs of such insurance within thirty (30) days after receipt of Landlord's invoice. Unless and until Tenant has in place the insurance coverage set forth in this Section, Tenant shall suspend the sale of alcoholic beverages until such insurance has been procured and is in full force and effect.

(b) Insurance Amounts. Insurance obtained by Tenant under this Section 11.4 shall be in amounts which Landlord and any Mortgagee shall from time to time determine as being sufficient (provided that, in any event, insurance under Section 11.4(a)(1), shall be carried with combined single limits of not less than \$1,000,000.00 in respect to any one accident or occurrence, and insurance under Section 11.4(a)(2), shall be carried on a full replacement cost basis subject to only such deductibles and exclusions as Landlord may approve).

(c) General Requirements. Except as otherwise approved in writing by Landlord, all insurance obtained by Tenant shall be on forms and with insurers selected or approved by Landlord, which approval shall not be unreasonably withheld; shall be carried on an occurrence basis; shall name Landlord, the Association, and any Mortgagee as additional insured parties, as their interests may appear; shall be written as primary policies, not contributing with and not in addition to coverage that Landlord or the Association may carry; and shall provide, by certificate of insurance or otherwise, that the insurance coverage shall not be cancelled or altered except upon thirty (30) days' prior written notice to Landlord and any Mortgagee.

All commercial general liability insurance policies shall contain a provision that Landlord, the Association, and any Mortgagee, although named as additional insureds, shall nevertheless be entitled to recover under such policies for any loss sustained by either of them and their servants, agents and employees, notwithstanding any negligence of Tenant.

(d) Evidence of Insurance. Tenant shall obtain and file with Landlord certificates of insurance evidencing the insurance coverage required above and shall deliver such certificates to Landlord on or before the date Tenant commences Tenant's Work and from time to time thereafter as may be reasonably required by Landlord to establish Tenant's insurance coverage.

11.5 LANDLORD'S INSURANCE. Landlord or the Association shall procure and keep in force the following insurance (it being understood and agreed that Landlord's obligation to provide same shall terminate at such time, if any, that the Association becomes obligated to maintain insurance):

(a) Comprehensive general liability insurance with respect to the Premises covering bodily injury, death and damage to property of others; and

(b) Fire and extended coverage insurance (with coverage at Landlord's option by endorsement or otherwise, for all risks, vandalism and malicious mischief, sprinkler damage, boilers and rental loss) with respect to the Premises (excluding those portions of the Premises required to be insured by Tenant pursuant to Section 11.4).

Such insurance shall be in amounts which Landlord or the Association shall from time to time determine reasonable and sufficient, shall be subject to such reasonable deductibles and exclusions as Landlord or the Association may deem appropriate, and shall otherwise be on such terms and conditions as Landlord or the Association shall from time to time determine reasonable and sufficient. Any insurance provided for in this Section 11.5 may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds.

11.6 COMPLIANCE WITH INSURANCE AND GOVERNMENTAL REQUIREMENTS. Tenant agrees at its own expense to comply with all reasonable recommendations and requirements with respect to the Premises, or its use or occupancy, of the insurance underwriters and any similar public or private body, and any governmental authority having jurisdiction over insurance rates with respect to the use or occupancy of the Shopping Center.

11.7 LIMIT OF LANDLORD'S RESPONSIBILITY. Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions or persons occupying space in any other part of the Shopping Center, or for any loss or damage resulting to the Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or for any damage caused by water leakage, or loss of property within the Premises from any cause whatsoever except Landlord's sole gross negligence or willful acts.

ARTICLE 12 RECONSTRUCTION

12.1 DUTY TO RECONSTRUCT. If the Premises shall be partially damaged by a casualty, Tenant shall, upon receipt of the insurance proceeds, repair the Premises. Notwithstanding the foregoing, if: (a) the Premises by reason of such occurrence are rendered wholly untenable, or (b) the Premises are damaged as a result of a risk which is not covered by the Association's insurance, or (c) the Premises are damaged in whole or in part during the last two (2) years of the Term or of any extension or renewal of the Term, or (d) the Premises or the building of which it is a part, whether the Premises are damaged or not, or all of the improvements which comprise the Shopping Center are damaged to the extent of fifty percent (50%) or more of the monetary value thereof, or (e) any or all of Common Elements of the Shopping Center are damaged, whether or not the Premises are damaged, to an extent that the Shopping Center cannot in the sole judgment of Landlord, be operated as an integrated unit, then and in any such event, Landlord may either elect to require Tenant to repair the damage to the Premises or may cancel this Lease by notice of cancellation within one hundred eighty (180) days after such casualty event and thereupon this Lease shall expire, and Tenant shall vacate and surrender the Premises to Landlord. Upon termination of the Lease, Tenant shall assign to Landlord all proceeds of Tenant's insurance relating to damage to the Premises (but not to Tenant's personal property). Tenant's liability for rent upon the termination of this Lease shall cease as of the day following Landlord's giving notice of cancellation. Unless this Lease is terminated by Landlord, Tenant shall repair and re-fixture the interior of the Premises in a manner and in at least a condition equal to that existing prior to the destruction or casualty and the proceeds of all insurance carried by Tenant shall be used for the purpose of said repair and replacement.

12.2 RIGHT TO TERMINATE. Notwithstanding anything contained in this Lease to the contrary, if any part of the Shopping Center sustains damage, then regardless of whether the Premises are damaged or destroyed or otherwise affected by the damage, the rights and obligations of Tenant and Landlord under this Section 12 with respect to repair and restoration work and termination rights shall be subject to the provisions of the Declaration, including, without limitation, the rights of the Association to cause the damage to be repaired or restored or, as permitted in specified circumstances, to elect to sell the Shopping Center free and clear of the Declaration. If applicable, in the event the Association elects to complete such repairs or reconstruction work, Landlord shall not be responsible or liable for the timely and proper performance of such work to be done by the Association. In the event of a sale of the Shopping Center by the Association pursuant to the terms of the Declaration, this Lease shall terminate effective the date of the sale, and Landlord may refund to Tenant such amounts of Minimum Rent and Additional Rent previously paid by Tenant as may be applicable to the period subsequent to (i) the date of Tenant's notice of damage, if any, or (ii) the date of the sale, if Tenant continued to use the Premises following the damage to the

Shopping Center; or, at Landlord's option, Landlord may apply such Minimum Rent and Additional Rent to any unsatisfied obligation of Tenant to Landlord.

12.3 ABATEMENT OF RENT. Tenant shall not be required to pay any Minimum Rent for any period in which the Premises are wholly untenantable; and, in the event only a portion of the Premises are untenantable, Tenant's Minimum Rent shall be equitably abated in proportion to that portion of the Premises which are so unfit for such period of time as the Premises (or such portion) remains untenantable. There shall be no rent abatement if the damages are due to the fault or negligence of Tenant or Tenant's agents, employees, licensees, invitees or contractors.

ARTICLE 13 MAINTENANCE OF PREMISES

13.1 MAINTENANCE BY LANDLORD OR ASSOCIATION. The Association is responsible for maintenance, repair and replacement of the Common Elements, including, without limitation, the structural components of the Shopping Center. Tenant is hereby advised that the Declaration may impose liability upon Tenant (or upon Landlord which may be allocated to Tenant pursuant to the terms of this Lease) for costs of repairs necessitated by the act or omission of Tenant. Failure of Tenant to pay such amount immediately shall constitute a default by Tenant hereunder. Landlord shall not perform or be responsible for the repair and/or maintenance obligations required to be performed by the Association under the Declaration.

13.2 TENANT'S DUTY TO MAINTAIN. Tenant, at Tenant's sole cost and expense, shall have the affirmative duty to periodically inspect, maintain, service, repair and replace, as if necessary, all portions of the Premises which are not expressly the responsibility of Landlord or the Association including, but not limited to, any windows, plate glass, doors, store fronts, interior walls and finish work, floors and floor coverings, water heaters, branch sprinkler systems, all branch plumbing, electrical and mechanical systems and fixtures, and pest extermination. Tenant shall also keep the Premises and the area immediately in front of the Premises store front in a clean and sanitary condition. In addition, in the event any maintenance or repairs to the common areas of the Shopping Center are caused by the negligence of Tenant, or any of Tenant's employees, agents, invitees or contractors, Tenant shall reimburse to Landlord, as Additional Rent, the cost of such maintenance and repairs within fifteen (15) days after receipt of Landlord's statement. In the event Tenant should fail to perform any maintenance or repairs required of Tenant under this Lease in a prompt and good workmanlike manner after Landlord's written demand, Landlord shall have the right, but not the obligation, to perform such maintenance and repairs, whereupon Tenant shall pay to Landlord, as Additional Rent, all such maintenance and repair costs, plus ten percent (10%), within fifteen (15) days after receipt of Landlord's statement. Tenant shall not store materials, waste or pallets outside of the Premises, and Tenant shall timely arrange for the removal and/or disposal of all pallets, crates, trash and refuse owned by Tenant, or placed on or about the Shopping Center by Tenant or any of Tenant's agents, employees, contractors and invitees, which cannot be disposed of in the dumpster servicing the Premises.

Tenant shall have the affirmative duty to periodically inspect, maintain, service, repair and/or replace the heating, ventilation and air conditioning ("HVAC") system, or portion thereof, which exclusively services the Premises, in a manner and as often as is reasonably required to keep said system operating properly and efficiently. In the event said HVAC system requires repairs or replacement during the Term, or any extension thereto, Tenant shall make such repairs or replacement at Tenant's sole cost and expense. Within ninety (90) days after the Commencement Date, Tenant shall enter into a regularly scheduled preventative maintenance/service contract on said HVAC system, and deliver a copy of such contract to Landlord. Such contract shall include, without limitation, not less than four (4) inspections per year, and all services suggested or recommended by the equipment manufacturer in the operation and maintenance of such system.

Tenant shall, at its sole cost and expense, install and maintain on all exhaust fans a grease containment system to prevent the accumulation of grease on the building of which the Premises forms a part. Tenant shall clean such system at least monthly. Tenant shall employ a firm satisfactory to Landlord engaged in the business of maintaining grease containment systems to maintain the grease containment system serving the Premises in good working order and repair, to inspect said system at least once every year, and to report in writing to Landlord and Tenant the results of each such inspection and the repairs and/or replacements recommended by such firm. Tenant shall promptly make the repairs and/or replacements so recommended. In addition, Tenant shall, at its sole cost and expense, install and maintain grease traps to prevent the accumulation of grease or other wastes in the plumbing facilities and floor drains servicing the Premises, and keep such grease traps in good working order and repair. Tenant shall clean all grease traps at least monthly and shall hydroflush the sewer lines serving the Premises at least quarterly.

All maintenance, repair, and replacement obligations of Tenant under this Section shall be deemed improvements to the Premises and shall be performed by Tenant pursuant to and in accordance with the terms and conditions under Article 10 of this Lease. All materials utilized by Tenant in any maintenance, repairs, construction or replacements under this Lease shall be pre-approved by Landlord, meet minimum municipal code requirements, and be of a quality at least as good as the quality of the materials in place within the Premises, as reasonably determined by Landlord ("Approved Materials"). All contractors performing any construction, services or other work within the Premises for or on behalf of Tenant shall be pre-approved by Landlord ("Approved Contractors"). Landlord's approval may include, without limitation, the use of union tradesmen and laborers; and in all events, as a prerequisite of any approval, Tenant shall provide Landlord with certificates of insurance of all contractors in a form and content, and with such companies as Landlord may reasonably approve, naming both Landlord and Landlord's managing agent as additional insureds.

13.3 LANDLORD'S RIGHT OF ENTRY AND USE

(a) Landlord and its authorized representatives may enter the Premises at any and all times during usual business hours for the purpose of inspecting the same. Tenant further agrees that Landlord may from time to time go upon the Premises and make any repairs to the Premises or to any utilities, systems or equipment located in, above or under the Premises. Nothing herein shall imply any duty on the part of Landlord to perform any such work which, under any provision of this Lease Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. In the event Landlord performs or causes any such work required by Tenant to be performed, Tenant shall pay the cost thereof to Landlord forthwith as Additional Rent upon receipt of a bill therefor. Landlord may install pipes, ducts, conduits, wires and other mechanical equipment serving other portions, tenants and occupants of the Shopping Center, under or above the Premises, without the same constituting an actual or constructive eviction of Tenant.

(b) Landlord may also go in the Premises at all times for the purpose of showing the Premises to prospective purchasers, mortgagees and tenants. During the last six (6) months of the Term, Landlord may place on the exterior of the Premises a "For Rent" sign, which shall not be obliterated or hidden by Tenant. No exercise by Landlord of any rights provided in Article 13 shall entitle Tenant to any damage for any inconvenience, disturbance, loss of business or other damage to Tenant occasioned thereby, nor to any abatement of Rent. Landlord will exercise its rights under this Section in a manner that will not cause unreasonable interference with Tenant's business.

13.4 CONFLICTS. If there is a conflict between the provisions of this Article 13 and Article 12, the provisions of Article 12 shall govern.

ARTICLE 14 UTILITIES AND GARBAGE DISPOSAL

14.1 WATER, SANITARY SEWER, TELEPHONE AND ELECTRIC SERVICE. Tenant shall pay for all utilities and sanitary services used within the Premises and make such deposits to assure service as may be required by the utility or sanitary service company providing the same.

ARTICLE 15 LIENS

15.1 NO LIENS PERMITTED; DISCHARGE. The Landlord's property shall not be subject to liens for work done or materials used on the Premises made at the request of, or on order of or to discharge an obligation of, Tenant. This paragraph shall be construed so as to prohibit, in accordance to the provisions of State law, the interest of Landlord in the Premises or any part thereof from being subject to any lien for any improvements made by Tenant or any third-party on Tenant's behalf (except Landlord) to the Premises. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of lien by a party engaged by Tenant or Tenant's contractor to work on the Premises shall be filed against the Premises or any other property owned by Landlord, Tenant, within ten (10) days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien or notice of lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding procedures. Any amount so paid by Landlord and all costs and expenses, including attorneys' fees, incurred by Landlord in connection therewith, and including interest at the Default Rate, shall constitute Additional Rent and shall be paid by Tenant to Landlord on demand. Nothing herein shall obligate Tenant to pay or discharge any lien created by Landlord.

15.2 **LESSOR'S TITLE.** Nothing herein contained shall empower Tenant to do any such act which can, may or shall cloud or encumber Landlord's title.

ARTICLE 16 FIXTURES, PERSONAL PROPERTY, AND SIGNAGE

16.1 **TENANT'S PROPERTY REMOVAL.** Tenant shall have the right, provided Tenant is not in default, at any time and from time to time during the Term, to remove any and all of its trade fixtures, signs and other personal property which it may have stored or installed in the Premises, provided that any trade fixtures necessary for Tenant's operation shall be immediately replaced with similar personal property of comparable or better quality so as to render the Premises suitable for conducting the type of business specified in Section 1.1(j). Tenant at its expense shall immediately repair any damage occasioned to the Premises by reason of installation or removal of any such trade fixtures, signs and other personal property. If this Lease expires or is terminated for any reason except termination by Landlord pursuant to Section 12.2 and Tenant fails to remove such items from the Premises prior to such expiration or termination, or if this Lease is terminated by Landlord pursuant to Section 12.2 and Tenant fails to remove such items from the Premises on or before fourteen (14) days after the effective date of such termination, then in any such event all such trade fixtures, signs and other personal property shall thereupon become the property of Landlord, without further act by either party hereto, unless Landlord elects to require their removal, in which case Tenant agrees to promptly remove same and restore the Premises to its prior condition at Tenant's expense.

16.2 **IMPROVEMENTS TO PREMISES.** All improvements to the Premises by Tenant, including, but not limited to, the items furnished pursuant to Tenant's Work, alterations, changes and additions by Tenant, light fixtures, floor coverings and partitions, but excluding trade fixtures and signs, shall become the property of Landlord upon expiration or earlier termination of this Lease; provided, however, that Landlord may designate by written notice to Tenant those alterations, changes and additions which shall be removed by Tenant at the expiration or termination of this Lease, in which event Tenant shall, at its expense, promptly remove the same and repair any damage to the Premises caused by such removal.

16.3 **SIGNAGE.** The Tenant shall at its own expense erect a sign on the exterior sign band of the Premises, which sign shall: (i) conform to the general material, size and appearance of other tenants' signs at the Shopping Center, (ii) be in strict conformity with any guidelines or sign criteria adopted by Landlord and the with respect to the Shopping Center, including, without limitation, the Sign Criteria set forth in Exhibit "D", attached hereto and made a part hereof, (iii) be in accordance with all applicable laws, (iv) be installed by an Approved Contractor, and (v) be otherwise subject to Landlord's prior written approval which shall be obtained from Landlord before fabrication of the sign and obtained from Landlord before any fabricated sign is installed on the Premises. Also, if "under canopy" signage is utilized at the Shopping Center, Tenant shall at its own expense install under the canopy a sign with the Tenant's trade name in lettering standard to all similar signs for other tenants at the Shopping Center. Tenant shall not install or erect any other signs, advertisements or other visual displays at, on or in the Premises which are visible from the exterior thereof without the prior written approval of Landlord and the Association except as outlined in Section 7.2(h) hereof. Any window signs or displays which are approved by Landlord shall be made with artist's lettering and otherwise with a professional appearance. Landlord may remove any signs or displays which are objectionable to Landlord. Tenant shall keep insured and maintain such sign in good condition, repair and operating order at all times. If any damage is done to Tenant's sign, Tenant shall commence to repair same with in ten (10) days or Landlord may at its option repair same at Tenant's expense.

ARTICLE 17 ASSIGNMENT AND SUBLETTING

17.1 **RESTRICTIONS ON ASSIGNMENT.** The terms of this Lease, including the provisions relating to Rent and Use, have been negotiated by Landlord and Tenant on the assumption that Tenant will be the occupant of the Premises for the full term. The parties have therefore agreed that Tenant shall have no right to transfer, assign, sublet, enter into license or concession agreements, or mortgage or hypothecate this Lease or the Tenant's interest in the Premises or any part thereof without Landlord's consent which consent shall not be unreasonably withheld. The design of any sublet must meet all governmental and Association requirements and be approved by Landlord. Any attempted transfer, assignment, subletting, license or concession agreement, or hypothecation without Landlord's consent shall be void and confer no rights upon any third person and shall be a violation of this Section. Any transfer of this Lease from Tenant by merger, consolidation, liquidation or otherwise by operation of law, including, but not limited to, an assignment for the benefit of creditors, shall be included in the term "assignment" for the purposes of this Lease and shall be a violation of this Section. Landlord may deny its consent to assignment without cause or

justification and may impose such conditions upon the granting of its consent as it may deem appropriate, including, without limitation, requiring the assignee to agree to new or different terms.

17.2 CHANGE OF OWNERSHIP. If Tenant or any Guarantor is a corporation, limited liability company, unincorporated association or partnership, a transfer, assignment or hypothecation of any stock or interest in such corporation, limited liability company, association or partnership by any stockholder, member or partner so as to result in a change in the control thereof by the person, persons or entities owning a majority interest therein as of the date of this Lease, shall be deemed to be an assignment of this Lease. This provision shall not be applicable to Tenant or to any Guarantor if it is a corporation whose voting stock is listed on a national securities exchange (as defined in the Securities Exchange Act of 1934, as amended) or is traded in any recognized over-the-counter market.

17.3 REQUIREMENT FOR ASSIGNMENT. In the event that Tenant proposes any transfer of this Lease or transfer of leasehold interest, Tenant shall notify Landlord in writing by certified mail at least thirty (30) days before the date on which the transfer is to be effective, and, included with such notice, furnish Landlord with: (i) the name of the entity receiving such transfer (the "Transferee"); (ii) a detailed description of the business of the Transferee, (iii) financial statements of the Transferee; (iv) all written agreements governing the transfer; and (v) any information reasonably requested by the Landlord with respect to the transfer or the Transferee; and (vi) a fee of five hundred dollars (\$500.00) to compensate Landlord for legal fees, costs of administration, and other expenses to be incurred in connection with the review and processing of such documentation. Landlord shall respond to Tenant's request for approval or disapproval of the transfer within fifteen (15) days after Landlord receives the request and documents and information required above.

ARTICLE 18 DEFAULTS BY TENANT

18.1 EVENTS OF DEFAULT. This Lease and Tenant's right to possession of the Premises is made subject to and conditioned upon Tenant performing all of the covenants and obligations to be performed by Tenant hereunder, at the times and pursuant to terms and conditions set forth herein. The following events shall each be an event of default by Tenant under this Lease (a "Default" or "Event of Default"): (a) Tenant fails to pay any Rent or other charge when the same is due; (b) Tenant fails to perform any other obligation to be performed by Tenant within the time or times set forth herein; (c) Tenant makes any material misrepresentation, or commits any fraud or criminal act; (d) Tenant shall become insolvent, make a transfer in fraud of its creditors, make an assignment for the benefit of its creditors, files or has filed against it a petition in bankruptcy, has a receiver, trustee or liquidator appointed over a substantial portion of its property or this Lease, or is adjudicated insolvent; (e) the business operated by Tenant shall be closed by governmental authority for failure to pay any sales or other tax as required or for any other reason; (f) the interest of Tenant in this Lease, the Premises or any part of the Premises shall be levied on or under execution or by other process of law directed against Tenant, or shall be taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant and said attachment shall not be discharged or disposed of within 15 days after the levy thereof; (g) any other act or omission identified as a default elsewhere in this Lease or (h) Tenant vacates or abandons the Premises for more than thirty (30) days.

18.2 LANDLORD'S REMEDIES.

(a) In the event any monetary Event of Default shall continue for five (5) days after notice from Landlord provided in accordance with Section 25.3, or in the event any non-monetary Event of Default shall continue for ten (10) days after notice from Landlord provided in accordance with Section 25.3, or in the event of an Event of Default for the same general reason three (3) or more times during the Term (regardless of whether or not Tenant subsequently cures such Events of Default); then, in addition to all other remedies afforded Landlord under this Lease, at law or in equity, Landlord may terminate this Lease, or terminate Tenant's right of possession to the Premises without terminating this Lease, by providing notice in accordance with Section 25.3 to Tenant. In either event, Landlord shall have the right to dispossess Tenant, or any other person in occupancy, together with their property, and re-enter the Premises. No such dispossession of Tenant or re-entry by Landlord, or Landlord's voluntary acceptance of the keys to the Premises, shall constitute or be construed as an election by Landlord to terminate this Lease, unless Landlord provides notice in accordance with Section 25.3 to Tenant specifically terminating this Lease. Upon such re-entry, Tenant shall be liable for all expenses incurred by Landlord in recovering the Premises including, without limitation, clean-up costs, legal fees, removal, storage or disposal of Tenant's property, and restoration costs.

(b) In the event Landlord elects to terminate this Lease, Tenant shall immediately vacate the Premises and pay to Landlord all Rent accrued through the effective date of termination, together with any late fees and interest

thereon, plus an amount equal to all tenant concessions initially granted to Tenant including, but not limited to, any free or reduced Rent, any interior finish constructed within the Premises, or any contribution paid to Tenant in lieu thereof. In addition thereto, Tenant shall pay to Landlord a sum equal to the remainder of the Rent payable by Tenant through the expiration of the Term of this Lease, less the fair market rental value of the Premises for such period.

(c) In the event Landlord elects not to terminate this Lease, but only to terminate Tenant's right of possession to the Premises, Tenant shall immediately vacate the Premises and pay to Landlord all Rent accrued through the effective date of repossession, together with any late fees and interest thereon. Upon repossession, Landlord may use reasonable efforts to mitigate its damages and relet the Premises upon terms and conditions satisfactory to Landlord; however, Landlord shall have no duty to prioritize the reletting of the Premises over the leasing of other vacant space owned by Landlord. Tenant shall remain liable for all Rent accruing after the date of repossession (together with all late fees and interest), payable monthly as such Rent accrues, in an amount equal to the Rent payable under this Lease, less the rent (if any) collected by Landlord from any reletting. Landlord shall have the right to make repairs, alterations, and additions in or to the Premises and redecorate and remodel the same to the extent deemed necessary by Landlord in connection with any reletting of the Premises; and Tenant shall pay to Landlord the cost thereof within fifteen (15) days after receipt of Landlord's statement.

(d) No action by Tenant after final judgment for possession of the Premises shall reinstate this Lease, and Tenant waives any and all rights of redemption in the event Tenant is judicially dispossessed. Should Landlord elect not to exercise any of its rights in connection with an Event of Default, it shall not be deemed a waiver of such rights as to subsequent Events of Default. No payment by Tenant or receipt by Landlord of a lesser amount than that stipulated to be paid shall be deemed to be anything other than a payment on account; nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord and satisfaction; and Landlord may accept any payment without prejudice to Landlord's right to recover the balance, or pursue any other remedy under this Lease. Landlord reserves the right to apply any monies received from Tenant, regardless of how designated, to any outstanding Rent, interest, late fees or other amounts then owed to Landlord under this Lease. All of the aforesaid rights of Landlord shall be in addition to any remedies which Landlord may have at law or in equity; Landlord shall have the right to pursue any one or all of such remedies; and no election of remedy by Landlord shall preclude Landlord from subsequently pursuing any of Landlord's other remedies. Tenant shall pay all costs and attorney's fees incurred by Landlord from enforcing the covenants of this Lease.

(e) The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy nor hereafter provided by law or in equity. All rights and remedies shall be cumulative and not exclusive of each other. Landlord may exercise its rights or remedies at any time, in any order, to any extent, and as often as Landlord deems advisable without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of any other. A single or partial exercise of a right or remedy shall not preclude a further exercise thereof or the exercise of another right or remedy from time to time. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute of waiver of, or acquiescence to, any Default by Tenant. No waiver of any Default by Tenant shall extend to or affect any other Default or impair any right or remedy with respect thereto. No action or inaction by Landlord shall constitute a waiver of any Default by Tenant. No waiver of any Default by Tenant shall be effective, unless it is in writing and signed by both Landlord and Tenant.

(f) Tenant hereby expressly waives its right to any notice to quit under any statutes relating to summary process or any statutes that may be enacted for recovery of possession of leased premises or other formalities of any nature.

18.3 ATTORNEYS' FEES AND COSTS. Tenant agrees to reimburse Landlord for the costs and attorneys' fees incurred by Landlord by reason of any Event of Default by Tenant, including reasonable attorneys' fees and costs in connection with trial and appellate proceedings.

18.4 RENT PAYABLE BY TENANT. For all purposes of Article 18, in determining the Rent which would be payable by Tenant hereunder subsequent to default, Rent for each Lease Year of the unexpired Term shall be deemed to be the amount of Rent payable by Tenant during the twelve (12) calendar months immediately preceding the Event of Default.

18.5 TENANT'S PROPERTY TO REMAIN. If there is an Event of Default, all of the Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the

Premises and, in that event and continuing during the length of said default, without cost, until all defaults are cured or, at its option, at any time during the Term to require Tenant to forthwith remove same.

18.6 LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT. In the event of an Event of Default under any provision of this Lease other than for the payment of Rent, and Tenant has not cured such Event of Default within ten (10) days after receipt of Landlord's written notice, Landlord shall have the right but not the obligation to cure such Event of Default on behalf of Tenant, at Tenant's expense. Landlord may also perform any obligation of Tenant, without notice to Tenant, should Landlord deem such performance to be an emergency, or Landlord reasonably determines that such Event of Default will result in a violation of law or the cancellation of any insurance policy maintained by Landlord, or will unreasonably interfere with any other tenants in the Shopping Center. If Landlord incurs any expense, including reasonable attorney's fees, in instituting, prosecuting and/or defending any action or proceeding by reason of any emergency or Event of Default, Tenant shall reimburse Landlord for the same, as Additional Rent, with interest calculated thereon at the Default Rate from the date such payment is first due Landlord.

ARTICLE 19 **LIABILITY OF LANDLORD**

19.1 LANDLORD'S DEFAULT. Except as otherwise provided in this Lease, Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after written notice thereof from Tenant to Landlord (unless such failure cannot reasonably be cured within thirty (30) days and Landlord shall have commenced to cure said failure within said thirty (30) days and continues diligently to pursue the curing of the same). If Landlord defaults under this Lease and if, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment against the right, title and interest of Landlord in the Shopping Center as the same may then be constituted and encumbered, and Landlord shall not be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Shopping Center.

19.2 TRANSFER OF LANDLORD'S INTEREST. In the event of the sale or other transfer of Landlord's interest in the Premises (except in the case of a sale-leaseback financing transaction in which Landlord is the lessee), Landlord shall transfer and assign to such purchaser or transferee the Security Deposit, and Landlord thereupon and without further act by either party shall be released from all liability and obligations hereunder arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or transfer. Tenant agrees to attorn to any successor, assign, mortgagee or ground lessor of Landlord.

ARTICLE 20 **SUBORDINATION AND ATTORNMENT**

20.1 SUBORDINATION OF LEASE. This Lease is subordinate to the lien of all mortgages, deeds of trust, security instruments, collateral assignments of leases, ground leases and easement agreements ("Mortgages") now or hereafter covering all or any part of the Premises, and to all modifications, consolidations, renewals, replacements and extensions thereof; provided, however, that this Lease shall not be subordinate to any mortgage other than a first mortgage without the consent of the holder of such first mortgage. Tenant also agrees that, if any mortgagee elects to have this Lease prior to the lien of its mortgage and signifies such election in the instrument creating its lien, or by separate recorded instrument, this Lease shall be prior in dignity to such mortgage.

20.2 TENANT'S ATTORNMENT. In the event of any proceedings brought for the enforcement of any Mortgage or superior lease, Tenant shall, upon demand by the mortgagee or superior lessor, attorn to and recognize such mortgagee or lessor as Landlord under this Lease. In the event of a sale or assignment of Landlord's interest under this Lease or in the Premises, Tenant shall attorn to and recognize such purchaser or assignee as Landlord under this Lease without further act by Landlord or such purchaser or assignee.

20.3 INSTRUMENTS TO CARRY OUT INTENT. Tenant agrees that, in order to confirm the provisions of this Article, but in no way limiting the self-operative effect of said provisions, Tenant shall execute and deliver whatever instruments may be required by Landlord for such purposes.

ARTICLE 21 ESTOPPEL CERTIFICATES

21.1 TENANT'S AGREEMENT TO DELIVER. Within ten (10) days after Tenant opens for business in the Premises, and from time to time thereafter within ten (10) days after request therefor from Landlord, Tenant agrees to execute and deliver to Landlord, or to such other addressee or addressees as Landlord may designate (and any such addressee may rely thereon), a statement in writing certifying (if true) that the Lease is in full force and effect and unmodified or describing any modifications; that Tenant has accepted the Premises; that Landlord has performed all of its obligations under the Lease arising prior to the date of the certificate; that there are no defenses or offsets against the enforcement of this Lease or stating with particularity those claimed by Tenant; stating the date to which Rent has been paid; and making such other true representations as may be reasonably requested by Landlord.

21.2 FAILURE OF TENANT TO GIVE ESTOPPEL. If Tenant fails to give the estoppel certificate required by Section 21.1 within the time permitted thereby and fails to object in writing specifying with particularity the manner in which the requested estoppel certificate is untrue, such failure shall constitute an Event of Default and it shall be conclusively deemed that the matters set forth in the requested estoppel are true and correct as of the date of the request.

ARTICLE 22 QUIET ENJOYMENT

22.1 FAITHFUL PERFORMANCE. Upon payment by the Tenant of the Rent herein provided for and upon the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord.

ARTICLE 23 SURRENDER AND HOLDING OVER

23.1 DELIVERY AFTER TERM. Tenant shall deliver up and surrender to Landlord possession of the Premises upon the expiration or earlier termination of the Term, broom clean, free of debris, in good order, condition and state of repair (except as may be Landlord's obligation under this Lease and ordinary wear and tear), and shall deliver the keys at the office of Landlord in the Shopping Center or to Landlord at the address to which notices to Landlord are to be sent pursuant to Section 1.1(o). If not sooner terminated as herein provided, this Lease shall terminate at the end of the Term as provided for in Article 3 without the necessity of notice from either Landlord or Tenant to terminate the same, Tenant hereby waiving notice to vacate the Premises and agreeing that Landlord shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of premises from a tenant holding over.

23.2 EFFECT OF HOLDING OVER; RENT. If Tenant or any party claiming under Tenant remains in possession of the Premises, or any part thereof, after any termination of this Lease, no tenancy or interest in the Premises shall result therefrom, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Tenant shall upon demand pay to Landlord, as liquidated damages, a sum equal to all Rent and Additional Rent provided for in this Lease during any period which Tenant shall hold the Premises after the Term has expired, plus an amount computed at the rate of double the Minimum Rent for such period.

ARTICLE 24 CONDEMNATION

24.1 ALL OF PREMISES TAKEN. If the whole of the Premises shall be taken either permanently or temporarily by any right of eminent domain or conveyance in lieu thereof (each being hereinafter referred to as "condemnation"), this Lease shall terminate as of the day possession shall be taken by the condemning authority, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent that may have been paid in advance for a period subsequent to the date of taking.

24.2 LESS THAN ALL OF PREMISES TAKEN. If less than all but substantially all of the Premises is taken by condemnation, then in such event Landlord and Tenant shall have the right to terminate this Lease upon notice in writing to the other party within ninety (90) days after possession is taken by such condemnation. If this Lease is so terminated, it shall terminate as of the day possession shall be taken by such authority, and Tenant shall pay Rent and perform all of its other obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent that may have been paid in advance for a period subsequent to the date of the taking. If this Lease is not so terminated, it shall terminate only with respect to the parts of the Premises so taken as of the day

possession is taken by such authority, and Tenant shall pay Rent up to that day with a proportionate refund by Landlord of any Rent that may have been paid for a period subsequent to the date of the taking and, thereafter, the Rent shall be based on the square footage of GLA in the Premises. Landlord agrees, at Landlord's cost and expense, as soon as reasonably possible, to restore the Premises on the land remaining to a complete unit of like quality and character as existed prior to such appropriation or taking; provided that Landlord shall not be required to expend more on such restoration than the condemnation award received by Landlord (less all expenses, costs, legal fees and court costs incurred by Landlord in connection with such award).

24.3 ASSOCIATION'S DETERMINATION. Notwithstanding anything contained in this Lease to the contrary, if any portion of the Shopping Center is affected by a condemnation, then regardless of whether the Premises are affected by such action, the rights and obligations of Landlord and Tenant under this Section 24 with respect to repair and reconstruction and termination rights shall be subject to the Declaration including, without limitation, the rights of the Association to determine whether to restore the portions of the Shopping Center remaining, if any, after such condemnation, or to sell the Shopping Center free and clear of the Declaration. In the event of a sale by the Association, this Lease shall terminate effective the date of the sale, and Landlord may refund to Tenant such amounts of Minimum Rent and Additional Rent previously paid by Tenant as may be apportioned to the period subsequent to the date of the sale by the Association, or if earlier and applicable, the date of the condemnation; or, at Landlord's option, Landlord may apply such Minimum Rent and Additional Rent to any unsatisfied obligation of Tenant to Landlord.

24.4 OWNERSHIP OF AWARD. All damages for any condemnation of all or any part of the Shopping Center, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion, and fee, shall belong to the Landlord without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest to any such award. Although all damages in the event of any condemnation are to belong to the Landlord, Tenant may have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment, business interruption, start-up expenses or capital investments in leasehold fixtures that cannot be removed or reused.

24.5 CONFLICTS. If there is a conflict between the provisions of this Article 24 and Article 13, the provisions of this Article 24 shall govern.

ARTICLE 25 MISCELLANEOUS

25.1 INTERPRETATION.

(a) The captions appearing in this Lease are inserted only as a matter of convenience and in no way amplify, define, limit, construe or describe the scope or intent of such sections of the Lease.

(b) The neuter, feminine or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural.

(c) The printed provisions of this Lease were drawn together by Tenant and Landlord, so that this Lease shall not be construed for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

25.2 RELATIONSHIP OF PARTIES. Nothing herein contained shall be construed as creating any relationship between the parties other than the relationship of Landlord and Tenant, nor cause either party to be responsible in any way for the acts, debts or obligations of the other.

25.3 NOTICES.

(a) Any notice, demand, request, approval, consent or other instrument which may be or is required to be given under this Lease shall be in writing and shall be deemed to have been given when delivered to the party to be notified or when mailed by United States certified mail, return receipt requested, postage prepaid, or when delivered to a reputable overnight courier (such as Federal Express), addressed to the party to be notified at the address of such

party set forth in Section 1.1(o), or to such other address as such party may from time to time designate by notice to the other in accordance with this Section.

(b) No notice if required to be given to Landlord shall be effective for any purpose unless and until a true copy thereof is given to each mortgagee of Landlord's estate, provided Tenant has previously been given written notice of the name and address of such mortgagee.

25.4 SUCCESSORS. This Lease shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such assigns of Tenant to whom the assignment by Tenant has been made and consented to in accordance with the provisions of this Lease.

25.5 BROKER'S COMMISSION. Tenant warrants that it has dealt with no broker in connection with this Lease other than Landlord's Leasing Agent and cooperating broker, if any, named in Section 1.1(n). Tenant acknowledges its receipt of an Agency Disclosure Statement which receipt occurred at the initial contact with the broker named in Section 1.1(n).

25.6 UNAVOIDABLE DELAYS. In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse Tenant from prompt payment of Rent or any other payments required by the terms of this Lease, or maintenance of all required insurance, and shall not extend the Term. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

25.7 ENTIRE AGREEMENT.

(a) There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof.

(b) This Lease, including the Exhibits and any addenda, sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and the Shopping Center. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced in writing, signed by them and mutually delivered between them.

25.8 OTHER TENANTS. Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord shall determine in the exercise of its sole business judgment. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or occupant or number of tenants or occupants shall occupy any space in the Shopping Center.

25.9 APPLICABLE LAW. The laws of the state in which the Premises is located shall govern the validity, performance and enforcement of this Lease.

25.10 WAIVER.

(a) The waiver by Landlord of any term, covenant, agreement or condition herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition. The acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any prior default by Tenant, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such prior default at the time of acceptance of such Rent. No covenant, term, agreement or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord.

(b) No waiver of any covenant, term, agreement or condition of this Lease or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason. No waiver by Landlord in respect to one or more tenants or occupants of the Shopping Center shall constitute a waiver in favor of any other tenant.

Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

25.11 ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this Lease or available at law or in equity.

25.12 LANDLORD'S SELF-HELP. In addition to Landlord's rights of self-help set forth elsewhere in this Lease, if Tenant at any time fails to perform any of its obligations under this Lease in a manner reasonably satisfactory to Landlord, Landlord shall have the right, but not the obligation, upon giving Tenant at least ten (10) days' prior written notice of its election to do so (in the event of an emergency, no prior notice shall be required), to perform such obligations on behalf of and for the account of Tenant and to take all such action necessary to perform such obligations. In such event, Landlord's costs and expenses incurred therein shall be paid for by Tenant as Additional Rent, forthwith upon demand therefor, with interest thereon from the date Landlord performs such work at the Default Rate. The performance by Landlord of any such obligation shall not constitute a release or waiver of Tenant therefrom.

25.13 RECORDING. Landlord may, at any time during the initial term or any renewals thereof, record this Lease. Tenant agrees that it will not record the Lease.

25.14 JOINT AND SEVERAL LIABILITY. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each of them shall be joint and several. In like manner, if the Tenant named in this Lease shall be a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.

25.15 EXECUTION OF LEASE. The submission of this Lease for examination does not constitute a reservation of or option for the Premises or any other space within the Shopping Center and shall vest no right in either party. This Lease shall become effective as a Lease only upon execution and legal delivery thereof by the parties. This Lease may be executed in more than one counterpart, and each such counterpart shall be deemed to be an original document.

25.16 WAIVER OF JURY TRIAL AND PERMISSIVE COUNTERCLAIM. The Tenant hereby waives trial by jury in any action, proceeding, or permissive counterclaim involving any matters whatsoever arising out of or in any way connected with the Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or claim or injury or damage. In the event Landlord commences any proceedings for nonpayment of Rent, Tenant will not interpose any permissive counterclaim of any nature or description in any such proceedings.

25.17 TIME OF THE ESSENCE. Time is of the essence of each and every obligation under this Lease.

25.18 CONFIDENTIAL TERMS: Tenant hereby agrees not to disclose the terms of this Lease to anyone other than Tenant's attorneys, accountants, officers and directors. This restriction on disclosure shall survive the termination of this Lease.

ARTICLE 26 SECURITY DEPOSIT

26.1 SECURITY. As security for the faithful performance by Tenant of all of the terms and conditions of this Lease on the Tenant's part to be performed, Tenant has deposited with Landlord the Security Deposit required by Section 1.1(m). Such amount shall be returned to Tenant, without interest, on the day set forth for the expiration of the term herein if Tenant has fully and faithfully carried out all of the terms, covenants and conditions on its part to be performed, including, without limitation, the obligations of Tenant under Article 23 hereof. Landlord shall have the right to apply any part of said deposit to the payment of monies due to Landlord hereunder by Tenant, but such application shall not remedy the default.

26.2 TRANSFER OF DEPOSIT. In the event of a sale of the Landlord's Building or lease of the Landlord's Building or the land on which it stands, subject to this Lease, the Landlord shall have the right to transfer

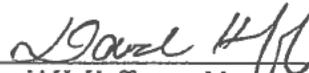
this Security Deposit to the vendee or lessee and the Landlord shall thereupon be released from all liability for the return of such Security Deposit, and the Tenant shall look to the new landlord solely for the return of the said Security Deposit. This provision shall apply to every transfer or assignment made of the security to a new landlord. The Security Deposit deposited under this Lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord. In the event of any authorized assignment of this Lease, Landlord shall have no further liability with respect to the return of said Security Deposit to the Tenant or assignee.

[Signature page follows.]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:

150 EAST BEAVER CREEK, LLC,
a Delaware limited liability company

By: 
David H. Hoffmann, Manager

TENANT:

CTK LLC,
a Colorado limited liability company

By: 
Name: Tony Heringman
Title: President
Tax I.D.# 47-2537318

EXHIBIT "B"

Description of Work to be Performed by Landlord

LANDLORD'S WORK:

EXHIBIT "C"

ADDENDUM TO LEASE

This Addendum to Lease is attached hereto and made a part hereof of that certain Lease by and between CSB PROPERTIES HOLDINGS, LLC, as Landlord, and CTK LLC, as Tenant, dated Feb. 16th, 2016, and delivered simultaneously herewith. If any article of this Addendum changes, expands or modifies any article of the Lease, the article in the Addendum shall control and prevail.

1. **Option to Renew.** Provided Tenant is not then in Default of any obligation, covenant or condition of this Lease, Tenant shall have the option to renew the Term for two (2) additional periods of five (5) years each following the Termination Date indicated in Section 1 above (each such 5-year period being a "Renewal Term"). The option to renew the Lease for the Renewal Terms must be exercised in a written notice thereof by Tenant which must be delivered to Landlord at least six (6) months but not more than twelve (12) months prior to the Termination Date or the expiration of the first Renewal Term, as applicable. If the required notice to renew the Lease for a Renewal Term is not delivered by said 6-month prior date, Tenant will be conclusively deemed to have waived the option to renew for all remaining Renewal Terms. The option contained in this Addendum is personal to the original Tenant listed in Section 1 above and shall not be exercisable by any successor or assignee of said original Tenant.

The base rent during each Renewal Term shall be equal to the Market Rent (as defined hereinafter) for the Premises as of the beginning of the applicable Renewal Term. Written notice of Landlord's determination of Market Rent shall be sent to Tenant within thirty (30) days after Landlord's receipt of Tenant's notice to renew for the respective Renewal Term. Unless Tenant sends Landlord a written notice within fifteen (15) days after Tenant's receipt of said determination withdrawing its exercise of its option to renew, Landlord's determination of rent shall be conclusively binding upon the parties for the Renewal Term. If Tenant does send Landlord such written withdrawal within said fifteen (15) day period, then Tenant will be conclusively deemed to have waived the option to renew. "Market Rent" shall mean the annual rental rate then being charged by similar shopping centers in the area for improved space comparable to the Premises for leases commencing on or about the time of the applicable renewal period, taking into consideration use, location within the applicable shopping center, the location, quality, age and reputation of the shopping center, the definition of rentable area or net rentable area, as the case may be, with respect to which such rental rates are computed, comparative leasehold improvements, rental concessions and abatements, lease assumptions or take-overs, moving expenses, the term of the lease under consideration and the extent of services provided thereunder, applicable distinctions between "gross" leases and "net" leases, other adjustments (including, by way of example, indexes) to base rental, and any other relevant term or condition in making such evaluation; provided, however, that in no event shall Market Rent be less than the Minimum Rent then in effect for the last month of the initial Term.

2. **Tenant's Work.** Tenant has inspected the Premises and accepts the same in its present "AS IS" condition; and, except as set forth below, Tenant acknowledges that Landlord has made no representations to Tenant with respect to any other alterations, repairs or improvements to be performed by Landlord within the Premises.

Tenant shall install all improvements and fixtures within the Premises necessary or appropriate for the operation of Tenant's business for the uses permitted under this Lease, consistent with Tenant's most current design prototype for Tenant's flagship or "A" level stores ("Tenant's Work"); however, all such work must be performed in accordance with drawings and specifications prepared by Tenant and approved by Landlord prior to the commencement of such work. It is expressly understood that any plans prepared by or on behalf of Tenant shall incorporate all requirements of the Americans with Disabilities Act of 1990 (as the same may be from time to time amended), and Tenant shall be solely responsible for compliance with such Act, and hold Landlord harmless therefrom, notwithstanding Landlord's approval of any such plans or any construction. Any changes, alterations, or additions made to the original approved plans shall be in writing and also approved by Landlord prior to construction.

Tenant acknowledges and agrees that Tenant shall be liable for all costs of Tenant's Work and, prior to the commencement of any construction, Tenant shall provide Landlord with certain assurances reasonably satisfactory to Landlord that Tenant is capable of paying for Tenant's Work. Such assurances may include, by way of example: (a) proof of prepayment of all or substantially all of the construction, based upon contractor's bids, and/or (b) evidence of a construction loan from a bank or other lender in the full amount of the cost of Tenant's Work which provides for

the disbursement of the loan proceeds pursuant to a disbursing arrangement in accordance with customary industry standards acceptable to Landlord, and/or (c) a guaranty by one (1) or more separate persons or entities, reasonably satisfactory to Landlord, for the full amount of the cost of such work.

Tenant shall select and contract directly with the general contractor performing Tenant's Work; however, such contractor shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld. Notwithstanding the selection of the general contractor, Landlord reserves the right to select all subcontractors performing any HVAC, electrical and/or plumbing work in connection with Tenant's Work. All subcontractors selected by Landlord shall be commercially competitive in price, and shall be compensated on a time and materials not to exceed basis.

Landlord shall contribute an allowance toward the actual cost of Tenant's interior finish work in an amount not to exceed Ten Dollars (\$10.00) per rentable square foot of space in the Premises. Upon receipt of copies of all paid invoices, and applicable lien waiver(s) for all construction performed and materials furnished, and services performed, Landlord shall pay to Tenant the sum set forth in said paid invoices, but in no event more than the aforesaid allowance. Tenant shall deliver such invoices and lien waivers to Landlord no later than the date that is one hundred eighty (180) days after the Commencement Date; and Tenant waives its right to reimbursement for any costs of Tenant's Work which are not delivered to Landlord and/or supported by lien waivers by such date.

All construction undertaken by Tenant shall be in compliance with state, federal, and local codes, and shall be built in a good and workmanlike manner, and shall be subject to Landlord's inspection from time to time. Tenant shall indemnify and hold Landlord harmless from any and all claims and damages (including reasonable attorneys' fees), to persons or property of Landlord or third persons, caused by Tenant's construction. Tenant shall also indemnify Landlord against any mechanic's liens or other liens arising out of any construction performed by or on behalf of Tenant; and Tenant shall, within thirty (30) days after any construction, furnish to Landlord lien waivers for all work performed and materials furnished. In the event a lien is filed against the Premises for any reason as a result of any construction performed or alleged to have been performed by or on behalf of Tenant, Tenant shall remove such lien within fifteen (15) days. Should Tenant fail to remove any such lien within said fifteen (15) days, Landlord shall have the absolute right to cause such lien to be removed by whatever measures as Landlord, in Landlord's sole discretion, shall deem convenient or necessary including, without limitation, payment to any contractor, subcontractor, laborer, supplier or materialman (and any relating attorney's fees) to extinguish such lien; and, in such event, Tenant shall pay to Landlord, as Additional Rent, all of Landlord's costs and expenses including, without limitation, any payment made by Landlord to any contractor, subcontractor, laborer, supplier or materialman, the payment of any attorneys' fees of any lienholder, as well as the payment of Landlord's attorneys' fees to extinguish such lien.

All improvements made to the Premises by Tenant and which are pre-approved in writing by Landlord shall be delivered to Landlord with the Premises, unless Landlord elects in writing, at the time Landlord consents to such improvements, that one or more of such improvements must be removed upon the expiration of the lease term. All improvements made to the Premises by Tenant which are not pre-approved in writing by Landlord shall, at the option of Landlord, be either delivered to Landlord with the Premises or removed from the Premises prior to the lease termination date. In the event Landlord elects for Tenant to remove any improvements, Tenant shall repair and restore the Premises to a condition substantially similar to the condition of the Premises immediately prior to the installation of such improvements; and, in the event Tenant fails to so repair and restore the Premises, Tenant shall be liable for the costs thereof, which liability shall survive the termination of this Lease.

If for any reason Tenant does not complete construction of Tenant's Work by the Commencement Date set forth herein, this Lease and the obligations of the parties shall nevertheless begin on the stated Commencement Date; it being understood and agreed that Tenant shall assume all risk of construction and the timing thereof.

3. **Outside Seating.** To the extent permitted by the Declaration and the rules established by the Association, Tenant shall be allowed to have outdoor seating in the defined area set forth on the drawing attached hereto as Exhibit "G". Tenant acknowledges that Landlord has made no representations to Tenant with respect to whether or not any outdoor seating, herein approved or subsequently approved by Landlord, is permitted by the Declaration and the rules established by the Association, or meets local or municipal code requirements. Tenant shall have the sole responsibility to secure all necessary permits, licenses and approvals from the Town of Avon and any other governmental or quasi-governmental entity in order to operate outdoor dining in the manner allowed under this

Lease; and Tenant shall deliver copies of all such permits, licenses and approvals to Landlord upon Tenant's receipt thereof and prior to operating any outdoor seating. In the event Tenant cannot secure all permits, licenses and/or approvals to operate outdoor dining, or in the event Landlord terminates Tenant's right to continue outdoor dining (as more fully set forth below), the validity of this Lease shall not be affected, nor shall Landlord be in default under this Lease, but the terms and conditions of this Lease shall remain in full force and effect without a reduction or adjustment in any rent payable to Landlord. During the period of time that Tenant is allowed to operate outdoor dining, the area under Tenant's control and set forth on said Exhibit "D" shall be deemed a part of the Premises, and Tenant shall be liable for all terms and conditions under this Lease (other than with respect to the payment of rent) for and with respect to such space. Tenant shall at all times keep the outdoor seating area clean and free of trash and debris. Tenant shall pay no additional Annual Base Rent, nor shall Tenant's proportionate share with respect to Tenant's obligation for operating costs and taxes, be increased as a result of Tenant's use of such outdoor dining area.

Prior to the installation or placement of any improvements or personal property within the area designated on said Exhibit "D" for outdoor dining, Tenant shall provide Landlord with a detailed description of the same, together with all proposed lighting, additional signage, and any other information reasonably requested by Landlord. Landlord reserves the right to approve all exterior improvements and personal property placed or installed within such outdoor dining area, as the same may be modified from time to time, which approval shall not be unreasonably withheld.

The parties acknowledge that there are a limited number of parking spaces within the Shopping Center; that the number of seats allowable within the restaurant is a function of the number of parking spaces within the Shopping Center which are available from time to time for Tenant's use; and, that as of the date of this Lease, the number of parking spaces available to Tenant within the Shopping Center will permit Tenant to maintain no more than [] seats within the Premises (inclusive of the outdoor dining area).

4. **Franchiser's Right to Cure.** Landlord shall provide Chronic Tacos, Inc. ("Franchisor") with copies of any notices required to be delivered to Tenant pursuant to the terms of this lease at the time that such notices are sent to Tenant addressed to Chronic Tacos at 31 Journey, #230, Aliso Viejo, CA 92656, Attention: Legal Dept. Landlord further agrees that, if it intends to terminate the Lease, the Landlord will give Franchisor a copy of the notice of such intent as provided to Tenant, specifying in such notice all Defaults that are the cause of the proposed termination. Franchisor shall have the right to cure, at its sole option, any such Default within the time periods (if any) granted to Tenant under the Lease. If neither Tenant nor Franchisor cures all such defaults within the period provided pursuant to the terms of this Lease (if any), then the Landlord shall have the right to exercise all remedies provided pursuant to this Lease, at law, or in equity. Prior to the expiration or termination of the Lease, Franchisor shall have the right, upon five (5) business day's written notice to Landlord, to enter the Premises to make any reasonable modifications or reasonable alterations necessary to protect Franchisor's Marks, provided Franchisor agrees in writing to repair any damage to the Premises or the Shopping Center caused thereby.

EXHIBIT "D"

Tenant Signage Criteria

It is understood that Tenant's sign plans are subject to the approval of the Landlord, the Association and the Town of Avon.

EXHIBIT "E"

Lease Commencement, Rent Commencement and Lease Expiration Agreement

This Lease Commencement, Rent Commencement and Lease Expiration Agreement, made and entered into this 5th day of February, 2016, by and between 150 EAST BEAVER CREEK, LLC, Landlord, and CTK LLC Tenant, for the Premises commonly known as UNIT A101 Avon Plaza Condominiums, containing approximately 2,028 square feet of leasable space.

WHEREAS, Landlord and Tenant are both desirous of modifying and clarifying certain dates in the Lease, and in accordance with the terms and conditions contained herein;

NOW THEREFORE, for and consideration of the sum of the TEN and 00/100 dollars (\$10.00), each to the other paid, and in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agrees as follows:

1. The Commencement Date of the Lease as described in Article I, Paragraph 1.1 (h) of the Lease, shall be February 15th, 2016, and the Expiration Date of the Initial Term of the Lease shall be TBD, 2016.
2. The Rent Commencement Date of the Lease, as described in Article I, Paragraph 1.1 (k) of the Lease is TBD, 2016.
3. The Minimum Rent as set forth in Article I, Paragraph (g) of the Lease shall be as follows:

EXCEPT FOR HEREIN PROVIDED, all other terms and conditions of this Lease shall remain the same and this Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Commencement, Rent Commencement and Lease Expiration Agreement upon the day and year first written above. This Lease Commencement, Rent Commencement and Lease Expiration Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, representatives, executors, guarantors and assigns.

LANDLORD:

150 EAST BEAVER CREEK, LLC,
a Missouri limited liability company

By: _____

David H. Hoffmann, Manager

TENANT:

CTK LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT "F"

Guaranty

GUARANTY OF LEASE

THIS GUARANTY OF LEASE ("Guaranty"), dated this 5th day of February, 2016, is given by Tony Kalligoe ("Guarantor"), to 150 East Beaver Creek, LLC, a Missouri limited liability company ("Landlord").

RECITALS:

- A. Simultaneously with the delivery of this Guaranty, Landlord and CTK LLC, a Colorado Limited Liability Company authorized to conduct business in the State of Colorado ("Tenant") are entering into that certain Shopping Center Lease of even date herewith ("Lease"), for certain space known and numbered as 150 East Beaver Creek Unit A101, Avon, CO 81620 ("Premises"), and located in the Avon Plaza Shopping Center (the "Shopping Center").
- B. Landlord is unwilling to enter into said Lease unless Guarantor executes and delivers to Landlord this Guaranty.
- C. Guarantor has examined said Amendment and fully understands all of Tenant's obligations set forth therein.

AGREEMENT:

NOW THEREFORE, in order to induce Landlord to enter into said Amendment and, further, in consideration of One Dollar (\$1.00) and other valuable consideration paid by Landlord to Guarantor, receipt of which is hereby acknowledged, Guarantor hereby covenants, guarantees and agrees as follows:

1. Guarantor hereby irrevocably and unconditionally guarantees to Landlord the performance of all of Tenant's obligations under said Lease, and to timely perform and observe all of the terms, covenants, conditions and agreements to be performed and observed by Tenant, throughout the term of said Lease.
2. In the event Tenant should default in the payment of any rent or other charges due Landlord under said Lease, Guarantor shall immediately pay to Landlord, upon demand, all such rental or other charges due Landlord, together with all damages, costs and/or expenses (including reasonable attorney's fees) incurred by Landlord as a result of Tenant's default. In the event Tenant should breach any covenant, condition or term of said Lease, or fail to perform any obligation required to be performed by Tenant thereunder, Guarantor shall immediately take all actions, necessary or appropriate, to fulfill such obligation; and, in the event Guarantor fails to timely take such actions and, for whatever reason, Landlord performs such actions, Guarantor shall immediately pay to Landlord, upon demand, all costs and/or expenses (including reasonable attorney's fees) incurred by Landlord in the performance of such actions.
3. The obligations of Guarantor hereunder shall be of a continuing nature such that, in the event the lease term is extended, or in the event any of the terms of said Lease are modified or amended, the obligations and liabilities of Guarantor shall not be affected or diminished; and Guarantor hereby waives any notice of any such lease extensions, or any modifications or further amendments to said Lease. Notwithstanding the aforesaid, at Landlord's request, Guarantor shall execute and deliver to Landlord such further assurances as Landlord deems desirable, in Landlord's reasonable judgment, to confirm Guarantor's continuing obligation and liability under said Lease.
4. The obligations and liabilities of Guarantor, and the rights of Landlord, under this Guaranty shall not in any manner be dependent upon, or be subject to, the exercise by Landlord of any rights which Landlord may have against or with respect to Tenant, to the extent that Landlord need not exhaust its remedies against Tenant or resort to any security held by Tenant before proceeding against Guarantor under this Guaranty; and no action by Landlord to enforce any of the terms of said Lease or to collect any sums due Landlord from Tenant shall constitute an election of remedies by Landlord or result in a diminution or restriction of Landlord's rights under this Guaranty.
5. Guarantor hereby waives all right to any notice of default or non-performance by Tenant under said Lease. All notices which are required to be sent between the parties shall be delivered by United States registered or certified mail, postage prepaid, addressed to the parties at their respective addresses below:

LANDLORD:

150 East Beaver Creek, LLC
8000 Maryland Ave., Suite 610
Clayton, Missouri 63105

GUARANTOR:

Tony Herzigone
6 Starline Ave.
Shrewsbury Village, CO 80113
[Signature]

Either Landlord or Guarantor may designate a different address by giving notice to the other party of same at the address set forth above. Notices shall be deemed received on the date of the return receipt. If any such notices are refused, or if the party to whom any such notice is sent has relocated without leaving a forwarding address, then the notice shall be deemed received on the date the notice-receipt is returned stating that the same was refused or is undeliverable at such address.

6. Landlord's waiver of the performance of any obligation of Tenant under said Lease, or the giving by Landlord of any extension of time for the performance of any of the obligations of Tenant, or any other forbearance on the part of Landlord, or any failure by Landlord to enforce any of its rights under said Lease, or any modification of any lease term by Landlord and Tenant, shall in no way release Guarantor from liability hereunder or terminate, affect or diminish the validity of this Guaranty, except to the same extent, but only to such extent, that the liability or obligation of Tenant is so released, terminated, affected or diminished; and all notices to Guarantor of any such modification, waiver, extension, forbearance or failure by Landlord under the terms of said Lease are hereby waived.

7. Guarantor agrees that, in the event Tenant shall become insolvent or shall be adjudicated bankrupt, or in the event Tenant shall file a petition for reorganization or similar relief under any present or future provision of the Federal Bankruptcy Act, or if such a petition filed by any creditors of Tenant shall be approved by a court, or if Tenant shall seek a judicial re-adjustment of the rights of its creditors under any present or future Federal or State law, or if a receiver of all or part of Tenant's property and assets is appointed by a State or Federal Court, and in any such proceeding said Lease shall be terminated or rejected or the obligations of the Tenant thereunder shall be abated, reduced, or modified, Guarantor shall immediately pay to Landlord, or Landlord's successors or assigns, an amount equal to all rent and other charges due Landlord under said Lease which was accrued through the date of such termination, rejection or modification, together with interest thereon at 10% per annum from the date such payments were first due under said Lease. In addition thereto, Guarantor agrees to pay to Landlord, each month, commencing after such termination, rejection or modification, as applicable, through the expiration date of the then current term of this Lease, at the time, place and in the manner set forth in said Lease, an amount equal to the difference between the monthly obligations of Tenant under said Lease and the actual monthly amount of rent and other charges, if any, received by Landlord during and for such month, whether as a result of any reorganization of Tenant or the rejection or termination of said Lease and the reletting of the Premises by Landlord. Guarantor's obligation to make payment in accordance with the terms of this Guaranty shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Tenant or its estate in bankruptcy resulting from the operation of any present or future provision of the Federal Bankruptcy Act or other statute, or from the decision of any court.

8. Guarantor shall not be subrogated to any of the rights of Landlord under said Lease, or in or to the premises demised thereby, or to any other rights of Landlord by reason of any of the provisions of this Guaranty, or by reason of the performance by Guarantor of any of its obligations hereunder; and Guarantor shall look solely to Tenant for any recoupment of any losses or damages suffered by Guarantor as a result of Landlord enforcing this Guaranty.

9. This Guaranty shall extend to and be binding upon the parties' respective heirs, representatives, administrators, successors and assigns.

[Signature page follows.]

EXHIBIT "G"

Outdoor Seating Area

SCHEDULE 2.2(c)

Equipment

- Commercial Hood, ducting and venting along with the Ansul System
- Built in Grease Trap
- Walk in Cooler (Compressor or Motor not included, since it was taken by Foods of Vail)
- Air Conditioner

Operating Agreement

CTK LLC, a Colorado Limited Liability Company

THIS OPERATING AGREEMENT of CTK LLC (the "Company") is entered into as of the date set forth on the signature page of this Agreement by each of the Members listed on Exhibit A of this Agreement.

A. The Members have formed the Company as a Colorado limited liability company under the Colorado Limited Liability Company Act. The purpose of the Company is to conduct any lawful business for which limited liability companies may be organized under the laws of the state of Colorado. The Members hereby adopt and approve the articles of organization of the Company filed with the Colorado Secretary of State.

B. The Members enter into this Agreement to provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations.

ARTICLE 1: DEFINITIONS

Capitalized terms used in this Agreement have the meanings specified in this Article 1 or elsewhere in this Agreement and if not so specified, have the meanings set forth in the Colorado Limited Liability Company Act.

"Agreement" means this Operating Agreement of the Company, as may be amended from time to time.

"Capital Account" means, with respect to any Member, an account consisting of such Member's Capital Contribution, (1) increased by such Member's allocated share of income and gain, (2) decreased by such Member's share of losses and deductions, (3) decreased by any distributions made by the Company to such Member, and (4) otherwise adjusted as required in accordance with applicable tax laws.

"Capital Contribution" means, with respect to any Member, the total value of (1) cash and the fair market value of property other than cash and (2) services that are contributed and/or agreed to be contributed to the Company by such Member, as listed on Exhibit A, as may be updated from time to time according to the terms of this Agreement.

"Exhibit" means a document attached to this Agreement labeled as "Exhibit A," "Exhibit B," and so forth, as such document may be amended, updated, or replaced from time to time according to the terms of this Agreement.

"Manager" means each Person who has authority to manage the business and affairs of the Company pursuant to this Agreement; such Persons are listed on Exhibit B, as may be updated from time to time according to the terms of this Agreement. A Manager may be, but is not required to be, a Member.

"Member" means each Person who acquires Membership Interest pursuant to this Agreement. The Members are listed on Exhibit A, as may be updated from time to time according to the terms of this Agreement. Each Member has the rights and obligations specified in this Agreement.

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including the right to any and all benefits to which a Member may be entitled as provided in this Agreement and under the Colorado Limited Liability Company Act, together with the obligations of the Member to comply with all of the terms and provisions of this Agreement.

"Ownership Interest" means the Percentage Interest or Units, as applicable, based on the manner in which relative ownership of the Company is divided.

"Percentage Interest" means the percentage of ownership in the Company that, with respect to each Member, entitles the Member to a Membership Interest and is expressed as either:

- A. If ownership in the Company is expressed in terms of percentage, the percentage set forth opposite the name of each Member on Exhibit A, as may be adjusted from time to time pursuant to this Agreement; or

B. If ownership in the Company is expressed in Units, the ratio, expressed as a percentage, of:

(1) the number of Units owned by the Member (expressed as "MU" in the equation below) divided by

(2) the total number of Units owned by all of the Members of the Company (expressed as "TU" in the equation below).

$$\text{Percentage Interest} = \frac{MU}{TU}$$

"Person" means an individual (natural person), partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

"Units" mean, if ownership in the Company is expressed in Units, units of ownership in the Company, that, with respect to each Member, entitles the Member to a Membership Interest which, if applicable, is expressed as the number of Units set forth opposite the name of each Member on Exhibit A, as may be adjusted from time to time pursuant to this Agreement.

ARTICLE 2: CAPITAL CONTRIBUTIONS, ADDITIONAL MEMBERS, CAPITAL ACCOUNTS AND LIMITED LIABILITY

2.1 Initial Capital Contributions. The names of all Members and each of their respective addresses, initial Capital Contributions, and Ownership Interests must be set forth on Exhibit A. Each Member has made or agrees to make the initial Capital Contribution set forth next to such Member's name on Exhibit A to become a Member of the Company.

2.2 Subsequent Capital Contributions. Members are not obligated to make additional Capital Contributions unless unanimously agreed by all the Members. If subsequent Capital Contributions are unanimously agreed by all the Members in a consent in writing, the Members may make such additional Capital Contributions on a pro rata basis in accordance with each Member's respective Percentage Interest or as otherwise unanimously agreed by the Members.

2.3 Additional Members.

A. With the exception of a transfer of interest (1) governed by Article 7 of this Agreement or (2) otherwise expressly authorized by this Agreement, additional Persons may become Members of the Company and be issued additional Ownership Interests only if approved by and on terms determined by a unanimous written agreement signed by all of the existing Members.

B. Before a Person may be admitted as a Member of the Company, that Person must sign and deliver to the Company the documents and instruments, in the form and containing the information required by the Company, that the Managers deem necessary or desirable. Membership Interests of new Members will be allocated according to the terms of this Agreement.

2.4 **Capital Accounts.** Individual Capital Accounts must be maintained for each Member, unless (a) there is only one Member of the Company and (b) the Company is exempt according to applicable tax laws. Capital Accounts must be maintained in accordance with all applicable tax laws.

2.5 **Interest.** No interest will be paid by the Company or otherwise on Capital Contributions or on the balance of a Member's Capital Account.

2.6 **Limited Liability; No Authority.** A Member will not be bound by, or be personally liable for, the expenses, liabilities, debts, contracts, or obligations of the Company, except as otherwise provided in this Agreement or as required by the Colorado Limited Liability Company Act. Unless expressly provided in this Agreement, no Member, acting alone, has any authority to undertake or assume any obligation, debt, or responsibility, or otherwise act on behalf of, the Company or any other Member.

ARTICLE 3: ALLOCATIONS AND DISTRIBUTIONS

3.1 **Allocations.** Unless otherwise agreed to by the unanimous consent of the Members any income, gain, loss, deduction, or credit of the Company will be allocated for accounting and tax purposes on a pro rata basis in proportion to the respective Percentage Interest held by each Member and in compliance with applicable tax laws.

3.2 Distributions. The Company will have the right to make distributions of cash and property to the Members on a pro rata basis in proportion to the respective Percentage Interest held by each Member. The timing and amount of distributions will be determined by the Managers in accordance with the Colorado Limited Liability Company Act.

3.3 Limitations on Distributions. The Company must not make a distribution to a Member if, after giving effect to the distribution:

A. The Company would be unable to pay its debts as they become due in the usual course of business; or

B. The fair value of the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of Members, if any, whose preferential rights are superior to those of the Members receiving the distribution.

ARTICLE 4: MANAGEMENT

4.1 Management.

A. **Generally.** Subject to the terms of this Agreement and the Colorado Limited Liability Company Act, the business and affairs of the Company will be managed by the Board of Managers, as further described below. The Members initially nominate and elect the Person(s) set forth on Exhibit B to serve as the Manager(s) of the Company. The Managers will act under the direction of the Members and may be elected or removed at any time, for any reason or no reason, by the Members holding a majority of the Voting Interest of the Company. Exhibit B must be amended to reflect any changes in Managers.

B. **Approval and Action.** Unless greater or other authorization is required pursuant to this Agreement or under the Colorado Limited Liability Company Act for the Company to engage in an activity or transaction, all activities or transactions must be approved by a majority of Managers, to constitute the act of the Company or serve to bind the Company, but if the Managers cannot reach a majority vote, the dispute will be submitted to the Members to be resolved by the affirmative vote of the Members holding at least a majority of the Voting Interest of the Company. With such approval, the signature of any Managers authorized to sign on behalf of the Company is sufficient to bind the Company with respect to the matter or matters so approved. Without such

approval, no Managers acting alone may bind the Company to any agreement with or obligation to any third party or represent or claim to have the ability to so bind the Company.

C. **Certain Decisions Requiring Greater Authorization.** Notwithstanding clause B above, the following matters require unanimous approval of the Members in a consent in writing to constitute an act of the Company:

- (i) A material change in the purposes or the nature of the Company's business;
- (ii) With the exception of a transfer of interest governed by Article 7 of this Agreement, the admission of a new Member or a change in any Member's Membership Interest, Ownership Interest, Percentage Interest, or Voting Interest in any manner other than in accordance with this Agreement;
- (iii) An amendment to the Articles of Organization;
- (iv) The merger of the Company with any other entity or the sale of all or substantially all of the Company's assets; and
- (v) The amendment of this Agreement.

4.2 **Meetings of Managers.** Regular meetings of the Managers are not required but may be held at such time and place as the Managers deem necessary or desirable for the reasonable management of the Company. Meetings may take place in person, by conference call, or by any other means permitted under the Colorado Limited Liability Company Act. In addition, Company actions requiring a vote may be carried out without a meeting if all of the Managers consent in writing to approve the action.

4.3 **Officers.** The Managers are authorized to appoint one or more officers from time to time. The officers will have the titles, the authority, exercise the powers, and perform the duties that the Managers determine from time to time. Each officer will continue to perform and hold office until such time as (a) the officer's successor is chosen and appointed by the Managers; or (b) the officer is dismissed or terminated by the Managers, which termination will be subject to applicable law and, if an effective employment agreement exists between the officer and the Company, the employment agreement. Subject to applicable law and the employment agreement (if any), each officer will serve at the direction of Managers, and may be terminated, at any time and for any reason, by the Managers.

ARTICLE 5: ACCOUNTS AND ACCOUNTING

5.1 Accounts. The Company must maintain complete accounting records of the Company's business, including a full and accurate record of each Company transaction. The records must be kept at the Company's principal executive office and must be open to inspection and copying by Members during normal business hours upon reasonable notice by the Members wishing to inspect or copy the records or their authorized representatives, for purposes reasonably related to the Membership Interest of such Members. The costs of inspection and copying will be borne by the respective Member.

5.2 Records. The Managers will keep or cause the Company to keep the following business records.

- (i) An up to date list of the Members, each of their respective full legal names, last known business or residence address, Capital Contributions, the amount and terms of any agreed upon future Capital Contributions, and Ownership Interests, and Voting Interests;
- (ii) A copy of the Company's federal, state, and local tax information and income tax returns and reports, if any, for the six most recent taxable years;
- (iii) Minutes of any special or annual meetings ordered pursuant to Colorado law;
- (iv) A copy of the articles of organization of the Company, as may be amended from time to time ("Articles of Organization"); and
- (v) An original signed copy, which may include counterpart signatures, of this Agreement, and any amendments to this Agreement, signed by all then-current Members.

5.3 Income Tax Returns. Within 45 days after the end of each taxable year, the Company will use its best efforts to send each of the Members all information necessary for the Members to complete their federal and state tax information, returns, and reports and a copy of the Company's federal, state, and local tax information or income tax returns and reports for such year.

5.4 Subchapter S Election. The Company may, upon unanimous consent of the Members, elect to be treated for income tax purposes as an S Corporation. This designation may be changed as permitted under the Internal Revenue Code Section 1362(d) and applicable Regulations.

5.5 Tax Matters Member. Anytime the Company is required to designate or select a tax matters partner pursuant to Section 6231(a)(7) of the Internal Revenue Code and any regulations issued by the Internal Revenue Service, the Members must designate one of the Members as the tax matters partner of the Company and keep such designation in effect at all times.

5.6 Banking. All funds of the Company must be deposited in one or more bank accounts in the name of the Company with one or more recognized financial institutions. The Managers are authorized to establish such accounts and complete, sign, and deliver any banking resolutions reasonably required by the respective financial institutions in order to establish an account.

ARTICLE 6: MEMBERSHIP - VOTING AND MEETINGS

6.1 Members and Voting Rights. The Members have the right and power to vote on all matters with respect to which the Articles of Organization, this Agreement, or the Colorado Limited Liability Company Act requires or permits. Unless otherwise stated in this Agreement (for example, in Section 4.1(c)) or required under the Colorado Limited Liability Company Act, the vote of the Members holding at least a majority of the Voting Interest of the Company is required to approve or carry out an action.

6.2 Meetings of Members. Annual, regular, or special meetings of the Members are not required but may be held at such time and place as the Members deem necessary or desirable for the reasonable management of the Company. Meetings may be called by any Member or Members, holding 10% or more of the Percentage Interests, for the purpose of addressing any matters on which the Members may vote. A written notice setting forth the date, time, and location of a meeting must be sent at least ten (10) days but no more than sixty (60) days before the date of the meeting to each Member entitled to vote at the meeting. A Member may waive notice of a meeting by sending a signed waiver to the Company's principal executive office or as otherwise provided in the Colorado Limited Liability Company Act. In any instance in which the approval of the Members is required under this Agreement, such approval may be obtained in any manner permitted by the Colorado Limited Liability Company Act, including by conference call or similar communications equipment. Any action that could be taken at a meeting may be approved by a consent in writing that describes the

action to be taken and is signed by Members holding the minimum Voting Interest required to approve the action. If any action is taken without a meeting and without unanimous written consent of the Members, notice of such action must be sent to each Member that did not consent to the action.

ARTICLE 7: WITHDRAWAL AND TRANSFERS OF MEMBERSHIP INTERESTS

7.1 Withdrawal. Members may withdraw from the Company prior to the dissolution and winding up of the Company (a) by transferring or assigning all of their respective Membership Interests pursuant to Section 7.2 below, or (b) if all of the Members unanimously agree in a written consent. Subject to the provisions of Article 3, a Member that withdraws pursuant to this Section 7.1 will be entitled to a distribution from the Company in an amount equal to such Member's Capital Account.

7.2 Restrictions on Transfer; Admission of Transferee. A Member may transfer Membership Interests to any other Person without the consent of any other Member. A person may acquire Membership Interests directly from the Company upon the written consent of all Members. A Person that acquires Membership Interests in accordance with this Section 7.2 will be admitted as a Member of the Company only after the requirements of Section 2.3(b) are complied with in full.

ARTICLE 8: DISSOLUTION

8.1 Dissolution. The Company will be dissolved upon the first to occur of the following events:

- (i) The unanimous agreement of all Members in a consent in writing to dissolve the Company;
- (ii) Entry of a decree of judicial dissolution under Colorado Limited Liability Company Act;
- (iii) At any time that there are no Members, unless and provided that the Company is not otherwise required to be dissolved and wound up, within 90 days after the occurrence of the event that terminated the continued membership of the last remaining Member, the legal representative of the last remaining Member agrees in writing to continue the Company and (i) to become a Member; or (ii) to the extent that the last remaining Member assigned its interest in the

Company, to cause the Member's assignee to become a Member of the Company, effective as of the occurrence of the event that terminated the continued membership of the last remaining Member;

- (iv) The sale or transfer of all or substantially all of the Company's assets;
- (v) A merger or consolidation of the Company with one or more entities in which the Company is not the surviving entity.

8.2 No Automatic Dissolution Upon Certain Events. Unless otherwise set forth in this Agreement or required by applicable law, the death, incapacity, disassociation, bankruptcy, or withdrawal of a Member will not automatically cause a dissolution of the Company.

ARTICLE 9: INDEMNIFICATION

9.1 Indemnification. The Company has the power to defend, indemnify, and hold harmless any Person who was or is a party, or who is threatened to be made a party, to any Proceeding (as that term is defined below) by reason of the fact that such Person was or is a Member, Manager, officer, employee, representative, or other agent of the Company, or was or is serving at the request of the Company as a director, Manager, Governor, officer, employee, representative or other agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise (each such Person is referred to as a "Company Agent"), against Expenses (as that term is defined below), judgments, fines, settlements, and other amounts (collectively, "Damages") to the maximum extent now or hereafter permitted under Colorado law. "Proceeding," as used in this Article 9, means any threatened, pending, or completed action, proceeding, individual claim or matter within a proceeding, whether civil, criminal, administrative, or investigative. "Expenses," as used in this Article 9, includes, without limitation, court costs, reasonable attorney and expert fees, and any expenses incurred relating to establishing a right to indemnification, if any, under this Article 9.

9.2 Mandatory. The Company must defend, indemnify and hold harmless a Company Agent in connection with a Proceeding in which such Company Agent is involved if, and to the extent, Colorado law requires that a limited liability company indemnify a Company Agent in connection with a Proceeding.

9.3 Expenses Paid by the Company Prior to Final Disposition. Expenses of each Company Agent indemnified or held harmless under this Agreement that are actually and reasonably incurred in connection with the defense or settlement of a Proceeding may be paid by the Company in advance of the final disposition of a Proceeding if authorized by a vote of the Members that are not seeking indemnification holding a majority of the Voting Interests (excluding the Voting Interest of the Company Agent seeking indemnification) or a majority of the Managers that are not seeking indemnification, as the case may be. Before the Company makes any such payment of Expenses, the Company Agent seeking indemnification must deliver a written undertaking to the Company stating that such Company Agent will repay the applicable Expenses to the Company unless it is ultimately determined that the Company Agent is entitled or required to be indemnified and held harmless by the Company (as set forth in Sections 9.1 or 9.2 above or as otherwise required by applicable law).

ARTICLE 10: GENERAL PROVISIONS

10.1 Notice. (a) Any notices (including requests, demands, or other communications) to be sent by one party to another party in connection with this Agreement must be in writing and delivered personally, by reputable overnight courier, or by certified mail (or equivalent service offered by the postal service from time to time) to the following addresses or as otherwise notified in accordance with this Section: (i) if to the Company, notices must be sent to the Company's principal executive office; and (ii) if to a Member, notices must be sent to the Member's last known address for notice on record. (b) Any party to this Agreement may change its notice address by sending written notice of such change to the Company in the manner specified above. Notice will be deemed to have been duly given as follows: (i) upon delivery, if delivered personally or by reputable overnight carrier or (ii) five days after the date of posting if sent by certified mail.

10.2 Entire Agreement; Amendment. This Agreement along with the Articles of Organization (together, the "Organizational Documents"), constitute the entire agreement among the Members and replace and supersede all prior written and oral understandings and agreements with respect to the subject matter of this Agreement, except as otherwise required by the Colorado Limited Liability Company Act. There are no representations, agreements, arrangements, or undertakings, oral or written, between or among the Members relating to the subject matter of this Agreement that are not fully expressed in the Organizational Documents. This Agreement may not be modified or amended in any respect, except in a writing signed by all of the Members,

except as otherwise required or permitted by the Colorado Limited Liability Company Act.

10.3 Governing Law; Severability. This Agreement will be construed and enforced in accordance with the laws of the state of Colorado. If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the unenforceable provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and the Agreement will be deemed amended accordingly.

10.4 Further Action. Each Member agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

10.5 No Third Party Beneficiary. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person or entity will have or acquire any right by virtue of this Agreement. This Agreement will be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

10.6 Incorporation by Reference. The recitals and each appendix, exhibit, schedule, and other document attached to or referred to in this Agreement are hereby incorporated into this Agreement by reference.

10.7 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members signed the same copy. All counterparts will be construed together and will constitute one agreement.

[Remainder Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Operating Agreement and do each hereby represent and warrant that their respective signatory, whose signature appears below, has been and is, on the date of this Agreement, duly authorized to execute this Agreement.

Dated: 12/27/14


Signature of Anthony B. Kerrigone

EXHIBIT A
MEMBERS

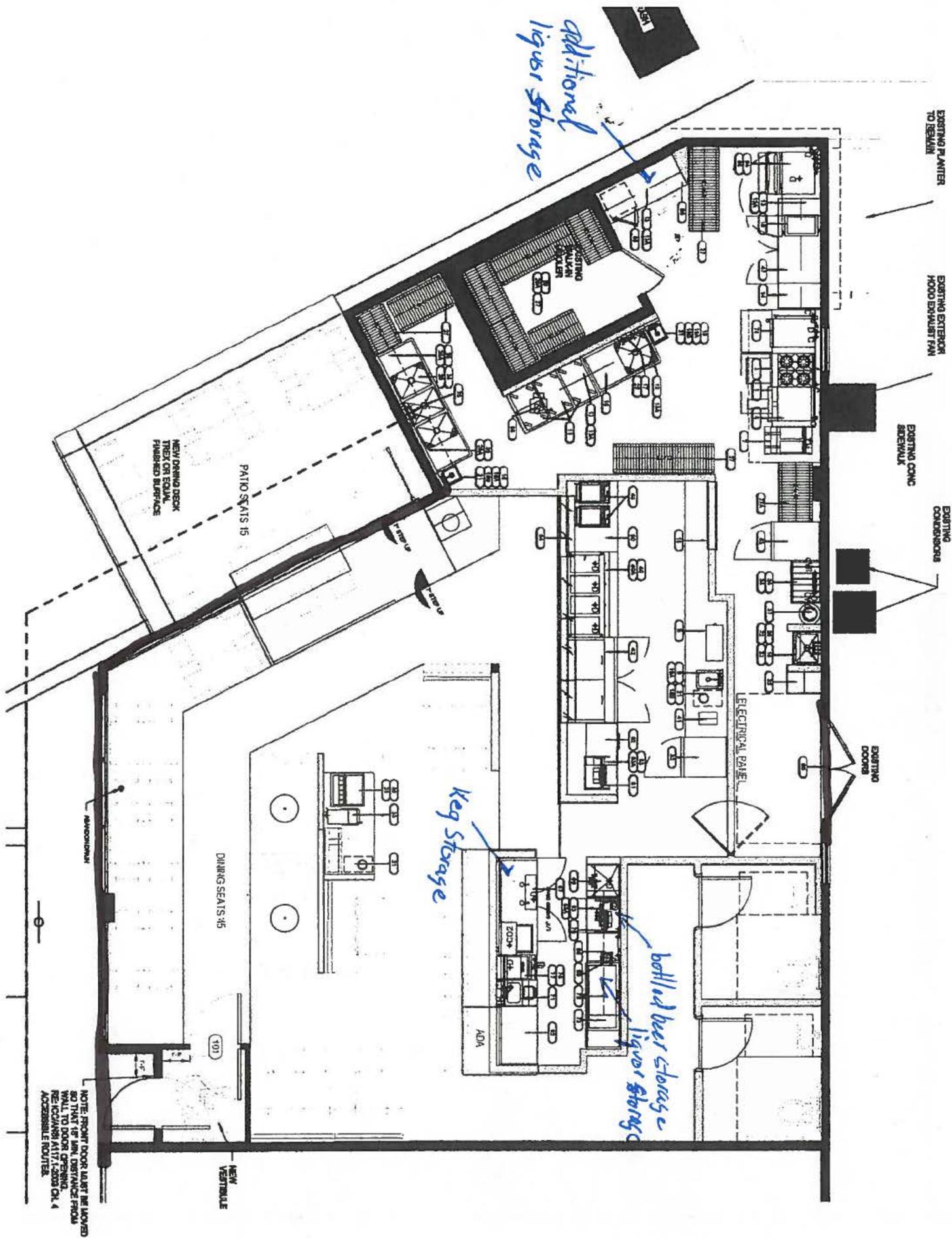
The Members of the Company and their respective addresses, Capital Contributions, and Ownership Interests are set forth below. The Members agree to keep this Exhibit A current and updated in accordance with the terms of this Agreement, including, but not limited to, Sections 2.1, 2.3, 2.4, 7.1, 7.2, and 10.1.

Members	Capital Contribution	Percentage Interest
Anthony B. Kerrigone Address: 6 Sterling Ave. Cherry Hills Village, Colorado 80113		100%

EXHIBIT B
MANAGERS

Manager(s) of the Company are set forth below.

Thomas King
Anthony B. Kerrigone



Additional liquor storage

Keg Storage

bottled beer storage - liquor storage

EXISTING PLANTER TO REMAIN

EXISTING EXTERIOR HOOD EXHAUST FAN

EXISTING COOK SCHEDULE

EXISTING CONDENSORS

EXISTING DOOR

ELECTRICAL PANEL

PATIO SEATS 15

NEW DINING DECK TRICK ON EQUAL FINISHED SURFACE

DINING SEATS - 15

NEW VENTILATE

NOTE: FRONT DOOR MUST BE MOVED SO THAT 7'0" MIN. OBSTRUCTION FREE CLEARANCE FROM ACCESSIBLE ROUTE.



Colorado Secretary of State
 Date and Time: 12/11/2014 04:30 AM
 ID Number: 20141752528
 Document number: 20141752528
 Amount Paid: \$50.00

Document must be filed electronically.
 Paper documents are not accepted.
 Fees & forms are subject to change.
 For more information or to print copies
 of filed documents, visit www.sos.state.co.us.

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Organization

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

CTK LLC

(The name of a limited liability company must contain the term or abbreviation "limited liability company", "Ltd. liability company", "limited liability co.", "Ltd. liability co.", "limited", "l.l.c.", "llc", or "Ltd.". See §7-90-601, C.R.S.)

(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the limited liability company's initial principal office is

Street address

6 Sterling Ave.

(Street number and name)

Cherry Hills Village

(City)

CO

(State)

80113

(ZIP/Postal Code)

United States

(Country)

(Province - if applicable)

Mailing address

(leave blank if same as street address)

(Street number and name or Post Office Box information)

(City)

(State)

(ZIP/Postal Code)

(Province - if applicable)

(Country)

3. The registered agent name and registered agent address of the limited liability company's initial registered agent are

Name

(if an individual)

(Last)

(First)

(Middle)

(Suffix)

or

(if an entity)

United States Corporation Agents, Inc.

(Caution: Do not provide both an individual and an entity name.)

Street address

2 North Cascade, Suite 1100

(Street number and name)

Colorado Springs

(City)

CO

(State)

80903

(ZIP Code)

Mailing address

(leave blank if same as street address)

(Street number and name or Post Office Box information)

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,

CTK LLC

is a

Limited Liability Company

formed or registered on 12/11/2014 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 20141752528 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 06/27/2016 that have been posted, and by documents delivered to this office electronically through 07/01/2016 @ 09:24:48 .

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 07/01/2016 @ 09:24:48 in accordance with applicable law. This certificate is assigned Confirmation Number 9723522 .



A handwritten signature in blue ink that reads "Wayne W. Williams".

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/bi~/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."

Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant or Tavern class of retail license

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

1. Name of Business Chronic Tacos Mexican Grill		Home Phone Number	Cellular Number (970) 376-1927	
2. Your Full Name (last, first, middle) Wilkison, Chad, David		3. List any other names you have used		
4. Mailing address (if different from residence) PO Box 7375 Avon, CO 81620		Email Address chad.wilkison@gmail.com		
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)				
Street and Number		City, State, Zip		From
To				
Current 4495 Wildridge Rd. West		Avon, CO, 81620		09/2015
Previous 189 Old County Ln.		Edwards, CO, 81632		09/2009
6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)				
Name of Employer or Business		Address (Street, Number, City, State, Zip)		Position Held
From		To		
Pazzos Pizzeria		82 East Beaver Creek Blvd. Avon, CO, 81620		Pizza Cook
				03/2009
				08/2015
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
Name of Relative		Relationship to You		Position Held
Name of Licensee				
David Wilkison		Father		Part Owner
Chris Wilkison		Aunt		Owner
				Grand Inc.
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.) Yes No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.) Yes No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.) Yes No

Personal and Financial Information

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth [REDACTED]	b. Social Security Number [REDACTED]	c. Place of Birth Vail, CO	d. U.S. Citizen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
e. If Naturalized, state where		f. When	g. Name of District Court
h. Naturalization Certificate Number	i. Date of Certification	j. If an Alien, Give Allen's Registration Card Number	k. Permanent Residence Card Number
l. Height 5'09"	m. Weight 185	n. Hair Color Blonde	o. Eye Color Blue
p. Gender Male	q. Race Caucasian	r. Do you have a current Driver's License/ID? If so, give number and state. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No # 03-184-0362 State Colorado	

14. Financial Information.
 a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.
 \$ 600,000

b. List the total amount of the personal investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ 0
 * If corporate investment only please skip to and complete section (d)
 ** Section b should reflect the total of sections c and e

c. Provide details of the personal investment described in 14b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount

d. Provide details of the corporate investment described in 14 b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount

Oath of Applicant

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature <i>Chad Wilkison</i>	Print Signature Chad Wilkison	Title	Date 06/10/16
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Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant or Tavern class of retail license

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". Any deliberate misrepresentation or material omission may jeopardize the license application. (Please attach a separate sheet if necessary to enable you to answer questions completely)				
1. Name of Business CTK LLC (DBA Chronic Tacos)		Home Phone Number 720-381-0863	Cellular Number 303-513-2522	
2. Your Full Name (last, first, middle) Kerrigone, Anthony, Benedict		3. List any other names you have used N/A		
4. Mailing address (if different from residence)		Email Address tonykerrigone@outlook.com		
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)				
Street and Number		City, State, Zip		From
To				
Current 6 Sterling Ave		Cherry Hills Village, CO 80113		09/2011
Previous 1101 S Clayton St		Denver, CO 80211		04/2010
				09/2011
6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)				
Name of Employer or Business		Address (Street, Number, City, State, Zip)		Position Held
From		To		
Self		6 Sterling Ave, Cherry Hills Village, CO, 8011		Starting Chronic
				05/2014
BMA Securities		100 Filmore St, Ste 500, Denver, CO 80206		Securities Trader
				07/2013
Wilson Davis & Co		6901 S Yosemite St, Centennial, CO 80112		Securites Trader
				10/2008
				03/2014
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
Name of Relative		Relationship to You		Position Held
Name of Licensee				
N/A				
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.) Yes No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.) Yes No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.) Yes No

Personal and Financial Information

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth		b. Social Security Number		c. Place of Birth Brooklyn, NY		d. U.S. Citizen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
e. If Naturalized, state where			f. When		g. Name of District Court		
h. Naturalization Certificate Number		i. Date of Certification		j. If an Alien, Give Alien's Registration Card Number		k. Permanent Residence Card Number	
l. Height	m. Weight	n. Hair Color	o. Eye Color	p. Gender	q. Race	r. Do you have a current Driver's License/ID? If so, give number and state. <input type="checkbox"/> Yes <input type="checkbox"/> No # _____ State _____	

14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.
\$ 500,000

b. List the total amount of the personal investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ 500,000

* If corporate investment only please skip to and complete section (d)

** Section b should reflect the total of sections c and e

c. Provide details of the personal investment described in 14b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount
Cash	Checking/Savings	Wells Fargo	500,000

d. Provide details of the corporate investment described in 14 b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

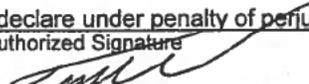
Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount

Oath of Applicant

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature 	Print Signature Tony Kettigore	Title Managing Member	Date 7/1/16
--	-----------------------------------	--------------------------	----------------

**Avon Police Department
Liquor License Application**

Individual Name(s): Anthony Kerrigone
Chad Wilkison

Name of Business: CTK, LLC d/b/a Chronic Tacos

Type of License: Hotel & Restaurant
 Special Event Permit

Event Name: n/a
Date of Event: n/a

Location of Business: 150 East Beaver Creek Blvd. Unit A-101
Avon, Colorado 81620

Date Received: July 27th 2016

Photographs/Fingerprints: On File
 Special Event – N/A

Investigation by:
 Detective Sergeant Jonathan Lovins
 Detective Jeremy Holmstrom

Date: August 2nd 2016

CBI Criminal Investigation (attached):

Mr. Kerrigone was arrested for DUI and resisting arrest in Cherry Hills, Colorado on December 9th 2015, the CBI record is not showing a final case disposition as of this date.

Local Criminal Investigation:

On February 21st 2015, Mr. Kerrigone was contacted by the Eagle County Sheriffs Office after responding to a call for service. Mr. Kerrigone was intoxicated and had gotten into an argument with a roommate. Mr. Kerrigone left the residence and retrieved a handgun from his vehicle. Mr. Kerrigone told Deputies he was in fear of the roommate. Mr. Kerrigone had several other firearms in his vehicle at the time. Deputies took possession of the firearms for safekeeping and issued Mr. Kerrigone a summons for Prohibited Use of a Weapon ECSO case #2015-000318

Comments:

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.

PETITION TO THE AVON LIQUOR LICENSING AUTHORITY

SUMMARY OF LIQUOR PETITION

DATES OF PETITIONING: START 7/5/16 END 7/8/16

NUMBER OF SIGNATURES IN FAVOR 28

NUMBER OF SIGNATURES AGAINST 0

APPLICANT: CTK LLC / Anthony Kerrigone + Chad Wilkison

TRADE NAME: Chronic Tacos Mexican Grill

SITE LOCATION: 150 E. Beaver Creek Blvd. Unit A101 Avon

FOR: _____ LIQUOR LICENSE (TYPE OF LICENSE)

To (PLEASE CHECK ONE):

- 1. **HOTEL & RESTAURANT OR TAVERN LIQUOR LICENSE**
SELL BEER, WINE & DISTILLED SPIRITS BY THE DRINK FOR CONSUMPTION ON THE PREMISES
- 2. **BREW PUB LICENSE**
SELL BEER, WINE AND DISTILLED SPIRITS BY THE DRINK FOR CONSUMPTION ON THE PREMISES; AND, TO MANUFACTURE MALT LIQUORS ON THE PREMISES FOR SALE BY THE DRINK FOR CONSUMPTION ON THE PREMISES, OR FOR SALE BY THE PACKAGE TO INDEPENDENT WHOLESALERS FOR DISTRIBUTION TO LICENSED RETAILERS OR TO THE PUBLIC FOR CONSUMPTION OFF THE PREMISES
- 3. **RETAIL LIQUOR STORE LICENSE**
SELL BEER, WINE & DISTILLED SPIRITS FOR CONSUMPTION OFF THE PREMISES
- 4. **3.2% BEER LICENSE**
SELL 3.2% BEER FOR CONSUMPTION OFF THE PREMISES
- 5. **BEER AND WINE LIQUOR LICENSE**
SELL BEER AND VINOUS SPIRITS FOR CONSUMPTION ON THE PREMISES

This is only a sample of what a Summary might include. It is not intended to be legal advice
And is offered as a courtesy by the Town Clerk's office of Avon.

PETITION TO THE AVON LIQUOR LICENSING AUTHORITY

INSTRUCTIONS AND QUALIFICATIONS FOR SIGNING PETITION

1. To sign this petition, you must be 21 years of age or older and a United States citizen and it is recommended that signatures include those persons that are either a resident of the Town, persons that are working in the Town or visitors to the Town. Please note that the neighborhood is defined in Resolution No. 04-04 as adopted by the Avon Liquor Licensing Authority on the 23rd day of November 2004. A copy will be provided upon request of the applicant.
2. Please sign this petition in the presence of the petition circulator.
3. Please take the opportunity to read the petition, or have it read to you, in its entirety. Your signature on the petition indicates you understand the petition issue. If you are unclear on the petition issue, ask the circulator for clarification.
4. Please sign this petition only one time. If you were previously contacted by another circulator concerning this matter, please do not sign this petition also.
5. Please sign your own given name: first name or first initial, middle name or middle initial (if applicable), and last name. You may not sign this petition for any other individual.
6. **Please include your street residence address & not a PO Box number.**

PETITION TO THE AVON LIQUOR LICENSING AUTHORITY

I, the undersigned, am aware that an application for a Hotel & Restaurant ¹¹⁹⁰⁰ license has been filed with the Avon Liquor Licensing Authority by: CTK LLC doing business as Chronic Tacos, and proposed to be located at 150 E. Beaver Creek Blvd. Unit A101. I am at least 21 years of age and am a resident or owner or manager of a business located within the defined neighborhood boundaries of the proposed liquor establishment. I have indicated below whether I consider the granting of the above-mentioned liquor license to be desirable and necessary for the reasonable requirements of the neighborhood.

Print Name	Signature	Street Address & Town in which you reside Include only Street Address	Age	Date	For	Against
David R. Wilkison	<i>[Signature]</i>	2753 E Haystacker Eagle Co 81631	54	7/5/16	✓	
Dustin Bunderson	<i>[Signature]</i>	2095 Polmer Loop Eagle Co 81631	52	7-5-16	✓	
Lee Franen	<i>[Signature]</i>	731 Knub Ln Cypress, Co 81627	37	7/5/16	✓	
Beth Reilly	<i>[Signature]</i>	430 Palmer Loop Eagle 81631	50	7/5/16	✓	
Dedric Brid	<i>[Signature]</i>	5491 Wildridge Rd E Avon 81620	57	7/5/16	✓	
MALCOM PARR	<i>[Signature]</i>	1031 W BEAVER CREEK RD AVON, MO 81620	30	7-5-16	✓	
Pete Brock	<i>[Signature]</i>	5491 Wildridge Rd E Avon Co 81620	57	7-5-16	✓	
KEVIN EGARDS	<i>[Signature]</i>	34353 Hwy Co Esrum Co 81632	43	7-5-16	✓	
Jan Estlin	<i>[Signature]</i>	150 E. Deer Creek Rd	45	7-5-16	✓	
Taylor Lynn Taylor	<i>[Signature]</i>	441 main st Minton, Co 81645	22	7-5-16	✓	
Tara Cavett	<i>[Signature]</i>	2500 Old Trail Rd, Avon 81620	35	7-5-16	✓	
Shawn Springy	<i>[Signature]</i>	1700 Deer Blvd Avon 81620	25	7-5-16	✓	
Lance Adkins	<i>[Signature]</i>	4/4 E. Beaver Creek Blvd Avon	33	7-5-16	✓	
JESSICA ODING	<i>[Signature]</i>	5703 KENTFORD CIR. NICHITA, KS 25	25	7/5-16	✓	

I, the undersigned, am aware that an application for a Hotel & Restaurant ¹¹⁹⁰⁰ license has been filed with the Avon Liquor Licensing Authority by: CTK LLC doing business as Chronic Tacos and

This is only a sample of what a Summary might include. It is not intended to be legal advice
And is offered as a courtesy by the Town Clerk's office of Avon.

PETITION TO THE AVON LIQUOR LICENSING AUTHORITY

proposed to be located at 150 E. Beaver Creek Blvd. A101. I am at least 21 years of age and am a resident or owner or manager of a business located within the defined neighborhood boundaries of the proposed liquor establishment. I have indicated below whether I consider the granting of the above-mentioned liquor license to be desirable and necessary for the reasonable requirements of the neighborhood.

Print Name	Signature	Street Address & Town (in which you reside)	Age	Date	For	Against
Maria Carwell		2111 W. FRONTAGE RD. #103 AVON CO 81657	53	7/5/16	X	
Jan O'Connor		414 WISBEAR CREEK - BLDG AVON CO 81657	37	7/5/16	X	
ANGELA PHILLIPS		1220 DEER HAVEN AVON CO 81631	24	7/5/16		X
Carmen Evans		4495 Wildridge Rd W. AVON CO 81620	27	7/6/16	X	
Mary Mitz		2823 Ked Spun Rd Avon Co 81620	76	7/6/16	X	
VELKO ANTONIJEVIC		5197 Black Goat DR, VAIL CO 81657	27	7/7/16	X	
Leo Flynn		4061 Bighorn Road Vail, CO 81658	44	7/7/16	X	
Osha Greetz		3999 W. Hwy 6 Hwy 6	38	7/7/16	X	
Stephanie Kokzak		231 Christian Ct. Eagle CO 81631	35	7/7/16	X	
COLLEEN HEFFERAN		98 RIVERSIDE CT, Eagle-Vail CO	22	7/7/16		X
JOHN LUSK		1614 DEER BLVD EAGLE VAIL CO	47	7/7/16	X	
Chris Brook		20 Flat Top Edwards, CO 81632	47	7/7/16	X	
DAVID THIREDEAN		11 James Creek EDWARDS CO	47	7/8/16	X	
Matthew Nelson		971 W Beaver Crk Blvd, Avon CO	40	7/8/16	X	



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, JULY 26, 2016
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER AND ROLL CALL

Chairman Fancher called the meeting to order at 5:01 p.m. A roll call was taken and Board members present were Jake Wolf, Buz Reynolds, Matt Gennett, Megan Burch, Scott Prince and Sarah Smith Hymes. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Planning Director Matt Pielsticker, Town Engineer Justin Hildreth, 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 – COMMENTS ARE WELCOME ON TOPICS NOT ON THE AGENDA

No public comments made.

4. PUBLIC HEARING SPECIAL EVENTS PERMIT

4.1. Applicant Name: Bright Future Foundation for Eagle County

Event Name: Boulder Symphony

Event Date: August 7, 2016

Event Name: Avon Live!

Event Date: August 10, 2016

Event Time: 4:00 p.m. until 9:00 p.m.

Location: Nottingham Park

Event Manager: Casey Angel

Permit Type: Malt, Vinous & Spirituous Liquor

The application was presented with no concerns. Chairman Fancher opened the public hearing and no comments were made. Board member Reynolds moved to approve the Special Event Permit application for the upcoming Boulder Symphony and Avon Live! events; Vice Chairman Wolf seconded the motion and it passes unanimously by those present.

4.2. Applicant Name: Roundup River Ranch

Event Name: Campfire Games

Event Date: August 27, 2016

Event Time: 9:00 a.m. until 3:00 p.m.

Location: Nottingham Lake

Event Manager: Sarah Ingersoll

Permit Type: Malt, Vinous & Spirituous Liquor

The application was presented with no concerns. Chairman Fancher opened the public hearing and no comments were made. Board member Gennett moved to approve the Special Event Permit application for the upcoming Campfire Games event; Board member Reynolds seconded the motion and it passes unanimously by those present.



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, JULY 26, 2016
AVON TOWN HALL, ONE LAKE STREET

5. MINUTES FROM JULY 12, 2016

Vice Chairman Wolf moved to approve the Minutes from July 12, 2016; Board member Gennett seconded the motion and it passed unanimously by those present. Board member Prince abstained from the vote.

6. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 5:07 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

TO: Honorable Mayor Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Ordinance No. 16-16 Approving Comcast Franchise Agreement
DATE: August 3, 2016

SUMMARY: The Town of Avon entered into a 15 year Franchise Agreement with TCI Cablevision of the Rockies which expired in 2010. The TCI Franchise Agreement was assigned to Comcast years ago. Avon Town staff has pursued negotiations with Comcast for renewal of the Franchise Agreement for several years. Initially, Avon followed the Franchise Agreement renewal process in Vail, which was a comprehensive review process.

The majority of terms of the Franchise Agreement follow a common form adopted by Comcast and the vast majority of communities in Colorado, including the Town of Vail. The Franchise Agreement includes the same 5% franchise fee and provisions concerning the level of service for the Town as in the prior Franchise Agreement. During Town Council and community review in 2014, two terms remained unresolved, including (1) the ability of the Town of Avon to increase the PEG Fees higher than 50 cents per month for individual subscribers, and (2) the ability to re-negotiate the Franchise Agreement when regulatory changes occur. The remaining terms of the Franchise Agreement were reviewed and tentatively accepted by Council in 2014. These outstanding issues are discussed below. The Term of the Franchise Agreement is through the end of 2022 (i.e. a little more than 6 years). The Town of Avon will have the ability to initiate Franchise Agreement renewal negotiations in 2021 (i.e. in 5 years).

Council approved First Reading of Ordinance No. 16-16 at its regular meeting on July 26, 2016. Second reading is presented for Council's consideration. Pursuant to the Avon Home Rule Charter, Council must conduct a public hearing on second reading.

PROPOSED MOTION: "I move to approve on second and final reading Ordinance No. 16-16 Approving a Franchise Agreement with Comcast of Colorado VII, LLC for the Provision of Cable Services in the Town of Avon."

PEG FEES: PEG Fees are additional fees that can be imposed to support local community public access channels. PEG Fees can only be used for capital improvements. Pursuant to Town Council direction, Town staff proposed language that would have allowed the Town to raise the monthly PEG Fee above 50 cents per month up to 75 cents per month for residential customers and above 25 cents per month to 40 cents per month for bulk subscribers.

Upon further negotiations with Comcast and research of Comcast Franchise Agreements with other communities, it was determined that Comcast has only approved PEG Fees higher than 50 cents per month for residential users in very rare situations where extensive research demonstrated an immediate and significant need for capital improvements. Comcast feels that higher PEG Fees may have a direct impact on Comcast's ability to compete with other television service providers. Comcast did indicate that it was willing to advance funds for capital improvements which would then be reimbursed through PEG Fees and that Comcast has implemented this approach in other communities. Town staff worked closely with Channel 5 to determine capital improvement needs for the Avon community. Based upon this research, Town staff negotiated a new **Section 9.5(B) Initial Capital Contribution** whereby Comcast will advance

\$18,000 for immediate capital improvements and shall retain 70% of PEG Fees until the Initial Capital Contribution is reimbursed.

REGULATORY CHANGES: The Franchise Agreement addresses regulatory changes in Section 14.5. The standard language states that both parties agree to use best efforts to renegotiate the Franchise Agreement if regulations change or expand the rights of either party. Town staff had proposed language that would have allowed the Town to terminate the Franchise Agreement after 2 years if negotiations were not successful. Comcast was resistant to the language the Town proposed, which Comcast has not adopted in any other Franchise Agreement. At this point, considering the short term of the Franchise Agreement, Town staff feels that the concern about the Town's rights to renegotiate if regulatory changes occur is reduced commensurately with the short Term. Therefore, Town staff is recommending that the Town not pursue further language that allows the Town to terminate the Franchise Agreement if regulatory changes occur and re-negotiation of the Franchise Agreement before expiration of the remaining Term is not successful.

Thank you, Eric

Attachments: Ordinance No. 16-16 with Exhibit A: Comcast Franchise Agreement



**TOWN OF AVON
ORDINANCE 16-16**

**APPROVING A FRANCHISE AGREEMENT WITH
COMCAST OF COLORADO VII, LLC FOR THE PROVISION OF
CABLE SERVICES IN THE TOWN OF AVON**

WHEREAS, the Town of Avon, Colorado, (“Town”) and TCI Cablevision, the predecessor of Comcast Colorado VII, LLC (“Comcast”), entered into a Franchise Agreement on January 1, 1996, to allow TCI Cablevision to provide cable service to subscribers of such service in the Town of Avon, which Franchise Agreement expired on December 31, 2010, and then continued on a month by month basis in accordance with the Federal Telecommunications Act of 1996;

WHEREAS, negotiations for a new Franchise Agreement have been on-going;

WHEREAS, during negotiations the performance and technical issues of the expired Franchise Agreement were met within the Town;

WHEREAS, no outstanding areas of noncompliance have been identified within the Town;

WHEREAS Section 17.6 of the Avon Town Charter authorizes the Town Council to grant a franchise by ordinance and to establish the term, fees, compensation, conditions and any other matters related to the granting of franchises; 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, THAT:

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. **Franchise Agreement Approved.** The Franchise Agreement between the Town and Comcast is hereby approved in the form attached hereto as **Exhibit A**, for a term of six (6) years, commencing on September 8, 2016.

Section 3. Mayor and Town Clerk Authorized to Execute Documents. The Mayor and Town Clerk are authorized to execute documents approved in this Ordinance and take such other actions as may be reasonably necessary to implement the actions 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 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. Correction of Errors. Town Staff is authorized to insert proper dates, references to recording information and make similar changes, and to correct any typographical, grammatical, cross-reference, or other errors which may be discovered in any documents associated with this Ordinance and documents approved by this Ordinance provided that such corrections do not change the substantive terms and provisions of such documents.

Section 8. Publication. 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 July 26, 2016 and setting such public hearing for August 9, 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 August 9, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:



Eric J. Heil, Town Attorney

EXHIBIT A:
TOWN OF AVON – COMCAST
FRANCHISE AGREEMENT
September 8, 2016

**TOWN OF AVON - COMCAST
FRANCHISE AGREEMENT**

September 8, 2016

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FRANCHISE AGREEMENT

This Franchise Agreement ("**Agreement**") is made between the Town of Avon, Colorado, a Colorado home rule municipality ("**Town**") and Comcast of Colorado VII, LLC ("**Comcast**"), on September 8, 2016.

WHEREAS, the Town, having determined that the financial, legal, and technical ability of Comcast is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Agreement with Comcast for the operation and maintenance of a cable system on the terms and conditions set forth herein.

NOW THEREFORE, the Town and Comcast agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings, provided that terms not defined, or those defined, but not capitalized within the text, shall be given their common and ordinary meaning, and the word "shall" is always mandatory:

"**Access**" includes Public Access, Educational Access and Governmental Access, collectively and means the availability for Noncommercial use by various governmental and educational agencies, institutions and organizations in the community of particular channels on the Cable System to receive and distribute Video Programming to subscribers as permitted under applicable law.

"**Access Channel**" means any Channel designated for Access purposes or otherwise made available to facilitate Access programming.

"**Affiliate**" when used in connection with Comcast means any Person who owns or controls, is owned or controlled by, or is under common ownership or control of Comcast.

"**Bad Debt**" means amounts lawfully owed by a Subscriber and accrued as revenues on the books of Comcast, but not collected after reasonable efforts by Comcast.

"**Basic Service**" means any Cable Service Tier that includes, at a minimum, the retransmission of local television Broadcast Signals and PEG Access Channels required in this Franchise and any additional programming added by the Town and made available to all Subscribers in the Franchise Area.

"**Broadcast Signal**" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite dishes or any other means.

"**Cable Act**" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, and any amendments thereto.

"**Cable Operator**" means any Person or group of Persons, including Comcast, who provides Cable Service over the Cable System and directly or through one or more Affiliates owns a significant interest in such Cable System or who otherwise controls or is responsible for, through any arrangement, the management and operation of the Cable System.

"**Cable Service**" means the one-way transmission to Subscribers of Video Programming, or other programming service and Subscriber interaction, if any, that is required for the selection or use of such Video Programming or other programming service.

"**Cable System**" means Comcast's facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, designed to provide Cable Service that includes Video Programming and provided to Subscribers in the Franchise Area.

"**Channel**" means a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof.

"**Designated Access Provider**" means an entity designated by the Town to manage or co-manage Public, Educational or Governmental Access Channels and facilities. The Town may be a Designated Access Provider.

"**Dwelling Unit**" means any building or portion thereof that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy.

"**Educational Access**" means Access where Schools are the primary users having editorial control over programming and services.

"**Emergency**" means any condition constituting a clear and present danger to life or property.

"**Expanded Basic Service**" means cable programming services not included in the Basic Service and excluding premium or pay-per-view services.

"**FCC**" means the Federal Communications Commission or its lawful successor.

"**Fiber Optic**" means a transmission medium of optical fiber cable, along with all associated electronics and equipment capable of carrying electric lightwave pulses.

"**Franchise Area**" means the area within the jurisdictional boundaries of the Town, including any areas hereafter annexed by Town.

"**Franchise Fee**" includes any tax, fee or assessment of any kind imposed by the Town on Comcast or Subscribers, or both solely because of their status as such, but excluding: (i) any tax, fee or assessment of general applicability (including any such tax, fee, or assessment on both utilities and Cable Operators or their services, but not including a tax, fee, or assessment that is unduly discriminatory against Cable Operators or cable Subscribers); (ii) capital costs that are required by the Agreement to be incurred by Comcast for Access facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Agreement, including but not limited to, payments for bonds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17, United States Code.

"Governmental Access" means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

"Gross Revenue" means all revenue derived directly or indirectly by Comcast or its Affiliates from the operation of the Cable System in the Franchise Area, including without limitation monthly and other fees charged Subscribers for Cable Service including Basic Service, Expanded Basic Service, any expanded Tiers of Cable Service, other Tiers of Cable Service, optional Premium Service, pay-per-view and per-program Channels, Cable Service installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, remote control rental fees, late fees and administrative fees, consideration received by Comcast from programmers for carriage of Cable Service on the Cable System and recognized as revenue under generally accepted accounting principles ("GAAP"), revenues from rentals of converters or other Cable System equipment, advertising sales revenues (including local, regional and a pro rata share of national advertising carried on the Cable System in the Franchise Area but excluding commissions paid to an unaffiliated agency), revenues from program guides, additional outlet fees, revenue from the sale or carriage of other Cable Service, and revenues from home shopping. Franchise Fees are included in Gross Revenue. Gross Revenue does not include (i) to the extent consistent with GAAP, Bad Debt, provided, however, that any part of such Bad Debt that is written off but subsequently collected shall be included in Gross Revenue in the period collected; or (ii) any taxes on services furnished by Comcast that are imposed directly on any Subscriber or user by the State, Town or other governmental unit and that are collected by Comcast on behalf of said governmental unit; or (iii) capital costs or contributions required by this Franchise.

"Headend" or **"Hub"** means a facility for signal reception and dissemination on a Cable System, including cable, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals or other signals, and all other related equipment and Facilities.

"Incremental Costs" means Comcast's direct and actual material and labor cost (excluding profit) of constructing, relocating or placing additional facilities for the Town, excluding the costs that Comcast would otherwise incur to construct, relocate or place facilities for Comcast including, but not limited to, trenching, pipe bedding, backfilling, compacting, restoring the surface, and other charges, costs or expenses.

"Interconnect" or **"Interconnection"** means the provision of Access Channel programming to a geographically contiguous cable system, including technical, engineering, physical, and other necessary components to accomplish, complete and adequately maintain such provisioning.

"Late fee" means and includes any assessment, charge, cost, fee or sum, however characterized, that Comcast imposes upon a Subscriber solely for late payment of a bill is a late fee.

"Leased Access Channel" means any Channel or portion of a Channel commercially available for programming in accordance with Section 612 of the Cable Act.

"Noncommercial" means, in the context of Access Channels, those particular products and services that are not promoted or sold in order to generate revenue that exceeds the costs of operations for the Town or any Designated Access Provider. This term shall not be interpreted

to prohibit an Access Channel operator or programmer from soliciting and receiving contributions used to produce and transmit Video Programming on an Access Channel, or from acknowledging a contribution, in the manner of the Corporation for Public Broadcasting or some similar manner, subject to applicable law.

"**Person**" means any natural person, lawful trustee, successor, assignee, transferee, or personal representative, sole proprietorship, partnership, joint venture, association, or limited liability entity or corporation, or any other form of entity or organization.

"**Public Access**" means Access where any member of the general public may be a programmer on a nondiscriminatory basis, subject to operating rules formulated by the Town or its designee. Such rules shall not be designed to control the content of public access programming. Such rules may also address the extent to which and manner in which members of the general public who are not residents of the Town may be programmers on the Access Channel.

"**Public Way**" means land in the Franchise Area acquired for or dedicated to the public and maintained under public authority, including but not limited to public streets, roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements, and similar public property.

"**Residential Subscriber**" means any Person who receives Cable Service delivered to a Dwelling Unit, excluding such multiple Dwelling Units billed on a bulk-billing basis.

"**Standard Installation**" means a one hundred twenty five (125) foot drop connecting to the exterior demarcation point.

"**State**" means the State of Colorado.

"**Subscriber**" means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

"**Tier**" means a category of Cable Service provided by Comcast for which a separate rate is charged.

"**Video Programming**" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, or cable programming provider primarily consisting of full motion video and audio.

SECTION 2. GRANT OF FRANCHISE

2.1 GRANT

(A) The Town hereby grants to Comcast a nonexclusive authorization to make reasonable and lawful use of the Public Ways to construct, operate, maintain, reconstruct, repair and upgrade the Cable System for the purpose of providing Cable Service, subject to this Agreement and applicable law. Comcast shall provide Cable Service, as authorized by this Agreement, in the Franchise Area in accordance with line extension and density provisions as provided herein. The franchise granted by this Agreement is subject to all prior rights, interests, easements, or

franchises granted by Town or its predecessors to any Person to any property or Public Way, including the right of the Town to use same for any purpose it lawfully deems fit. This Agreement conveys limited rights and interests in only those Public Ways in which the Town has an actual interest; it is not a warranty of title or interest in any property.

(B) Comcast shall comply with the Avon Town Code and the lawful exercise of the Town's police power. Subject to the Town's lawful exercise of its police power, in the event of a conflict between the Avon Town Code and the Agreement, the Agreement shall govern. Comcast acknowledges that the Town may enforce or modify its generally applicable regulatory policies by lawful exercise of the Town's police powers throughout the term of this Agreement, and Comcast agrees to comply with such lawful enforcement or modifications. Comcast reserves the right to challenge provisions of any ordinance, rule, regulation or other enactment of the Town that conflicts with its contractual rights under the Franchise, either now or in the future. This Agreement shall not be interpreted to prevent the Town from imposing other conditions, to the extent permitted by law.

(C) No rights shall pass to Comcast by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not be a substitute for: any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that is required by the Town; any permit, agreement or authorization required by the Town for Public Way users in connection with operations on or in Public Ways or public property; or any permits or agreements for occupying any other property to which access is not specifically granted by this Agreement.

(D) This Agreement is an express authorization to provide Cable Service only. This Agreement is not a bar to the imposition of any lawful conditions on Comcast with respect to non-Cable Service, telecommunications services or information services, whether similar, different or the same as the condition specified herein. This Agreement does not relieve Comcast of any obligation it may have to obtain from the Town an authorization to provide non-Cable Service, telecommunications services or information services or relieve Comcast of its obligation to comply with any such authorization(s) that may be lawfully required.

(E) This Agreement shall have no effect on any obligation of Comcast in effect prior to the effective date of this Agreement to indemnify or insure the Town against acts and omissions occurring during the period that the prior franchise agreement was in effect, nor shall it have any affect upon liability to pay Franchise Fees that were due and owed under a prior franchise.

2.2 USE OF PUBLIC WAYS

(A) Subject to the Avon Town Code, as amended, Comcast may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, through, below and along the Public Ways, such wires, cables, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System.

(B) Comcast shall install Cable System facilities in a manner that minimizes interference with the use of the Public Ways by others. To protect public health, safety and welfare, the Town

may: require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Public Ways; deny access if Comcast is not willing to comply with Town's requirements; remove, or require removal of, any facility that is not installed in compliance with the requirements established by Town, or that is installed without prior Town approval of the time, place or manner of installation and charge Comcast for all the costs associated with removal; and require Comcast to cooperate with others to minimize adverse impacts on the Public Ways through joint trenching and other arrangements.

2.3 TERM

This Agreement shall have a term of six (6) years, beginning on the Effective Date and shall expire on December 31, 2022.

2.4 EFFECTIVE DATE

The Effective Date of this Agreement shall be September 8, 2016.

2.5 COMPETITIVE EQUITY

(A) Comcast acknowledges and agrees that the Town reserves the right to grant additional franchises to provide Cable Service in the Franchise Area; provided that if any such franchise is granted by the Town which, in the reasonable opinion of Comcast, contains more favorable or less burdensome Material Terms and Conditions than this Agreement, the Town agrees that, within ninety (90) days of Comcast's request, the parties shall amend this Franchise to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material Terms and Conditions" includes without limitation: Franchise Fees; insurance coverage amounts; System build-out requirements; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this Subsection does not require a word for word identical franchise or authorization for a competitive entity if the regulatory and financial burdens on each entity are materially equivalent.

(B) If an application for a new cable franchise is filed with the Town proposing to serve the Franchise Area, in whole or in part, the Town shall make a good faith effort to provide notice of such application upon Comcast prior to acting on the application.

(C) Notwithstanding any provisions to the contrary, at any time that a facilities-based Cable Services provider, legally authorized by state or Federal law, makes Cable Services or multiple Channels of Video Programming within the Franchise Area available for purchase by Subscribers without a franchise or other similar lawful authorization granted by the Town, then Comcast may seek modification pursuant to subsection (A) hereof, or the term of this Franchise shall, upon ninety (90) days written notice from Comcast, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Comcast's notice; provided, however, that if the provision of Cable Services or Video Programming by the other facilities-based Cable Services Provider within the Franchise Area is being legally challenged by the Town, the term of this Franchise shall remain unaffected until such legal challenge is concluded.

2.6 FAMILIARITY WITH AGREEMENT AND ACCEPTANCE

(A) Comcast acknowledges and warrants that it has carefully read and fully comprehends the terms of this Agreement and that it has fully considered the requirements of this Agreement, and finds that the same are commercially practicable at this time and consistent with all local, State and federal laws and regulations currently in effect.

(B) By executing this Agreement, Comcast: (1) acknowledges and accepts the Town's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Town's lawful intervention in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with every provision of this Agreement; and (4) agrees that the Agreement was negotiated in compliance with applicable law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS

3.1 FRANCHISE FEE

As compensation for the use of the Public Ways, Comcast shall pay as a Franchise Fee to Town, for the duration of this Agreement, an amount equal to five percent (5%) of Comcast's Gross Revenue.

3.2 PAYMENTS

(A) Franchise Fee payments to Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates. For untimely payments, Comcast shall pay, in addition to the payment or sum due, interest from the due date at the rate of eight percent (8%) per annum until the date the Town receives the payment.

(B) No acceptance of payment shall be construed as an accord by Town that the amount paid is the correct amount, nor shall an acceptance of payment be construed as a release of any claim Town may have against Comcast. The period of limitation for recovery of Franchise Fees payable hereunder shall be three (3) years from the date on which payment by Comcast was due or such shorter period of time if so provided by law.

(C) A report prepared by a representative of Comcast showing the basis for the computation of the Franchise Fees paid during that period shall either accompany the Franchise Fee payment or be provided under separate cover within ten days of the report.

3.3 AUDITS

(A) On an annual basis, upon thirty (30) days' prior written notice, the Town may conduct an independent audit of Comcast's financial records necessary to ensure compliance with this Agreement. If Comcast cooperates in making all relevant records available upon request, the Town will in good faith attempt to complete each audit within six (6) months, and the audit period shall not be any greater than the previous three (3) years.

(B) Additional amounts due to the Town as a result of the audit shall be paid within sixty (60) days following written notice to Comcast. If a Franchise Fee underpayment is discovered as the result of an audit, Comcast shall pay, in addition to the amount due, interest at the maximum

allowed rate as provided under State law calculated from the date the underpayment was originally due until the date the Town receives the payment.

(C) If the audit shows that Franchise Fees have been underpaid by five percent (5%) or more in a calendar year, Comcast shall pay the actual cost of the audit in a total amount not to exceed \$10,000.

3.4 ADDITIONAL COMMITMENTS NOT FRANCHISE FEES

No term of this Agreement shall affect Comcast's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Gross Revenue in any twelve-month period, Comcast agrees that the additional commitments regarding PEG funding and Access Channels are not Franchise Fees, nor are they to be offset or credited against Franchise Fee payments unless specifically provided by applicable law.

3.5 PAYMENT ON TERMINATION

Within one hundred twenty (120) days of termination of this Agreement, Comcast shall file with the Town a financial statement, certified by an independent certified public accountant, showing the Gross Revenue received by Comcast since the end of the previous fiscal year. Within forty-five (45) days of the filing of the certified statement with the Town, Comcast shall pay any unpaid amounts as indicated. If Comcast fails to satisfy its remaining financial obligations as required in this Agreement, the Town may do so by utilizing the funds available in a Letter of Credit or other security provided by Comcast.

3.6 SERVICE PACKAGES

If Comcast offers bundled Cable Service and non-Cable Service to Subscribers, Comcast shall fairly and reasonably allocate revenue with regard to Cable Service.

3.7 TAX LIABILITY

The Franchise Fees shall be in addition to all taxes or other levies or assessments now or hereafter required to be paid by businesses by any applicable law including without limitation sales, use, utility and other taxes, and business license fees.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 RATES AND CHARGES

(A) Comcast's rates and charges for Cable Service shall be subject to regulation by Town to the full extent authorized by applicable federal, State and local laws. Subscriber billing shall be itemized by service pursuant to FCC Regulation, 47 C.F.R. § 76.1619 or as amended.

(B) Comcast will use best efforts to maintain with the Town a current schedule of applicable rates charged for Cable Service provided under this Agreement. The Town recognizes that such rates change periodically, and if the Town clerk has reason to believe that the schedule of rates on file is not up to date, then upon three (3) days advance request, Comcast shall provide the Town with a current and complete schedule of applicable rates and charges for Cable Service provided to Subscribers in the Town. Nothing in this Subsection shall be construed to require

Comcast to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

4.2 NO RATE DISCRIMINATION

All Comcast rates and charges shall be published (in the form of a publicly-available rate card), made available to the public, and shall be non-discriminatory as to all Persons of similar classes, under similar circumstances. Nothing herein shall be construed to prohibit:

- (1) The temporary reduction or waiving of rates or charges in conjunction with promotional campaigns;
- (2) The offering of reasonable discounts to similarly situated Persons; or
- (3) The offering of bulk discounts for multiple Dwelling Units.

4.3 TIME LIMITS STRICTLY CONSTRUED

When this Agreement sets forth a time for any act to be performed by Comcast, such time shall be deemed to be of the essence, and any failure of Comcast to perform within the allotted time may be considered a breach of this Agreement.

4.4 PERFORMANCE EVALUATIONS

Special evaluation sessions may be held at any time upon written request and upon not less than thirty (30) days prior notice by the Town during the term of this Agreement. All such evaluation sessions shall be open to the public. Topics that may be discussed at any evaluation session may include those issues surrounding Comcast's failure to comply with the terms of the Agreement provided that nothing in this Subsection shall be construed as requiring the renegotiation of this Agreement or any term or provision therein and further provided that this Subsection need not be followed before other legal or equitable remedies within this Agreement.

4.5 LATE FEES AND DISCONNECTION

Comcast's late fee and disconnection policies and practices shall be nondiscriminatory, and such policies and practices, and any fees imposed pursuant to this Subsection, shall apply equally throughout the Franchise Area without regard to the neighborhood or income level of the Subscribers.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 INDEMNIFICATION

(A) Comcast, at its own expense, shall indemnify, defend and hold harmless the Town, its officers, officials, boards, commissions, agents, representatives and employees, from any action or claim for injury, damage, loss, liability, settlement, proceeding, judgment, or cost or expense, including court and appeal costs and attorney fees and expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, erection, operation, maintenance, repair or reconstruction, or any other act done under this Agreement, by or for Comcast, its authorized agents, or by reason of any neglect or

omission of Comcast, its authorized agents or its employees. Comcast shall consult and cooperate with the Town while conducting its defense of the Town.

(B) The provisions of this Section 5 shall survive the termination of this Agreement unless superseded by indemnification provisions in a new franchise or in federal or state law.

(C) Subject to applicable law, Comcast shall indemnify the Town for any damages, including but not limited to damages incurred as a result of delay, payable by the Town related to Comcast's failure to properly install, remove, adjust or relocate any of its facilities in the Public Ways in accordance with any lawful relocation required by the Town.

(D) Comcast shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost and expense, including court and appeal costs and attorney fees and expenses in any way arising out of any failure by Comcast to secure consents from the owners, authorized distributors or franchisees/licensors of programs to be delivered by the Cable System, provided however, that Comcast will not be required to indemnify the Town for any claims arising out of the use of Access Channels by the Town or its Designated Access Provider or use by the Town of the emergency alert system.

5.2 INDEMNIFICATION PROCEDURES AND DEFENSE

(A) If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim or action to Comcast, which defense shall be at Comcast's expense. The Town may participate in the defense of a claim and Comcast may not agree to any settlement of claims without the Town's written approval, which shall not be unreasonably withheld.

(B) The fact that Comcast carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of or defense to Comcast's duty of defense and indemnification.

(C) If separate representation is necessary, such as a conflict of interest between the Town and the counsel selected by Comcast to represent the Town, Comcast shall select other counsel.

5.3 INSURANCE

(A) Comcast shall maintain at all times in full force and effect at its own expense each of the following policies of insurance:

(1) Commercial General Liability coverage for bodily injury, personal injury, and property damage with limits of no less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall be no less than two million dollars (\$2,000,000).

(2) Commercial Automobile Liability Insurance with minimum combined single limits of at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate with respect to each of Comcast's owned, hired and non-owned, or any other vehicles assigned to or used in any activities authorized under or used in conjunction with this Agreement.

(3) Employer's Liability with limits of at least one million dollars (\$1,000,000).

- (4) Workers' Compensation insurance shall be maintained during the life of this Agreement to comply with State law for all employees.
- (B) Each policy shall provide that the insurance shall not be canceled or terminated so as to be out of compliance with these requirements without forty-five (45) days' prior written notice, and ten (10) days' notice for nonpayment of any premium. Comcast shall maintain continuous uninterrupted insurance coverage, in at least the amounts required, until all work required to be performed under the terms of this Agreement is satisfactorily completed and, in the case of Commercial General Liability Insurance, for at least one (1) year after termination of this Agreement. A failure of Comcast to comply with any claim reporting provisions or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect the Town. However, if coverage is not afforded under these circumstances, Comcast shall indemnify the Town for losses the Town otherwise would have been covered for as an additional insured.
- (C) All insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Town, its officers, officials, agents, and employees for any claims arising out of Comcast's work or service. Comcast shall be responsible for deductibles or self-insured retention.
- (D) All policies shall contain, or shall be endorsed so that:
- (1) The Town and its officers, officials, boards, commissions, agents, representatives, and employees are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Comcast under this Agreement or applicable law, or in the construction, operation, upgrade, maintenance, repair, replacement or ownership of the Cable System;
 - (2) Comcast's insurance coverage shall be primary insurance with respect to the Town and its officers, officials, boards, commissions, agents, volunteers and employees. Any insurance or self insurance maintained by the Town or its officers, officials, boards, commissions, agents, representatives, volunteers or employees shall be in excess of Comcast's insurance and shall not contribute to it, provided the occurrence arises out of Comcast's negligence; and
 - (3) Comcast's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (E) Comcast shall furnish the Town with certificates of insurance and an endorsement reflecting additional insured status. The certificates for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices, and are to be received and approved by the Town at the time of acceptance of this Agreement by Comcast with existing insurance coverage to be maintained by Comcast until that date. Comcast hereby warrants that its insurance policies satisfy the requirements of this Agreement.
- (F) The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on liability or indemnification.

5.4 LETTER OF CREDIT

(A) At any time during the term of this Agreement, if there is a claim by the Town of an uncured breach by Comcast of a provision of this Franchise, then the Town may require and Comcast shall establish and provide, as quickly as possible, but no later than thirty (30) days after a request from the Town, a letter of credit from a financial institution satisfactory to the Town in the amount of fifty thousand dollars (\$50,000).

(B) After completion of the procedures set forth in Section 12.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Town for purposes that include, but are not limited to the following:

- (1) Failure of Comcast to pay the Town sums due under this Agreement;
- (2) Reimbursement of costs borne by the Town to correct violations not corrected by Comcast; and
- (3) Liquidated damages assessed against Comcast as provided in this Agreement.

(C) The Town shall give Comcast written notice of any withdrawal under this Subsection upon such withdrawal. Within ten (10) days following receipt of such notice, Comcast shall restore the letter of credit to the amount required under this Agreement.

SECTION 6. CUSTOMER SERVICE

6.1 SERVICE AVAILABILITY

(A) Except as otherwise provided herein, Comcast shall provide a standard aerial installation of Cable Service within seven (7) days of a request by any Person in the Franchise Area. Standard Installations shall be done within seven (7) days of a request for service. Comcast shall provide such service:

- (1) With no extension charge except as specifically authorized by this Agreement;
- (2) At a non-discriminatory installation charge for a Standard Installation and with additional charges for non-Standard Installations computed according to a non-discriminatory methodology for such installations; and
- (3) At non-discriminatory monthly rates for all Subscribers, excepting commercial Subscribers, Multiple Dwelling Unit Bulk Subscribers and other lawful exceptions to uniform pricing.

(B) No Person shall be refused service arbitrarily. However, for non-Standard Installations or a density of less than twenty five (25) residences per 5280 aerial cable-bearing strand feet of trunk or distribution cable, or sixty (60) residences per 5280 underground trench feet of trunk or distribution cable, Cable Service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. Comcast may require that the payment of the capital contribution in aid of construction be borne by such potential Subscribers and be paid in advance.

6.2 CUSTOMER SERVICE STANDARDS

(A) Comcast shall comply with the Customer Service Standards (CSS), which are attached to this Franchise as Exhibit A.

6.3 CUSTOMER PRIVACY

Comcast shall comply with privacy rights of Subscribers in accordance with applicable law.

6.4 CUSTOMER SERVICE AGREEMENT AND MANUAL

(A) Comcast shall provide to Subscribers an accurate, comprehensive service agreement and Subscriber installation packet for use in establishing Customer service. This material shall, at a minimum, contain the following:

- (1) Comcast's procedure for investigation and resolution of Customer complaints;
- (2) Services to be provided and rates for such services;
- (3) Billing procedures;
- (4) Service termination procedure;
- (5) A complete statement of the Subscriber's right to privacy;
- (6) Equipment policy; and,
- (7) The name, address and phone number of the Subscriber service department that is responsible for handling questions and complaints for Comcast.

(B) A copy of the current installation packet shall be available to each Subscriber: (1) at the time of initial installation and at any time the packet is requested by the Subscriber.

SECTION 7. RECORDS

7.1 REQUIRED RECORDS

(A) Comcast shall at all times maintain:

- (1) Access to a full and complete set of plans, records and maps showing the location of all Cable System facilities in Public Ways;
- (2) A copy of all FCC filings on behalf of Comcast, its parent corporations or Affiliates that relate to the operation of the Cable System in the Franchise Area;
- (3) A list of Comcast's rates and Channel line-ups; and,
- (4) Financial records as required by Section 3 hereof.

(B) The Town, upon reasonable prior written notice to Comcast, may review Comcast's records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Comcast's compliance with this Agreement, including without limitation any records required to be kept in a public file by Comcast pursuant to FCC rules and regulations. All such records shall be retained by Comcast for at least three (3) years. Comcast shall not deny the Town access to any of Comcast's records on the basis that Comcast's records are under the control of any parent

corporation, Affiliate or a third party. The Town may request in writing copies of such records that are reasonably necessary, and Comcast shall provide such copies within thirty (30) days at Comcast's sole expense. If the requested records are too voluminous, or for security reasons cannot be copied or removed, then Comcast may request, in writing within ten (10) days of receipt of such request, that the Town inspect them at Comcast's local offices or at one of Comcast's offices more convenient to Town or its duly authorized agent. If any records of Comcast are not kept in such office and not made available to the Town upon written request, and if the Town determines that an examination of such records is necessary for the enforcement of this Agreement, then all reasonable travel expenses incurred in making such examination shall be paid by Comcast.

(C) Comcast shall maintain at its business office, in a file available for public inspection during regular business hours, those documents required pursuant to FCC rules and regulations.

(D) Comcast shall keep an accurate and comprehensive compilation of any and all Subscriber complaints received and Comcast's actions in response to those complaints, in a manner consistent with the privacy rights of Subscribers. Comcast shall provide an executive summary report to the Town on an annual basis within one hundred twenty (120) days of the end of each year that shall include the following information:

- (1) Nature, date and type of Subscriber complaints escalated to Comcast by the Town in writing and date complaints were resolved;
- (2) Average response time for service calls;
- (3) Phone activity report;
- (4) A summary of the previous year's activities regarding the development of the Cable System, including, beginning and ending plant miles constructed;
- (5) An annual report of the company on Form 10-K that is filed with the U.S. Securities and Exchange Commission; and,
- (6) A copy of all Comcast's rules and regulations applicable to Subscribers.

7.2 PROPRIETARY INFORMATION

If Comcast provides records to the Town, the Town agrees to keep confidential any proprietary information to the extent permitted by law. Comcast shall be responsible for clearly and conspicuously identifying the work proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under applicable law.

7.3 COPIES OF FEDERAL AND STATE REPORTS

Within thirty (30) days of the Town's written request, Comcast shall submit to the Town copies of any pleading, application, notification, communication or document of any kind, submitted by Comcast or an Affiliate to any federal, State or local court, regulatory agency or other government body if such documents relate to the operations of the Cable System. Comcast shall not claim confidential, privileged or proprietary rights to such documents, unless under federal, State, or local law such documents have been determined to be confidential by a court of

competent jurisdiction, or a federal or State agency. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating the Cable System, Comcast shall make such documents available to the Town upon the Town's written request.

SECTION 8. PROGRAMMING

8.1 BROAD PROGRAMMING CATEGORIES

(A) Comcast shall provide at least the following initial broad categories of programming to the extent such categories are reasonably available.

- Educational programming;
- News, weather and information;
- Sports;
- General entertainment including movies;
- Foreign language programming;
- Children's programming;
- Family oriented programming;
- Arts, culture, performing arts programming;
- Science and documentary programming;
- National/international news; and
- Local/regional news.

(B) Comcast shall not delete or so limit as to effectively delete any broad category of programming within its control without prior written notice to the Town.

(C) In the event of a modification proceeding under federal law, the mix and quality of Cable Service provided by Comcast shall follow the guidelines of Federal law.

8.2 OBSCENITY

Comcast shall not transmit, or permit to be transmitted, over any Channel subject to its editorial control any programming which is obscene under applicable federal, State or local laws.

8.3 SERVICES FOR THE DISABLED

In providing Cable Service to the disabled, Comcast shall comply with the Americans With Disabilities Act, as amended.

8.4 PARENTAL CONTROL DEVICE

Upon request by any Subscriber, Comcast shall make available at no charge a parental control device to enable a Subscriber to control access to both the audio and video portions of any Channels. Comcast shall inform its Subscribers of the availability of the device at the time of their initial subscription and upon request.

8.5 COMPLIMENTARY CABLE SERVICE

Comcast, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Service to those buildings now existing, acquired or hereafter constructed that are either owned and occupied or leased and occupied by the Town, its designee or other governmental entity, including without limitation fire stations, police stations, libraries, schools and the Access studio, provided that they are already served or are within one hundred twenty-five (125) feet of the Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from Comcast, which shall not be unreasonably withheld. In the case of leased facilities, the recipient of service is responsible for securing approval for appropriate right of entry suitable to Comcast in its reasonable discretion. The Cable Service provided shall not extend to areas of Town buildings where the Comcast would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities) or be used for commercial purposes. For new hookups, Comcast shall not provide an outlet to such buildings where a non-Standard Installation is required, unless the Town or building owner/occupant agrees to pay the cost of the non-Standard Installation.

SECTION 9. ACCESS

9.1 ACCESS CHANNELS

- (A) Comcast shall provide, at no charge, two (2) Public, Educational or Governmental (PEG) Access Channels.
- (B) The Town may delegate management of the PEG Access Channels to a Designated Access Provider.
- (C) All PEG Access Channels provided for in this Agreement shall be carried system-wide in the Franchise Area, and shall be provided on the Basic Service tier unless otherwise agreed to by the parties.
- (D) The technical quality of the PEG Access Channels shall not be lower than the quality of other Channels on the same tier of service, at the same technical quality that programming is provided to Comcast by the Town or its Designated Access Provider.
- (E) The Town shall establish and enforce rules for use of the PEG Access Channels to assure nondiscriminatory access to the Channels to similarly situated users; and to promote use and viewership of the channels, consistent with applicable law. PEG Access Channels may not be used for commercial purposes.
- (F) Comcast may not exercise any editorial control over the content of programming on the PEG Access Channels.

9.2 UNDERUTILIZED ACCESS CHANNELS

Comcast and the Town agree that it is their mutual goal to fully and efficiently use the Channel capacity of the Cable System, which may include allowing Comcast to use underutilized Access Channels. If Comcast believes that any Access Channel is underutilized, Comcast may file a

request with the Town to use that Access Channel. The Town shall in its sole discretion render a decision regarding the matter within six (6) months of receiving the request. Should the Town find that the Access Channel may be used by Comcast, then Comcast may begin using such Channel thirty (30) days after receipt of the decision. In the event the Town determines, in Town's sole discretion, that Town needs to use an Access Channel or Channels that Town has previously determined that Comcast may use as an underutilized Access Channel, Town may rescind Town's permission to allow Comcast to utilize an Access Channel or Channels which rescission shall be effective ninety (90) days after tendering written notice Comcast.

9.3 ACCESS CHANNEL LOCATION

(A) Comcast shall use its best efforts to minimize the movement of Access Channel assignments. Comcast shall provide to the Town a minimum of ninety (90) days prior written notice, prior to any relocation of its Access Channels, unless the change is required by federal law, in which case Comcast shall give the Town the maximum notice possible. Comcast shall pay the Town two thousand dollars (\$2,000) per Access Channel, per move.

(B) Comcast, at Comcast's expense, shall include notice of Access Channel changes in its regular monthly billing.

9.4 ACCESS CHANNEL PROMOTION

Comcast shall provide the Town the opportunity to include promotional notices on paper and electronic bills on not more than two occasions per year. Comcast shall be provided an opportunity to review all such promotional notices. The Town shall be responsible for any costs associated with the provision of such notices.

9.5 PEG ACCESS CAPITAL

(A) As of the Effective Date of this Agreement, Comcast shall continue to collect and provide to the Town a monthly fee as capital support for PEG access ("PEG Fee"). The PEG Fee shall be fifty cents (\$0.50) per subscriber per month for individual Residential Subscribers and commercial subscribers, and twenty-five cents (\$0.25) per subscriber per month subject to bulk-billing. It is understood that pursuant to federal law, Comcast has the right to pass through the costs of PEG Access capital payments to Subscribers, and Comcast shall be obligated to pay no more than the amount it actually collects from such Subscribers. The PEG Fee shall be used solely for capital costs related to PEG Access equipment and facilities. Comcast shall make PEG Fee payments quarterly, no later than forty-five (45) days following the end of the quarter.

(B) Initial Capital Contribution. Within 90 days of the Effective Date of this Franchise, Comcast shall provide a one-time capital contribution of Eighteen Thousand Dollars (\$18,000), which the Town shall use to purchase Access equipment. Comcast shall be entitled to fully recover this Initial Capital Contribution from Subscribers pursuant to federal law. As soon as the Initial Capital Contribution has been provided to the Town, Comcast shall retain seventy percent (70%) of the PEG Fees collected from Subscribers until the Initial Capital Contribution is fully recovered. Comcast shall provide to the Town the remaining thirty percent (30%) of the PEG Fees collected during this recovery period. Comcast shall provide notice to the Town when this Initial Capital Contribution is fully recovered, and at that time, Comcast will resume providing

the Town the full amount of the PEG Fees collected. The Town shall retain the right to repay to Comcast the \$18,000 Initial Capital Contribution or any portion thereof from other sources.

(C) To the extent permitted by law, the PEG Fee may be itemized on Subscriber billing statements and recovered from Subscribers over the term of this Agreement. Comcast shall not be responsible for paying the PEG Fee with respect to gratis or Bad Debt accounts.

9.6 RETURN LINES

(A) Comcast shall continue to maintain the return lines from all existing Access broadcast facilities to the Headend in order to enable the distribution of programming to Subscribers on the Access Channels. Comcast shall continuously maintain these return lines throughout the term of the Agreement, unless any of these locations are no longer used in the future to originate Access programming.

(B) Within eighteen (18) months of written request by the Town, Comcast shall construct and maintain additional return lines to other locations in the Franchise Area; provided however, that Comcast's construction costs shall be paid by the Town or its Designated Access Provider.

(C) Return Lines shall be maintained by Comcast in the same manner as the rest of the Cable System so that Access Channels may be viewed at the same quality that is provided by the Town or its Designated Access Provider.

SECTION 10. USE OF PUBLIC WAYS

10.1 CONSTRUCTION AND MAINTENANCE

(A) The Cable System shall be constructed and maintained so as not to interfere with sewers, water pipes, or any other property of Town, or with any other pipes, wires, conduits, pedestals, structures or other facilities installed in Public Ways.

(B) In its maintenance and construction of the Cable System, Comcast shall comply with the Avon Town Code. All construction and maintenance of Comcast's facilities within Public Ways shall, regardless of who performs the construction, be and remain Comcast's responsibility.

(C) Comcast's contractors and subcontractors shall be licensed and bonded in accordance with the Town's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Comcast. Comcast shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Agreement and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Comcast's responsibility to ensure that contractors, subcontractors or other Persons performing work on Comcast's behalf are familiar with the requirements of this Agreement and other applicable laws governing the work performed by them.

(D) Comcast shall give reasonable notice to private property owners of construction work in adjacent Public Ways.

(E) If Comcast disturbs, alters, or damages any public or private property, Comcast shall at its own expense replace and restore any such Public Way or property to a condition equal to the condition of the property existing immediately prior to the disturbance.

(F) The Town may inspect any of Comcast's facilities or construction upon at least twenty-four (24) hours' notice, or, in case of emergency, without prior notice, and the Town may charge Comcast generally applicable inspection fees therefor. If an unsafe condition is found, the Town, in addition to taking any other action permitted under applicable law, may order Comcast to make necessary repairs and alterations to correct the unsafe condition by a time the Town establishes. The Town may correct, inspect, administer and repair the unsafe condition if Comcast fails to do so, and to charge Comcast therefor.

(G) On notice from Town that any work is being conducted contrary to this Agreement, or in violation of the terms of any applicable law or permit, the work may immediately be stopped by Town. The stop work order shall: be in writing; be given to the Person doing the work or posted on the work site; be sent to Comcast by mail; indicate the nature of the alleged violation or unsafe condition; and establish conditions under which work may be resumed.

10.2 LOCATION AND MOVEMENT OF FACILITIES

(A) After the Town or any franchisee or permittee of the Town notifies Comcast of a proposed Public Way excavation, or design of any project impacting facilities in the Public Way, Comcast shall, at Comcast's expense, mark on the surface all of its located underground facilities within the area of the proposed excavation in accordance with applicable law.

(B) The Town may remove or disconnect Comcast's facilities and equipment located in the Public Way or on any other property of the Town in the case of an emergency. Except in an emergency, the Town shall provide reasonable notice to Comcast prior to taking such action and shall provide Comcast with the opportunity to perform such action. Following notice by the Town, Comcast shall remove, replace, relocate, modify or disconnect any of its facilities in a Public Way or on any other property of the Town, except that the Town shall provide at least ninety (90) days written notice of any major capital improvement project that would require the removal, relocation, replacement, modification or disconnection of Comcast's facilities or equipment. If Comcast fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done at Comcast's expense. Comcast shall remit payment to Town within thirty (30) days of receipt of an itemized list of those costs.

(C) If the Town requires Comcast to relocate its facilities located in a Public Way, the Town shall make a reasonable effort to provide Comcast with an alternate location within the Public Way. If funds are generally made available to users of the Public Way for such relocation, Comcast shall be entitled to its pro rata share of such funds.

(C) At the request of any Person holding a valid permit and upon reasonable advance notice, Comcast shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The cost of such temporary change may be charged by Comcast to the permit holder, and Comcast may require the estimated payment in advance.

Such payment is an exchange between Comcast and the permittee, and the Town will not be the administrator of these transactions.

10.3 ACQUISITION OF FACILITIES

Upon Comcast's acquisition of Cable System related facilities in any Public Way, or upon the addition or annexation to the Town of any area in which Comcast owns or operates any facility, such facilities shall be subject to the terms of this Agreement. The Town acknowledges that inclusion of revenue from Subscribers affected by annexation to the Town will require ninety (90) days to make changes in the billing system affecting those Subscribers.

10.4 RESERVATION OF PUBLIC WAYS

Nothing in this Agreement shall prevent the Town from constructing any public improvement, or from permitting other utilities the use of the Public Ways. If the Cable System interferes with the construction, maintenance or repair of any Public Way or public improvement, the Cable System shall be removed or relocated in the area the Town directs. If the Town requires Comcast to relocate its facilities located within the Public Way, the Town shall make a reasonable effort to provide Comcast with an alternate location within the Public Way. All such removal or relocation shall be preceded by sixty (60) days written notice or such additional time as may be provided by Town. Should Comcast fail to remove, adjust or relocate its facilities by the date established by the Town, the Town may effect such removal, adjustment or relocation at Comcast's sole expense. If funds are generally made available to users of the Public Way for such relocation, Comcast shall be entitled to its pro rata share of such funds.

10.5 DISCONTINUED FACILITIES

(A) When Comcast intends to discontinue using any facility within a Public Way, Comcast shall submit to Town a complete description of the facility and the date on which Comcast intends to discontinue using the facility. Comcast may remove the facility or request that the Town allow it to remain in place. Notwithstanding Comcast's request that any such facility remain in place, the Town may require Comcast to remove the facility from the Public Way or modify the facility to protect the public health, welfare, safety and convenience. The Town may require Comcast to perform a combination of modification and removal of the facility.

(B) Comcast shall complete such removal or modification in accordance with a schedule set by the Town. Until Comcast removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Comcast shall be responsible for the facility, as well as maintenance of the Public Way, in the same manner and degree as if the facility were in active use, and Comcast shall retain all liability for such facility.

(C) If Comcast abandons any facilities, the Town may choose to use such facilities for any purpose whatsoever.

10.6 USE OF CONDUIT OR DUCTS

(A) The Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any of Comcast's ducts or conduits in the Public Ways, without charge

to the Town, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. For purposes of this Subsection, "Town purposes" includes, but is not limited to, the use of the structures and installations for fire, police, traffic, water, telephone, or signal systems, but not for Cable Service in competition with Comcast. Comcast shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the Town.

(B) Comcast acknowledges that the Public Ways have a finite capacity for containing conduit and facilities. Therefore, Comcast agrees that when the Town determines it is impracticable to permit construction of an underground conduit system by any other Person which may at the time have authority to construct or maintain conduits or ducts in the Public Ways, but excluding Persons providing Cable Service in competition with Comcast, the Town may require Comcast to afford to such Person the right to use Comcast's surplus ducts or conduits in common with Comcast, pursuant to the terms and conditions of an agreement for use of surplus ducts or conduits entered into by Comcast and the other Person. Nothing herein shall require Comcast to enter into an agreement with such Person if, in Comcast's reasonable determination, such an agreement will compromise the integrity of the Cable System.

10.7 UNDERGROUNDING

Where electric and telephone utility wiring is underground, all Cable System lines, wiring and equipment shall also be placed underground with other wireline service at no expense to the Town. Related equipment, such as pedestals, shall be placed in accordance with applicable Town requirements. In areas where either electric or telephone utility wiring are aerial, Comcast may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

10.8 TREE TRIMMING

Comcast may prune or cause to be pruned, using proper pruning practices, any tree in any Public Way which interferes with the Cable System. Comcast shall comply with all Town requirements regarding tree trimming. Except in emergencies, Comcast may not prune trees at a point below thirty (30) feet above sidewalk grade without seven (7) days prior written notice to the owner or occupant of the premises abutting the Public Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Comcast may prune such tree at its own expense. For purposes of this Subsection, emergencies exist when it is necessary to prune to protect the public or Comcast's facilities from imminent danger only.

10.9 GIS MAPPING

Comcast shall provide the Town with records of Comcast's trunk and distribution facilities in the Franchise Area in a standard geographic information (GIS) format within thirty (30) days of receipt of written request or longer if agreed to by the parties.

SECTION 11. CABLE SYSTEM DESIGN AND TECHNICAL STANDARDS

11.1 TECHNICAL PERFORMANCE

The technical performance of the Cable System shall meet or exceed all applicable technical standards authorized or required by law, including FCC technical standards as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the authority provided by law to enforce compliance with these technical standards.

11.2 CABLE SYSTEM PERFORMANCE TESTING

(A) Comcast shall, at its expense, perform all tests on the Cable System required by the FCC (including FCC required test points located in the Franchise Area) and shall maintain written records of its test results in accordance with FCC requirements. Copies of such test results shall be provided to the Town upon request.

(B) All required tests may be witnessed by representatives of the Town. Upon request, Comcast will notify the Town before any required technical proof-of-performance or other testing occurs.

(C) Comcast shall promptly take all necessary measures to correct any performance deficiencies and prevent their recurrence. Sites shall be re-tested within five (5) days following correction until correction has been confirmed and satisfactory results are obtained.

11.3 STANDBY POWER

Comcast shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Comcast shall maintain standby power supplies that will supply back-up power of at least two (2) hours duration throughout the distribution networks, and four (4) hours duration at all nodes and hubs.

SECTION 12. VIOLATIONS AND REVOCATION

12.1 PROCEDURE FOR REMEDYING VIOLATIONS

(A) If the Town believes that Comcast has failed to perform any material obligation of this Agreement, the Town shall notify Comcast in writing, stating with specificity, the nature of the alleged violation. Comcast shall have thirty (30) days from the receipt of such notice to:

- (1) Respond to the Town, contesting the Town's assertion that a violation has occurred, or notifying the Town that violation cannot be cured within thirty (30) days because of the nature of the alleged violation, and requesting a hearing in accordance with Subsection (B), below; or
- (2) Cure the violation.

(B) If Comcast does not cure the violation within thirty (30) days, or denies the violation and requests a hearing, the Town shall set a public hearing on the violation. The Town shall provide not less than seven (7) days prior written notice of the hearing. At the hearing, Comcast shall be provided an opportunity to be heard, to present and question witnesses, and to present evidence in its defense.

(C) If, after considering the evidence presented at the public hearing, the Town Council determines that a violation exists, the Town may order Comcast to remedy the violation within fourteen (14) days or within such other reasonable timeframe agreed to by the parties. If Comcast does not remedy the violation within such time to the Town's reasonable satisfaction, the Town may:

- (1) Assess and collect monetary damages in accordance with this Agreement;
- (2) Terminate this Agreement; and/or,
- (3) Pursue any other legal or equitable remedy available under this Agreement or applicable law.

12.2 ALTERNATIVE REMEDIES

(A) No provision of this Agreement shall bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement of obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

(B) The Town does not waive any right, immunity, limitation or protection otherwise available to the Town, its officers, officials, Boards, commissions, agents, or employees under any law, including without limitation Section 635A of the Cable Act. Comcast shall not have any monetary recourse against the Town, or its officers, officials, Board, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision of this Agreement or the enforcement thereof, subject to applicable law.

12.3 LIQUIDATED DAMAGES

(A) The Town and Comcast recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the Town as a result of a violation by Comcast of this Agreement. Accordingly, instead of requiring such proof of actual loss, the Town and Comcast agree that Comcast shall pay to the Town the sums set forth in this Subsection. Such amounts are agreed by both parties to be a reasonable estimate of the actual damages the Town would suffer in the event of Comcast's violation.

(B) In addition to any other remedy, the Town in its sole discretion may, after following the procedures as provided in this Section 12.1, charge to and collect from Comcast the following liquidated damages per day, for each day, or part thereof, the violation continues:

- (1) For failure to provide data, documents, reports or information or to cooperate with the Town during an application process or Cable System review or as otherwise provided herein: one hundred fifty dollars (\$150).
- (2) For failure to make timely PEG Fee or Franchise Fee payments: two hundred fifty dollars (\$250).

(3) For failure to comply with any other provision of this Agreement or Customer Service Standards or the Avon Town Code: one hundred fifty dollars (\$150).

(C) Each violation shall be considered a separate violation for which separate liquidated damages can be imposed. In no event shall liquidated damages be imposed for a period greater than 120 days.

(D) Comcast shall have thirty (30) days to pay the liquidated damages. If not so paid, the Town may draw on any bond or Letter of Credit. The Town shall give Comcast written notice of any such draw, and within seven (7) days of such notice, Comcast shall restore the bond or Letter of Credit to the amount required under this Agreement.

12.4 REVOCATION

(A) The franchise provided by this Agreement may be revoked and all rights and privileges rescinded if a material breach of the Agreement is not cured, or in the event that:

(1) Comcast attempts to evade any material provision of this Agreement or to practice any fraud or deceit upon the Town or Subscribers;

(2) Comcast makes a material misrepresentation of fact in the negotiation of this Agreement;

(3) Comcast abandons the Cable System, or terminates the Cable System's operations;

(4) Comcast fails to restore service to the Cable System after three (3) consecutive days of an outage or interruption in service; except in the case of an emergency or during a *force majeure* occurrence, or when approval of such outage or interruption is obtained from the Town; or

(5) Comcast becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, there is an assignment for the benefit of Comcast's creditors, or all or part of Cable System is sold under an instrument to secure a debt and is not redeemed by Comcast within thirty (30) days from said sale.

(B) Additionally, the franchise granted in this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to conduct the business of Comcast, at the option of the Town and subject to applicable law, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless directed otherwise by a court of competent jurisdiction.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Comcast, the Town may serve notice of revocation on Comcast and to the purchaser at the sale, and the rights and privileges of Comcast under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and

(2) The transferee has agreed to assume and be bound by all terms of this Agreement.

12.5 PURCHASE OF THE CABLE SYSTEM

If at any time this Agreement lawfully terminates, the Town shall have the option to purchase the Cable System; provided that nothing in this Agreement shall limit or expand the Town's right of eminent domain under State law.

SECTION 13. TRANSFER

13.1 TRANSFER OF OWNERSHIP OR CONTROL

(A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council, acting by ordinance or resolution.

(B) Comcast shall promptly notify the Town of any actual or proposed change in control of Comcast. The word "control" as used herein is defined as an acquisition of 51% or greater ownership interest in Comcast. Such change of control of Comcast shall make this Agreement subject to cancellation unless and until the Town has consented in writing.

(C) The parties to the transfer shall make a written request to the Town for its approval of a sale or transfer or change in control and shall furnish all information required by law.

(D) In seeking the Town's consent to any transfer, the proposed transferee or controlling entity shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a Cable System or the provision of Cable Services;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee or controlling entity, along with any other data that is lawfully required; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Agreement.

(E) The proposed transferee shall provide complete information regarding any potential impact of the transaction on Subscriber rates and service, as well as any other documentation reasonably related to the proposed transaction and consistent with applicable law which, in the reasonable discretion of the Town are necessary to understand the proposed transaction.

(F) The Town shall act on the request within one hundred twenty (120) days of receipt of the FCC Form 394 application and all information expressly required by this Agreement and applicable law, provided it has received a complete application. Subject to the foregoing, if the

Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(G) Within thirty (30) days of any transfer, Comcast shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such transfer, certified correct by Comcast and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all terms of this Agreement, subject to applicable law. In the event of a change in control in which Comcast is not replaced by another entity, Comcast will continue to be bound by all terms of the Agreement, subject to applicable law, and will not be required to file an additional written acceptance. The approval of any transfer shall not waive any rights of Town to subsequently enforce noncompliance issues relating to this Agreement. If a change of control involves an entity that was not an Affiliate prior to the contemplated transaction, the Town's consent shall be required for such change in control.

(H) In reviewing a transfer request, the Town may inquire into the legal, technical and financial qualifications of the transferee, and Comcast shall assist the Town in so inquiring. The Town may condition said transfer upon such terms as it deems reasonably appropriate, consistent with applicable law and reasonably related to the qualifications of the prospective transferee to comply with this Agreement or the resolution of outstanding and unresolved issues of noncompliance with this Agreement by Comcast.

(I) Notwithstanding anything to the contrary in this Subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Agreement or the Cable System to an intra-company entity controlling, controlled by or under the same common control as Comcast, provided that the proposed assignee or transferee shall show financial responsibility as may be determined necessary by the Town and shall agree in writing to comply with all provisions of the Agreement. Further, Comcast may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not mitigate Comcast's responsibilities to meet its obligations under this Agreement.

SECTION 14. MISCELLANEOUS

14.1 CUMULATIVE RIGHTS

Subject to applicable law, all rights and remedies given to the Town or retained by the Town in this Agreement shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the Town, at law or in equity, and such rights and remedies shall not be exclusive, but every right and remedy given by this Agreement or otherwise existing may be exercised as often and in such order as deemed expedient by the Town, and the exercise of one right or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

14.2 COSTS TO BE BORNE BY COMCAST

Comcast shall pay for all costs of publication of this Agreement, and any and all notices prior to any public meeting or hearing provided for pursuant to this Agreement in accordance with the Avon Town Code or Charter.

14.3 BINDING EFFECT

This Agreement shall be binding upon the parties hereto, their permitted successors, transferees and assigns.

14.4 MODIFICATION

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within sixty (60) days of receipt of notice, the Town and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Town Council for its approval. If so approved by the Town Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

14.5 GOVERNING LAW AND VENUE

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado, the Cable Act, as amended, any applicable rules, regulations and orders of the FCC, as amended, and any other applicable local, State and federal laws, rules, and regulations. The venue for any dispute related to a violation of this Agreement shall be in an appropriate state court of competent jurisdiction in Eagle County, Colorado.

14.6 NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

14.7 WAIVER

The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

14.8 SEVERABILITY

If any provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other provision of this Agreement.

14.9 FORCE MAJEURE

Comcast shall not be held in violation of this Agreement for any act caused by circumstances reasonably beyond the ability of Comcast to anticipate and control, including war, riots, civil disturbances, floods, severe adverse weather conditions or other natural catastrophes, labor stoppages or power outages exceeding back-up power supplies.

14.10 ENTIRE AGREEMENT

This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

14.11 NOTICES

Each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. On the Effective Date, the following are the addressed on file:

Comcast:

Comcast
8000 East Iliff Avenue
Denver, CO 80231
Attn: Government Affairs

With a copy to:

Comcast
281 Metcalf Road, Suite 110
Avon, CO 81620
Attn: General Manager

Town:

Town of Avon
P.O. Box 975
1 Lake Street
Avon, CO 81620
Attn: Town Manager

With a copy to:

Town of Avon
P.O. Box 975
1 Lake Street
Avon, CO 81620
Attn: Town Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

TOWN OF AVON, COLORADO

Jennie Fancher, Mayor

ATTEST:

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:



Eric J. Heil, Town Attorney

COMCAST OF COLORADO VII, LLC

By: _____
Its: _____

EXHIBIT A: CUSTOMER SERVICE STANDARDS

TOWN OF AVON CUSTOMER SERVICE STANDARDS

I. POLICY

The Cable Operator should resolve citizen complaints without delay and interference from the Franchising Authority.

Where a given complaint is not addressed by the Cable Operator to the citizen's satisfaction, the Franchising Authority should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the Standards is identified, the Franchising Authority should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

These Standards are intended to be of general application, and are expected to be met under normal operating conditions; however, the Cable Operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The Cable Operator is free to exceed these Standards to the benefit of its Customers and such shall be considered performance for the purposes of these Standards.

These Standards supercede any contradictory or inconsistent provision in federal, state or local law (Source: 47 U.S.C. § 552(a)(1) and (d)), provided, however, that any provision in federal, state or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these Standards, shall not be considered contradictory or inconsistent with these Standards. In the event of a conflict between these Standards and a Franchise Agreement, the Franchise Agreement shall control.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the Town of Avon.

II. DEFINITIONS

When used in these Customer Service Standards (the "Standards"), the following words, phrases, and terms shall have the meanings given below.

"Adoption" shall mean the process necessary to formally enact the Standards within the Franchising Authority's jurisdiction under applicable ordinances and laws.

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.

"Applicable Law" means, with respect to these standards and any Cable Operator's privacy policies, any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

"Cable Operator" shall mean any person or group of persons (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. Source: 47 U.S.C. § 522(5).

"Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Source: 47 U.S.C. § 522(6). For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station. Source: 47 U.S.C. § 522(20). "Other programming service" is information that a Cable Operator makes available to all subscribers generally. Source: 47 U.S.C. § 522(14).

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, or (B) a facility that serves subscribers without using any public right of way. Source: 47 U.S.C. § 522(7).

"Contractor" shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

"Customer" shall mean any person who receives any Cable Service from a Cable Operator.

"Customer Service Representative" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated complaint" shall mean a complaint that is referred to a Cable Operator by the Franchising Authority.

"Franchising Authority" shall mean the Town of Avon.

"Necessary" shall mean required or indispensable.

"Non-cable-related purpose" shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a Cable Service or Other Service provided by a Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products that are not related to a Cable Service or Other Service provided by a Cable Operator to a Customer shall be considered Non-cable-related purposes.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

“Normal business hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include at least some evening hours one night per week, and include some weekend hours. Source: 47 C.F.R. § 76.309.

“Normal operating conditions” shall mean those service conditions which are within the control of a Cable Operator. Conditions which are not within the control of a Cable Operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a Cable Operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade to the Cable System.

“Other Service(s)” shall mean any wire or radio communications service provided using any of the facilities of a Cable Operator that are used in the provision of Cable Service.

"Personally Identifiable Information" shall mean specific information about an identified Customer, including, but not be limited to, a Customer's (a) login information for the use of Cable Service and management of a Customer's Cable Service account, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, or (h) any other personal or private information. "Personally Identifiable Information" shall not mean any aggregate information about Customers which does not identify particular persons, or information gathered by a Cable Operator necessary to install, repair or service equipment or Cable System facilities at a Customer's premises.

“Service interruption” or “interruption” shall mean (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

“Service outage” or “outage” shall mean a loss or substantial impairment in reception on all channels.

“Subcontractor” shall mean a person or entity that enters into a contract to perform part or all of the obligations of another's contract.

"Town" shall mean the Town of Avon, Colorado.

“Writing” or “written” as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these Standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

III. CUSTOMER SERVICE

A. Courtesy

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

B. Accessibility

1. A Cable Operator shall provide customer service centers/business offices (“Service Centers”) which are conveniently located, and which are open during Normal Business Hours. Service Centers shall be fully staffed with Customer Service Representatives offering the following services to Customers who come to the Service Center: bill payment, equipment exchange, processing of change of service requests, and response to Customer inquiries and request.

Unless otherwise requested by the Town, a Cable Operator shall post a sign at each Service Center, visible from the outside of the Service Center, advising Customers of its hours of operation and of the telephone number at which to contact the Cable Operator if the Service Center is not open at the times posted.

The Cable Operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology, in order to respond to the growing demand of Customers who wish to interact with the Cable Operator on the Customer’s own terms and timeline and at their own convenience, without having to travel to a Service Center. Without limitation, examples of self-help tools or technology may include self-installation kits to Customers upon request; pre-paid mailers for the return of equipment upon Customer request; an automated phone option for Customer bill payments; and equipment exchanges at a Customer’s residence in the event of damaged equipment. A Cable Operator shall provide free exchanges of faulty equipment at the customer's address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer’s concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. During Normal Business Hours, a Cable Operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty (30) seconds or less from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement or local code provisions, or if there are no applicable Franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the Cable Operator and the customer.

2. Residential Installation and Service Appointments

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the Cable Operator must arrive at the customer's location.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the Cable Operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within Normal Business Hours or as may be otherwise agreed to between the customer and Cable Operator.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the Cable Operator's actions in response to those complaints. These files shall remain available for viewing by the Franchising Authority during normal business hours at the Cable Operator's business office, and shall be retained by the Cable Operator for a period of at least three (3) years.

ii. Upon written request a Cable Operator shall provide the Franchising Authority an executive summary quarterly, which shall include information concerning customer complaints referred by the Franchising Authority to the Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) days after the end of each quarter. Once a request is made, it need not be repeated and quarterly executive summaries shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required.

iii. Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the Cable Operator for each quarter and submitted to the Franchising Authority by the fifteenth (15th) day of the month after each calendar quarter. Once a request is made, it need not be repeated and quarterly summary of service requests shall be provided by the Cable Operator until notified in writing by the Franchising Authority that such summaries are no longer required. Complaints shall be broken out by the nature of the complaint and the type of Cable service subject to the complaint.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the Franchising Authority quarterly, upon written request, within fifteen (15) days after the end of each quarter. Such records shall be submitted to the Franchising Authority with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. At the customer's request, the Cable Operator shall repair the problem at a later time convenient to the customer, during Normal Business Hours or at such other time as may be agreed to by the customer and Cable Operator. A Cable Operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing, so that the customer is advised of the status of the Cable Operator's efforts to address the problem.

5. Problem Resolution

A Cable Operator's customer service representatives shall have the authority to provide credit for interrupted service, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four (4) hours and resolve the problem within forty eight (48) hours or within such other time frame as is acceptable to the customer and the Cable Operator.

6. Billing, Credits, and Refunds

a. In addition to other options for payment of a customer's service bill, a Cable Operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in

EXHIBIT A: CUSTOMER SERVICE STANDARDS

attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.

b. A Cable Operator shall, at its own cost and expense, and in a manner approved by the property owner and the Franchising Authority, restore any private property to as good condition as before the work causing such disturbance was initiated. A Cable Operator shall repair, replace or compensate a property owner for any damage resulting from the Cable Operator's installation, construction, service or repair activities. If compensation is requested by the customer for damage caused by any Cable Operator activity, the Cable Operator shall reimburse the property owner one hundred (100) percent of the actual cost of the damage.

c. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a Cable Operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that in the case of construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the Cable Operator's customer service representatives for any hearing-impaired customer at no charge.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.

4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

1. At any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website (and in Spanish, when requested by the customer):

a. Products and services offered by the Cable Operator, including its channel lineup;

b. The Cable Operator's complete range of service options and the prices for these services;

EXHIBIT A: CUSTOMER SERVICE STANDARDS

- c. The Cable Operator's billing, collection and disconnection policies;
 - d. Privacy rights of customers;
 - e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;
 - f. Use and availability of parental control/lock out device;
 - g. Special services for customers with disabilities;
 - h. Days, times of operation, and locations of the service centers;
2. At a Customer's request, a Cable Operator shall make available either a complete copy of these Standards and any other applicable customer service standards, or a summary of these Standards, in a format to be approved by the Franchising Authority, which shall include at a minimum, the URL address of a website containing these Standards in their entirety; provided however, that if the Franchising Authority does not maintain a website with a complete copy of these Standards, a Cable Operator shall be under no obligation to do so;

If acceptable to a customer, Cable Operator may fulfill customer requests for any of the information listed in this Section by making the requested information available electronically, such as on a website or by electronic mail.

3. Upon written request, a Cable Operator shall meet annually with the Franchising Authority to review the format of the Cable Operator's bills to customers. Whenever the Cable Operator makes substantial changes to its billing format, it will contact the Franchising Authority at least thirty (30) days prior to the time such changes are to be effective, in order to inform the Franchising Authority of such changes.
4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) concurrently with the Franchising Authority.
5. A Cable Operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other Cable Services that a customer has subscribed to, at the time the change in rates are announced by the Cable Operator.
6. All officers, agents, and employees of the Cable Operator or its contractors or subcontractors who are in personal contact with customers and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the Cable Operator. The Cable Operator shall account for all identification cards at all times. Every vehicle of the Cable Operator shall be clearly visually identified to the public as working for the Cable Operator. Whenever a Cable Operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the Cable Operator.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

F. Customer Privacy

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This subsection F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. A Cable Operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection

EXHIBIT A: CUSTOMER SERVICE STANDARDS

III.F.9, the Cable Operator shall notify each Customer (that the Cable Operator intends to disclose information about) of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may reference the Customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection III.F.10.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by applicable law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena, court order, warrant or other valid legal process authorizing such disclosure.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information about himself or herself at the local offices of the Cable Operator or other convenient place within the Town designated by the Cable Operator, or electronically, such as over a website. Upon a reasonable showing by the Customer that such Personally Identifiable Information is inaccurate, a Cable Operator shall correct such information.

5. Privacy Notice to Customers

a. A Cable Operator shall annually mail or provide a separate, written or electronic copy of the privacy statement to Customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to Customers about their account as it appears on either paper or electronic Customer communications.

b. In or accompanying the statement required by subsection F.5.a, a Cable Operator shall state substantially the following message regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. Disclosure of the name and address of a Customer subscribing to any general programming tiers of service and other categories of Cable Services provided by the Cable Operator that do not directly or indirectly disclose: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or websites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with

EXHIBIT A: CUSTOMER SERVICE STANDARDS

respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a Customer in connection with programming available from their account for Cable Services.”

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a or this subsection, such prohibition against disclosure shall remain in effect, unless and until the Customer subsequently changes their disclosure preferences as described in subsection F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the Franchising Authority required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement from an authorized representative of the Cable Operator certifying that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used to the extent Necessary to detect unauthorized reception of cable communications; (C) disclosed pursuant to valid legal process authorized by applicable law; or (D) a disclosure of Personally Identifiable Information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.

c. The standard industrial classification (SIC) codes or comparable identifiers pertaining to any entities to whom such Personally Identifiable Information was disclosed, except that a Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law;

d. The general measures that have been taken to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator. A Cable Operator shall meet with Franchising Authority if requested to discuss technology used to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this subsection III.F shall be construed to prevent the Franchising Authority from obtaining Personally Identifiable Information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551 and applicable laws.

8. Destruction of Personally Identifiable Information. A Cable Operator shall destroy any Personally Identifiable Information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

9. Notice and Choice for Customers. The Cable Operator shall at all times make available to Customers one or more methods for Customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection III.F. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the Customer’s monthly bill for Cable Service, the privacy notice specified in subsection III.F.5, or such other comparable methods as may be provided by the Cable Operator. Website “preference center” features shall be easily identifiable and navigable by Customers, and shall be in a comparable size font as other billing information provided to Customers on a Cable Operator’s website. A Customer who provides the Cable Operator with permission to disclose Personally Identifiable Information through any of the methods offered by a Cable Operator shall be provided follow-up notice, no less than annually, of the Customer’s right to prohibit these disclosures and the options for the Customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the Cable Operator’s bill (or other direct mail piece) to the Customer or a notice or message printed on the Cable Operator’s bill to the Customer, and on the Cable Operator’s website when a Customer logs in to view his or her Cable Service account options. The form of such notice shall also be provided on an annual basis to the Franchising Authority. These methods of notification to Customers may also include other comparable methods as submitted by the Cable Operator and approved by the Franchising Authority in its reasonable discretion.

G. Safety

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

H. Cancellation of New Services

In the event that a new customer requests installation of Cable Service and is unsatisfied with their initial Cable Service, and provided that the customer so notifies the Cable Operator of their dissatisfaction within 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 days of initial installation, and the Cable Operator shall provide a credit to the customer’s account consistent with this Section. The customer will be required to return all equipment in good working order; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer’s first 30 days of Cable Service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their Cable Service, to discretionary Cable Service such as PPV or movies purchased and viewed On Demand, or to customer moves and/or transfers of Cable Service. The service credit shall be provided in the next billing cycle.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

IV. COMPLAINT PROCEDURE

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. If a representative of the Franchising Authority notifies the Cable Operator of a customer complaint that has not previously been made by the customer to the Cable Operator, the complaint shall be deemed to have been made by the customer as of the date of the Franchising Authority's notice to the Cable Operator.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.
4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the Franchising Authority in the event the customer is dissatisfied with the Cable Operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the Franchising Authority.
5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the Franchising Authority.
6. A Cable Operator's complaint procedures shall be filed with the Franchising Authority prior to implementation.

B. Complaints to the Franchising Authority

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the Franchising Authority.
2. The customer may initiate the review either by calling the Franchising Authority or by filing a written complaint together with the Cable Operator's written decision, if any, with the Franchising Authority.
3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

4. If the Franchising Authority decides that further evidence is warranted, the Franchising Authority shall require the Cable Operator and the customer to submit, within ten (10) days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
5. The Cable Operator and the customer shall produce any additional evidence, including any reports from the Cable Operator, which the Franchising Authority may deem necessary to an understanding and determination of the complaint.
6. The Franchising Authority shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.
7. The Franchising Authority may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

C. Security Fund or Letter of Credit

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the written notification to a Cable Operator by the Franchising Authority that an alleged Franchise violation exists, a Cable Operator shall deposit with an escrow agent approved by the Franchising Authority fifty thousand dollars (\$50,000) or, in the sole discretion of the Franchising Authority, such lesser amount as the Franchising Authority deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the Cable Operator's discretion, it may provide to the Franchising Authority an irrevocable letter of credit in the same amount.

The escrowed funds or letter of credit shall constitute the "Security Fund" for ensuring compliance with these Standards for the benefit of the Franchising Authority. The escrowed funds or letter of credit shall be maintained by a Cable Operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these Standards, until any claims related to the alleged Franchise violation(s) are paid in full.

2. The Franchising Authority may require the Cable Operator to increase the amount of the Security Fund, if it finds that new risk factors exist which necessitate such an increase.
3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.
4. The rights reserved to the Franchising Authority with respect to the Security Fund are in addition to all other rights of the Franchising Authority, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Franchising Authority may otherwise have.

EXHIBIT A: CUSTOMER SERVICE STANDARDS

D. Verification of Compliance

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the Franchising Authority.

E. Procedure for Remediating Violations

1. If the Franchising Authority has reason to believe that a Cable Operator has failed to comply with any of these Standards, or has failed to perform in a timely manner, the Franchising Authority may pursue the procedures in its Franchise Agreement to address violations of these Standards in a like manner as other franchise violations are considered.

2. Following the procedures set forth in any Franchise Agreement governing the manner to address alleged Franchise violations, if the Franchising Authority determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the Franchise Agreement, the Franchising Authority may:

a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or

b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or

c. Reverse any decision of the Cable Operator in the matter and/or

d. Grant a specific solution as determined by the Franchising Authority; and/or

e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

V. MISCELLANEOUS

A. Severability

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards. Revised 6/18/13.



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Kelly Huitt, Budget Analyst

Meeting Date: August 9, 2016

Agenda

Topic: Review and Action on Mr. Tom Ruemmler's Appeal on the Denial for a Real Estate Transfer Tax Refund

ACTION BEFORE COUNCIL

Action on Mr. Tom Ruemmler's appeal on the denial for a real estate transfer tax refund

PROPOSED MOTION(S)

- "I move to approve Mr. Tom Ruemmler's appeal for the refund of real estate transfer tax paid in error"
- OR
- "I move to deny Mr. Tom Ruemmler's appeal for the refund of real estate transfer tax paid in error"

SUMMARY

Attached is an appeal of the Town's denial of Mr. Tom Ruemmler's request for a refund of real estate transfer tax. In April 2016 Mr. Ruemmler and Judith Douglas applied for a primary residence exemption on the 5/22/2015 purchase of the residence at 2011 Beaver Creek Point. The grantee on the application is Malaide LLC. Mr. Ruemmler expressed that he was unaware of the primary residence exemption at the time of closing, 11 months prior, and would now like to request a refund of the \$3,200 maximum primary exemption. Mr. Ruemmler requested a refund within the one year timeframe stipulated in section 3.12.140. However, section 3.12.070(a) states that "An application may be filed no more than seventy-five (75) days prior to a transfer of real property or within seventy-five (75) days after the transfer of real property. No application for exemption from real property transfer tax shall be received and no such application shall be approved if submitted to the Town more than four (4) months after the date of transfer, unless the Finance Director finds good cause exists for a later filing." And section 3.12.140 states that "The failure to file an application for exemption from a real estate transfer tax within the timeframes established in Section 3.12.070 shall not constitute the payment of a real estate transfer tax in error."

In addition to the lapse in deadline, the grantee on the application and owners on the title of the property is Malaide LLC. The Town has not historically granted primary residence exemptions to LLCs, trusts, or otherwise - only to actual persons; although applicants have been allowed to make subsequent transfers of their property into trusts or LLCs for estate planning purposes without incurring any additional RETT.

The relevant sections of the Municipal Code have been copied below:

3.12.060 - Exemptions.

Unless the method of transfer is contrived for the purpose of evading the real property transfer tax imposed by this Chapter, the real property transfer tax shall not apply to the situations described below:

- (15) The first one hundred sixty thousand dollars (\$160,000.00) of the consideration for any sale or conveyance of real property and completed improvements for occupancy as a primary residence, provided the following conditions are met:
 - a. The same applicant has not previously received an exemption pursuant to this subsection;
 - b. An application for exemption is filed with the Town Manager or his or her designee, which application is accompanied by:
 1. An affidavit that the real property is being purchased for use as a primary residence and not for investment or resale (provided that a co-signor shall not disqualify the exemption for the applicant where the co-signor is signing for the sole purpose of facilitating the financing qualifications of the applicant/primary resident and signs an affidavit that the co-signor is not a co-purchaser for investment or resale purposes); and
 2. A promissory note in the amount of the tax otherwise owing, together with interest accruing at the rate hereinafter provided, providing that the tax and the promissory note including accrued interest shall be due and payable in full in the event the applicant shall fail to occupy and use the property as a primary residence within the timeframe established under the definition of primary residence found in Section 3.12.020 or shall cease to use the property as his or her primary residence within one (1) year after closing and granting to the Town a lien securing such indebtedness, which lien shall be subordinate to any first mortgage or deed of trust of record.
 - c. The exemption applies only to the portion of the transfer tax actually paid by the buyer and will not reduce any portion of the transfer tax that the seller agrees to pay in the transaction.

3.12.070 - Application for exemption—appeal.

(a) Application required. No transfer of real property shall be exempt from the imposition of the real estate transfer tax imposed in Section 3.12.030 unless a complete application for exemptions is filed with the Town and such application is approved by the Town. An application may be filed no more than seventy-five (75) days prior to a transfer of real property or within seventy-five (75) days after the transfer of real property. No application for exemption from real property transfer tax shall be received and no such application shall be approved if submitted to the Town more than four (4) months after the date of transfer, unless the Finance Director finds good cause exists for a later filing. Notwithstanding the foregoing, an application for exemption for low and moderate income housing projects pursuant to Section 3.12.060(14) must be submitted and approved prior to the transfer of real property and no such application for exemption pursuant to Section 3.12.060(14) may be received or approved after the transfer of real property.

3.12.140 - Refund of tax paid in error.

A transferee who has paid a real estate transfer tax, or portion thereof, in error may apply for a refund. Any such application for refund must be filed within one (1) year after the day of recording of the deed causing the transfer. The failure to file an application for exemption from a real estate transfer tax within the timeframes established in Section 3.12.070 shall not constitute the payment of a real estate transfer tax in error. Any person whose application is denied may appeal to the town council in accordance with Subsection 3.12.070(b) of this chapter.

Staff Response: Mr. Ruemmler's exemption application was denied by staff based on the relevant sections of the Town of Avon Municipal Code copied above.

ATTACHMENTS

Tom Ruemmler Appeal

Malaide LLC RETT Exemption Application

Tom Ruemmler Denial Letter

Tom Ruemmler
Judy Douglas
2011 Beaver Creek Point
Box 2726
Avon< CO 81620
719 293-0655
571 429-2505
TRuemmler@hotmail.com
Ctrixieski@gmail.com

6-18-2016

Avon Town Council

To Whom it May Concern;

Judy Douglas and Tom Ruemmler would like to appeal the denial of our application for the \$160,000 exclusion of the RETT for primary residence owners (for 2011 Beaver Creek Point). We would like this put on the agenda after August 3, 2016 as we will be out of town.

Thank You

Tom Ruemmler
Judy Douglas



**TOWN OF AVON
APPLICATION FOR EXEMPTION
FROM REAL PROPERTY TRANSFER TAX**

Grantee(s) (Buyer(s)): Malaide LLC (Tom Ruemmler/Judith Douglas)
 Mailing Address: PO Box 2726 Avon, CO 81620
 Phone Number: 719-293-0655 (Tom) E-Mail Address: TRuemmler@hotmail.com
 Date of Conveyance/Closing: May 22, 2015 Purchase Price/Consideration: \$1,251,000
 Complex Name: Beaver Creek Point Building/Unit: 2011
 Street Address: 2011 Beaver Creek Point Avon, CO 81620

The undersigned hereby applies for exemption of the above real estate transaction from the payment of the Town of Avon Real Property Transfer Tax. The basis of the application for exemption is as follows:

- | | |
|--|--|
| <input type="checkbox"/> (1) – Transfer to or from Governmental Entity | <input type="checkbox"/> (10) – Lease < 25 Years |
| <input type="checkbox"/> (2) – Gift/Charity | <input type="checkbox"/> (11) – Mineral or Royalty Interest |
| <input type="checkbox"/> (3) – Termination of Joint Tenancy | <input type="checkbox"/> (12) – Debt Security |
| <input type="checkbox"/> (4) – Death, Will, or Decree of Distribution | <input type="checkbox"/> (13) – Foreclosure, Sheriff's, Public Trustee, or Treasurer's Deeds |
| <input type="checkbox"/> (5) – Capital Investment or Reorganization of Trusts, Corporations, LLCs, etc | <input type="checkbox"/> (14) – Deed Restricted Housing |
| <input type="checkbox"/> (6) – Bankruptcy | <input checked="" type="checkbox"/> (15) – Primary Residence (\$22 fee) |
| <input type="checkbox"/> (7) – Correction of Previously Recorded Transfer | <input type="checkbox"/> Request 90 Day Move In Extension |
| <input type="checkbox"/> (8) – Cemetery Lots | <input type="checkbox"/> (16) – Subsequent Primary Residence (\$22 fee) |
| <input type="checkbox"/> (9) – Condemnation | <input type="checkbox"/> Request 90 Day Move In Extension |
| | <input type="checkbox"/> (17) – IRS Tax Free or Tax Deferred trade |

Explanation (Attach additional information as needed. See instructions.):
 See attached.

I hereby certify under penalty of perjury that the foregoing statements are true and correct.

4/18/2016 4/18/16
 Grantee(s) Date Grantee(s) Date

Avon Real Property Transfer Tax Exemption Application Approved: _____
 Town Manager or Designee Date

*****Allow Up to 30 Days for Processing per Chapter 3.12 of the Avon Municipal Code*****

Finance Department Fee Paid (if applicable): _____ Initials: _____
--

Despite the fact that we are beyond the 75 day filing period for the RETT exemption, we are requesting consideration for the exemption at this point in time because of the circumstances described in our two affidavits which are attached. 2011 Beaver Creek Point is our permanent residence. We have been living here since May 22, 2015. We are both registered voters, hold CO driver licenses and have our autos registered and insured in CO. We have attached evidence of this as well as our personal affidavits, proof of our homeowner's insurance and a couple examples of our utility bills. The requisite promissory note is also attached. However, by the time a decision is made on our request, the year waiting period for the promissory note will most likely be expired.

Thank you for your consideration.

Judith Douglas and Tom Ruemmler

1 Tom Ruemmler
2 PO Box 2726
3 Avon, CO 81620
4 (719) 293-0655
5 TRuemmler@hotmail.com

6
7
8
9
10 **AFFIDAVIT OF TOM RUEMMLER**

- 11 1. I, Tom Ruemmler, am over 18 years old.
12 2. The house we purchased for our primary residence in Avon Colorado closed escrow
13 on May 22, 2015 and cost over \$160,000
14 3. Land Title handled the closing.
15 4. Neither Land Title or the real estate agent or his brokerage informed me of the
16 \$160,000 RETT exclusion for primary residence.
17 5. Virginia Eggar recently informed me there was a \$160,000 RETT exclusion.
18 6. I called the title company who informed me that it was not their responsibility to
19 inform the buyer of the \$160,000 Exclusion.
20

21 I declare under penalty of perjury under the laws of the State of Colorado that the foregoing
22 is true and correct.

23 Executed this 16 day of April 2016, in Avon, Colorado

24
25 Respectfully Submitted,


26 _____
27 Thomas Ruemmler
28

1 Judy Douglas
2 PO Box 2726
3 Avon, CO 81620
4 (571) 429-2505
5 crixieski@gmail.com

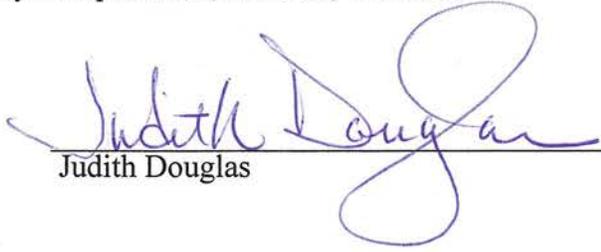
6
7
8
9
10 **AFFIDAVIT OF JUDITH DOUGLAS**

- 11 1. I, Judith Douglas, am over 18 years old.
- 12 2. The house I purchased with Tom Ruemmler for our primary residence in Avon,
13 Colorado closed escrow on May 22, 2015 and cost \$1,251,000.
- 14 3. Land Title handled the closing.
- 15 4. Neither Land Title nor the real estate agent or his brokerage informed us of the
16 \$160,000 RETT exclusion for primary residences.
- 17 5. Virginia Eggar recently informed Tom that there is a \$160,000 RETT exclusion.
- 18 6. He called the title company who informed him that it was not their responsibility to
19 inform the buyer of the \$160,000 exclusion.
- 20

21 I declare under penalty of perjury under the laws of the State of Colorado that the foregoing
22 is true and correct.

23 Executed this 16 day of April 2016, in Avon, Colorado

24
25 Respectfully Submitted,

26 
27 Judith Douglas
28

44E651848 1GNDT13W1Y2111775

PREV TITLE YR MAKE BD MODEL CWT/PAS FUEL
ID 2000 CHEV UP S10 42 G

LEGAL ADDRESS/CITY PREV. EXP
2011 BVR CRK PT 05/2015
AVON

PURCH PRICE MSRP TAXABLE VALUE
0.00 24,536

PURCH DT. ACC.DATE TERM E-470 HVUT
09/26/2000 05/27/2015 4422

UNIT # H/C DATE DUPE ISS. DT DUPE CT SHORT CHECK

PRV TRN CODE
NEW TTL/NO RCD

TYPE PLATE IAB
PAS-REG 266QJH B616811
BUS DATE TR.TIME INL EMISSION
05/29/2015 12:10:55 KJM
TRAN CODE EXPIRE BRANCH
R04 05/2016 03
NEW REG/COL RCD

TITLE FEE 0.00
PRIOR OT 0.00
OWN. TAX 3.00
LIC. FEE 72.06
STATE TAX 0.00
RTD TAX 0.00
CNTY TAX 0.00
CITY TAX 0.00
DISTRICT TAX 0.00
TITLE OTHER FEE 0.00
SPEC. FEE 0.00
REG. OTHER FEE 0.00
CR OT 0.00
CR. LIC. FEE 0.00
EM. FEE 0.00
TOTAL FEES \$ 75.06

REMARK
OWNER 1 RUEMLER THOMAS R
OWNER 2
OWNER 3
LESSEE

COLORADO INSURANCE CARD



POLICY INFORMATION

Policy Number
AOS-298-217624-40 5 2

Policy Effective Date
05/20/2015

Policy Expiration Date
05/20/2016

Name of Insured
THOMAS R RUEMLER

VEHICLE INFORMATION

Year 2000

Make CHEVROLET

Model BLAZER

Vehicle Identification Number
1GNDT13W1Y2111775

CONTACT US

To report a claim
1-800-2CLAIMS
(1-800-225-2467)
Customer service
1-303-346-0028
1-800-624-7293
Roadside Assistance
1-800-426-9898

Card Effective Date
05/20/2015
Card Expiration Date
05/20/2016

Company Name: LM GENERAL INSURANCE COMPANY
NAIC Number: 36447

SEE IMPORTANT MESSAGE ON REVERSE SIDE.

PMKT 525 12 09

GEICO Colorado Insurance Identification Card
geico.com 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
PO BOX 509090 SAN DIEGO, CA 92150-9090

Policy Number	Effective Date	Expiration Date
0271576605	12-05-15	06-05-16

Year	Make	Model	Vehicle ID No.
2005	PORSCHE	BOXSTER	WP0CA29805U710417

Insured:
JUDITH CACICH DOUGLAS
PO BOX 2726
AVON, CO 81620-2726

The above insurance company has issued an insurance policy which complies with the minimum liability limits prescribed by law.

Important Information

Here are your Policy Identification Cards. Please destroy your old cards when the new cards become effective. Due to space limitations on the ID card, only the Named Insured and the Co-insured are listed. For a full list of drivers covered under this policy, please reference the Drivers section of your Declarations Page, which is included with your insurance packet.

Please notify us promptly of any change in your address to be sure you receive all important policy documents. Prompt notification will enable us to service you better.

Your policy is recorded under the name and policy number shown on the card.

If you would like additional ID cards, you can go online to geico.com or call us at 1-800-841-3000.

What to do at the time of an accident.

- Do not admit fault.
- Do not reveal the limits of your liability coverage to anyone.
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable.
- Contact GEICO by calling 1-800-841-3000 or visit geico.com to report the accident.

Colorado ★
Driver License



15-350-0647 Expires: **02-17-2021**

Class: **P** Issued: **01-22-2018**

End: **DOB: 02-17-1949**

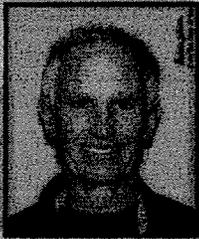
Rest: **Previous Type: A**

Ht: **5'04"** Wt: **115** Eyes: **BRN**

Judith Cagich Douglas

JUDITH CAGICH DOUGLAS
2011 BEAVER CREEK POINT
AVON, CO 81620

Colorado ★
Driver License



16-029-0728 Expires: **02-21-2021**

Class: **P** Issued: **01-29-2018**

End: **DOB: 02-21-1948**

Rest: **Previous Type: A**

Ht: **5'00"** Wt: **164** Eyes: **BRN**

Thomas Riemmler

THOMAS RICHARD RIEMMLER
2011 BEAVER CREEK PT
AVON, CO 81620



2B-QJH

COLORADO

16
B 616817

5
COLORADO
EXB

TEAK J. SIMONTON
Eagle County Clerk & Recorder



P.O. Box 537
500 Broadway
Eagle, Colorado 81631-0537
(970) 328-8710
www.eaglecounty.us/clerk
Recording: (970) 328-8723
Fax: (970) 328-8716

Official New Voter Registration Notification

02/12/2016

JUDITH CACICH DOUGLAS
PO BOX 2726
AVON, CO 81620



Dear JUDITH CACICH DOUGLAS,

Our records show that you recently applied to register to vote. Your application has been processed and your voter registration record currently reflects the following information:

Name : JUDITH CACICH DOUGLAS
Residential address : 2011 BEAVER CREEK PT
AVON, CO 81620
Mailing address (if different) : PO BOX 2726
AVON, CO 81620
Precinct number : 2052619019
Party affiliation : Democratic
Email address :
Request to receive election notices by email? No

If this information is correct, no further action is required on your part. If this information is not accurate, please correct or update your voter registration now. If you have a valid Colorado driver's license or state identification card issued by the Colorado Department of Revenue, you may affiliate with a political party and update your voter registration record by using the online voter registration system at www.GoVoteColorado.com. You may also complete the Change in Voter Registration Information form printed on the reverse side of this letter, and return the completed form to us by any of the following methods you find most convenient:

- By U.S. mail to PO BOX 537, EAGLE, CO 81631-0537;
- By fax to 970-328-8716 (Fax); or
- As an email attachment to elections@eaglecounty.us.

Thank you for your prompt attention to this matter, and please contact the Eagle Elections Office at 970-328-8726 if you have any questions.

Sincerely,

Teak Simonton
Clerk And Recorder
Eagle County, Colorado

TEAK J. SIMONTON
Eagle County Clerk & Recorder



P.O. Box 537
500 Broadway
Eagle, Colorado 81631-0537
(970) 328-8710
www.eaglecounty.us/clerk
Recording: (970) 328-8723
Fax: (970) 328-8716

Official New Voter Registration Notification

02/05/2016

THOMAS RICHARD RUEMMLER
PO BOX 2726
AVON, CO 81620

601221993



Dear THOMAS RICHARD RUEMMLER,

Our records show that you recently applied to register to vote. Your application has been processed and your voter registration record currently reflects the following information:

Name : THOMAS RICHARD RUEMMLER
Residential address : 2011 BEAVER CREEK PT
AVON, CO 81620
Mailing address (if different) : PO BOX 2726
AVON, CO 81620
Precinct number : 2052619019
Party affiliation : Unaffiliated
Email address :
Request to receive election notices by email? No

If this information is correct, no further action is required on your part. If this information is not accurate, please correct or update your voter registration now. If you have a valid Colorado driver's license or state identification card issued by the Colorado Department of Revenue, you may affiliate with a political party and update your voter registration record by using the online voter registration system at www.GoVoteColorado.com. You may also complete the Change in Voter Registration Information form printed on the reverse side of this letter, and return the completed form to us by any of the following methods you find most convenient:

- By U.S. mail to PO BOX 537, EAGLE, CO 81631-0537;
- By fax to 970-328-8716 (Fax); or
- As an email attachment to elections@eaglecounty.us.

Thank you for your prompt attention to this matter, and please contact the Eagle Elections Office at 970-328-8726 if you have any questions.

Sincerely,

Teak Simonton
Clerk And Recorder
Eagle County, Colorado



**PERSONAL INSURANCE STATEMENT
POLICY CHANGE**

PAGE 1

Writing Company:
GREAT NORTHERN INSURANCE COMPANY

Statement Date: 07/30/15
Policy Term: 05/22/15 - 05/22/16

JUDY DOUGLAS & TOM RUEMLER
PO BOX 2726
AVON, CO 81620

Policy Number: 14360718-01
Account Number: 2934 5613 7316 001P

Insured: JUDY DOUGLAS & TOM RUEMLER

Coverage: Home

Location: 2011 BEAVER CREEK PT
AVON, CO 81620

IMPORTANT MESSAGES

Higher Deductible = Lower Premium You may have more control over your premium than you think. Consider raising your deductible to maximize the value of your policy. Also speak to your agent or broker about all of the available discounts in your state.

99% of customers would recommend us In a recent survey, 99 percent of Chubb policyholders said they'd recommend us to a family member or a friend following a claim.

STATEMENT SUMMARY

Balance From Last Statement-06/29/15	\$1,480.00
Installment Fee	10.00
Premium & Charges (see detail below)	-52.00
Total Amount Due	\$1,438.00
Minimum Amount Due	\$193.13
Payment Due Date	08/22/15

PREMIUM & CHARGES (Refer to your policy papers for details about your coverage, premium and any policy changes.)

Policy Term	Transaction	Effective Date	Coverage	Amount
05/22/15 - 05/22/16	Policy Change	06/17/15	Home	-\$52.00
Total Premium & Charges				-\$52.00

For Coverage Questions Please Call:
ARROW INSURANCE MANAGEMENT INC (AVON)
P. O. BOX 918
AVON, CO 81620-0000
1-970-949-5110

For Claims Reporting and Information Please Call:
1-800-CLAIMS-0 (252-4670)

Billing/Payment Options & Information:
Visit www.chubb.com/personal to access your account, pay online and review payment history.

Customer Care Team, 1-800-682-4822 (Service Reps available M-F, 8am-6pm ET; Automated Service available 24/7)

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Please return this coupon with your payment. Write your **Account Number** on your check, make it **payable to Chubb**, and mail your check so we receive it by the Due Date. Thank you for insuring through Chubb.

Account No. 2934 5613 7316 001P
JUDY DOUGLAS & TOM RUEMLER

CHUBB GROUP OF INSURANCE COMPANIES
PO BOX 7247-0180
PHILADELPHIA PA 19170-0180

*Enrolled
auto billing - 8/17*

Payment Due Date: 08/22/15
Payment must be received by this date, to avoid a cancellation notice.

Total Amount Due: \$1,438.00
Minimum Amount Due: \$193.13

Amount Enclosed: \$

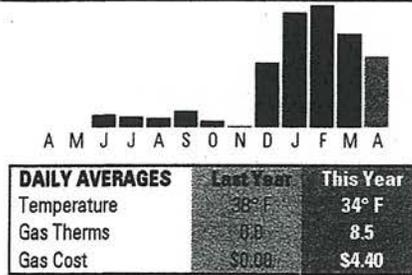
1293456137316001P0 201508223 001438001 000193136 8





SERVICE ADDRESS	ACCOUNT NUMBER	DUE DATE
MALAHIDE LLC 2011 BEAVER CREEK PT AVON, CO 81620	53-0010853858-6	04/21/2016
	STATEMENT NUMBER	STATEMENT DATE
	496065422	04/01/2016
		AMOUNT DUE
		\$127.58

YOUR MONTHLY NATURAL GAS USAGE



SUMMARY OF CURRENT CHARGES (detailed charges begin on page 2)

Natural Gas Service	03/02/16 - 03/31/16	247 therms	\$127.58
Current Charges			\$127.58

ACCOUNT BALANCE

Previous Balance	As of 03/02	\$163.73
Payment Received	Auto Pay 03/24	-\$163.73 CR
Balance Forward		\$0.00
Current Charges		\$127.58
Amount Due		\$127.58

QUESTIONS ABOUT YOUR BILL?

See our website: xcelenergy.com
 Email us at: Customerservice@xcelenergy.com
 Call 24 hours a day, 7 days a week
 Please Call: 1-800-895-4999
 Hearing Impaired: 1-800-895-4949
 Español: 1-800-687-8778
 Or write us at: XCEL ENERGY
 PO BOX 8
 EAU CLAIRE WI 54702-0008

INFORMATION ABOUT YOUR BILL

Thank you for your payment.



RETURN BOTTOM PORTION WITH YOUR PAYMENT • PLEASE DO NOT USE STAPLES, TAPE OR PAPER CLIPS



Please help our neighbors in need of energy assistance by contributing to Energy Outreach Colorado. To participate, check the box in the lower left corner and mark your contribution amount on the back of this payment stub using blue or black ink.

ACCOUNT NUMBER	DUE DATE	AMOUNT DUE	AMOUNT ENCLOSED
53-0010853858-6	04/21/2016	\$127.58	Automated Bank Payment

Your bill is paid through an automated bank payment plan.

APRIL						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

AV 01 044493 36128B154 C**5DGT



MALAHIDE LLC
 PO BOX 2726
 AVON CO 81620-2726



XCEL ENERGY
 P.O. BOX 9477
 MPLS MN 55484-9477



32 53042116 00108538586 00000012758000000012758



3799 HIGHWAY 82 • PO BOX 2150
 GLENWOOD SPRINGS, CO 81602-2150
 (970) 945-5491 • FAX (970) 947-5465
 www.holycross.com

A Touchstone Energy® Cooperative

Avon Office
 41284 Hwy 6
 PO BOX 972
 Avon, CO 81620
 (970) 949-5892
 FAX: (970) 949-4566

Gypsum Office
 0132 Buckhorn Valley Blvd
 Gypsum, CO 81637
 No Mail Delivery
 (970) 949-5892
 FAX: (970) 748-4315

Pay-By-Phone (877) 833-2555

3633 1 AV 0.388
 MALAHIDE LLC
 PO BOX 2726
 AVON CO 81620-2726

4 3633
 C-9 P-9

*** REMINDER ***
 Please call Holy Cross Energy at (970) 945-5491 to update
 your member contact information for billing and power
 outage communications.



Account Number		501030803		3		Statement Date		Amounts		
Service Dates				Days		10/23/2015				
FROM		09/15/2015		TO		10/14/2015		29		
Meter Readings						Description				
Description	Rate	Present	Previous	Multiplier	Usage					
						Previous Balance				53.10
						Payment				-53.10
						Subtotal				0.00
						Customer Charge				7.75
						Energy Charge				7.58
						76 ECA @ 0.00199-				-0.15
						WECARE Surcharge				0.30
						Town Tax				0.16
						Franchise Fee				0.46
						Total This Bill				16.10
OLD KWH	21	6056	5980	1	76					
NEW KWH	21	0	0	1	0					
Meter #	Service Address				Location: #	Payment Due By	Amount Due			
36791	2011 BVR CRK PT L111C				5057053	11/07/2015	\$16.10			
220878	Average Daily Temp:		This Month:		58	Last Year:		54		
Billing Date		Average Daily KWH			Average Daily KWH					
10/23/2015		This Year:			2	Last Year:		0		

Include this stub with your remittance in the envelope provided to ensure prompt credit.

Make Check Payable To: Holy Cross Energy. PO Box 2150, Glenwood Springs, CO 81602-2150

MALAHIDE LLC

Cycle	Account Number	Payment Due By	Amount Due
3	501030803	11/07/2015	PAID BY CREDIT CARD - DO NOT SEND PAYMENT

Yes... Sign this account up for Round-up.

Round up my bill.

Add additional \$ _____ to my monthly bill.

HOLY CROSS ENERGY
 PO BOX 2150
 GLENWOOD SPRINGS CO 81602-2150





**REAL ESTATE TRANSFER TAX EXEMPTION
PROMISSORY NOTE AND AFFIDAVIT
FOR PRIMARY RESIDENCE EXEMPTION**

\$ 3,200 .00 DOLLARS

Date: April 16, 2016

1. This Promissory Note (“**Note**”) is executed by the undersigned “**Borrower**” (or Borrowers) as a condition of granting a conditional exemption from the Town of Avon Real Estate Transfer Tax as permitted for the acquisition of a residential property for use as a primary residence as set forth in Avon Municipal Code Sections 3.12.060(15) and (16), for the property described as:

Complex Name Beaver Creek Point Building/Unit 2011

Street Address 2011 Beaver Creek Point Avon, CO 81620, the “**Property**”.

2. FOR VALUE RECEIVED, the undersigned Borrower promises to pay the Town of Avon, a home rule municipal corporation of the State of Colorado (“**Note Holder**”), the principal sum of Thirty-two hundred DOLLARS (U.S. \$ 3,200 .00), immediately due in one installment, if, within one year from the property acquisition date of May 22, 2015 Borrower ceases to use the Property as a primary residence.

3. AFFIDAVIT: Borrower swears that the Property has been purchased, or will be purchased, for use as a primary residence by Borrower and not for investment or resale. Occupation and use of a residence as a primary residence must occur within thirty (30) days of transfer of the real property, provided that the Town Manager may grant an extension of an additional ninety (90) days if extenuating circumstances are found to exist in the Town Manager’s discretion and provided that such extension request is included with the applicant’s application for exemption.

4. The Town shall terminate, extinguish and release the Borrower from any obligation or liability under this Note no sooner than one year after the date that Borrower acquires the Property if the Borrower provides evidence that the Property was used as a primary residence by Borrower. The Town shall take into account the following circumstances for the purpose of determining primary residence: voter registration in Avon, Colorado (or signing an affidavit stating that the applicant is not registered to vote in any other place); stated address on Colorado driver’s license or Colorado identification card; stated address on motor vehicle registration; ownership or use of other residences not situated in Avon, Colorado; and stated residence for income and tax purposes.

5. The principal amount shall bear interest at the rate of twelve percent (12%) per annum from the date that Borrower acquired the Property until the date paid. Principal and interest shall be payable at One Lake Street, P.O. Box 975, Avon, Colorado, 81620, or such other place as Note Holder may designate.

6. Note Holder shall be entitled to collect all reasonable costs and expense of collection and/or suit, including, but not limited to reasonable attorneys’ fees.

7. In the case of multiple Borrowers, the term "Borrower" shall include the plural "Borrowers" and Borrowers' liability shall be joint and several under this Note.

8. This Note shall constitute a lien on the Property and shall be subordinate to any first mortgage or deed of trust of record on the Property. Town may collect the amount due under this Note as a delinquent tax in accordance with Colorado Revised Statutes Section 31-20-105 by certifying the amount due to the treasurer of Eagle County.

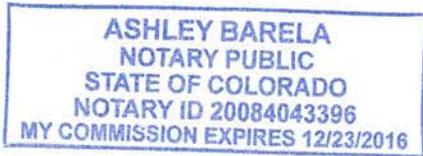
Borrower's Signature Thomas Ruenmler Date 4/18/2016

STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 18 day of APRIL, 2016, by THOMAS RUENMLER.

Witness my hand and official seal.

My commission expires: 12.23.16



Ashley Barela
Notary Public

SECOND BORROWER'S SIGNATURE (Use only if there is more than one Borrower)

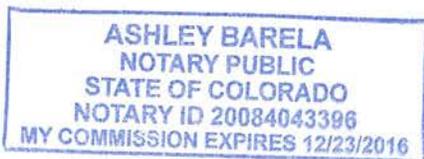
Borrower's Signature Judith Douglas Date 4/18/16

STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 18 day of APRIL, 2016, by JUDITH DOUGLAS.

Witness my hand and official seal.

My commission expires: 12.23.16



Ashley Barela
Notary Public

CERTIFICATE OF TITLE

MOTOR VEHICLE

44E655118

ODOMETER

3863

A

ODOMETER LEGEND:

- A - Actual Mileage
- E - Exceeds mechanical limits
- N - Not actual mileage - WARNING
- ODOMETER DISCREPANCY

VIN WPOCA29805U710417

YEAR 2005 MAKE PORS

MODEL

BODY CV PAS

MAIL TO

DOUGLAS JUDITH CACICH
PO BOX 2726
AVON, CO 81620

CW/CAP/ALZE

CWT 28

PREVIOUS TITLE

VA

FUEL

TITLE BRANDS

OWNER DOUGLAS JUDITH CACICH

DATE PURCHASED

01/22/2007

DATE ACCEPTED

09/09/2015

DATE ISSUED

09/29/2015

FIRST LIENHOLDER

DATE FILED

Signature below certifies under penalty of perjury in the second degree the release of the first lienholder's interest in the vehicle.

FILE NUMBER

Lienholder's Name

AMOUNT OF LIEN

LIEN EXTENDED TO COUNTY

MATURITY DATE

Authorized Agent's Signature Date

SECOND LIENHOLDER

DATE FILED

Signature below certifies under penalty of perjury in the second degree the release of the first lienholder's interest in the vehicle.

FILE NUMBER

Lienholder's Name

AMOUNT OF LIEN

LIEN EXTENDED TO COUNTY

MATURITY DATE

Authorized Agent's Signature Date

THIRD LIENHOLDER

DATE FILED

Signature below certifies under penalty of perjury in the second degree the release of the first lienholder's interest in the vehicle.

FILE NUMBER

Lienholder's Name

AMOUNT OF LIEN

LIEN EXTENDED TO COUNTY

MATURITY DATE

Authorized Agent's Signature Date

FOURTH LIENHOLDER

DATE FILED

Signature below certifies under penalty of perjury in the second degree the release of the first lienholder's interest in the vehicle.

FILE NUMBER

Lienholder's Name

AMOUNT OF LIEN

LIEN EXTENDED TO COUNTY

MATURITY DATE

Authorized Agent's Signature Date

THE APPLICANT HAS BEEN DULY REGISTERED IN THIS OFFICE AS THE OWNER OF THE MOTOR VEHICLE DESCRIBED SUBJECT TO LIENS AND ENCUMBRANCES IN THE ORDER SHOWN.

EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF REVENUE DATE DUPLICATE ISSUED

BARBARA BROHL

J6480666

KEEP IN SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

DR-2001 (8-11)

VOID IF ALTERED



May 24, 2016

Mr. Tom Ruemmler
PO Box 2726
Avon, CO 81620

Dear Mr. Ruemmler:

The Town has received your application for a real estate transfer tax exemption based upon Avon Municipal Code Section 3.12.060(15) which provides for an exemption based upon the first \$160,000 of consideration of a residence to be used as a primary residence.

Section 3.12.070 provides that a complete application for exemption be filed with the Town no more than seventy-five (75) days prior to a transfer of real property or within seventy-five (75) days after the transfer of real property. In addition, applications for exemptions submitted more than four (4) months after the date of transfer, must have a finding of good cause by the Finance Director. I do not find such good cause contained within either the application or affidavits submitted.

Finally, Section 3.12.140 provides that a transferee who has paid a real estate transfer tax, or portion thereof, in error may apply for a refund within one year of the transfer. However, the code further states that "the failure to file an application for exemption from a real estate transfer tax within the timeframes established in Section 3.12.070 shall not constitute the payment of a real estate transfer tax in error".

Based on the findings above, your application for exemption is denied. You may appeal this decision to the Avon Town Council in accordance with the requirements contained in Subsection 3.12.070(d). You must file a written appeal with the Town Clerk by June 23, 2016.

Sincerely,

A handwritten signature in black ink that reads "Scott Wright". The signature is written in a cursive style with a large initial "S" and "W".

Scott C. Wright, CPA, CPFO
Finance Director / Asst. Town Manager



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Matt Pielsticker, Planning Director
David McWilliams, Town Planner
Meeting Date: August 9, 2016
Agenda Topic: Work Session and Review of Options and Direction
Developing Managed Parking Program for 2016/2017 Ski Season

Council Action

Direction on Managed Parking options for 2016/2017 Ski Season.

Background

Town Council requested proposed responses to the new parking fees, which will be implemented by Beaver Creek Resort at the Elk and Bear lots, in November 2016. The Resort will charge \$10 per vehicle to park at the Elk and Bear lots directly across from the Town on Highway 6, from 6am – 1pm, with free parking offered after 1pm. The Town anticipates increased pressure on free public parking with the change, as skiers and others who have been using the Resort lots would see free public parking in Avon as a positive alternative. For skiers, Avon's Skier Shuttle provides a viable alternative to mountain access.

On July 30, 2016, a staff meeting was held to discuss potential parking policy changes in response to the increased parking demand. Consultants and immediate stakeholders also were in attendance. The group included Scot Martin and Gregory Shumate, Senior Associates with Desmond Design Management; Dan Leary, Traer Creek; Terry Smith, Eagle Valley Library District; Virginia Egger, Town Manager; Jane Burden, Transit Director; Greg Daly, acting Police Chief; Justin Hildreth, Town Engineer; Matt Pielsticker, Planning Director; and David McWilliams, Town Planner.

Desmond Design Management representatives were invited to the meeting to assess the Town's position relative to other resort communities and best practices in the parking management field. This Memorandum summarizes the two options identified from the session for possible implementation this fall.

Options

1. No changes to current parking hours in the Town of Avon

The meeting participants discussed the potential of continuing the current parking plan in Avon, which allows free parking with no time limits from 6am – midnight on most of the Town's street parking spaces and in publically owned lots; no overnight parking is allowed.

- This parking plan was implemented last fall and has resulted in greater use of available parking spaces in the West Town Core, which was the goal of the plan. There is very little on street parking in the eastern core. Tract A is a Town-owned lot and discussed below.

- There has been no indication of driver congestion looking for spaces. It is observed that users of the spaces include commercial core employees, skiers, and park and river users.
- This approach would maintain current parking time limits, but increase the number of spaces for the library to a total of 50 placed along Mikaela Way, on the north side of the Library in the Recreation Center lot, with the balance at Town Hall for employees.
- It is anticipated that this approach could result in diminished parking for users other than skiers who want to benefit from free parking between 6am – 1pm.
- If parking or congestion problems occur, it would be challenging to implement a different parking plan mid-ski season.

2. Managed Plan with 2-hour limits until 1pm and Permits

A second strategy would be to match the Resort paid parking program in the West Town Core to:

- Incentivize skiers to use the Resort lots
- Test a permit parking system - pay and free - in Avon
- Provide a stable and consistent amount of parking for local businesses and other uses
- Shift commercial employee parking to Tract A at Chapel Place

The strategy includes the following:

- Parking spaces in East Municipal lot, East side of Recreation Center, Mikaela Way, along West Benchmark Road, and Lake Street:
 - Would be signed and enforced for free 2 hour use until 1pm; unlimited time parking would be allowed after 1pm
 - In addition, provide an all-day parking permit option for a fee. This permit would be available for a nominal fee and would allow pass holders to park in designated 2-hour spaces for an unlimited amount of time.
 - Provide Library parking as described in #1 above.
- Tract A at Chapel Place
 - The Town owns this parking lot, totaling 143 spaces of the 247 shown in Exhibit 1. A *Parking Maintenance Agreement* with Traer Creek- RC states the Town will allow and enforce short term parking and Traer Creek will maintain the lot, including snowplowing. The Town may not charge for parking.
 - Staff believes, and in conversations last summer with Pier 1, at least 120 of the spaces are not used.
 - It is proposed this lot become permitted parking until 1pm for commercial core employees. A small administrative fee would be charged to the employer. After 1pm the 120 spaces would be open as free unlimited time parking.
 - The Town would provide snow removal.
- West Beaver Creek Boulevard
 - All the spaces along West Beaver Creek Boulevard would remain all-day for now. This area may be used by some skiers, but would not provide a volume or consistency of parking to make its use habitual. Likewise, many locals only ski for a few hours, and it is anticipated that spaces occupied by skiers will experience some turnover by noon.

Enforcement

The commitment to and consistency of enforcing any parking program is important. Enforcement of all-day parking is low-cost and only takes on critical importance between midnight and 6am. Implementing 2 hour spaces and permit only spaces would require monitoring with greater frequency to ensure adherence to the rules.

During the review work for Tuesday's meeting, staff became aware of the efficiency of License Plate Readers (LPRs). This electronic system, used in Aspen and other municipalities today, has the ability to quickly read license plates and register if the vehicle on a succeeding read has parked according to the time limit. It also is valuable in providing data on vehicle parking patterns in all parking spaces. The equipment can be mounted in a patrol car or other vehicle and information, we are told, can seamlessly interface with Avon's citation software.

Financial Implications

Depending on Council's preferred action, additional resources may be required, including new signage, the LPR software and hardware for enforcement and Tract A snowplowing. These estimates give a general idea of added expense to actively manage parking in the Town core area.

- Signage [Funding from the General Fund]
\$2,600 – Based upon replacing signs in Municipal lot, Recreation Center, West Benchmark Road, and Lake Street.
- License Plate Reader (LPR) [Funding from the Capital Projects or General Fund]
\$50,000 - LPR device
\$5,000 - Installation and training
\$5,000 - Annual Maintenance and Cloud web-based platform
\$5,000 – 2 year warranty
- Maintenance [Funding from the General Fund]
TBD - If the Town takes over management of the Tract A area there will be snowplowing costs in 2017; which are believed to be \$3,000 - \$5,000 per year, depending on snowfall. If a program continued into the summer the Town should anticipate annual striping, and additional signage costs to define a managed parking area.

Monitoring

Town staff would be relied upon to monitor any parking plan changes directed by the Council. Of special interest will be monitoring the change in ridership on Avon's Skier Bus.

Attachments

Exhibit 1 – Public Parking Locations and Spaces

Exhibit 2 – Public Parking Map

Exhibit 1 – Public Parking Supply and Locations

West Town Center	<u>Spaces</u>
Avon Elementary	72
Lot 16 Park	19
Town Hall/Lake St	123
Rec Center/Fire	93
West BC Blvd	22
Mikaela Way	25
New Town Hall	36
Wyndham On-Street	3
	393
East Town Center	
E. Benchmark Rd	21
Chapel Place	9
Behind Chapel Sq.	30
Pier 1 Lot (Total)	*247
	307
Village	
Traer Creek Plaza- P1	82
Traer Creek Plaza- P2	88
	170
Total Public Parking Spaces	870

*Managed Parking area would be approximately 75-100 spaces



Avon Public Parking Zones

- **All Day Parking Zone** P Lot P Lot
- **2 Hour Max Zone** P Lot P Lot
- **Pier One Lot** P Lot P Lot
- **All Day Parking Pass Spaces*** P Lot P Lot

*Permit holders can use all 2 hour spaces west of Avon Road, and have dedicated spaces in the Rec Center lot.



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Preston Neill, Executive Assistant to the Town Manager
Date: August 9, 2016
Agenda Topic: Review of Booting Practices in Avon and Comparable Colorado Municipalities for Direction

SUMMARY:

On June 14, 2016, Ordinance 16-11 was presented to Council to amend sections of the Avon Municipal Code concerning vehicle impoundment and immobilization. Council tabled the item and provided direction to Town staff to research the processes of vehicle impoundment and immobilization, and regulations for private booting companies in several other municipalities. Additionally, staff was directed to conduct outreach to local businesses and commercial property owners that contract with booting and/or towing companies, to gauge opinion and sentiments on the issue.

BACKGROUND:

In 2009, the Avon Town Council considered whether to regulate private companies that immobilize vehicles by “booting”. Consideration was given to the legalities, practices in other communities and the public interest. The Colorado Attorney General’s (AG) office and the District Attorney (DA) both found vehicle owners have the right to due process if their vehicles are immobilized or towed. The AG and DA letters are included with this memorandum. There was substantial research into laws and practices of other states concerning the regulation of private booting companies. The Town Council adopted Ordinance 09-10 to enact regulations for private booting companies, referred to as Parking Enforcement Companies.

OUTREACH:

The Avon Police Department has completed community outreach regarding vehicle immobilization procedures in Avon, particularly in the Town core. Master Police Officer Chris Peck visited with a variety of business proprietors and property managers to survey their response to a number of questions. Owners or managers of the following businesses were interviewed: Bob’s Place, Venture Sports, Avon Bakery, Beaver Liquors, Treasures Quality Consignments, High Gear Cyclery, Loaded Joe’s, Montana’s Smokehouse and Pazzo’s Pizzeria. In addition, property managers for Avon Center and Aspens Mobile Home Village were surveyed. A summary of their responses is below:

Question – How do you feel about the current municipal ordinance regarding regulations for private booting companies?

Generally speaking, respondents were supportive of booting as a mechanism for parking enforcement but some respondents had an issue with the practices of one booting company in particular and how that company operates. Respondents commented that this company is “too strict” and at times booting is not executed with “common sense”. One property manager, who referenced the same booting company, supported the practices and believed that at times, violators are not truthful regarding their intent. The property manager stated that the property restricts parking only to those patronizing the businesses on the property.

Question – Can you recommend any better practices in which the Town of Avon can handle booting?

There was a mixture of responses. Proposals from respondents included parking meters, more free on-street parking and a grace period before a vehicle is booted.

Question – How have you or your business been affected by booting on private commercial property?

Respondents explained the negative impacts on customers and further explained the detrimental effects on the businesses as sometimes customers will not patronize a business because of a 2-hour restricted use in the private parking lot. One business owner stated that some employees have been booted, while another complained that legitimate customers have been booted when they walked across the street to another business. Other complaints included that there is no parking for sales representatives and businesses have lost customers because of booting.

Question – Do you think the municipal ordinance regarding regulations for private booting companies should be repealed or modified?

The majority of responses included recommendations to modify the ordinance as opposed to repealing the ordinance entirely. Some of the recommended modifications included to allow a grace period, with one recommending up to four hours before booting.

RESEARCH:

As previously mentioned, staff was directed to conduct research on the processes of vehicle impoundment and immobilization, and regulations for private booting companies in several other municipalities. Staff researched the municipal codes and contacted representatives of the towns of Breckenridge and Vail and the city of Aspen.

Aspen

The City of Aspen has not enacted any regulations for private booting companies. According to a representative with the Aspen Police Department, they rarely, if ever, have any issues regarding booting companies. It was emphasized that a booting issue would be between the property owner and the owner of the booted vehicle.

Breckenridge

The Town of Breckenridge has not enacted any regulations for private booting companies. A sergeant with the Breckenridge Police Department, who oversees parking enforcement, said she has never encountered an issue related to booting. She explained that there are a couple of businesses that boot vehicles themselves if vehicles are parked illegally. They leave the boot on the vehicles until a tow truck company arrives. Those businesses that apply boots themselves rarely have to do it and their private parking lots are well-signed.

Vail

The Town of Vail has not enacted any regulations for private booting companies.

OPTIONS:

This is a policy decision for the Town Council and no recommendation is offered. Potential options are outlined below:

1. Council may choose to amend the current regulations to include the following revisions:
 - Allow businesses to apply boots themselves by waiving the license requirement in section 5.12.020 of the Avon Municipal Code, or continue to utilize the services of a licensed parking enforcement company. However, the licensed parking enforcement company may

- only boot based on a complaint from a business or property owner. They cannot boot based on their own observations. This would eliminate the need for post-seizure hearings conducted by the Avon Municipal Court for cases involving commercial private properties.
- All residential private home owner associations or property managers may apply boots themselves by waiving the license requirement in section 5.12.020 of the Avon Municipal Code. In addition these entities may continue to contract with a parking enforcement company. Those companies will not need to have a complainant in order to boot vehicles. It can be based on their observations. Cases involving residential private properties will still be subject to a post-seizure hearing.
 - Require private parking lots that utilize licensed parking enforcement companies to be adequately signed that illegally parked cars will be immobilized.
 - Permit the municipal court discretion to reverse or reduce an immobilization fee.
2. Council may choose to amend the current regulations to include the following revisions:
 - Implement a one (1) hour (or longer) grace period that prevents a parking enforcement company from immobilizing a vehicle until after the one hour mark.
 - If the one hour mark is reached and the parking enforcement company believes the driver of the vehicle did not patronize any businesses on the property, the vehicle may be immobilized.
 - Require businesses to implement a validation system in order to give patrons the ability to prove patronization of a business associated with a particular private parking lot.
 - If businesses do not elect to utilize the services of a licensed parking enforcement company, allow businesses to apply boots themselves by waiving the license requirement in section 5.12.020 of the Avon Municipal Code.
 3. Council may elect to amend the current regulations to include the following revisions:
 - Permit payment by credit card in addition to payment by cash.
 - Clarify grounds for finding a lack of “moral character” that would justify suspending or revoking a license.
 - Change the standard to uphold a vehicle immobilization from “probable cause” to actual violation of parking rules and compliance with all vehicle impoundment rules.
 - Change the minimum hearing cost from \$100 to an amount to be determined by the municipal court.
 - Permit the municipal court discretion to reverse or reduce an immobilization fee.
 4. Council may repeal the booting regulations established by Ordinance 09-10. Oversight and due process for parking enforcement companies that boot within the Town of Avon would be eliminated.
 5. Council may choose to outlaw the practice of booting within the Town of Avon.

ATTACHMENTS:

AG Opinion re: Booting – February 19, 2009

Heil/Conboy Memo – March 5, 2009

District Attorney Opinion re: Booting – March 20, 2009



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

February 19, 2009

Mark Hurlbert
District Attorney
Fifth Judicial District
P.O. Box 488
Breckenridge CO 80424

RE: Private entities "booting" cars on private property

Dear Mark:

We have reviewed the materials you sent on this issue and agree with the analyses provided in the opinions from California and Colorado Springs. Vehicle owners must be afforded due process if their vehicles are to be immobilized or towed. As such, private property owners are entitled to call the police to have improperly parked vehicles ticketed and/or booted or towed. Since private "booting" companies perform a function similar to that of tow truck drivers, it is appropriate that they be held to similar standards; private property owners should therefore follow similar procedures before immobilizing vehicles that are allegedly parked illegally on private property.

Sincerely,

FOR THE ATTORNEY GENERAL

THOMAS RAYNES
Deputy Attorney General
Criminal Justice Section
303-866-2375



WIDNER MICHOW & COX^{LLP}
ATTORNEYS AT LAW

MEMORANDUM

TO: Honorable Mayor Wolfe and Town Council Members
CC: Larry Brooks, Town Manager; Chief Brian N. Kozak, Avon Police Department
FROM: Mary Conboy, Associate Attorney
THROUGH: Eric Heil, Town Attorney
DATE: March 5, 2009
SUBJECT: Private Booting of Vehicles

SUMMARY: This memorandum discusses the legality of booting vehicles parked on private property, applicable state statutes, and vehicle booting laws from other jurisdictions. To date, neither the Colorado courts nor the Attorney General have addressed the legality of booting vehicles on private property. Unlike towing companies, private booting companies are not regulated by the Public Utilities Commission.

Other jurisdictions are split on whether private booting constitutes illegal tampering of a motor vehicle or justified self-help for the protection of private property from trespass. The states of Utah, New York and North Carolina have examined the issue of private booting and have issued decisions that the booting of private vehicles on private property constitutes justified protection of private property. The California Attorney General has issued a formal opinion that booting vehicles on private property constitutes criminal vehicle tampering. Some states, such as Washington, have enacted legislation that specifically prohibits and criminalizes booting of vehicles on private property by private companies.

PROTECTION OF PRIVATE PROPERTY: Several states have held that vehicle booting on private property is justified and reasonable protection of property rights.

North Carolina: The North Carolina Supreme Court recently ruled on whether private booting of vehicles constitutes justified protection of private property in the case of *Kirschbaum v. McLaurin Parking Co.*, 656 S.E. 2d 683, (North Carolina 2008). In *Kirschbaum*, the Plaintiff had a boot affixed to his vehicle after he illegally parked it in a private lot. The Plaintiff raised a claim that the Defendants committed “trespass to chattel” by placing a boot on his vehicle. The Court in *Kirschbaum* considered the application the two state statutes, the first stating that it is unlawful for an unauthorized person to park in a private parking space provided that the private parking lot contains certain signage (N.C. Gen.Stat. §20-219.2 (2005)) and the second stating that tampering with a vehicle without the owner’s consent is a Class 2 misdemeanor (N.C. Gen.Stat. §20-107 (2005)). The Court reconciled these statutes by recognizing the principle that:

“[O]ne is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if the act is, or is reasonably believed to be, necessary to protect the actor's land or chattels or his possession of them, and the harm inflicted is not unreasonable as compared with the harm threatened.”

Restatement (Second) of Torts § 260(1) (1965)

The Court in *Kirschbaum* dismissed the vehicle owner's claims holding that the application of a boot may be an interference with the property of a trespasser; however, the owner of the real property is privileged to protect their right to exclusive possession of their property by such application.¹ Interestingly, *Kirschbaum* went on to recognize limits to a property owner's rights to protect their property, stating that rightful possession to property cannot be vindicated by a bludgeon, but must be determined by a resort to legal proceedings. The Court in *Kirschbaum* noted that the private towing company provided a telephone number for removal of the boot as well as an appeals process for improper booting.

Utah: The Utah Attorney General's Office issued an opinion on August 26, 2008, stating that local regulations enacted by Logan City which authorized private booting with limitations were legally permissible. In Logan City, Utah individuals who did not have a proper permit and improperly parked on private property within the City limits were subject to having their vehicles booted by a private parking enforcement company contracted by the property owner. The individual was required to pay a fee to the booting company to have the boot removed.

Logan City adopted an ordinance to regulate the booting practices of private property owners within the City's limits. The legality of the ordinance was questioned as citizens were concerned that the private vehicle booting violated Utah law. The Attorney General took the position that Logan City's regulation of the practice of booting did not expand a property owner's right to enforce parking, but limited the owner's existing right to contract with a private company to immobilize vehicles which trespass on a private parking lot. The opinion recognized that Utah law allows the owner of real property to regulate the use of their property when the owner allows use by the public for motor vehicle travel. §41-6a-215. The Attorney General indicated that this statute “would include the action of private owners, upon proper notice to the public, assuring compliance with its rules prohibiting unauthorized parking by “non-residents” by vigorous use of traditional common law remedies,” such as private vehicle booting.

In its discussion of the issue the Attorney General cited the holding in the New York case of *Forest Hills Gardens Corp. v. Baroth*, 147 Misc. 2d 404 and to the holding in *Kirschbaum*. In *Forest Hills* the New York court evaluated the issue of whether a corporate owner of a private residential development area had the legal right to apply an immobilizing boot on unauthorized vehicles parked on its property. The Court held that there was little difference between booting a vehicle versus towing and impoundment and that booting, compared to towing, was a preferable option.

The Utah Attorney General's opinion concludes by stating Logan City's ordinance neither conflicted with nor violated any provision of Utah law.

¹ The North Carolina General Assembly has specifically authorized private parking lot owners in certain counties to boot unauthorized vehicles.

ILLEGAL VEHICLE TAMPERING: The California Attorney General's Office issued an official opinion regarding the legality of private vehicle booting that was contrary to the opinion of the Utah Attorney General. The California Attorney General concluded that placing a boot on a vehicle's wheel in order to immobilize the vehicle would constitute tampering in violation of the California Vehicle Code and in violation of state law. The California Vehicle Code provides that, "no person shall either individually or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner." The Attorney General opined that since the state had enacted several statutes to provide a legal means for preventing the impermissible parking of vehicles on private property, the booting of vehicles parked on private lots by private companies violated California law.

STATE AND MUNICIPAL REGULATION OF BOOTING: The unregulated nature of private booting companies has led to abusive practices and some states have passed legislation to prohibit booting. The Attorney General for the State of Connecticut proposed regulations that would require a booting company to notify the police when booting, prohibit the charging of a customer for storage for any time prior to the notification of the police, delegate rate regulation to the Connecticut Department of Motor Vehicles and allow reasonable access to recover the vehicle.

The State of Washington passed a bill specifically prohibiting booting. The law makes immobilizing a vehicle with a boot a misdemeanor that could lead to a year in jail. This legislation was passed after attorneys for the Washington Department of Licensing argued that immobilizing a vehicle with a boot was an illegal impoundment and officials won a permanent injunction against a booting company for such illegal practices.

The City Council of the City of Minneapolis, Minnesota unanimously voted to ban the practice of booting last June in connection with a City report on abusive and predatory booting practices. Booting companies were observed booting without adequate signage and without proper authorization. Several companies also charged unauthorized fees, used intimidating behavior and threatened to have cars towed if booting fees were not paid immediately.

The City of Logan Utah, as discussed above, adopted an ordinance to regulate private vehicle booting on private property within the City's limits.

COLORADO STATUTES APPLICABLE TO BOOTING: Like California, Colorado also has a motor vehicle tampering provision in addition to a criminal tampering provision. The language of Colorado's tampering provision is slightly different from that of California. Colorado Revised Statutes §42-5-103(1)(a) provides that any person who with criminal intent, "Tightens or loosens any bolt, bracket, wire, screw, or other fastening contained in, on, or forming a part of such motor vehicle," or takes these actions against, "any part, equipment, attachment, accessory, or appurtenance contained in or forming a part [of the motor vehicle] without the knowledge and consent of the owner of such motor vehicle commits tampering with a motor vehicle." Colorado's criminal tampering provision contained in §18-4-506, C.R.S., provides that a person commits the crime of second degree criminal tampering if he tampers with property of another with intent to cause injury, inconvenience or annoyance to that person or to another.

Legality of Private Vehicle Booting

March 5, 2009

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The action enumerated in both the tampering and criminal tampering statutes clearly applies to the act of placing a boot on a vehicle's wheel. Moreover, it is arguable that the criminal intent element of the statutes is also met based on the details of the complaints received by the Avon Police Department.

The Office of the Colorado Attorney General recently provided an unofficial opinion to the Eagle County District Attorney which stated that the owners of vehicles that are booted on private property should be afforded due process, such as a post deprivation hearing and ability to appeal the private booting action and protest the boot removal charges.

PUC REGULATION OF TOWING COMPANIES: Towing companies in Colorado are strictly regulated by the Colorado Public Utilities Commission ("PUC") as provided by §40-13-01(3)(a)(b), C.R.S. They are required to be licensed, inspected and audited. Pursuant to §40-13-107(1)(d), C.R.S., the PUC has the duty to prescribe rules and regulations covering the operations of towing carriers which includes, but is not limited to, the circumstances under which a towing carrier may tow a motor vehicle without the express consent of the owner. The regulations specifically state that the towing company shall release a vehicle upon demand by the vehicle's owner, during normal business hours, for a non-consensual tow.

Towing carrier's fees are regulated by the PUC so that they are not allowed to charge unreasonable amounts for towing. §40-13-107(2), C.R.S., provides that the PUC may set maximum towing rates to be collected for the towing of motor vehicles and for storage of the same. Disputes about the legality of tows are reviewed by the commission and an independent judge. If a filed complaint proves valid, the PUC has the authority to suspend or revoke a towing carrier's permit and assess civil penalties pursuant to §40-13-109, C.R.S.

Private booting companies, unlike towing companies, are not regulated in the State of Colorado. Therefore, private booting companies are not subject to oversight or regulation governing the circumstances when a boot may be placed on a vehicle and the maximum fees that may be charged for such booting. Moreover, there is neither a mechanism for the filing of grievances nor any legal remedy for those aggrieved by the industry's practices.

AVON'S AUTHORITY TO REGULATE PRIVATE VEHICLE BOOTING: Since Colorado has not regulated the industry of private vehicle booting, the Town is not restricted from regulating private vehicle booting under its general police powers and home rule authority. The Town may consider adopting regulations to govern the operation of private booting companies, which could include the following elements:

- 1) require booting companies to obtain a license to conduct booting within the Town;
- 2) limit the circumstances under which a company may boot a motor vehicle without the owner's consent;
- 3) require police notification prior to booting;
- 4) provide remedies for parties who have their cars illegally booted (i.e. by requiring immediate removal of the boot);
- 5) impose liability such as revocation or suspension of the company's license and impose fines for failure to comply with the Town's regulations;

Legality of Private Vehicle Booting

March 5, 2009

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- 6) impose specific signage requirements to notify the public when booting may occur;
- 7) impose maximum fees that may be charged for booting;
- 8) require notice be affixed to the vehicle stating who to contact to remove the boot and the cost;
- 9) require the booting company to maintain personnel at all times who are available to remove the boot; and,
- 10) require private booting companies to provide an appeals process for alleged improper booting.

The Town could also decide to prohibit (i.e. criminalize) private booting activities altogether.

The Town's obligation is to enforce the Town's municipal code and if the Town chooses to regulate the practice of booting then it will become the Town's duty to advise private property owners and private businesses under which circumstances the practice of booting is legally permissible and to prosecute any violations. Alternatively, the Town could choose not to act on the issue locally and leave the matter to the vehicle owners, private property owners, and the District Attorney. If the Town chooses this option, then an opinion should be obtained from the District Attorney regarding whether booting is a violation of a state criminal statute(s). Once a determination is made, the District's Attorney's Office would be responsible for prosecuting booting offenses. If the District Attorney determines that booting is a violation of a criminal statute it is not the Town's duty to advise private property owners and private businesses that private booting is illegal.

CONCLUSION: The State of Colorado does not regulate the industry or the practice of vehicle booting by private companies and Colorado courts have not ruled on whether private vehicle booting constitutes unlawful trespass to chattel or illegal vehicle tamper or if such activities are authorized and reasonable means for protection of private property. The Town has the authority to regulate private booting companies pursuant to its general police powers and home rule authority. We are not aware of any municipalities in Colorado that have adopted local regulations concerning vehicle booting by private companies.



**Office of the District Attorney
Fifth Judicial District**

Serving Summit, Lake, Clear Creek, and Eagle Counties
Mark D. Hurlbert, District Attorney

March 10, 2009

Chief Brian Kozak
Avon Police Department

RE: Private Booting of Cars

Chief Kozak:

Thank you for writing to me about this. After careful consideration, including consultation with the Attorney General's Office and reading the memorandum from Avon Town Attorneys Eric Heil and Mary Conboy, I have come to the conclusion that at this time it is potentially criminal for private entities to boot illegally parked cars.

Under C.R.S. 18-4-506, Second Degree Criminal Tampering, a person commits such a crime "if he tampers with property of another with intent to cause injury, inconvenience, or annoyance to that person." Second Degree Criminal Tampering is a class two misdemeanor. C.R.S. 42-5-03, Tampering with a motor vehicle is when a "person who with criminal intent does any of the following to a motor vehicle or to any part, equipment, attachment, accessory, or appurtenance contained in or forming a part thereof without the knowledge and consent of the owner of such a motor vehicle commits tampering with a motor vehicle: (a) Tightens or loosens any bolt bracket, wire, screw, or other fastening contained in, contained on, or forming a part of such motor vehicle."

Either of these charges could potentially apply to the situation regarding private booting of cars in Avon. Should you file such a case we will review it and should we be able to prove the case beyond a reasonable doubt, we will prosecute. Should ordinances in Avon change, I can re-evaluate my position.

Again, thank you for your consideration. If you or anyone else has any questions about this, you can call or e-mail me.

Sincerely,

Mark Hurlbert
District Attorney
Fifth Judicial District



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council

From: Virginia C. Egger, Town Manager

Meeting Date: August 9, 2016

Agenda Topic: ACTION TO SUBMIT A LETTER TO THE USFS IN REGARDS TO FSR 7-779

ACTION BEFORE COUNCIL

Action to authorize the mayor to sign a letter to the United States Forest Service (USFS) asking that the USFS consider year-round vehicle access on FSR 7-779, also known as Metcalf Creek Road.

PROPOSED MOTION

I move to authorize Mayor Jennie Fancher to submit the letter provided in Attachment A to the USFS.

SUMMARY

On July 21, 2014, the Town of Avon and the USDA Forest Service (USFS) executed a Memorandum of Understanding stating certain terms regarding the study and potential improvements to provide year-round use of USFS 7-779 also known as Metcalf Road (Attachment 1) The access point was closed to motorized vehicles (predominantly snow machines) during the winter season in 2011 when the USFS finalized it "travel management plan". Snow machine winter access was allowed to continue from Berry Creek.

At the request of the Holy Cross Powder Hounds Snowmobile Club and other snow machine enthusiasts, Town Council has been requested to send the USFS a letter to propose year-round access (Attachment 1, paragraph 2) and to propose and fund improvements to Tract I, described in the MOU's paragraph 1. In a spring meeting with the Powder Hounds, USFS and the Town Manager, the USFS offered that:

- Upon receipt of the letter the USFS will schedule the appropriate review under NEPA (paragraph 3). The queuing of the review could take 1 – 3 years depending on USFS staffing and other priority work.
- The Town in sending a letter should request that the USFS in its study consider allowing the parking lot for Metcalf Road, if approved, be located on the federal lands as Metcalf Road will not be able to provide adequate parking.
- The estimated cost of the parking and access improvements is \$250,000. Staff will recommend the expenditure in the Five Year Capital Improvements Fund in 2018.
- A potential and likely outcome of the study, if Metcalf Road is approved for winter use, the Berry Creek access will be closed. The USFS stated this is to provide reasonable access and protect the wildlife winter habitat. Powder Hound representatives said they would reach out to the Berry Creek users to update them on the Town of Avon action.

The proposed letter is provided as Attachment 2.

ATTACHMENTS

Attachment 1 – Memorandum of Understanding

Attachment 2 – Letter to the USFS

ATTACHMENT 1

FS Agreement Number	14-MU-11021507-035
Cooperator Agreement Number	

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into between the Town of Avon ("Avon"), a home rule municipality, and the USDA Forest Service ("U.S. Forest Service") on July 21, 2014, 2014.

RECITALS

Avon and the U.S. Forest Service entered into a Negotiated Resolution, dated July 5, 2011, concerning Appeal Number 11-02-00-0044 (215) which contemplated that the Town of Avon and White River National Forest would seek to develop a MOU to address issues associated with FSR 7-779 ("Metcalf Creek Road"), Exhibit A.

UNDERSTANDING OF PARTIES

1. Avon shall propose improvements to Tract I, Wildridge Subdivision, owned by Avon ("Tract I"), including construction of off-street parking spaces, potential realignment of Metcalf Creek Road as it crosses Tract I, regrading rutted road sections, and drainage improvements.
2. Avon shall propose year-round access for all vehicles, bicycles, horse and foot traffic, except during any appropriate U.S. Forest Service closures.
3. U.S. Forest Service shall consider Avon's proposal for a Federal action under the National Environmental Policy Act (NEPA).
4. Avon and U.S. Forest Service shall strive to complete the review and decision for improvements to Metcalf Creek Road and, year-round vehicle access on Metcalf Creek Road within a reasonable timeframe.
5. Avon and U.S. Forest Service shall consider and seek to develop, if appropriate, an on-going Instrument for Metcalf Creek Road that addresses maintenance responsibilities, signage and other issues as deemed appropriate.
6. Avon and U.S. Forest Service agree that this MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity and further agree that this MOU does not create any obligation of either party to expend funds, perform actions or transfer anything of value.
7. This MOU is executed as of the date of the last signature and is effective through five years at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

AVON:



Rich Carroll, Mayor, Town of Avon

U.S. FOREST SERVICE:



David Neely, District Ranger
Eagle-Holy Cross Ranger District

8/12/14

The Authority and Format of this Instrument has been reviewed and approved for signature



Grants and Agreements Specialist

7/23/14
Date

Appeal Number: 11-02-00-0044 (215)

Appellant: Rich Carroll, Town of Avon

Date Received: June 20, 2011

Decision: White River Travel Management Plan

Decision Maker: Forest Supervisor, Scott Fitzwilliams, White River National Forest

Negotiated Resolution: July 5, 2011

Town of Avon representatives and the White River National Forest officials through informal disposition agree:

- That the Town of Avon and the White River National Forest would seek to develop a Memorandum of Understanding (MOU) to address issues associated with FSR 7-779 (Metcalf Creek Road). This includes a commitment from the Town of Avon to address in the near term resource issues associated with parking and access to FSR 7-779.1 on Town of Avon lands; and in partnership with the Forest Service address long-term resource and social issues associated with the alignment and uses of this road.
- That based on the above commitment the White River National Forest would revise the decision to allow FSR 7-779 (Metcalf Creek Road) to remain open to licensed motor vehicles, bicycles, horse, and foot traffic.
- The Town of Avon would withdraw the appeal.
- Recognize the Forest Service reserves the right to decommission FSR 7-779 if the Town is unable to accomplish needed work on Town land in a reasonable timeframe, if agreement cannot be reached on the specifics of the MOU, or if specific actions identified in the MOU are not accomplished within a reasonable timeframe.

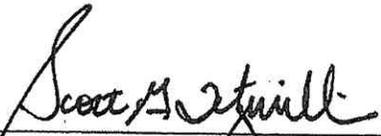
Forest Supervisor Scott Fitzwilliams commits:

To work with the Town of Avon to develop a Memorandum of Understanding (MOU) to address issues associated with FSR 7-779 (Metcalf Creek Road). That based on the commitment from both parties I will revise the decision to allow FSR 7-779 (Metcalf Creek Road) to remain open to licensed motor vehicles, bicycles, horse, and foot traffic.

Appellant Rich Carroll on behalf of the Town of Avon commits:

To work with the White River National Forest to develop a Memorandum of Understanding (MOU) to address issues associated with FSR 7-779 (Metcalf Creek

Road). Based on the commitment by the Forest Service stated above, I withdraw my appeal of the White River National Forest Travel Management Plan in its entirety.



SCOTT FITZWILLIAMS
Forest Supervisor, White River National Forest

7/5/11
Date



Rich Carroll
Town of Avon

7/7/2011
Date

ATTACHMENT 2



Post Office Box 975
One Lake Street
Avon, CO 81620

970-748-4000
970-949-9139 Fax
970-845-7708 TTY

DISTRIBUTION TO ALL PARTIES VIA EMAIL

August 9, 2016

Acting District Ranger Aaron Mayville
United States Forest Service
White River National Forest, Eagle-Holy Cross Ranger District
24747 US Hwy 24, PO Box 190
Minturn, CO 81645
awmayville@fs.fed.us

Dear Aaron,

On behalf of the Town of Avon, I am proposing year-round access for all vehicles, bicycles, horse and foot traffic be provided for FSR 7-779 (Metcalf Creek Road), except during any appropriate US Forest Service closure. This request includes a review of year-round vehicle access and road improvements on Metcalf Creek Road and emanates from our Memorandum of Understanding, dated July 1, 2014, which is attached as an Attachment. As part of the Metcalf Creek Road access assessment, the Town respectfully asks the US Forest Service include the potential for constructing the needed parking area, for the access, on US Forest Service land.

The Town understands that the US Forest Service shall consider this proposal for a Federal action under the National Environmental Policy Act within a reasonable timeframe.

Upon a positive determination for year-round access and the location of parking, the Town of Avon is prepared to provide improvements to Tract I, including construction of off-street parking spaces, and potential realignment of the Metcalf Creek Road to address drainage and rutted sections. The Town has estimated these improvements to cost approximately \$250,000, and will be subject to budget appropriation. Long term maintenance, signage and other development issues, which are identified, can be expected to be addressed in an agreement with the US Forest Service.

The Town appreciates your timely consideration of this proposal. Please let us know that it has been received and any indication of the estimated review period. As you are aware, this has been a long discussed opportunity and is important to the Avon citizenry.

Sincerely,

Mayor Jennie Fancher
Town of Avon

Attachment: Memorandum of Understanding

cc: Avon Town Council



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Matt Pielsticker, Planning Director
Meeting Date: August 9, 2016
Agenda Topic: First Reading of Ordinance 2016-14, An Ordinance Approving Amendments to the Public Facilities and Town Center Zone District Standards

Council Action

Action on First Reading of Ordinance 2016-14, An Ordinance approving Amendments to the Public Facilities (PF) and Town Center (TC) zone District Standards.

Background

Shortly after the Town purchased the Mountain Vista Office Building and Lot 4, Mountain Vista Resort Subdivision, Staff presented the option to rezone the property to PF; this would have been concurrent with the Points of Colorado application to rezone the remainder of the Mountain Vista Resort Subdivision as TC. While the accessory uses of the Mountain Vista building are still pending, the potential to use ground floor space to accommodate retail, a coffee shop, a visitor's center, or other similar use is being considered. Analysis of the structural capability to hold additional floors, potentially accommodating housing on the top of the building, is also forthcoming. Council provided direction to Staff to further evaluate the zoning options so as to not restrict possibilities with new construction.

In the interim, Staff presented draft code text amendments to the Planning and Zoning Commission (PAC) on August 2, 2016. The intent of these changes is to amend the zoning code regulations to reflect current conditions, and also allow flexibility for the future zoning of the Mountain Vista Office Building. Once the final programming is determined, Staff will come back with a rezoning application to either the PF or TC zone district.

if the property were rezoned to PF under the current code, the building would be nonconforming due to its height (58' estimated), and housing would not be permitted. In recent years two other PF buildings—Avon Regional Transportation Operations Facility and Police/Fire building- were approved over the current 40' height limit through the Comprehensive Plan Amendment process, and the reoccurring nature of the request merits reevaluation. Worker housing is a continual need within Eagle County, and allowing housing in the PF district would help meet demand.

On a larger scale, these Code Amendments would permit a level of flexibility necessary for a densifying and growing town. Avon has promoted mixed-use buildings and districts within appropriate areas for a variety of reasons, including the reduced demand on public services, congestion, and to promote year round use and activation in the Town Core area. Allowing government services within the TC district would be a positive continuation of that trend, and responds to the specific case of the Mountain Vista Office Building.

Creating more allowed uses within the PF district may help provide needed housing to appropriate areas of the Town. Increasing building scale responds to a series of different building uses within the

PF district that have all demonstrated the need for increased allowances. Ultimately, it is unknown what the exact future use of the Mountain Vista Office Building will be, and these changes represent time and location-sensitive changes to the code for future potentials.

PZC Recommendation

At the August 2, 2016 meeting PZC recommended the following code text amendments:

1. Table 7.24-1. Multi-family Dwellings will be added as a Special Review Use in the PF zone district.
2. Table 7.20-11. Building Height Maximum will increase from 40' to 60' in the PF zone district.
3. Table 7.20-11. Maximum Density (Units/Acre) assignment of 15 Units/Acre will be added in the PF zone district.

PZC recommended that housing be added as a Special Review Use in the PF zone district in order to review compatibility of future potential housing projects that may be located adjacent or attached to other governmental projects and uses. For example, adding housing to a project on the Town's Swift Gulch was viewed as a case where additional public review by the Planning Commission is necessary to maintain separation of semi-industrial uses and residential uses.

When discussing residential land uses on PF properties, there was a desire to add a maximum density per acre in order to add congruency with other zone districts. The number of 15 DU/Acre was chosen as it is comparable to the Residential Medium Density (RMD) zone district.

As mentioned above multiple projects in the PF district have already been approved and/or construction that exceed 40' in height. After considering implications of an increased building height on other PF properties, the Planning Commission found the change appropriate and recommended that the height be increased to avoid the need to process Comprehensive Plan amendments.

PZC discussed adding Governmental Uses as either a Use-by-right or Special Review in the TC zone district. After discussing the possible negative ramifications of having such governmental land uses (County administrative uses on ground floor of Seasons, or Fire Department office next to Avon Station were both cited as examples), the Planning Commission recommended no changes to the TC district and not permitting these types of uses in the future.

Staff Recommendation

Approve first reading of Ordinance 16-14, approving the following amendments:

1. Table 7.24-1, Allowed Uses, of the ADC is amended to add "S" (special review use) to the "PF" (Public Facilities zone district) column for the following Residential Uses: Dwelling, Single-Family Detached; Dwelling, Two-Family/Duplex; Dwelling, Townhouse; Dwelling, Multi-Family; Dwelling, live/work; and, Accessory DU; and
2. Table 7.20-11, Dimensions for the Public Facilities District, of the ADC is amended to remove the Maximum density and Maximum Units/lot columns; and change Maximum Building Height from 40' to 60'.
3. Table 7.24-1, Allowed Uses, of the ADC is amended to add "P" (permitted) to the "TC" (Town Center zone district) column for the following Public and Institutional Uses: Library; Government services, offices and facilities; and, Post office branches; and

Staff's recommendation is to broaden the allowable housing types in the PF zone district. By allowing all housing types, future housing projects would not rule out the possibility of a Townhouse

project or other types of dwelling units. In any case, these mixed-use projects would be special review by PZC. Limiting future projects to 15 DU/acre would not allow flexibility for innovative housing projects. For example, the Mountain Vista Office Building less than ¼ acre in size and would be limited three (3) units. Staff is recommending no restrictions on density for housing in the PF zone district.

The additional building height in the PF district – 40’ to 60’ is supported and recommended for approval.

By adding governmental office and facilities as a permitted use in the TC zone district, the Mountain Vista Office Building could be rezoned accordingly. Alternatively, and as discussed by PZC, governmental offices and facilities could be added as a Special Review if deemed necessary.

Options

1. Approve First Reading of Ordinance 2016-14 as drafted, thereby approving Staff’s recommended changes to the PF and TC zone districts.
2. Approve First Reading of Ordinance 2016-14 with PZC recommendations, thereby not permitting Governmental land uses in the TC zone district, and setting a maximum density of 15 Dwellings per/acre in the PF district.
3. Continue First Reading of Ordinance 2016-14.

Review Criteria

§7.16.040(c), Code Text Amendment Review Criteria. The PZC and Town Council shall use the following review criteria as the basis for recommendations and decisions on applications to amend the text of the Development Code:

- (1) The text amendment promotes the health, safety, and general welfare of the Avon Community;
- (2) The text amendment promotes or implements the goals and policies of the Avon Comprehensive Plan;
- (3) The text amendment promotes or implements the purposes stated in this Development Code; or
- (4) The text amendment is necessary or desirable to respond to changed conditions, new planning concepts, or other social or economic conditions.

These code text amendments are necessary to respond to changing conditions with town facilities and Town Core development. The amendments represent changes to the code for future potential projects that will require creativity and flexibility with land use regulations. The Town’s long range plans acknowledge the continued trend toward ‘out of the box’ projects that may not fit squarely within standard zone districts and could contain a mix of land uses (i.e. governmental, private, retail) within single projects. For example, the West Town Center plan contains a concept for a parking structure in place of Mikaela Way, with housing on top and retail at the ground level facing the Main Street Pedestrian Mall. These code changes would allow further creativity to future public or public-private projects.

Motion

Council action should be made by a motion and vote.

Attachment

Ordinance 2016-14



**TOWN OF AVON, COLORADO
ORDINANCE NO. 16-14**

**APPROVING CODE TEXT AMENDMENTS FOR THE PUBLIC FACILITIES
AND TOWN CENTER ZONE DISTRICTS**

WHEREAS, the Town of Avon (“**Town**”) is a home rule authority municipal corporation and body politic organized under the laws of the State of Colorado and possessing the maximum powers, authority and privileges to which it is entitled under Colorado law; and

WHEREAS, the Town Council finds that periodic review and updates to the Avon Municipal Code (“**AMC**”) are necessary to respond to changing conditions; and

WHEREAS, the Planning & Zoning Commission (“**PZC**”) of the Town of Avon held a public hearing on August 2, 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 to the Town Council; and

WHEREAS, the Town Council of the Town held a public hearing on September 13, 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; and

WHEREAS, pursuant to AMC §7.16.040(c), *Review Criteria*, the Town Council has considered the applicable review criteria for a Code Text Amendment; and

WHEREAS, the Town Council finds that necessary in response to new conditions affecting governmentally owned properties; and

WHEREAS, the Town Council finds approval of the Application is in compliance with the mandatory review criteria; 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. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Municipal Code Amendments.

- Table 7.24-1, Allowed Uses, of the ADC is amended to add “P” (permitted) to the “TC” (Town Center zone district) column for the following Public and Institutional Uses: Library; Government services, offices and facilities; and, Post office branches; and
- Table 7.24-1, Allowed Uses, of the ADC is amended to add “S” (special review use) to the “PF” (Public Facilities zone district) column for the following Residential Uses: Dwelling, Single-Family Detached; Dwelling, Two-Family/Duplex; Dwelling, Townhouse; Dwelling, Multi-Family; Dwelling, live/work; and, Accessory DU; and
- Table 7.20-11, Dimensions for the Public Facilities District, of the ADC is amended to remove the Maximum density and Maximum Units/lot columns; and change Maximum Building Height from 40’ to 60’.

Section 3. Codification of 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. 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 final adoption 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. Correction of Errors. Town Staff is authorized to insert proper dates, references to recording information and make similar changes, and to correct any typographical, grammatical, cross-reference, or other errors which may be discovered in any documents associated with this Ordinance and documents approved by this Ordinance provided that such corrections do not change the substantive terms and provisions of such documents.

Section 8. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

INTRODUCED, APPROVED, PASSED ON FIRST READING AND ORDERED POSTED on August 9, 2016 and a public hearing on this ordinance shall be held at the regular meeting of the Town Council on September 13, 2016, at 5:30 P.M. in the Council Chambers, Avon Municipal Building, One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on September 13, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: John Curutchet, Director of Recreation
Date: July 28, 2016
Topic: Public Hearing on Resolution 16-22; Authorizing the Submittal of a GOCO Grant Application and Certifying the Town of Avon Funding Match for a New Playground at Harry A. Nottingham Park

ACTION BEFORE COUNCIL

Action on Resolution 16-22; approving GOCO grant applications and certifying matching monies for the Capital Projects Fund.

PROPOSED MOTION

“I move to approve Resolution 16-22 approving the application for a GOCO playground grant and matching Town funds from the Capital Projects Fund.”

BACKGROUND

In 2015, the Town released a Request for Proposals for the design and construction of a new playground in Nottingham Park. Three of the five proposals were selected for interviews, and the team from Churchich Recreation was chosen as the contractor. Staff worked with the Churchich group on an extensive public outreach effort to extract public feedback and narrow the design scope to meet the desires of our community. Staff also worked with the Town Planning and Zoning Commission to further scour design details and gather feedback. Recently, staff worked with the Churchich team to analyze the two final design concepts and to reach consensus on which concept best fit the desires expressed by the Avon community. Schematic design shown in Attachment A.

Town staff and the Churchich team are confident that Avon should be a highly rated project for a GOCO grant for the construction of the new playground, however, an award cannot be guaranteed. Critical milestones include:

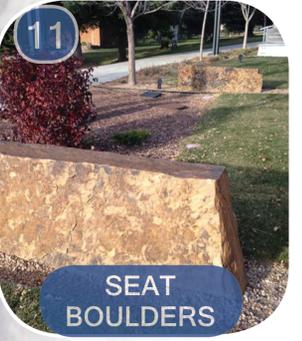
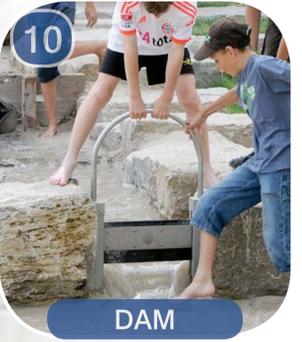
- Avon Town Council approving the resolution to proceed with the grant application and to certify matching Capital Project funds; a requirement of the application
- November 2016: GOCO grant application completed and submitted
- February 2017: notice of award of the GOCO grant
- May 2017: demolition of existing playground and construction of “Destination Jump, Splash, Learn.” A signature playground in Nottingham Park

Maximum GOCO grant funds available for the playground project: \$350,000. The adopted Five Year Capital Improvements Plan includes \$350,000 marked for the Nottingham Park playground improvements in 2017. Line item details of the \$703,309 budget are included as Attachment B. Adoption of the 2017 budget this October is the needed appropriation action for the matching funds, and the Resolution addresses that expectation.

ATTACHMENTS

- A. Schematic Design
- B. Project Budget
- C. Resolution 16-22

SCHEMATIC DESIGN

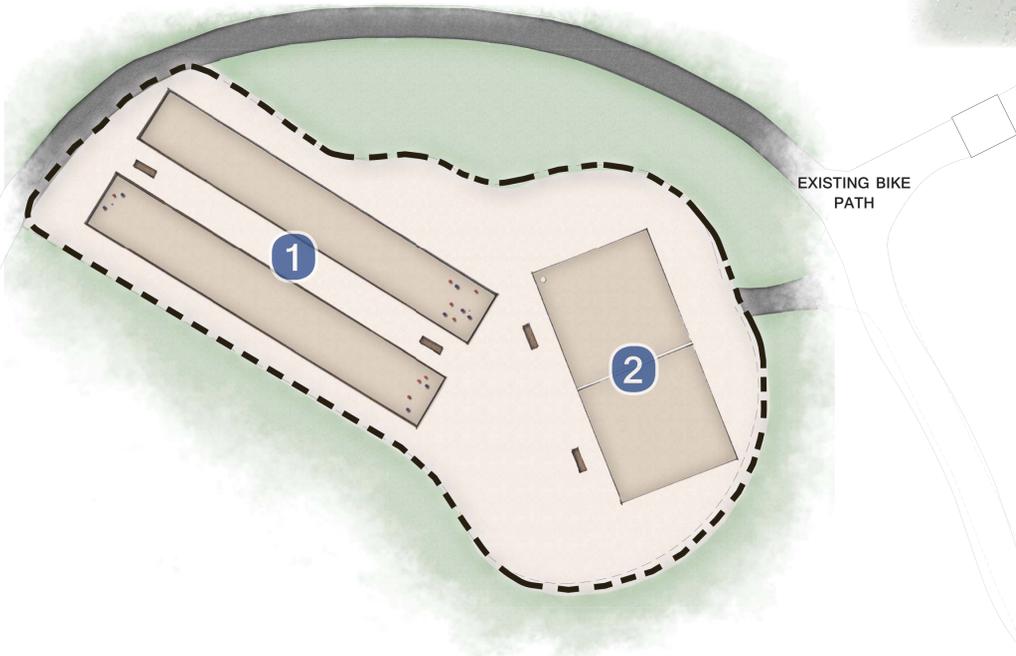
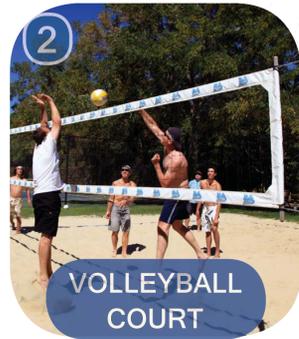
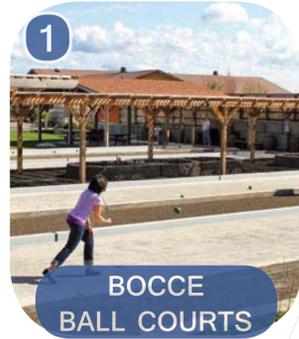


EXISTING PLAYGROUND REPURPOSE

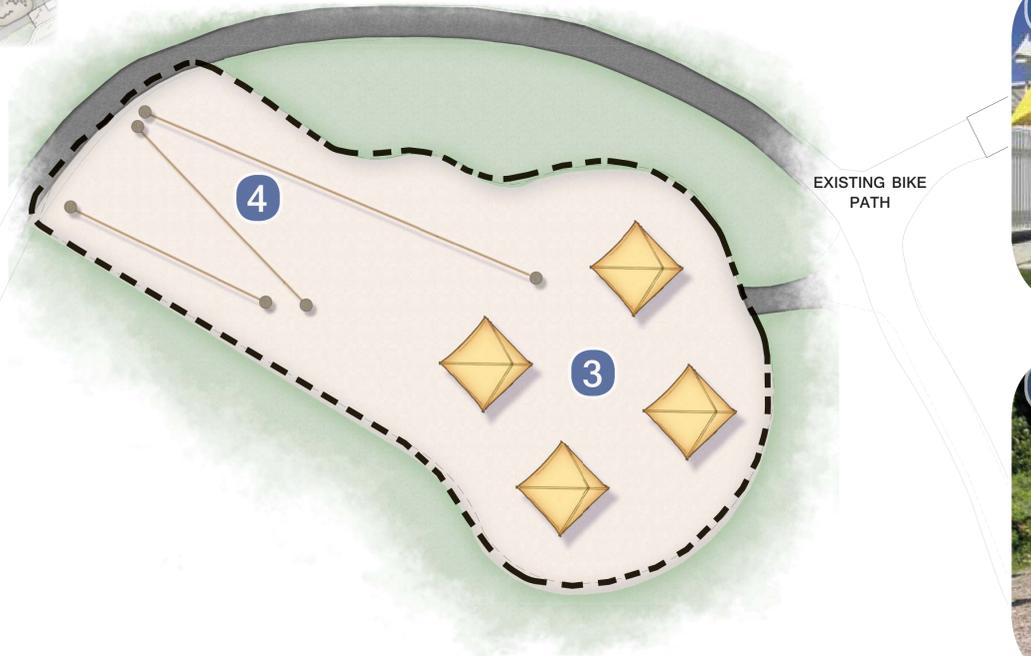
KEY MAP:



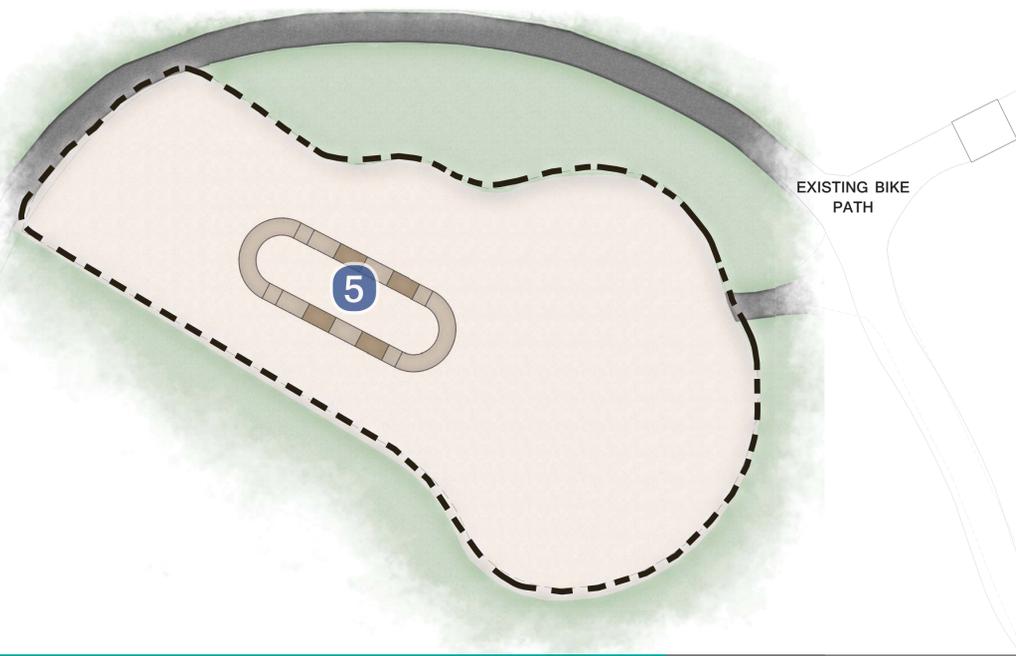
CONCEPT 1:
SAND VOLLEYBALL
AND BOCCE COURTS



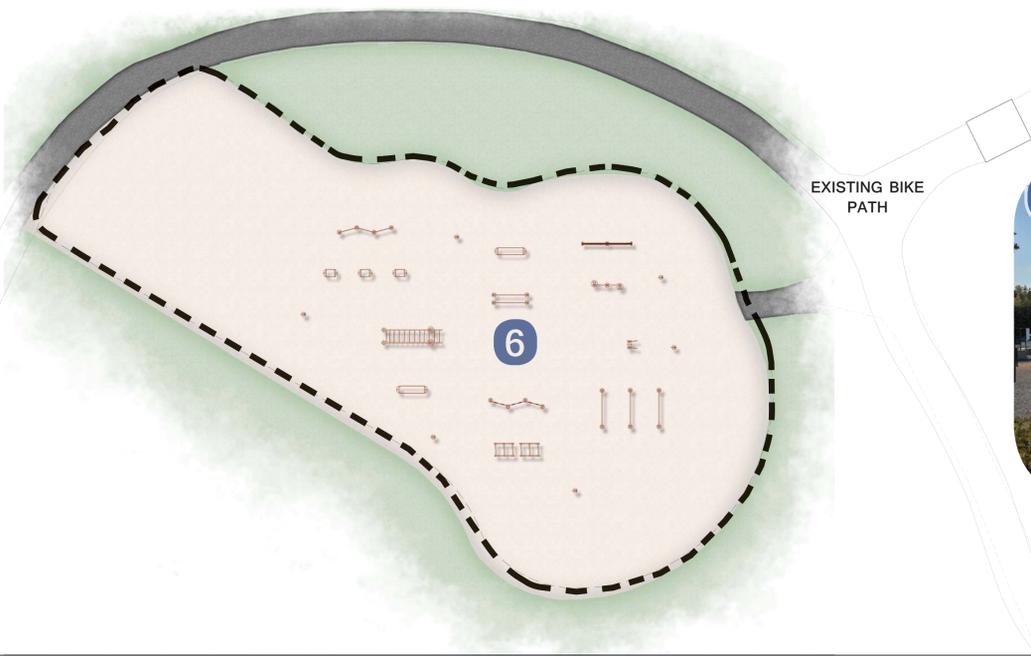
CONCEPT 2:
SHADE STRUCTURES
AND SLACKLINES



CONCEPT 3:
PUMP TRACK



CONCEPT 4:
ADULT FITNESS
EQUIPMENT



Town of Avon : Nottingham Park Playground Budget Estimate

Destination Jump, Splash, Learn

August 3, 2016

Park and Amenities				
<i>Item</i>	<i>Quantity</i>	<i>Unit</i>	<i>Cost</i>	<i>Total</i>
Playground (equipment, water play, nature play, surfacing, installation, etc.)				
Subtotal				\$408,570.00
Site Work (ex. playground demo, bike path relocation, landscape, irrigation, earthwork, etc.)				
Subtotal				\$138,878.00
Site Furnishings (new roof for picnic shelter, additional picnic shelters, tables, benches, etc.)				
Subtotal				\$54,600.00
<i>Park and Amenities Subtotal</i>				<i>\$602,048.00</i>

General				
<i>Item</i>	<i>Quantity</i>	<i>Unit</i>	<i>Cost</i>	<i>Total</i>
Contingency	1	ls	\$35,000.00	\$35,000.00
Insurance	1	ls	\$4,983.00	\$4,983.00
Bonds	1	ls	\$5,392.00	\$5,392.00
Project Management, Surveying	1	ls	\$55,886.00	\$55,886.00
<i>General Subtotal</i>				<i>\$101,261.00</i>

Grand Total **\$703,309.00**

Note: Cost estimate does not include permitting fees, tap fees, electrical or structural. This estimate is based on plan dated 8/3/16 and is subject to change. All estimates are approximate, do not include escalation and to be verified by contractor at time of construction.

Add Alternates - Existing Playground Area Repurpose				
<i>Item</i>	<i>Quantity</i>	<i>Unit</i>	<i>Cost</i>	<i>Total</i>
Concept 1 - Sand Volleyball and Bocce Courts	1	ls	\$35,000.00	\$35,000.00
Concept 2 - Shade Structures and Slackline	1	ls	\$56,400.00	\$56,400.00
Concept 3 - Pump Track	1	ls	\$42,437.00	\$42,437.00
Concept 4 - Adult Fitness Equipment	1	ls	\$58,145.00	\$58,145.00

Note: Cost estimate prepared by Evans Chaffee Construction Group, Churchich Recreation LLC and Norris Design.



**RESOLUTION 16-22
APPROVING A GOCO GRANT APPLICATION AND CERTIFYING
MATCHING FUNDS FROM THE CAPITAL PROJECTS FUND**

WHEREAS, the Town of Avon in partnership with the community has completed the design of a new playground to be located in Harry A. Nottingham Park; and

WHEREAS, the new playground is included in the Town of Avon's adopted *Master Plan for Harry A. Nottingham Park*, a plan which envisions development of the playground to include educational and interactive play elements with easy access to the natural environment; and

WHEREAS, the new playground has been designed to meet the goals of the *Master Plan* and, as such, has been named Destination Jump, Splash, Learn to fully describe the characteristics of the new structure and interface of play and learning in the park's natural environment and its small stream; and

WHEREAS, Destination Jump, Splash, Learn will provide a signature, beautiful and functional playground for all of Avon's citizens and especially those who use the park as an integral recreational place for their families, including those who live and work in Avon and have household incomes significantly below the State's median income; and

WHEREAS, the Town has completed a cost estimate of \$700,000.00 for the new playground and intends to apply for a GOCO grant in the amount of \$350,000.00 to partially fund Destination Jump, Splash, Learn; and

WHEREAS, \$350,000.00 of matching funds from the Town will be reserved in the Town of Avon 2017 Capital Projects Fund, subject to appropriation by the Town Council, if the grant is approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO: The Avon Town Council hereby approves the submission of an application for a GOCO grant and certifies that \$350,000.00 will be appropriated from the Capital Projects Fund to match a grant award.

ADOPTED August 09, 2016, by the Avon Town Council.

By: _____
Jennie Fancher, Mayor

Attest: _____
Debbie Hoppe, Town Clerk

TO: Honorable Mayor Fancher and Town Council members
FROM: Eric J. Heil, Town Attorney
RE: Amendment to Ground Lease for the Avon Water Treatment Plan
DATE: August 3, 2016

SUMMARY: The Town of Avon approved a 99 year Ground Lease on Tract P, Benchmark at Beaver Creek, Avon, Colorado, as the Lessor with the Upper Eagle Regional Water Authority ("Authority") on April 30, 1985, in order to facilitate the Authority's construction of water treatment plant in Avon. The original Ground Lease included the footprint of the existing building. The Authority has been using additional area around the building for parking, deliver, storage and general work. The Authority is requesting the Town of Avon to approve a First Amendment to the Ground Lease ("First Amendment") to expand the leased area to include the existing fenced area and small amount of additional land to the east. The First Amendment is for a period greater than 1 year; therefore, Council must approve the First Amendment by ordinance.

PROPOSE MOTION: "I move to approve first reading of Ordinance No. 16-17 Approving the First Amendment to the Ground Lease on Tract P, Benchmark at Beaver Creek, Avon, Colorado."

FIRST AMENDMENT TERMS: Besides expanding the area of the Ground Lease, the First Amendment would extinguish the Town of Avon's reserved "airspace" to construct a municipal facility above the existing water treatment plant. The reserved airspace is not practical legal development right for the Town of Avon due to security considerations for public drinking water authorities.

A municipal drainage feature crosses the far east portion of the expanded Ground Lease area. The First Amendment acknowledges the existing municipal drainage feature and provides that the Ground Lease shall be subject to the existing drainage feature.

Thank you, Eric

ATTACHMENTS: Ordinance No. 16-17 w/ the First Amendment to Ground Lease
1985 Ground Lease



**TOWN OF AVON, COLORADO
ORDINANCE NO. 16-17**

**AMENDING THE FIRST AMENDMENT TO GROUND LEASE ON TRACT P,
BENCHMARK AT BEAVER CREEK, AVON, COLORADO**

WHEREAS, the Avon Home Rule Charter and Colorado Revised Statute Section 31-15-713(1)(c) authorizes the Town Council to lease property for a period of more than one year by ordinance; and

WHEREAS, the Town of Avon and the Upper Eagle Regional Water Authority entered into a Ground Lease dated April 30, 1985, which provided a 99 year ground lease for a portion of Tract P, Benchmark at Beaver Creek, Avon, CO (“Ground Lease”); and,

WHEREAS, the Upper Eagle Regional Water Authority desires to expand the area of the Ground Lease to include adjacent areas;

WHEREAS, the Avon Town Council finds that approval of the First Amendment to Ground Lease will promote the efficient and secure provision of drinking water to the Avon community 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 with 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 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. Amended Lease Authorized. The Town Council hereby approves the First Amendment to the Ground Lease attached hereto as Exhibit A and further authorizes the Mayor and Town Clerk to execute the First Amendment to Ground Lease.

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 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 4. Effective Date. This Ordinance shall take effect thirty (30) days after the date of 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 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. 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 August 9, 2016 and setting such public hearing for September 13, 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 September 13, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

EXHIBIT A:

FIRST AMENDMENT TO GROUND LEASE

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (“**Amendment**”) is made as of October 13, 2016 by and between TOWN OF AVON, a home rule municipal corporation of the State of Colorado (hereinafter “**Lessor**”) and UPPER EAGLE REGIONAL WATER AUTHORITY, a separate governmental entity established pursuant to Section 29-1-204.2, C.R.S. (hereinafter “**Lessee**”).

RECITALS

WHEREAS, Lessor and Lessee entered into that certain Ground Lease (“**Lease**”) dated April 30, 1985, recorded May 1, 1984 in Book 412 at Page 782 of the records of the Clerk and Recorder of Eagle County, Colorado; and

WHEREAS, the Lease provides for Tenant to finance, construct, operate and maintain a water treatment plant and activities related thereto (the “**Project**”) for Lessee’s use and benefit for a term of 99 years ending on April 30, 2084; and

WHEREAS, and the rent payment due for the term of the Lease has been paid in full; and

WHEREAS, Lessee has completed the construction and expansion of the Avon Water Treatment Facility (“**AWTF**”) on the leased premises, a portion of Tract “P”, Benchmark at Beaver Creek Subdivision, Town of Avon, County of Eagle and State of Colorado, as provided in the Lease and continues to occupy and operate the AWTF for the benefit of Lessor and the other Contracting Parties of the Upper Eagle Regional Water Authority, subject to the terms and provisions of the Lease; and

WHEREAS, Lessee has occupied and fenced an area greater than and extending beyond the footprint of the original Lease which is beneficial and essential for operation and security purposes of the AWTF; and,

WHEREAS, Lessor desires to extend the area of the Lease to promote the efficient and secure operations of the AWTF, and furthermore Lessee does not desire to reserve any air rights to construct municipal facilities above the AWTF during the remaining term of this Lease; and,

WHEREAS, the term of the Lease continues as provided therein and the Parties now wish to substitute a new legal description of the Premises to be Leased in place of Exhibit “A” attached to the Lease for the mutually beneficial reasons listed above.

NOW, THEREFORE, for consideration of goodwill, mutual promises and cooperation, the parties hereto agree as follows:

1. **PREMISES TO BE LEASED.** The real property to be leased is located in the Town of Avon, County of Eagle, Colorado, and is described as follows:

A parcel of land located in Amendment No. 3, Benchmark at Beaver Creek, Section 11, Township 5 South, Range 82 West of the 6th Principal Meridian, Town of Avon, Eagle County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of Tract P, Amendment No. 3, Benchmark at Beaver Creek, thence along the Westerly line of Tract P, also being the Easterly R.O.W. of Beaver Creek Blvd. along the arc of a non-tangent curve to the left 58.45 feet, having a radius of 390.00 feet, a central angle of 8°35'11" and a chord which bears N16°19'31"E 58.39 feet; thence continuing along said line N12°01'54"E 74.07 feet; thence departing said line S73°27'56"E 397.95 feet; thence S18°25'32"W 132.37 feet to a point on the Northerly R.O.W. of the U.P.R.R.; thence along said R.O.W. line along the arc of a non-tangent curve to the left 387.84 feet, having a radius of 2914.93 feet, a central angle of 7°37'24° and a chord which bears N73°27'22°W 387.55 feet to the point of beginning. (“Leased Premises”).

SUBJECT TO any and all ditch, drainage or detention facilities that may now exist within the Leased Premises, the existence of which is hereby acknowledged by Lessee and Lessor. Lessee agrees not to modify or fence in any portion of these ditch, drainage or detention facilities without the written authorization of Lessor during the term of this Lease. Lessee assumes no responsibility, obligation or liability for maintaining any of the ditch, drainage or detention facilities by reason of this Lease.

The described parcel contains 1.150 acres more or less.

See Exhibit A, Survey and Legal Description, dated July 27, 2016, attached hereto and incorporated herein by this reference.

2. **REAFFIRMATION OF LEASE TERMS.** Except as modified by this Amendment, the terms and provisions of the Lease shall remain in full force and effect, including the Term of the Lease as set forth in Paragraph 2 of the original Lease; provided, however, that in the event of a conflict between the terms and provisions of this Amendment and the Lease, this Amendment shall control.

IN WITNESS WHEREOF the parties have executed this First Amendment to Ground Lease as of the date and year first written above.

**TOWN OF AVON, COLORADO
("Lessor")**

By: _____
Jennie Fancher, Mayor

Attest:

Debbie Hoppe, Town Clerk

**UPPER EAGLE REGIONAL WATER
AUTHORITY ("Lessee")**

By: _____
George Gregory, Chairman

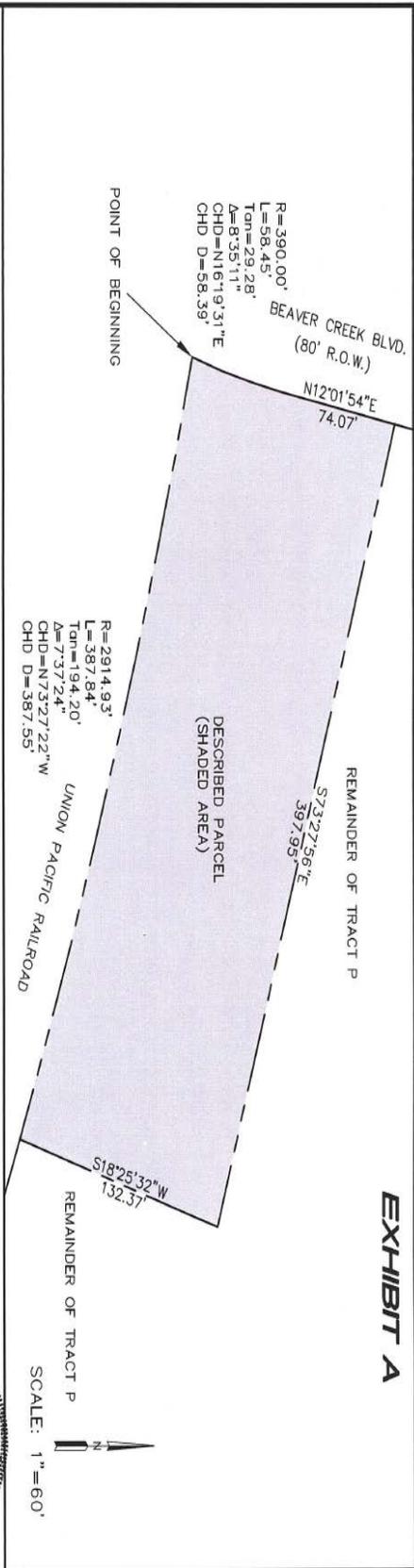
Attest:

James Power, Secretary

Exhibit “A”
Leased Premises

See attached Exhibit A, Survey and Legal Description, dated July 27, 2016.

EXHIBIT A



LAND DESCRIPTION

A parcel of land located in Amendment No. 3, Benchmark at Beaver Creek, Section 11, Township 5 South, Range 82 West of the 6th Principal Meridian, Town of Avon, Eagle County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of Tract P, Amendment No. 3, Benchmark at Beaver Creek, thence along the Western line of Tract P, also being the Easterly R.O.W. of Beaver Creek Blvd. along the arc of a non-tangent curve to the left 58.45 feet, having a radius of 390.00 feet; a central angle of 8°35'11" and a chord which bears N1619'31"E 58.39 feet; thence continuing along said line N12°01'54"E 74.07 feet; thence departing said line S73°27'56"E 397.95 feet; thence S18°25'32"W 132.37 feet to a point on the Northernly R.O.W. of the U.P.R.R.; thence along said R.O.W. line along the arc of a non-tangent curve to the left 387.84 feet, having a radius of 2914.93 feet, a central angle of 7°37'24" and a chord which bears N73°27'22"W 387.55 feet to the point of beginning.

The described parcel contains 1.150 acres more or less.

NOTICE: According to Colorado Law, you must commence any legal action to discover such defects in no event more than ten years from the date of the certification shown hereon.

SHEET 1 OF 1

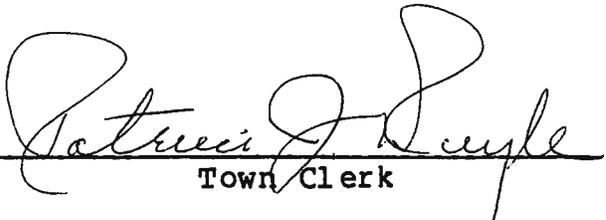


Upper Eagle Regional Water Authority
Revenue Bonds, Series 1985
\$8,300,000

CERTIFICATE AS TO GROUND LEASE

I, the undersigned, hereby certify that I am the duly qualified and acting Town Clerk of the Town of Avon, Colorado, (the "Town") and that attached hereto is a true, correct and complete copy of the Ground Lease dated as of April 30, 1985, between the Town and the Upper Eagle Regional Water Authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Authority this April 30, 1985.


Town Clerk

(SEAL)

309059

BOOK 412

PAGE 782

JOHNETTE PHILLIPS
EAGLE CITY RECORD

GROUND LEASE

MAY 1 9 54 AM '85

THIS LEASE made and entered into 30th
day of April, 1985, by and between the TOWN OF
AVON, hereinafter referred to as Lessor, and the UPPER EAGLE
REGIONAL WATER AUTHORITY, a separate governmental entity
established pursuant to Section 29-1-204.2 C.R.S., hereinaf-
ter referred to as Lessee,

W I T N E S S E T H :

Lessor hereby leases to Lessee, and Lessee hereby
hires and leases from Lessor the real property hereinafter
described for the term, rental and upon the following
covenants, terms and conditions:

1. PREMISES TO BE LEASED. The real property to
be leased is located in the County of Eagle, Colorado, and
is described as follows: A portion of Tract "P", Benchmark
at Beaver Creek Subdivision, Town of Avon, County of Eagle
and State of Colorado, as per the recorded plat thereof as
filed for record in the office of the Clerk and Recorder of
the County of Eagle in Book 274 at Page 701, as more fully
described on Exhibit "A" attached hereto and incorporated
herein by this reference, reserving, however, the right to
construct municipal facilities within the airspace above the
facility constructed by the Authority and the right to
require subjacent support thereof.

2. TERM. The term of this lease shall commence
on April 30,, 1985, and shall expire and

terminate on a date 99 years from such term commencement date or shall end on such earlier date upon which said term may expire or be terminated pursuant to any of the conditions or provisions of this lease or pursuant to law. Upon expiration or termination of this lease for any reason, Lessee shall promptly surrender possession of the premises to Lessor, including any improvements thereon which are required for the subjacent support of Lessor's improvements. This Ground Lease shall terminate, upon the election of Lessor, in the event Lessee does not acquire financing for the project, as hereinafter defined, by January 1, 1986.

3. RENTAL. Lessee shall pay as rent the sum of \$500 for the term of this lease which amount shall be payable in advance upon execution of this agreement. The Lessor shall not be called upon to pay any taxes, assessments, repairs, maintenance, insurance or any other costs or charges whatsoever, unless provided for herein.

4. USE OF PREMISES. Lessee shall have the right to occupy the above described leased premises for constructing, maintaining and operating a water treatment plant and activities related thereto and for no other purpose whatsoever ("the project").

It is specifically understood that the leased premises shall not be used for any unsanitary or unhealthful purposes of any kind or nature or any other use, or

occupancy thereof contrary to any federal, state or local laws or regulations.

Lessee shall not sublet, sublease, assign or otherwise permit the use or occupancy of the above-described leased premises or any part thereof without the prior written consent of the Lessor.

If the leased premises are used for any purpose other than that stated above without Lessor's written consent, Lessor may terminate this lease at its sole option upon 30 days written notice.

5. COMMON FLOOR. The portion of the improvements on the leased premises between the lower surface of the ceiling of Lessee's water treatment facility and the upper surface of the floor of Lessor's adjoining municipal facility, together with the foundation supporting such improvements and any portion of walls abutting such improvements and the structural supports thereto are collectively referred to as the "common floor."

To the extent not inconsistent with this Lease, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply to the common floor.

The costs and expenses of necessary and reasonable repair, maintenance or restoration of any portion of the common floor, including restoration in the event of damage

or destruction due to fire or other casualty, shall be divided equally between the Lessor and Lessee.

If Lessor or Lessee shall fail, after a demand, to pay for any costs or expenses with respect to the common floor to be borne by the other party, then the demanding party shall have a lien, from and after the time notice of lien is recorded in the Office of Clerk and Recorder of Eagle County, Colorado, against the party who has failed to pay any such costs and expenses, for the full amount due and not paid, plus interest from the date of demand for payment at the rate of 18% per annum, plus all costs and expenses of collection of the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner of foreclosure of mortgages in the State of Colorado. The failure of Lessee to pay the costs or expenses associated with the common floor shall also be considered a default under this Lease.

Both Lessor and Lessee shall have a perpetual easement in and to that part of the adjoining area on which the common floor is located for all purposes commonly associated with party walls, including, without limitation, maintenance, repair and inspection.

6. TAXES AND ASSESSMENTS. Neither party expects any portion of the leased premises to be subject to taxes or assessments. If, however, the leased premises becomes subject to taxes or assessments, Lessee shall pay, when and

as the same become due and payable, all taxes, general and special assessments, and other charges of every description which may be levied or assessed during the term of this lease upon or against the demised premises, all interest therein, and improvements and other property thereon, to which either the Lessor or Lessee may become liable in relation thereto. Lessee agrees to protect and hold harmless the Lessor and the demised premises, all interest therein, and improvements thereon from any and all such taxes, assessments and other charges including any interest, penalties and other expenses which may be thereby imposed, and from any lien thereon or sale or other proceedings to enforce payment thereof. If the Lessee fails to make payment of such taxes, assessments and other charges at least ten (10) days prior to delinquency, the Lessor may at its option make the same and in such event the Lessee shall, on demand, repay to the Lessor the amount so paid by Lessor, together with interest at the rate of fifteen per cent (15%) per annum from the date of payment by Lessor. Lessee shall furnish a copy of receipted tax bills to Lessor within ten (10) days of receipt thereof.

Lessee shall be entitled to protect or challenge any such tax or assessment or the validity thereof in the name of Lessor or otherwise, but any such action shall be at Lessee's own cost and expense and without cost or expense to the Lessor or the demised premises. Lessee will, with the

cooperation of Lessor, obtain tax exempt status for the demised premises.

7. MAINTENANCE AND REPAIRS. During the term of this lease, the Lessee shall maintain improvements constructed by it as a water treatment plant in first class condition, at its own expense, make any and all proper or necessary repairs, alterations and replacements to such improvements and keep and maintain all of such improvements clean and in good order, condition and repair and in compliance with all applicable laws, regulations, and orders of public authorities, whether now in effect or hereafter adopted or issued; and the Lessor shall in no event be liable for or called upon to make or do any repairs, alterations, replacements or maintenance in or upon such improvements or any part or portion thereof under any condition whatsoever. The foregoing obligations shall extend to the entire demised premises until such time as the Town constructs its municipal facility as is more specifically set forth in the parties' agreement executed on even date herewith, to the entirety of the Town's interest in Tract P.

Lessee shall keep the leased premises free and clear of any liens for labor performed thereon for materials furnished to the Lessee, their contractors, subcontractors, sublessees or assigns and shall comply with Section 38-26-105 through 38-26-107, C.R.S.

Lessee shall keep the leased premises, including sidewalks, driveways and parking lot in front of and around the leased premises free from ice and snow and free from litter, dirt, debris and obstructions until such time as Lessor completes construction of its municipal facility whereupon each party shall share the foregoing obligations equally determined on a pro-rata basis according to the square-foot usage.

Lessee shall not commit, or suffer to be committed, any waste nor any nuisance upon the lease premises.

Lessor shall be obligated to provide maintenance, repair and replacement to the exterior of the demised premises. The costs associated with such maintenance, repair and replacement shall be shared by Lessor and Lessee determined on a pro rata basis according to the square foot usage. Failure by Lessee to pay any costs shall be deemed an event of default hereunder.

8. UTILITIES. Lessee shall pay promptly any and all charges for light, heat, power, water, gas, electricity and any and all other utilities or utility services consumed as a result of its activities on the leased premises or, at any time, charged against its improvements on or activities on the leased premises.

9. INDEMNITY OF LESSOR. Lessee shall and agrees to indemnify and forever save the Lessor and the demised premises free and harmless from and against:

a. Any and all liability, penalties, losses, damages, costs and expenses, causes of action, claims or judgments arising from or growing out of any injury or injuries to any person or persons or any damage or damages to any property as a result of any accident or other occurrence during the term of this lease occasioned by any act or acts, omission or omissions of the Lessee, its officers, employees, agent, servants customers, subtenants, concessionaires, licensees, contractors, invitees or permittees, or arising from or growing out of the use, maintenance, occupation or operation of the demised premises during the term of this lease, and

b. From and against all legal costs and charges, including reasonable attorney's fees, incurred in and about such matters and the defense of any action arising out of the same or in discharging the demised premises or any part thereof from any and all liens, charges or judgments which may accrue or be placed thereon by reason of any act or omission of the Lessee.

c. From any liability on account of or in respect of any mechanic's lien or liens in the nature thereof for work and labor done or materials furnished at the instance and request of the Lessee in, on or about the demised premises and, accordingly, Lessee will either satisfy any such lien or, if Lessee disputes the validity thereof, will defend any such legal action for the enforcement thereof

(and if Lessee is deemed liable as a result of such action, will cause such lien to be satisfied and released).

10. DEFAULT. Should default of whatever nature be made and continue for thirty (30) days after written notice from the Lessor specifying such default, the Lessor through its agent or attorney shall have and at its option may exercise any one or more of the following rights and remedies, each of which shall be cumulative and in addition to all other rights and remedies authorized by law, provided, however, that if the default by its nature cannot be reasonably cured within said 30 days, the following provisions shall not be operative so long as Lessee is proceeding with due diligence to cure said default;

a. It may, without terminating this lease, bring and maintain an action for any amount due and unpaid;

b. It may, so long as no bonds or other security obligations, leasehold or otherwise, are not outstanding, re-enter and take possession of the premises, remove all persons and property therefrom and, at its option, declare this lease and the leasehold estate hereby created to be null and void, and thereupon the same shall be and become terminated and ended;

c. It may, so long as no bonds or other security obligations, leasehold or otherwise, are not outstanding, re-enter and take possession of the premises and remove all persons therefrom and, at its option, without declaring this

lease or the leasehold estate created hereby terminated or ended, may re-let the premises or any portion thereof for such rent and upon such terms as it may see fit, or it may operate said property itself.

If, by reason of any such default, the Lessor shall have elected to declare this lease terminated as provided for in subdivision "b" above, such default shall be deemed to be a breach of this lease in its entirety, and Lessor may utilize any and all legal remedies available to obtain redress for such breach.

If, by reason of any such default, the Lessor shall have re-entered and shall have elected not to declare this lease terminated but to re-let the said property or to operate said property itself as provided in subdivision "c", above, and if a sufficient sum shall not be thus realized, after paying the expenses of re-entry and of re-letting and collecting or of operating said property to satisfy any charges or items payable by Lessee, Lessee agrees forthwith to satisfy and pay any such deficiency as and when the same arises and as and when demanded by the Lessor.

In the event of any such re-letting, or of any such operation by the Lessor pursuant to the subdivision "c" above, the Lessee agrees that any and all of its improvements, structures, furniture, furnishings, equipment, and fixtures that are in or on or about the demised premises may be used by Lessor or its tenant until the expiration of the

natural term or any earlier termination of this lease, without payment of or any liability for rent, compensation or other charge; but if, on the expiration of the natural term or on any earlier termination of this lease, the total net amount so collected or received by the Lessor from and through any such re-letting or operation has exceeded the total amount accrued and due and unpaid from the Lessee, then such excess shall be paid to the Lessee.

Any re-entry or possession of said premises by the Lessor, or any notice served in connection therewith, or for money due the Lessor hereunder, shall not operate to release the Lessee from any obligation under this lease, except with the written consent of the Lessor.

In the event of any such re-entry by the Lessor, the Lessor may, at its option, require the Lessee to remove from the premises any of the Lessee's property and structures located thereon. If the Lessee fails to remove its structures, then the Lessor shall remove same or cause them to be removed, and Lessee shall be liable for all expenses incurred by Lessor in so doing. If Lessee fails to remove its personal property, Lessor shall not be responsible for the care or safekeeping thereof and may remove any of same from the demised premises and place the same in storage in a public warehouse at the cost, expense and risk of the Lessee with authority to the warehouseman to sell the same in the event that the Lessee shall fail to pay the costs of

transportation and storage all in accordance with the rules and regulations applicable to the operation of a public warehouseman's business. Any refusal by a public warehouseman to accept personal property upon such conditions shall be conclusive evidence that the same is of no substantial value and shall be an unconditional warrant to the Lessor for disposing of the same in any manner it sees fit and without accountability for any alleged value thereof. In any and all such cases of re-entry, the Lessor may make any repairs in, to, or upon the demised premises which may be necessary, desirable, or convenient, and the Lessee hereby waives any and all claims on account of any and all damage which may be caused or occasioned by such re-entry or any of the aforesaid acts of the Lessor by reason of any loss or destruction or damage to any property in or about the demised premises or any part thereof.

In addition to the foregoing rights and remedies, the Lessor shall have and at its option may exercise all other rights and remedies, whether similar or dissimilar to the foregoing and whether now or hereafter authorized by law or equity, it being understood that each and all of the rights and remedies available to the Lessor shall be cumulative and none of them exclusive.

Whenever a right of re-entry is given to Lessor by the terms of this lease, Lessor may exercise the same by agent or attorney, and with or without legal process, such

process and any demand for possession of said premises being expressly waived by Lessee, and Lessor may use all force necessary to make such entry and/or to hold the demised premises after such entry and/or to remove Lessee and/or any other person and property from the demised premises; and Lessor shall be entitled, on application to a court of competent jurisdiction, to have a receiver appointed in aid of the enforcement of any remedy here provided for.

11. EMINENT DOMAIN. In the event the demised property is condemned by any public authority or if a substantial portion of said property is condemned, making the remainder of the property unusable for the purposes as intended by this lease, this lease may be terminated either by Lessor or Lessee; any award made for leasehold improvements constructed by the Lessee shall be paid to the Lessee, and any award made for the value of improvements constructed by Lessor or for the value of the land condemned shall be paid to the Lessor. No damages shall be paid to Lessee as the result of the termination of this lease.

12. ATTORNEY'S FEES. In the event of any action instituted under this lease by either party hereto against the other, the prevailing party in such suit or proceedings shall be entitled to recover a reasonable attorney's fee from the other party, which fee shall be fixed by the Court.

13. SUBORDINATION. Lessor will subordinate its interest in the real property which is the subject of this

lease to any construction and/or permanent financing, including municipal lease financing, which the Lessee shall obtain in connection with the construction of a building upon the real property which is the subject of this lease for the term of this lease upon the following terms and conditions:

a. Lessor's interest shall not be subordinated to any Deed of Trust or lease securing such a construction and/or permanent loan if at the time of recordation of such construction loan Deed of Trust or lease, the lease hereunder is in default;

b. Any such construction and/or permanent loan or lease shall provide that no portion of said loan shall be used to pay principal, interest, or other charges not directly connected with the construction of improvements on the site or sites which the Deed of Trust or lease securing such construction loan encumbers;

c. Lessee shall upon request of Lessor furnish Lessor documentation evidencing compliance by Lessee with the terms and conditions contained herein within 30 days after any such request.

14. HOLDING OVER. In the event Lessee holds over or remains in the possession or occupancy of the demised premises after the expiration of this lease by lapse of time without any written lease of said premises being made or entered into between Lessor and Lessee, such holding over or

continued possession or occupancy shall not be deemed or be held to operate as any renewal or extension of the term of this lease but shall only create a tenancy from month to month upon the other conditions provided for, and such month to month tenancy may, at any time, be terminated by either Lessor or Lessee giving to the other thirty (30) days written notice of intention to terminate the same.

15. NOTICES. All notices required under the terms of this lease shall be in writing and shall be delivered personally or by registered or certified mail.

16. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties hereto and may be amended only by a writing executed by both.

17. LEASE BINDING ON OTHERS. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of all the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

18. DRAINAGE. Lessee shall be responsible for accepting surface drainage from adjoining lands, over, under and across said leased premises. In addition, Lessee shall provide for all drainage presently being accepted by any water course in the area, across, over or through the leased premises, and all provisions for altering such drainage shall be subject to approval by the Lessor in writing.

19. EASEMENTS. This lease is subordinate to the terms and conditions of any and all public or quasi-public easements granted by Lessor over, under, upon, and/or across the leased premises. Lessor specifically reserves the right to grant additional easements provided that any future easement is or will not, in the discretion of Lessor, be incompatible with the use or uses herein authorized.

IN WITNESS WHEREOF, the parties hereto have caused their names and seals to be affixed the day and year first above written for the purposes set forth herein.

LESSOR:

TOWN OF AVON

By: Erin R. [Signature]
Mayor

ATTEST:

[Signature]
Town Clerk

LESSEE:

UPPER EAGLE REGIONAL WATER
AUTHORITY

By: _____
President

ATTEST:

[Signature]
Secretary

1" = 40'

West Line Tract P

S 73° 24'29" E, 277.00'

WATER TREATMENT PLANT

S 16° 35'31" W, 44.33'

S 16° 35'31" W, 63.33'

N 16° 35'31" E, 31.67'

N 73° 24'29" W, 131.67'

N 73° 24'29" W, 48.00'

FUTURE PLANT EXPANSION

S 16° 35'31" W, 32.67'

N 16° 35'31" E, 11.67'

N 16° 35'31" E, 11.67'

N 73° 24'29" W, 20.33'

N 73° 24'29" W, 56.33'

N 73° 24'29" W, 152.00'

S 73° 24'29" E, 89.02'

POINT OF BEGINNING

Southwest Corner Tract P
Benchmark at Beaver Creek,
Amendment No. 4

~CURVE

Δ = 3°28'54"

R = 390.00'

L = 23.70'

T = 11.85'

C = 23.69', N 18° 52'40" E

EXHIBIT "A"

4/26/85

EXHIBIT "A"

PHASE 1

WATER TREATMENT PLANT

Commencing at the most southwesterly corner of Tract P, Benchmark at Beaver Creek, Amendment No. 4, Town of Avon, Eagle County, Colorado, and with all bearings relative to the west line of said Tract P which bears N.12°01'54"E.; thence northerly along the westerly line of said Tract P along a curve concave to the west having a radius of 390.00 feet and central angle of 3°28'54" a distance of 23.70 feet; thence S.73°24'29"E., 89.02 feet to the POINT OF BEGINNING; thence N.16°35'31"E., 48.00 feet; thence N.73°24'29"W., 41.00 feet; thence N.16°35'31"E., 48.00 feet; thence S.73°24'29"E., 277.00 feet; thence S.16°35'31"W., 63.33 feet; thence N.73°24'29"W., 48.00 feet; thence N.16°35'31"E., 11.67 feet; thence N.73°24'29"W., 131.67 feet; thence S.16°35'31"W., 44.33 feet; thence N.73°24'29"W., 56.33 feet to The Point of Beginning and there terminating; said water treatment plant contains 0.3953 Acres.

EXHIBIT "A"

PHASE 2 -

FUTURE WATER TREATMENT PLANT EXPANSION

Commencing at the most southwesterly corner of Tract P, Benchmark at Beaver Creek, Amendment No. 4, Town of Avon, Eagle County, Colorado, and with all bearings relative to the west line of said Tract P which bears $N.12^{\circ}01'54''E.$; thence northerly along the westerly line of said Tract P along a curve concave to the west having a radius of 390.00 feet and a central angle of $3^{\circ}28'54''$ a distance of 23.70 feet; thence $S.73^{\circ}24'29''E.$, 145.35 feet the POINT OF BEGINNING; thence $N.16^{\circ}35'31''E.$, 44.33 feet; thence $S.73^{\circ}24'29''E.$, 131.67 feet; thence $S.16^{\circ}35'31''E.$, 11.67 feet; thence $S.73^{\circ}24'29''E.$, 20.33 feet; thence $S.16^{\circ}35'31''W.$, 32.67 feet; thence $N.73^{\circ}24'29''W.$, 152.00 feet to the Point of Beginning and there terminating, said expansion site contains 0.1493 Acres.

CARB-OUT

DELUXE CHECK PRINTERS, INC.

DOUBLE VOUCHER

UPPER EAGLE REGIONAL
WATER AUTHORITY

846 FOREST RD.
VAIL, COLO. 81657


AVON NATIONAL BANK
0048 East Beaver Creek Blvd. • P.O. Box 5040
Avon, Colorado 81620

1034

4-30- 19 85

82-551/1021

PAY Forty Thousand Five Hundred no/100

DOLLARS \$40,500.00

TO
THE
ORDER
OF

Town Of Avon
P.O. Box 975
Avon, CO 81620


Michael S. Blair

⑈001034⑈ ⑆⑆102105515⑆ 900 1173⑈

DELUXE CHECK PRINTERS

UPPER EAGLE REGIONAL
WATER AUTHORITY

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVC-3 V-2

DATE	DESCRIPTION	AMOUNT
4-30-85	Land Acquisition	40,500.00

V-2



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Scott Wright, Asst. Town Manager
Meeting Date: August 9, 2016
Re: 2016 Supplemental Budget Amendment Resolution No. 2016-21

Action Before Council

A Capital Projects Fund budget amendment is being presented to Town Council to appropriate or revise several projects, including the Joint Public Safety Facility, which is scheduled to break ground the middle of this month.

Proposed Motion

"I move to approve Resolution 2016-21, a Resolution Summarizing Expenditures and Revenues by Fund and Amending the 2016 Capital Projects Fund Budget for the Town of Avon for the Calendar Year 2016".

Summary

Projects in Strategic Plan: The following Tier One projects have proceeded through necessary planning, bidding and/or bond financing. The next step is to approve funding for the projects, which have not previously been included in the budget.

- New Town Hall Tenant Finish Design – Add \$190,000. Davis Partnership has been selected for architectural and engineering services for the design of the tenant finishes on three floors for the New Town Hall.
- New Town Hall 4th/5th Floor Expansion Feasibility Study – Add \$10,500. Davis Partnership will also be performing the feasibility study for adding a 4th and/or 5th floor to the New Town Hall.
- Joint Public Safety Facility Land Purchase and Construction – Add \$5,997,655 from bond proceeds. A total of \$852,042 represents the Town's 45% interest in Buck Creek Lot 1B. The remainder (\$5,145,613) represents the construction costs of the facility and parking, soft costs and contingency. See Table below.

SOURCES OF FUNDS

Par Value of COPs	\$ 6,300,000
Premium	<u>302,205</u>
Total Bond Issue Proceeds	6,602,205
Less: Bond Issuance Costs	<u>(153,550)</u>
Net Proceeds Available for Project	<u>\$ 6,448,655</u>

USES OF FUNDS

Design Costs	\$ 451,000
Purchase of 45% Interest in Lot 1B	852,042
Construction, soft costs, contingency	<u>5,145,613</u>
Total Uses of Funds	<u>\$ 6,448,655</u>

- Tract G/Core Parking Plan – Add \$20,000 for consultant services. With the relocation of Town Hall municipal services to new facilities, the Tract G Plan will identify the near and longer term development plan for the Town-owned property. Final development plans for Swift Gulch and Lot 5 are included in the work. Matched with the development planning is the preparation of a full parking and multi-modal transportation plan to meet the development needs of the commercial core. An additional \$55,000 is recommended to be added in the 2017 capital budget, for an estimated planning cost of \$75,000. A RFP for consultant services will be issued once funds are approved.

Revised Projects included in the 2016 Capital Projects Fund long-range that are proposed to change in cost, scope, or timing:

- Mountain Vista Office Building Purchase – Subtract \$24,075. Closing costs for the purchase of the future Town Hall were much lower than expected.
- Joint Public Safety Facility Project design costs – Add \$86,863. Additional design costs associated with the facility.
- Transit Bus Shelters – Add \$14,382. Bus shelters are being installed at the Stonebridge Drive, City Market, Buffalo Ridge and Avon Elementary bus stop locations. The original project budget of \$250,000 is being revised down to a project total (including the previous year) of \$174,382, a savings of \$75,618.
- Roundabout #4 Art Element – Subtract \$15,000. Planning costs of \$15,000 originally appropriated for 2016 will be moved to 2017.
- Metcalf Road Climbing Lane Phases 1 & 2 – Subtract a net \$177,700. With bids coming in lower than anticipated, Phases 1 and 2 of the climbing lane project have been combined into one project and result in a combined net savings of \$177,000.
- 2016 Safety Improvements for West B/C Blvd walkability – add \$20,000. The additional funds are required for removal of old striping, signage, and for the additional cost of bollards over and above the original budget.

Other Fund Considerations

- Bond proceeds from the issuance of the Town’s Series 2016 Certificates of Participation for the joint public safety facility project totaled \$6,602,205. Issuance costs totaled \$153,550, giving the Town a net construction fund of \$6,448,655. See Table above.
- Nottingham Park Pavilion Retractable Door – Add \$40,000. This is for design and fabrication of a retractable door system to replace the curtain at the back of the Pavilion. The door is to address safety concerns during high winds.
- Eaglebend/US 6 Bus Shelter – The expenditure is to provide a bus shelter which was removed. The bus stop serves Avon and ECO transit services. The total cost is

estimated at \$48,000, with construction planned this year, if funding is approved. The Town has requested a cost share with ECO of 50%, which would bring in revenues of \$24,000. An IGA will be required.

- Real estate transfer taxes and currently tracking to the budget estimate of \$2,100,000. Staff will continue to monitor these revenues as we develop the long-range CIP and the final revised Capital Projects Fund budget presented in October.

Fund Balance

The net impact to the overall ending fund balance of the Capital Projects Fund of all the above revisions is an increase of \$262,033 (See table below). The Unreserved Fund Balance is revised to \$1,058,997 from \$1,110,776.

REVENUES	
ECO Grant – Eaglebend/Hwy 6 Bus Stop	\$ 24,000
Bond Issue Proceeds	<u>6,602,205</u>
Total Revenues	<u>6,626,205</u>
 EXPENDITURES	
New Town Hall Tenant Finish Design	190,000
New Town Hall Floor Expansion Feasibility Study	10,500
New Town Hall Purchase	(24,075)
Joint Public Safety Facility Design	86,860
Joint Public Safety Facility Construction	5,997,655
Transit Bus Shelters	14,382
Roundabout #4 Art Element	(15,000)
Metcalf Road Climbing Lane	(177,700)
2016 West B/C Blvd. Safety Improvements	20,000
Nottingham Park Pavilion Retractable Door	40,000
Eaglebend/US Hwy 6 Bus Shelter	48,000
Tract G Core/Parking Plan	<u>20,000</u>
Total Capital Improvement Projects	6,210,622
Bond Issuance Costs	<u>153,550</u>
Total Expenditures	<u>6,364,172</u>
 Net Source of Funds (Fund Balance)	 <u>\$ 262,033</u>

Attachments:

1. Resolution No. 2016-21
2. Capital Projects Fund Supplemental Amendment No. 3

**TOWN OF AVON, COLORADO
RESOLUTION NO. 16-21**

SERIES OF 2016

**A RESOLUTION TO AMEND THE 2016 TOWN OF AVON CAPITAL
PROJECTS FUND BUDGET**

**A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES BY
FUND AND AMENDING THE 2016 CAPITAL PROJECTS FUND BUDGET FOR
THE TOWN OF AVON, COLORADO, FOR THE CALENDAR YEAR
BEGINNING ON THE FIRST DAY OF JANUARY, 2016 AND ENDING ON THE
LAST DAY OF DECEMBER, 2016**

WHEREAS, the Town Council of the Town of Avon has previously adopted the 2016 Capital Projects Fund budget; and

WHEREAS, the Town Council reviewed the revised estimated revenues and expenditures for 2016; and

WHEREAS, the Town Council finds it necessary to amend the 2016 Capital Projects Fund budget to more accurately reflect the revenues and expenditures for 2016; and

WHEREAS, the Town Council has caused to be published a notice containing the date and time of a public hearing at which the adoption of the proposed budget amendment will be considered and a statement that the proposed budget amendment is available for public inspection at the office of the Town Clerk located in the Avon Town Hall during normal business hours, and that any interested elector of the Town of Avon may file any objection to the proposed budget amendment at any time prior to the final adoption of the proposed budget amendment; and

WHEREAS, whatever increases may have been made in the expenditures, like increases were added to the revenues so that the budget remains in balance as required by law.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF AVON, COLORADO:**

Section 1. That estimated revenues and expenditures for the Capital Projects Fund are revised as follows for 2016:

	Original or Previously Amended <u>2016 Budget</u>	Current Proposed Amended <u>2016 Budget</u>
<u>Capital Projects Fund</u>		
Beginning Fund Balance	\$ 6,198,817	\$ 6,198,817
Revenues and Other Sources	7,591,906	14,218,111
Expenditures and Other Uses	<u>8,343,614</u>	<u>14,707,786</u>
Ending Fund Balance	<u>\$ 5,447,109</u>	<u>\$ 5,709,142</u>

Section 2. That the Capital Projects Fund budget, as submitted, amended, and hereinabove summarized by fund, hereby is approved and adopted as the capital program budget of the Town of Avon for the year stated above.

Section 3. That the Capital Projects Fund budget as hereby approved and adopted shall be signed by the Mayor and made part of the public record of the Town.

ADOPTED this 9th day of August, 2016.

AVON TOWN COUNCIL

By: _____
Jennie Fancher, Mayor

Attest: _____
Debbie Hoppe, Town Clerk

Capital Projects Fund #41 Supplemental Amendment No. 3

Fund Summary

	Actual 2015	Original or Prev. Amended Budget 2016	Proposed Revised Budget 2016	Difference Increase (Decrease)
REVENUES				
Taxes	\$ 2,369,314	\$ 2,100,000	\$ 2,100,000	\$ -
Intergovernmental	40,000	1,878,534	1,902,534	24,000
Investment Earnings	18,167	13,372	13,372	-
Other Revenue	93,246	80,000	80,000	-
Total Revenues	2,520,727	4,071,906	4,095,906	24,000
Other Sources:				
Transfer In from Other Funds	2,095,000	1,020,000	1,020,000	-
Bond Issue Proceeds	3,800,000	2,500,000	9,102,205	6,602,205
Total Other Sources	5,895,000	3,520,000	10,122,205	6,602,205
TOTAL REVENUES AND OTHER SOURCES	8,415,727	7,591,906	14,218,111	6,626,205
EXPENDITURES				
Capital Improvements:				
Facilities	1,514,981	2,210,932	8,574,254	6,363,322
Land and Land Improvements	44,632	369,484	369,484	-
Roads and Streets	1,667,152	4,624,684	4,451,984	(172,700)
Water Fund Projects	-	150,000	150,000	-
Communications and Technology	7,037	63,201	63,201	-
Strategic Planning	51,050	-	20,000	20,000
Other	-	5,000	5,000	-
Debt Service:				
Bond Issuance Costs	80,569	-	153,550	153,550
Capital Leases	121,769	121,770	121,770	-
Total Expenditures	3,487,190	7,545,071	13,909,243	6,364,172
Other Uses				
Operating Transfer-Out - General Fund	1,538,335	219,735	219,735	-
Operating Transfer-Out - Debt Service Fund	578,106	578,808	578,808	-
Total Other Uses	2,116,441	798,543	798,543	-
TOTAL EXPENDITURES AND OTHER USES	5,603,631	8,343,614	14,707,786	6,364,172
NET SOURCE (USE) OF FUNDS	2,812,096	(751,708)	(489,675)	262,033
FUND BALANCE, Beginning of Year	3,386,721	6,198,817	6,198,817	-
FUND BALANCE, End of Year	\$ 6,198,817	\$ 5,447,109	\$ 5,709,142	\$ 262,033
Fund Balances				
Restricted For:				
Street Improvements	\$ 2,752,445	\$ 1,356,333	\$ 1,670,145	\$ 313,812
Asphalt Overlay	240,000	480,000	480,000	-
Assigned For:				
Avon Town Hall Relocation	1,425,000	-	-	-
URA Town Center West Improvements - Bond Proceeds	-	2,500,000	2,500,000	-
Unassigned and Unreserved	1,781,372	1,110,776	1,058,997	(51,779)
Total Fund Balances	\$ 6,198,817	\$ 5,447,109	\$ 5,709,142	\$ 262,033

Capital Projects Fund #41 Supplemental Amendment No. 3

Revenue Detail

Description	Actual 2015	Original or Prev. Amended Budget 2016	Proposed Revised Budget 2016	Difference Increase (Decrease)
Taxes:				
Penalties and Interest	\$ 289	\$ -	\$ -	\$ -
Real Estate Transfer Tax	2,369,025	2,100,000	2,100,000	-
Total Taxes	2,369,314	2,100,000	2,100,000	-
Intergovernmental:				
Federal / State:				
MAP-21 Grant (CFDA 20.205)	-	1,355,000	1,355,000	-
Local Government / Other:				
ECO Grant - Traer Creek Bus Stop (50%)	-	30,000	30,000	-
ECO Grant - Eaglebend / US Hwy 6 Bus Stop (50%)	-	-	24,000	24,000
Eagle County Trails Grant - Phase 3	-	453,534	453,534	-
Asphalt Overlay Contributions - TCMD	40,000	40,000	40,000	-
Total Intergovernmental	40,000	1,878,534	1,902,534	24,000
Investment Earnings:				
Interest Earnings	20,633	13,372	13,372	-
Net Increase (Decrease) in Fair Value	(2,466)	-	-	-
Total Investment Earnings	18,167	13,372	13,372	-
Other Revenues:				
Asphalt Overlay Contributions - Developer	80,000	80,000	80,000	-
Donations and Contributions	10,000	-	-	-
Project cost Reimbursements	2,194	-	-	-
Nonclassified	1,052	-	-	-
Total Other Revenues	93,246	80,000	80,000	-
Other Sources:				
Transfer In from General Fund:				
Short-term Loan	1,425,000	-	-	-
Asphalt Overlay	120,000	120,000	120,000	-
Unassigned General Fund Balance	-	150,000	150,000	-
Transfer In from Avon URA	-	500,000	500,000	-
Transfer In from Community Enhancement Fund	-	100,000	100,000	-
Transfer In from Water Fund	-	150,000	150,000	-
Transfer In from Equipment Replacement Fund	550,000	-	-	-
Bond Issue Proceeds	3,800,000	2,500,000	9,102,205	6,602,205
Total Other Sources	5,895,000	3,520,000	10,122,205	6,602,205
TOTAL REVENUES	\$ 8,415,727	\$ 7,591,906	\$ 14,218,111	\$ 6,626,205

Capital Projects Fund #41 Supplemental Amendment No. 3

CIP Projects Inventory

Account Number	Description	Project Expenditures					Total Project Budget		Difference Increase (Decrease)
		(1)	(2)	(3)	(4)	(1+2+4)	Current	Proposed	
		2014 and Prior Actuals	Actual 2015	Current Budget 2016	Proposed Revised Budget 2016	Revised Estimated Project-to-Date Expenditures			
CAPITAL IMPROVEMENT PROJECTS									
Facilities:									
<i>General Government Facilities:</i>									
11011	Town Hall Acquisition - 2014	\$ 5,822	\$ 27,795	\$ -	\$ -	\$ 33,617	\$ 33,617	\$ 33,617	-
11012	Tenant Finish Design	-	-	-	190,000	190,000	-	190,000	190,000
	Floor Expansion Feasibility Study	-	-	-	10,500	10,500	-	10,500	10,500
11013	Mountain Vista Office Building Purchase	-	-	1,525,000	1,500,925	1,500,925	1,525,000	1,500,925	(24,075)
<i>Joint Public Safety Facility Project:</i>									
12003	Design	-	69,606	294,534	381,394	451,000	364,140	451,000	86,860
12004	Construction	-	-	-	5,997,655	5,997,655	-	5,997,655	5,997,655
	Geothermal / Solar	-	-	-	-	-	-	-	-
<i>I70 Transit / PW Facilities Improvement Project:</i>									
13005	Public Works Facilities (On Site & Lot 5)	662,985	41,046	-	-	704,031	719,474	719,474	-
<i>Transportation Facilities:</i>									
14010	Fleet Maintenance EPDM Roof Replacement	-	-	80,000	80,000	80,000	80,000	80,000	-
14014	Fleet Maintenance Building Improvements	-	-	80,000	80,000	80,000	80,000	80,000	-
14011	Transit Bus Shelters (4)	-	19,382	140,618	155,000	174,382	250,000	174,382	(75,618)
14012	Transit Bus Stop - Traer Creek Plaza	4,490	-	55,510	55,510	60,000	60,000	60,000	-
	Transit Bus Stop - Eaglebend / US Hwy 6	-	-	-	48,000	48,000	-	48,000	48,000
<i>Cultural and Recreational Facilities:</i>									
15012	Nottingham Park Pavilion	2,724,284	1,135,344	-	-	3,859,628	3,870,000	3,870,000	-
15013	Recreation Center Exterior Renovation	-	52,902	-	-	52,902	52,750	52,750	-
15014	Recreation Center - Remodel - Phase 2	-	96,530	-	-	96,530	98,530	98,530	-
15015	Recreation Center - Boulderling Wall	-	48,646	-	-	48,646	50,000	50,000	-
15016	Recreation Center - Slide Refurbishment	-	23,730	35,270	35,270	59,000	59,000	59,000	-
	Nottingham Park Pavilion - Retractable Door	-	-	-	40,000	40,000	-	40,000	40,000
Land and Land Improvements:									
21016	Nottingham Park Zone C Improvements - Playground De	3,966	-	71,034	71,034	75,000	975,000	975,000	-
21017	Nottingham Park - Restroom Remodel	-	-	260,400	260,400	260,400	260,400	260,400	-
21021	Fishing Pier Repairs	-	44,632	-	-	44,632	75,000	75,000	-
21022	Eagle River Whitewater Park Repair	-	-	10,000	10,000	10,000	10,000	10,000	-
21023	Eaglebend Affordable Housing Landscaping Project	-	-	28,050	28,050	28,050	28,050	28,050	-

Capital Projects Fund #41 Supplemental Amendment No. 3

CIP Projects Inventory

Account Number	Description	Project Expenditures					Total Project Budget		Difference Increase (Decrease)
		(1)	(2)	(3)	(4)	(1+2+4)	Current	Proposed	
		2014 and Prior Actuals	Actual 2015	Current Budget 2016	Proposed Revised Budget 2016	Revised Estimated Project-to-Date Expenditures			
CAPITAL IMPROVEMENT PROJECTS									
Roads and Streets:									
<i>Streetscape Improvements</i>									
31014	Avon Rd. Streetscape Update	242,052	27,683	-	-	269,735	252,052	252,052	-
31015	2014 Mall Improvements	1,789,645	54,820	-	-	1,844,465	1,992,703	1,992,703	-
31018	Post Blvd. Landscaping Improvements	308,986	2,320	25,000	25,000	336,306	363,986	363,986	-
31019	Post Blvd. Electrical Assessment and Street Lights	44,401	28,541	-	-	72,942	78,000	78,000	-
31022	Avon Rd. / I70 Overpass Pedestrian Safety Imp.	-	-	88,000	88,000	88,000	88,000	88,000	-
31024	Roundabout #4 TCW Art Element	-	10,000	15,000	-	10,000	255,525	255,525	-
31025	2015 Avon Rd. Landscaping Project	-	438,130	-	-	438,130	485,000	485,000	-
31026	Mall Improvements - Phase 2	-	-	15,000	15,000	15,000	240,000	240,000	-
35003	Roundabout #4 TCW Feature	75,343	1,718	-	-	77,061	60,000	60,000	-
New	Wayfinding Signage	-	-	45,000	45,000	45,000	45,000	45,000	-
<i>Annual Street Maintenance and Repair:</i>									
33015	2015 Paving/Road Improvements	-	717,372	-	-	717,372	729,684	729,684	-
32016	Buck Creek Bridge Repair	-	280,865	-	-	280,865	280,865	280,865	-
34025	West B/C Blvd. Pedestrian Crossing	-	49,318	15,000	15,000	64,318	64,318	64,318	-
34032	West B/C Blvd. Slurry Seal - Lake Street to US 6	-	-	150,000	150,000	150,000	150,000	150,000	-
32018	Post Blvd. Settlement Repair	-	-	75,000	75,000	75,000	75,000	75,000	-
32019	Wildwood Road Repair	-	-	75,000	75,000	75,000	75,000	75,000	-
<i>Street Improvements</i>									
34014	Metcalf Bike Lane - Phase 1 & Phase 2	-	32,883	827,117	1,049,417	1,082,300	860,000	1,082,300	222,300
32017	Metcalf Bike Lane Overlay	-	-	400,000	-	-	400,000	-	(400,000)
34033	Walkability - East & West B/C Blvd.	-	1,254	203,746	203,746	205,000	2,705,000	2,705,000	-
New	2016 Safety Improvements - West B/C Blvd	-	-	30,000	50,000	50,000	30,000	50,000	20,000
New	West B/C Blvd. RR Crossing Improvements	-	-	10,000	10,000	10,000	10,000	10,000	-
<i>Multi-Modal/Alternative Mobility:</i>									
34015	Eagle Valley Trails - Phase 3	10,341	22,248	2,427,411	2,427,411	2,460,000	2,460,000	2,460,000	-
34016	Eagle Valley Trails - Undergrounding Project	-	-	100,000	100,000	100,000	100,000	100,000	-
<i>Recreational Trails Program:</i>									
34026	Trails Master Plan	-	-	23,410	23,410	23,410	23,410	23,410	-
34027	Soft and Hard Surface Trail Improvements	-	-	100,000	100,000	100,000	150,000	150,000	-

Capital Projects Fund #41 Supplemental Amendment No. 3

CIP Projects Inventory

Account Number	Description	Project Expenditures					Total Project Budget		Difference Increase (Decrease)
		(1)	(2)	(3)	(4)	(1+2+4)	Current	Proposed	
		2014 and Prior Actuals	Actual 2015	Current Budget 2016	Proposed Revised Budget 2016	Revised Estimated Project-to-Date Expenditures			
CAPITAL IMPROVEMENT PROJECTS									
Water Fund Projects:									
21020	Pumphouse Pump Replacement	-	-	150,000	150,000	150,000	150,000	150,000	-
Strategic Planning:									
79111	Space Needs Analysis	-	26,249	-	-	26,249	30,000	30,000	-
79112	Tract G Feasibility Study	-	24,801	-	-	24,801	30,000	30,000	-
	Tract G/Core Parking Plan	-	-	-	20,000	20,000	-	75,000	75,000
Communications and Technology:									
81008	Fullcourt	-	-	60,000	60,000	60,000	60,000	60,000	-
81010	Timekeeping Software and Peripheral Devices	24,762	7,037	3,201	3,201	35,000	35,000	35,000	-
Other:									
93012	Historical Preservation	-	-	5,000	5,000	5,000	5,000	5,000	-
Total Capital Improvement Projects		\$ 5,897,077	\$ 3,284,852	\$ 7,423,301	\$ 13,633,923	\$ 22,815,852	\$ 20,874,504	\$ 27,065,126	\$ 6,190,622



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Justin Hildreth PE, Town Engineer
Virginia C. Egger, Town Manager
Meeting Date: August 9, 2016
Agenda Topic: Award of Architecture Services for New Town Hall to Davis Partnership Architects

ACTION BEFORE TOWN COUNCIL: To authorize Mayor Jennie Fancher to sign a Professional Services Agreement for Architecture, Engineering and Price Estimating Services for the New Town Hall, with Davis Partnership Architects.

RECOMMENDED MOTION:

I move to authorize Mayor Jennie Fancher to execute a Professional Service Agreement for Architecture, Engineering and Price Estimating Services for the New Town Hall, with Davis Partnership Architects in the amount of \$200,000.00.

BACKGROUND: In April, the Town of Avon purchased the Sheraton Mountain Vista Office building for the purpose of finishing the three-story shell structure for use as its New Town Hall. Upon completion of the sale, a Design Committee was created and includes Mayor Jennie Fancher, Councilors Megan Birch and Buz Reynolds, the Town Manager Virginia Egger, Mark Kogan and the Department Heads that will occupy the building. The Design Committee drafted a Request for Proposal for Architecture, Engineering and Price Estimating Services (RFP). The RFP was released on June 17th and six proposals were received on July 14th. The Design Committee met and selected the following four firms for interviews:

<u>Firm</u>	<u>Proposal Fee</u>
• Pierce Architects	\$175,000
• Vertical Arts	\$210,000
• Davis Partnership Architects	\$222,000
• Obermeier – Sheykhet Architecture	\$190,000

The range of relevant experience, creative expertise and ability to work successfully in a public process to develop the space varied across the firms. Davis Partnership Architects was selected unanimously as the preferred firm based on approach, depth of experience and programming expertise for office remodels and Town Halls. Staff then negotiated the firm’s fee down to \$190,000, with a \$10,000 owner-controlled contingency.

Terms of Professional Services Agreement: Attached is Exhibit A, Project Scope of Work that will be included in the PSA. The scope of work includes an analysis of the feasibility of adding a 4th and 5th floor of the building for residences and the design of the first three floors of the building. Particular attention will be made to the first floor to ensure maximum flexibility and to assist in activating the

mall. If the 4th and 5th floors are feasible then the PSA will have to be amended to include the design of the floors and a modification of the schedule. The fee for the feasibility analysis is \$10,000 and the fee for the design of the first three floors of the building is \$191,700.

SCHEDULE: The design process is expected to take approximately six months. Upon completion of the design, it will be presented to Town Council for approval and then bid out for construction. It is anticipated that construction will be completed in summer 2017 and town staff will move-in shortly after. The schedule will be extended if the construction of the 4th and 5th floors is feasible.

Attachment

Davis Partnership Scope of Services, Proposed Fees and Schedule



PROJECT APPROACH

Engaging the Client with Design Workshops

In order to make certain that our collaborative design and the completed build will meet your vision and operational needs. We will employ an interactive workshop design process to establish the vision and a coordinated project delivery method to insure project success. This success will be achieved through the design, construction and delivery of a healthy, vibrant, collaborative office environment that: attracts and retains the brightest and best employees, provides for future flexibility and accommodates the working styles and preferences of multiple generations in the workplace.

INTERACTIVE WORKSHOP DESIGN PROCESS

Our design workshops are formatted to be a very efficient and effective means of quickly extracting an understanding of key issues, overriding priorities, opportunities and challenges. In these workshops we will promote a reiterative dialog about what options meet your goals and which do not, with the goal of reaching a group consensus on the best way to integrate visions, values and objectives into an efficient, functional, inspiring and beautiful design solution.

BUILDING CONSENSUS THROUGH DESIGN WORKSHOPS

An abundance of ideas, preferences, concerns and agendas will be represented and expressed; and, there will no doubt be inherent contradictions. The design workshops will include interactive activities designed to establish a successful team dynamic, facilitate open communication in a safe and collaborative environment, incorporate full, collective team expertise, identify the aspirations and concerns of everyone, and allow for issues to be thoroughly understood, openly discussed and debated. We don't promise to make everyone happy at all points throughout the process; but, we do promise to be engaging

and responsive with an inclusive and guided process that allows competing concerns to be resolved in a substantive manner. While the final number of workshops, participants, goals and objectives for each meeting will be defined with your participation, we envision the following workshop agenda as a starting point:

DESIGN WORKSHOP 1 - VISIONING & MASTER PLAN REVIEW & INFORMATION GATHERING

- **Goal:** To gain a thorough understanding of your existing program, your goals, desired spatial relationships, interior design preferences, performance targets, wellness aspirations, and overall values that will guide decisions throughout the life of the project. This insight will be used to develop conceptual design options presented in Design Workshop 2.
- **Agenda:**
 1. Participants will be asked to develop a list of all potential users—both frequent and infrequent—and determine each of their needs.
 2. Participants will be given a deck of images from which to select a



group of five, that they feel represent the current and future mission and culture. Each group of images will be presented and discussed, with the goal of informing one another about the current view of the corporate culture.

3. Together we will prioritize suggested potential performance, health and wellness values to establish guiding parameters relevant throughout the design and construction process.
4. An exercise will help further define sustainability goals, budget parameters, and process for consultant integration.
5. Participants will be given the opportunity to identify attitudes about existing conditions in their current facility not directly addressed as part of the program discussion or through other workshop activities. What constitutes the center or 'heart' of the organization? What will make this space a great place to work, humane, memorable, uplifting and inspirational?
6. Davis will facilitate a discussion and show examples of healthy workplaces, work places of the future and elements proven to deliver success. This discussion will be based upon current industry research and trends, and our developed design strategies for "workplace of the future" that stem from our directly applicable expertise. (Please see "Workplace of the Future" narrative on the following page.)

DESIGN WORKSHOP 2 - CONCEPTUAL DESIGN OPTIONS:

- **Goal:** To explore, as a group, the best conceptual design directions for the design team to develop further.

- **Agenda:**

1. Three to four conceptual space plan options reflecting the ideas and goals gleaned from the 'design workshop 1' will be presented for review and discussion. Each planning idea will explore designs for the space. We will use color-coded models to illustrate spatial relationships, and where each major program function is located. Pros and cons of each option will be presented as well as cost implications, challenges and opportunities.
2. A series of images will be projected and independently scored by members of the group for aesthetic relevance. Scoring will be collected and summarized, and both the top ten and bottom five images discussed as a group. Through this exercise, we will hone in on the appropriate interior design and architectural concept for the project.
3. We will provide initial 3D Sketch Up vignettes illustrating our initial thoughts focused upon key areas. These vignettes will be offered to solicit initial reactions and comments. Our extensive experience using rendering tools is unparalleled and critical to building consensus within the client group. (Please see "Collaborative-Creative Workplace Experience Using Rendering Tools" narrative.)

4. Discuss preliminary, fundamental performance characteristics associated with different design approaches, informed through use of design performance modeling software (Sefaira).

DESIGN WORKSHOP 3 - REFINED DESIGN CONCEPT:

- **Goal:** To agree on a space plan and direction for further exploration in subsequent design phases. What will be finalized in this workshop are general sizes and location of departments and major functions; and general adjacencies.

- **Agenda:**

1. At this third workshop we will present a developed space plan based on the previous group consensus. We will discuss possibilities and challenges related to function, design, daylighting and other foundational opportunities to pursue a healthful and high performing project design that supports and encourages occupant wellness.
2. Finish palettes and finish materials will be proposed along with interior design concepts reviewed as SketchUp models based on the selected precedent images in workshop 1.

Following each of the workshops, the design team will collect all data generated and include it in a design workshop summary report for distribution to all participants prior to the next workshop.

Through each workshop we will establish values and priorities, and together as a team make decisions which will form the

PROJECT APPROACH

roadmap for development of the project. We'll move from larger to smaller scale elements comprising the vision, progressively identifying critical areas of focus and assembling a layered foundation for the design and subsequent construction.

PROPOSED DESIGN MEETING SCHEDULE

CORE GROUP MEETINGS

I. Design/Programming:

- Design Workshop #1 2 hours
- Design Workshop #2 2 hours
- Design Workshop #3 2 hours

II. Design Documentation Meetings:

- Meeting #1: Meet with the department heads to review the space plan and discuss concepts and required program for their individual areas. – 1 hour per group
- Final meeting with the core group to obtain final approval on the space plan and the interior design concepts and finishes. – 2 hours



Workplace of the Future

The workplace is changing faster than ever before. Offices are currently shifting from a “me” to a “we” environment. Telecommuting is becoming increasingly prevalent and an assortment of meeting spaces, that are technology rich, will be needed to maintain full collaboration. Additionally, staff wants to understand that their organization has a commitment to their wellbeing. The current shift from wellness to well-being, focuses not only on physical health but also mental health and a sense of belonging. Thoughtful office and workplace design can be a powerful tool in enhancing creativity, productivity and collaboration, integrating technology and promoting employee health, with the overall objective of putting staff, and therefore the entire organization, in a position to flourish and succeed. The Workplace of the Future must be planned with a human centered design that promotes successful work models, health and living well.

The following are Design Strategies for the “Workplace of the Future”:

1. AUTHENTICITY / BRANDING OF THE OFFICE:

Employees want to work for a company that stands for something.

Design Strategy:

- Add branding graphics throughout the interior design.
- Facilities need to provide personality.
- Transparency so people can see and be seen.
- Communicate corporate values and the desired culture.

2. COLLABORATION / THE WORKPLACE IS NO LONGER A DESTINATION, BUT A RESOURCE:

Plan for mobile work styles.

Design Strategy:

- Assigned vs. unassigned work spaces / reduction of space allocation to 150-200 sf per person / work space flexibility.
- Variety of flexible meeting room sizes and a variety of technology options.
- Employ office “hotelling” concepts for mobile workers.
- Add more video conferencing for less travel out of the office and to integrate off-site staff.

3. SOCIAL CONNECTION / MULTIPLE GENERATIONS AT WORK:

Tenured staff working longer and the shortage of talented workers coming into the workforce.

Design Strategy:

- Collision of “water cooler” spaces for face to face connection time.
- Huddle spaces for the older workers and open work carrels for the younger workers.
- Collegiate environments for entry level employees.
- Variable light levels and high levels of controllability and/or variability among available work environments to fit a range of preferences and definitions of comfort.

4. INNOVATION / HEALTHY AND SUSTAINABLE WORK SPACES:

Plan for the first health conscious generation.

Design Strategy:

- Daylight and views establishing a clear connection to nature / biophilia reinforcing incorporation of the outside into the indoor experience.
- Select proven responsibly sourced and manufactured, healthful furniture, materials and products.
- Access to healthy foods and informed options.
- Support active, healthy lifestyle with central stairs, interior walking paths, and opportunities to utilize a variety of spaces and move throughout the office and adjoining exterior spaces across the course of the day.

5. PERSONALIZATION / ENVIRONMENTAL CONTROL:

Generation X is the first generation coming into the workforce that grew up on technology.

Design Strategy:

- Team oriented open workstations.
- Flexible work spaces that allow for personalization.
- Personal control over noise and sensory stimulation.
- Ergonomics and flexibility in furniture.
- Incorporation of “Escape Spaces” where private conversations or focused work can occur outside the bustle of general office activity.

6. CHANGE / TECHNOLOGY IS CHANGING FASTER THAN THE WORKPLACE:

Design Strategy:

- Social media displays, so staff can keep current with work-related social media trending.
- Automated video wall with rotating images.
- “Wormholes”: Access screens to off-site workers for instant collaboration.



Collaborative-Creative Workplace Experience Using Rendering Tools

The most important things architects and interior designers need to communicate are the specifics of the proposed design. Explaining and revealing the design for a space not yet built is a significant challenge. This is why we have spent so much time and made such a significant investment in developing three-dimensional computer capabilities, allowing our clients to visualize and move through our designs, and understands performance characteristics, in a manner that takes the mystery out of the design process. This approach truly gives our clients a level of insight and awareness of the project that simply cannot be gained in any other way, and we have found that it significantly aids us in working collaboratively together to reach design solutions that truly serve the layered priorities of each project.



Sustainable Design Methodology

COLLABORATIVE APPROACH TO HIGH PERFORMANCE

Building upon the initial workshops, Davis Partnership Architects will orchestrate a highly collaborative, integrated team process to ensure that project requirements, goals and priorities are fundamentally understood and a tightly coordinated and aligned whole project approach developed in direct response. We will work closely with the Town of Avon, to determine where the most promising opportunities exist in the context of project specific considerations, and then focus our analysis while integrating these pieces into initial design concepts. Through rigorous attention to detail, early engagement of all stakeholders and disciplines, and continuous transparent communication we'll lead the team to a project optimized for performance and occupant experience, health and wellness – a project that reflects TOA's organizational commitment to dignified, sustainable, responsible use of resources. We'll include discussion of project attributes that might contribute to resiliency, and TOA's overall aspirations related to this increasingly relevant consideration.

Utilizing Sefaira design performance modeling (DPM) software to inform the project during concept and schematic design phases, we'll evaluate macro scale building design decisions in tandem with comparative building performance and resource use projections. Use of DPM software contributes to optimization of basic, early design decisions by informing an extensive collection of complex and project specific factors. Some might include: natural ventilation; architectural form; building (and parking) configuration; integration with neighboring Town of Avon properties and resources to identify and capitalize on uniquely advantageous synergies; building orientation; materials and exterior enclosure R-value; window to wall ratio; shading; glare control; thermal comfort; daylight penetration; water efficiency; glazing and shading options; and, clean energy production with efficient use plans, including site and location specific opportunities such as geothermal wells and PV cells.

With Group 14's collaboration, subsequent integration of building energy modeling (BEM) software will allow for closer evaluation of building energy use and on site production, as the team further defines the design. Additional important factors such as lighting and plumbing fixture selection; specific material characteristics and sources; and, controls, will also become relevant in the evaluation as design progresses.

At all stages, we will discuss sustainability considerations and strategies as an integral part of the design taking form, engaging the Ownership team in the decision making process as we review quantified benefits and costs. Project team members identified from the outset will shepherd specifics of these priorities through the life of the project. During each phase, we'll perform an implementation review to ensure goals are tracking as the project takes shape, and to revisit the potential for any new opportunities to be incorporated. We will maintain an ongoing dialogue within the team to ensure each discipline is involved and engaged in the dialogue, contributing expertise as we interweave complex, complementary performance based strategies within the full project vision.

WELLNESS

Our team understands that even the highest performing project can only be successful if it creates an environment beneficial not only to the community (and beyond), but also to the long term health and wellbeing of those who inhabit it daily. Wellness is where sustainable design meets individuals directly affected by the buildings and landscapes we shape. It is of essential significance to those who visit the completed project day to day, and extremely valuable to the Ownership team.

As such, as we continue to connect and discuss sustainable design in the context of available technologies to support highly controlled and efficient use of resources, we

also focus heavy attention on elements bearing potential impact on health and wellbeing of individual building occupants. This extends across opportunities for activity, optimized air and water quality, promotion of healthy choices and habits, connection to the natural environment – the many often subtle factors that shape an occupant's experience into a strongly positive daily influence.

STANDARDS

EXPERIENCE WITH THE WELL BUILDING STANDARD AND LEED

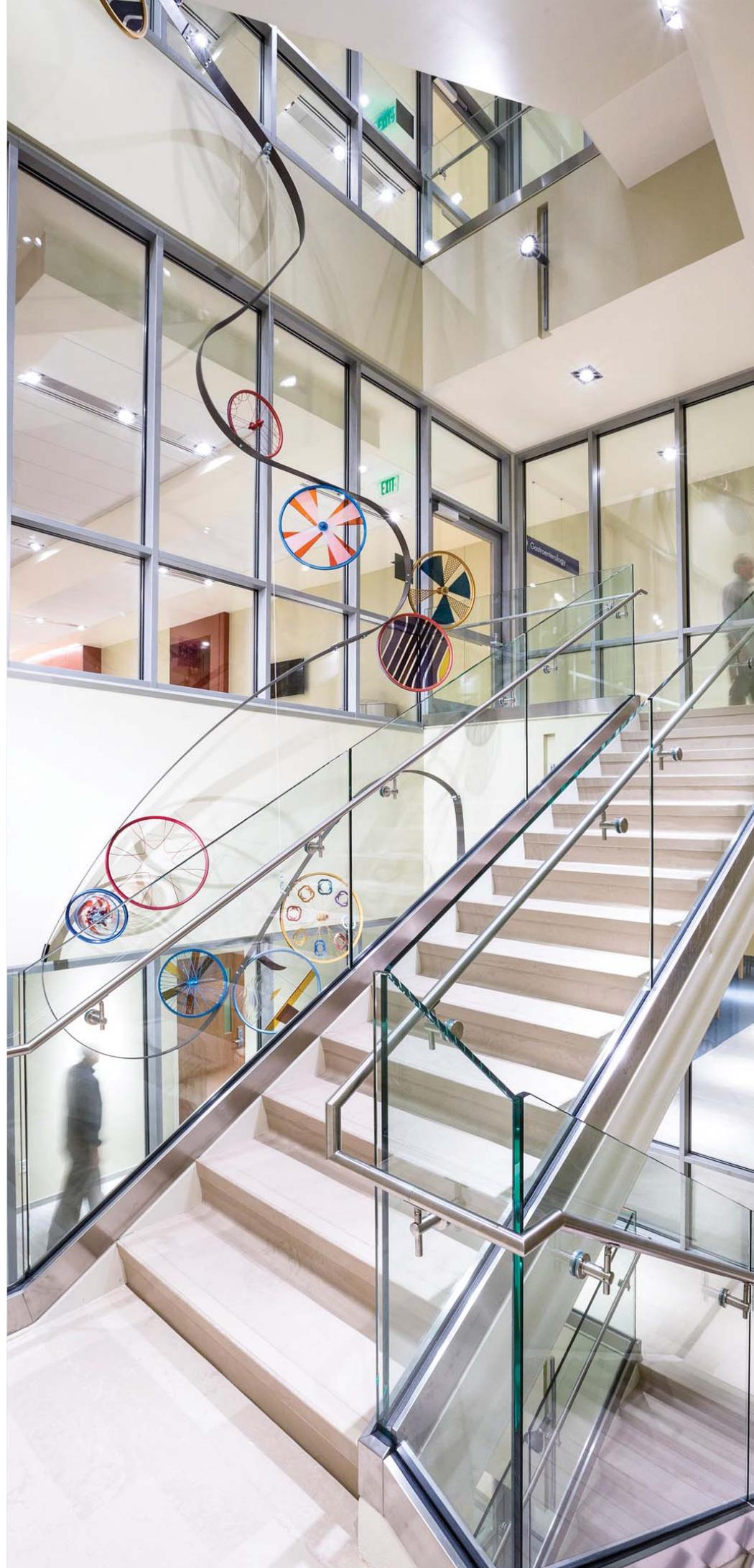
Davis Partnership has broken ground on the new headquarters for The Colorado Health Foundation. The non-profit's mission of making Colorado the healthiest state in the nation is manifested in the new building design, in which "health positive" features drive programming, planning, massing, and character. Our expertise in Evidence Based Design, Biophilic Design, Sefaira Design Performance Modeling software and the 2030 Commitment lends depth to our approach of delivering health, happiness and wellbeing in the built environment. The WELL Building Standard v1.0 for commercial work is one of the metrics implemented on this project and has had a positive impact on both design and owner policies. The WELL Standard continues to be fine-tuned as it rapidly establishes a stronger foothold in the market. As such, we have interacted with the International Well Building Institute as needed to clarify preconditions and optimizations relevant to the project, and implemented some of the recent September 2015 updates to version 1.0. Additionally, we are in the pre-planning stages of a 200 unit multi-family development in Denver where WELL Certification is one of the sustainable project goals. While the WELL Standard remains relatively new within our community, we have already had the good fortune of implementing it and working with the IWBI through our project work. This will empower us to draw upon this experience to facilitate informed incorporation of priorities

and requirements represented through the standard in our design for this project.

Beyond our recent exposure to the details of the WELL Standard we also have years of extensive experience designing projects to achieve all levels of LEED certification. We recently renovated an existing 30,000 SF industrial building to become our new office space starting in 2016, and are targeting LEED v4 Gold certification as one of the first LEED v4 projects in Denver. Under leadership of our Sustainable Design Lead, a core team of individuals in our office form our Sustainable Design Focus Group consistently advancing high performance and wellness in our work. The group regularly attends national conferences focused on sustainability and sustainable design, and is continually educating themselves and the rest of our DPA team on how buildings can elevate human health and wellness. They also provide guidance to ensure that we habitually design our projects with maximum performance in mind. Two of those group members will pursue WELL professional accreditation mid-year 2016.

Combining our experience with WELL on the Colorado Health Foundation project with extensive LEED experience enables us to design spaces that improve users' health and well-being across the three key scales currently relevant within our industry: individual occupant; immediate neighboring community; and much broader community also affected by wider environmental impacts.

Also worthy of mention: in addition to LEED and WELL there are a growing number of complementary rating systems that we are comfortable referencing. These would not be limited to but might include: Workplace of the Future, Energy Star, Living Building Challenge 3.0, Active Design Guidelines, and the recently released EcoDistrict protocol.



Lighting Design

Davis Partnership's Lighting Design team offers the technical expertise required to design efficient lighting systems with an intimate understanding of how light affects the wellness of people who use the space. Each of the following factors is scrutinized by our team and reviewed with our Clients as we move through design:

FUNCTION

Successful lighting design starts with an analysis of the functional requirements of the space. Daylight and artificial lighting must be integrated to support usage. Thorough consideration must be given to elements such as glare, visual comfort, and task illumination. We carefully select light sources to deliver the appropriate quantity and quality of light, and strongly believe that there is no "one size fits all" solution for lighting design.

ENERGY & ENVIRONMENT

As energy codes become more stringent and energy costs escalate, projects benefit from a team member who specializes in lighting in order to arrive at an outcome that balances energy code compliance, sustainability, and evolving lighting technology. Sustainability is no longer a possibility, it is a necessity.

WELLNESS

Ongoing research demonstrates the substantial effects of light on human health and behavior. We leverage our knowledge of lighting's influence on health into thoughtful designs that positively influence outcomes for staff and users. Lighting thoughtfully designed for wellness supports healthy sleep/wake cycles, increased productivity and alertness, and optimized immune function, findings which have been echoed by the American Medical Association in two position statements.

AESTHETICS

Lighting profoundly affects our perception of space. A remarkable architectural design can be rendered lifeless with poor lighting, and an unremarkable space can be drastically improved with excellent lighting design.

BUDGET

Lighting is one of the portions of a project that frequently exceeds budgets. We have developed a unique budgeting and specification method that introduces fairness, accountability and transparency to lighting costs. We are passionate about helping our clients acquire the right lighting at the best cost.



THE COLORADO HEALTH FOUNDATION
DENVER, COLORADO

- Natural Ventilation
- Biophilia
- Workspace Flexibility



**MENTAL HEALTH CENTER OF DENVER
FIRST HOUSING**

DENVER, COLORADO

- Active Stair
- Engaging Common Spaces
- Energy Efficiency
- Natural Lighting



**2901 BLAKE STREET,
DAVIS PARTNERSHIP ARCHITECTS**

DENVER, COLORADO

- Ergonomics
- Beauty and Design
- Lighting and Lighting controls

Coordinated Project Delivery

CONSTRUCTION & CLOSEOUT

Once the design vision for the project is established the focus shifts to production and execution. There are several elements that are key to the success of this stage: quality coordinated design documents, adherence to the established budget, preservation of identified guiding priorities, schedule, minimization of change orders, resolution of unanticipated field conditions and the close collaboration between owner, architect and contractor. Our seasoned team has extensive experience in every facet of this stage and brings an unmatched commitment to bringing to life your vision while delivering the required operational needs, function, technical performance, resource efficiency, and value. Together we are dedicated to client success.

Ultimately, we at Davis Partnership believe architectural excellence is a matter of integrating high-quality design optimized for performance and occupant wellness with superior functional programming and operational efficiency. Although our primary concern is to meet our clients' technical, human, aesthetic and economic needs, we also extend our sense of responsibility to the communities and neighborhoods within which our buildings must blend, shape and evolve. As a result, our designs provide enduring visual continuity and suitability to the urban, suburban and rural fabrics within which they consciously contribute to the built community.

BUDGET METHODOLOGY/COST CONTROL

Achieving client goals within available resources is, we believe, the essence of responsible architectural design. Delivering

a successful project within cost parameters always entails balancing three key project factors: cost, quality and scope. Our process is to facilitate early decisions regarding those key elements representing the biggest budget impact. With the use of a 'cost model' we set targets for basic elements before we begin designing, and test these targets periodically to balance the three project factors - recognizing that if any two of these factors are fixed the third is also set; we explore ways to satisfy all three without diminishing function or durability.

BUILDING INFORMATION MODELING

Davis Partnership Architects has integrated Building Information Modeling into our practice since 2000, and our leadership role in the innovative use of computerized design tools and technologies is the result of a longstanding commitment to client service and satisfaction. Our ongoing investment in proven technology and tools continues to deliver unparalleled benefits to our clients by increasing efficiencies, streamlining processes, enhancing overall communications and assuring more accurate cost-estimating and documentation.

To this end, Davis Partnership is committed to working closely with our partners to fully utilize Revit-based Building Information Modeling [BIM] technology. With a design staff fully operational on Revit, Building Information Models can be efficiently integrated into constructor's processes, particularly where estimating, scheduling and collision detection are concerned. Our team is also committed to working with each contractors' mechanical, electrical, plumbing and fire protection sub-contractors

to coordinate systems and identify conflicts prior to fabrication and installation of major building systems. This effort consistently results in more efficient fabrication, reduced labor costs, shortened schedules and fewer field conflicts.

SCHEDULE

To keep the project on schedule, we identify critical paths and subtask actions that all project team members agree upon. Intervals for review, decision-making, and project presentations are established and incorporated in the schedule. Developing an initial schedule that encompasses all of these activities is critical to ensuring that each participant understands and accepts his or her part in the process.

Once established, the schedule serves as a key management tool that is constantly referenced during the all phases to track progress, assess the impact of group decisions, and determine staffing requirements. We listen to and make certain that we understand the Owner's goals and provide design solutions responding to your project objectives; thereby taking a more straight-line approach to reaching the final design.

SCOPE OF SERVICES AGREEMENT & FEES

SCOPE OF SERVICES AGREEMENT

Proposed Fees

NEW TOWN HALL

Feasibility Study

Architecture	\$5,000
Structural	\$5,000
Estimated Total Feasibility Study Cost	\$10,000

Town Hall w/o Additional Levels

	<u>REVISED</u>	NUMBERS IN RED ARE ORIGINAL NUMBERS
Architecture	\$95,000	\$105,000
Interior Design	\$12,000	\$15,000
MEP Engineering	\$30,000	\$30,000
Structural Engineering	\$4,200	-
Lighting Design	\$10,000	\$12,000
ADA / Access	\$6,000	\$6,000
Acoustical Engineering	\$10,000	\$10,000
Code Consulting	\$2,700	\$5,000
Cost Estimating	\$11,800	\$14,000
Estimated Total Design Cost	\$181,700	\$197,000

Reimbursables	\$10,000	\$15,000
TOTAL	\$191,700	\$212,000 DELTA = \$20,300

NOTE:

NO LANDSCAPE IS ANTICIPATED ON THIS PHASE OF THE PROJECT. IF THE ENTRY IS MOVED THERE WILL BE INCURRED LANDCAPE FEES WHICH WE WILL PROVIDE AT THAT TIME IN A PROPOSAL



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Justin Hildreth PE, Town Engineer
Meeting Date: August 09, 2016
Agenda Topic: Resolution No. 16-23, Approving Holy Cross Energy Underground Right-Of-Way Easement and Trench, Conduit, and Vault Agreement for the Public Safety Facility Project

ACTION BEFORE COUNCIL

Review and approve Resolution No. 16-23, Approving Holy Cross Energy Underground Right-Of-Way Easement and Trench, Conduit, and Vault Agreement for the Public Safety Facility Project.

PROPOSED MOTION

I move to approve Resolution No. 16-23, Approving Holy Cross Energy Underground Right-Of-Way Easement and Trench, Conduit, and Vault Agreement for the Public Safety Facility Project.

DISCUSSION

The Town of Avon and Eagle River Fire Protection District (ERFPD) are starting construction of a joint Public Safety Facility located at Lot 1B, Buck Creek Subdivision. The Holy Cross Energy agreements are required to be approved by both the Town of Avon and ERFPD as joint owners of the property and the ERFPD has already approved and signed the agreements. The Holy Cross Energy Underground Right-Of-Way Easement, attached as Exhibit A, is required to facilitate installation of facilities to provide electrical service to the Public Safety Facility and allows the rights of access to the property to construct, repair, operate, and maintain underground and aboveground electric facilities. The Trench, Conduit, and Vault Agreement, attached as Exhibit B, specifies construction and clearance requirements. Approval of the agreements will be subject to Town Attorney review and comment.

ATTACHMENTS:

Resolution No. 16-23

Exhibit A: Holy Cross Energy Underground Right-Of-Way Easement

Exhibit B: Holy Cross Energy Trench, Conduit, and Vault Agreement



RESOLUTION NO. 16-23
APPROVING HOLY CROSS ENERGY UNDERGROUND RIGHT-OF-WAY
EASEMENT ACROSS LOT 1B, BUCK CREEK SUBDIVISION, AVON, COLORADO
AND TRENCH, CONDUIT AND VAULT AGREEMENT

WHEREAS, the Town of Avon and the Eagle River Fire Protection District are constructing a new Public Safety Facility that will house the Avon Police Department and the Avon Fire Station, and such construction project requires improvements to electrical facilities owned by Holy Cross Energy, and Holy Cross Energy has agreed to cooperate with this project; and,

WHEREAS, Lot 1B, Buck Creek Subdivision is owned by both the Eagle River Fire Protection District and the Town of Avon and both entities must approve the agreements; and,

WHEREAS, The Eagle River Fire Protection District as part owner approved the Holy Cross Energy Underground Right-of-Way Easement across Lot 1B, Buck Creek Subdivision and Trench, Conduit, Vault Agreement; and,

WHEREAS, the Avon Town Council has determined that the upgrading of electrical facilities across Lot 1B, Buck Creek Subdivision, Avon, Colorado will provide required electric service to the new Public Safety Facility and will thereby promote the health, safety and general welfare of the Avon community; and,

WHEREAS, the Town Council finds that approval of the attached Holy Cross Energy Underground Right-of-Way Easement Across Lot 1B, Buck Creek Subdivision, Avon, Colorado and approval of the Trench, Conduit and Vault Agreement will promote the health, safety, convenience and general welfare of the Avon community.

NOW THEREFORE, the Avon Town Council, hereby **RESOLVES** to approve the following Holy Cross Energy Underground Right-of-Way Easement Across Lot 1B, Buck Creek Subdivision, Avon, Colorado (attached to this Resolution as **Exhibit A**) and the Trench, Conduit, and Vault Agreement (attached to this Resolution as **Exhibit B**).

ADOPTED August 09, 2016 by the AVON TOWN COUNCIL

By: _____
Jennie Fancher, Mayor

Attest: _____
Debbie Hoppe, Town Clerk

**HOLY CROSS ENERGY
UNDERGROUND RIGHT-OF-WAY EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,

EAGLE RIVER FIRE PROTECTION DISTRICT, a political subdivision and quasi-municipal corporation of the State of Colorado as to an undivided 55% and THE TOWN OF AVON, a home rule municipal corporation of the State of Colorado as to an undivided 45%, Tenants in Common

(hereinafter called "Grantor"), for a good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant unto Holy Cross Energy, a Colorado corporation whose post office address is P. O. Box 2150, Glenwood Springs, Colorado (hereinafter called "Grantee") and to its successors and assigns, the right of ingress and egress across lands of Grantor, situate in the County of Eagle, State of Colorado, described as follows:

Lot 1B, Buck Creek Subdivision, Filing No. 2, according to the Final Plat thereof, situate in Section 1, Township 5 South, Range 82 West of the 6th P.M., more particularly described at Reception Numbers 201510225, 201610880 and 201611830 in the office of the Eagle County Clerk and Recorder, Eagle, Colorado.

And, to construct, reconstruct, repair, change, enlarge, re-phase, operate, and maintain an underground electric transmission or distribution line, or both, with the underground vaults, conduit, fixtures and equipment used or useable in connection therewith, together with associated equipment required above ground, within the above mentioned lands, upon an easement described as follows:

An Easement containing underground power lines with above ground pad mounted equipment as constructed, the location of said Easement upon the above described property is shown on Exhibit A attached hereto and made a part hereof by reference.

The rights herein granted specifically allow Grantee to install additional underground and/or pad-mounted facilities within the easement described herein.

It shall be the Grantor's responsibility to ensure that splice vaults, switchgear vaults and transformer vaults installed hereunder on said real property are accessible by Grantee's boom trucks and other necessary equipment and personnel at all times. The use of such access by Grantee shall not require removal or alteration of any improvements, landscaping, or other obstructions. The ground surface grade shall not be altered within ten (10) feet of said splice, switchgear and transformer vaults, nor along the power line route between the vaults. The ground surface grade at said transformer and switchgear vaults shall be six (6) inches below the top of the pad. The ground surface grade at said splice vaults shall be even with the top of the pad. The manhole opening of said splice vaults shall be uncovered (excluding snow) and accessible at all times. Improvements, landscaping or any other objects placed in the vicinity of said transformers and switchgear shall be located so as not to hinder complete opening of the equipment doors. The ground surface within ten (10) feet of said transformer and switchgear doors shall be flat, level and free of improvements, landscaping, and other obstructions. Improvements, landscaping and other objects will be kept a minimum of four (4) feet from non-opening sides and backs of said transformers and switchgear. Grantor hereby agrees to maintain the requirements of this paragraph and further agrees to correct any violations which may occur as soon as notified by Grantee. Said corrections will be made at the sole cost and expense of Grantor.

Together with the right to remove any and all trees, brush, vegetation and obstructions within said easement and the right to pile spoils outside said easement during construction and maintenance, when such is reasonably necessary for the implementation and use of the rights hereinabove granted. In areas where vegetation is disturbed by the above described use of the easement, the ground surface shall be seeded using a standard native mix by Grantee. Grantor agrees that landscaping or other surface improvements added on said easement after the date of execution hereof will be minimized and that Grantee will not be responsible for damage to said additional landscaping or surface improvements caused by exercise of its rights granted by this easement.

Grantor agrees that all facilities installed by Grantee on the above described lands, shall remain the property of Grantee, and shall be removable at the option of Grantee.

Grantor covenants that they are the owner of the above described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character, except those held by the following: All those of Record.

TO HAVE AND TO HOLD, said right-of-way and easement, together with all and singular, the rights and privileges appertaining thereto, unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused these presents to be duly executed on this _____ day of _____, 20_____.

The individual signing this Holy Cross Energy Underground Right-of-Way Easement hereby represents that he/she has full power and authority to sign, execute, and deliver this instrument.

EAGLE RIVER FIRE PROTECTION DISTRICT,
a political subdivision and quasi-municipal corporation
of the State of Colorado, as to an undivided 55%

THE TOWN OF AVON,
a home rule municipal corporation of the State of
Colorado, as to an undivided 45%

By: _____

By: _____

Mayor

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____,
by _____ as _____ of EAGLE RIVER FIRE PROTECTION DISTRICT,
a political subdivision and quasi-municipal corporation of the State of Colorado, as to an undivided 55%.

WITNESS my hand and official seal.
My commission expires:

Notary Public

Address: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____,
by _____ as Mayor of THE TOWN OF AVON, a home rule municipal corporation of the State
of Colorado, as to an undivided 45%

WITNESS my hand and official seal.
My commission expires:

Notary Public

Address: _____

TRENCH, CONDUIT, AND VAULT AGREEMENT

This agreement is made and entered into this _____ day of _____, 20_____, between EAGLE RIVER FIRE PROTECTION DISTRICT, a political subdivision and quasi-municipal corporation of the State of Colorado as to an undivided 55%, whose mailing address is P.O. Box 7980, Avon, CO 81620-7980, and THE TOWN OF AVON, a home rule municipal corporation of the State of Colorado as to an undivided 45%, whose mailing address is P.O. Box 975, Avon, CO 81620, Tenants in Common, hereinafter called "Owner", and Holy Cross Energy, a Colorado corporation whose mailing address is P. O. Box 2150, Glenwood Springs, Colorado 81602, hereafter called "Holy Cross".

WHEREAS, Holy Cross has been requested by Owner to provide underground electric facilities, hereinafter called "Facilities", to serve a project known as Avon Public Safety Facility, Buck CK L1B, hereinafter called "Project"; and,

WHEREAS, Owner is required to provide all excavation, conduit and vault installation, backfill, compaction and cleanup needed to construct said requested Facilities; and,

WHEREAS, Owner owns real property described as follows: Lot 1B, Buck Creek Subdivision, Filing No. 2, according to the Final Plat thereof, situate in Section 1, Township 5 South, Range 82 West of the 6th P.M., more particularly described at Reception Numbers 201510225, 201610880 and 201611830 in the office of the Eagle County Clerk and Recorder, Eagle, Colorado, hereinafter called "Property", which Property is the real property where the Project is being developed; and,

WHEREAS, installation of Facilities to serve the Project may require trenching or other excavation on certain real property adjacent to the Project described as follows: N/A, hereinafter called "Adjacent Land".

NOW, THEREFORE, Owner and Holy Cross agree as follows:

1. Owner shall provide all excavation, conduit and vault installation, backfill, compaction and cleanup necessary for installation of Facilities to serve the Project. Such excavation shall be located as shown on the construction plans approved by Holy Cross, and performed in accordance with Holy Cross Vault Installation Specifications, Construction Specifications and inspector requirements. Any deviation from the approved construction plans will not be made unless approved by Holy Cross in advance. All Facilities installed hereunder shall be inspected during construction by Holy Cross and shall meet all Holy Cross requirements prior to acceptance of such Facilities by Holy Cross.
 - a. Prior to commencement of any work hereunder, Holy Cross shall furnish to Owner its Vault Installation Specifications and Construction Specifications and such specifications are made a part hereof by reference.
 - b. All Facilities installed within the Property and Adjacent Land shall be within dedicated or conveyed and recorded utility easements.
 - c. The top of all conduits installed hereunder shall be located a minimum of 48" below the final grade of the ground surface.
 - d. A twelve-inch (12") minimum separation will be maintained between conduits installed for the Facilities and all other new or existing underground utilities. Wherever possible, this separation will be horizontal. The Facilities conduit separation from plastic gas lines shall be greater than this minimum wherever practicable.
 - e. Holy Cross will supply the necessary conduit and vaults for installation by the Owner upon completion of contractual arrangements. Owner assumes responsibility for all material lost or damaged after such material has been issued to and signed for by Owner or by an agent of Owner. Alternatively, Owner may provide its own conduit and vaults meeting Holy Cross specifications for use on the Project and convey such provided material to Holy Cross with an acceptable Bill of Sale. After installation by the Owner and acceptance by Holy Cross, Holy Cross shall continue as the owner of the conduit, vaults and related structures and facilities.
 - f. If conduit and/or vault installation provided by Owner for the Project are found to be unusable or improperly constructed, irrespective of whether such discovery is made during or after installation, Owner will be responsible for correcting said problems at its expense as specified by Holy Cross and Owner shall reimburse Holy Cross for all additional costs resulting from conduit and/or vault installation being unusable or improperly constructed.
2. Despite the fact that Holy Cross reserves the right to specify acceptable work performed hereunder, Owner shall perform work hereunder as an independent contractor, including, but not limited to, the hiring and firing of its own employees, providing its own tools and equipment, payment of all wages, taxes, insurance, employee withholdings, and fees connected with its work on the Project.
3. Owner shall obtain all necessary digging permits and utility locations prior to excavation for work performed hereunder. Owner shall repair all damage caused during excavation promptly and at its expense. No excavation will be undertaken within five (5) feet of existing underground electric facilities except under the on site supervision of a Holy Cross employee.

4. Owner shall indemnify, save, and hold harmless Holy Cross, its employees and agents, against any and all loss, liability, claims, expense, suits, causes of action, or judgments for damages to property or injury or death to persons that may arise out of work performed hereunder, or because of a breach of any of the promises, covenants and agreements herein made by the Owner. Owner shall promptly defend Holy Cross whenever legal proceedings of any kind are brought against it arising out of work performed hereunder by the Owner and/or work performed at the direction of the Owner. In the event Owner shall fail to promptly defend Holy Cross, it shall be liable to Holy Cross, and shall reimburse it, for all costs, expenses and attorney fees incurred in defending any such legal proceeding. Owner agrees to satisfy, pay, and discharge any and all judgments and fines rendered against Holy Cross arising out of any such proceedings. Owner also agrees to promptly satisfy and pay any monetary settlements of disputes that arise hereunder, provided Owner has been given the opportunity to join in such settlement agreements. The above indemnification clause shall not apply to state and local governments or local service districts. In lieu thereof, whenever Owner is a government or district it shall procure and maintain in effect at least \$1,000,000 of public liability insurance covering the acts, damages and expenses described in the above indemnification clause. Upon Holy Cross' request, such an Owner shall furnish a Certificate of Insurance verifying the existence of such insurance coverage.
5. Owner shall repair, at its expense, any excavation settlement and damage to asphalt paving or other surface improvements caused by such settlement resulting from work performed hereunder within the Property and Adjacent Land for a period of two (2) years beginning on the date backfill and cleanup are completed.
6. Owner, at its expense, shall stop the growth of thistles and/or other noxious weeds in all areas disturbed by excavation performed hereunder for a period of two (2) years beginning on the date backfill and cleanup are completed.
7. In the event Owner shall not promptly complete all of the obligations hereinabove agreed to be performed by Owner, Holy Cross may give written notice by registered or certified mail demanding Owner to complete the work and obligations undertaken by Owner herein, and if such is not completed within 30 days after receipt of such notice by Owner, Holy Cross may complete the work and obligations hereof. If Holy Cross shall be required to complete the work, all costs of completion shall be chargeable to and collectible from Owner.
8. As set forth in paragraph 1 above, Owner covenants that the trench, and all Facilities within the trench installed hereunder shall be located within dedicated or conveyed and recorded utility easements and at the proper depth below finished grade. It shall be the obligation of Owner to properly locate and construct the Facilities within the easement. Should it ever be discovered that such Facilities have not been properly located within dedicated or conveyed and recorded utility easements, or at the proper depth, it shall be the obligation of Owner to provide new easements for the actual location of the Facilities, or to relocate the Facilities within the easement, all of which shall be at the sole cost and expense of Owner.
9. It shall be Owner's responsibility to ensure that splice vaults, switchgear vaults and transformer vaults installed hereunder on the Property are accessible by Holy Cross boom trucks and other necessary equipment and personnel at all times. The use of such access by Holy Cross shall not require removal or alteration of any improvements, landscaping, or other obstructions. The ground surface grade shall not be altered within ten (10) feet of said splice, switchgear and transformer vaults, nor along the power line route between the vaults. The ground surface grade at said transformer and switchgear vaults shall be six (6) inches below the top of the pad. The ground surface grade at said splice vaults shall be even with the top of the pad. The manhole opening of said splice vaults shall be uncovered (excluding snow) and accessible at all times. Improvements, landscaping or any other objects placed in the vicinity of said transformers and switchgear shall be located so as not to hinder complete opening of the equipment doors. The ground surface within ten (10) feet of said transformer and switchgear doors shall be flat, level and free of improvements, landscaping, and other obstructions. Improvements, landscaping and other objects will be kept a minimum of four (4) feet from non-opening sides and backs of said transformers and switchgear. Owner hereby agrees to maintain the requirements of this paragraph and further agrees to correct any violations that may occur as soon as notified by Holy Cross. Said corrections will be made at the sole cost and expense of Owner.
10. All Holy Cross meter locations must be approved in advance. Notwithstanding such advance approval, it shall be the Owner's responsibility to maintain acceptable access, as determined solely by Holy Cross, to all Holy Cross meters at all times. At any time in the future, should access to any Holy Cross meters be determined by Holy Cross to be unacceptable, then it shall be the Owner's responsibility, at the Owner's sole cost, to correct the access and make it acceptable, as determined solely by Holy Cross.
11. Owner covenants that it is the owner of the above described Property and that said Property is free and clear of encumbrances and liens of any character, except those held by the following: All those of Record.

The promises, agreements and representations made by Owner herein shall be covenants that run with the Property and shall be binding upon the successors in interest, and assigns, of the Property.

The individual signing this Trench, Conduit and Vault Agreement hereby represents that he/she has full power and authority to sign, execute, and deliver this instrument.

Holy Cross Energy, a Colorado corporation

EAGLE RIVER FIRE PROTECTION DISTRICT,
a political subdivision and quasi-municipal corporation of
the state of Colorado as to an undivided 55%

By: _____
David Bleakley - Vice President, Engineering

By: _____
Title: _____

THE TOWN OF AVON,
a home rule municipal corporation of the State of
Colorado as to an undivided 45%

By: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ as _____ of EAGLE RIVER FIRE PROTECTION DISTRICT,
a political subdivision and quasi-municipal corporation of the State of Colorado as to an undivided 55%.

WITNESS my hand and official seal.
My commission expires:

Notary Public
Address: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ as _____ of THE TOWN OF AVON, a home rule
municipal corporation of the State of Colorado as to an undivided 45%

WITNESS my hand and official seal.
My commission expires:

Notary Public
Address: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by David Bleakley - Vice President, Engineering Department, Holy Cross Energy, a Colorado corporation.

WITNESS my hand and official seal.
My commission expires:

Notary Public

Address: _____



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, JULY 26, 2016
AVON TOWN HALL, ONE LAKE STREET

1. A CALL TO ORDER & ROLL CALL

Mayor Fancher called the meeting to order at 5:07 p.m. A roll call was taken and Council members present were Sarah Smith Hymes, Scott Prince, Megan Burch, Matt Gennett, Buz Reynolds and Jake Wolf. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Planning Director Matt Pielsticker, Interim Police Chief Greg Daly, Town Engineer Justin Hildreth, Assistant Town Manager Scott Wright, 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

Andrea Burrows, Derick George, Tom Beaver, Darcy Giles, Amy Hunter, LeeAnn Marshall and Josh Frank commented.

4. ACTION ITEMS

START TIME: 00:51:22

4.1. PUBLIC HEARING SOUND PERMIT APPLICATION FOR AVON LIVE! SUMMER CONCERT SERIES

(MIKE O'BRIEN, PEAK PERFORMANCES)

Mayor Fancher opened the Public Hearing and no comments were made. Councilor Reynolds moved to approve the Amplified Sound Permit for Avon LIVE! Summer Concert in the Park on Wednesday, August 10th, 17th, 24th and 31st, 2016; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present.

4.2. PUBLIC HEARING SECOND READING ORDINANCE 16-13, APPROVING REZONING PORTIONS OF LOTS 1, 2A, 2B, 2C, 3 AND 5, MOUNTAIN VISTA RESORT SUBDIVISION, FROM PUD TO TOWN CENTER ZONE DISTRICT – CONTINUED FROM JULY 12, 2016 (PLANNING DIRECTOR MATT PIELSTICKER)

Mayor Fancher opened the Public Hearing and Tambi Katieb commented. Councilor Gennett moved to approve on second and final reading Ordinance No. 16-13 Rezoning Lots 1, 2A, 2B, 2C, 3 and 5, Mountain Vista Resort Subdivision, Avon, Colorado from Planned Unit development to Town Center with one modification to section 3.3 of the Restated Development Agreement, attached as Exhibit A to Ordinance 16-13. The modification was the addition of the following language: "Owner shall consider shared parking arrangements with the Town at the time of proposing development." Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present.

4.3. ACTION ON FIRST READING OF ORDINANCE 16-16, APPROVING A FRANCHISE AGREEMENT WITH COMCAST OF COLORADO VII, LLC FOR THE PROVISION OF CABLE SERVICES IN THE TOWN OF AVON

(TOWN ATTORNEY ERIC HEIL)

Councilor Reynolds moved to approve on first reading Ordinance No. 16-16 Approving a Franchise Agreement with COMCAST of Colorado VII, LLC for the Provision of Cable Services in the Town of Avon; Councilor Burch seconded the motion and it passed unanimously by those present.



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, JULY 26, 2016
AVON TOWN HALL, ONE LAKE STREET

5. WORK SESSION

START TIME: 02:17:37

5.1. 2016 LEGISLATIVE REPORT FROM COLORADO STATE REPRESENTATIVE DIANE MITSCH BUSH

6. ACTION ITEMS

START TIME: 02:30:48

6.1. ACTION TO SUPPORT A LETTER TO THE DEPARTMENT OF THE INTERIOR TO INITIATE A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR THE FEDERAL COAL PROGRAM (COUNCILOR SARAH SMITH HYMES)
Councilor Smith Hymes moved to authorize Mayor Jennie Fancher, on behalf of the Town of Avon, to become a signature to the Mountain Pact letter calling for the U.S. Department of the Interior to initiate a Programmatic Environmental Impact Statement for the federal coal program; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present.

6.2. ACTION ON REQUEST TO SOLICIT, INTERVIEW AND APPOINT MEMBERS TO A HISTORIC PRESERVATION ADVISORY COMMITTEE MEMBERSHIP (COUNCILOR SARAH SMITH HYMES)

Tamara Underwood commented.

Councilor Burch moved to approve the formation of an Advisory Committee for Historic Preservation with up to 5 members to be appointed by the Mayor; Councilor Smith Hymes seconded the motion and it passed unanimously by those present.

6.3. CONSENT AGENDA

6.3.1. APPROVAL OF THE NOVEMBER 8, 2016 GENERAL MAIL BALLOT ELECTION – IGA
(TOWN CLERK DEBBIE HOPPE)

6.3.2. APPROVAL OF THE MINUTES FROM THE JULY 12, 2016, TOWN COUNCIL MEETING
(TOWN CLERK DEBBIE HOPPE)

6.3.3. APPROVAL OF RESOLUTION 16-20, A RESOLUTION AMENDING AND RE-ADOPTING THE SIMPLIFIED RULES OF ORDER FOR AVON TOWN COUNCIL MEETINGS (TOWN ATTORNEY ERIC HEIL)

Councilor Burch moved to approve the consent agenda; Councilor Gennett seconded the motion and it passed unanimously by those present. Mayor Pro Tem Wolf voted no.

7. WRITTEN REPORTS

7.1. TOWN ATTORNEY UPDATE OF HB 16-1309 AND HB 16-1311 REPORTING ON THE RESPECTIVE REQUIREMENTS OF THE BILLS (TOWN ATTORNEY ERIC HEIL)

7.2. MONTHLY FINANCIAL REPORT (BUDGET ANALYST KELLY HUITT)

8. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

9. MAYOR & COUNCIL COMMENTS

10. TOWN MANAGER UPDATE

11. ADJOURNMENT

There being no further business to come before the Council, the regular meeting adjourned at 8:41 p.m.



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, JULY 26, 2016
AVON TOWN HALL, ONE LAKE STREET

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: Scott Wright, Asst. Town Manager
Meeting Date: August 9, 2016
Agenda Topic: Review and Direction on Revenue Projections for the 2017-18 Budget and Allocation Target of Up to \$205,000 for Community Grants

The following are staff's comments and recommendations regarding tax revenue trends and projections and increases in certain fees. Early observations, discussion and direction allow staff to be proactive during our budget development.

A PowerPoint presentation will be provided during the budget work session.

Tax Revenues

Property Taxes

- Although the preliminary certification of values has not yet been received (anticipated receipt date is Aug. 25) this is not a revaluation year so assessed values are only expected to grow based on new construction.
- Most new construction outside of the Town Center West Urban Renewal Plan area has been residential construction in Wildridge and Mountain Star.
- Assessed values for residential property are only assessed at a rate of 7.96%. Therefore, total assess values are only projected to increase by one percent (1%) or \$17,461, which is the 5-year average of new construction for the Town.
- In 2015, a revaluation year, total assessed values grew by 16.9%. The projected growth in assess values for 2017 is 20%. The increase in projected 2018 property tax revenues based on this projection is \$349,220.

Sales Tax

- Key indicators of sales tax include the following:
 - Total sales tax for 2016 is up 3.77% YTD through May over the previous year. However, 2015 included very large collections sales tax collections in January and February due to the 2015 Alpine World Championships. Given this anomaly, normal sales tax collections are actually showing to be up approximately 10.8% year-to-date.
 - The top ten sales tax payers representing 50.48% of total sales tax collections are collectively up 8.95% over last year.

- New sales tax licensees are helping drive the Town's sales tax growth, representing \$156,533 in new taxes, or 4.73% of total sales taxes collected YTD.
- Projections
 - Staff recommends a 4% projected rate of growth for sales tax for both 2017 and 2018. There is no change in this projection from the previous year. However, this projected growth will be calculated on a revised base to reflect the loss of Sports Authority. Sports Authority has consistently been one of the top 5 sales tax payers in the Town. Our sales tax projections for the remainder of 2016 and 2017 take into consideration the loss of these revenues.
 - Based on sales tax collections through May, a decrease of \$31,471 in estimated revenues for 2016 and a decrease of \$257,834 for 2017 are necessary.
 - Using the revised 2017 base, a 4% growth factor, and project additional revenues from the new hotel being developed on Lot B, staff projects an additional \$451,290 in sales tax revenues for 2018 over the 2017 year.

Accommodations Tax

- Key indicators of accommodations tax include the following:
 - Total accommodations tax is up 14.26% YTD through May over the previous year.
 - Both January and February, 2016 exceeded those months in the previous year, even with the 2015 AWSC occurring.
 - Accommodation taxes collected at the Riverfront Lodge and Spa are up 20.9% through May.
 - Compliance efforts for short-term rentals are increasing those revenues, even though they represent a small percentage of total accommodation taxes.
 - DestiMetrics statistics indicate that room rates for Avon lodges are at the lower end compared to other mountain ski towns. This indicates a continuing growth trend in accommodation tax revenues is possible even without additional room nights.
- Projections
 - Based on the current YTD increase over 2015, and assuming the same level of collections for the remainder of the year as in 2015, the projected increase for 2016 is 7.5%. This results in an increase of \$93,911 over the current 2016 budget.
 - Staff recommends a projected rate of growth of 6% for 2017 and 2018. This results in an increase in accommodations tax revenues of \$72,968 and 77,346 for 2017 and 2018, respectfully.

Building Fees

- Building fees are being reviewed to ensure that these fees cover costs. The proposed cost recovery methodology is that building permit fees, plan check fees and contractor's fees together should cover a rolling 5-year average of 100% of the Community Development Department's building inspection division budget, and 20% of its planning division budget.
- Year-to-date, building fees are \$5,152 over the budget of \$176,500 for permit fees, plan check fees and contractors fees. This amount is on par with years of similar normal activity. That being said, we are now aware of two additional development projects coming online in either late 2016 or 2017 – the Basecamp development, and the new hotel on Lot B. These new projects will generate approximately \$300,000 in additional building fees. As we get closer to understanding their building schedules, staff will make a decision as to which year to include these additional revenues.

Capital Projects – Real Estate Transfer Tax

- Real estate transfer tax revenues are up 23% through June compared to the same time period for the previous year, and up \$220,959 compared to the budget through June 2016.
- 2016 revenues are budgeted at \$2,100,000 which reflects the average RETT collections for the past couple of years.
- Staff will continue to monitor the volume of RETT transactions and before the final budget may recommend increasing the estimated revenues by \$100,000 for both 2017 and 2018 based upon the volume of sales and the general increase in market values in Avon.

Fee Recommendations

Fleet Maintenance

The past year has been a challenging one for Fleet Maintenance. New Fleet Director Rego Omerigic has been busily reviewing fleet operations and staffing which we are optimistic will result in a more efficient fleet operation.

Fleet shop rates are intended to cover the salaries and benefits of our fleet staff. In 2015, cash used in operations totaled \$108,820. It is staff's objective to reduce this figure to a breakeven point by ensuring the efficiency of our mechanics and working to increase the volume of third-party business. The third leg of the stool is to periodically adjust shop rates to cover real operating cost increases, yet ensure competitiveness with the private market.

Rates

- Current Rates = \$107/hr. for light duty vehicles and \$116/hr. for heavy duty vehicles.
- The Town annually compares rates to private shops in order to stay competitive. A recent survey of regional private shops produced an average of \$123.5/hr. for light duty and \$128/hr. for heavy duty.
- Based on this survey staff proposes to increase 2017 shop rates by \$3 per hour to \$110 for light duty and \$119 heavy duty vehicles. These rates still allow the Town to remain competitive by maintaining a lower than average rate for both vehicle types. These rates represent approximately 90% of the market average.
- The increase in rates will translate into approximately \$73,203 in additional revenue for 2016
- There are no shop rate increases being contemplated for 2018.
- A parts mark-up was approved in 2016 to increase from 15% to 20%. The Town Manager deferred this increase for 2016. The increase will be instituted beginning January 1, 2017.

Avon Recreation Center Admission Fees

Staff proposes to increase resident monthly passes by the following amounts. Please see Attachment #1 for detail regarding the Recreation Director's market research, historical data and service level improvements and upgrades supporting this recommendation.

Pass Type	2016 Cost	Proposed 2017 fee structure
Adult Resident		
1 Month	\$49.00	\$56.00
6 Month	\$259.00	\$294.00
1 Year	\$447.00	\$516.00
Family Resident		
1 Month	\$96.00	\$118.00
6 Month	\$502.00	\$576.00
1 Year	\$866.00	\$1,000.00
Buddy Resident		
1 Month	\$45.00	\$52.00
6 Month	\$238.00	\$270.00
1 Year	\$415.00	\$475.00
Youth/Senior Resident		
1 Month	\$31.00	\$37.00
6 Month	\$155.00	\$186.00
1 Year	\$268.00	\$300.00

Allocation Target of Up to \$205,000 for Community Grants

See Attachment #2 – Community Grant Program

Attachments:

Attachment #1 – Recreation Center Pass Rates Memo

Attachment #2 – Community Grant Program



ATTACHMENT #1 RECREATION CENTER PASS RATES

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: John Curutchet, Director of Recreation
Date: August 1, 2016
Re: Recreation Center Pass Rates

Background

Staff completed a market research effort and collected historical data this year to determine the need for any cost adjustments to Recreation Center admission fees. Fee structure information was gathered from recreation centers in Summit County, Glenwood Springs, Gypsum and the Westin Athletic Club. Staff found that most recreation centers have a fee structure similar to ours that differentiates fees for residents and non-residents. The separation in resident/non-resident monthly fees of our regional facilities averaged \$11.00, while the Avon Recreation Center cost differential for monthly resident versus non-resident is \$27.00. Our non-resident monthly pass is currently set at \$76.00. That amount is on average, 68% higher than the regional recreation centers that we studied, however, does represent a competitive value locally. The current resident monthly pass fee at the Avon Recreation center is \$49.00, which does align with our regional recreation centers; however the rate is 63% lower than our nearest health club option, The Westin.

Our historical data research concluded that our resident pass rates have not been adjusted since 2008. Staff found that our nearest local option, The Westin makes a general practice of raising rates annually, while our regional recreation and fitness providers conduct small percentage adjustments every 2-3 years.

Summary

Staff concluded that our focus should be to remain competitive in the local market, while representing a fee structure that is consistent with other regional providers. Staff believes the non-resident pass rates remain a good value in the local market, but our resident pass rates have been determined to be low, and should be considered for upward adjustment. An increase in resident pass rates will decrease the gap in cost difference between resident and non-resident fees, while remaining a great value in the local market. See proposed 2016 rate structure, (Attachment A).

Staff Recommendation

Since the last pass rate adjustment eight years ago, the Recreation Center has undergone many improvements, and has increased our amenities significantly. Staff is confident that the numerous upgrades and additions to Recreation Center amenities will be perceived as reasonable to warrant an increase to fees. Staff recommends that Council approve the adjustment to Avon Resident pass rates based upon the following considerations:

- Addition of a 1,600 square foot free weight room with increased equipment options
- Addition of a wellness studio for increased yoga and a premier Tai Chi program
- Addition of a professional bouldering wall from Eldorado Climbing Walls
- Refurbished water slide, addition of tumble buckets, spray cannon and waterfall to the aquatics area
- Upgraded locker rooms with top tier tile and vanity fixtures enclosed by new frosted glass doors
- Upgraded reception area including a redesigned, and more welcoming front desk
- Upgraded lobby with new furniture, artwork, and flooring that invokes a relaxing and inviting “living room” feel
- Free Wi-Fi added to the Recreation Center

Attachment A

Proposed 2017 Avon Pass Rate Structure

Pass Type	2016 Cost	Proposed 2017 fee structure
Adult Resident		
1 Month	\$49.00	\$56.00
6 Month	\$259.00	\$294.00
1 Year	\$447.00	\$516.00
Family Resident		
1 Month	\$96.00	\$118.00
6 Month	\$502.00	\$576.00
1 Year	\$866.00	\$1,000.00
Buddy Resident		
1 Month	\$45.00	\$52.00
6 Month	\$238.00	\$270.00
1 Year	\$415.00	\$475.00
Youth/Senior Resident		
1 Month	\$31.00	\$37.00
6 Month	\$155.00	\$186.00
1 Year	\$268.00	\$300.00



**ATTACHMENT #2
COMMUNITY GRANT PROGRAM**

To: Honorable Mayor Jennie Fancher and Avon Town Council
 From: Preston Neill, Executive Assistant to the Town Manager
 Date: August 9, 2016
 Agenda Topic: Allocation target of up to \$205,000 for the 2017 Town of Avon Community Grant Program

SUMMARY:

On June 14, 2016, in preparation for the release of application materials for the 2017 Town of Avon Community Grant Program, the Town Council reviewed and amended the procedures for solicitation, evaluation and funding.

One of the refinements was the elimination of applicant presentations before Council. Instead, funding recommendations from the Ad Hoc Review Committee will be incorporated into the annual proposed budget and subject to approval during the annual budget process. Also, Council agreed to set a maximum amount of money for community funding that the Ad Hoc Review Committee’s funding recommendations shall not exceed. The purpose of this memorandum is to request Council approval, by motion and vote, of a “not to exceed” amount for community funding.

A funding history chart that includes several other municipalities has been prepared below:

Community Grant Funding History						
	Avon	Aspen	Breckenridge	Estes Park	Telluride	Vail
2014	\$213,250	\$1,118,900	\$282,600	\$229,822	\$228,125	n/a
2015	\$197,850	\$1,120,878	\$299,580	\$366,286	\$239,750	n/a
2016	\$205,150	\$1,111,003	\$332,890	\$157,325	n/a	\$2,501,780
2016 General Fund Operating Expenditures	\$12,940,955	\$26,548,210	\$22,439,864	\$14,696,065	* \$8,810,354	\$34,817,631
% of 2016 General Fund Operating Expenditures	1.59%	4.18%	1.48%	1.07%	*2.72%	7.19%
* = 2015 figure						

RECOMMENDED MOTION:

“I move to allocate up to \$205,000 for community funding that the Ad Hoc Review Committee’s funding recommendations shall not exceed.”



TOWN COUNCIL REPORT

To: Honorable Mayor and Town Council
From: Preston Neill, Executive Assistant to the Town Manager
Date: August 9, 2016
Topic: Town Code Requirement for Gift Reporting and Disclosure Report

The Town Code of Ethics requires disclosure of any gifts received which exceed \$50 in value. "Gifts" includes any present, or offer of future, individual gift, favor, loan, service or thing of value in excess of \$50.00 and such gift is offered due to such person's status as a Town Officer then such Officer shall report such gift and the estimated value to the Town Clerk. The Avon Municipal Code requires the Town Clerk to disclose through a report any gifts offered to any Town Officer per Section 2.30.170 of the Town Code of Ethics.

Please find attached the Town Clerk Gift Reporting Disclosure Report for August 2016, which lists fourteen (14) VIP passes to the *Outlaws & Legends Music Festival* on July 29th and 30th.

Town Council is not required to take any action; however, any Town Council member may request Council consideration of a reported gift to determine whether such gift constitutes a conflict of interest.

Town of Avon
Town Clerk Disclosure Report



In accordance with §7, Article XXIX of the Colorado Constitution and Section 2.30.170, Chapter 2.30 Avon Town Code of Ethics of the Avon Municipal Code, and any other applicable Avon Home Rule Charter provision, ordinance or resolution adopted by the Town of Avon, I, Debbie Hoppe, Town Clerk for Town of Avon, submit the following list of such gifts reported to be received by officers of the Town of Avon:

1. 2016 Outlaws & Legends Music Festival VIP Passes – The Town Council received fourteen (14) VIP passes to the *Outlaws & Legends Music Festival* on July 29th and 30th. Each member of the Council received two (2) VIP passes, one provided for the purpose of reviewing the event for production and for any future funding request, and the second provided as a gift for a guest. Each pass is valued at \$400.00.

Submitted to the Avon Town Council on August 9, 2016.

Debbie Hoppe, Town Clerk