



**TOWN OF AVON MEETINGS FOR TUESDAY, OCTOBER 25, 2016**  
**AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM**  
**REGULAR MEETING BEGINS AT 5:05 PM**  
**AVON URBAN RENEWAL AUTHORITY MEETING BEGINS AT 6:05 PM**  
AVON TOWN HALL, ONE LAKE STREET

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**AVON LIQUOR LICENSING AUTHORITY MEETING BEGINS AT 5:00 PM (SEE SEPARATE AGENDA PAGE 3)**  
**REGULAR MEETING BEGINS AT 5:05 PM**  
**AVON URBAN RENEWAL AUTHORITY MEETING BEGINS AT 6:05 PM (SEE SEPARATE AGENDA PAGE 4)**

- 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. PROCLAMATION – EAGLE COUNTY GIVES DAY (MICHELLE MALONEY)**
- 5. ACTION ITEMS**
  - 5.1. MOTION TO CONTINUE THE PUBLIC HEARING** ON SECOND READING OF ORDINANCE 16-20, REPEALING THE 2009 RECREATIONAL TRAILS MASTER PLAN, AND APPROVING THE 2016 RECREATIONAL TRAILS MASTER PLAN TO JANUARY 10, 2017 (PLANNING DIRECTOR MATT PIELSTICKER)
  - 5.2. PUBLIC HEARING** FOR THE ADOPTION OF THE 2016 FINAL REVISED BUDGETS, 2017 OPERATING BUDGET, 2017 CAPITAL PROJECTS FUND BUDGET & LONG-RANGE CAPITAL PROGRAM
    - 5.2.1. RESOLUTION No. 16-27, RESOLUTION TO AMEND THE 2016 TOWN OF AVON OPERATING FUNDS BUDGETS (BUDGET ANALYST KELLY HUITT)
    - 5.2.2. RESOLUTION No. 16-28, RESOLUTION TO AMEND THE 2016 TOWN OF AVON CAPITAL PROJECTS FUND BUDGET (BUDGET ANALYST KELLY HUITT)
    - 5.2.3. RESOLUTION No. 16-29, RESOLUTION TO ADOPT THE 2017 TOWN OF AVON OPERATING FUNDS BUDGETS (BUDGET ANALYST KELLY HUITT)
    - 5.2.4. RESOLUTION NO. 16-30, RESOLUTION TO ADOPT THE TOWN OF AVON LONG-RANGE CAPITAL PROGRAM AND SIMULTANEOUSLY ADOPT THE 2017 CAPITAL PROJECTS FUND BUDGET (BUDGET ANALYST KELLY HUITT)
  - 5.3. MOTION TO CONTINUE THE REGULAR MEETING** FOR THE URBAN RENEWAL AUTHORITY MEETING’S BUDGET ADOPTION (MAYOR JENNIE FANCHER)
  - 5.4. CALL TO ORDER AND ROLL CALL
  - 5.5. RESOLUTION 16-32, APPROVING THE EXECUTION AND DELIVERY BY BUFFALO RIDGE AFFORDABLE HOUSING CORPORATION OF A MORTGAGE LOAN AND AUTHORIZING CERTAIN AMENDMENTS AND INCIDENTAL ACTION THERETO (EXECUTIVE DIRECTOR GERRY FLYNN)
  - 5.6. ACTION ON VOTE TO TERMINATE BENCHMARK PROTECTIVE COVENANT, VOTE FOR FIVE MEMBERS OF THE LAND OWNERS COMMITTEE, AND AUTHORIZATION OF TOWN’S REPRESENTATIVE TO VOTE IN FAVOR OF TERMINATING BENCHMARK PROTECTIVE COVENANTS (TOWN ATTORNEY ERIC HEIL)
  - 5.7. FIRST READING OF ORDINANCE 16-19, TO REZONE LOT 4, MOUNTAIN VISTA RESORT SUBDIVISION FROM PUD TO PUBLIC FACILITIES (PLANNING DIRECTOR MATT PIELSTICKER)

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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](mailto:DHOPPE@AVON.ORG) WITH ANY SPECIAL REQUESTS.



**TOWN OF AVON MEETINGS FOR TUESDAY, OCTOBER 25, 2016**  
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**6. WORK SESSION**

- 6.1. REVIEW OF 2016/17 WINTER PARKING MANAGEMENT PLAN (PLANNING DIRECTOR MATT PIELSTICKER)
- 6.2. REVIEW OF SUMMER 2016 FOOD TRUCK AND VENDOR PROGRAM  
(EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)

**7. CONSENT AGENDA**

- 7.1. APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT WITH THE VALLEY HOME STORE FOR EMPLOYEE HOUSING MANAGEMENT SERVICES (ASSISTANT TOWN MANAGER SCOTT WRIGHT)
- 7.2. APPROVAL OF AUTHORIZATION FOR THE TOWN MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR A FIVE YEAR LEASE TO STORE ONE OR MORE BUSTANG BUSES IN THE AVON REGIONAL TRANSIT FACILITY (TRANSIT DIRECTOR JANE BURDEN)
- 7.3. APPROVAL OF THE OCTOBER 11, 2016 MINUTES (TOWN CLERK DEBBIE HOPPE)

**8. WRITTEN REPORTS**

- 8.1. MONTHLY FINANCIALS REPORT (BUDGET ANALYST KELLY HUITT)

**9. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR**

**10. MAYOR & COUNCIL COMMENTS**

**11. TOWN MANAGER UPDATE**

**12. ADJOURNMENT**

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**TOWN OF AVON MEETINGS FOR TUESDAY, OCTOBER 25, 2016**  
**AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM**  
AVON TOWN HALL, ONE LAKE STREET

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**1. CALL TO ORDER AND ROLL CALL**

**2. APPROVAL OF AGENDA**

**3. PUBLIC COMMENT**

**4. RENEWAL OF LIQUOR LICENSES**

4.1. APPLICANT: BLACKSTAR, LLC D/B/A FOOD! BY MARC

LOCATION: 137 BENCHMARK ROAD 4W

TYPE: HOTEL AND RESTAURANT

MANAGER: MARC ROUSE

4.2. APPLICANT: AVON PROPERTIES LEASING, LLC D/B/A VILLAGE WAREHOUSE WINES

LOCATION: 101 FAWCETT ROAD

TYPE: RETAIL LIQUOR STORE

MANAGER: PETER CUCCIA

**5. MINUTES FROM OCTOBER 11, 2016**

**6. ADJOURNMENT**

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**TOWN OF AVON MEETINGS FOR TUESDAY, OCTOBER 25, 2016**  
**AVON URBAN RENEWAL AUTHORITY MEETING BEGINS AT 6:05 PM**  
AVON TOWN HALL, ONE LAKE STREET

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- 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** RESOLUTION 16-02, AMENDING THE 2016 AVON URBAN RENEWAL AUTHORITY BUDGET (BUDGET ANALYST KELLY HUITT)
  - 4.2. **PUBLIC HEARING** RESOLUTION 16-03, ADOPTING THE 2017 AVON URBAN RENEWAL AUTHORITY BUDGET (BUDGET ANALYST KELLY HUITT)
  - 4.3. APPROVAL OF SEPTEMBER 27, 2016 URA MEETING MINUTES (AUTHORITY CLERK DEBBIE HOPPE)
- 5. ADJOURNMENT**

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## LIQUOR AUTHORITY REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Brenda Torres, Deputy Town Clerk  
Meeting Date: October 25, 2016  
Agenda Topic: Renewal Application–FOOD! by Marc

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### **PROPOSED MOTION**

I move to approve (or deny stating the reasons for denial) the Renewal Application for Blackstar LLC d/b/a FOOD! by Marc.

### **ACTION BEFORE COUNCIL**

The Town Council serving as the Avon Liquor Licensing Authority will consider the following Liquor License Application for renewal at its Board meeting next week:

#### **RENEWAL OF LIQUOR LICENSE**

Applicant: Blackstar, LLC d/b/a FOOD! By Marc  
Location: 137 Benchmark Road 4W  
Type: Hotel and Restaurant  
Manager: Marc Rouse

### **BACKGROUND**

Colorado Liquor Code, 12-47-302, provides for guidelines related to liquor licensing renewals; applications for the renewal of an existing license shall be made to the local licensing authority. The Town Clerk, Town Attorney, and Police Department have reviewed the application submitted and referenced above and the materials are in order. The Police Report results show the following information:

Blackstar LLC d/b/a FOOD! by Marc:

There have been no concerns or violations during the past year.

The owner/manager has been invited to attend the Liquor Board meeting.

During the liquor license renewal process, the Liquor Authority has broad discretion to consider any character issues related to the licensee holder at renewal in the same manner as granting a license. If there have been various types of behavior, such as failure to pay taxes and fraud, the courts have held these behaviors as a valid reason to find the applicant does not possess character. The Colorado Liquor Code §12-47-302 sets forth the local authority's ability to hold a hearing on the application for renewal. It is also noted that a "yes or no action" only is required on renewals; there are no conditions that can be mandated in this process.

### **Attachments:**

- ✓ State of Colorado Renewal Application Form
- ✓ Avon Police Department Summary Reports

**RETAIL LIQUOR OR 3.2 BEER  
 LICENSE RENEWAL APPLICATION**

Fees Due	
Renewal Fee	\$500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
<b>Amount Due/Paid</b>	

FOOD! BY MARC  
 PO BOX 4237  
 AVON CO 81620

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.


**PLEASE VERIFY & UPDATE ALL INFORMATION BELOW**

Licensee Name <b>BLACKSTAR LLC</b>		DBA <b>FOOD! BY MARC</b>	
Liquor License # <b>4700635</b>	License Type <b>Hotel &amp; Restaurant (city)</b>	Sales Tax License # <b>27275056</b>	Expiration Date <b>12/03/2016</b>
Operating Manager <b>MARC ROUSE</b>		Date of Birth <b>[REDACTED]</b>	Home Address <b>0100 EWING ST. EDGE 81631</b>
Manager Phone Number <b>970 376 4435</b>		Email Address <b>MARC@FOODANDWINEBYMARC.COM</b>	
Street Address <b>137 BENCHMARK RD SUITE 4W AVON CO 81620</b>			Phone Number <b>9703764435</b>
Mailing Address <b>PO BOX 4237 AVON CO 81620</b>			

- Do you have legal possession of the premises at the street address above?  YES  NO  
 Is the premises owned or rented?  Owned  Rented\* \*If rented, expiration date of lease 12/31/2017
- Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested.  YES  NO  
**NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:** If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
- Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation.  YES  NO
- Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation.  YES  NO
- Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation.  YES  NO



**AFFIRMATION & CONSENT**

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.

Type or Print Name of Applicant/Authorized Agent of Business <b>MARC E. ROUSE</b>	Title <b>OWNER</b>
Signature 	Date <b>10/10/16</b>

**REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY**

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For	Date
Signature 	Attest 

**Avon Police Department  
Liquor License Application**

**Individual Name(s):** Rouse, Marc

**Name of Business:** Blackstar, LLC  
D/B/A FOOD! By Marc

**Type of License:**  Hotel & Restaurant  
 Special Event Permit

**Event Name:**  
**Date of Event:**

**Location of Business:** 137 Benchmark Rd 4W  
Avon, Colorado 81620

**Date Received:** October 13, 2016

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

**Investigation by:**  
 Detective Sergeant Jonathan Lovins  
 Detective Jeremy Holmstrom

**Date:** October 17, 2016

**CBI Criminal Investigation (attached):** No concern

**Local Criminal Investigation:** No negative contacts in the past 12 months

**Comments:** N/A

**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 AUTHORITY REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Brenda Torres, Deputy Town Clerk  
Meeting Date: October 25, 2016  
Agenda Topic: Renewal Application– Village Warehouse Wines

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### **PROPOSED MOTION**

I move to approve (or deny stating the reasons for denial) the Renewal Application for Avon Properties Leasing, LLC d/b/a Village Warehouse Wines.

### **ACTION BEFORE COUNCIL**

The Town Council serving as the Avon Liquor Licensing Authority will consider the following Liquor License Application for renewal at its Board meeting next week:

#### **RENEWAL OF LIQUOR LICENSE**

Applicant: Avon Properties Leasing, LLC d/b/a Village Warehouse Wines  
Location: 101 Fawcett Road  
Type: Retail Liquor Store  
Manager: Peter Cuccia

### **BACKGROUND**

Colorado Liquor Code, 12-47-302, provides for guidelines related to liquor licensing renewals; applications for the renewal of an existing license shall be made to the local licensing authority. The Town Clerk, Town Attorney, and Police Department have reviewed the application submitted and referenced above and the materials are in order. The Police Report results show the following information:

Avon Properties Leasing, LLC d/b/a Village Warehouse Wines:

There have been no concerns or violations during the past year.

The owner/manager has been invited to attend the Liquor Board meeting.

During the liquor license renewal process, the Liquor Authority has broad discretion to consider any character issues related to the licensee holder at renewal in the same manner as granting a license. If there have been various types of behavior, such as failure to pay taxes and fraud, the courts have held these behaviors as a valid reason to find the applicant does not possess character. The Colorado Liquor Code §12-47-302 sets forth the local authority's ability to hold a hearing on the application for renewal. It is also noted that a "yes or no action" only is required on renewals; there are no conditions that can be mandated in this process.

### **Attachments:**

- ✓ State of Colorado Renewal Application Form
- ✓ Avon Police Department Summary Reports



Submit to Local Licensing Authority

Fees Due	
Renewal Fee	
Storage Permit \$100 X _____	\$
Optional Premise \$100 X _____	\$
<b>Amount Due/Paid</b>	<b>\$</b>

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

## Retail Liquor or 3.2 License Renewal Application

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name <b>Avon Properties Leasing, LLC</b>		DBA <b>Village Warehouse Wines</b>	
Liquor License # <b>41847620000</b>	License Type <b>Liquor Store (City)</b>	Sales Tax License # <b>41847620000</b>	Expiration Date <b>12/14/16</b>
Business Address <b>101 Fawcett Road #130 Avon, CO 81620</b>			Due Date <b>10/30/16</b>
Mailing Address <b>515 Independence Pl. Aspen, CO 81611</b>			Phone Number <b>(970) 949-5999</b>
Operating Manager <b>Peter Cuccia</b>	Date of Birth <b>[REDACTED]</b>	Home Address <b>232 River Ranch Road, Edwards, CO 81632</b>	Email <b>mick@sopris.net</b>
1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Are the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease <b>10/31/21</b>			
2. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
3. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
4. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Affirmation &amp; Consent</b>			
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.			
Type or Print Name of Applicant/Authorized Agent of Business <b>Peter A. Cuccia</b>			Title <b>Managing Member</b>
Signature 			Date <b>10/14/16</b>
<b>Report &amp; Approval of City or County Licensing Authority</b>			
The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S.			
<b>Therefore this application is approved.</b>			
Local Licensing Authority For <b>Town of Avon</b>			Date
Signature		Title	Attest

**Avon Police Department  
Liquor License Application**

**Individual Name(s):** Cuccia, Peter

**Name of Business:** Avon Properties Leasing, LLC  
D/B/A Village Warehouse Wines

**Type of License:**  Hotel & Restaurant  
 Special Event Permit

**Event Name:**  
**Date of Event:**

**Location of Business:** 101 Fawcett Road  
Avon, Colorado 81620

**Date Received:** October 13, 2016

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

**Investigation by:**

Detective Sergeant Jonathan Lovins  
 Detective Jeremy Holmstrom

**Date:** October 17, 2016

**CBI Criminal Investigation (attached):** No concerns

**Local Criminal Investigation:** No negative contacts in the past 12 months

**Comments:** no concerns

**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.





**TOWN OF AVON, COLORADO**

**AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, OCTOBER 11, 2016**

AVON TOWN HALL, ONE LAKE STREET

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**1. CALL TO ORDER AND ROLL CALL**

Chairman Fancher called the meeting to order at 5:00 p.m. A roll call was taken and Board members present were Jake Wolf, Matt Gennett, Buz Reynolds and Megan Burch. Sarah Smith Hymes and Scott Prince were absent. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Assistant Town Manager Scott Wright, Recreation Director John Curuchet, Planning Director Matt Pielsticker, Public Works Director Gary Padilla, Transit Director Jane Burden, Town Engineer Justin Hildreth, Police Chief Greg Daly, 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. RENEWAL OF LIQUOR LICENSES**

Start time: 00:01:29

**4.1. Applicant: Pazzo's West, Inc. d/b/a Pazzo's Pizzeria**

Location: 82 E. Beaver Creek Blvd.

Type: Hotel and Restaurant

Manager: Mark Colwell

Board member Gennett moved to approve the renewal application for Pazzo's West, Inc. d/b/a Pazzo's Pizzeria; Vice Chairman Wolf seconded the motion and it passed unanimously by those present.

Board member Smith Hymes and Board member Prince were absent.

**4.2. Applicant: Fork & Knife, Inc. d/b/a Blue Plate**

Location: 48 E. Beaver Creek Blvd.

Type: Hotel and Restaurant License

Manager: Adam Roustom

Board member Gennett moved to approve the renewal application for Fork & Knife, Inc. d/b/a Blue Plate; Board member Reynolds seconded the motion and it passed unanimously by those present. Board member Smith Hymes and Board member Prince were absent.

**4.3. Applicant: Nova Entertainment, LLC d/b/a Loaded Joe's**

Location: 82 E. Beaver Creek Blvd. #14

Type: Tavern License

Manager: Kent Beidel

Vice Chairman Wolf recused himself due to a conflict.

Board member Reynolds moved to approve the renewal application for Nova Entertainment, LLC d/b/a Loaded Joe's; Board member Gennett seconded the motion and it passed unanimously by those present. Board member Smith Hymes and Board member Prince were absent. Vice Chairman abstained from the vote.



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, OCTOBER 11, 2016
AVON TOWN HALL, ONE LAKE STREET

4.4. Applicant: WVO Licensing, LLC d/b/a Wyndham Beaver Creek Resort
Location: 75 Benchmark Road
Type: Resort Complex
Manager: Patricia Janssens

Board member Gennett moved to approve the renewal application for WVO Licensing, LLC d/b/a Wyndham Resort at Avon; Vice Chairman Wolf seconded the motion and it passed unanimously by those present. Board member Smith Hymes and Board member Prince were absent.

5. REPORT OF CHANGE - TRADE NAME

5.1. Applicant: WVO Licensing, LLC d/b/a Wyndham Beaver Creek Resort
New Trade Name: Wyndham Resort at Avon
Location: 75 Benchmark Road
Type: Resort Complex
Manager: Patricia Janssens

Board member Gennett moved to approve the report of changes - trade name for WVO Licensing, LLC d/b/a Wyndham Beaver Creek Resort to Wyndham Resort at Avon; Board member Reynolds seconded the motion and it passed unanimously by those present. Board member Smith Hymes and Board member Prince were absent.

6. MINUTES FROM SEPTEMBER 27, 2016

Board member Reynolds moved to approve the minutes from September 27,2016 with changes; Board member Gennett seconded the motion and it passed unanimously by those present. Board member Smith Hymes and Board member Prince were absent.

7. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 5:12 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

Signature lines for approval



## TOWN COUNCIL REPORT

To: Honorable Mayor and Town Council  
From: Preston Neill, Executive Assistant to the Town Manager  
Date: October 25, 2016  
Topic: Proclamation Honoring Eagle County Gives

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Michelle Maloney with the Vail Valley Charitable Fund will present to the Town Council information about Eagle County Gives.

The Town Council is asked to consider adopting the attached Proclamation that supports Colorado Gives Day on Tuesday, December 6, 2016. According to its supporters, this is a statewide day of philanthropy where citizens are encouraged to “Give Where You Live” by logging onto [www.coloradogives.org](http://www.coloradogives.org) and investing in local charitable organizations. The seventh annual Colorado Gives Day takes place midnight to midnight on Tuesday, December 6, 2016.

Colorado Gives Day is a project of an online resource created by Community First Foundation that profiles Colorado non-profits and encourages charitable giving within our state. The Colorado Gives website, [www.coloradogives.org](http://www.coloradogives.org), provides comprehensive, objective, and up-to-date information about hundreds of Colorado non-profit organizations, along with an on-line donation system to support those organizations. Last year, Colorado Gives Day raised \$28.5 million for Colorado charities in one 24-hour period, and \$822,580.61 locally.

# **PROCLAMATION**

Town of Avon, Colorado

## **COLORADO GIVES DAY**

WHEREAS, charitable giving in the Town of Avon, Colorado is critical to providing support that local nonprofit organizations need to make our community a desirable place to live; and

WHEREAS, research shows an increase in online giving both locally and nationally, and many believe it is the future of philanthropy; and

WHEREAS, Community First Foundation and FirstBank have partnered in an effort to increase charitable giving in our community through the online giving initiative Colorado Gives Day; and

WHEREAS, Colorado Gives Day in 2015 raised \$28.5 million in a single 24-hour period via online donations, \$822,580.61 to Eagle County nonprofits, at [coloradogives.org](http://coloradogives.org), a website allowing donors to direct their contributions to one or more of the forty-one (41) local, Eagle County, charities featured on the site, making it an ideal resource for facilitating charitable giving to our locally-based nonprofit organizations; and

WHEREAS, Colorado Gives Day is December 6<sup>th</sup> this year, and all citizens are encouraged to participate because all donations, large or small, can make a difference to nonprofits in need.

### **NOW, THEREFORE, LET IT BE KNOWN:**

The Town of Avon, Colorado, hereby proclaims Tuesday, December 6, 2016 as Colorado Gives Day in our community.

Mayor Jennie Fancher  
On behalf of the Town of Avon, Colorado



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Matt Pielsticker, AICP, Planning Director  
Meeting Date: October 25, 2016  
Agenda Topic: **MOTION TO CONTINUE PUBLIC HEARING** and Second Reading of Ordinance 2016-20, An Ordinance Repealing the 2009 Recreational Trails Master Plan, and Approving the 2016 Recreational Trails Master Plan

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### Council Action

Action on Second Reading of Ordinance 2016-20, An Ordinance Repealing the 2009 *Recreational Trails Master Plan*, and Approving the 2016 *Recreational Trails Master Plan*.

### Request for Continuance

Councilor Matt Gennett has requested a continuance of the public hearing to adopt the 2016 *Recreational Trails Master Plan*. The request is being made due to the anticipated absence of Councilor Gennett at next Tuesday's meeting due to a scheduling conflict. Should the request for continuance be approved, the public hearing and Second Reading of the Ordinance will be recommended for notice on the January 10, 2017, agenda.

Should the Council choose to take final action on October 25, 2016, the Ordinance includes from First Reading approval of the "M" trails, Trail P8, with removal of the Pump Track in Harry A. Nottingham Park and all Metcalf Drainage trails. The Ordinance, along with all written public comments can be found at <http://avon.org/Archive.aspx?AMID=35>.

### Recommended Motion

*"I move to Continue the public hearing and second and final reading of Ordinance 16-20, repealing the 2009 Recreational Trails Master Plan, approving the 2016 Recreational Trails Master Plan, with deletions listed in Section 2, to the January 10, 2017 Town Council Meeting."*



## TOWN COUNCIL REPORT

**To:** Honorable Mayor Jennie Fancher and Avon Town Council

**From:** Kelly Huitt, Budget Analyst

**Date:** October 25, 2015

**Re:** Adoption of Proposed 2017 and Final Revised 2016 Operating Budgets

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### **Action Before Council**

Adoption of the Proposed 2017 and Final Revised 2016 Town of Avon operating budgets.

### **Proposed Motion**

“I move to approve Resolution #16-27 and #16-29 to adopt the 2017 and amend the 2016 annual operating budgets.”

### **Summary**

The Town’s final revised operating budgets for 2016 and proposed 2017 are hereby submitted for adoption by the Avon Town Council.

According to State Statute, because the Town levies a property tax, the budget must be adopted by December 15, and filed with the Division of Local Governments no later than January 31. This budget meets this and all other legal requirements for submission.

The Town Manager and staff presented the recommended budget at the Council work session held on September 27<sup>th</sup>. The following changes have been made to the operating budget subsequent to the September work session:

### **2017 Changes**

#### **General Fund - (\$17,762) total changes**

- \$28,137 reduction to anticipated 2017 property tax revenue
- \$8,963 increase to anticipated Highway User Tax Fund revenue
- \$25,000 for community survey moved from 2017 to 2018
- \$2,460 for the addition of smartphones for the Police Department
- \$3,200 for PubWorks annual software maintenance
- \$15,923 for the addition of a Facilities Superintendent and the offsetting removal of one Building Tech II



Water Fund - \$41,200 total changes

- \$41,200 for moving the Public Safety Facility tap fee contribution from 2017 to 2016

**2016 Changes**

General Fund - (\$54,182) total changes

- \$2,700 for Survey Monkey licenses
- \$4,000 for additional HR advertising
- \$8,768 for increased Telephone costs due to an overlap in coverage during changeover
- \$3,200 for PubWorks annual software maintenance
- \$1,894 for the addition of a Facilities Superintendent and the offsetting removal of one Building Tech II for the period of November-December 2016
- \$36,608 for various changes to employee insurance elections and miscellaneous personnel corrections

Water Fund – (\$34,700) total changes

- \$11,500 for a flood inundation study
- \$23,200 for the Water Fund contribution to the Public Safety Facility tap fee

***Public Hearing.*** As required by Town Charter, on October 25, 2016, a public hearing will be held for members of the public to comment on the proposed 2017 budget.

**Recommendation:**

Staff recommends that Council adopt the resolutions discussed above as presented.

**Exhibits and Attachments:**

2017 Financial Overview, Total - All Funds

2017 Financial Overview, Total by Fund

Resolution No. 16-27

Resolution No. 16-29

# TOWN OF AVON Financial Overview

## TOTAL - ALL FUNDS

	Actual 2015	Original or Prev. Amend. Budget 2016	Final Revised Budget 2016	Adopted Budget 2017	Proposed Budget 2018
<b>REVENUES</b>					
Taxes	\$ 15,277,128	\$ 15,718,575	15,990,805	\$ 15,486,653	\$ 16,594,974
Licenses and Permits	335,741	174,000	206,100	206,100	206,100
Intergovernmental	1,061,345	3,472,837	3,581,496	1,728,926	1,050,926
Charges for Services	3,858,292	3,798,675	3,511,875	3,882,138	3,832,546
Fines and Forfeitures	129,356	116,900	92,445	92,445	92,445
Investment Earnings	52,651	45,025	45,176	42,993	52,362
Other Revenue	623,345	603,594	584,850	575,860	575,960
<b>Total Operating Revenues</b>	<b>21,337,858</b>	<b>23,929,606</b>	<b>24,012,747</b>	<b>22,015,115</b>	<b>22,405,313</b>
<b>Other Sources</b>					
Sales of Fixed Assets	31,025	15,000	26,000	15,000	15,000
Capital Lease Proceeds	-	-	-	185,000	-
Bond and Loan Proceeds	3,800,000	9,102,205	6,602,205	3,000,000	-
Transfers-In From Other Funds	5,788,440	3,700,543	4,472,611	6,011,696	3,592,471
<b>Total Other Sources</b>	<b>9,619,465</b>	<b>12,817,748</b>	<b>11,100,816</b>	<b>9,211,696</b>	<b>3,607,471</b>
<b>TOTAL REVENUES</b>	<b>30,957,323</b>	<b>36,747,354</b>	<b>35,113,563</b>	<b>31,226,811</b>	<b>26,012,784</b>
<b>EXPENDITURES</b>					
General Government and Finance	2,916,095	3,205,336	3,187,869	3,359,093	3,590,900
Community Development	1,348,166	1,495,777	1,380,476	935,279	971,096
Public Safety	3,007,164	3,253,667	3,204,355	3,370,680	3,545,647
Public Works, Engineering and Utilities	4,080,272	5,420,784	5,260,944	4,600,883	4,479,034
Transportation and Fleet Maintenance	3,021,627	3,901,690	3,199,745	3,600,905	3,203,670
Recreation	1,147,149	1,288,912	1,294,689	1,434,122	1,475,190
<b>Total Operating Expenditures</b>	<b>15,520,473</b>	<b>18,566,166</b>	<b>17,528,078</b>	<b>17,300,962</b>	<b>17,265,537</b>
Debt Service	1,890,093	2,062,269	2,069,599	2,106,308	2,034,287
Capital Improvements and Equipment Replacement	4,523,849	13,914,592	13,408,039	7,769,191	2,360,523
Contingency	-	99,000	99,000	250,000	250,000
<b>Other Uses</b>					
Loan to ERFPD	-	-	-	-	-
Transfers-Out To Other Funds	5,788,440	3,700,543	4,472,611	6,011,696	3,592,471
<b>TOTAL EXPENDITURES</b>	<b>27,722,855</b>	<b>38,342,570</b>	<b>37,577,327</b>	<b>33,438,157</b>	<b>25,502,818</b>
<b>NET SOURCE (USE) OF FUNDS</b>	<b>3,234,468</b>	<b>(1,595,216)</b>	<b>(2,463,764)</b>	<b>(2,211,346)</b>	<b>509,966</b>
<b>FUND BALANCES, Beginning of Year</b>	<b>14,368,585</b>	<b>17,505,603</b>	<b>17,603,053</b>	<b>15,139,289</b>	<b>12,927,943</b>
<b>FUND BALANCES, End of Year</b>	<b>\$ 17,603,053</b>	<b>\$ 15,910,387</b>	<b>\$ 15,139,289</b>	<b>\$ 12,927,943</b>	<b>\$ 13,437,909</b>

# TOWN OF AVON Financial Overview

## TOTAL - BY FUND

	General Fund	Special Revenue Funds				Affordable Housing Fund
		Town Center West	Urban Renewal Fund	Community Enhancement Fund	Water Fund	
<b>REVENUE</b>						
Taxes	\$ 12,245,424	\$ -	\$ 1,000,832	\$ -	\$ -	\$ -
Licenses and Permits	206,100	-	-	-	-	-
Intergovernmental	1,010,926	-	-	-	-	-
Charges for Services	1,504,782	-	-	-	211,200	-
Fines and Forfeitures	92,445	-	-	-	-	-
Investment Earnings	25,000	-	4,712	-	-	721
Other Revenue	314,900	-	-	84,000	-	3,020
<b>Total Operating Revenues</b>	<b>15,399,577</b>	<b>-</b>	<b>1,005,544</b>	<b>84,000</b>	<b>211,200</b>	<b>3,741</b>
<b>Other Sources</b>						
Sales of Fixed Assets	-	-	-	-	-	-
Capital Lease Proceeds	-	-	-	-	-	-
Bond and Loan Proceeds	-	-	3,000,000	-	-	-
Transfers-In From Other Funds	226,327	-	-	-	-	-
<b>TOTAL REVENUES</b>	<b>15,625,904</b>	<b>-</b>	<b>4,005,544</b>	<b>84,000</b>	<b>211,200</b>	<b>3,741</b>
<b>EXPENDITURES</b>						
General Government, Housing and Finance	\$ 3,330,643	-	3,450	-	-	25,000
Community Development	935,279	-	-	-	-	-
Police	3,370,680	-	-	-	-	-
Public Works, Engineering and Utilities	4,442,906	-	-	-	157,977	-
Transportation and Fleet Maintenance		-	-	-	-	-
Recreation and Culture	1,434,122	-	-	-	-	-
<b>Total Operating Expenditures</b>	<b>13,513,630</b>	<b>-</b>	<b>3,450</b>	<b>-</b>	<b>157,977</b>	<b>25,000</b>
Debt Service	-	-	957,069	-	-	-
Capital Expenditures	-	-	-	-	-	-
Contingency	250,000	-	-	-	-	-
<b>Other Uses</b>						
Transfers-Out To Other Funds	1,702,000	-	2,900,000	158,000	-	-
<b>TOTAL EXPENDITURES</b>	<b>15,465,630</b>	<b>-</b>	<b>3,860,519</b>	<b>158,000</b>	<b>157,977</b>	<b>25,000</b>
<b>NET SOURCE (USE) OF FUNDS</b>	<b>160,274</b>	<b>-</b>	<b>145,025</b>	<b>(74,000)</b>	<b>53,223</b>	<b>(21,259)</b>
<b>FUND BALANCES, Beginning of Year</b>	<b>4,576,694</b>	<b>-</b>	<b>1,162,585</b>	<b>74,469</b>	<b>38,173</b>	<b>506,220</b>
<b>FUND BALANCES, End of Year</b>	<b>\$ 4,736,968</b>	<b>\$ -</b>	<b>\$ 1,307,610</b>	<b>\$ 469</b>	<b>\$ 91,396</b>	<b>\$ 484,961</b>

# TOWN OF AVON Financial Overview

## TOTAL - BY FUND

Facilities Reserve Fund	Debt Service Fund		Enterprise Funds			Internal Service	Total	Percent of Total
	Bond Redemption	Capital Projects Fund	Transit Fund	Fleet Maintenance	Equipment Replacement			
\$ -	\$ -	\$ 2,200,000	\$ 40,397	\$ -	\$ -	\$ -	\$ 15,486,653	70.35%
-	-	-	-	-	-	-	206,100	0.94%
-	-	390,000	328,000	-	-	-	1,728,926	7.85%
-	-	-	239,930	1,279,426	646,800	-	3,882,138	17.63%
-	-	-	-	-	-	-	92,445	0.42%
-	2,100	10,460	-	-	-	-	42,993	0.20%
-	-	80,000	93,940	-	-	-	575,860	2.62%
-	2,100	2,680,460	702,267	1,279,426	646,800	-	22,015,115	100.00%
-	-	-	-	-	-	15,000	15,000	
-	-	-	-	-	-	185,000	185,000	
-	-	-	-	-	-	-	3,000,000	
-	1,025,369	3,178,000	1,182,000	400,000	-	-	6,011,696	
-	1,027,469	5,858,460	1,884,267	1,679,426	846,800	-	31,226,811	
-	-	-	-	-	-	-	3,359,093	19.42%
-	-	-	-	-	-	-	935,279	5.41%
-	-	-	-	-	-	-	3,370,680	19.48%
-	-	-	-	-	-	-	4,600,883	26.59%
-	-	-	1,948,359	1,652,546	-	-	3,600,905	20.81%
-	-	-	-	-	-	-	1,434,122	8.29%
-	-	-	1,948,359	1,652,546	-	-	17,300,962	100.00%
-	1,027,469	121,770	-	-	-	-	2,106,308	
-	-	7,381,991	-	-	387,200	-	7,769,191	
-	-	-	-	-	-	-	250,000	
-	-	1,251,696	-	-	-	-	6,011,696	
-	1,027,469	8,755,457	1,948,359	1,652,546	387,200	-	33,438,157	
-	-	(2,896,997)	(64,092)	26,880	459,600	-	(2,211,346)	
-	530,467	4,840,168	630,441	139,750	2,640,322	-	15,139,289	
\$ -	\$ 530,467	\$ 1,943,171	\$ 566,349	\$ 166,630	\$ 3,099,922	\$ -	\$ 12,927,943	

**TOWN OF AVON, COLORADO  
RESOLUTION NO. 16-27**

**SERIES OF 2016**

**A RESOLUTION TO AMEND THE 2016 TOWN OF AVON BUDGET**

**A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES BY  
FUND AND AMENDING THE 2016 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 budget; and

**WHEREAS**, the Town Council reviewed the revised estimated revenues and expenditures for all operating funds for 2016; and

**WHEREAS**, the Town Council finds it necessary to amend the 2016 budget to more accurately reflect the revenues and expenditures for 2016; 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 following funds are revised as follows for 2016:

	Original or Previously Amended <u>2016 Budget</u>	Current Proposed Amended <u>2016 Budget</u>
<b><u>General Fund</u></b>		
Beginning Fund Balance	\$ 5,659,925	\$ 5,659,925
Revenues and Other Sources	15,191,391	15,399,513
Expenditures and Other Uses	<u>15,563,185</u>	<u>16,482,744</u>
Ending Fund Balance	<u>\$ 5,288,131</u>	<u>\$ 4,576,694</u>
<b><u>Town Center West Fund</u></b>		
Beginning Fund Balance	\$ 88,584	\$ 124,597
Revenues and Other Sources	300,000	145,874
Expenditures and Other Uses	<u>298,281</u>	<u>270,471</u>
Ending Fund Balance	<u>\$ 90,303</u>	<u>\$ 0</u>

	Original or Previously Amended <u>2016 Budget</u>	Current Proposed Amended <u>2016 Budget</u>
<b><u>Community Enhancement Fund</u></b>		
Beginning Fund Balance	\$ 96,996	\$ 90,469
Revenues and Other Sources	84,000	84,000
Expenditures and Other Uses	<u>100,000</u>	<u>100,000</u>
Ending Fund Balance	<u>\$ 80,996</u>	<u>\$ 74,469</u>
<b><u>Water Fund</u></b>		
Beginning Fund Balance	\$ 1,016,159	\$ 1,016,159
Revenues and Other Sources	190,000	190,000
Expenditures and Other Uses	<u>1,128,060</u>	<u>1,167,986</u>
Ending Fund Balance	<u>\$ 78,099</u>	<u>\$ 38,173</u>
<b><u>Affordable Housing Fund</u></b>		
Beginning Fund Balance	\$ 517,335	\$ 517,335
Revenues and Other Sources	3,885	13,885
Expenditures and Other Uses	<u>25,000</u>	<u>25,000</u>
Ending Fund Balance	<u>\$ 496,220</u>	<u>\$ 506,220</u>
<b><u>Debt Service Fund</u></b>		
Beginning Fund Balance	\$ 510,375	\$ 529,117
Revenues and Other Sources	1,126,089	1,127,439
Expenditures and Other Uses	<u>1,126,089</u>	<u>1,126,089</u>
Ending Fund Balance	<u>\$ 510,375</u>	<u>\$ 530,467</u>
<b><u>Transit Fund</u></b>		
Beginning Fund Balance	\$ 690,694	\$ 689,894
Revenues and Other Sources	2,039,014	1,566,513
Expenditures and Other Uses	<u>2,083,745</u>	<u>1,625,966</u>
Ending Fund Balance	<u>\$ 645,963</u>	<u>\$ 630,441</u>
<b><u>Fleet Maintenance Fund</u></b>		
Beginning Fund Balance	\$ 169,474	\$ 169,474
Revenues and Other Sources	1,787,632	1,544,055
Expenditures and Other Uses	<u>1,817,945</u>	<u>1,573,779</u>
Ending Fund Balance	<u>\$ 139,161</u>	<u>\$ 139,750</u>
<b><u>Equipment Replacement Fund</u></b>		
Beginning Fund Balance	\$ 1,699,303	\$ 1,699,303
Revenues and Other Sources	748,565	1,190,358
Expenditures and Other Uses	<u>280,669</u>	<u>249,339</u>
Ending Fund Balance	<u>\$ 2,167,199</u>	<u>\$ 2,640,322</u>

**Section 2.** That the budget, as submitted, amended, and hereinabove summarized by fund, hereby is approved and adopted as the budget of the Town of Avon for the year stated above.

**Section 3.** That the budget hereby approved and adopted shall be signed by the Mayor and made part of the public record of the Town.

**ADOPTED this 25th day of October, 2016.**

**AVON TOWN COUNCIL**

By: \_\_\_\_\_  
Jennie Fancher, Mayor

Attest: \_\_\_\_\_  
Debbie Hoppe, Town Clerk

**TOWN OF AVON  
RESOLUTION NO. 16-29**

**SERIES OF 2016**

**A RESOLUTION TO ADOPT THE 2017 TOWN OF AVON BUDGET**

**A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES FOR EACH FUND AND ADOPTING A BUDGET FOR THE TOWN OF AVON, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY, 2017 AND ENDING ON THE LAST DAY OF DECEMBER, 2017**

**WHEREAS**, the Town Council of the Town of Avon has appointed the Town Manager to prepare and submit a proposed budget to said governing body for its consideration; and

**WHEREAS**, upon due and proper notice, published and posted in accordance with the law, said proposed budget was open for inspection by the public at a designated place. A public hearing was held on October 25, 2016, and interested taxpayers were given the opportunity to file or register any comment to said proposed budget; 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 each fund are as follows for 2017:

	2017 Proposed <u>Budget</u>
<b><u>General Fund</u></b>	
Beginning Fund Balance	\$ 4,576,694
Revenues and Other Sources	15,625,904
Expenditures and Other Uses	<u>15,465,630</u>
Ending Fund Balance	\$ <u>4,736,968</u>
<b><u>Community Enhancement Fund</u></b>	
Beginning Fund Balance	\$ 74,469
Revenues and Other Sources	84,000
Expenditures and Other Uses	<u>158,000</u>
Ending Fund Balance	\$ <u>469</u>



	2017 Proposed <u>Budget</u>
<b><u>Water Fund</u></b>	
Beginning Fund Balance	\$ 38,173
Revenues and Other Sources	211,200
Expenditures and Other Uses	<u>157,977</u>
Ending Fund Balance	<u>\$ 91,396</u>
<b><u>Affordable Housing Fund</u></b>	
Beginning Fund Balance	\$ 506,220
Revenues and Other Sources	3,741
Expenditures and Other Uses	<u>25,000</u>
Ending Fund Balance	<u>\$ 484,961</u>
<b><u>Debt Service Fund</u></b>	
Beginning Fund Balance	\$ 530,467
Revenues and Other Sources	1,027,469
Expenditures and Other Uses	<u>1,027,469</u>
Ending Fund Balance	<u>\$ 530,467</u>
<b><u>Transit Enterprise Fund</u></b>	
Beginning Fund Balance	\$ 630,441
Revenues and Other Sources	1,884,267
Expenditures and Other Uses	<u>1,948,359</u>
Ending Fund Balance	<u>\$ 566,349</u>
<b><u>Fleet Maintenance Enterprise Fund</u></b>	
Beginning Fund Balance	\$ 139,750
Revenues and Other Sources	1,679,426
Expenditures and Other Uses	<u>1,652,546</u>
Ending Fund Balance	<u>\$ 166,630</u>
<b><u>Equipment Replacement Internal Service Fund</u></b>	
Beginning Fund Balance	\$ 2,640,322
Revenues and Other Sources	846,800
Expenditures and Other Uses	<u>387,200</u>
Ending Fund Balance	<u>\$ 3,099,922</u>

**Section 2.** That the budget, as submitted, amended, and hereinabove summarized by fund, hereby is approved and adopted as the budget of the Town of Avon for the year stated above.

**Section 3.** That the budget hereby approved and adopted shall be signed by the Mayor and made part of the public record of the Town.

**ADOPTED this 25<sup>th</sup> day of October, 2016.**

TOWN OF AVON, COLORADO

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Jennie Fancher, Mayor

ATTEST:

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Debbie Hoppe  
Town Clerk



## TOWN COUNCIL REPORT

**To:** Honorable Mayor Jennie Fancher and Avon Town Council

**From:** Kelly Huitt, Budget Analyst

**Date:** October 25, 2016

**Re:** Adoption of Proposed 2017 and Final Revised 2016 Capital Projects Fund

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### **Action Before Council**

Adoption of the Proposed 2017 and Final Revised 2016 Town of Avon Capital Projects Fund budget and long-range plan.

### **Proposed Motion**

“I move to approve Resolution #16-28 and #16-30 to adopt the 2017 and amend the 2016 Capital Projects Fund budget and long-range plan.”

### **Summary**

The Town’s final revised Capital Projects Fund budget for 2016 and the proposed 2017 Capital Projects Fund budget are hereby submitted for adoption by the Avon Town Council. Also submitted for acceptance by the Town Council is the long-range capital program (otherwise referred to as the 5-year plan).

Concurrently with the presentation of the Town’s operating budgets, the Town Manager presented her recommended Capital Projects Fund budget at the Council budget work session held on September 27. A public hearing will be held on October 25<sup>th</sup>, 2016.

The following changes have been made subsequent to the September 27th budget work session:

#### **Revenues**

- Increased RETT revenues by \$200,000 in 2016
- Moved the \$2,900,000 transfer in from the URA for the new town hall tenant finish from 2016 to 2017
- Moved the Water Fund contribution for the public safety facility tap fee from 2017 to 2016

#### **Facilities**

- Increased 2016 budget for the construction of the joint public safety facility by \$23,200 for tap fees paid

- Increased the 2016 budget for Fleet Maintenance building improvements by \$10,000
- Moved \$100,000 of the Nottingham Park Pavilion retractable door project budget from 2016 to 2017
- Reduced the 2017 budget for the New Town Hall Tenant Finish by \$200,500
- Increased the 2017 budget for the fiber connection between ARTF and the new joint public safety facility by \$3,341

**Land and Land Improvements**

- Increased the budget for the Nottingham Park Restroom Remodel by \$54,600 to \$315,000 total project budget. \$28,150 of this budget remains in 2016, and \$286,850 has been moved to 2017.

**Recommendation:**

Staff recommends that Council adopt the resolutions discussed above as presented, and accept the long-range capital program as submitted.

**Exhibits and Attachments:**

Capital Projects Fund Budget

Long-range Capital Program (5-year CIP Plan)

Resolution 16-28

Resolution 16-30

# MUNICIPAL SERVICES

## Capital Projects Fund #41

### Fund Summary

	Actual 2015	Original or Prev. Amend. Budget 2016	Final Revised Budget 2016	Proposed Budget 2017	Proposed Budget 2018
<b>REVENUES</b>					
Taxes	\$ 2,369,314	\$ 2,100,000	\$ 2,300,000	\$ 2,200,000	\$ 2,200,000
Intergovernmental	40,000	1,902,534	1,902,534	390,000	40,000
Investment Earnings	18,167	13,372	13,372	10,460	16,388
Other Revenue	93,246	80,000	80,000	80,000	80,000
<b>Total Operating Revenues</b>	<b>2,520,727</b>	<b>4,095,906</b>	<b>4,295,906</b>	<b>2,680,460</b>	<b>2,336,388</b>
<b>Other Sources:</b>					
Bond Proceeds	3,800,000	9,102,205	6,602,205	-	-
Operating Transfers-In	2,095,000	1,020,000	1,943,200	3,178,000	870,000
<b>Total Other Sources</b>	<b>5,895,000</b>	<b>10,122,205</b>	<b>8,545,405</b>	<b>3,178,000</b>	<b>870,000</b>
<b>TOTAL REVENUES</b>	<b>8,415,727</b>	<b>14,218,111</b>	<b>12,841,311</b>	<b>5,858,460</b>	<b>3,206,388</b>
<b>EXPENDITURES</b>					
<b>Capital Improvements:</b>					
Facilities	1,514,981	8,574,254	8,512,454	2,961,841	80,000
Land and Land Improvements	44,632	369,484	136,200	1,285,150	350,000
Roads and Streets	1,667,152	4,451,984	4,213,574	3,110,000	1,175,326
Water Fund Projects	-	150,000	150,000	25,000	100,000
Communications and Technology	7,037	63,201	33,869	-	-
Strategic Planning	51,050	20,000	75,000	-	-
Other	-	5,000	5,000	-	-
<b>Debt Service:</b>					
Bond Issuance Costs	80,569	153,550	153,550	-	-
Capital Leases	121,769	121,770	121,770	121,770	121,770
<b>Total Capital Improvements</b>	<b>3,487,190</b>	<b>13,909,243</b>	<b>13,401,417</b>	<b>7,503,761</b>	<b>1,827,096</b>
<b>Other Uses</b>					
Operating Transfer-Out - General Fund	1,538,335	219,735	219,735	226,327	233,117
Operating Transfer-Out - Debt Service Fund	578,106	578,808	578,808	1,025,369	1,019,354
<b>Total Other Uses</b>	<b>2,116,441</b>	<b>798,543</b>	<b>798,543</b>	<b>1,251,696</b>	<b>1,252,471</b>
<b>TOTAL EXPENDITURES</b>	<b>5,603,631</b>	<b>14,707,786</b>	<b>14,199,960</b>	<b>8,755,457</b>	<b>3,079,567</b>
<b>NET SOURCE (USE) OF FUNDS</b>	<b>2,812,096</b>	<b>(489,675)</b>	<b>(1,358,649)</b>	<b>(2,896,997)</b>	<b>126,821</b>
<b>FUND BALANCE, Beginning of Year</b>	<b>3,386,721</b>	<b>6,198,817</b>	<b>6,198,817</b>	<b>4,840,168</b>	<b>1,943,171</b>
<b>FUND BALANCE, End of Year</b>	<b>\$ 6,198,817</b>	<b>\$ 5,709,142</b>	<b>\$ 4,840,168</b>	<b>\$ 1,943,171</b>	<b>\$ 2,069,992</b>
<b>Fund Balances</b>					
<b>Restricted For:</b>					
Street Improvements (COPs)	\$ 2,637,739	\$ 1,670,145	\$ 1,369,576	\$ -	\$ -
Asphalt Overlay	240,000	480,000	480,000	720,000	960,000
<b>Assigned For:</b>					
Avon Town Hall Relocation / Renovation	1,425,000	-	-	-	-
Avon Town Hall Tenant Finish	-	2,500,000	2,900,000	-	-
<b>Unassigned:</b>					
Unreserved	1,896,078	1,058,997	90,592	1,223,171	1,109,992
<b>Total Fund Balances</b>	<b>\$ 6,198,817</b>	<b>\$ 5,709,142</b>	<b>\$ 4,840,168</b>	<b>\$ 1,943,171</b>	<b>\$ 2,069,992</b>

## CAPITAL PROJECTS FUND 5-YEAR PLAN SUMMARY

	Actual 2015	Current Budget 2016	Revised Budget 2016	Proposed Budget 2017	Projected			
					2018	2019	2020	2021
<b>REVENUES</b>								
Real Estate Transfer Tax:	\$ 2,369,314	\$ 2,100,000	\$ 2,300,000	\$ 2,200,000	\$ 2,200,000	\$ 2,200,000	\$ 2,200,000	\$ 2,200,000
Interest Earnings	18,167	13,372	13,372	10,460	16,388	19,675	20,000	20,000
Intergovernmental:								
Federal/State:								
MAP-21 Grant (CFDA 20.205)	-	1,355,000	1,355,000	-	-	-	-	-
GOCO Grant - Playground	-	-	-	350,000	-	-	-	-
Local Government:								
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	40,000	40,000	40,000	75,000	75,000
Other Revenues:								
Asphalt Overlay Contributions - Developer	80,000	80,000	80,000	80,000	80,000	80,000	-	-
Donations and Contributions	10,000	-	-	-	-	-	-	-
Project Cost Reimbursements	2,194	-	-	-	-	-	-	-
Nonclassified	1,052	-	-	-	-	-	-	-
<b>Total Operating Revenues</b>	<b>2,520,727</b>	<b>4,095,906</b>	<b>4,295,906</b>	<b>2,680,460</b>	<b>2,336,388</b>	<b>2,339,675</b>	<b>2,295,000</b>	<b>2,295,000</b>
<b>Other Sources:</b>								
Bond Issue Proceeds - Street Improvements	3,800,000	-	-	-	-	-	-	-
Bond Issue Proceeds - Joint Public Safety Facility	-	6,602,205	6,602,205	-	-	-	-	-
Debt Proceeds - URA	-	2,500,000	-	-	-	-	-	-
Transfer in from General Fund								
- Assigned to Capital Improvements	-	150,000	1,550,000	-	750,000	-	-	-
- Short-term Loan	1,425,000	-	-	-	-	-	-	-
- Asphalt Overlay	120,000	120,000	120,000	120,000	120,000	120,000	75,000	75,000
Transfer in from the AURA								
- New Town Hall Tenant Finish	-	-	-	2,900,000	-	-	-	-
- Tract G	-	500,000	-	-	-	-	-	-
Transfer in from Community Enhancement Fund								
- 2016 Power line Undergrounding	-	100,000	100,000	-	-	-	-	-
- 2017 Playground	-	-	-	158,000	-	-	-	-
Transfer in from Water Fund	-	150,000	173,200	-	-	-	-	-
Transfer in from Equipment Replacement Fund	550,000	-	-	-	-	-	-	-
<b>Total Other Sources</b>	<b>5,895,000</b>	<b>10,122,205</b>	<b>8,545,405</b>	<b>3,178,000</b>	<b>870,000</b>	<b>120,000</b>	<b>75,000</b>	<b>75,000</b>
<b>Total Revenues and Sources of Funds</b>	<b>\$ 8,415,727</b>	<b>\$ 14,218,111</b>	<b>\$ 12,841,311</b>	<b>\$ 5,858,460</b>	<b>\$ 3,206,388</b>	<b>\$ 2,459,675</b>	<b>\$ 2,370,000</b>	<b>\$ 2,370,000</b>

## CAPITAL PROJECTS FUND 5-YEAR PLAN SUMMARY

	Actual 2015	Current Budget 2016	Revised Budget 2016	Proposed Budget 2017	Projected			
					2018	2019	2020	2021
<b>EXPENDITURES</b>								
Capital Improvements:								
Facilities	1,514,981	8,574,254	8,512,454	2,961,841	80,000	-	70,000	700,000
Land and Land Improvements	44,632	369,484	136,200	1,285,150	350,000	-	-	-
Roads and Streets	1,667,152	4,451,984	4,213,574	3,110,000	1,175,326	676,770	625,000	365,000
Water Fund Projects	-	150,000	150,000	25,000	100,000	300,000	-	-
Communications and Technology	7,037	63,201	33,869	-	-	-	-	-
Strategic Planning	51,050	20,000	75,000	-	-	-	-	-
Other	-	5,000	5,000	-	-	-	-	-
Debt Service:								
Debt Issuance Costs	80,569	153,550	153,550	-	-	-	-	-
Capital Leases	121,769	121,770	121,770	121,770	121,770	43,082	26,279	26,279
<b>Total Expenditures</b>	<b>3,487,190</b>	<b>13,909,243</b>	<b>13,401,417</b>	<b>7,503,761</b>	<b>1,827,096</b>	<b>1,019,852</b>	<b>721,279</b>	<b>1,091,279</b>
<b>Other Uses:</b>								
Operating Transfers Out - General Fund:								
- Engineering Department Salary and Operations	213,335	219,735	219,735	226,327	233,117	240,110	247,314	254,733
- Repayment of Short-term Loan	1,325,000	-	-	-	-	-	-	-
Operating Transfers Out - Debt Service Fund:								
- 2010 COPs (ARTF)	255,775	255,557	255,557	254,481	254,831	250,300	255,225	254,800
- 2015B COPS (Street Improvements)	322,331	323,251	323,251	319,863	318,248	321,582	319,613	322,493
- 2016 COPS (Public Safety Bldg.)	-	-	-	451,025	446,275	448,325	450,075	449,375
<b>Total Other Uses</b>	<b>2,116,441</b>	<b>798,543</b>	<b>798,543</b>	<b>1,251,696</b>	<b>1,252,471</b>	<b>1,260,317</b>	<b>1,272,227</b>	<b>1,281,401</b>
<b>Total Expenditures and Uses of Funds</b>	<b>5,603,631</b>	<b>14,707,786</b>	<b>14,199,960</b>	<b>8,755,457</b>	<b>3,079,567</b>	<b>2,280,169</b>	<b>1,993,506</b>	<b>2,372,680</b>
<b>Net Source (Use) of Funds</b>	<b>2,812,096</b>	<b>(489,675)</b>	<b>(1,358,649)</b>	<b>(2,896,997)</b>	<b>126,821</b>	<b>179,506</b>	<b>376,494</b>	<b>(2,680)</b>
<b>Fund Balance, Beginning of Year</b>	<b>3,386,721</b>	<b>6,198,817</b>	<b>6,198,817</b>	<b>4,840,168</b>	<b>1,943,171</b>	<b>2,069,992</b>	<b>2,249,498</b>	<b>2,625,992</b>
<b>Fund Balance, End of Year</b>	<b>\$ 6,198,817</b>	<b>\$ 5,709,142</b>	<b>\$ 4,840,168</b>	<b>\$ 1,943,171</b>	<b>\$ 2,069,992</b>	<b>\$ 2,249,498</b>	<b>\$ 2,625,992</b>	<b>\$ 2,623,312</b>
<b>Fund Balances</b>								
Restricted For:								
Street Improvements COPs	\$ 2,637,739	\$ 1,670,145	1,369,576	-	\$ -	\$ -	\$ -	-
Asphalt Overlay	240,000	480,000	480,000	720,000	960,000	1,200,000	1,350,000	1,500,000
Assigned For:								
Avon Town Hall Relocation / Renovation	1,425,000	-	-	-	-	-	-	-
Avon Town Hall Tenant Finish	-	2,500,000	-	-	-	-	-	-
Unassigned:								
Unreserved	1,896,078	1,058,997	2,990,592	1,223,171	1,109,992	1,049,498	1,275,992	1,123,312
<b>Total Fund Balances</b>	<b>\$ 6,198,817</b>	<b>\$ 5,709,142</b>	<b>\$ 4,840,168</b>	<b>\$ 1,943,171</b>	<b>\$ 2,069,992</b>	<b>\$ 2,249,498</b>	<b>\$ 2,625,992</b>	<b>\$ 2,623,312</b>

## CAPITAL PROJECTS FUND 5-YEAR PLAN INVENTORY DETAIL

	Total Project Budget	2014 and Prior Yr. Actuals	Actual 2015	Current Budget 2016	Proposed Revised Budget 2016	Estimated Project Cost To-Date 2016	Proposed Budget 2017	Projected			
								2018	2019	2020	2021
<b>CAPITAL IMPROVEMENT PROJECTS</b>											
<b>Facilities:</b>											
<i>General Government Facilities:</i>											
11011	New Town Hall Acquisition - 2014	\$ 33,617	\$ 5,822	\$ 27,795	\$ -	\$ -	\$ 33,617	\$ -	\$ -	\$ -	\$ -
11013	Mountain Vista Office Building Purchase	1,500,925	-	-	1,500,925	1,500,925	1,500,925	-	-	-	-
11012	New Town Hall Tenant Finish Design	190,000	-	-	190,000	190,000	190,000	-	-	-	-
	New Town Hall Floor Expansion Feasibility Study	10,500	-	-	10,500	10,500	10,500	-	-	-	-
	New Town Hall Tenant Finish	2,699,500	-	-	-	-	2,699,500	-	-	-	-
<i>Joint Public Safety Facility Project:</i>											
12003	Design	450,000	-	69,606	381,394	381,394	451,000	-	-	-	-
12004	Construction	6,020,855	-	-	5,997,655	6,020,855	6,020,855	-	-	-	-
	Fiber - ATF to PSF	87,341	-	-	-	-	87,341	-	-	-	-
<i>Transit / PW Facilities Improvement Project:</i>											
13005	Public Works Improvements, (On-site and Lot 5)	719,474	662,985	41,046	-	-	704,031	-	-	-	-
<i>Public Works Facilities</i>											
	Cinder De-icer Storage	165,000	-	-	-	-	-	-	-	15,000	150,000
	Large Vehicle Storage	605,000	-	-	-	-	-	-	-	55,000	550,000
<i>Transportation Facilities</i>											
14010	Fleet Maintenance EPDM Roof Replacement	80,000	-	-	80,000	-	-	-	80,000	-	-
14014	Fleet Maintenance Building Improvements	90,000	-	-	80,000	90,000	90,000	-	-	-	-
14011	Transit Bus Shelters	264,382	-	19,382	155,000	155,000	174,382	-	-	-	-
14012	Transit Bus Stop - Traer Creek Plaza	60,000	4,490	-	55,510	55,510	60,000	-	-	-	-
	Transit Bus Stop - Eaglebend / US Hyw 6	48,000	-	-	48,000	48,000	48,000	-	-	-	-
<i>Cultural and Recreational Facilities:</i>											
15012	Nottingham Park Pavilion	3,870,000	2,724,284	1,135,344	-	-	3,859,628	-	-	-	-
15013	Recreation Center Exterior Renovation	52,750	-	52,902	-	-	52,902	-	-	-	-
15014	Recreation Center - Remodel - Phase 2	98,530	-	96,530	-	-	96,530	-	-	-	-
15015	Recreation Center - Boulderling Wall	50,000	-	48,646	-	-	48,646	-	-	-	-
15016	Recreation Center - Slide Flume Refurbishment and S	59,000	-	23,730	35,270	35,270	59,000	-	-	-	-
	Nottingham Park Pavilion - Retractable Door	125,000	-	-	40,000	25,000	25,000	100,000	-	-	-
	Recreation Center - Fitness Floor	75,000	-	-	-	-	75,000	-	-	-	-
<b>Land and Land Improvements:</b>											
<i>H.A. Nottingham Park Improvements</i>											
21016	Nottingham Park Zone C Improvements - Playground	868,300	3,966	-	71,034	70,000	73,966	798,300	-	-	-
21017	Nottingham Park - Remodel Restrooms	315,000	-	-	260,400	28,150	28,150	286,850	-	-	-
21019	Upper Athletic Field Replacement	335,000	-	-	-	-	-	-	350,000	-	-
21021	Fishing Pier Repairs	75,000	-	44,632	-	-	44,632	-	-	-	-
21022	Eagle River Whitewater Park Repair	10,000	-	-	10,000	10,000	10,000	-	-	-	-
21023	Eaglebend Affordable Housing Landscaping	28,050	-	-	28,050	28,050	28,050	-	-	-	-
	Nottingham Park Light Upgrade	125,000	-	-	-	-	-	125,000	-	-	-
	Nottingham Park Northside Port-a-Potty Sheds	75,000	-	-	-	-	75,000	-	-	-	-



## CAPITAL PROJECTS FUND 5-YEAR PLAN INVENTORY DETAIL

	Total Project Budget	2014 and Prior Yr. Actuals	Actual 2015	Current Budget 2016	Proposed Revised Budget 2016	Estimated Project Cost To-Date 2016	Proposed Budget 2017	Projected				
								2018	2019	2020	2021	
<b>CAPITAL IMPROVEMENT PROJECTS</b>												
<b>Roads and Streets:</b>												
<i>Streetscape Improvements</i>												
31014	Avon Rd. Streetscape Update	252,052	242,052	27,683	-	-	269,735	-	-	-	-	
31015	2014 Mall Improvements	1,992,703	1,789,645	54,820	-	-	1,844,465	-	-	-	-	
31026	Mall Improvements - Phase 2	240,000	-	-	15,000	-	-	-	-	-	-	
31018	Post Blvd. Landscaping Improvements	368,000	308,986	2,320	25,000	25,000	336,306	-	-	-	-	
31019	Post Blvd. Electrical Assessment and Street Lights	78,000	44,401	28,541	-	-	72,942	-	-	-	-	
	Post Blvd. Light Pole Replacement	100,000	-	-	-	-	-	100,000	-	-	-	
31022	Avon Rd./170 Overpass Pedestrian Safety Improve	88,000	-	-	88,000	88,000	88,000	-	-	-	-	
	Avon Rd./170 Overpass Aesthetics Improvements	270,000	-	-	-	-	-	270,000	-	-	-	
31024	Roundabout #4 TCW Art Element	260,000	-	10,000	-	-	10,000	-	-	20,000	230,000	
	Metcalf Road - Retaining Wall Stabilization	100,000	-	-	-	-	-	100,000	-	-	-	
31025	2015 Avon Rd. Landscaping Project	485,000	-	438,130	-	-	438,130	-	-	-	-	
35003	Roundabout #4 TCW Feature	60,000	75,343	1,718	-	-	77,061	-	-	-	-	
	Wayfinding Signage	45,000	-	-	45,000	45,000	45,000	-	-	-	-	
	Mall Activation Elements	20,000	-	-	-	-	-	20,000	-	-	-	
<i>Annual Street Maintenance and Repair</i>												
	Annual Paving/Road Improvements	NA	-	717,372	-	-	NA	-	300,000	200,000	125,000	125,000
32016	Buck Creek Bridge Repair	280,865	-	280,865	-	-	280,865	-	-	-	-	
34025	West B/C Blvd. Pedestrian Crossing	64,318	-	49,318	15,000	15,000	64,318	-	-	-	-	
34032	Annual Slurry Seals	NA	-	-	150,000	-	-	-	435,326	191,770	230,000	200,000
32018	Post Blvd. Settlement Repair	75,000	-	-	75,000	75,000	75,000	-	-	-	-	
32019	Wildwood Road Repair	75,000	-	-	75,000	75,000	75,000	-	-	-	-	
	Eaglebend Dr. & Nottingham Rd. Repaving	250,000	-	-	-	-	-	250,000	-	-	-	
	Annual Guard Rail Repair	NA	-	-	-	-	-	-	40,000	40,000	40,000	40,000
<i>Street Improvements:</i>												
34014	Metcalf Bike Lane Phases 1 & 2	1,082,300	-	32,883	1,049,417	1,049,417	1,082,300	-	-	-	-	
34033	Walkability - East and West B/C Blvd.	2,705,000	-	1,254	203,746	203,746	205,000	2,500,000	-	-	-	
	2016 Safety Improvements - West B/C Blvd	50,000	-	-	50,000	50,000	50,000	-	-	-	-	
	West B/C Blvd. RR Crossing Improvements	10,000	-	-	10,000	10,000	10,000	100,000	-	-	-	
	Nottingham Rd. Pedestrian Crossings (3)	60,000	-	-	-	-	-	60,000	-	-	-	
<i>Multi-Modal/Alternative Mobility:</i>												
34015	Eagle Valley Trails Phase 3 (CDOT Funded)	2,460,000	10,341	22,248	2,427,411	2,427,411	2,460,000	-	-	-	-	
34016	Eagle Valley Trails Undergrounding Project (CEF)	109,000	-	-	100,000	100,000	109,000	-	-	-	-	
<i>Recreational Trails Program:</i>												
34026	Trails Master Plan	-	-	-	23,410	-	-	-	-	-	-	
34027	Soft and Hard Surface Trail Improvements	150,000	-	-	100,000	50,000	50,000	100,000	-	-	-	
	Metcalf Rd. FS 7-779 Trailhead Design and Improv.	245,000	-	-	-	-	-	-	10,000	225,000	-	
<b>Water Fund Projects</b>												
21020	Pump House Pump Replacement	150,000	-	-	150,000	150,000	150,000	-	-	-	-	
	Nottingham Rd. Debris Flow Study and Imp. / Sidewalk	25,000	-	-	-	-	-	25,000	100,000	300,000	-	

## CAPITAL PROJECTS FUND 5-YEAR PLAN INVENTORY DETAIL

	Total Project Budget	2014 and Prior Yr. Actuals	Actual 2015	Current Budget 2016	Proposed Revised Budget 2016	Estimated Project Cost To-Date 2016	Proposed Budget 2017	Projected				
								2018	2019	2020	2021	
<b>CAPITAL IMPROVEMENT PROJECTS</b>												
<b>Communications and Technology</b>												
<i>e-Gov.:</i>												
81008	Fullcourt	60,000	-	-	60,000	30,668	30,668	-	-	-	-	-
81010	Timekeeping Software and Peripheral Devices	35,000	24,762	7,037	3,201	3,201	35,000	-	-	-	-	-
<b>Strategic Planning</b>												
<i>Planning and Consulting:</i>												
79111	Space Needs Analysis	30,000	-	26,249	-	-	26,249	-	-	-	-	-
79112	Tract G Feasibility Study	25,740	-	24,801	-	-	24,801	-	-	-	-	-
	Tract G Core / Parking Plan	75,000	-	-	20,000	75,000	75,000	-	-	-	-	-
<b>Other</b>												
93012	Historical Preservation	5,000	-	-	5,000	5,000	5,000	-	-	-	-	-
<b>Total Capital Improvement Projects</b>		<b>\$ 31,567,202</b>	<b>\$ 5,897,077</b>	<b>\$ 3,284,852</b>	<b>\$ 13,633,923</b>	<b>\$ 13,126,097</b>	<b>\$ 21,599,654</b>	<b>\$ 7,381,991</b>	<b>\$ 1,705,326</b>	<b>\$ 976,770</b>	<b>\$ 695,000</b>	<b>\$ 1,065,000</b>

**TOWN OF AVON  
RESOLUTION NO. 16-28**

**SERIES OF 2016**

**A RESOLUTION TO AMEND THE 2016 TOWN OF AVON CAPITAL  
PROJECTS FUND BUDGET**

**A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES  
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 adopted the 2016 Capital Projects Fund budget; and

**WHEREAS**, the Town Council has 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**, upon due and proper notice, published or posted in accordance with the law, the proposed budget amendment to the 2016 budget was open for inspection by the public at a designated place, a public hearing was held on October 25, 2016 and interested taxpayers were given the opportunity to file or register any objections to 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 is revised as follows for 2016:

	Original or Previously Amended <u>2016 Budget</u>	Current Proposed Amended <u>2016 Budget</u>
<b><u>Capital Projects Fund</u></b>		
Beginning Fund Balance	\$ 6,198,817	\$ 6,198,817
Revenues and Other Sources	14,218,111	12,841,311
Expenditures and Other Uses	<u>14,707,786</u>	<u>14,199,960</u>
Ending Fund Balance	<u>\$ 5,709,142</u>	<u>\$ 4,840,168</u>

**Section 2.** That the Capital Projects Fund budget, as submitted, amended, and hereinabove summarized, 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 hereby approved, amended, and adopted shall be signed by the Town Manager and made part of the public record of the Town.

**ADOPTED this 25<sup>th</sup> day of October, 2016.**

TOWN OF AVON, COLORADO

\_\_\_\_\_  
Jennie Fancher, Mayor

ATTEST:

\_\_\_\_\_  
Debbie Hoppe  
Town Clerk

**TOWN OF AVON  
RESOLUTION NO. 16-30**

**SERIES OF 2016**

**A RESOLUTION TO ACCEPT THE PROPOSED TOWN OF AVON LONG  
RANGE CAPITAL PROGRAM AND SIMULTANEOUSLY ADOPT THE YEAR 2017  
CAPITAL PROJECTS FUND BUDGET**

**A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES FOR THE  
CAPITAL PROJECTS FUND AND ADOPTING A BUDGET FOR THE CALENDAR  
YEAR BEGINNING ON THE FIRST DAY OF JANUARY, 2017 AND ENDING ON THE  
LAST DAY OF DECEMBER, 2017**

**WHEREAS**, the Town Council of the Town of Avon has appointed the Town Manager to prepare and submit a long-range capital program to said governing body for its consideration; and

**WHEREAS**, the Town Council of the Town of Avon has also appointed the Town Manager to prepare and submit a proposed Capital Projects Fund budget to said governing body for its consideration; and

**WHEREAS**, upon due and proper notice, published and posted in accordance with the law, said proposed budget was open for inspection by the public at a designated place. A public hearing was held on October 25, 2016, and interested taxpayers were given the opportunity to file or register any comment to said proposed budget; and

**WHEREAS**, whatever increases may have been made in the expenditures, like increases were added to the revenues so that the Capital Projects Fund 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 the long-range capital program as submitted to the Town Council is hereby accepted as an official Town document and planning tool, and that the information contained therein may be revised or extended each year with regard to capital improvements.

**Section 2.** That estimated revenues and expenditures for the Capital Projects Fund are as follows for 2017:

	2017 Proposed <u>Budget</u>
<b><u>Capital Projects Fund</u></b>	
Beginning Fund Balance	\$ 4,840,168
Revenues and Other Sources	5,858,460
Expenditures and Other Uses	<u>8,755,457</u>
Ending Fund Balance	<u>\$ 1,943,171</u>

**Section 3.** That the budget, as submitted, and hereinabove summarized, hereby is approved and adopted as the Capital Projects Fund budget of the Town of Avon for the year stated above.

**Section 4.** That the Capital Projects Fund budget hereby approved and adopted shall be signed by the Mayor and made part of the public record of the Town.

**ADOPTED this 25<sup>th</sup> day of October, 2016.**

TOWN OF AVON, COLORADO

\_\_\_\_\_  
Jennie Fancher, Mayor

ATTEST:

\_\_\_\_\_  
Debbie Hoppe, Town Clerk



**AVON URBAN RENEWAL AUTHORITY  
COMMISSIONERS REPORT**

**To:** Chairperson Jennie Fancher and URA Commissioners

**From:** Kelly Huitt, Budget Analyst

**Date:** October 25, 2016

**Re:** 2017 Proposed and 2016 Revised Budgets

---

**Action Before the Board**

Adoption of the 2017 Proposed and 2016 Final Revised Avon Urban Renewal Authority annual budgets.

**Proposed Motion**

“I move to approve Resolution #16-02 and #16-03 to adopt the 2017 annual budget and amend the 2016 annual budget for the Avon Urban Renewal Authority.”

**Summary**

Attached are the final proposed and revised budget resolutions for the Avon Urban Renewal Authority. The Authority is considered a separate legal entity from the Town authorized by the Colorado Urban Renewal Act.

The Authority’s budget summary is attached as an exhibit to this memorandum and is also included for informational purposes in the Town’s budget summary as a component unit of the Town.

***Public Hearing.*** At the Avon URA meeting on October 25, 2016 a public hearing will be held for members of the public to comment on the proposed 2017 budget.

**Recommendation**

Staff recommends that the Board adopt the resolutions as presented.

**Exhibits and Attachments:**

Avon Urban Renewal Authority budget

Resolution No. 16-02

Resolution No. 16-03



# AVON URBAN RENEWAL AUTHORITY #22

## Summary

### Fund Summary

	Actual 2015	Original or Prev. Amend. Budget 2016	Final Revised Budget 2016	Proposed Budget 2017	Proposed Budget 2018
<b>REVENUES</b>					
Taxes	\$ 756,471	\$ 1,053,955	\$ 1,006,846	\$ 1,000,832	\$ 1,197,576
Investment Earnings	3,617	4,712	3,769	4,712	7,853
<b>Total Operating Revenues</b>	<b>760,088</b>	<b>1,058,667</b>	<b>1,010,615</b>	<b>1,005,544</b>	<b>1,205,429</b>
<b>Other Sources</b>					
Debt Issuance Proceeds	-	-	-	3,000,000	-
<b>TOTAL REVENUES</b>	<b>760,088</b>	<b>1,058,667</b>	<b>1,010,615</b>	<b>4,005,544</b>	<b>1,205,429</b>
<b>EXPENDITURES</b>					
Current:					
General Government	-	950	5,450	3,450	3,450
Capital Improvements	-	-	32,603	-	-
Debt Service:					
Principal	320,000	410,000	410,000	545,000	575,000
Interest	229,504	218,240	218,240	282,569	272,083
Bond Issuance Costs	-	-	-	90,000	-
Treasurer Fees	28,499	31,620	39,200	39,000	43,080
Fiscal Charges	300	1,000	500	500	500
<b>Total Operating Expenditures</b>	<b>578,303</b>	<b>661,810</b>	<b>705,993</b>	<b>960,519</b>	<b>894,113</b>
<b>Other Uses</b>					
Transfers Out - Capital Projects Fund	-	500,000	-	2,900,000	-
Transfers Out - Town Center West Mtc. Fund	100,000	50,000	50,000	-	-
<b>Total Other Uses</b>	<b>100,000</b>	<b>550,000</b>	<b>50,000</b>	<b>2,900,000</b>	<b>-</b>
<b>TOTAL EXPENDITURES</b>	<b>678,303</b>	<b>1,211,810</b>	<b>755,993</b>	<b>3,860,519</b>	<b>894,113</b>
<b>NET SOURCE (USE) OF FUNDS</b>	<b>81,785</b>	<b>(153,143)</b>	<b>254,622</b>	<b>145,025</b>	<b>311,316</b>
<b>FUND BALANCES, Beginning of Year</b>	<b>826,178</b>	<b>857,941</b>	<b>907,963</b>	<b>1,162,585</b>	<b>1,307,610</b>
<b>FUND BALANCES, End of Year</b>	<b>\$ 907,963</b>	<b>\$ 704,798</b>	<b>\$ 1,162,585</b>	<b>\$ 1,307,610</b>	<b>\$ 1,618,926</b>
<b>FUND BALANCES:</b>					
<b>Restricted For:</b>					
Debt Service	\$ 628,240	\$ 628,240	\$ 628,240	\$ 628,240	\$ 628,240
Urban Renewal	279,723	76,558	534,345	679,370	990,686
<b>TOTAL FUND BALANCES</b>	<b>\$ 907,963</b>	<b>\$ 704,798</b>	<b>\$ 1,162,585</b>	<b>\$ 1,307,610</b>	<b>\$ 1,618,926</b>

**AVON URBAN RENEWAL AUTHORITY  
TOWN OF AVON, COLORADO  
RESOLUTION NO. 16-02**

**SERIES OF 2016**

**A RESOLUTION AMENDING THE  
2016 AVON URBAN RENEWAL AUTHORITY BUDGET**

**WHEREAS**, the Board of Commissioners of the Avon Urban Renewal Authority has previously adopted the 2016 budget;

**WHEREAS**, the Board of Commissioners of the Avon Urban Renewal Authority reviewed the revised estimated revenues and expenditures for all funds for 2016;

**WHEREAS**, the Board of Commissioners of the Avon Urban Renewal Authority finds it necessary to amend the 2016 budget to more accurately reflect the revenues and expenditures for 2016;

**WHEREAS**, upon due and proper notice, published or posted in accordance with the law, the proposed budget amendment to the 2016 budget was open for inspection by the public at a designated place, a public hearing was held on October 25, 2016 and interested taxpayers were given the opportunity to file or register any objections to 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 BOARD OF COMMISSIONERS OF THE AVON URBAN RENEWAL AUTHORITY:**

**Section 1.** That estimated revenues and expenditures for the Avon Urban Renewal Authority are revised as follows for 2016:

	Original or Previously Amended <u>2016 Budget</u>	Current Proposed Amended <u>2016 Budget</u>
<b><u>Avon Urban Renewal Authority</u></b>		
Beginning Fund Balance	\$ 857,941	\$ 907,963
Revenues and Other Sources	1,058,667	1,010,615
Expenditures and Other Uses	<u>1,211,810</u>	<u>755,993</u>
Ending Fund Balance	<u>\$ 704,798</u>	<u>\$ 1,162,585</u>

**Section 2.** That the budget, as submitted and amended hereby is approved and adopted as the budget of the Avon Urban Renewal Authority for the year stated above.

**Section 3.** That the budget hereby approved and adopted shall be signed by the Chairman and made part of the public record of the Authority.

**ADOPTED this 25th day of October, 2016.**

AVON URBAN RENEWAL AUTHORITY

---

Jennie Fancher, Chairman

ATTEST:

---

Scott Wright, Treasurer

CERTIFIED:

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Debbie Hoppe  
Authority Clerk

**AVON URBAN RENEWAL AUTHORITY  
TOWN OF AVON, COLORADO  
RESOLUTION NO. 16-03**

**SERIES OF 2016**

**A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES AND ADOPTING A BUDGET FOR THE AVON URBAN RENEWAL AUTHORITY FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY, 2017, AND ENDING ON THE LAST DAY OF DECEMBER, 2017.**

**WHEREAS**, the Board of Commissioners of the Avon Urban Renewal Authority has directed the Authority's Executive Director/Secretary to prepare and submit a proposed budget for its consideration;

**WHEREAS**, Virginia Egger, Town Manager, has submitted a proposed budget to said governing body on September 27, 2016;

**WHEREAS**, upon due and proper notice, published or posted in accordance with the law, said proposed budget was open for inspection by the public at a designated place, a public hearing was held on October 25, 2016 and interested taxpayers were given the opportunity to file or register any objections to said proposed budget; 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 BOARD OF COMMISSIONERS OF THE AVON URBAN RENEWAL AUTHORITY:**

**Section 1.** That estimated revenues and expenditures for the Avon Urban Renewal Authority are as follows for 2017:

	2017 Proposed <u>Budget</u>
<b><u>Avon Urban Renewal Authority</u></b>	
Beginning Fund Balance	\$ 1,162,585
Revenues and Other Sources	4,005,544
Expenditures and Other Uses	<u>3,860,519</u>
Ending Fund Balance	\$ <u>1,307,610</u>

**Section 2.** That the budget, as submitted, hereby is approved and adopted as the budget of the Avon Urban Renewal Authority for the year stated above.

**Section 3.** That the budget hereby approved and adopted shall be signed by the Chairman and made part of the public record of the Authority.

**ADOPTED this 25<sup>th</sup> day of October, 2016.**

AVON URBAN RENEWAL AUTHORITY

---

Jennie Fancher, Chairman

ATTEST:

---

Scott Wright, Treasurer

CERTIFIED:

---

Debbie Hoppe, Authority Clerk



TOWN OF AVON, COLORADO

MINUTES FOR THE URBAN RENEWAL AUTHORITY MEETING FOR SEPTEMBER 27, 2016

AVON TOWN HALL, ONE LAKE STREET

**1. CALL TO ORDER & ROLL CALL**

Chairman Fancher called the meeting to order at 6:54 p.m. A roll call was taken and Authority members present were Buz Reynolds, Matt Gennett, Jake Wolf, Scott Prince, Sarah Smith Hymes and Megan Burch. Also present were Executive Director/Secretary Virginia Egger, Town Attorney Eric Heil, Treasurer Scott Wright, Police Chief Greg Daly, Town Engineer Justin Hildreth, Fleet Director Rego Omerigic, Public Works Director Gary Padilla, Executive Assistant to the Town Manager Preston Neill and Authority Clerk Debbie Hoppe.

**2. APPROVAL OF AGENDA**

There were no changes to the agenda.

**3. PUBLIC COMMENT – COMMENTS ARE WELCOME ON ITEMS NOT LISTED ON THE FOLLOWING AGENDA**

No comments were made.

**4. WORK SESSION**

START TIME: 01:55:30

4.1. 2017 & 2018 URA BUDGET PRESENTATION (ASSISTANT TOWN MANAGER SCOTT WRIGHT)

**5. ACTION ITEM**

START TIME: 02:04:23

5.1. APPROVAL OF MINUTES FROM JANUARY 26, 2016 (AUTHORITY CLERK DEBBIE HOPPE)

Authority member Reynolds moved to approve the minutes for January 26, 2016; Authority member Burch seconded the motion and it passed unanimously by those present.

**6. ADJOURNMENT**

There being no further business to come before the Authority, the meeting adjourned at 7:04 p.m.

**RESPECTFULLY SUBMITTED:**

\_\_\_\_\_  
Debbie Hoppe, Authority Clerk

**APPROVED:**

Jennie Fancher	_____
Jake Wolf	_____
Matt Gennett	_____
Megan Burch	_____
Albert "Buz" Reynolds	_____
Scott Prince	_____
Sarah Smith Hymes	_____

---

# Buffalo Ridge

AFFORDABLE HOUSING

---

MEMORANDUM

TO: Town Manager  
Town Council  
Town of Avon, CO

FROM: Gerry Flynn  
President

DATE: October 20, 2016

RE: Buffalo Ridge Revised HUD Loan Terms

Buffalo Ridge Affordable Housing Corporation previously refinanced Its HUD mortgage in 2013, with the formal approval of Avon Town Council by Resolution No 13-16 dated May 28, 2013. At that time the following HUD insured mortgage loan and Surplus Cash Notes were approved to refinance the previously existing debt:

- HUD Insured Mortgage Loan originated by CBRE in the amount of \$10,036,200, at an effective interest rate of 4.55%
- Subordinate Surplus Cash Note to Corum Real Estate Group in the amount of \$605,018 in satisfaction of prior obligations for deferred development fees. The Surplus Cash Note bears interest at 7.5%
- Subordinate Surplus Cash Note to Eaglebend Affordable Housing Corporation in the amount of \$221,500 for cash advanced to Buffalo Ridge to fund a partial settlement with Corum Real Estate Group. The Surplus Cash Note bears interest at 10%.

Because of delays in closing this financing in 2013 (from initial approval in May until closing on August 28, 2016) Buffalo Ridge locked a substantially higher HUD interest rate than available earlier in 2013. HUD insured Mortgages can subsequently adjust that interest downward to the then prevailing mortgage rates in situations where the reduction is significant enough to pay transaction costs. This benefit is typically measured in total debt service saving after transaction costs or "Net Present Value" savings.

In 2016, Buffalo Ridge engaged CBRE HMF, Inc. to explore the potential savings of an interest rate reset or a section 223(a)(7) refinance in order to reduce monthly debt service going forward, without extending final maturity. The CBRE proposal estimated annual savings of over approximately \$32,000 per year based on an adjusted interest rate of 3.6%. That proposal has been filed with HUD and is awaiting Firm Commitment from HUD at which time we can lock the interest rate and finalize documents for closing. At that time our outstanding debt would be:

1. HUD-insured Mortgage in the amount of \$10,036,200 maturing in December 2043
2. The two Subordinate Surplus Cash Notes in the aggregate amount of \$826,518, which have been paid down to \$650,604 as of October 31, 2016.

With the annual savings on the HUD loan, we project that the Corum Surplus Cash Note will be paid off within 4 years, at which time we would commence payments on the EagleBend Note, which is subordinate to the Corum Note.

We should be able to provide final documents for this transaction later in October, after we have locked the interest rate and finalized terms with CBRE. We are pleased to be able to pay down the expensive Subordinate Notes earlier than expected, thereby giving us additional flexibility to keep rents affordable.

Please direct any questions directly to me. I will be available to present this item to the entire Town Council at your regular meeting on October 25, 2016.

Sincerely,

**Buffalo Ridge Affordable Housing Corporation**

  
\_\_\_\_\_  
Gerald E. Flynn  
President





**RESOLUTION NO. 16-32**

**TOWN OF AVON, COLORADO**

**APPROVING THE EXECUTION AND DELIVERY BY BUFFALO RIDGE AFFORDABLE HOUSING CORPORATION OF A MORTGAGE LOAN AND AUTHORIZING CERTAIN AMENDMENTS AND INCIDENTAL ACTION THERETO.**

**WITNESSETH:**

WHEREAS, Buffalo Ridge Affordable Housing Corporation (the “Corporation”) has been duly organized under the provisions of the Colorado Revised Nonprofit Corporation Act, Articles 121 through 137 of Title 7, Colorado Revised Statutes, as amended, for the purpose of acquiring interests in real property and to construct, install and operate certain improvements in the Town of Avon, Colorado (the “Town”); and

WHEREAS, the Corporation acquired real and personal property and constructed improvements to provide dwelling accommodations at rentals within the means of individuals or families of low or moderate income (the “Project”), known as the Buffalo Ridge I Apartments; and

WHEREAS, in order to finance the Project, the Corporation originally entered into a Trust Indenture dated as of May 1, 2002 (as amended on March 8, 2011, the “Indenture”) with Wells Fargo Bank, N.A., formerly known as Wells Fargo Bank West, National Association, as Trustee under the Indenture (the “Trustee”) and issued its Multifamily Housing Project Revenue Bonds (GNMA Mortgage-Backed Securities Program—Buffalo Ridge I Apartments Project), Series 2002, in an aggregate principal amount of \$10,315,000 (collectively, the “Bonds”); and

WHEREAS, in connection with the issuance of the Bonds the Town and the Corporation executed and delivered a Project Agreement dated as of May 1, 2002, and amended on March 8, 2011 (the “Project Agreement”), under the terms of which the Corporation is responsible for operating the Project, and, subject to certain conditions, title to the Project shall vest in the Town upon the end of the term of the Project Agreement; and

WHEREAS, in order to refinance a loan that provided funds for the Project, and to pay off certain obligations of the Corporation, the Corporation entered into (a) a mortgage loan with CBRE HMF, Inc. on August 28, 2013 (“2013 Loan”), (b) executed a note and deed of trust in connection therewith, and (c) entered into two subordinate cash flow notes (“Subordinate Notes”);

WHEREAS, the Bonds have been redeemed in full and the Indenture has been terminated; and

WHEREAS, in connection with the 2013 Loan, the Project Agreement was amended and restated (“Amended and Restated Project Agreement”) which changes and agreement were approved by the Town Council;

WHEREAS, the Corporation desires to enter into a new mortgage loan (the “New Mortgage Loan”) with CBRE HMF, Inc. (the “New Lender”) in order to refinance the 2013 Loan; and

WHEREAS, proposed forms of the Note (the “New Mortgage Note), the Multifamily Deed of Trust Assignment of Leases and Rents and Security Agreement (the “New Mortgage Deed”) and the U.S. Department of Housing and Urban Development Regulatory Agreement for Multifamily Housing Projects (the “New Mortgage Regulatory Agreement”) relating to the New Mortgage Loan (collectively, together with any other documents executed in connection therewith, the “New Mortgage Loan Documents”) (collectively, the “Agreements”) have been presented before the Town Council at this meeting;

WHEREAS, it is not necessary in connection with the New Mortgage Loan to make any changes to or amend the Amended and Restated Project Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, AS FOLLOWS:

**1. Consent.** The Town hereby consents to the Corporation’s execution and delivery of the New Mortgage Note, the New Mortgage Deed and the New Mortgage Regulatory Agreement, substantially in the form presented to Town Council at this meeting, together with any documents related thereto; provided the New Mortgage Loan does not exceed \$10,036,200 in principal amount, does not bear interest at a rate exceeding 3.60%, and matures on or before December 31, 2043.

**2. Issuance of Indebtedness.** The indebtedness evidenced by the Agreements, with such changes as may be approved by the Town Manager, are, in all respects, hereby approved. Such indebtedness shall bear interest payable at the rates and times and will mature in the amounts and on the dates set forth in the Agreements.

**3. Town Action.** All actions taken by the members of the Town Council and other officials of the Town with respect to the Agreements are hereby ratified and confirmed. The Mayor of the Town (the “Mayor”) and the Town Clerk of the Town (the “Town Clerk”) are hereby authorized and directed to execute, deliver, acknowledge or consent to, as applicable or required, the Agreements and to take all action necessary or reasonably required by the terms of the Agreements to carry out, give effect to and consummate the transactions contemplated hereby and thereby, with such variations or revisions thereto deemed necessary or appropriate by the Town Manager, and the execution and delivery of such incidental closing certificates and releases as the Town Manager may determine to be necessary.

**4. No Indebtedness of the Town.** No provision of this Resolution or of the Agreements or any other instrument executed in connection therewith, shall be construed as creating an obligation on the part of the Town to pay the principal of, premium, if any, or interest

on indebtedness evidenced by the Agreements, nor as creating an indebtedness or financial obligation on the part of the Town within the provisions or limitations of any statutory or constitutional provision of the laws of the State of Colorado.

**5. Title to Project.** The Town hereby determines that it will accept title to the Project, including any additions thereto, when the indebtedness evidenced by the Agreements is fully paid and discharged in accordance with the Agreements.

**6. Corporation's Board of Directors.** The Town hereby confirms the following as the current Board of Directors of the Corporation.

Gerald E. Flynn  
Jeffrey Spanel  
Larry Brooks  
Michele Evans  
Craig Ferraro

**7. Severability.** If any provision of this Resolution should be held invalid, the invalidity of such provision shall not affect any of the other provisions of this Resolution, the intention being that the various provisions hereof are severable.

**8. Other Actions.** The appropriate officers of the Town are hereby authorized to execute and deliver for and on behalf of the Town, any or all additional certificates, acknowledgments, documents and other papers and to carry all other acts they may deem necessary or appropriate in order to implement and carry out the matters authorized in this Resolution and in the Agreements.

**9. Effective Date; Repealer.** This Resolution shall take effect immediately upon its passage, and all acts, orders, resolutions, or parts thereof, taken by the Town in conflict with this Resolution are hereby repealed or modified to the extent of such conflict.

[Remainder of page intentionally left blank]

INTRODUCED, APPROVED AND ADOPTED the 25<sup>th</sup> day of October 2016.

[SEAL]

TOWN OF AVON, COLORADO

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Town Clerk

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF EAGLE                    )

The Town Council of the Town of Avon, Colorado, held a regular meeting open to the public at the Town Council Chambers at 400 Benchmark Road, Avon, Colorado, on October 25, 2016, at 5:30 p.m.

The following members of the Town Council, constituting a quorum thereof, were present:

Council Members:

The following members of the Town Council were absent:

Council Members:

The following persons were also present:

Council Member \_\_\_\_\_ moved that the Resolution be finally passed and adopted and numbered 16-\_\_\_\_. Council Member \_\_\_\_\_ seconded the motion, and the question being upon the final passage and adoption of the Resolution, the roll was called with the following results:

Council Members Voting “Yes”:

The following Council Members recused due to Conflict of Interest:

The Mayor thereupon declared the Resolution finally passed and adopted and instructed the Town Clerk to number the same as moved.

After consideration of other business to come before the Town Council, the meeting was adjourned.

[SEAL]

TOWN OF AVON, COLORADO

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
Town Clerk

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF EAGLE                    )

I, Debbie Hoppe, Town Clerk of the Town of Avon, Colorado, do hereby certify that the attached copy of Resolution No. 16-\_\_\_\_, Series of 2016, is a true and correct copy; that said Resolution was passed by the Town Council of the Town of Avon, Colorado, at its regular meeting held at 400 Benchmark Road, Avon, Colorado, the regular meeting place thereof, on October 25, 2016; that a true copy of said Resolution has been authenticated by the signatures of the Mayor of the Town of Avon and myself as Town Clerk thereof, sealed with the seal of the Town, and numbered and recorded in a book kept for that purpose in my office; that the foregoing pages 1 through 6, inclusive, constitute a true and correct copy of the record of the proceedings of said Town Council at its regular meeting of October 25, 2016, insofar as said proceedings relate to said Resolution; that said proceedings were duly had and taken, that the meeting was duly held; and that the persons were present at said meeting as therein shown.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Avon, Colorado this \_\_\_\_\_ day of October, 2016.

[SEAL]

TOWN OF AVON, COLORADO

By \_\_\_\_\_  
Debbie Hoppe, Town Clerk

Buffalo Ridge Affordable Housing  
930-1190 Swift Gulch Road  
Avon, CO 81620



68 Units  
Section 223 (a)(7) Refinance  
Firm Application Pursuant to MAP Guidelines

CBRE HMF, Inc.  
FHA Mortgagee #25889-0000-8  
1225 17<sup>th</sup> Street, Suite 3200  
Denver, CO 80202  
Phone: 303.628.1768  
Fax: 303.628.1757



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## Executive Summary

HUD Project No.: 101-35723 (Current number)  
 Project Name: Buffalo Ridge Affordable Housing  
 Address: 930-1190 Swift Gulch Road Avon, CO 81620  
 Section of Act: Proposed 223(a)(7) Refinance

CBRE HMF, Inc. ("CBRE" or "Lender") hereby recommends for approval by the US Department of Housing and Urban Development, a \$10,036,200 loan insured pursuant to Section 223(a)(7) for Buffalo Ridge Affordable Housing ("Subject Property"), at an interest rate of 3.25% for a term of 326 months.

**Criterion:**

1. Mortgage or Loan Amount Requested in Application	N/A
2. Original Principal Amount of Existing Insured Mortgage	\$10,036,200
5. Amount Based on Debt Service Ratio:	\$11,963,600
10. Amount based on 100% of Existing Debt, Repairs, & other certifiable Costs	\$10,296,400

The existing loan has a maturity date of December 1, 2043.

Please see the below chart comparing the current in place financing and proposed 223(a)(7) Refinance, which will provide annual savings of \$31,593 to the Borrower.

	Current Loan	Proposed Loan
Original Balance	\$10,036,200	\$10,036,200
In-Place NOI (with Reserves)	\$838,730	\$804,241
Interest Rate (with MIP)	4.55%	3.60%
Monthly P&I	\$48,000	\$46,390
Annual P&I	\$576,000	\$556,680
Annual Payment (with MIP)	\$623,400	\$591,807
DSCR (based on P&I only)	1.45x	1.45x
DSCR (including MIP)	1.34x	1.36x
Loan Term	30 years	27 years
Monthly Savings (with MIP)		\$2,632.75
Annual Savings (with MIP)		\$31,593

- The current debt service payment per the existing financing is \$576,000 annually not including MIP. With MIP, the current debt service payment is \$623,400 annually. The DSC for the current debt based on the underwritten Net Operating Income including Replacement Reserves is 1.45x before MIP, and 1.34x including MIP.
- The proposed financing will provide lower monthly debt service payments to \$46,390, \$556,680 annually, not including MIP. With MIP, the monthly debt service payment will increase to \$49,317, \$591,807 annually. This results in a monthly savings (with MIP) of \$2,632.75 and an annual savings of \$31,593. The proposed loan's DSC based on the current underwritten Net Operating Income including Replacement Reserves is 1.45x before MIP, and 1.36x including MIP.

- The DSC has increased from the current loan to the proposed loan (1.36x including MIP).
  - There are two points new to the underwriting of this loan from the prior 223(a)(7) completed in 2013. The first is the term of the loan may not be increased back to original pursuant to terms of the LURA. The loan term is proposed at 326 months which reflects the term in place as of September 1, 2016 which is when the prepayment penalty drops to 7% from 8%. The loan underwriting anticipates a closing on or about October 31, 2016.
  - This project has a LURA in-place which meets the requirement for the MIP to be underwritten at .35% per the new MIP rules in effect. The project is held by a non-profit organization with deed restrictions that run with the land and are recorded. Previously, due to the non-profit and low-income restrictions on the project the prior 223(a)(7) was underwritten with the .50% MIP rate.
  - Since the loan term remains unchanged of 326 months, the monthly P&I has not significantly reduced.

The savings to the annual debt service payments of \$31,593 will enable the Subject to improve long-term financial viability, increase cash flow, reduce the risk of default, allow for funding of future capital needs and improve the mortgage security.

The Property is owned and operated by the Buffalo Ridge Affordable Housing Corporation, a Colorado non-profit corporation formed pursuant to the guidelines of Revenue Ruling 1963-20. The formation of the Corporation was approved by the Town of Avon and the Corporation is being operated exclusively on behalf of and for the benefit of the Town. All moneys of the Corporation must be used exclusively for the operation, maintenance and development of the property. Further, the Project must be used to provide housing at affordable rental rates at 80% of AMI to individuals or families of low or moderate income as mandated per a deed restriction with the Town of Avon.

The management of the Corporation is accomplished through a Board of Directors (the "Board") which oversees administration, operations and maintenance of the Project. The board consists of five directors. The present members of the Board are Gerald E. Flynn, Jeffery M. Spanel, Megan Burch, Tamra Nottingham and Craig Ferraro. Megan Burch and Tamra Nottingham were not members of the Board of Directors at the time of the initial HUD mortgage. The property is being managed by Polar Star Properties under an agreement with the Corporation.

## **Proposed Loan Strengths and Weaknesses:**

### **Strengths:**

1. As a nonprofit owner no distributions are allowed therefore all of the savings will be used for the benefit of the property and for retiring all debt as previously stated above.
2. Occupancy is steady and has remained above 98% for the most recent trailing 6 month period, per the rent rolls analyzed through 7/31/2016.
3. Experienced Management Agent with Polar Star Properties.
4. The property is very well maintained.

### **Weaknesses:**

1. There are two subordinated loans, the Development Fee Note and the Eagle Bend Affordable Housing Corporation Note:
  - At the time the current 223(a)(7) loan closed there were four subordinate loans on the property for a total of \$997,743. There are currently two subordinate loans on the property with total balances of \$738,498 as of 10/31/2016. A summary of the projected principal + accrued interest due as of 10/31/16, (the expected closing date), is provided below:

Buffalo Ridge Affordable Housing Corporation Schedule of Subordinate Debt						
Obligation	Interest Rate	Note Date	Maturity Date	Principal as of 10/31/2016	Accrued Interest as of 10/31/2016	Total
Development Fee Note	7.50%	5/1/2014	12/1/2043	\$429,104	\$17,498	\$446,602
Eagle Bend Affordable Housing Corporation	10.00%	5/1/2014	12/1/2043	\$221,500	\$70,395	\$291,895

- The projected cash flow after debt service is \$212,434 which will support the payoff of the remaining subordinate debt each year until the maturity dates of 12/1/2043 which is coterminous with the mortgage. There is sufficient excess cash flow after the debt service payments to pay down the loans. These loans will be subordinated to the FHA insured first mortgage.
2. Proof of the continued extension of the Real Estate Tax Abatement at refinance has not been provided, however, the borrower is obtaining an updated tax abatement letter to confirm the statement below. There will be a special condition that a new letter will be required with the closing package.
- Historical and ongoing tax abatement was verified by a letter dated January 30, 2013 from Mark Chapin who is the Eagle County Assessor. The letter states that as long as the Town of Avon has an interest in the property the exemption will remain. The Town of Avon’s interest is verified via the Project Agreement between the Town of Avon and the Buffalo Ridge Affordable Housing Corporation dated May 1, 2002 which is a matter of public record. The Town of Avon cannot remove their interest unless it is released via a sales transaction; hence, the tax abatement will continue until the property is sold. The Eagle County Letter and the Project Agreement are included as an Addendum to this narrative.

## The Project

Buffalo Ridge Affordable Housing (the “Property” or “Subject”) is an existing 68-unit, four-story garden-style affordable housing apartment building located in Avon, Colorado (Eagle County) constructed in 2003 under Section 221(d)(4), refinanced under Section 223(a)(7) in 2013 and situated on 4.17 acres. The Subject consists of four buildings and is comprised of 4 one-bedroom units, 24 two-bedroom units and 40 three-bedroom units. The Property is located on Swift Gulch Road, which is ½ mile west from the I-70 interchange in Avon, CO. Avon, CO is located in Eagle County, which is approximately three miles North of Beaver Creek, 10 miles West of Vail and two hours West of Denver.

The Subject has 160 parking spaces, one hundred surface spaces and sixty garages. The Subject’s unit mix is depicted in the chart below:

Unit Description	Number of Units	Average Apartment Unit Area (sf)	Monthly Rent	Rent Per SF
1 BR / 1 BA	4	605	\$960	\$1.59
2 BR / 1 BA	4	846	\$1,250	\$1.48
2 BR / 1 BA	4	868	\$1,250	\$1.44
2 BR / 1 BA	12	873	\$1,250	\$1.43
2 BR / 1 BA	4	953	\$1,250	\$1.31
3 BR/ 2BA	40	1,199	\$1,485	\$1.24
<b>Total</b>	<b>68</b>			

The above rents are the market rents based on the July 31, 2016 rent roll. The rents recently increased so as tenants renew their leases, the lease rent will match the stated market rent. Currently, there are no concessions.

As mentioned previously, per a deed restriction with the Town Avon, the subject property offers affordable rents of 80% of AMI to its residents. The deed restriction runs with the land and will continue perpetually unless it is voided with a foreclosure. The monthly rent shown above reflects rents that are closer to 64% of AMI.

## Market Area (CBRE, Inc.)

The subject property is located in Eagle County, Colorado. Eagle County includes the towns of Avon, Basalt, Beaver Creek, Eagle, Edwards, Gypsum, Dotsero, Minturn, Red Cliff, and Vail. Interstate 70 bisects the county extending east to west and passing through the Glenwood Canyon of the Colorado River a short distance to the west and continuing onto Grand Junction.

The Eagle County economy is largely service related to the resort activities at Vail and Beaver Creek. Although the county has become more of a year round resort area due to the number of golf courses developed over the last twenty years, employment still tends to be seasonal with peaks during the winter and summer months and dropping during the fall and spring shoulder seasons. Non-service employment can be found in medical, construction, light manufacturing and government. Vail Resorts, Inc. is the largest employer in Eagle County, with a seasonal work force of about 2,800 and 1,500 year-round. The stable year round workforce has averaged 30k jobs in recent years.

## Neighborhood

Buffalo Ridge Affordable Housing is located in Eagle County in the town of Avon. The town of Avon is centered approximately 110 miles west of the city of Denver's central business district. Avon has a population of approximately 6,500. Schools, retail, and public transportation are all within close proximity to the subject property.

The subject is located in an immediate neighborhood that because of its boundaries (US Forest Service Property and Interstate 70) has a relatively isolated feel. Outside of the subject's immediate neighborhood, the major commercial arterial is Highway 6, which is developed with a combination of commercial and residential uses. There are few, if any, vacant and developable sites located within the subject neighborhood to accommodate future demand. Accordingly, any future construction would most likely occur as redevelopment of an improved site. In summary, the subject neighborhood is in the mature portion of the growth cycle with no significant change forecasted.

## Tenant Occupancy Review

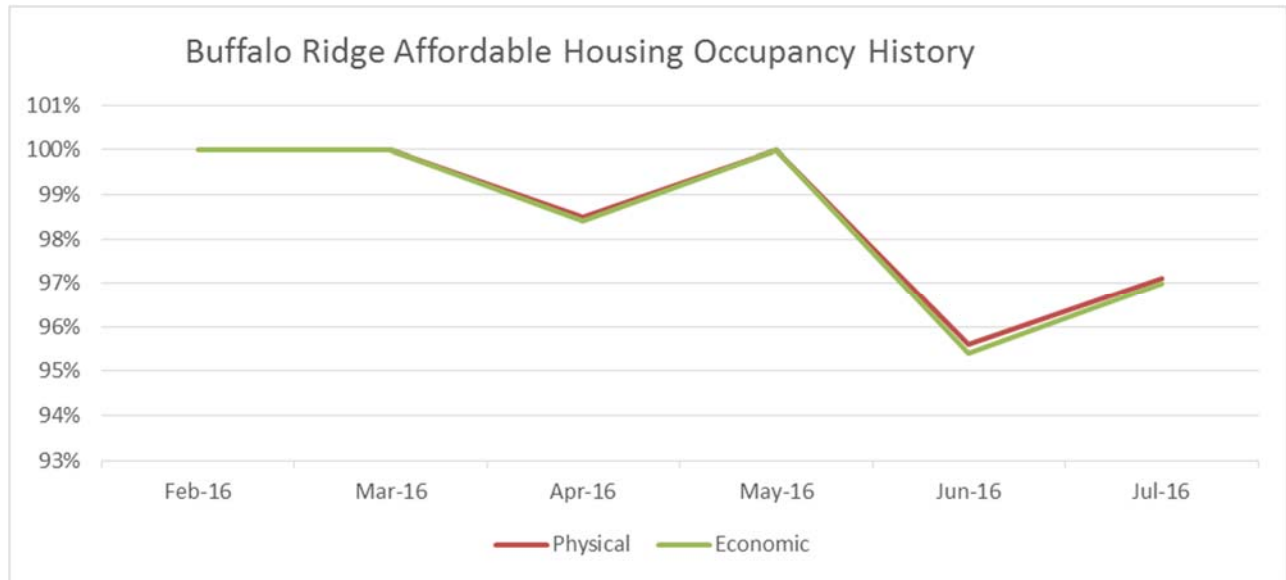
Information Source: Borrower supplied rent roll-certified as of 7/31/2016

Preparer: Will Wright, CBRE

Leases with less than 6 months remaining:	29%
Leases at rents below that estimated as market in the appraisal/application:	0%
Leases at rents higher than estimated as market in the appraisal/application:	0%
Leases reported as delinquent (1 wk past due):	0%
Leases with terms less than 12 months	3%
Leases with terms greater than 12 months	4%
Expired leases pending renewal:	0%
Vacant Units	2.9%

Occupancy at the Subject has remained stable since 2003 and has maintained an average occupancy level of 98.5% since third quarter 2014.

CBRE received rent rolls from February 2016 through July 2016. Physical occupancy rates ranged from 100% (February and March 2016) to 95.6% (June 2016) and averaged 98.5% over the most recent 6-month period as shown below. The most recent rent roll (7/31/2016) indicates occupancy of 97.1%.



## Underwriting of Income and Expenses

Number of Units	68				
	2013 Audit	2014 Audit	2015 Audit	Jun-16 YTD Annualized	CBRE Underwriting
Gross Potential Rent	1,094,238	1,094,407	1,094,401	1,097,590	1,097,590
Stores & Commercial	0	0	0	0	0
Garage and Parking	61,023	69,404	69,535	76,982	0
Laundry & Vending	15,698	14,593	17,321	17,422	0
NSF & Late Charges	9,570	8,260	6,555	7,340	0
Utilities Reimbursement	149,873	155,480	155,916	156,602	0
Other Revenue	20,595	30,172	29,410	25,532	283,878
Loss to Vacancy	(47,357)	(18,810)	(15,883)	(8,956)	(54,880) 5.00%
Loss to Concessions	(108,968)	(47,082)	(1,059)	0	0 0.00%
Loss to Bad Debt	(9,510)	(4,825)	(13,524)	(11,106)	0 0.00%
<b>Effective Gross Income (EGI)</b>	<b>1,185,162</b>	<b>1,301,599</b>	<b>1,342,672</b>	<b>1,361,406</b>	<b>1,326,589 5.00%</b>
Administrative	17,627	17,747	25,915	18,614	18,614
Payroll	97,826	109,246	112,156	103,736	103,736
Mgmt Fee	48,695	49,969	49,733	56,708	56,380 4.25%
Utilities	161,708	173,412	170,676	175,686	175,686
Operating & Maintenance	97,813	112,405	95,801	100,150	100,150
Real Estate Taxes	0	0	0	0	0
Insurance	24,375	30,477	32,175	37,722	37,722
Other	1,157	0	12	0	0
Total Expenses excluding RFR	449,201	493,256	486,468	492,616	492,288
Reserve for Replacement (RFR)	30,060	30,060	30,060	30,060	30,059 442 per unit
Total Expenses including RFR	479,261	523,316	516,528	522,676	522,347
<b>Net Operating Income</b>	<b>705,901</b>	<b>778,283</b>	<b>826,144</b>	<b>838,730</b>	<b>804,241</b>

- CBRE underwrote GPR and other income based on the year-to-date June 2016 financial statements and then annualized.

- Vacancy loss is based on 5% of the total gross potential rent. The \$54,880 underwritten loss to vacancy accounts for more than the 2015 vacancy, concessions and bad debt combined. Further discussion on the historical occupancy is discussed above in the Tenant Occupancy Review section.
- Historical and ongoing tax abatement was verified by a letter from Mark Chapin who is the Eagle County Assessor. The letter states that as long as the Town of Avon has an interest in the property the exemption will remain. The Town of Avon's interest is verified via the Project Agreement between the Town of Avon and the Buffalo Ridge Affordable Housing Corporation dated May 1, 2002 which is a matter of public record. The Town of Avon cannot remove their interest unless it is released via a sales transaction; hence, the tax abatement will continue until the property is sold.
- CBRE Underwritten Expenses are based on 2016 YTD figures with the exception of the management fee, which is underwritten to 4.25% of EGI.
- Replacement reserves are underwritten the current reserve for replacement payment of \$30,060 and \$442/unit.
- The underwritten NOI of \$804,241 is 4.12% less than the YTD 2016 NOI. This is due to the 5% underwritten loss to vacancy which has historically be lower than this amount.

Projections for 2016 are a stabilized NOI of \$838,730 which is an improvement of over \$12K from 2015 and over \$34K from the underwritten NOI.

## Site Inspection

The Underwriter performed a site visit of the property on August 11<sup>th</sup> and surveyed 11 units. One of each unit type was inspected. No property issues were observed during the site visit.

## Outstanding Loan

CBRE HMF, Inc. is the current lender and servicer on the outstanding indebtedness. The current outstanding principal balance as of September 1, 2016 is \$9,512,278. The current debt service including MIP is \$623,400 annually.

The existing loan is open to prepayment with a 7% prepayment premium.

The estimated payoff will adjust based on the outstanding principal balance and estimated interest charges and fees once the payoff statement is finalized. Per the HUD Form 9807 dated August 16, 2016, HUD has approved the voluntary termination of the loan with no expiration. For calculation purposes, we assume an October 31, 2016 closing, at which time the existing loan balance would be approximately \$9,480,433. If we do not close by the end of October then a revised payoff statement will be obtained.

## Subordinated Debt

There are currently two subordinate loans on the property for a total of \$738,497. A summary of the projected principal + accrued interest due as of 10/31/2016, (the expected closing date), is provided below.

Buffalo Ridge Affordable Housing Corporation Schedule of Subordinate Debt						
Obligation	Interest Rate	Note Date	Maturity Date	Principal as of 10/31/2016	Accrued Interest as of 10/31/2016	Total
Development Fee Note	7.50%	5/1/2014	12/1/2043	\$429,104	\$17,498	\$446,602

Eagle Bend Affordable Housing Corporation	10.00%	5/1/2014	12/1/2043	\$221,500	\$70,395	\$291,895
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## Replacement Reserve

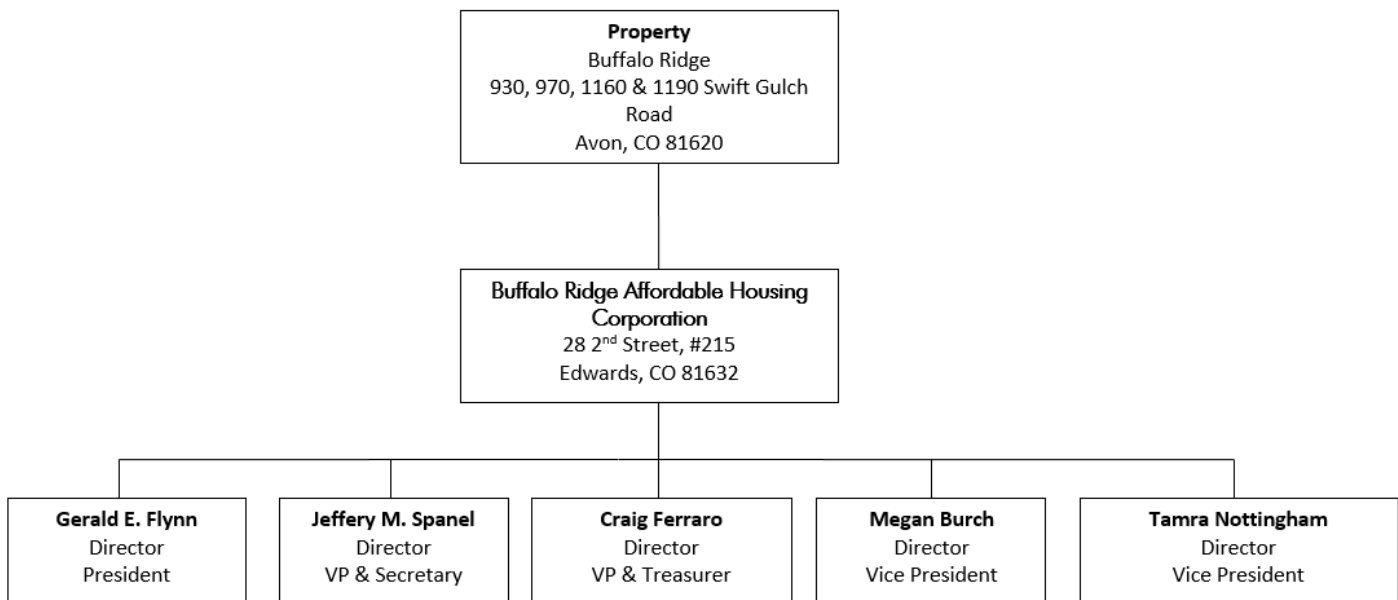
### HUD REAC Inspection

The most recent REAC score is dated September 10, 2015. The Subject received a rating of 87b\* per the REAC inspection. This is a good score with some minor systematic deficiencies noted. There were no life-threatening concerns noted at the Subject. Since the REAC inspection, the borrower provided a report that accurately identifies the repairs that have been made to correct the Exigent Health and Safety items, the location of those repairs, and the dates the repairs were made.

### PCNA Report

CBRE HMF, Inc. requested a waiver of the PCNA due to the fact that the Subject is currently a 223(a)(7) Refinance transaction that closed on August 29, 2013. The PCNA was originally completed on February 4, 2013. No critical repairs were identified and \$5,292 in non-critical and accessibility repairs were identified and completed prior to closing in August 2013. The most recent REAC inspection was performed on September 10, 2015 and received a score of 87b\*. The replacement reserve balance as of August 31, 2016 is \$170,261.60. On August 1, 2016, CBRE HMF, Inc. received approval of the waiver from Mark Feilmeier of the Denver HUD Office. It was noted that a PCNA must be completed no later than during the tenth year after the last PCNA (February 4, 2013). A copy of the PCNA waiver request and approval has been included in the application package.

## Project Ownership & Management



The Property is owned and operated by the Buffalo Ridge Affordable Housing Corporation; a Colorado non-profit corporation formed pursuant to the guidelines of revenue ruling 1963-20, and is governed by a Board of Directors. The Borrowing entity has owned and operated the property since its original construction.

The Board of Directors is presently comprised of five members including, Gerald E. Flynn, Jeffery M. Spanel, Megan Burch, Tamra Nottingham, and Craig Ferraro. All of the members of the board were in place at the time of the



original (a)(7) transaction in 2013 with the exception of Megan Burch and Tamra Nottingham, both joining the organization in 2015.

Gerry Flynn has been involved in real estate development and management in the Vail Valley for over 20 years. Initially, in his role as Chief Financial Officer of Vail Resorts, Gerry was involved in the resort developments of Beaver Creek and Bachelor Gulch. Additionally, Gerry was directly responsible for the development of workforce housing in the community, which has resulted in the development of over 1,100 new units in the last 15 years.

Gerry is currently managing member and owner of Polar Star Development, LLC, which owns a 60% interest in Polar Star Properties, LLC ("PSP"). Mr. Flynn is currently Chairman and President of various nonprofit boards which own and operate affordable housing projects in Eagle County.

PSP manages approximately 494 rental housing units and specializes in the unique needs of resort community workforce housing. PSP is currently the subject's property management company; hence, an identity of interest exists.

Jeffery M. Spanel has been a principal in Inter-Mountain Engineering, Ltd., a consulting engineering firm, since the firm was founded in 1978. Inter-Mountain Engineering, Ltd. provides a wide range of services to the construction industry in Eagle County, including land planning; utility, roadway, and drainage design; soils and construction materials testing; land surveying; and construction management. In addition, Mr. Spanel is a managing partner in Wintergreen Homes, LLC, the original developer of the Eaglebend Apartments and of other affordable and entry-level housing developments in the Rocky Mountain region. Mr. Spanel holds a Bachelor of Science degree in Construction Engineering from Iowa State University.

Megan Burch was an advocate program director and shelter director for The Resource Center of Eagle County in Avon, Colorado from 2001 to 2004 where she developed, implemented, and managed shelter programs in start-up residential domestic violence programs. From 2004 to 2010, Ms. Burch was the project manager for Evans Chaffee Construction Group in Avon, Colorado. There she estimated and managed construction project valued up to \$2 million, analyzed and controlled budgets throughout the project, created and managed project schedules and supervised project superintendents. From 2010 to present, Ms. Burch is currently the strategy, partnerships, and performance manager for Eagle County Department of Human Services in Eagle, Colorado. Her duties include training and supervising division staff, writing and managing multiple grants, state and federal, for a variety of program areas. Ms. Burch has also been an elected council member for the Town of Avon since November of 2014.

Tamra Nottingham (Underwood) has been an attorney based in Colorado for 27 years where she focused on ski resort operations including commercial leasing operational and management agreements, regulatory affairs and corporate matters. Ms. Underwood founded the law firm of Tamra N. Underwood, PC in 2011 and presently serves the needs of ski resort clients, including Arapahoe Basin, Squaw Valley/Alpine Meadows, Sierra-at-Tahoe and Bear Valley and other small businesses. From 1990 to 1998, Ms. Underwood worked as Assistant General Counsel of Vail Resorts, Inc./Vail Associates and was responsible for all legal aspects of the company's operations and compliance at Vail and Beaver Creek such as contractual relationships, federal, state, and local permitting/licensing, due diligence for acquisitions and other legal matters.

Craig Ferraro is the managing partner with East West Partners, a resort development firm headquartered in Beaver Creek, Colorado. Craig is currently the Chief Financial Officer and Vice President of East West Partners and each of its development projects. Craig received a B.S. in Business from the University of Colorado and an MBA from the University of Pennsylvania Wharton School. Craig became a Certified Public Accountant in California while working for Touche Ross.

Nonprofit entities and sponsoring parent organizations need to be evaluated for credit history, experience and capacity. Officers of the Board of Directors are subject to credit and previous participation review. However, other members of the Board are generally not subject to such reviews beyond previous participation. Megan Burch and Tamra Underwood were not on the Board at the time of the HUD 223(a)(7) loan and are considered "new" Sponsors.

Buffalo Ridge Affordable Housing [CBRE HMF, Inc., September 12, 2016]

Both individuals are also Officers of the Non-profit Corporation. As a result, a limited Mortgage Credit review (in addition to a review of previous participation), was performed on them as follows:

**92013 Supp – Burch**

Ms. Burch has answered “no” to the four questions at the bottom of the Supplemental.

**92013 Supp – Underwood**

Ms. Underwood has answered “no” to the four questions at the bottom of the Supplemental.

**2530 APPS**

CBRE has engaged an APPS consultant to complete a baseline submission and an Org Tier Report along with a Schedule A was completed. Both exhibits are found within the Firm Application Package.

**Proposed Loan Assumptions**

The Mortgagor’s application for loan insurance of \$10,036,200 is based on the following assumptions:

1. Rents for the Subject’s units are based on the currently achieved rental rates, and an underwritten 5% physical vacancy rate.
2. Underwritten expenses were based on the annualized 2016 expenses with the following exceptions:
  - a. Management Fee was underwritten to 4.25% of EGI based on the Subject’s historical operating statements.
  - b. Insurance was underwritten to the actual 2016 expense
  - c. Real Estate taxes are abated
3. The loan amount is constrained by 100% of the original mortgage amount.

## Sources and Uses

The new loan and the additional cash investment are shown in the Sources and Uses exhibit:

<b>ESTIMATED SOURCES AND USES FOR CLOSING</b>			
<b>FHA Cost Certifiable Costs</b>			
Existing Debt Amount	9,480,433	0	
Prepayment Penalty	663,630	7%	
FHA Approved Additional Debt	0	N/A	
Estimate of Repair Cost	0	0	per unit
Financing Fee	25,000	0.25%	
GNMA Issuance Costs / Lender Legal / Lender App Fee	24,800	Estimated	
Borrower's Counsel	30,000	Estimated	
Title & Recording Fees	20,000	Estimated	
0.15% FHA Application / Exam Fee (1)	15,054	0.15%	
First Year MIP (2)	35,127	0.35%	
PCNA, Survey, PZR	1,800	Estimated	
Deposit to Replacement Reserve	<u>0</u>	0	per unit
<b>Total Certifiable Costs</b>	<b>10,295,844</b>		
<b>Other Closing Requirements</b>			
Repair Escrow (Portion Over - Collateralized)	0	10% of Repair Amount	
Discount	0	Subject to Market	
Accrued Interest on Existing Loan	<u>0</u>	To Be Determined	
<b>Total Other Closing Requirements</b>	<b>0</b>		
<b>Total Uses</b>	<b>10,295,844</b>		
<b>Sources of Funds</b>			
FHA Insured Mortgage	10,036,200		
Investor Contribution (through premium pricing)	259,644		
Owner Contribution	<u>0</u>		
<b>Total Sources</b>	<b>10,295,844</b>		
<b>Reconciliation of Owner Contribution</b>			
Owner Contribution	0		
Return of Repair Escrow after Completion of Repairs	0		
MIP Return and Refund (1)	<u>0</u>		
<b>Net Cash Investment (Cash Out)</b>	<b><u>0</u></b>		

## Special Conditions and Waivers

CBRE HMF, Inc. requested a waiver of the PCNA due to the fact that the Subject is currently a 223(a)(7) Refinance transaction that closed on August 29, 2013. The PCNA was originally completed on February 4, 2013. No critical repairs were identified and \$5,292 in non-critical and accessibility repairs were identified and completed prior to closing in August 2013. The most recent REAC inspection was performed on September 10, 2015 and received a score of 87b\*. The replacement reserve balance as of August 31, 2016 is \$170,261.60. On August 1, 2016, CBRE HMF, Inc. received approval of the waiver from Mark Feilmeier of the Denver HUD Office. It was noted that a PCNA must be completed no later than during the tenth year after the last PCNA (February 4, 2013). A copy of the PCNA waiver request and approval has been included in the application package.

The Surplus Cash Notes of the Deferred Development Fee and the Eagle Bend Affordable Housing Note are subordinated to the current loan and will need to be subordinated to the new debt at the time of closing (October 31, 2016).

## **Underwriter Recommendation**

On behalf of CBRE HMF, Inc., I recommend that HUD issue mortgage insurance under the 223(a)(7) program for a first mortgage loan of \$10,036,200, with a term of 326 months (27 years) and an interest rate of 3.25% with a MIP of 0.350%.

## UNDERWRITER'S MAP CERTIFICATION

**Project:** Buffalo Ridge Affordable Housing  
**Location:** 930-1190 Swift Gulch Road  
**Section:** 223(a)(7) Refinance

I understand that my underwriting review will be used by CBRE HMF, Inc. to document to the U.S. Department of Housing and Urban Development that the MAP Lender's application for FHA multifamily mortgage insurance was prepared and reviewed in accordance with the MAP HUD requirements. I certify that my review was in accordance with the MAP HUD requirements applicable on the date of my review and that I have no financial interest or family relationship with the officers, directors, stockholders, or partners of the Borrower, the general contractor, any subcontractors, the buyer or seller of the proposed property or the architect or engage in any business that might present a conflict of interest.

CBRE HMF, Inc. (CBRE) has reviewed all in-house and third party forms/reports/reviews. The preparers of the forms/reports/reviews are qualified as required by the MAP guide and has the necessary insurance required by the guide. The forms/reports/reviews were prepared in the manner required by the guide and the forms/reports/reviews are complete and accurate, except where noted as a result of CBRE's review of the forms/reports/reviews. The proposed loan represents an acceptable risk to the Department and is economically sound, based on CBRE's review and analysis and the proposed loan and processing complies with all FHA statutory, regulatory and administrative requirements.

I am employed full time by the MAP Lender (underwriter) or under contract for this specific assignment (appraiser, market analyst, cost architect) and that I have no other side deals, agreements, or financial considerations with the MAP Lender or others in connection with this transaction.

I hereby certify that I have directly supervised the MAP Underwriter Trainee in completion of the specific tasks identified below by the said Trainee, and acknowledge that I have full responsibility for all aspects of the underwriting of this transaction.

CBRE HMF, Inc.



**By:** Leslie Duchene  
**Title:** Chief FHA Underwriter  
**Date:** September 12, 2016

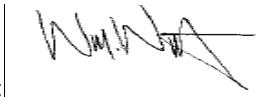
**Warning:** Title 19 U.S. C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any manner in the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

**MAP Underwriter Trainee Certification**  
**For**  
**Buffalo Ridge Affordable Housing**  
**Section: 223(a)(7)**

The undersigned MAP Underwriter contributed to the completion of this Underwriters Narrative Summary as well as the processing of forms by completing the Review, Approval, & Analysis of the following Narrative Sections:

1. Project Ownership and Management
2. Executive Summary
3. Tenant Occupancy Review

CBRE HMF, Inc.

By: 

Underwriting Analyst

Date: September 12, 2016

TO: Honorable Mayor Fancher and Town Council members  
FROM: Eric J. Heil, Town Attorney  
RE: Termination of Benchmark Covenants  
DATE: October 20, 2016

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**SUMMARY:** Representatives of Traer Creek LLC have requested that the Town of Avon consider, participate and support an effort to terminate the Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, originally adopted in 1974 ("**Benchmark Covenants**"). The Town Council reviewed my introductory memorandum at its regular meeting on September 27, 2016 and provided direction to proceed with efforts to provide notice to property owners and prepare documents necessary for termination of the Benchmark Covenants.

**HISTORY:** The Benchmark Covenants predate the incorporation of the Town of Avon. The Benchmark Covenants address permitted uses, approval of construction plans, fences, signs, livestock, trees, building height and parking, and other matters. At the time, the Benchmark Covenants were typical of initial covenants created by a master developer to guide the development of a large multi-use planned development area. However, some 42 years later, the Benchmark Covenants are outdated, duplicitous with Town's Development Code regulations, and are largely unenforced. Traer Creek LLC has found that the Benchmark Covenants are now a cloud on property title as well as impediment to certain retail commercial deals, and has therefore requested the Town's support and participation in an effort to terminate the Benchmark Covenants.

**RECOMMENDATION:** The Town of Avon's Development Code, sign code, building code and other municipal regulations address the same topic matters in the Benchmark Covenants, but in a more defined, complete and modern manner. The Town's regulations are more easily updated, are more easily accessible, and are better administered through the Avon Community Development department than the Benchmark Covenants. The Benchmark Covenants makes several references to review and approval of private a design committee; however, such design committee has not existed for more than a decade.

Upon review of the Benchmark Covenants, I fully support and recommend termination of the Benchmark Covenants because they are duplicitous of the Town's Development Code and other municipal regulations, appear to no longer have any valid purpose or offer any protection to property owners, create unnecessary restrictions and requirements, and create unnecessary exceptions on property title throughout the Town of Avon. The Benchmark Covenants also affect Town owned properties in the original Benchmark Subdivision.

**PROCESS TO TERMINATE:** The Benchmark Covenants apply to all of the original platted area of the Town of Avon, which is basically everything on the valley floor except Eagle Bend, Nottingham Station, River Front, Brookside and the Village (at Avon). The Benchmark Covenants allow for the amendment and termination through a five member Landowner's Committee appointed by a majority of the landowners in the Benchmark Subdivision. The Town of Avon appears to be the majority landowner and may therefore effectively control the appointment of the five member Landowner's Committee. The Town of Avon may only be one member of the Landowner Committee. A decision of the Landowner Committee requires the concurring vote of four members.

The law firm of Johnson and Repucci, hired by Traer Creek LLC, is assisting with the process. The process includes notification of all landowners in the Benchmark Subdivision with an explanation of the effort to terminate the covenants, conducting a ballot to appoint the five person Landowner Committee, and documenting the actions of the land owner committee once appointed. A notice was sent to property owners on October 14, 2016 which is attached to this memorandum. Notice has also been published in the Vail Daily. The notice and procedures for termination of the Benchmark Covenants has been coordinated with a local title insurance company to ensure that the process is effective in order to remove the Benchmark Protective Covenants from an encumbrance on properties within the Benchmark Subdivision.

Effectively, the Town is the land owner of more than 51% of the original Benchmark Subdivision. Therefore, the Town's vote will determine the appointment of the five person Landowner Committee. The Town of Avon may appoint one representative to the Landowners Committee. Jennie Fancher, Mayor is proposed for the Town's representative. Other property owners that have been identified as supportive of this effort include Katherine Pakozdi, Rob E. Tartre, Marka Ann McLaughlin Brenner, and Ellen Mary Crosbie.

The following actions are requested for Council consideration:

- (1) Approve a landowner ballot on behalf of the Town of Avon for consent to terminate the Benchmark Covenants.
- (2) Approve a landowner ballot on behalf of the Town of Avon to vote for Jennie Fancher, Katherine Pakozdi, Rob E. Tartre, Marka Ann McLaughlin Brenner, and Ellen Mary Crosbie to be on the five person Landowners Committee.
- (3) Authorize the Town's representative on the Landowners Committee (i.e. Jennie Fancher) to vote to terminate the Benchmark Covenants and take such other actions as a Landowner Committee member as required to effectuate the termination of the of the Benchmark Covenants.

A proxy statement and absentee ballot form is attached which the Town may complete and sign with regard to the first two action items.

**REQUESTED MOTION:** "I move to vote for termination of the Benchmark Covenants, vote for the appointment of Jennie Fancher, Katherine Pakozdi, Rob E. Tartre, Marka Ann McLaughlin Brenner, and Ellen Mary Crosbie as members of the Benchmark Landowners Committee, and authorize Jennie Fancher to vote in favor of terminating the Benchmark Covenants at the Landowners Committee meeting and take such other action as required to effectuate the termination of the Benchmark Covenants."

*Thank you, Eric*

**ATTACHMENTS:** A: The Benchmark Covenants, with amendments  
B: Notice to Property Owners dated October 14, 2016  
C: Proxy Statement and Absentee Ballot



# Attachment A: Benchmark Covenants

Eagle County, Colorado

## DECLARATION OF PROTECTIVE COVENANTS

### FOR

### BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership, is the beneficial owner of all that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the plat of which has been filed under Reception No. 129460 and recorded in Map Case 2, Drawer "B" of Plats in the records of the Eagle County Clerk & Recorder.

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

1. DEFINITIONS: As used herein the following words and terms shall have the following meanings:

- Subdivision - Benchmark at Beaver Creek Subdivision
- Lot - A lot located within Benchmark at Beaver
- Commercial - Lots in the Commercial Zone are intended to provide for the broad range of commercial operations and services required for the proper and convenient functioning of Commercial Centers serving large areas of the County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: Wholesale and retail establishments, including sale of food, beverages, drygoods, furniture, appliances, bakery, automobile and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant materials; personal service establishments, including banks, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private reading club, theater and indoor recreation; general service establishments, including service of automobile service stations, vehicular rental service and repair shops, motel-hotel-lodges up to 750 units, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

# Attachment A: Benchmark Covenants

- Condominium - A lot which may be used for multiple family residential purposes, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants.
- Multiple Family - A lot which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- Community Facilities - A lot which may be used for Church, fire station, police or Sheriff's station, public nursery or day care center.
- Common Open Space - That portion of the subdivision held in trust by Benchmark at Beaver Creek and Eagle County and used to provide common access to the public domain by residents and visitors to the subdivision and the public in general.
- Committee - A group of three persons who shall be responsible for the administration and enforcement of these protective covenants. Two of such persons shall be appointed by Grantor and the third shall be selected by the two persons so appointed. A majority of the Committee shall govern its actions. Any vacancy on the Committee which shall continue for a continuous period of thirty days without replacement by the remaining members of the committee can be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and lessees of the lots in the subdivision and are made for the purpose of creating and keeping the subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the subdivision.

3. USES: All lots in the subdivision shall fall within the following land use definitions:

<u>Definition</u>	<u>Lot Description</u>
Commercial	Block 1, Lots 1, 2 and 3, Block 2, Lots 6, 7, 8, 9, 10, 11, 12, 20, 21, 22, 23, 24, 25, 26, 27

## Attachment A: Benchmark Covenants

Condominium	Block 1, Lot 4, Block 2, Lots 3, 4, 5, 13, 14, 15, 17, 18, 19, Block 3, Lots 1, 2, 4
Multiple Family	Block 1, Lot 5, Block 2, Lot 2, Block 3, Lots 5, 6
Community Facilities	Block 2, Lot 16, Block 3, Lot 3
Common Open Space	Tracts A, B, C

4. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided: (a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor, elevation showing four sides, plot and grading plans; provisions for offstreet parking and locations of driveway access; the specifications for exterior materials, color schemes; landscape drawings and plant specifications; the location, character and method of utilization of all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The proceeds of such charges shall be used for the administration and enforcement of these protective covenants.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) In passing upon all such plans and specifications, the Committee shall take into consideration the suitability of the proposed building or other structure and the materials of which it is to be built to the lot upon which it is to be erected, the harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from adjacent or neighboring lots. The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

5. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the subdivision free and clear

## Attachment A: Benchmark Covenants

and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee.

6. EASEMENTS: Easements and rights-of-way are hereby reserved as shown or described on the recorded plat of the subdivision. There are also in addition the following easements and rights-of-way reserved:

(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Benchmark for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

7. FENCES: No fence, wall or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

8. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses.

9. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the subdivision.

10. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse and all such receptacles shall be screened from the public view and protected from disturbance.

11. LIVESTOCK: The keeping of livestock and animals except dogs, cats and other household pets for personal enjoyment and not for commercial purposes shall not be allowed. The keeping of such dogs, cats and other household pets shall be strictly governed by the applicable rules and regulations adopted by the Board of County Commissioners of Eagle County, Colorado, any successor entity, the Committee aforementioned, or homeowners association.

## Attachment A: Benchmark Covenants

12. TREES. Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

13. BUILDING HEIGHT AND PARKING REQUIREMENTS. Building height and parking requirements shall be governed by the Committee.

14. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 4 hereof. In addition, for every 2,000 square feet of building area the builder shall plant one (1) 12 foot high or larger non-deciduous tree, either on the subject lot or another location within the subdivision approved by the Committee.

15. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

16. CONTINUITY OF CONSTRUCTION: All structures commenced in the subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless some exception is granted in writing by the Committee.

17. NUISANCE: No noxious or offensive activity shall be carried on within the subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.

18. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the subdivision or herein may be granted in writing by the Committee.

19. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 1999, at which time they shall be automatically extended for five successive terms of ten years each.

20. AMENDMENT: The conditions, restrictions, stipulations, agreements and covenants contained herein shall not be abandoned, terminated, or amended except by written consent of the owners of 51% of the land included within the boundaries of the subdivision. In determining the land included within the boundaries of the subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

21. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property

Attachment A: Benchmark Covenants

in the subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorney's fees, for such violations.

22. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 7th day of February, 1974.

BENCHMARK AT BEAVER CREEK  
By Benchmark-Avon Properties,  
General Partner

By Ronald D. Allred  
Ronald D. Allred

By A. J. Wells  
A. J. Wells

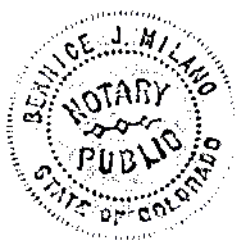
By Doyle G. Fulton  
Doyle G. Fulton

STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF EAGLE     )

The above and foregoing instrument was acknowledged before me this 8th day of February, 1974, by RONALD D. ALLRED, A. J. WELLS and DOYLE G. FULTON, Attorneys-in-fact for Benchmark-Avon Properties, General Partner of Benchmark at Beaver Creek.

My commission expires: July 3, 1977

WITNESS my hand and official seal.



Bennice J. Milano  
NOTARY PUBLIC

129459

STATE OF COLORADO, }  
EAGLE COUNTY. } ss.

I hereby certify that this instrument  
was filed for record in my office the  
27 day of February, 1974, at  
9:00 o'clock A.M., and is duly recorded  
in Book 233 Page 565

Marshall R. Barry  
County Clerk and Recorder

Jessie Baker  
Deputy

Fee \$ 12.00 Pd.

Ron Allred  
Box 5  
Avon, Colo

I  
135288 4/7/75 @ 9AM 239 /249

AMENDED DECLARATION OF PROTECTIVE COVENANTS  
FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership, is the beneficial owner of all that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the final plat of which has been filed under Reception No. 129460 and recorded in Map Case #2, Drawer "B" of Plats in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder and the Revised Final Plat of which has been filed under Reception No. 134061 and recorded in Map Case #2, Drawer "B" in Book 238 at Page 41 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, Grantor, as the owner of at least 51% of the land included within the boundaries of said Subdivision, hereby amends in total the previously filed Declaration of Protective Covenants for said Subdivision as recorded in Book 233 at Page 565 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

1. DEFINITIONS: As used herein the following words and terms shall have the following meanings:

- Subdivision - Benchmark at Beaver Creek Subdivision
- Lot - A lot located within Benchmark at Beaver Creek Subdivision
- Commercial - Lots in the Commercial Zone are intended to provide for the broad range of commercial operations and services required for the proper and convenient functioning of Commercial Centers serving large areas of the County. Uses permitted are intended to include all retail and service operations that may be appropriately located within a shopping district and that are normally required to sustain a community, including but not limited to the following: Wholesale and retail establishments, including sale of food, beverages, drygoods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant materials, personal service establishments, including banks, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor ship, bowling alley, restaurant, cocktail lounge, private



# Attachment A: Benchmark Covenants

reading club, theater and indoor recreation; general service establishments, including automobile service stations, vehicular rental service and repair shops, motel-hotel-lodges up to 750 units, boarding and rooming houses, offices for conduct of a business or profession, studios for conduct of arts and crafts, dental and medical clinics. Also, any Use by Right of the C/L District and C/G District permitted under the Zoning Resolution of Eagle County, Colorado.

- Condominium** - A lot which may be used for multiple family residential purposes, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants.
- Multiple Family** - A lot which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- Mobile Home Park** - A lot which may be used for mobile home park purposes; which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and County of Eagle; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
- Community Facilities** - A lot which may be used for religious purposes, fire station, police or sheriff's station, or similar governmental purposes, public nursery or day-care center.
- Common Open Space** - That portion of the Subdivision held in trust by Benchmark at Beaver Creek and Eagle County and used to provide common access to the public domain by residents and visitors to the Subdivision and the public in general.
- Committee** - A group of five persons who shall be responsible for the administration and enforcement of these protective covenants. All such persons shall be appointed by Grantor.

2. **GENERAL PURPOSES:** These covenants are for the mutual benefit and protection of the owners and lessees of the lots in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the Subdivision.

3. **USES:** All lots in the Subdivision shall fall within the following land use definitions:

<u>Definition</u>	<u>Lot Description</u>
Commercial	Block 1, Lots 1, 2, 3, 4, 6, 7 and 8. Block 2, Lots 10, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and Tract Q Block 3, Lot 4
Condominium	Block 1, Lot 9 Block 2, Lots 3, 4, 5, 6, 7, 8, 9, 15 and 16 Block 3, Lots 1, 2, 4, 5 and 6
Multiple Family	Block 1, Lots 5 and 9 Block 2, Lots 2, 3, 4, 5, 6, 7, 8, 9, 15 and 16 Block 3, Lots 5 and 6
Community Facilities	Block 2, Lot 34 Block 3, Lot 3
Common Open Space	Tracts A, B, and C

**4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE:**

The Planning and Architectural Control Committee, hereinafter referred to as the Committee, shall consist of five members and shall be appointed by the Grantor, Benchmark at Beaver Creek, its successors or assigns, to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and Revised Final Plat of Benchmark at Beaver Creek of which these protective covenants are made a part. A majority of the Committee shall govern its actions. Any vacancy on the Committee which shall continue for a continuous period of thirty days without replacement by the remaining members of the Committee may be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

(a) The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the Committee shall consider:

(i) the suitability of the improvement, including materials of which it is to be constructed, to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

(d) In the event the Committee fails to approve or disapprove plans and specifications submitted to it within thirty days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications for exterior materials, color schemes; landscape drawings and plant specifications; the location, character and method of utilization of all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The Committee shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action

## Attachment A: Benchmark Covenants

in reviewing such drainage plans shall be guided by the recommendations of the Planning Department of Eagle County, Colorado.

7. **EASEMENTS:** Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Grantor for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. **FENCES:** No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

9. **SIGNS:** No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses. The Committee shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and bunting, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs. For private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The Committee shall review the appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The Committee shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The Committee may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the Committee) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the County of Eagle, Colorado, any successor governmental entity, the Committee aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

14. SET BACK REQUIREMENTS: The Committee may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the Committee prior to the commencement of construction. In determining the proper location for each improvement, the Committee shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the Committee. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the Committee. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The Committee shall not approve any construction until plans are presented and approved by the Committee that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the Committee's approval is granted shall be conditional

upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements are complied with. With respect to additional general provisions, design requirements, minimum off-street loading requirements, minimum off-street parking space requirements, clear-vision area requirements, the Committee shall be guided by the standards set forth in the Eagle County Zoning Resolution, as amended.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The Committee shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the Committee.

20. NUISANCE: No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the Committee.

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the Committee upon approval thereof by the Board of County Commissioners of Eagle County, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned,

terminated, or amended by the Grantor until such time as 70% of the land included within the boundaries of the Subdivision have been sold by the Grantor, at which time the then owners of 51% of the land in the Subdivision may call an election to select a "Landowners Committee" comprised of five individual owners in the subdivision, one of whom shall be the Grantor, if the Grantor shall at such time still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. In determining the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violations.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the Committee pursuant to this instrument for which penalties are provided, or cause expenses to the Committee as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

- a) tax and special assessment liens in favor of any assessing unit; and
- b) all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the Committee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall be signed by a member of the Committee and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the Committee. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Grantor hereunder shall have the power to bid in said real property at any foreclosure sale and to acquire and hold, lease, mortgage or convey the same.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structural alteration of such structure is proposed or made for the purpose of such extension.

27.1. Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2. Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3. Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the Committee based on the intent and purposes of this instrument.

27.4. Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the Committee pursuant to this instrument.



28. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 4<sup>th</sup> day of April, 1975.

BENCHMARK AT BEAVER CREEK, a Colorado Limited Partnership

By BENCHMARK-AVON PROPERTIES, a Partnership, Its Sole General Partner

By Ronald D. Allred  
Ronald D. Allred, A Managing Partner and Attorney-In-Fact

By A. J. Wells  
A. J. Wells, A Managing Partner and Attorney-In-Fact

By Doyle G. Fulton  
Doyle G. Fulton, A Managing Partner and Attorney-In-Fact

STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The above and foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 1975, by RONALD D. ALLRED, A. J. WELLS, and DOYLE G. FULTON, Attorneys-in-fact for Benchmark-Avon Properties, General Partner of Benchmark at Beaver Creek.

My commission expires: My Commission expires Nov. 3, 1978

WITNESS my hand and official seal.



George Rosenberg  
NOTARY PUBLIC

SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS

FOR

BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, being a subdivision in Eagle County, Colorado, the Final Plat of which has been filed under Reception No. 129460 and recorded in Map Case #2, Drawer "B" of Plats in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder and the Revised Final Plat of which has been filed under Reception No. 134061 and recorded in Map Case #2, Drawer "B" in Book 238 at Page 41 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, a limited partnership, Grantor, as the owner of at least 51% of the land included within the boundaries of said Subdivision, hereby amends in part the previously filed Amended Declaration of Protective Covenants for said Subdivision as recorded in Book 239 at Page 249 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

I. Paragraph 1 of the previously filed Amended Declaration of Protective Covenants is amended by the addition of the following definition:

"Industrial - A lot which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of Eagle County, including but not limited to all of the uses by right contained in the Zoning Resolution for the County of Eagle, State of Colorado,

and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto."

II. Paragraph 3 of the previously filed Amended Declaration of Protective Covenants is amended as follows: Lot 5, Block 1 in the Subdivision is hereby deleted from the definition "Multiple Family" and said Lot 5, Block 1 is added to the definition "Commercial"; further, the definition "Industrial" as set forth in Paragraph 1 of said Amended Declaration of Protective Covenants is added to said Paragraph 3, and Block 1, Lot 5 shall be included under said definition.

Only the amendments contained herein shall affect the previously filed Amended Declaration of Protective Covenants, and all other provisions of said Amended Declaration of Protective Covenants shall remain in full force and effect.

Executed this 29th day of March, 1976.

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership,

By: BENCHMARK-AVON PROPERTIES, a partnership, its sole general partner

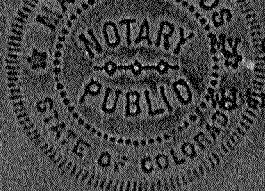
By: Ronald D. Allred  
Ronald D. Allred, a Managing Partner

By: A. J. Wells  
A. J. Wells, a managing partner

By: Doyle G. Fulton  
Doyle G. Fulton, a managing partner

STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The above and foregoing instrument was acknowledged before me this 29th day of March, 1976, by RONALD D. ALLRED, A. J. WELLS, and DOYLE G. FULTON, managing partners of Benchmark-Avon Properties, a partnership and general partner of Benchmark at Beaver Creek.



My commission expires: My Commission expires May 20, 1979

Witness my hand and official seal.

Margaret Woods  
Notary Public

Attachment A: Benchmark Covenants

and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto."

II. Paragraph 3 of the previously filed Amended Declaration of Protective Covenants is amended as follows: Lot 5, Block 1 in the Subdivision is hereby deleted from the definition "Multiple Family" and said Lot 5, Block 1 is added to the definition "Commercial"; further, the definition "Industrial" as set forth in Paragraph 1 of said Amended Declaration of Protective Covenants is added to said Paragraph 3, and Block 1, Lot 5 shall be included under said definition.

Only the amendments contained herein shall affect the previously filed Amended Declaration of Protective Covenants, and all other provisions of said Amended Declaration of Protective Covenants shall remain in full force and effect.

Executed this 29th day of March, 1976.

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership,

By: BENCHMARK-AVON PROPERTIES, a partnership, its sole general partner

By: Ronald D. Allred  
Ronald D. Allred, a Managing Partner

By: A. J. Wells  
A. J. Wells, a managing partner

By: Doyle G. Fulton  
Doyle G. Fulton, a managing partner

STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The above and foregoing instrument was acknowledged before me this 29th day of March, 1976, by RONALD D. ALLRED, A. J. WELLS, and DOYLE G. FULTON, managing partners of Benchmark-Avon Properties, a partnership and general partner of Benchmark at Beaver Creek.



My commission expires: My Commission expires May 20, 1978

In witness my hand and official seal.

Margo Woods  
Notary Public

141817

STATE OF COLORADO }  
County of EAGLE } ss.  
I hereby certify that this instrument was  
Filed for record in my office on

APR - 5 1976

at 1:20 o'clock P M and recorded  
in Book 245 Page 642  
MAXWELL B. BARZ, County Clerk & Recorder  
By Steve Ball Deputy

\$4.00 pd

# Attachment A: Benchmark Covenants

## DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS

This Declaration of Additional Protective Covenants made this 11th day of June, 1976 by BENCHMARK AT BEAVER CREEK, a Limited Partnership (the "Declarant").

### WITNESSETH

WHEREAS, the Declarant is the present owner of certain property situated in the County of Eagle, State of Colorado more particularly described in Exhibit A attached hereto and hereby incorporated by reference, which land is sometimes herein referred to as the "Property", and

WHEREAS, the Property is subject to certain existing restrictions of record set forth in instrument recorded in Book 233 at Page 565, and in Amended Declaration recorded in Book 239 at Page 249, and Second Amendment to Declaration of Protective Covenants recorded in Book 245 at Page 642, and

WHEREAS, Declarant is desirous of subjecting the Property to the additional restrictions hereinafter set forth which shall be in addition to the above-described restrictions, to insure proper use and appropriate improvement of said Property as follows:

1. No lot nor any portion thereof of the Property shall at any time be used for any of the following purposes:

(a) A package liquor store operated primarily and exclusively for such purpose.

(b) A public movie theatre.

(c) A hardware store.

(d) A grocery store whether independent or chain operated but not, including other stores which may offer on an ancillary basis certain selected items for sale which may also be sold by an independent or chain operated grocery store.

## Attachment A: Benchmark Covenants

(e) A department or variety department store, but not including a store or stores utilizing no more than 5,000 square feet within each such store for the sale of certain items which may also be sold by a variety department store.

(f) A bowling alley for public bowling, but not including bowling facilities which may be provided by lodging or resort facilities on the Property for the primary use of the patrons of such facilities.

(g) No more than two gasoline service stations.

(h) Medical/dental clinic offices, but not including individual medical or dental offices which may be established within structures not established primarily for the purposes of containing medical/dental clinic offices.

(i) Public laundromat or laundry and dry cleaning facilities, but not including such facilities which may be operated by a lodging or resort facility which may be established on the Property for the primary benefit of the patrons of such facility.

(j) A bank, state or federally chartered.

(k) Savings and loan association, state or federally chartered.

(l) Finance company.

2. Each of the foregoing restrictions shall run with the Property, and a breach of any one of them or continuance thereof, may at the option of the Declarant, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings, in addition to any other remedy at law or in equity. The attorneys fees and expenses of the prevailing party in any such action shall be included in the amount of any judgment obtained against the other party. It is understood, however,

## Attachment A: Benchmark Covenants

that the breach of any of the foregoing covenants, conditions and restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust on the Property made in good faith and for value; provided, however, (i) that any breach or continuance thereof may be enjoined, abated or remedied by the proper proceeding as aforesaid; and (ii) that each and all of the foregoing restrictions shall at all times remain in full force and effect against said premises or any part thereof, notwithstanding any foreclosure of any such mortgage or deed of trust. No assent, expressed or implied, to any breach of any one or more of the within restrictions shall be deemed to be taken to be a waiver of any succeeding or other breach.

3. If any provisions of these additional protective covenants are held invalid as a matter of law, such invalidity shall not affect the other provisions of these covenants, all of which shall remain in full force and effect as herein set forth.

4. These additional protective covenants shall remain in full force and effect until June 11, 1983; provided, however, by written recorded instrument, the Declarant, its successors or assigns, may waive or terminate the additional protective covenants, or any restriction included herein prior to that date. The benefits and burdens of these covenants are expressly intended to be limited to the parties hereto and their successors and do not create any rights or obligations in third parties of any kind.

IN WITNESS WHEREOF, the Declarant has caused these covenants to be executed the day and year first above written.

BENCHMARK AT BEAVER CREEK, a  
limited partnership

BY: BENCHMARK-AVON PROPERTIES, a  
partnership, the sole general  
partner

BY: Ronald D. Allred  
RONALD D. ALLRED, a Managing  
Partner



BY: Doyle S. Fulton  
DOYLE S. FULTON, a Managing  
Partner

BY: A. J. Wells  
A. J. WELLS, a Managing  
Partner

STATE OF COLORADO )  
CITY AND ) SS.  
COUNTY OF DENVER )

The foregoing Declaration of Additional Protective  
Covenants was subscribed and sworn to before me this 11th  
day of June, 1976 by RONALD D. ALLRED, DOYLE G. FULTON and  
A. J. WELLS, as Managing Partners of Benchmark <sup>-Aven Properties</sup> ~~At Beaver~~  
Creek, a limited partnership.

Witness my hand and official seal.

My commission expires: Nov 4, 1978

George Rosenberg  
Notary Public



Attachment A: Benchmark Covenants

EXHIBIT A TO DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS  
DATED JUNE 11, 1976 BY BENCHMARK AT BEAVER CREEK, A LIMITED  
PARTNERSHIP.

Lots 25 through 32, and Lot 35, Block 2, BENCHMARK AT BEAVER CREEK SUBDIVISION, according to the recorded plats thereof in the Office of the Clerk and Recorder of Eagle County, Colorado, as recorded December 24, 1974, in Book 238 at Page 41, and April 27, 1976, in Book 246 at Page 44, the above-described Lots 25 and 26 being more particularly described as follows:

LOT 25:

A parcel of land in the County of Eagle and State of Colorado, being a portion of Benchmark at Beaver Creek as recorded December 24, 1974, in Book 238 at Page 41, and April 27, 1976, in Book 246 at Page 44, lying within the Northwest one-quarter of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian; said parcel of land being more particularly described as follows:

Commencing at the point of intersection of the Westerly right-of-way line of tract "F" (also known as Avon Road) with the Southerly right-of-way line of Interstate Highway No. 70, said point also being the Northeasterly corner of Lot 29, Block 2, of said Benchmark at Beaver Creek Subdivision; thence S 54°11'08" E and along said Southerly right-of-way line 99.75 feet; thence continuing along said Southerly right-of-way line S 61°46'15" E 524.56 feet to the true point of beginning; thence continuing along said Southerly right-of-way line S 61°46'15" E 541.94 feet to a point of intersection with the Northerly right-of-way line of Beaver Creek Boulevard; thence along said Northerly right-of-way line 311.98 feet along the arc of a 325.00 foot radius curve to the left having a central angle of 55°00'00" and whose long chord bears S 89°16'15" W 300.14 feet; thence continuing along said Northerly right-of-way line S 63°13'45" W 90.00 feet to a point of curve; thence continuing along said Northerly right-of-way line 310.22 feet along the arc of a 372.63 foot radius curve to the right having a central angle of 47°41'57" and whose long chord bears S 87°04'44" W 301.34 feet; thence N 33°28'26" E 369.74 feet to the true point of beginning. Said parcel of land contains 2.1843 acres, more or less.

LOT 26:

A parcel of land in the County of Eagle and State of Colorado, being a portion of Benchmark at Beaver Creek as recorded December 24, 1974, in Book 238 at Page 41, and April 27, 1976, in Book 246 at Page 44, lying within the Northwest one-quarter of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian; said parcel of land being more particularly described as follows:

Commencing at the point of intersection of the Westerly right-of-way line of tract "F" (also known as Avon Road) with the Southerly right-of-way line of Interstate Highway No. 70, said point also being the Northeasterly corner of Lot 29, Block 2, of said Benchmark at Beaver Creek Subdivision; thence S 54°11'08" E and along said Southerly right-of-way line 99.75 feet; thence continuing along said Southerly right-of-way line S 61°46'15" E 201.00 feet to the true point of beginning; thence continuing along said Southerly right-of-way line S 61°46'15" E 323.56 feet; thence S 33°28'26" W 369.74 feet to a point on the Northerly right-of-way line of Beaver Creek Boulevard; thence N 69°04'18" W and along said Northerly line, 174.91 feet; thence N 11°38'42" E 407.36 feet to the true point of beginning. Said parcel of land contains 2.1746 acres, more or less.

143173

STATE OF COLORADO }  
County of EAGLE } ss.  
I hereby certify that this instrument was  
Filed for record in my office on

JUN 14, 1976

for 10.00 of Book 246 Page 947  
of Book 246 Page 947  
by Stacy Hall  
\$10.00

Return to:  
Benchmark at Beaver Creek  
Box 5  
Avon, Colo 81657

Attachment A: Benchmark Covenants

#146410-Filed for Record: Nov. 18, 1976 at 1 P M 250/143

146410

11/18/76 @ 1PM

250/143

RESTATEMENT OF AND THIRD AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership, is the beneficial owner of all that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the Final Plat, as amended, of which has been filed under Reception No. 129460 and recorded in Map Case #2, Drawer "B" of Plats in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder, the Revised Final Plat of which has been filed under Reception No. 134061 and recorded in Map Case #2, Drawer "B" in Book 238 at Page 41 in the records of the Eagle County Clerk and Recorder; Final Plat Amendment No. 1 filed under Reception No. 142223 and recorded in Book 246 at Page 43; Final Plat Amendment No. 2 filed under Reception No. 142224 and recorded in Book 246 at Page 244, and Final Plat Amendment No. 3 filed under Reception No. 145347 in Book 249 at Page 93, all respectively in the records of the Eagle County Clerk and Recorder.

BENCHMARK AT BEAVER CREEK, Grantor, as the owner of at least 51% of the land included within the boundaries of said Subdivision, hereby amends in total the previously filed Declaration of Protective Covenants for said Subdivision as recorded in Book 233 at Page 565 and the Amended Declaration of Protective Covenants as recorded in Book 245 at Page 642, both respectively recorded in the records of the Eagle County Clerk and Recorder; provided, however, that this instrument shall in no wise affect that certain instrument entitled Declaration of Additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

1. DEFINITIONS: As used herein the following words and terms shall have the following meanings:

- 1. Commercial - Lots in the Commercial Zone are intended to provide for the broad range of commercial operations and services required for the proper and convenient functioning of Commercial Centers serving large areas of the County. Uses permitted are intended to include all retail and service operations that may be appropriately located within a shopping district and that are normally required to sustain a community, including but not limited to the following: Wholesale and retail establishments, including sale of food, beverages, drygoods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant

# Attachment A: Benchmark Covenants

materials, personal service establishments, including banks, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private reading club, theater and indoor recreation; general service establishments, including automobile service stations, vehicular rental service and repair shops, motel-hotel-lodges up to 750 units, boarding and rooming houses, offices for conduct of a business or profession, studios for conduct of arts and crafts, dental and medical clinics. Also, any use by Right of the C/L District and C/G District permitted under the Zoning Resolution of Eagle County, Colorado.

2. **Committee** - A group of five persons who shall be responsible for the administration and enforcement of these protective covenants. All such persons shall be appointed by Grantor.
3. **Common Open Space** - That portion of the Subdivision held in trust by Benchmark at Beaver Creek and Eagle County and used to provide common access to the public domain by residents and visitors to the Subdivision and the public in general.
4. **Community Facilities** - A lot which may be used for religious purposes, fire station, police or sheriff's station, or similar governmental purposes, public nursery or day-care center.
5. **Condominium** - A lot which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a building containing two dwelling units; dwelling units defined herein below under the term "single family."
6. **Industrial** - A lot which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of Eagle County, including but not limited to all of the uses by right contained in the Zoning Resolution for the County of Eagle, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the

# Attachment A: Benchmark Covenants

construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto.

7. Lot - A lot located within Benchmark at Beaver Creek Subdivision.
8. Mobile Home Park - A lot which may be used for mobile home park purposes; which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and County of Eagle; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
9. Multiple Family - A lot which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
10. Single Family - A lot which may be used for the construction of only one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area. A dwelling unit is defined as one or more rooms in one building occupied by one family living independently of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.
11. Subdivision- Benchmark at Beaver Creek Subdivision.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and lessees of the lots in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the Subdivision.

3. USES: All lots in the Subdivision shall fall within the following land use definitions:

# Attachment A: Benchmark Covenants

<u>Definition</u>	<u>Lot Description</u>
1. Commercial, also designated general commercial or bank or motel-lodge or hotel-lodge or shopping center	Block 1: Lots 1 through and including 50 and 62, 63, 64, 65, 67 and 68 Block 2: Lots 20, Tract Q, 21 through and including 32, 35, 47 through and including 74 Block 3: Lots 3, 4, 7, 8
2. Common Open Space	Tracts A, B, and C
3. Community Facilities	Block 2: Lot 34 Block 3: Lot 3
4. Condominium, also designated apartment or duplex	Block 1: Lots 51, 52, 53, 54, 55, 57, 66 Block 2: Lots 2 through and including 19, 33, 34, 36 through and including 56, 58, 61, 62, 63, 64, 65 Block 3: Lots 1, 2, 5, 6, 9 through and including 14
5. Industrial	Block 1: Lots 10 through and including 37
6. Multiple Family, also designated apartment or condominium	Block 1: Lots 55, 57, 66 Block 2: Lots 2, 3, 4, 7, 11 through and including 19, 34, 41 through and including 47, 49, 51, 52, 54, 55, 56, 61, 62, 63, 64, 65 Block 3: Lots 1, 2, 5, 9 through and including 14
7. Mobile Home Park	Block 2: Lot 1
8. Single Family	Block 1: Lots 56, 58, 59, 60, 61, 69

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE:

The Planning and Architectural Control Committee, hereinafter referred to as the Committee, shall consist of five members who shall be appointed and serve at the pleasure of the Grantor, Benchmark at Beaver Creek, its successors or assigns, to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of Benchmark at Beaver Creek of which these protective covenants are made a part. The Grantor shall have the exclusive right to remove and/or replace any member of the Committee as the Grantor in its sole opinion shall deem necessary, including but not limited to the replacement of a committee member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Grantor. A majority of the Committee shall govern its actions. However, Grantor at its sole discretion may alter in part or in total any decision of the Committee. Any vacancy on the Committee shall be filled by appointment by the Grantor; in the event Grantor fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

(a) The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the Committee shall consider:

## Attachment A: Benchmark Covenants

(i) the suitability of the improvement, including materials of which it is to be constructed, to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

(d) In the event the Committee fails to approve or disapprove plans and specifications submitted to it within thirty days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The Committee is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the Committee pursuant to these Protective Covenants and any and all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of Benchmark at Beaver Creek, a limited partnership and/or its successors and assigns. Said fees may be used by the Committee for its expenses.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications for exterior materials, color schemes; landscape drawings and plant specifications; the location, character and method of utilization of all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The Committee shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.



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(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action in reviewing such drainage plans shall be guided by the recommendations of the Planning Department of Eagle County, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Grantor for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses. The Committee shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and bunting,

## Attachment A: Benchmark Covenants

display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The Committee shall review the appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The Committee shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The Committee may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the Committee) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the County of Eagle, Colorado, any successor governmental entity, the Committee aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

14. SET BACK REQUIREMENTS: The Committee may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the Committee prior to the commencement of construction. In determining the proper location for each improvement, the Committee shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the Committee. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

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16. PARKING REQUIREMENTS: Parking requirements shall be determined by the Committee. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The Committee shall not approve any construction until plans are presented and approved by the Committee that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the Committee's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements are complied with. With respect to additional general provisions, design requirements, minimum off-street loading requirements, minimum off-street parking space requirements, clear-vision area requirements, the Committee shall be guided by the standards set forth in the Eagle County Zoning Resolution, as amended.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The Committee shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the Committee.

20. NUISANCE: No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the Committee. "Benchmark", as a word, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by the Grantor.

# Attachment A: Benchmark Covenants

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the Committee upon approval thereof by the Board of County Commissioners of Eagle County, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Grantor until such time as 70% of the land included within the boundaries of the Subdivision has been sold by the Grantor, at which time the then owners of 51% of the land in the Subdivision may call an election to select a "Landowners Committee" comprised of five individual owners in the subdivision, one of whom shall be the Grantor, if the Grantor shall at such time still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. In determining the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violations.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the Committee pursuant to this instrument for which penalties are provided, or cause expenses to the Committee as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

a) Tax and special assessment liens in favor of any assessing unit; and

b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the Committee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall

## Attachment A: Benchmark Covenants

be signed by a member of the Committee and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the Committee. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Grantor hereunder shall have the power to bid in said real property at any foreclosure sale and to acquire and hold, lease, mortgage or convey the same.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structural alteration of such structure is proposed or made for the purpose of such extension.

27.1. Repaid and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2. Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3. Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the Committee based on the intent and purposes of this instrument.

27.4. Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the Committee pursuant to this instrument.

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28. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

29. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event the Committee shall have the right to cut, trim, or remove said growth at the sole expense of the respective owner of any such lot.

30. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the Grantor or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

Executed this 18th day of November, 1976.

BENCHMARK AT BEAVER CREEK, a Colorado Limited Partnership,

By BENCHMARK-AVON PROPERTIES, a Partnership, Its Sole General Partner,

By Ronald D. Allred  
Ronald D. Allred, a Managing Partner

STATE OF COLORADO )  
COUNTY OF EAGLE ) SS.

The above and foregoing instrument was acknowledged before me this 18th day of November, 1976, by RONALD D. ALLRED, a Managing Partner of Benchmark-Avon Properties, a Partnership.

My commission expires:  
WITNESS my hand and official seal.



Margo Woods  
Notary Public

Attachment A: Benchmark Covenants

RECEPTION NO.

184517

KIMMETTE PHILLIPS, RECORDER

28.00 pd.

RESTATEMENT OF AND FOURTH AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a limited partnership, exercises its power pursuant to paragraph 24 of the Restatement of and Third Amendment to Declaration of Protective Covenants for the Benchmark at Beaver Creek Subdivision, as recorded in Book 250 at Page 143 in the records of the Eagle County Clerk and Recorder, Eagle, Colorado, and hereby amends in total the above referenced Restatement and Third Amendment, provided however, that this instrument shall in no wise affect the additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

1. DEFINITIONS: As used herein the following words and terms shall have the following meanings:

1. Commercial - The commercial zone is intended to provide for the broad convenient functioning of commercial centers serving large areas of the County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: wholesale and retail establishment, including sale of food, beverages, drygoods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden

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supply, equipment rental and plant materials; personal service establishment including bank, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private club, theater and indoor recreation; general service establishment including service of automobiles, automobile service stations, vehicular rental service and repair shops, hotel-lodges up to 750 units, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

2. Committee - A group of five persons who shall be responsible for the administration and enforcement of these protective covenants. All such persons shall be appointed by Grantor.
3. Common Open Space - That portion of the Subdivision held in trust by Benchmark at Beaver Creek and used to provide common access to the public domain by residents and visitors to the Subdivision and the public in general.
4. Community Facilities - A lot which may be used for religious purposes, fire station, police or sheriff's station, or similar governmental purposes, public nursery or day-care center.
5. Condominium- A lot which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a building containing two dwelling units; dwelling units defined hereinbelow under the term "single family."



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6. Industrial -- A lot which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of Eagle County, including but not limited to all of the uses by right contained in the Zoning Resolution for the County of Eagle, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto.
7. Lot - A lot located within Benchmark at Beaver Creek Subdivision.
8. Mobile Home- A lot which may be used for mobile home park purposes; Park which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and Town of Avon; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
9. Multiple - A lot which may be used for multiple family residential Family apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
10. Single - A lot which may be used for the construction of only Family one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area. A dwelling unit defined as one or more rooms in one building occupied by one family living independent of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term

## Attachment A: Benchmark Covenants

dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.

11. Subdivision- Benchmark at Beaver Creek Subdivision.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection fo the owners and lessees of the lots in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the Subdivision.

3. USES: All lots in the Subdivision shall fall within the following land use definitions:

<u>Definition</u>	<u>Lot Description</u>
1. Commercial, also designated general commercial or bank or motel-lodge or hotel-lodge or shopping center.	Block 1: Lots 1 thru 5, Lots 10 through 42, Lots 67 and 68. Block 2: Lots 20 thru 32, Lot 35, Lots 47 thru 75, Tract Q. Block 3: Lots 3 thru 8.
2. Common Open Space	Tracts A, B, and C.
3. Community Facilities	Tracts G and P.
4. Condominium, also designated apartment or duplex	Block 1: Lots 6 thru 9, Lots 43 thru 51 and Lot 70. Block 2: Lots 2 thru 19, Lots 23, 33 and 34; Lots 36 thru 56, Lot 58, Lots 61 thru 69, Lots 71 and 72, Lot 75. Block 3: Lots 1 thru 3, Lots 5 thru 9.
5. Industrial	Block 1: Lots 10 thru 29, 32 thru 41.
6. Multiple Family, also designated apartment or condominium	Block 1: Lots 6 thru 9, Lots 43 thru 51, Lot 70. Block 2: Lots 2,3,4,7, Lots 11 thru 19, Lots 23, 34, 41 thru 56, 58 Lots 61 thru 69, 71 and 72, 75. Block 3: Lots 1 thru 3, Lots 5 and 6, and Lots 8 and 9.
7. Mobile Home Park	Block 2: Lot 1
8. Single Family	Block 1: Lots 52 thru 57, Lot 69.
9. I-70 right-of-way exception	Tract D.
10. Avon Road right-of-way	Tract E, F.

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|---|-------------------|
| 11. Eagle River-Drainage use and conservation                             | Tract H, I, K, L. |
| 12. Old River Bridge and conservation                                     | Tract J.          |
| 13. Denver and Rio Grande Western Railroad right-of-way exception to Plat | Tract M.          |
| 14. Upper Eagle Valley Sanitation District exception to Plat              | Tract N, O.       |
| 15. Shopping Center Phase 1   | Tract Q.          |
| 16. Shopping Center sign  | Tract R.          |
| 17. Access, irrigation ditch drainage, utility                            | Tract S.          |
| 18. Private landscape and drainage  | Tract T, U, V.    |
| 19. Access, drainage, utility   | Tract W.          |
| 20. Private access  | Tract X.          |

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE: The Planning and Architectural Control Committee, hereinafter referred to as the Committee, shall consist of five members who shall be appointed and serve at the pleasure of the Grantor, Benchmark at Beaver Creek, its successors or assigns, to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of Benchmark at Beaver Creek of which these protective covenants are made a part. The Grantor shall have the exclusive right to remove and/or replace any member of the Committee as the Grantor in its sole opinion shall deem necessary, including but not limited to the replacement of a committee member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Grantor. A majority of the Committee shall govern its actions. However, Grantor at its sole discretion may alter in part or in total any decision of the Committee. Any vacancy on the Committee shall be filled by appointment by the Grantor; in the event Grantor fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

(a) The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

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(b) In passing upon any plans and specifications submitted for its approval the Committee shall consider:

(i) The suitability of the improvement, including materials of which it is to be constructed, to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

(d) In the event the Committee fails to approve or disapprove plans and specifications submitted to it within thirty days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The Committee is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the Committee pursuant to these Protective Covenants and any all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of Benchmark at Beaver Creek, a limited partnership and/or its successors and assigns. Said fees may be used by the Committee for its expenses.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications; the location, character and method of utilization of

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all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The Committee shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action in reviewing such drainage plans shall be guided by the recommendations of the Planning Department of Eagle County, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

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(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Grantor for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses. The Committee shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and buntings, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The Committee shall review appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The Committee shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such

## Attachment A: Benchmark Covenants

sign rules and regulations and in harmony with the character of the Subdivision. The Committee may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the Committee) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the Town of Avon, Colorado, any successor governmental entity, the Committee aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

14. SET BACK REQUIREMENTS: The Committee may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the Committee prior to the commencement of construction. In determining the proper location for each improvement, the Committee shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the Committee. Building height is defined as the distance, measured

## Attachment A: Benchmark Covenants

vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the Committee. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The Committee shall not approve any construction until plans are presented and approved by the Committee that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the Committee's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements, minimum off-street loading requirements, clear-vision area requirements, the Committee shall be guided by the standards set forth in the Town of Avon Zoning Resolution.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The Committee shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the Committee.

20. NUISANCE: No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved



## Attachment A: Benchmark Covenants

in writing by the Committee. "Benchmark", as a work, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by the Grantor.

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the Committee upon approval thereof by the Town of Avon, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Grantor until such time as 70% of the land included within the boundaries of the Subdivision has been sold by the Grantor, at which time the then owners of 51% of the land in the Subdivision may call an election to select a "Landowners Committee" comprised of five individual owners in the subdivision, one of whom shall be the Grantor, if the Grantor shall at such time still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. In determining the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Town of Avon, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable

## Attachment A: Benchmark Covenants

attorneys' fees, for such violations.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument

or the rules and regulations promulgated by the Committee pursuant to this instrument for which penalties are provided, or cause expenses to the Committee as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens in favor of any assessing unit; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the Committee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall be signed by a member of the Committee and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the Committee. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Grantor hereunder shall have the power to bid in said real property at any foreclosure sale and to acquire and hold, lease, mortgage or convey the same.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any

## Attachment A: Benchmark Covenants

real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structure is proposed or made for the purpose of such extension.

27.1 Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2. Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3. Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the Committee based on the intent and purposes of this instrument.

27.4 Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the Committee pursuant to this instrument.

28. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Attachment A: Benchmark Covenants

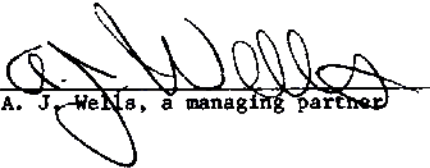
29. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event the Committee shall have the right to cut, trim, or remove said growth at the sole expense of the respective owner of any such lot.

30. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the Grantor or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

Executed this 9th day of July, 1979.

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership,

By BENCHMARK-AVON PROPERTIES, a partnership and general partner,

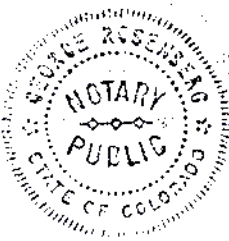
By  A. J. Wells, a managing partner

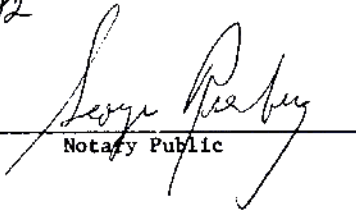
STATE OF COLORADO )  
                          ) SS.  
COUNTY OF EAGLE   )

The above and foregoing instrument was acknowledged before me this 9th day of July, 1979, by A. J. WELLS, a managing partner of Benchmark-Avon Properties, a partnership.

My commission expires: Nov. 4, 1982

WITNESS my hand and official seal



  
Notary Public

PLAT OF SUBDIVISION  
No. 288/567  
July 12, 1977

DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS

No fee  
Still on  
288/567

Benchmark at Beaver Creek, a Colorado limited partnership, ("Declarant") is the beneficial owner of all that real property located in Eagle County, Colorado and described on Exhibit A attached hereto and made a part hereof ("subject Property").

Declarant hereby makes and declares the following limitations, restrictions and uses upon and of the subject property as restrictive and protective covenants running with the land and binding upon Declarant and upon all persons claiming under Declarant and upon all future owners of any part of the subject property so long as these restrictive and protective covenants shall remain in effect.

1. Definitions. As used herein the following word or term shall have the following meaning:

Unit - a unit consists of one or more rooms in one building which may be occupied under the zoning regulations of the appropriate local governmental entity from time to time in force, by one family living independently of any other family for residential (human) occupancy. The term unit as used herein shall not include dormitories, boarding houses or any institutions such as an asylum, hospital or jail but shall include hotel or lodge rooms or separately rentable suites and shall include mobile home units for the purposes of which each separate mobile structure shall constitute one unit. Except as herein specified no room, building or other improvement shall be deemed a "unit".

2. Density Control. No more than 1,335 units shall be constructed on the subject property. Upon sale of lots within the subject property upon which a cumulative total of 1,335 units may be constructed, pursuant to the more restrictive of the subdivision plats or deed restrictions, no further lots within the subject property shall be sold unless use thereof is so restricted as to prevent construction of more than 1,335 units on the subject property.

3. Effect and Duration of Covenants. The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot within the subject property and each owner of any portion of the subject property or any interest therein, its successors, representatives and assigns, and shall continue in full force and effect until January 1, 2000 at which time they shall automatically be extended for five successive terms of ten years each.

4. Amendment. The conditions, restrictions, stipulations, agreements and covenants contained herein may be abandoned, terminated or amended by the Declarant until such time as 70% or more of the land area within the

subject property has been sold by Declarant. In the event Declarant has sold such proportion, the then owners of at least 51% of the land area in the subject property may amend, alter, revoke, or modify the conditions or restrictions, stipulations, agreements and covenants contained herein.

Provided, however, that no abandonment or termination and no amendment of these protective covenants which shall increase the number of units which may be constructed upon the subject property shall be implemented or adopted unless approved by the Board of County Commissioners of Eagle County, Colorado.

5. Enforcement. If any person shall violate or threaten to violate any of the provisions of this instrument it shall be lawful for the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property within the subject property to institute proceedings in law or in equity to enforce the provisions of this instrument and to restrain the persons violating or threatening to violate them and to recover damages for such violations, actual and punitive, together with costs and reasonable attorney's fees.

6. Condition Precedent. It is an express condition precedent to the enforceability of any provision of this instrument that there appear of record in the Office of the Clerk and Recorder of Eagle County, Colorado, within one year of the date hereof an Order from the District Court in and for said County incorporating the Plan of Avon.

EXECUTED this 22 day of February, 1978.

Benchmark at Beaver Creek,  
a Colorado limited partnership,

By Benchmark-Avon Properties,  
a partnership, its sole general  
partner.

By: Ronald D. Alford  
Managing Partner.

STATE OF COLORADO )  
 ) ss.  
County of Eagle )

The above and foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of February, 1978 by Ronald D. Alford, a Managing Partner of Benchmark-Avon Properties, a partnership, sole general partner of Benchmark at Beaver Creek, a Colorado limited partnership.

Witness my hand and official seal.

My commission expires: February 1, 1980

Maxwell R. Berg  
County Clerk & Recorder




EXHIBIT A

All that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the Final Plat of which has been filed under Reception No. 129460 in Map Case #2, Drawer "B" of Plats, and recorded in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder; the Revised Final Plat of which has been filed under Reception No. 134061 in Map Case #2, Drawer "B", and recorded in Book 238 at Page 41, as corrected by Corrected Plat recorded August 11, 1976 in Book 247 at Page 989; the Final Plat Amendment No. 1 of which has been filed under Reception No. 142223 in Map Case #2, Drawer "3" and recorded in Book 246 at Page 43; the Final Plat Amendment No. 2 of which has been filed under Reception No. 142224 in Map Case #2, Drawer "B" and recorded in Book 246 at Page 44, and the Final Plat Amendment No. 3 of which has been filed under Reception No. 145347 in Map Case #2, Drawer "B" and recorded in Book 249 at Page 93, all of such records,

Except the following:

Tracts H, O and Q

Block 1;

Lots 1, 4, 10, 12, 14-21, 26, 27, 29-33, 36, 67 and 69

Block 2;

Lots 1, 2, 5-7, 9-11, 21, 22, 24-33, 35-37, 40, 57-59, 67-69 and 72

Lot 23 BK 2  
Lot 66

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126  
17  
No. F.F.A. Amendment

RESTATEMENT OF AND FIFTH AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

Pursuant to paragraph 24 of the Restatement of and Fourth Amendment to Declaration of Protective Covenants for the Benchmark at Beaver Creek Subdivision, as recorded in Book 288 at Page 116 in the records of the Eagle County Clerk and Recorder, Eagle, Colorado, the undersigned constituting at least 4/5 of the duly elected Landowners Committee do hereby amend in total the above referenced Restatement of and Fourth Amendment, provided however, that this instrument shall in no wise affect the Additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

The Landowners Committee (hereinafter referred to as Committee), hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and binding upon all present owners of real property in said subdivision and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

1. DEFINITIONS: As used herein the following words and terms shall have the following meanings:

- 1.1 Commercial - A lot, tract of land or building space within a commercial zone intended to provide for the broad convenient functioning of commercial centers serving large areas of the Town of Avon and of Eagle County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: wholesale and retail establishments, including sale of food, beverages, dry goods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant materials; personal service establishments including a bank, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private club, theater and indoor recreation; general service establishments including service of automobiles, automobile service stations, vehicular rental service and repair shops, condominium-hotel/lodge, hotel/lodge, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.



## Attachment A: Benchmark Covenants

- 1.2 Landowners Committee - A group of five persons who shall be responsible for the administration and amendment of these protective covenants and who shall have the right to enforce these protective covenants. All such persons shall be elected as set forth in paragraph 24 of these covenants.
- 1.3 Common - That portion of the Subdivision held by Benchmark at Beaver Creek and/or its successors or assigns and used as private pen space.
- 1.4 Community Facilities - A lot, tract of land or building space which may be used for religious purposes or governmental purposes, such as, fire station, police station, water and sewer services, etc. or employee housing, public nursery or daycare center.
- 1.5 Condominium - A lot, tract of land or building space which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a single building containing two dwelling units.
- 1.6 Industrial - A lot, tract of land or building space which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of the Town of Avon and Eagle County, including but not limited to all of the uses by right contained in the Zoning Code for the Town of Avon, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation; also, including warehouse, storage, garage and office use.
- 1.7 Lot - A parcel or tract of land as described and located within Benchmark at Beaver Creek Subdivision.
- 1.8 Mobile Home Park - A lot or tract of land which may be used for mobile home park purposes; which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and Town of Avon; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.

## Attachment A: Benchmark Covenants

- 1.9 Multiple Family - A lot, tract of land or building or building space which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- 1.10 Private Park - A lot, tract of land or building space which may be used for a Recreation and Commercial related thereto clubhouse for indoor and outdoor sports activities and customary support facilities, such as, but not limited to, swimming pools, tennis courts, archery range, restaurant/lounge, pro shop, and other similar activities or services.
- 1.11 Single Family - A lot, tract of land or building which may be used for the construction of only one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area.
- 1.12 Dwelling Unit - A dwelling unit is defined as one or more rooms in a building occupied by one family living independent of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.
- 1.13 Subdivision - Benchmark at Beaver Creek Subdivision.
- 1.14 Town - The Town of Avon, Colorado.
- 1.15 BM@BC - Benchmark at Beaver Creek, a Colorado limited partnership.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and lessees of the lots and tracts in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference with or destruction of the Subdivision.

3. USES: All lots and Tracts of land in the Subdivision shall fall within the following respective land use definitions:

<u>Definition</u>	<u>Lot Description</u>
3.1 Commercial, also designated general commercial or condominium-hotel/lodge or hotel/lodge or shopping center.	Block 1: Lots 1 thru 5, Lots 10 thru 42, Lots 52A and 52B, Lots 67 and 68. Block 2: Lots A, B and C, Lots 20 thru 25, Lots 29 thru 32, Lots 55 thru 75, and Tract Q. Block 3: Lot 2.

## Attachment A: Benchmark Covenants

3.2 Common Open Space, also designated open space and conservation	Tracts A, B, and C.
3.3 Community Facilities	Tracts G and P.
3.4 Condominium, also designated apartment, multiple family duplex, or condominium-hotel-lodge	Block 1: Lots 5 thru 9, Lot 38, Lots 40 thru 51, Lot 70 and Lot 70A. Block 2: Lots A, B and C, Lots 2 thru 19, Lot 23, Lot 25, Lots 29 thru 34, Lots 36 thru 46, Lot 58, Lots 60 thru 69, Lots 71 thru 75. Block 3: Lot 1, 3, 8 and 9.
3.5 Industrial	Block 1: Lots 10 thru 37, Lot 39 and Lot 42.
3.6 Mobile Home Park	Block 2: Lot 1.
3.7 Private Park, Recreation and Commercial	Block 1: Lots 52A and 52B.
3.8 I-70 right-of-way exception	Tract D.
3.9 Avon Road right-of-way	Tract E, F.
3.10 Eagle River-Drainage use and conservation	Tract H, I, K, L.
3.11 Old River Bridge and conservation	Tract J.
3.12 Denver and Rio Grande Western Railroad right-of-way exception to Plat	Tract M.
3.13 Upper Eagle Valley Sanitation District exception to Plat	Tract N, O.
3.14 Shopping Center Phase I	Tract Q.
3.15 Shopping Center sign	Tract R.
3.16 Private landscape and drainage	Tract V.
3.17 Access, drainage, utility	Tract W.

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE: The Planning and Architectural Control Committee, hereinafter referred to as the PACC, shall consist of five members who shall be appointed and serve at the pleasure of the Committee to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of the Benchmark at Beaver Creek Subdivision of which these protective covenants are made a part. The Committee shall have the exclusive right to remove and/or replace any member of the PACC as the Committee in its sole opinion shall deem necessary, including but not limited to the replacement of a PACC member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Committee. A majority of the PACC shall govern its actions. However, Committee at its sole discretion may alter in part or in total any decision of the PACC. Any vacancy on the

## Attachment A: Benchmark Covenants

PACC shall be filled by appointment by the Committee; in the event Committee fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment by the Council of the Town of Avon, Colorado.

(a) The PACC shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the PACC shall consider:

(i) the suitability of the improvement (including materials of which it is to be constructed) to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the PACC to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values (monetary or aesthetic) will be impaired.

(d) In the event the PACC fails to approve or disapprove plans and specifications submitted to it within thirty (30) days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The PACC is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the PACC pursuant to these Protective Covenants and any and all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of the Committee and/or its successors and assigns. Said fees may be used by the PACC for its expenses.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the PACC as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications; the location, character and method of utilization of

## Attachment A: Benchmark Covenants

all utilities have been submitted to the PACC and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the PACC prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The PACC shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The PACC shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The PACC shall use reasonable judgment in passing upon all such plans and specifications, but the PACC shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the PACC acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the PACC. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the PACC. The PACC's action in reviewing such drainage plans shall be guided by the recommendations of the Engineer for the Town of Avon, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easements reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Benchmark at Beaver Creek for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services.

## Attachment A: Benchmark Covenants

Provided, however, that the use and exercise of said easement shall not permanently disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the PAAC as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the PACC either for identification of residences or places of business or other commercial uses. The PACC shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and buntings, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The PACC shall review appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The PACC shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The PACC may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by the appropriate governmental entity or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, garbage, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

## Attachment A: Benchmark Covenants

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the PACC) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the Town of Avon, Colorado, any successor governmental entity, the PACC aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the PACC.

14. SETBACK REQUIREMENTS: The PACC may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the PACC prior to the commencement of construction. In determining the proper location for each improvement, the PACC shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the PACC. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the PACC. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The PACC shall not approve any construction until plans are presented and approved by the PACC that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the PACC's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements, minimum off-street loading requirements, and clear-vision area requirements shall be met. The PACC shall be guided by the standards set forth in the Town of Avon Zoning Ordinance.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The PACC shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

## Attachment A: Benchmark Covenants

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the PACC in writing.
19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the PACC.
20. NUISANCE: No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.
21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the PACC. "Benchmark", as a word, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by BM@BC
22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the PACC upon approval thereof by the Town of Avon, Colorado.
23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.
24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Landowners Committee comprised of five individual owners in the Subdivision and elected by the owners of 51% of the land in the subdivision, one of whom shall be BM@BC, if BM@BC shall at such time of election still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings. In determining the ownership of the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "Tracts A thru F, Tracts H, I, K, L, P, R, V and W" shall be counted and shall be deemed to be owned by BM@BC.



## Attachment A: Benchmark Covenants

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the PACC, the Town of Avon, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violation.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the PACC pursuant to this instrument for which penalties are provided, or cause expenses to the PACC as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens in favor of any assessing unit; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the PACC shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall be signed by a member of the PACC and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the PACC. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

## Attachment A: Benchmark Covenants

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structure is proposed or made for the purpose of such extension.

27.1 Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2 Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3 Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the PAAC based on the intent and purposes of this instrument.

27.4 Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the PAAC pursuant to this instrument.

28. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event, the PACC shall have the right to cut, trim, control or remove said growth at the sole expense of the respective owner of any such lot.

29. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the PACC or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

30. LIABILITY: The Committee, PACC or any other owner of real property in the Subdivision shall not be liable for damages to any person or association submitting any plans and specifications or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and

## Attachment A: Benchmark Covenants


specifications or for any other action taken pursuant to these covenants in the reasonable exercise of their respective rights and powers hereunder. Any owner submitting or causing to be submitted any plans and specifications to the PACC agrees and covenants that he will not bring any action or suit to recover damages against the Committee, PACC, or any other owner, collectively, its members individually or its advisors, employees or agents. In the event of any legal action against the Committee or PACC, the prevailing party shall be entitled to reasonable attorney's fees.


31. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 4th day of MARCH, 1982.

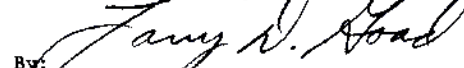
LANDOWNERS' COMMITTEE

By:

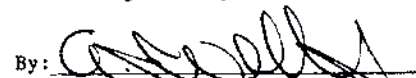
  
\_\_\_\_\_  
Angelo V. Alpi

  
\_\_\_\_\_  
William Doyle

Wildridge Development Company, a  
Colorado partnership

By:   
\_\_\_\_\_  
Larry D. Goad, Agent

Benchmark at Beaver Creek, a  
limited partnership, by Benchmark  
Company, a general partnership,  
the sole general partner

By:   
\_\_\_\_\_  
A. J. Wells, Attorney-in-Fact

Attachment A: Benchmark Covenants

STATE OF COLORADO )  
 ) SS.  
COUNTY OF EAGLE )

The above and foregoing instrument was acknowledged before me this 4th day of March, 1982, by A. J. Wells as Attorney-in-Fact for Benchmark Company, a partnership and general partner of Benchmark at Beaver Creek, a limited partnership, and by Angelo V. Alpi, and by William Doyle, and by Larry D. Goad as Agent for Wildridge Development Company, a Colorado partnership, all as members of the Landowners' Committee.

My commission expires: 6-30-84.

WITNESS my hand and official seal.



*Alma Rodgers*  
Notary Public  
Box 20  
Wor. Co. 81620  
Address

RESTATEMENT OF AND FIFTH AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BOOK 337  
PAGE 366  
JOHNNETTE PHILLIPS  
EAGLE COY. RECORDER

APR 29 11 35 AM '05

Pursuant to paragraph 24 of the Restatement of and Fifth Amendment to Declaration of Protective Covenants for the Benchmark at Beaver Creek Subdivision, as recorded in Book 337 at Page 366 in the records of the Eagle County Clerk and Recorder, Eagle, Colorado, the undersigned constituting at least 4/5 of the duly elected Landowners Committee do hereby amend in total the above referenced Restatement of and Fifth Amendment, provided however, that this instrument shall in no wise affect the Additional Protective Covenants recorded in Book 246 at Page 94 in the records of the Clerk and Recorder of Eagle County, Colorado; and

The Landowners Committee (hereinafter referred to as Committee), hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and binding upon all present owners of real property in said subdivision and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

1. DEFINITIONS: As used herein the following words and terms shall have the following meanings:

- 1.1 Commercial - A lot, tract of land or building space within a commercial zone intended to provide for the broad convenient functioning of commercial centers serving large areas of the Town of Avon and of Eagle County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: wholesale and retail establishments, including sale of food, beverages, dry goods, furniture, appliances, bakery, automotive and

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vehicular equipment, hardware, clothing, building materials, garden supply, equipment rental and plant materials; personal service establishments including a bank, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals; mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private club, theater and indoor recreation; general service establishments including service of automobiles, automobile service stations, vehicular rental service and repair shops, condominium-hotel/lodge, hotel/lodge, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

1.2 Landowners Committee

- A group of five persons who shall be responsible for the administration and amendment of these protective covenants and who shall have the right to enforce these protective covenants. All such persons shall be elected as set forth in paragraph 24 of these covenants.

1.3 Common

- That portion of the Subdivision held by Benchmark at Beaver Creek and/or its successors or assigns and used as private Open space.

1.4 Community Facilities

- A lot, tract of land or building space which may be used for religious purposes or governmental purposes, such as, fire station, police station, water and sewer services, etc. or employee housing, public nursery or daycare center.

1.5 Condominium

- A lot, tract of land or building space which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a single building containing two dwelling units.

Attachment A: Benchmark Covenants

- 1.6 Industrial - A lot, tract of land or building space which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of the Town of Avon and Eagle County, including but not limited to all of the uses by right contained in the Zoning Code for the Town of Avon, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation; also, including warehouse, storage, garage and office use.
- 1.7 Lot - A parcel or tract of land as described and located within Benchmark at Beaver Creek Subdivision.
- 1.8 Mobile Home - A lot or tract of land which may be used for mobile home park Park purposes, which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and Town of Avon; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
- 1.9 Multiple Family - A lot, tract of land or building or building space which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- 1.10 Private Park - A lot, tract of land or building space which may be used for a Recreation and Commercial re- clubhouse for indoor and outdoor sports activities and customary listed thereto support facilities, such as, but not limited to, swimming pools, tennis courts, archery range, restaurant/lounge, pro shop, and other similar activities or services.

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- 1.11 Single Family - A lot, tract of land or building which may be used for the construction of only one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area.
- 1.12 Dwelling Unit - A dwelling unit is defined as one or more rooms in a building occupied by one family living independent of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.
- 1.13 Subdivision - Benchmark at Beaver Creek Subdivision.
- 1.14 Town - The Town of Avon, Colorado.
- 1.15 BM@BC - Benchmark at Beaver Creek, a Colorado limited partnership.
- 1.16 WWR - Wildwood Resort.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and leasees of the lots and tracts in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference with or destruction of the Subdivision.

3. USES: All lots and Tracts of land in the Subdivision shall fall within the following respective land use definitions:

<u>Definition</u>	<u>Lot Description</u>
3.1 Commercial, also designated general commercial or condominium-hotel/loge or hotel/ lodge or shopping center	Block 1: Lots 1 thru 4, Lot 5 thru 42, WWR Lots 1 thru 3, Lots 67 and 68. Block 2: Lots A, B and C, Lots 29 thru 25, Lots 29 thru 32, Lots 55 thru 75, and Tract O. Block 3: Lot 2.

Our Lots 23 & 66



Attachment A: Benchmark Covenants

- |      |  |  |
|------|--|--|
| 3.2  | Common Open Space, also designated open space and conservation                             | Tracts A, B, and C.  |
| 3.3  | Community Facilities   | Tracts G and P.  |
| 3.4  | Condominium, also designated apartment, multiple family duplex, or condominium-hotel-lodge | Block 1: Lot 4, Lots 6 thru 9, Lot 32, Lots 40 thru 51, Lot 70 and Lot 70A.<br>Block 2: Lots A, B and C, Lots 2 thru 19, Lot 23, Lot 25, Lots 29 thru 34, Lots 36 thru 46, Lot 58, Lots 60 thru 69, Lots 71 thru 75.<br>Block 3: Lot 1, 3, 8 and 9.<br>WWR: Lot 1 and Lot 3. |
| 3.5  | Industrial   | Block 1: Lots 10 thru 37, Lot 39 and Lot 42.   |
| 3.6  | Mobile Home Park   | Block 2: Lot 1.  |
| 3.7  | Private Park, Recreation and Commercial  | WWR Lot 2.   |
| 3.8  | I-70 right-of-way exception  | Tract D.   |
| 3.9  | Avon Road right-of-way   | Tract E, F.  |
| 3.10 | Eagle River-Drainage use and conservation  | Tract H, I, K, L.  |
| 3.11 | Old River Bridge and conservation  | Tract J.   |
| 3.12 | Denver and Rio Grande Western Railroad right-of-way exception to Plat                      | Tract M.   |
| 3.13 | Upper Eagle Valley Sanitation District exception to Plat                                   | Tract N, O.  |
| 3.14 | Shopping Center Phase 1  | Tract Q.   |
| 3.15 | Shopping Center sign   | Tract R.   |
| 3.16 | Private landscape and drainage   | Tract V.   |
| 3.17 | Access, drainage, utility  | Tract W.   |
| 3.18 | Open Space, drainage, landscaping & signage  | WWR Lot 4  |
| 3.19 | Snow Storage, Landscaping, Drainage, Signage and Open Space                                | WWR Tract AA.  |

3.20 Snow Storage, Landscaping,  
Drainage, Parking, Signage  
and Open Space

See Tract 88.

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE: The Planning and Architectural Control Committee, hereinafter referred to as the PACC, shall consist of five members who shall be appointed and serve at the pleasure of the Committee to review, study, approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of the Benchmark at Beaver Creek Subdivision of which these protective covenants are made a part. The Committee shall have the exclusive right to remove and/or replace any member of the PACC as the Committee in its sole opinion shall deem necessary, including but not limited to the replacement of a PACC member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Committee. A majority of the PACC shall govern its actions. However, Committee at its sole discretion may alter in part or in total any decision of the PACC. Any vacancy on the PACC shall be filled by appointment by the Committee; in the event Committee fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment by the Council of the Town of Avon, Colorado.

(a) The PACC shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the PACC shall consider:

(i) the suitability of the improvement (including materials of which it is to be constructed) to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

## Attachment A: Benchmark Covenants

(c) It shall be an objective of the PACC to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values (monetary or aesthetic) will be impaired.

(d) In the event the PACC fails to approve or disapprove plans and specifications submitted to it within thirty (30) days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The PACC is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the PACC pursuant to these Protective Covenants and any and all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of the Committee and/or its successors and assigns. Said fees may be used by the PACC for its expenses.

4. APPROVAL OF CONSTRUCTION PLANS. All plans for construction and alteration shall be first submitted to the PACC as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans, provisions for off-street parking and locations of driveway access; the specifications; the location, character and method of utilization of all utilities have been submitted to the PACC and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the PACC prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

## Attachment A: Benchmark Covenants

(b) The PACC shall be authorized to levy a reasonable charge, not less than ten cents for each square foot of enclosed floor space, for the review of plans and specifications, which charge shall be paid in advance. The PACC shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The PACC shall use reasonable judgment in passing upon all such plans and specifications, but the PACC shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the PACC acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the PACC. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the PACC. The PACC's action in reviewing such drainage plans shall be guided by the recommendations of the Engineer for the Town of Avon, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision, as amended from time to time, are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easements reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

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(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Benchmark at Beaver Creek for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not permanently disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the PAAC as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the PACC either for identification of residences or places of business or other commercial uses. The PACC shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and bunting, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The PACC shall review appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The PACC shall make such aesthetic judgments necessary to insure that all

signs requiring approval under this covenant or any rules and regulations adopted hereunder hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The PACC may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by the appropriate governmental entity or any successive person or entity. No private wells or sanitation systems shall be used within the Subdivision.

11. TRASH: No trash, garbage, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the PACC) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the Town of Avon, Colorado, any successor governmental entity, the PACC aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the PACC.

14. SETBACK REQUIREMENTS: The PACC may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the PACC prior to the commencement of construction. In determining

the proper location for each improvement, the PACC shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the PACC. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the PACC. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The PACC shall not approve any construction until plans are presented and approved by the PACC that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the PACC's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements, minimum off-street loading requirements, and clear-vision area requirements shall be met. The PACC shall be guided by the standards set forth in the Town of Avon Zoning Ordinance.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The PACC shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

## Attachment A: Benchmark Covenants

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the PACC in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the PACC.

20. NUISANCE: No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the PACC. "Benchmark", as a word, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by BM@BC.

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the PACC upon approval thereof by the Town of Avon, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Landowners Committee comprised of five individual owners in the Subdivision and elected by the



## Attachment A: Benchmark Covenants

members of 5/12 of the land in the subdivision, one of whom shall be BM@BC. If any of the members shall at such time of election still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings. In determining the ownership of the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "Tracts A thru F, Tracts H, I, K, L, P, R, V and W" shall be counted and shall be deemed to be owned by BM@BC.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the PACC, the Town of Avon, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violation.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the PACC pursuant to this instrument for which penalties are provided, or cause expenses to the PACC as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

- (a) Tax and special assessment liens in favor of any assessing unit; and
- (b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the PACC shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject

property, and the legal description of the subject property. Such notices shall be signed by a member of the PACG and shall be recorded in the office of the County Recorder of the County of Eagle, State of Colorado. Such lien for the penalties and expenses shall attach from the date of the failure of payment of said assessments, penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the PACG. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structure is proposed or made for the purpose of such extension.

27.1 Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

## Attachment A: Benchmark Covenants

27.2 Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3 Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the PAAC based on the intent and purposes of this instrument.

27.4 Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the PAAC pursuant to this instrument.

28. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event, the PACC shall have the right to cut, trim, control or remove said growth at the sole expense of the respective owner of any such lot.

29. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the PACC or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

30. LIABILITY: The Committee, PACC or any other owner of real property in the Subdivision shall not be liable for damages to any person or association submitting any

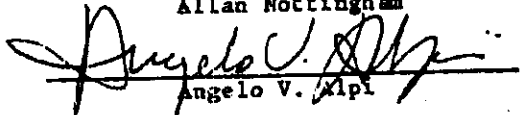
plans and specifications or to any other action taken pursuant to these covenants in the reasonable exercise of their respective rights and powers hereunder. Any owner submitting or causing to be submitted any plans and specifications to the PACC agrees and covenants that he will not bring any action or suit to recover damages against the Committee, PACC, or any other owner, collectively, its members individually or its advisors, employees or agents. In the event of any legal action against the Committee or PACC, the prevailing party shall be entitled to reasonable attorney's fees.

31. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

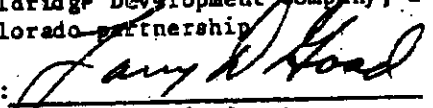
Executed this 9th day of April, 1985.


LANDOWNERS' COMMITTEE

BY:

Allan Nottingham  
  
Angelo V. Alpi

  
William Doyle

Wildridge Development Company, a  
Colorado Partnership  
BY:   
Larry D. Goad, Agent

Benchmark at Beaver Creek, a limited  
partnership, by Benchmark Company, a  
partnership and sole general partner  
BY:   
A. J. Miller, Attorney-in-Fact

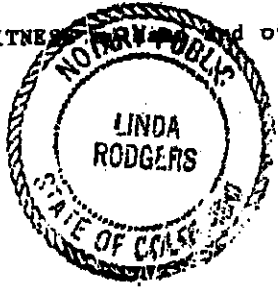
Attachment A: Benchmark Covenants

STATE OF COLORADO )  
 ) SS.  
COUNTY OF EAGLE )

The above and foregoing instrument was acknowledged before me this 9th day of April, 1985, by A. J. Wells as Attorney-in-Fact for Benchmark Company, a partnership and general partner of Benchmark at Beaver Creek, a limited partnership, and by Angelo V. Alpi, ~~partner~~ ~~partner~~ and by Willis Doyle, and by Larry D. Goad as Agent for Wildridge Development Company, a Colorado partnership, all as members of the Landowners' Committee.

My commission expires: 6-30-88

WITNESSETH my official seal.



Linda Rodgers  
Notary Public

\_\_\_\_\_  
Address

**AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION**

Pursuant to paragraph 24 of the Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, as recorded in Book 411 at Page 960 in the records of the Eagle County Clerk and Recorder, Eagle County, Colorado, at a duly called meeting of the Landowners' Committee of the Benchmark at Beaver Creek Subdivision held on June 12, 1986 in the Conference Room of Benchmark Companies, Benchmark Plaza, Avon, Colorado, 4 of the 5 members of the Landowners' Committee were present and adopted the following amendment to the Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision:

Paragraph 4.(d) of the Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision was amended in total to read as follows:

4.(d) "All other provisions of these Covenants to the contrary notwithstanding, all plans for construction and alteration which have been previously submitted to and approved by the Planning & Zoning Commission of the Town of Avon shall not be required to be submitted to PACC. Provided, however, the PACC may, at its sole option, within sixty (60) days from the initial filing or the resubmittal of an initial filing of any such construction plans with the Town of Avon, notify the Owner of the lot for which said construction plans have been submitted that it will be necessary for the owner to submit its plans for approval to the PACC in accordance with the Protective Covenants. Provided, further, in the event the Town of Avon through the Planning & Zoning Commission or similar body shall no longer exercise planning and architectural controls within the subdivision, then, in said event, all plans for construction and alteration shall be first submitted to the PACC as herein provided.

Provided, further, after the approval by the Town of Avon of an initial submittal, said approval shall be deemed an approval by the PACC unless, within ten (10) days of the approval by the Town, the PACC notifies the owner of the lot that it will be necessary for the owner to submit its' plans for approval to the PACC in accordance with the Protective Covenants.

In the event of any submissions of construction plans to the PACC as may be required herein, the PACC shall have thirty (30) days to approve or disapprove plans and specifications submitted. In the event the PACC shall fail to take action on any submittal, then, in said event, approval shall not be required and the Covenants shall be deemed to have been fully complied with."

12000

The above represents a true and correct statement of the Amendment to Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision as adopted by 4 of the 5 members of the Landowners' Committee at the meeting stated above.

*Angelo V. Alpi*  
Angelo V. Alpi,  
Acting Secretary of the Landowners'  
Committee for the June 12, 1986 meeting

Subscribed, s<sup>v</sup> for, and acknowledged before me this 10<sup>th</sup> day  
of January, 1986 by Angelo V. Alpi who is known to me to have been the  
Acting Secretary of Benchmark at Beaver Creek Subdivision Landowners' Committee  
for the June 12, 1986 Landowners' Committee meeting.

*P. Linda Lodge*  
Notary Public

*My Commission Expires: 1-5-92*

24465001-15

# Attachment B: Notice to Benchmark Owners

## BENCHMARK AT BEAVER CREEK SUBDIVISION OWNERS

October 14, 2016

### Notice of Avon Town Council Public Meeting and Notice of Special Owners Meeting

#### **BY USPS FIRST CLASS MAIL**

To All Owners Within Benchmark at Beaver Creek Subdivision:

**The Town of Avon invites all Owners of property within Benchmark at Beaver Creek Subdivision (the "Benchmark Subdivision") to attend the Avon Town Council meeting on Tuesday, October 25, 2016 at the Avon Town Hall, located at 1 Lake Street, Avon, CO 81620, and invites all Owners of property within the Benchmark Subdivision to attend a Special Owners Meeting to be held at 2:00 p.m. Mountain Time on Tuesday, November 15, 2016 in the Avon Town Hall, located at 1 Lake Street, Avon, CO 81620.**

The purpose of this Special Owners Meeting is to (1) consider revocation and termination of the restrictive covenants set forth in Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision recorded February 27, 1974 in Book 233, Page 565 of the Eagle County, Colorado real property records, as amended and/or restated by the various instruments referenced in **Exhibit A** attached hereto (collectively, the "**Declaration**"); and (2) announce the results of the Owners' vote to revoke and terminate the Declaration, as further described below.

The Declaration was adopted in 1974 before the incorporation of the Town of Avon in 1978 as part of the original Benchmark development. The Declaration encumbers a substantial portion of the Town's municipal boundaries. Since Avon's incorporation, the Town of Avon has adopted a Home Rule Charter and Avon Municipal Code (the "Town Code"). Title 7 of the Town Code sets forth the Avon's Development Code which includes a comprehensive and cohesive set of modern land use, zoning, design and landscaping regulations applicable to all of Avon, including the Benchmark Subdivision.

The Declaration itself is outdated in that it includes provisions which are often inconsistent with the regulations in the Town Code. In addition, since the Declaration has been amended and restated multiple times, the existence of the Declaration as an encumbrance against title to properties included within the Benchmark Subdivision is extremely difficult to track since some of the amendments only affect discrete portions of the Benchmark Subdivision, but not others. Overall, the Town believes that the Declaration is convoluted, redundant and creates a second and unnecessary set of development rules that impedes economic vitality within the portions of the Town encumbered by the Declaration.



## Attachment B: Notice to Benchmark Owners

After careful consideration, the Town of Avon firmly believes that revocation and termination of the Declaration will simplify the regulation of development within the Benchmark Subdivision. The resulting clarity in regulations applicable to the Benchmark Subdivision should benefit the marketability of properties within the Benchmark Subdivision by eliminating a confusing and convoluted secondary set of regulations encumbering the Benchmark Subdivision's properties.

The Declaration and its associated restrictive covenants may be revoked and terminated, as applicable, by either (i) the written consent of the owners of at least 51% of the land within the Benchmark Subdivision, and/or (ii) the written approval of a 4/5ths majority vote of a Landowner's Committee comprised of five individual landowners within the Benchmark Subdivision, duly elected by the owners of at least 51% of the land within the Benchmark Subdivision. Termination of the Declaration would be made effective upon and evidenced by executing and recording the Termination of Protective Covenants for Benchmark at Beaver Creek Subdivision (the "**Termination**") attached hereto as **Exhibit B**.

The Special Owners Meeting will be facilitated by the Town which owns title to a majority of the land encumbered by the Declaration. After answering any questions that may be posed by owners of title to properties within the Benchmark Subdivision, the Town will tally and announce the results of the owners' voting based on the completed proxies and ballots enclosed with this notice. The voting of the Landowners Committee will also be announced at the Special Owners Meeting if available at that time. No other business will be discussed or conducted at the Special Owners Meeting. **All votes pertaining to revocation and termination of the Declaration must be cast using the enclosed form of proxy and ballot, which must be returned in accordance with the instructions stated below, no later than Friday, November 11, 2016, which is two (2) business days prior to the Special Owners Meeting.** The owners each have two votes: (i) for or against revocation and termination of the Declaration; and (ii) for or against election of the ballot's slate of five individual owners appointed to the Landowner's Committee who shall be directed to vote for revocation and termination of the Declaration.

All votes must be cast on the proxy and ballot form enclosed; must be mailed by United States Postal Service First Class Mail, faxed, or scanned and e-mailed to the address below; and must be received at such address **on or before Friday, November 11, 2016 (which is two (2) business days prior to the Special Owners Meeting).** Mail completed proxy and ballot to:

Benchmark at Beaver Creek Subdivision  
CONFIDENTIAL BALLOT  
C/O Michael J. Repucci  
Johnson & Repucci LLP  
2521 Broadway, Suite A  
Boulder, CO 80304  
Facsimile: 303-442-0191  
E-mail: tarioux@j-rlaw.com

## Attachment B: Notice to Benchmark Owners

Thank you for your participation in this important matter to assist in furthering the continued economic vitality of Avon.

Town of Avon,

Virginia Egger

Virginia Egger, Town Manager

Eric J. Heil

Eric J. Heil, Town Attorney

**Enclosures:**

1. Proxy Statement and Absentee Ballot
2. Agenda for Special Owners Meeting

## Attachment B: Notice to Benchmark Owners

### Exhibit A

DECLARATIONS AND AMENDMENTS				
<u>Reception</u> <u>Number</u>	<u>Book</u>	<u>Page</u>	<u>Recording</u> <u>Date</u>	<u>Document Title</u>
129459	233	565	2/27/1974	Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision
135288	239	249	4/7/1975	Amended Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>Amends 233/565 [References Plat 233/566]</i>
141817	245	642	4/5/1976	Second Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek <i>Amends 239/49 [References Plats 129460 and 134061]</i>
143173	246	947	6/14/1976	Declaration of Additional Protective Covenants <i>[References Decls 233/565, 239/249, and 245/642]</i>
146410	250	143	11/18/1976	Restatement of and Third Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek <i>Amends 233/565, 245/642, 246/947 [References Plats 129460, 134061, 142223, 142224, and 145347]</i>
184517	288	116	7/12/1979	Restatement of and Fourth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 250/143 and 246/947]</i>
184968	288	567	7/19/1979	Declaration of Additional Protective Covenants
233718	337	366	3/5/1982	Restatement of and Fifth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision
308238	411	960	4/23/1985	Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 246/947]</i>
418888	522	721	2/7/1990	Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 411/960]</i>

# Attachment B: Notice to Benchmark Owners

## Exhibit B

### TERMINATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION

#### TERMINATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION

THIS TERMINATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION (this “**Termination**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by the Town of Avon, Colorado, a Colorado home rule municipal corporation acting on behalf of the “**Benchmark at Beaver Creek Owners**” and the “**Benchmark at Beaver Creek Landowners Committee**” (as those terms are hereinafter defined).

#### RECITALS

WHEREAS, pursuant to that certain Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision recorded February 27, 1974 in Book 233 at Page 565 of the Eagle County, Colorado real property records, as amended, restated and modified by the instruments listed in **Exhibit A** attached hereto and made a part hereof (the Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, together with all amendments and modifications thereto, are hereinafter collectively referred to as the “**Declaration**”), certain conditions, stipulations, agreements, limitations, restrictions and uses have been made and placed of record as restrictive and protective covenants (collectively, the “**Protective Covenants**”) running with title to the real property known as Benchmark at Beaver Creek Subdivision, as such land is identified and depicted in those certain plats recorded in the real property records of Eagle County, Colorado that are listed in **Exhibit B** attached hereto and made a part hereof (the “**Subdivision**”); and

WHEREAS, pursuant to the Declaration, the Protective Covenants may be abandoned, terminated, amended, altered, revoked or modified, as applicable, by either (i) the written consent of the owners of at least 51% of the land within the Subdivision (the “**Benchmark at Beaver Creek Owners**”), and/or (ii) the written approval of at least a 4/5ths majority vote of the Landowners Committee comprised of five individual owners in the Subdivision who are duly elected by the owners of at least 51% of the land within the Subdivision (the “**Benchmark at Beaver Creek Landowners Committee**”); and

WHEREAS, pursuant to the Declaration, the Benchmark at Beaver Creek Owners have by written consent pursuant to a duly held election, and the duly elected Benchmark at Beaver Creek Landowners Committee has by at least a 4/5 majority vote, agreed and elected to terminate, abandon, and revoke the Protective Covenants in accordance with this Termination; and

## Attachment B: Notice to Benchmark Owners

WHEREAS, all other preconditions to the effectiveness of this Termination have occurred or been duly waived.

### **TERMINATION**

NOW, THEREFORE, effective immediately upon the recording of this Termination in the real property records of Eagle County, Colorado, the Declaration and all Protective Covenants contained therein shall be terminated, abandoned, and revoked and shall be of no further force or effect whatsoever.

IN WITNESS WHEREOF, the Town of Avon, owning at least 51% of the land within the Subdivision and acting on behalf of the Benchmark at Avon Owners and the Benchmark at Avon Landowners Committee, as applicable, attest to the truth of the foregoing Recitals and approve this Termination as of the date and year first written above.

Town of Avon

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Town of Avon Attorney

Attachment B: Notice to Benchmark Owners

STATE OF COLORADO     )  
  )ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ of the Town of Avon, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO     )  
  )ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, as \_\_\_\_\_ of the Town of Avon, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

## Attachment B: Notice to Benchmark Owners

### Exhibit A

#### DECLARATIONS AND AMENDMENTS

<u>Reception Number</u>	<u>Book</u>	<u>Page</u>	<u>Recording Date</u>	<u>Document Title</u>
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143173	246	947	6/14/1976	Declaration of Additional Protective Covenants <i>[References Decls 233/565, 239/249, and 245/642]</i>
146410	250	143	11/18/1976	Restatement of and Third Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek <i>Amends 233/565, 245/642, 246/947 [References Plats 129460, 134061, 142223, 142224, and 145347]</i>
184517	288	116	7/12/1979	Restatement of and Fourth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 250/143 and 246/947]</i>
184968	288	567	7/19/1979	Declaration of Additional Protective Covenants
233718	337	366	3/5/1982	Restatement of and Fifth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision
308238	411	960	4/23/1985	Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 246/947]</i>
418888	522	721	2/7/1990	Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 411/960]</i>

Attachment B: Notice to Benchmark Owners

**Exhibit B**

RECORDED PLATS

<u>Reception Number</u>	<u>Book</u>	<u>Page</u>	<u>Recording Date</u>	<u>Document Title</u>
129460	233	566	2/27/1974	Final Plat, Benchmark at Beaver Creek, Eagle County, Colo.
134061	238	41	12/26/197 4	Revised Final Plat, Benchmark at Beaver Creek, Eagle County, Colo.
142223	246	43	4/27/1976	Final Plat Amendment No. 1, Lot 5, Block 1, Tract A and Tract B, Benchmark at Beaver Creek, Eagle County, Colorado
142224	246	44	4/27/1976	Final Plat Amendment No. 2, Lot 26, 27, and 28, Block 2, Benchmark at Beaver Creek, Eagle County, Colorado
145347	249	93	10/1/1976	Final Plat Amendment No. 3, Benchmark at Beaver Creek, Eagle County, Colo.



Attachment C: Proxy Statement-Absentee Ballot

**PROXY STATEMENT AND ABSENTEE BALLOT FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION**

A Special Owners Meeting of the Benchmark at Beaver Creek Subdivision (the "Owners") is scheduled for Tuesday, November 15, 2016 at 2:00 p.m. Mountain Time in the Avon Town Hall, located at 1 Lake Street, Avon, CO 81620.

*Please fill in the proxy information below if you wish to appoint someone to attend the meeting in your place. You may **ONLY** choose to name as your proxy **ONE** person who is an Owner of title to real property in the Subdivision.*

*Your votes in this matter on the two (2) questions presented **MUST** be cast via this absentee ballot and be received on or before **Friday, November 11, 2016 at the below address**. You may fill out only one (1) ballot, regardless of how many tracts, parcels, lots or units you own within the Subdivision.*

*Therefore, regardless of whether you plan to be at the meeting, please complete the absentee ballot, sign it, and timely deliver it to the address listed below.*

---

**PROXY STATEMENT AND ABSENTEE BALLOT**

Your Name(s): [insert merge field]

Your Benchmark at Beaver Creek Address(es): \_\_\_\_\_  
(attach additional pages, if necessary)

**\*\*\*\*\* PROXY STATEMENT \*\*\*\*\***

KNOW ALL MEN BY THESE PRESENTS, That I/We, [insert merge field], being the Owner(s) of the real property described as Eagle County Assessor's Tax Parcel Identification Number(s) [insert merge field], do hereby irrevocably appoint any designated official of the Town of Avon, Colorado to be my/our/its Proxy, to attend in my/our/its place the Special Owners Meeting to be held on Tuesday, November 15, 2016, at 2:00 p.m. Mountain Time. This Proxy shall remain in full force and effect until such time as it shall be revoked by the undersigned in writing, but in no event later than the actual date of the Special Owners Meeting.

Your Signature: \_\_\_\_\_

Your Signature: \_\_\_\_\_

Attachment C: Proxy Statement-Absentee Ballot

\*\*\*\*\* ABSENTEE BALLOT \*\*\*\*\*

*To be completed whether or not you also attend the Special Owners Meeting. There will be no voting at the Special Owners Meeting. All voting is via this absentee ballot.*

I hereby vote as follows on each of the following two (2) questions:

**QUESTION NO. 1** (Check only **ONE** from the following two choices):

- I vote **FOR** and consent to terminating, abandoning and revoking the Declaration described in the Notice of Special Owners Meeting dated October 14, 2016 (the "Notice") and I approve the Termination of Protective Covenants for Benchmark at Beaver Creek Subdivision attached as Exhibit B to the Notice (the "Termination").
- I vote **AGAINST** and do not consent to terminating, abandoning and revoking the Declaration described in the Notice and I disapprove the Termination.

**QUESTION 2** (Check only **ONE** from the following two choices):

Proposed slate of five individual Owners to constitute the Landowners Committee, each of which is an owner of land within the Subdivision:

The Town of Avon, represented by Mayor Jennie Fancher; Marka Ann McLaughlin Brenner; Ellen Mary Crosbie Revocable Trust, represented by Ellen Mary Crosbie as Trustee; Katherine E. Pakozdi; and Robert E. Tarte

- I vote **FOR** the above proposed slate of five individual Owners to constitute the Benchmark at Beaver Creek Landowners Committee who shall be directed to vote to terminate, abandon, and revoke the Declaration and to approve the Termination.
- I vote **AGAINST** the above proposed slate of five individual Owners to constitute the Benchmark at Beaver Creek Landowners Committee,

Date \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Date \_\_\_\_\_ Signature of Owner \_\_\_\_\_

**Please fill in the information below for our files:**

**Mailing Address:** \_\_\_\_\_

\_\_\_\_\_

Attachment C: Proxy Statement-Absentee Ballot

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**This completed ballot MUST be received at the below address by Friday, November 11, 2016 via USPS First Class Mail, Facsimile or E-mail:**

Benchmark at Beaver Creek Subdivision  
CONFIDENTIAL BALLOT  
C/O Michael J. Repucci  
Johnson & Repucci LLP  
2521 Broadway, Suite A  
Boulder, CO 80304  
Facsimile: 303-442-0191  
E-mail: tarioux@j-rlaw.com



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Matt Pielsticker, AICP, Planning Director  
Meeting Date: October 25, 2016 Meeting  
Agenda Topic: First Reading of Ordinance 2016-19, An Ordinance Approving the Rezoning of Lot 4, Mountain Vista Resort Subdivision, from Planned Unit Development (PUD) to Public Facilities (PF)

---

### **ACTION BEFORE COUNCIL**

Vote on an Ordinance that changes the zoning of the new Town Hall parcel from Planned Unit Development (PUD) to Public Facilities (PF) zone district.

### **PROPOSED MOTION**

*"I move to approve Ordinance 2016-19 (**Exhibit A**), thereby approving first reading of an Ordinance rezoning Lots 4, Mountain Vista Resort Subdivision, from PUD to PF."*

### **BACKGROUND**

Shortly after the purchase of the new Town Hall 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 further evaluate the zoning options so as to not restrict possibilities with new construction.

Code text amendments were processed to allow more flexibility with additional housing uses in PF and governmental uses in the TC zone district. The following changes to the development code were approved:

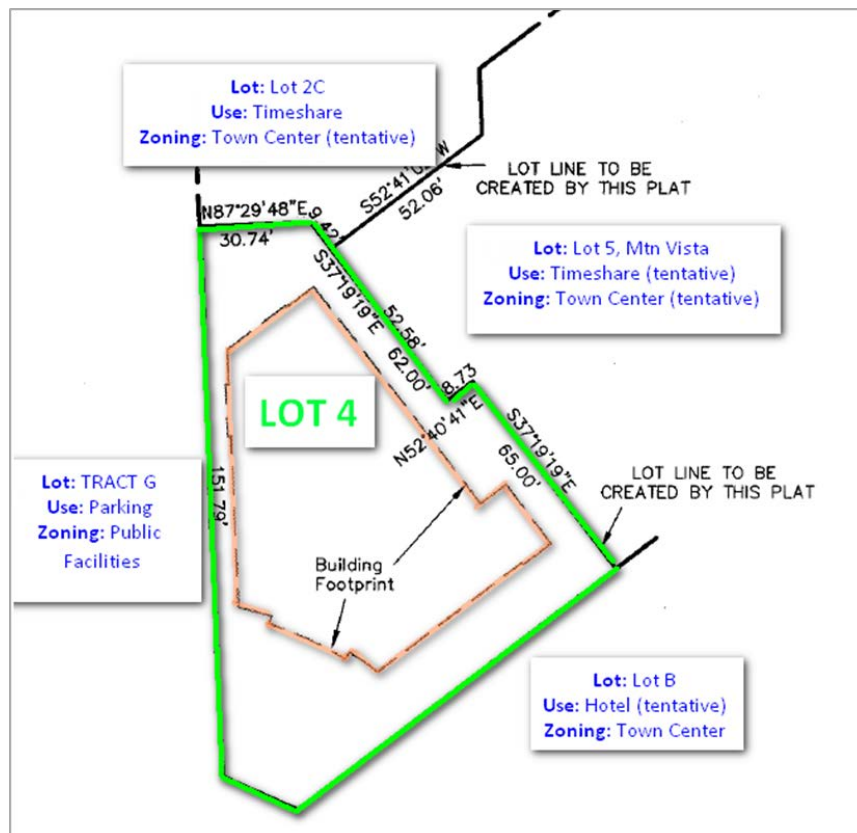
1. Residential Uses were added as a Special Review Use (SRU) in the PF zone district; and
2. Public and Institutional Uses added as a Use by Right in the TC zone district.

Following the approval of the code text changes, the Planning and Zoning Commission (PZC) again reviewed the rezoning of Lot 4. At a public hearing on October 4, 2016, PZC discussed the intended use of the facility first and foremost as a governmental office building. Citing concerns with other potential non-governmental uses in the development and resultant parking demands, PZC recommended that Council approve rezoning the property from PUD to the PF zone district, citing the following findings:

1. The Application was reviewed in accordance §7.16.050, *Rezoning*, Avon Development Code, and is found to be in substantial compliance with the review criteria.
2. The subject property is publicly owned by the Town of Avon and should remain public without private uses.
3. Town Center (TC) zone district designation is not appropriate for public uses.
4. Uses allowed in the TC zone district could result in inadequate parking allocations, or result in private enterprises' reliance on public parking currently reserved for the Recreation Center and other public uses.
5. The Application provides assurances with respect to building form, development standards, and allowed uses consistent and in scale with adjacent neighboring existing and planned land uses.
6. The Application is substantially compliant with the purpose statements of the Development Code by providing for the orderly, efficient use of the Property, while at the same time conserving the value of the investments of owners of property in Town.

**PROPERTY DESCRIPTION**

Lot 4 is approximately a 1/4 acre in size and is currently surrounded by parking lots and undeveloped portions of the Mountain Vista development project. The lot itself is covered mostly with the vacant office building footprint and concrete sidewalks surrounding the building. The property is bounded on the west by Tract G and surface parking; south by the Main Street Pedestrian Mall; on the north by the partially developed Sheraton Mountain Vista Subdivision, and on the east by Lot B and potential future site of a hotel.



## **REZONING REVIEW CRITERIA**

As outlined in Sec. 7.20.080(e), the PF district “is intended to provide sites for public uses such as community centers, police and fire stations, and governmental facilities.” The review process and review criteria for zoning amendments are governed by AMC §7.16.050, Rezonings. Council shall use the criteria below as the basis for a final decision on the application. Staff responses to each review criteria are provided.

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

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

*(a) Divide the Town into zones, restricting and requiring therein the location, erection, construction, reconstruction, alteration and use of buildings, structures and land for trade, industry, residence and other specified uses; regulate the intensity of the use of lot areas; regulate and determine the area of open spaces surrounding such buildings; establish building lines and locations of buildings designed for specified industrial, commercial, residential and other uses within such areas; establish standards to which buildings or structures shall conform; establish standards for use of areas adjoining such buildings or structures;*

*(b) Implement the goals and policies of the Avon Comprehensive Plan and other applicable planning documents of the Town;*

*(c) Comply with the purposes stated in state and federal regulations which authorize the regulations in this Development Code;*

*(d) Avoid undue traffic congestion and degradation of the level of service provided by streets and roadways, promote effective and economical mass transportation and enhance effective, attractive and economical pedestrian opportunities;*

*(e) Promote adequate light, air, landscaping and open space and avoid undue concentration or sprawl of population;*

*(f) Provide a planned and orderly use of land, protection of the environment and preservation of viability, all to conserve the value of the investments of the people of the Avon community and encourage a high quality of life and the most appropriate use of land throughout the municipality;*

*(g) Prevent the inefficient use of land; avoid increased demands on public services and facilities which exceed capacity or degrade the level of service for existing residents; provide for phased development of government services and facilities which maximizes efficiency and optimizes costs to taxpayers and users; and promote sufficient, economical and high-quality provision of all public services and public facilities, including but not limited to water, sewage, schools, libraries, police, parks, recreation, open space and medical facilities;*

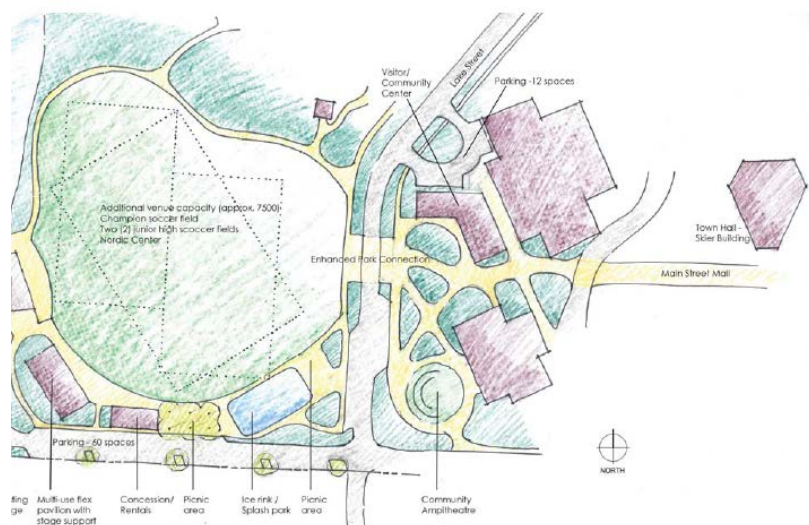
*(h) Minimize the risk of damage and injury to people, structures and public infrastructure created by wild fire, avalanche, unstable slopes, rock fall, mudslides, flood danger and other natural hazards;*

*(i) Achieve or exceed federal clean air standards;*

- (j) Sustain water sources by maintaining the natural watershed, preventing accelerated erosion, reducing runoff and consequent sedimentation, eliminating pollutants introduced directly into streams and enhancing public access to recreational water sources;
- (k) Maintain the natural scenic beauty of the Eagle River Valley in order to preserve areas of historical and archaeological importance, provide for adequate open spaces, preserve scenic views, provide recreational opportunities, sustain the tourist-based economy and preserve property values;
- (l) Promote architectural design which is compatible, functional, practical and complimentary to Avon's sub-alpine environment;
- (m) Achieve innovation and advancement in design of the built environment to improve efficiency, reduce energy consumption, reduce emission of pollutants, reduce consumption of non-renewable natural resources and attain sustainability;
- (n) Achieve a diverse range of attainable housing which meets the housing needs created by jobs in the Town, provides a range of housing types and price points to serve a complete range of life stages and promotes a balanced, diverse and stable full time residential community which is balanced with the visitor economy;
- (o) Promote quality real estate investments which conserve property values by disclosing risks, taxes and fees; by incorporating practical and comprehensible legal arrangements; and by promoting accuracy in investment expectations; and
- (p) Promote the health, safety and welfare of the Avon community.

Staff Response: The Application is substantially compliant with the purpose statements of the Development Code by providing for the orderly, efficient use of the Property, while at the same time considering adjacent land uses and compatibility of land uses in the vicinity.

The Application complies with the goals and policies of the Avon Comprehensive Plan and other applicable planning documents. Two planning study documents were completed in 2015 that support the rezoning and final use of the building as a Town Hall. The Avon Town Hall Facility Assessment and Space Needs Analysis was completed by SEH, Inc consultant to the Town. In addition to looking at space requirements and condition of the existing Town Hall, the study identified Lot 4 as the preferred option for a new Town Hall.



Further support for this rezoning was documented with the *Planning Services Review and Update of Nottingham Park Master Plan, Swift Gulch Master Plan, and Lot 5 Development Plan*, completed in November, 2015 by Stan Clauson Associates, consultant to the Town. That planning study looked at three alternatives for Town Hall, with the preferred option as Lot 4.

Staff Response: The application will provide consistency with the Comprehensive Plan, and supporting planning documents listed above. Specific goals and policies that support the rezoning include:

- Policy C.1.6:** Include sufficient land for public uses such as schools, recreation, community facilities (such as childcare), and government services near the people who use them.
- Goal J.2:** Ensure cost effective provision and development of public facilities and services.
- Policy J.2.2:** Locate schools, parks, and other civic facilities, along trails, sidewalks, and transit facilities.
- Goal J.3.1:** Encourage the broad participation of citizens in planning efforts and decision-making.

The *West Town Center Investment Plan* also supports moving public offices from their current location to accommodate other potential uses in its current footprint. The area between the Recreation Center and New Town Hall property is still envisioned to accommodate an expansion to the Recreation Center as well as a possible parking structure with employee housing and limited retail space on the Main Street Pedestrian Mall.

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

Staff Response: The Property is physically suitable for the proposed development as a Town Hall. A design and development process is already underway for the envisioned land use.

**(4) Compatibility with surrounding land uses;**

Staff Response: Governmental offices, with supportive community and related uses fit well between the park, Recreation Center, and library, with transition to the Main Street Pedestrian Mall and lodging activities that surround. The permitted uses in the PF zone District include the following:

- Art Gallery or Museums
- Community Centers



- Libraries
- Government Services, Offices, and Facilities
- Education
- Transit Facilities
- Medical
- Recycling Centers
- Residential Uses by Special Review Use
- Other Accessory Uses as determined by the Director

Public uses are concentrated in this area of Town at the edge of Nottingham Park and appear to be compatible with surrounding residential, commercial, and lodging land uses. The interface of Lot 4 with the surrounding uses (both existing and proposed) will be studied in more detail with the completion of the Main Street Pedestrian Mall planning.

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

*Staff Response:* As identified with updated planning studies, conditions have changed in the area of Tract G with the construction of the Pavilion. Additionally, ballot issues passed for the police and fire departments for the relocation to the north side of Interstate 70. This property is positioned between several TC properties to the east, and a large area of PF zoned district property to the west. While the potential use/character may be unconventional, it will ultimately be for the public good. It is envisioned that the building and supporting uses will have a high level of interaction with the Main Street Pedestrian Mall and be supportive of public use to a much higher degree than the current Town Hall facility on Tract G.

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

*Staff Response:* Adequate facilities are available to serve the development type and scope. If additional residential or office uses are pursued for the building, utilities can be up-sized.

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

*Staff Response:* The PF zone district is appropriate for the Lot's intended uses. The Public Facilities district "is intended to provide sites for public uses such as community centers, police and fire stations, and governmental facilities." Staff and PZC carefully analyzed the TC zone district; however, the PF district fit best with the planned uses.

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

*Staff Response:* Staff does not anticipate any adverse impacts upon the natural environment, compared to the existing zoning (office/retail).

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

*Staff Response:* No significant impacts to other properties in the vicinity are envisioned with a PF land use designation. All of the neighboring properties are aware of the proposed rezoning and intended use of the property; some neighboring property owners intend to perform additional improvements to create additional vibrancy in the area.

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

*Staff Response:* The rezoning would supersede and void the existing PUD Development Plan documents.

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

*Staff Response:* The intensity of use is comparable to existing zoning and possible uses of the property.

#### **ATTACHMENTS**

Exhibit A: Ordinance 2016-19

Exhibit B: PZC Record of Decision



**TOWN OF AVON, COLORADO  
ORDINANCE NO. 16-19**

**REZONING LOT 4, MOUNTAIN VISTA RESORT SUBDIVISION, AVON,  
COLORADO, FROM PLANNED UNIT DEVELOPMENT TO PUBLIC  
FACILITIES**

**WHEREAS**, the Town of Avon (“**Town**”) is a home rule 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 of Avon (“**Applicant**”) submitted an application to rezone Lot 4, Mountain Vista Resort Subdivision, Avon, Colorado (“**Property**”) from Planned Unit Development to Public Facilities zone district; and

**WHEREAS**, according to the Avon Municipal Code (“**AMC**”) §7.20.080(c), the PF district is intended to provide sites for public uses such as community centers, police and fire stations and governmental facilities; and

**WHEREAS**, the Town’s Planning & Zoning Commission (“**PZC**”), after publishing and posting notice as required by law, held a public hearing on October 4, 2016; and prior to formulating a recommendation to the Town Council considered all comments, testimony, evidence and Town Staff reports; and then took action to adopt Findings of Fact and a Record of Decision on October 18, 2016, in accordance with AMC §7.16.020(f), making a recommendation to the Town Council to approve the Application; and

**WHEREAS**, the Town Council of the Town of Avon, after publishing and posting notice in accordance with the requirements of AMC §7.16.020(d), *Step 4: Notice*, held a public hearing November 15, 2016, and prior to taking final action considered all comments, testimony, evidence and Town Staff reports; and then took action by approving this Ordinance; and

**WHEREAS**, in accordance with AMC §7.12.020, *Town Council*, and in addition to other authority granted by the Town Charter, its ordinances or State of Colorado law, the Town Council has application review and decision-making authority to approve, approve with conditions or deny the Application; and

**WHEREAS**, pursuant to AMC §7.16.050(c), *Review Criteria*, the Town Council has considered the applicable review criteria for rezoning and finds that the criteria are met in accordance with the town staff report, and in accordance with the Findings of Fact; and

**WHEREAS**, the Property is located adjacent to property owned by the Town of Avon which is currently zoned PF district and the Property is intended for use as a Town Hall, government facilities, and accessory land uses; and

**WHEREAS**, the Town Council finds that the rezoning from Planned Unit Development to the Public Facilities district will promote the Avon Comprehensive Plan for District 1, promote uniformity of zoning regulations in the Town Core area, and will thereby promote the health, safety and welfare of the Avon community; and

**WHEREAS**, approval of this Ordinance on First Reading is intended only to confirm 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 the application, and that approval of this Ordinance on First Reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this Ordinance.

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

**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.**     **Rezoning.** Lots 4, Mountain Vista Resort Subdivision, Avon, Colorado, is hereby rezoned from Planned Unit Development to the Public Facilities district.

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

**Section 4.**     **Effective Date.** This Ordinance shall in no event take effect sooner than thirty (30) days after final adoption in accordance with Section 6.4 of the Avon Home Rule Charter.

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

**Section 6.**     **No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability

incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**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.

***[EXECUTION PAGE FOLLOWS]***

**INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING** on October 25, 2016 and setting such public hearing for November 15, 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 November 15, 2016.

BY:

ATTEST:

\_\_\_\_\_  
Jennie Fancher, Mayor

\_\_\_\_\_  
Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Eric J. Heil, Town Attorney

**PLANNING AND ZONING COMMISSION  
FINDINGS OF FACT AND RECCOMENDATION TO TOWN COUNCIL**



**DATE OF PUBLIC HEARING:** October 4, 2016  
**APPROVAL OF FINDINGS:** October 18, 2016  
**TYPE OF APPLICATION:** Rezoning  
**PROPERTY LOCATION:** Lot 4, Mountain Vista Subdivision  
**FILE NUMBER:** #REZ16002  
**APPLICANT:** Town of Avon

This decision and recommendation is made in accordance with Avon Development Code ("Development Code") §7.16.040(c):


**DECISION:** Recommendation to approve Rezoning of the property from Planned Unit Development (PUD) to the Public Facilities (PF) zone district, citing the following findings:

**FINDINGS:**

1. The Application was reviewed in accordance §7.16.050, *Rezoning*, Avon Development Code, and is found to be in substantial compliance with the review criteria.
2. The subject property is publicly owned by the Town of Avon and should remain public without private uses.
3. Town Center (TC) zone district designation is not appropriate for public uses.
4. Uses allowed in the TC zone district could result in inadequate parking allocations, or result in private enterprises' reliance on public parking currently reserved for the Recreation Center and other public uses.
5. The Application provides assurances with respect to building form, development standards, and allowed uses consistent and in scale with adjacent neighboring existing and planned land uses.
6. The Application is substantially compliant with the purpose statements of the Development Code by providing for the orderly, efficient use of the Property, while at the same time conserving the value of the investments of owners of property in Town.

**VOTE:** The motion passed with a 6-1 vote.

**THESE FINDINGS OF FACT AND RECORD OF DECISION ARE HEREBY APPROVED:**

**BY:**   
PZC Chairperson



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Matt Pielsticker, Planning Director  
Jane Burden, Transit Director  
Gary Padilla, Public Works Director  
Greg Daly, Police Chief  
Preston Neill, Executive Assistant to the Town Manager  
Virginia Egger, Town Manager  
Meeting Date: October 25, 2016 Work Session  
Agenda Topic: Review of 2016/17 Winter Parking Management Plan Options

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### Council Action

Direction on 2016/17 Winter Parking Management Plan Options

### Background

Council requested a plan in response 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. Increased pressure on free public parking in Avon is anticipated with the change, as skiers and others who have been using the Beaver Creek 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.

After consulting with Desmond Design Management and various key Town staff and stakeholders in July, staff presented options to Council during a work session on August 9, 2016, ranging from “do nothing” to a full managed parking plan with enforcement by License Plate Reader (LPR) technology.

After considering public comments and the options, Council directed staff to pursue employee parking solutions including the Pier 1 Lot, as well as prioritizing local Avon residents if at all possible. Council did not support the purchase of License Plate Reader (LPR) technology, nor any type of paid permit system.

### Proposed 2016/17 Winter Parking Management Plan Options

After further evaluation and discussion with various property managers, staff requests Council consideration and direction on the following 2016/17 Parking Management Plan Options listed below. All parking spaces would be restricted to no overnight parking from midnight to 6:00 a.m. for snowplowing. The North Lot along West Beaver Creek Boulevard will remain as posted for park use.



### Option 1 – No changes to Unlimited Parking as Currently Signed and Enforced

- Over the past year, parking in Avon’s core has been predominantly without any limitation on the number of hours a vehicle utilizes a parking space.
- This parking plan has greatly increased the use of spaces that were consistently open, did not result in any traffic congestion looking for spaces or indicated that a space could not be found
- The concern with a do nothing option is that use will change as a result of the Beaver Creek paid lots
- While not impossible, it will be difficult to implement a different parking system mid-season

### Option 2 – Winter Parking Managed by Use – Current Town-owned Street and Public Lots

#### 1. Employee Parking

- Library/Fire Employees - 24 spaces between the Recreation Center and back of Fire Station would be signed and enforced for employees of these two entities at all times. The Library and Fire District are supportive of the number and location of these spaces.
  - In addition, 25 on-street parking spaces on Mikaela Way adjacent to the Library would remain short term parking for patrons of the library only.
  - This plan fully satisfies Library and Fire Station needs.
- Tract A (Pier One Town Lot)
  - This Town owned lot is governed by the *Parking Maintenance Agreement* between the Town and Traer Creek. Under the *Agreement*, the Town sets the short term parking hours and enforces the parking. Traer Creek maintains the lot, including snowplowing and striping.
  - Town staff met with Traer Creek and representatives of Sun & Ski to evaluate how best to manage the Tract A parking of 143 spaces. It was determined that parking turnover and availability for local businesses would be honored.
  - Parking permits would be granted to Pier One and Sun & Ski employees for shift parking; and, for any employees for a business opening in Office Depot.
  - The remainder of the Tract A lot will be 2 hour parking, with no parking midnight to 6:00 a.m.; towing will occur during those hours for snowplowing. Ticketing will be enforced during all other hours.
- Other Employee Parking – It is observed that employees park today on Lake Street, Benchmark Road across from the Fire Station and on West Beaver Creek Boulevard for a total of 75 parking spaces. It is also observed that these spaces are used by skiers, fishing and path walking users. In addition, it is believed that employees also park in the New Town Hall lot (36 spaces), for a total of 109 spaces.
  - The proposed plan for this winter is to make 89 spaces available solely for employee parking, for Avon core businesses, with 53 spaces located in the eastern portion of the Recreation Center and 36 spaces in the New Town Hall lot.
  - The exclusive use for employees would be from 6:00 a.m. to 1:00 p.m.

- Employers would need to acquire a permit at a nominal administration charge (\$15); first come, first served, up to five per employer, with a total of 150 permits distributed. These would be transferrable by the employer.
  - After 1:00 p.m., any employee or any other user may park in these spaces, with unlimited times.
  - Enforcement is simplified by having the employees, with permits, all located in these two lots.
  
- 2. Commercial Core Parking - East
  - As noted above, commercial parking in the Tract A lot will be for the benefit of those adjacent businesses' customers.
  - 20 on-street spaces on Benchmark Road East would remain marked 2-hour, as signed.
  - Tracts B1 and B2 in Chapel Place Square, are privately owned lots, and will continue to be used for merchants in the Square and enforced by Traer Creek and HCRE.
  
- 3. Commercial Core Parking - West
  - 24 on-street spaces on West Beaver Creek Boulevard would be changed to 2-hour parking throughout the day. Turnover in this area is observed and expected with local use of the tenant business in the Sheraton, Avon Center, and some use by Post Office patrons.
  - Avon Local's Pass - In an effort to accommodate Avon residents with priority parking options, various Town owned parking areas would be open exclusively to residential pass holders until 1pm; unrestricted after 1pm, for the following areas:
    - 14 spaces on Benchmark Road (Monday – Sunday)
    - 39 spaces on Lake Street (Monday – Sunday)
    - 86 spaces at Municipal Building West and East Lot (Saturday and Sunday Only)
    - Town would issue an unlimited number of Avon resident passes. In order to qualify for a pass, a resident would supply a utility bill or other form of identification validating a physical address in Town. It is anticipated that this parking supply may be adequate to accommodate Avon residents for this ski season or for early day access to area businesses and/or Nottingham Park. It is recommended a nominal fee of \$10 be charged for each permit; nontransferable, and assigned to a license plate.

**Option 3 – New Private Parking Lots**

Town Council is asked to determine whether other parking spaces should be included for this winter's ski season. Options available are:

1. Rodeo South Lot - This has recently been offered generously by Traer Creek as a possible parking area for next winter, without charge. An estimated 200 vehicles can be parked there. In turn, the Town would be responsible for all management aspects of this area. This lot is envisioned as an Avon Local's Pass lot, with limited hours (i.e. no vehicles admitted before 7am or after 1pm) to accommodate additional skier parking demand in addition to other Town facilities listed above. In order to ensure that this lot remains a

viable option in the future months if needed, plow operations would need to commence at the start of the ski season regardless of using the lot or not. The current Skier Shuttle loop time would increase by five minutes to pick up riders from the Lot.

2. Traer Creek Plaza Parking Facility - 200 covered spaces. This facility, privately owned and maintained, is an unrestricted public parking lot, and includes public parking spaces underneath the Traer Creek Plaza building. No parking is allowed from midnight until 6:00 a.m. If utilization of this lot were to be pursued as an alternative to the Rodeo South Lot, a skier/employee shuttle with frequency would be essential because the existing bus route frequency is 30 minutes.

**Estimated Costs – Option 2**

▪ New signage: Constructed and installed prior to November 25, 2016.	\$ 2,600.00
▪ Enforcement: Part-time Community Service Officer: January – March A temporary part-time officer is already budgeted through December	\$ 7,200.00
▪ Permit Design & Printing	\$ 800.00
▪ Marketing of the Parking System	<u>\$ 1,000.00</u>
TOTAL	\$11,600.00

Additional Skier Bus Shuttle, if needed – Monies in 2017 budget (\$50,000)

**Estimated Costs – Option 3**

Rodeo South Lot

▪ Snowplowing Contract November – March	\$17,500.00
▪ Parking Personnel Estimate – one person	<u>\$15,750.00</u>
TOTAL	\$33,250.00

Expand current bus loop for no additional costs; Additional Skier Bus Shuttle, if needed – Monies in 2017 budget (\$50,000)

Traer Creek Plaza Parking Lot

▪ Expanded Bus Service	TOTAL	\$35,911.00
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**2016/17 Winter Season Traer Creek Route**

Route	Winter Op Hrs.	Winter Frequency	Winter # Buses	Loop Time	Winter Serv. Hr.	Annual Cost
Traer Creek	7:30 am-10:30 am	15 Min	1	15 Min	441	\$35,911

Traer Creek Covered Parking to Avon Station Loop – 7 day a week service for the winter season November 20, 2016 through April 16, 2017.

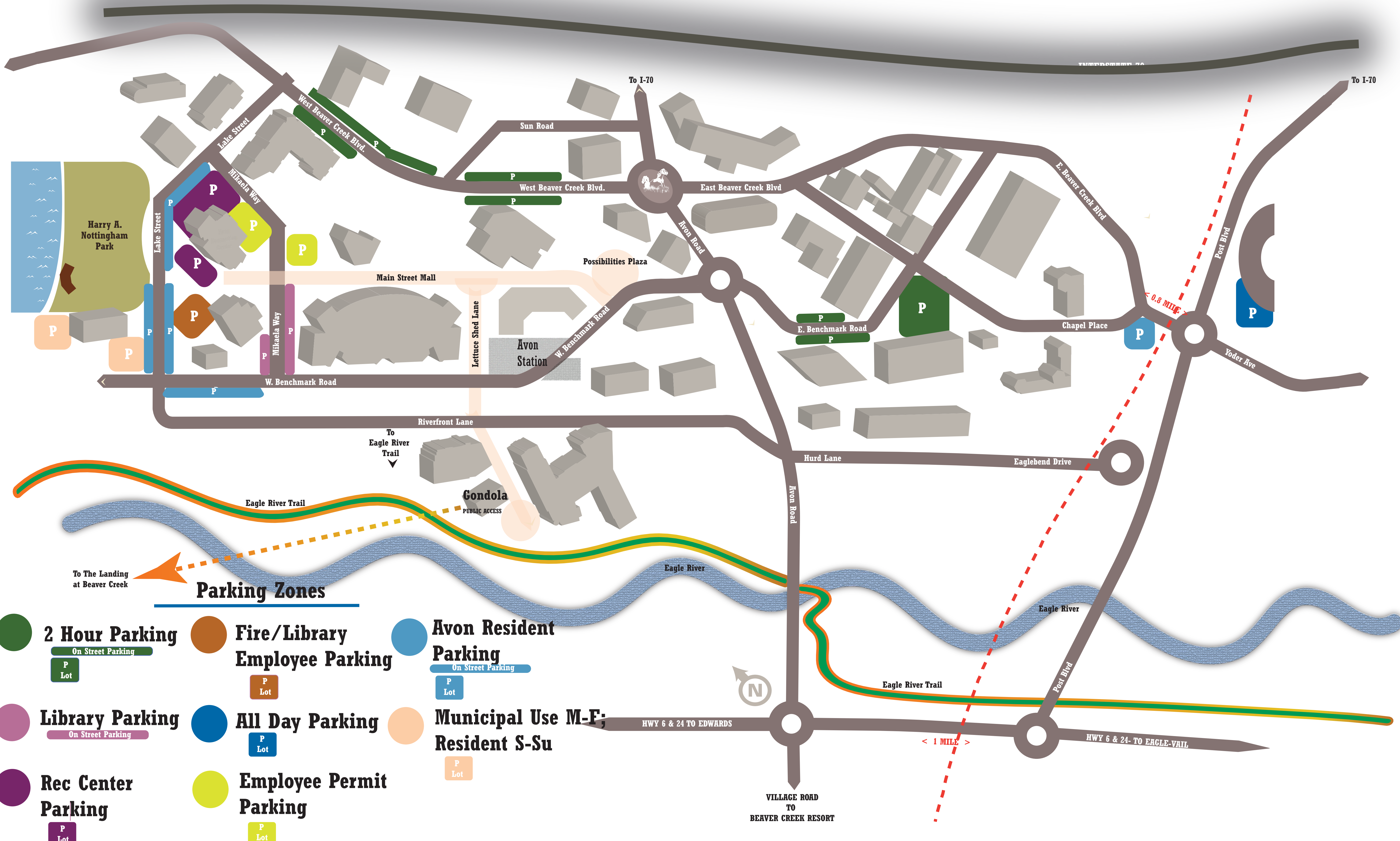
Direction Requested and Next Steps

1. Council finalization of Winter Parking Management Plan – October 25<sup>th</sup>
2. Marketing - Public Outreach Program (Liz Wood, Town of Avon Communications Manager)
3. Formalize Employer and Local Pass permit system and implementation (Preston Neill, Assistant to the Town Manager)
4. Installation of regulatory signage by November 25, 2016 (Gary Padilla, Public Works Director)
5. Commence enforcement program – warnings to tickets (Greg Daly, Chief of Police)
6. Data collection through the winter
7. Summary of winter program to Council – May 1, 2017

Attachment

Exhibit 1 – 2016/17 Winter Parking Management Map

# 2016/ 2017 Winter Parking Management Plan



- Parking Zones**
- 2 Hour Parking**
    - On Street Parking
    - P Lot
  - Fire/Library Employee Parking**
    - P Lot
  - Avon Resident Parking**
    - On Street Parking
    - P Lot
  - Library Parking**
    - On Street Parking
  - All Day Parking**
    - P Lot
  - Municipal Use M-F; Resident S-Su**
    - P Lot
  - Rec Center Parking**
    - P Lot
  - Employee Permit Parking**
    - P Lot



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Preston Neill, Executive Assistant to the Town Manager  
Date: October 25, 2016  
Agenda Topic: Review of Summer 2016 Food Truck and Mobile Vendor Cart Programs

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### OVERVIEW:

The purpose of this memorandum is to report on both the Town's Food Truck Program and Mobile Vendor Cart Program and seek direction for continuation, amendment or cessation of the program

### SUMMARY:

#### Food Truck Program

On May 10, 2016, Council approved Ordinance 16-07, allowing food trucks to operate on Town right-of-ways, and subsequently approved Resolution 16-17, which established locations and number of food trucks allowed to operate within the Town. More specifically, Council approved that one (1) food truck, at any given time, is allowed to operate on any one location near Harry A. Nottingham Park (Nottingham Park) and authorized the Town Manager to identify and test locations near the park, including but not limited to the following sites:

- Location #1: The parking lot on north side of Nottingham Park.
- Location #2: The two northerly parking spaces in the parking lot located on the east side of the Municipal Building.
- Location #3: The northwest corner of the parking lot located on the north side of the Recreation Center.

Council wished for any issued food truck permits to be monitored as a test case through October 1, 2016.

On May 20, 2016, Town staff released a Request for Proposal (RFP), soliciting proposals from qualified entrepreneurs and businesses to own and operate a food truck in areas located around Nottingham Park. Since the RFP was released, several vendors have contacted the Town to express their interest in obtaining a Food Truck Permit. However, the Town has received one (1) proposal and issued one (1) Food Truck Permit. The vendor, Rocky Mountain Taco, began utilizing the permit on July 1, 2016. Between July 1 and October 1, 2016, Rocky Mountain Taco operated in sites around Nottingham Park for a total of sixteen (16) days.

Since the end of the pilot program, Town staff has obtained feedback from Chris McGinnis, owner of Rocky Mountain Taco, in order to gain input on how the Town can improve the program and understand how they rate their overall success while operating in locations around Nottingham Park over the summer. Chris explained that sales were much lower than expected, but he attributed that to several days of bad weather. He went on to say that the only location they liked operating at was

location #1, as stated above, due to the fact that it is close to the lake. Finally, he expressed his interest in continuing to participate in the program next summer and said that he would love to see the “creation of a winter permit.” He offered his thought that Avon Station would be a perfect spot for their food truck to operate during the winter months.

#### Mobile Vendor Cart Program

On April 12, 2016, Council approved Resolution 16-08, establishing locations and number of mobile vendor carts in Nottingham Park. The Resolution states that up to two (2) mobile vendor carts are allowed in Nottingham Park. In addition, the exact location may be generally modified within a reasonable distance from the locations identified below, by the Town Manager, as may be determined to accommodate the operations of the cart and/or seasonal light and weather. The locations are as follows:

- Location #1: North side of park, near pedestrian bridge at northwest corner of the lake.
- Location #2: North side of park, on the east side of the fishing pier, near the water’s edge.

On April 20, 2016, the Town released an updated RFP for mobile vendor carts in order to announce available vending locations at Nottingham Park. Over the summer of 2016, two (2) vendors contacted the Town to express interest in obtaining a Mobile Vendor Cart Permit. Only one (1) vendor, Peace Love and Popsicles, LLC, submitted a proposal and was issued a permit. By the end of June 2016, Peace Love and Popsicles, LLC, relinquished their Mobile Vendor Cart Permit for reasons that included how the logistics of hauling a mobile vendor cart in and out of Nottingham Park on a daily basis proved to be difficult for them. At this time, there are no vendors with a Mobile Vendor Cart Permit.

#### **DIRECTION:**

Staff is requesting direction from Council on how to proceed with these programs.



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council

From: Scott Wright, Asst. Town Manager

Date: October 25, 2016

Re: IGA – Eagle County Housing and Development Authority

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### **Action Before Council**

Action on Intergovernmental Agreement (IGA) between the Town of Avon and the Eagle County Housing and Development Authority (ECHDA).

### **Recommended Motion**

This item is included under the Consent Agenda. If acted upon separately, the recommended motion is “I move to approve the Intergovernmental Agreement between the Town of Avon and the Eagle County Housing and Development Authority.”

### **Summary**

This agreement provides for affordable housing services to be performed for the Town of Avon, by the ECHDA, through its Valley Home Store, a centralized housing management organization, for the calendar year 2017. This agreement is renewable annually for additional one-year terms and may be terminated by either party upon 30 days prior written notice.

As the Town’s agent, ECHDA shall enforce the Town’s deed restrictions and ordinances relating to deed restrictions and affordable housing. Specific services to be provided include assisting buyers, sellers and lenders in resale of Town deed restricted housing stock, ensuring ongoing compliance with deed restrictions, and serving as a resource to the Town and its citizens and potential new residents regarding the Town’s affordable housing programs.

Eric Heil, Avon Town Attorney, and Jill Klosterman, Housing Director for Eagle County, have reviewed and approved the language of the IGA.

### **ATTACHMENTS:**

Intergovernmental Agreement

EXHIBIT A – Scope of Services and Fees

EXHIBIT B – Town of Avon Deed Restrictions



**INTERGOVERNMENTAL AGREEMENT BETWEEN  
EAGLE COUNTY HOUSING AND DEVELOPMENT AUTHORITY  
AND THE TOWN OF AVON**

This Intergovernmental Agreement (“**Agreement**”) is made and entered into on November 1, 2016 by and between Eagle County Housing and Development Authority, a body corporate and politic (“**ECHDA**”) and the Town of Avon, a Colorado home-rule municipal corporation (“**Town**”).

**WITNESSETH**

WHEREAS, the Town has a portfolio of deed restricted housing units described in **Exhibit B: Avon Housing Deed Restrictions** attached hereto and incorporated by reference (“**Deed Restriction(s)**”); and

WHEREAS, the median price of free market housing in the Town of Avon exceeds what residents earning the area median income can afford, creating a lack of housing affordable for the local workforce of the Town; and

WHEREAS, the Urban Land Institute recommended forming a regional housing body to address the lack of affordable housing with participation from public and private sectors throughout Eagle County; and

WHEREAS, ECHDA, in a multi-jurisdictional effort, has opened a centralized affordable housing management organization known as The Valley Home Store (“**TVHS**”) to provide one physical and electronic location in Eagle County to purchase housing stock affordable to Eagle County’s workforce; and

WHEREAS, The Valley Home Store was formed by the Eagle County Housing and Development Authority in 2008 and ECHDA is the majority member of TVHS with 99.9% ownership (Eagle County Housing and Development Authority and The Valley Home Store may collectively be referred to as “**ECHDA/TVHS**”); and

WHEREAS, the Town desires to contract with ECHDA for the performance of the affordable housing services on the terms and conditions in this Agreement; and

WHEREAS, ECHDA is agreeable to rendering such affordable housing services on the terms and conditions hereinafter set forth; and

WHEREAS, this Agreement is authorized pursuant to Section 29-1-201 and 30-11-101, Colorado Revised Statutes, as amended, and Article XIV, Section 18, of the Colorado Constitution.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree hereby as follows:

- 1. Services or Work.** ECHDA agrees to diligently provide all services, labor, personnel and materials necessary to perform and complete the services or work described in **Exhibit A: Services** (“**Services**”) which is attached hereto and incorporated herein by reference. The Services shall be performed in accordance with the provisions and conditions of this Agreement. In the event of any conflict or inconsistency between the terms and conditions set forth in **Exhibit A** and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail. The Town may modify **Exhibit B: Avon Housing Deed Restrictions** at any time and the amended **Exhibit B** shall become part of this Agreement when provided to ECHDA.
- 2. Term of the Agreement.** This Agreement shall commence January 1, 2017, and shall continue in full force and effect through December 31, 2017.
- 3. Extension.** Town and ECHDA may mutually renew and extend the Agreement for additional one-year terms. Such renewal and extension shall occur by Town sending via e-mail a renewal request (“**Renewal Request**”) to ECHDA. ECHDA may accept the Renewal Request via e-mail. Any other change or modification to the Agreement shall be in writing signed by each party. The Avon Town Manager may approve Renewal Requests and rate adjustments on behalf of the Town.
- 4. Termination.** Either party shall have the right to terminate this Agreement at any time and for any reason, with or without cause, and without penalty, by giving the other party thirty (30) days’ prior written notice of termination. In the event that a party fails to substantially perform the duties and obligations set forth in this Agreement, the other party may terminate this Agreement upon seven (7) days written notice to the non-performing party, unless the non-performing party cures the breach within the seven (7) day remedy period. Upon termination, ECHDA shall be entitled to compensation for Services performed prior to such termination, and both parties shall thereafter be relieved of any and all duties and obligations under this Agreement.
- 5. Compensation.** Town shall compensate ECHDA for the performance of the Services in a sum computed and payable as set forth in Exhibit A. Payment will be made for Services satisfactorily performed within thirty (30) days’ of receipt of a proper and accurate invoice from ECHDA. All invoices shall include detail regarding the hours spent, tasks performed, who performed each task and such other detail as Town may request.
- 6. Official Status.** For the purpose of performing the Services and functions set forth in this Agreement, Eagle County Housing and Development Authority and The Valley Home Store shall enforce, as the Town’s agent, the terms of any Deed Restrictions and any Town ordinances relating to Deed Restrictions or affordable housing now in effect and as may be amended from time to time.

7. **Enforcement.** ECHDA/TVHS shall promptly notify the Town of the following: (1) any action to enforce the terms of a Deed Restriction; (2) ECHDA/TVHS's receipt of notification or knowledge of a foreclosure on property with a Deed Restriction; (3) any evidence of non-compliance with a Deed Restriction; or (4) any dispute concerning the interpretation and application of the terms of a Deed Restriction. In the event of any legal or court action concerning a Deed Restriction, ECHDA/TVHS and the Town shall coordinate as deemed appropriate by the Town. The Town shall always maintain the right to interpret, enforce, protect, defend or modify any Deed Restriction in the Town's sole discretion.

8. **Records Management.** ECHDA and TVHS agree the following terms for records management and access:

a. ECHDA and TVHS shall provide access to records created or maintained by ECHDA or TVHS upon request by the Town within a reasonable time.

b. ECHDA/TVHS shall follow the Town of Avon's municipal records retention schedule for all records maintained by ECHDA/TVHS.

c. ECHDA/TVHS and Town shall promptly notify each other of the receipt of any public records requests under the Colorado Open Records Act. The parties shall coordinate the response to any public records request concerning this Agreement or any records created or maintained under this Agreement.

d. Upon termination or expiration of this Agreement, ECHDA/TVHS shall deliver to the Town all records held, created and maintained by this Agreement within seven (7) business days.

9. **Personnel.** ECHDA and TVHS and their respective staff shall have full cooperation from the Town and its employees, so as to facilitate the performance of this Agreement.

a. All persons employed in the performance of such Services for the Town, pursuant to this Agreement, shall be employees of Eagle County Government. Staff working at TVHS are licensed real estate agents in the State of Colorado. The Valley Home Store is a licensed real estate brokerage company.

b. It is expressly acknowledged and understood by the parties hereto that nothing contained in this Agreement shall result in, or be construed as establishing an employment relationship between the parties. The rendition of the Services provided for herein, the standards of performance, the discipline of staff, and other matters incident to the performance of such Services and the control of personnel so employed, shall remain with ECHDA.

10. **Liability and Insurance.** ECHDA and The Valley Home Store, their officers and employees, shall not be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the Town or of any officer or employee thereof. Likewise, the Town, its officers and employees, shall not be deemed to assume any liability for intentional or negligent acts, errors or omissions of ECHDA or by any officer or employee thereof.

a. ECHDA agrees to indemnify, defend and hold harmless, to the extent allowed by law, the Town, its respective agents, officers, servants and employees of and from any and all loss, costs, damage, injury, liability, claims, liens, demands, action and causes of action whatsoever, arising out of or related to ECHDA's intentional or negligent acts, errors or omissions or that of its agents, officers, servants, and employees, whether contractual or otherwise. Likewise, the Town agrees to indemnify, defend and hold harmless, to the extent allowed by law, ECHDA and The Valley Home Store, their respective agents, officers, servants and employees of and from any and all loss, costs, damage, injury, liability, claims, liens, demands, action and causes of action whatsoever arising out of or related to the Town's intentional or negligent acts errors or omissions or that of its agents officers, servants and employees, whether contractual or otherwise.

b. ECHDA and the Town shall respectively provide its own public liability, property damage, and errors and omissions insurance coverage as each party may deem adequate and necessary for any potential liability arising from this Agreement. Further, ECHDA and the Town, respectively, shall name, subject to the approval of each respective party's insurance carriers, the other respective party as a co-insured under such insurance policies to the extent of any potential liability arising under this Agreement and, upon reasonable written request, shall furnish evidence of the same to the other respective party.

## 11. **General Provisions.**

a. **Notices.** All notices, requests, consents, approvals, written instructions, reports or other communication by the Town and ECHDA, under this Agreement, shall be in writing and shall be deemed to have been given or served, if mailed by certified mail, postage prepaid, or e-mailed with confirmation of receipt by the recipient, or hand delivered to the parties as follows:

ECHDA:  
Attention: Jill Klosterman  
500 Broadway  
Post Office Box 850  
Eagle, CO 81631  
Telephone: 970-328-8773  
Facsimile: 970-328-8787  
E-mail: jill.klosterman@eaglecounty.us

With a copy to:  
Eagle County Attorney  
500 Broadway  
Post Office Box 850  
Eagle, CO 81631  
Telephone: 970-328-8685  
Facsimile: 970-328-8699

E-mail: atty@eaglecounty.us

TOWN:  
Town of Avon:  
Town Manager  
Post Office Box 975  
Avon, CO 81620  
Telephone: 970-748-4452  
Facsimile: 970-748-4417  
E-mail: vegger@avon.org

with a copy to:  
Town of Avon  
Town Attorney  
P.O. Box 975  
Avon, CO 81620  
E-Mail: townattorney@avon.org

Either party may change the address to which notices, requests, consents, approvals, written instructions, reports or other communications are to be given by a notice of change of address given in the manner set forth in this paragraph.

**b. No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Customer. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**c. Modification.** This Agreement contains the entire agreement between the parties, and no agreement shall be effective to change, modify, or terminate in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification, or termination is sought.

**d. Entire Agreement.** This written Agreement embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions, or obligations made or entered into either by ECHDA or the Town other than those contained herein.

**e. Assignment.** This Agreement shall be binding upon the parties hereto, their successors or assigns and may not be assigned by anyone without the prior written consent of the other respective party hereto. Any attempt to assign this Agreement without the consent of the other party shall be null and void.

**f. Severability.** All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid Agreement or covenant were not contained herein.

**g. Representation of Authority.** The Town has represented to ECHDA and, likewise, ECHDA has represented to the Town, that it possesses the legal ability to enter into this Agreement. In the event that a court of competent jurisdiction determines that either of the parties hereto did not possess the legal ability to enter into this Agreement, this Agreement shall be considered null and void as of the date of such Court determination.

**h. No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by

law to the Avon, its officials, employees, contractors, or agents, or any other person acting on behalf of the Avon and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

**i. Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The parties agree that venue in any action to enforce or interpret this Agreement shall be in the District Court for Eagle County, Colorado.

**j. Article X, Section 20/TABOR.** The Parties understand and acknowledge that the Town is subject to Article X, §20 of the Colorado Constitution (“**TABOR**”). Town does not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all obligations of Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of Town’s current fiscal period ending upon the next succeeding December 31. Financial obligations of Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first set forth above.

EAGLE COUNTY HOUSING AND  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Jeanne McQueeney, Chair

Attest:

By: \_\_\_\_\_  
Teak J. Simonton, Clerk

TOWN OF AVON

By: \_\_\_\_\_  
Mayor

Attest:

By: \_\_\_\_\_  
Town Clerk

## EXHIBIT A

### SCOPE OF SERVICES AND FEES

The following services will be provided to the Town by ECHDA/TVHS:

1. Qualifications for the resales of the Town's deed restricted housing stock.
  - a. ECHDA/TVHS will assist sellers, buyers, lenders, and appraisers through the process.
  - b. ECHDA/TVHS will calculate maximum resale prices for sellers, including calculation of capital improvements.
  - c. ECHDA/TVHS will qualify buyers.
  - d. ECHDA/TVHS will prepare and provide required deed restricted documentation for closings.
  - e. Compensation for this service will be \$250 for each unit listed for sale either on the MLS or by other means. The fee will be paid by the Town to ECHDA/TVHS.
  
2. Employee Housing Unit Compliance.
  - a. Send up to 3 requests for affidavits and compile responses.
  - b. Provide list of outstanding affidavits to Town by a mutually agreed upon date.
  - c. Town will maintain responsibility for enforcement.
  - d. Mailing costs, if any, will be reimbursed by Town.
  - e. Compensation for this service will be paid by the Town to ECHDA/TVHS on an hourly basis not to exceed \$7,800 per calendar year. The not-to-exceed amount is based on 120 hours of work at \$65/hour.
  
3. ECHDA/TVHS will serve as a resource to Town and consumers regarding the Town's affordable housing program.
  - a. Communicate Town's information on TVHS website, and provide a link to the TVHS website from the Town's website.
  - b. Provide at least one in-person first-time homebuyer education course to be held in Avon.
  - c. Provide one in-person homebuyer education course for Town of Avon employees.
  - d. Provide individual credit counseling or budgeting sessions to buyers or owners of Town units or down payment assistance programs.
  - e. Attend work sessions with Town Council as requested and recommend best practices.
  - f. Compensation for this service will be paid by the Town to ECHDA/TVHS on an hourly basis not to exceed \$2,600 per calendar year. This not-to-exceed amount is based on 40 hours of work at \$65/hour.



**EXHIBIT B**  
**TOWN OF AVON DEED RESTRICTED HOUSING**

<b>PROJECT NAME</b>	<b>UNIT</b>	<b>BED</b>	<b>BATH</b>	<b>AREA (sq. ft.)</b>	<b>RENTAL</b>	<b>PARCELNUM</b>	<b>NO. OF UNITS</b>
LODGE AT BROOKSIDE	113	1	2	967	N	210511205013	0
LODGE AT BROOKSIDE	211	1	2	719	N	210511205025	0
LODGE AT BROOKSIDE	311	1	2	872	N	210511205038	0
CHAPEL SQUARE (BLDG B)	204	1	1	630	N	210512116020	0
CHAPEL SQUARE (BLDG B)	206	1	1	584	N	210512116022	0
CHAPEL SQUARE (BLDG B)	216	1	1	581	N	210512116031	0
CHAPEL SQUARE (BLDG B)	218	1	1	626	N	210512116033	0
CHAPEL SQUARE (BLDG B)	304	1	1	630	N	210512116052	0
CHAPEL SQUARE (BLDG B)	306	1	1	584	N	210512116054	0
CHAPEL SQUARE (BLDG B)	316	1	1	581	N	210512116063	0
CHAPEL SQUARE (BLDG B)	318	1	1	626	N	210512116065	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E201	3	1	849	N	210512222001	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E202	2	1	497	Y	210512222002	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E203	1	1	405	N	210512222003	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E204	1	1	405	Y	210512222004	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E205	1	1	405	Y	210512222005	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E206	1	1	405	Y	210512222006	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E207	0	1	222	Y	210512222007	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E208	0	1	230	Y	210512222008	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E209	0	1	230	Y	210512222009	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E210	0	1	230	N	210512222010	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E301	3	1	807	N	210512222011	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E302	2	1	495	Y	210512222012	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E303	1	1	405	N	210512222013	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E304	1	1	405	Y	210512222014	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E305	1	1	405	Y	210512222015	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E306	1	1	405	Y	210512222016	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E307	0	1	222	N	210512222017	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E308	0	1	230	N	210512222018	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E309	0	1	230	Y	210512222019	0
MOUNTAIN VISTA EMPLOYEE HOUSING	E310	0	1	230	N	210512222020	0
LAKESIDE TERRACE CONDOMINIUMS	B204	1	1	541	Y	210512217015	0
LAKESIDE TERRACE CONDOMINIUMS	B205	2	1	645	Y	210512217016	0
WILDWOOD TOWNHOMES NORTH	C1	3	2	1,266	N	194335412001	0
WILDWOOD TOWNHOMES NORTH	C2	2	1	1,020	N	194335412002	0
WILDWOOD TOWNHOMES NORTH	C3	2	1	1,020	N	194335412003	0
WILDWOOD TOWNHOMES NORTH	C4	2	1	1,020	N	194335412004	0
WILDWOOD TOWNHOMES NORTH	C5	3	2	1,266	N	194335412005	0
WILDWOOD TOWNHOMES SOUTH	A1	3	2	1,266	N	194335411001	0
WILDWOOD TOWNHOMES SOUTH	A2	2	1	1,020	N	194335411002	0
WILDWOOD TOWNHOMES SOUTH	A3	2	1	1,020	N	194335411003	0
WILDWOOD TOWNHOMES SOUTH	A4	2	1	1,020	N	194335411004	0
WILDWOOD TOWNHOMES SOUTH	A5	2	1	1,020	N	194335411005	0
WILDWOOD TOWNHOMES SOUTH	A6	3	2	1,266	N	194335411006	0

WILDWOOD TOWNHOMES SOUTH	B1	3	2	1,266	N	194335411007	0
WILDWOOD TOWNHOMES SOUTH	B2	2	1	1,020	N	194335411008	0
WILDWOOD TOWNHOMES SOUTH	B3	2	1	1,020	N	194335411009	0
WILDWOOD TOWNHOMES SOUTH	B4	2	1	1,020	N	194335411010	0
WILDWOOD TOWNHOMES SOUTH	B5	2	1	1,020	N	194335411011	0
WILDWOOD TOWNHOMES SOUTH	B6	3	2	1,266	N	194335411012	0
GRANDVIEW	101	1	1	715	Y	210502415001	0
GRANDVIEW	102	2	2	870	N	210502415002	0
GRANDVIEW	103	2	2	823	N	210502415003	0
GRANDVIEW	104	2	2	870	N	210502415004	0
GRANDVIEW	105	2	2	823	N	210502415005	0
GRANDVIEW	106	2	2	1,002	N	210502415006	0
GRANDVIEW	201	1	1	576	Y	210502415007	0
GRANDVIEW	202	2	2	870	N	210502415008	0
GRANDVIEW	203	2	2	870	N	210502415009	0
GRANDVIEW	204	2	2	870	N	210502415010	0
GRANDVIEW	205	2	2	870	N	210502415011	0
GRANDVIEW	206	2	2	864	N	210502415012	0
CITY MARKET	0	0		0	Y	210512102023	14
BUFFALO RIDGE	0	0		0	Y	210307202001	244
EAGLEBEND APARTMENTS	0	0		0	Y	210512406015	294
RIVERSIDE APARTMENTS	0	0		0	Y	210512407002	54
FALCON POINTE CONDO INTERVAL	504	1	1	659	Y	210512211045	1
GANDORF	D	3	2	1,491	N	194335431004	0



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Jane Burden, Transit Director

Meeting Date: October 25, 2016

Agenda Topic: Intergovernmental Agreement with the Colorado Department of Transportation for a Five Year Lease To Store One or More Bustang Buses in the Avon Regional Transit Facility

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### **ACTION BEFORE COUNCIL**

Authorize the Town Manager to enter into a five (5) year intergovernmental lease agreement, renewable yearly, with CDOT for Bustang bus parking at the Transit Facility located at 500 Swift Gulch Road in Avon, Colorado.

### **PROPOSED MOTION**

I move to approve the authorization for the Town Manager to execute an Intergovernmental Agreement with the Colorado Department of Transportation for a five year lease, renewable yearly, to store one or more Bustang buses in the Avon Regional Transit Facility, subject to final approval by the Avon Town Attorney.

### **2017 BUDGET INFORMATION**

The Town will receive a base monthly payment of five hundred eighty seven dollars (\$587.00) for a total payment of seven thousand forty-four dollars (\$7,044.00) for fiscal year 2017, for the storage of one bus. The charge amount is equal to what ECO Transit pays to the Town for similar sized buses. The proposed additional four years, with CDOT, will be at the same base rate unless increased based upon annual actual costs, as determined by the ECO transit lease calculation, and subject to CDOT's annual approval. The multi-year lease would be annually renewable. At this time only one bus is foreseen to join the facility, but the agreement will be constructed in a manner to add additional buses, space being available, at the same per space lease amount.

### **BACKGROUND**

As a member of the Bustang Rural Regional Committee, staff was approached in August by Mike Timlin of CDOT to provide overnight parking for a second bus added to CDOT's intrastate daily Bustang service to Denver. This public transportation service has become popular and provides an economical (\$29 round trip) connection between our rural mountain communities and Denver. Bustang yearly driver accommodations are being provided by the Avon Comfort Inn.

Town Attorney Eric Heil has reviewed the CDOT contract, which is extensive and appears to be an agreement which can be improved and simplified, with time, by Eric working with CDOT. This will take some time, however, once completed the objective is to execute the agreement and not hold it up for a future meeting.

We welcome the opportunity to provide joint transportation services with CDOT for our valley residents/guests and welcome them to the Avon Regional Transit Facility.



**TOWN OF AVON, COLORADO**

**AVON MEETING MINUTES FOR TUESDAY, OCTOBER 11, 2016**

AVON TOWN HALL, ONE LAKE STREET

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**1. A CALL TO ORDER & ROLL CALL**

Mayor Fancher called the meeting to order at 5:12 p.m. A roll call was taken and Council members present were Megan Burch, Buz Reynolds, Matt Gennett, Jake Wolf and Scott Prince. Sarah Smith Hymes was absent. Also present were Town Manager Virginia Egger, Police Chief Greg Daly, Assistant Town Manager Scott Wright, Public Works Director Gary Padilla, Recreation Director John Curutchet, Transit Director Jane Burden, Town Engineer Justin Hildreth, Executive Assistant to the Town Manager Preston Neill and Town Clerk Debbie Hoppe.

**2. APPROVAL OF AGENDA**

Mayor Fancher requested the following changes to the agenda:

1. Item 5.1. Public Access TV Channel 5 update moved to 6:30 p.m. or continued to the next council meeting on October 25, 2016.
2. Executive Session 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 Eaglebend Affordable Housing to take place during the regular meeting.

Council agreed to the changes.

**3. PROCLAMATION HONORING THE SERVICE OF ALBERT “BUZ” REYNOLDS (MAYOR JENNIE FANCHER)**

**4. PUBLIC COMMENT**

Jackie Anthony commented.

**5. PRESENTATIONS**

START TIME: 00:39:49

- 5.1. PUBLIC ACCESS TV CHANNEL 5 UPDATE (HFAM PRESIDENT AMY PHILLIPS & EXECUTIVE DIRECTOR JK PERRY)
- 5.2. BALLOT ISSUE 1A: AFFORDABLE WORKFORCE HOUSING (CHRIS ROMER, VAIL VALLEY PARTNERSHIP)

**6. ACTION ITEMS**

START TIME: 00:49:50

- 6.1 RESOLUTION 16-25, IN SUPPORT OF OPEN SPACE, RIVERS, WILDLIFE & TRAILS BALLOT ISSUE 1B (TRAILS REPRESENTATIVE)

Councilor Reynolds moved to approve Resolution 16-25, A Resolution of the Avon Town Council of Avon, Colorado, in Support of Open Space, Rivers, Wildlife & Trails Ballot Issue 1B; Councilor Prince seconded the motion and it passed unanimously by those present. Councilor Smith Hymes was absent.

- 6.2. NOTICE OF AWARD FOR NOTTINGHAM PARK RESTROOM REMODEL PROJECT TO HESS CONTRACTING (TOWN ENGINEER JUSTIN HILDRETH)

Council did not take action and requested staff to rebid the Nottingham Park Restroom Remodel Project.



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, OCTOBER 11, 2016
AVON TOWN HALL, ONE LAKE STREET

6.3. APPROVAL OF THE SEPTEMBER 27, 2016 MINUTES (TOWN CLERK DEBBIE HOPPE)
Councilor Reynolds moved to approve the September 27, 2016 Minutes; Councilor Gennett seconded the motion and it passed unanimously by those present. Councilor Smith Hymes was absent.

7. WRITTEN REPORTS

8. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

9. MAYOR & COUNCIL COMMENTS

10. TOWN MANAGER UPDATE

11. EXECUTIVE SESSION

11.1. EXECUTIVE SESSION 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 EAGLEBEND AFFORDABLE HOUSING

12. ADJOURNMENT

There being no further business to come before the Council, the regular meeting adjourned at 07:26 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



**FISCAL YEAR 2016  
FINANCIAL REPORT**

**October 25, 2016**

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



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
 From: Kelly Huitt, Budget Analyst

Meeting Date: October 25, 2016

Agenda

Topic: Fiscal Year 2016 Financial Report –August / September

### SUMMARY

### Revenues

#### SALES TAX

- Sales tax revenue for the month of September is up \$20,732 or 3.62% compared to August 2015, but down -2.04% compared to the monthly budget. This year-over-year increase includes \$21,077 from new businesses, and after adjusting for new business growth, -.06% is the loss in revenue from existing business for the month. Year to date sales tax collections are up 7.16% compared to 2015 and 5.03% compared to the budget.
- August sales tax collections show considerable increases for the Home/Garden category at 15.08%, Accommodations at 16.62%, and Service Related businesses which increased 39.29% compared to August 2015. Miscellaneous Retail declined -16.01% for the month and, as anticipated, the Sporting Goods Retail/Rental category is down -57.05%. The decrease in existing business growth from Miscellaneous Retail can be partially attributed to the re-categorization of two entities. Home/Garden saw a large increase from floor covering sales while sales tax from Accommodations had a large jump from overall increases at the Town’s major lodges. The increase from Service Related vendors is due to new businesses in the category. The large decrease in the Sporting Goods category is related to the closing of Sports Authority.

<b>Sales Tax Monthly Totals - August 2016</b>			
<b>Category</b>	<b>2015/2016</b>	<b>Growth</b>	<b>Growth</b>
	<b>Variance</b>	<b>Existing Business</b>	<b>New Business</b>
Home/Garden	7,753.74	9.90%	5.18%
Grocery, Specialty, Health	14,140.05	5.85%	3.16%
Liquor Stores	(1,177.96)	-4.05%	0.00%
Sporting Goods Retail/Rental	(22,736.18)	-63.11%	6.06%
Miscellaneous Retail	(4,616.77)	-16.01%	0.00%
Accommodations	12,761.70	15.92%	0.70%
Restaurants/Bars	7,974.97	1.18%	5.28%
Other	2,748.16	0.91%	3.95%
Service Related	3,883.79	21.63%	17.66%
<b>Total</b>	<b>\$20,731.50</b>	<b>-0.06%</b>	<b>3.68%</b>

## ACCOMMODATIONS TAX

- Accommodations tax revenue for August is up \$12,566, or 16.73% compared to August 2015, and up 8.34% compared to the monthly budget.
- August 2016 accommodations tax collections increased 19.45% for Hotels, 5.08% for Timeshares and 24.81% for Vacation Rentals compared to August 2015.
- A portion of the increase to August accommodations tax from Vacation Rentals can be attributed to increased compliance efforts.

## REAL ESTATE TRANSFER TAX

- 2016 real estate transfer tax collections for September equal \$321,958, which is a \$30,734 increase compared to September 2015.
- Year-to-date RETT collections are on track at 92.85% of the 2016 annual budget.
- \$30,382 of September RETT is from August sales at the Wyndham. A total of \$198,510 in RETT has been received from the Wyndham in 2016.

## RECREATION CENTER ADMISSIONS

- September admissions fees at the ARC total \$49,018, a 9.61% increase compared to September 2015. Year-to-date admissions are 9.33% above 2015, and \$70,270 over the estimated annual budget.

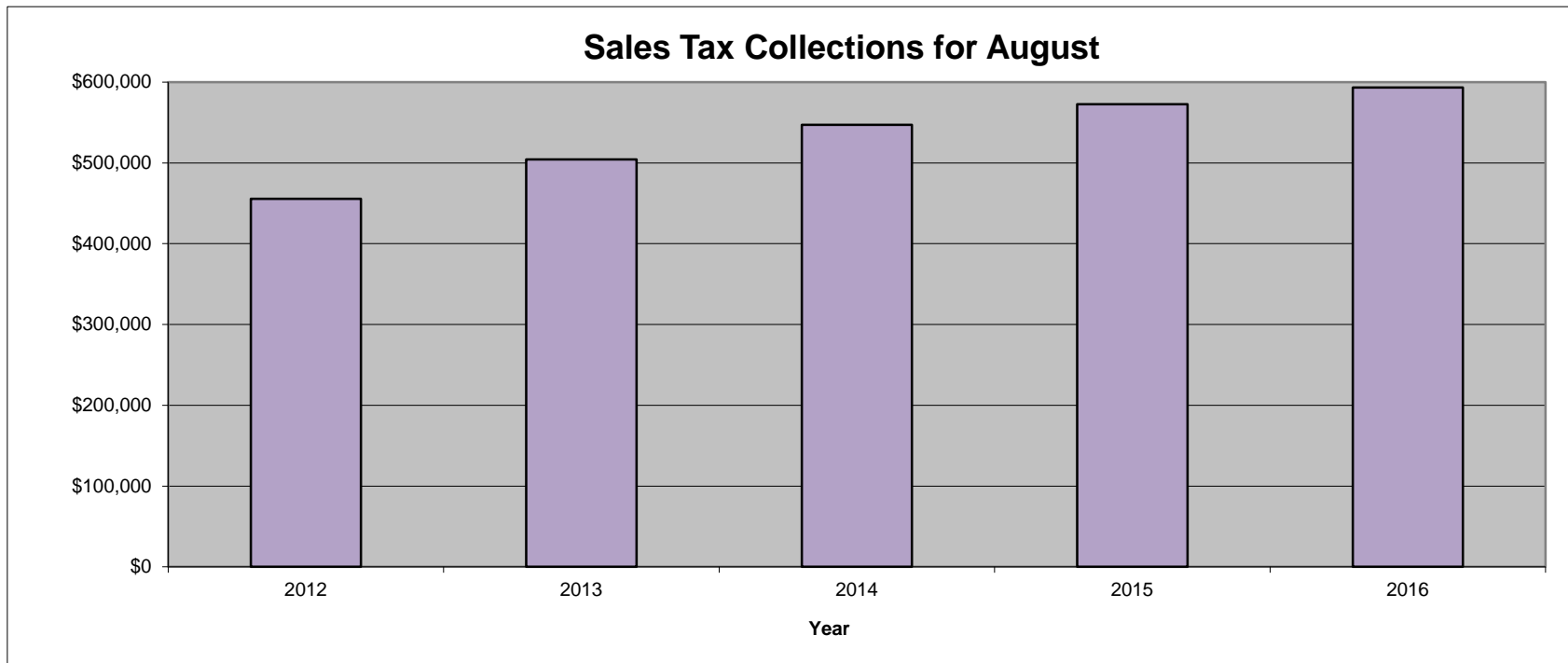
## **Expenditures**

- General Fund expenditures through September 2016 total 73.66% of the 2016 annual budget. These expenditures include the Town's annual insurance premium, \$366,438 toward signature event seed funding, \$197,750 spent for community grants, as well as a large encumbrance for the Town Attorney.
- Fleet expenditures for September are at 60.66% of the total budget. These costs include blanket encumbrances for stock parts and ongoing expenditures such as regularly purchased shop supplies and monthly copier charges.
- Transit funds are 61.56% expended compared to the 2016 budget. These expenditures include a \$135,000 expenditure for the 2015 people mover bus purchase, as well as \$176,000 for the Town's half of the 2016 gondola operations.



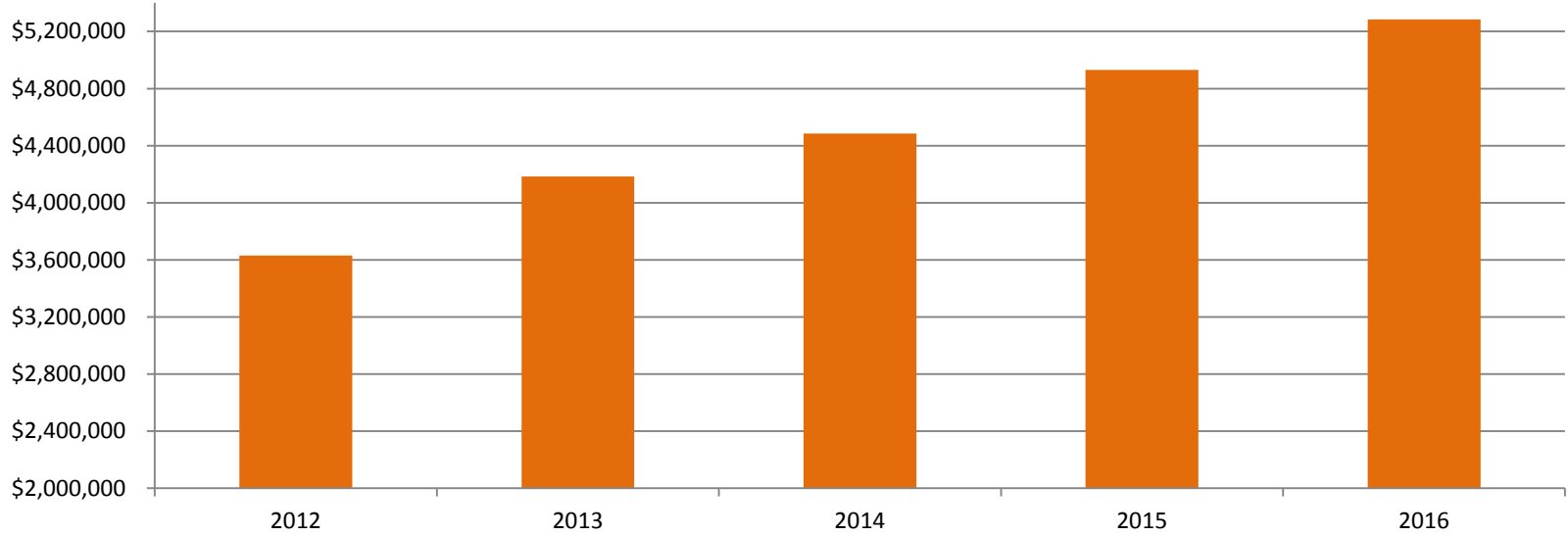
**TOWN OF AVON  
SALES TAX  
2016 Actual vs. Budget**

	Actual Collections					Budget 2016	YTD Collections 2016	Budget Variance	% of change from 2015
	2011	2012	2013	2014	2015				
January	\$ 511,040.76	\$ 519,784.89	\$ 677,943.78	\$ 638,863.27	\$ 765,195.68	\$ 754,412	\$ 743,689.78	\$ (10,722.17)	-2.81%
February	532,903.25	533,546.48	636,702.27	673,722.03	788,999.06	767,268	774,754.00	7,486.36	-1.81%
March	665,532.70	643,910.29	720,267.31	793,301.96	875,499.53	896,356	945,795.71	49,440.00	8.03%
April	305,269.73	304,220.84	307,407.13	381,839.56	403,560.42	412,562	438,198.18	25,636.50	8.58%
May	236,424.93	270,082.79	309,938.72	340,332.28	353,840.11	366,107	404,872.55	38,765.35	14.42%
June	406,828.27	430,588.57	490,329.18	538,517.31	570,424.51	590,545	693,675.00	103,129.62	21.61%
July	452,873.44	472,215.40	537,479.66	570,959.86	601,516.82	638,618	690,342.23	51,723.80	14.77%
August	419,977.29	455,439.86	504,332.25	547,085.80	572,647.57	605,764	593,379.07	(12,385.03)	3.62%
September	391,546.49	424,793.75	475,362.88	546,016.59	595,235.68	589,641			
October	299,193.35	341,711.43	356,925.96	417,921.46	423,701.53	445,802			
November	301,407.41	336,060.63	362,460.94	397,935.36	438,315.55	445,009			
December	921,815.61	852,868.64	981,917.79	1,221,263.98	1,159,160.45	1,244,988			
<b>Total</b>	<b>\$ 5,444,813.23</b>	<b>\$ 5,585,223.57</b>	<b>\$ 6,361,067.87</b>	<b>\$ 7,067,759.46</b>	<b>\$ 7,548,096.91</b>	<b>\$ 7,757,072</b>	<b>\$ 5,284,706.52</b>	<b>\$ 253,074.43</b>	<b>7.16%</b>

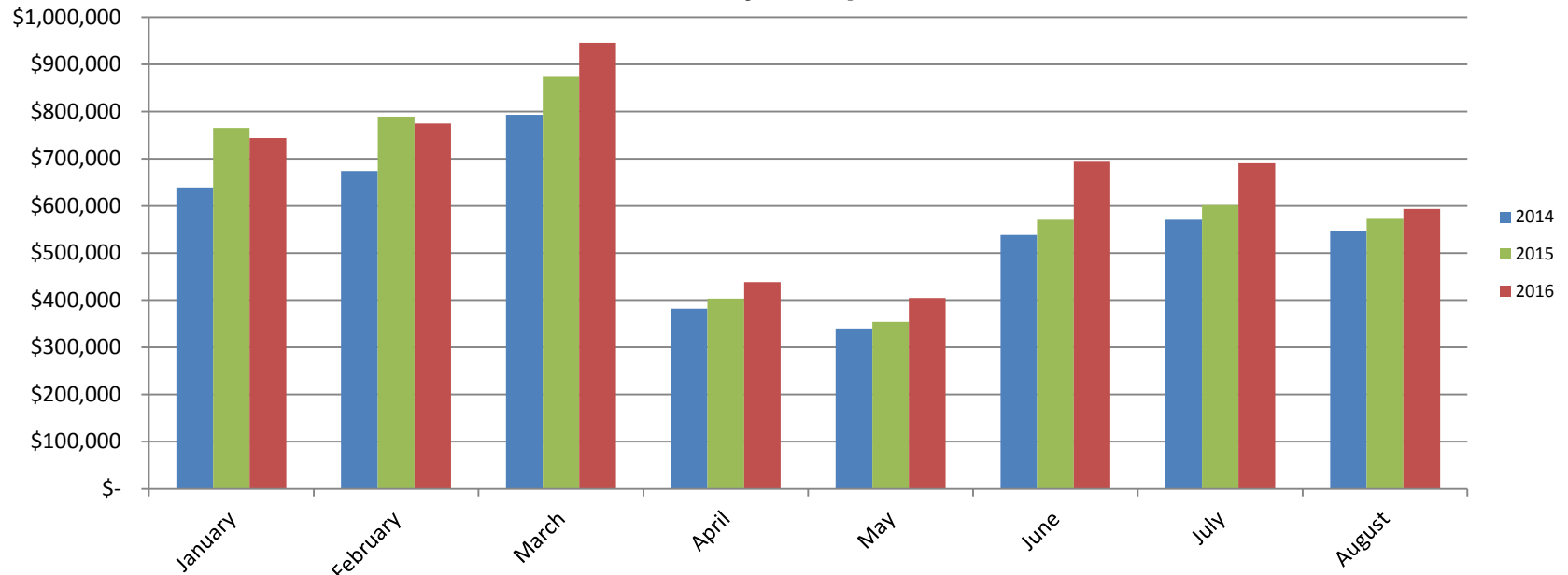


**TOWN OF AVON  
SALES TAX  
2016 Actual vs. Budget**

**YTD Sales Tax Comparison January - August**

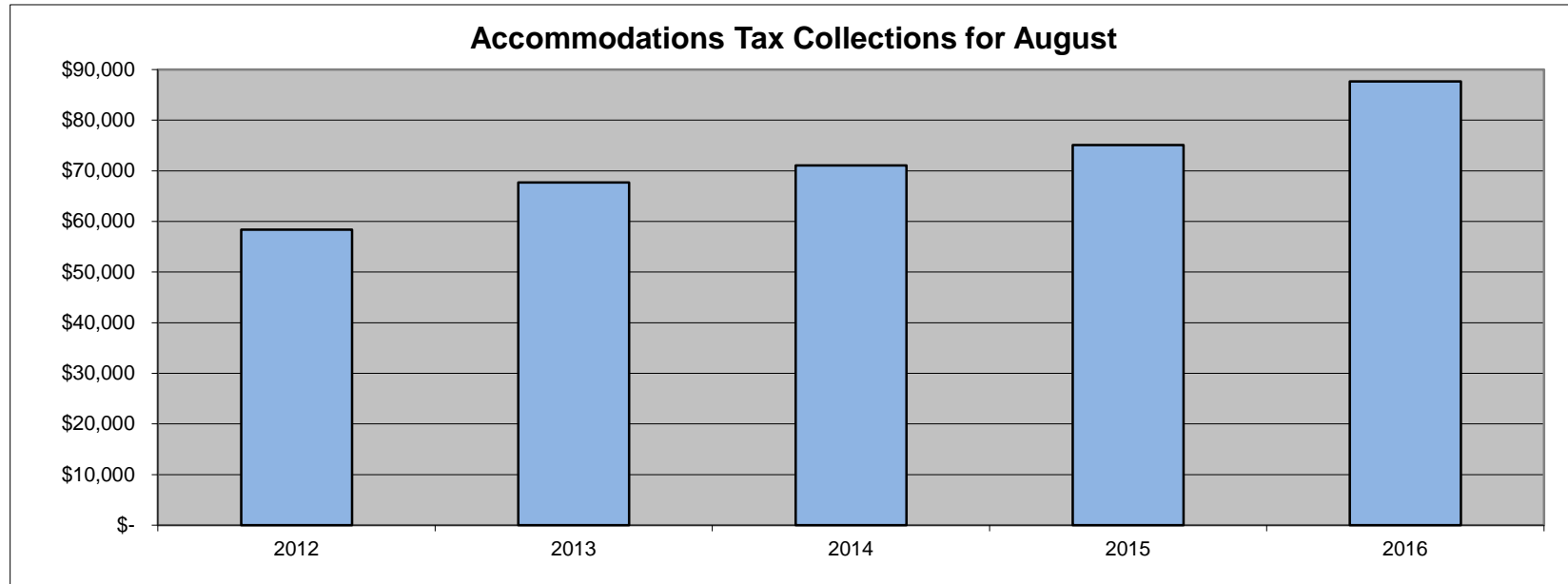


**Sales Tax Monthly Comparison 2014-2016**



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

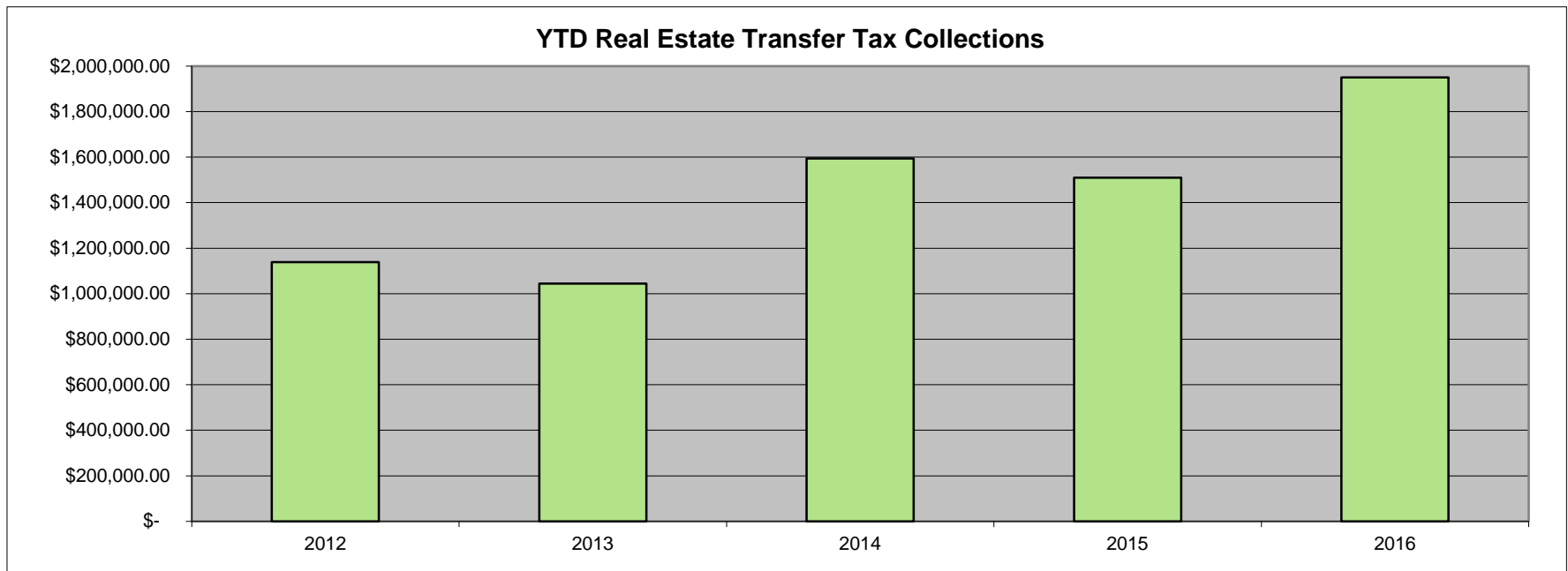
	Actual Collections					Budget 2016	YTD Collections 2016	Budget Variance	% change 2015
	2011	2012	2013	2014	2015				
January	\$ 85,233.73	\$ 90,118.88	\$ 108,508.43	\$ 129,851.78	\$ 164,361.04	\$ 144,277	\$ 168,424.63	\$ 24,147.30	2.47%
February	114,035.90	106,016.32	137,503.61	150,317.06	175,056.31	170,447	185,370.53	14,923.11	5.89%
March	122,145.16	115,043.42	153,208.80	168,597.39	183,650.29	185,351	217,387.54	32,036.06	18.37%
April	26,214.58	20,786.24	26,494.49	31,626.02	34,825.13	34,928	60,916.55	25,988.31	74.92%
May	15,152.82	16,664.44	24,527.17	21,961.97	28,002.56	26,533	37,357.48	10,824.59	33.41%
June	49,999.66	56,012.17	66,578.91	54,232.23	53,397.46	69,938	73,591.08	3,652.86	37.82%
July	62,928.07	66,726.73	73,008.92	81,083.01	86,301.22	92,358	107,595.18	15,237.56	24.67%
August	52,037.55	58,358.93	67,688.07	71,044.33	75,107.71	80,924	87,674.05	6,750.16	16.73%
September	35,521.81	42,245.24	44,661.37	50,840.16	60,417.74	58,324			
October	21,801.56	25,879.51	27,154.53	34,977.59	38,706.72	37,068			
November	24,971.33	22,786.42	28,171.04	32,064.02	34,328.47	35,521			
December	135,984.00	112,759.02	131,361.43	168,944.85	198,421.26	186,556			
<b>Total</b>	<b>\$ 746,026.17</b>	<b>\$ 733,397.32</b>	<b>\$ 888,866.77</b>	<b>\$ 995,540.41</b>	<b>\$ 1,132,575.91</b>	<b>\$ 1,122,226</b>	<b>\$ 938,317.04</b>	<b>\$ 133,559.95</b>	<b>17.19%</b>



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

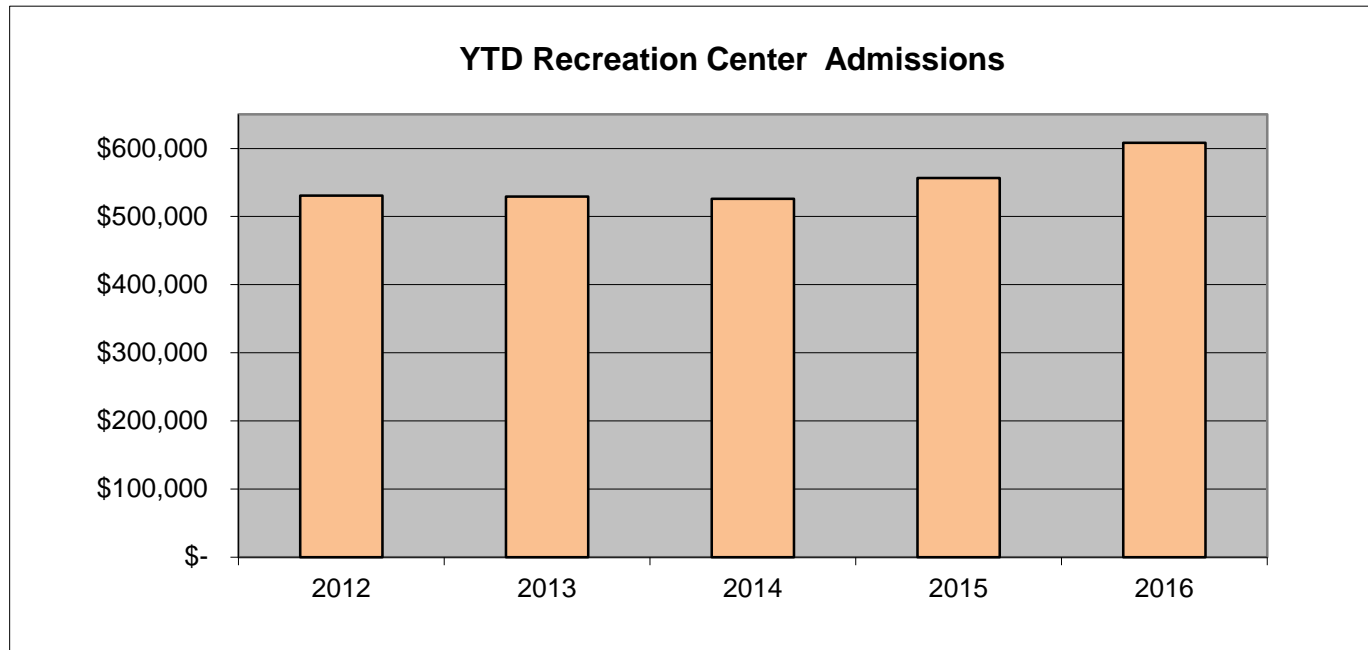
	Actual Collections					Budget 2016	YTD Collections 2016	\$ Change 2015	% of Change 2015
	2011	2012	2013	2014	2015				
January	\$ 57,540.00	\$ 50,204.00	\$ 22,535.00	\$ 85,126.74	\$ 48,640.40	\$ 50,308	\$ 64,422.00	\$ 15,781.60	32.45%
February	230,705.50	41,750.07	55,872.69	562,219.70	85,479.08	185,960	200,850.86	115,371.78	134.97%
March	187,099.47	84,760.49	125,927.64	50,375.06	168,744.22	117,537	265,061.65	96,317.43	57.08%
April	249,482.30	219,195.80	144,437.80	197,656.36	125,266.30	178,341	159,046.06	33,779.76	26.97%
May	187,668.62	270,170.12	121,784.12	183,745.60	237,971.08	190,782	184,987.10	(52,983.98)	-22.26%
June	49,606.58	169,040.47	90,309.74	220,009.15	294,434.84	156,880	307,127.24	12,692.40	4.31%
July	46,707.37	71,057.40	386,434.78	141,051.52	396,838.68	198,546	259,977.94	(136,860.74)	-34.49%
August	106,785.21	232,505.93	97,579.70	154,032.32	152,380.93	141,616	186,483.40	34,102.47	22.38%
September	140,876.56	96,389.34	157,010.67	267,886.92	291,223.61	181,646	321,957.68	30,734.07	10.55%
October	64,005.33	176,889.62	169,839.80	178,044.24	172,855.22	145,112			
November	98,057.44	150,549.86	112,491.82	122,582.66	169,328.38	124,416			
December	198,448.03	145,134.57	83,382.60	1,598,062.92	225,862.90	428,856			
<b>Total</b>	<b>\$ 1,616,982.41</b>	<b>\$ 1,707,647.67</b>	<b>\$ 1,567,606.36</b>	<b>\$ 3,760,793.19</b>	<b>\$ 2,369,025.64</b>	<b>\$ 2,100,000</b>	<b>\$ 1,949,913.93</b>	<b>\$ 148,934.79</b>	<b>8.27%</b>

Budget 2,100,000.00  
Variance, Favorable (Unfavorable) \$ (150,086.07)



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

	2011	2012	2013	2014	2015	Budget 2016	YTD Collections 2016	Budget Variance	% of change from 2015
January	\$ 76,386	\$ 66,113	\$ 70,040	\$ 62,607	\$ 64,723	\$ 67,526	\$ 74,674	\$ 7,148	15.37%
February	72,997	78,782	68,578	63,838	68,506	70,075	86,342	16,267	26.04%
March	78,985	62,670	72,616	77,902	81,664	74,275	76,023	1,748	-6.91%
April	59,991	49,982	64,370	61,760	55,452	57,927	67,398	9,471	21.54%
May	47,368	44,880	35,064	43,119	50,067	43,809	54,337	10,528	8.53%
June	49,850	49,442	46,194	55,052	58,431	51,452	58,044	6,592	-0.66%
July	70,839	73,067	71,491	61,472	66,400	68,201	65,874	(2,328)	-0.79%
August	68,324	67,510	57,329	63,233	66,389	64,131	76,558	12,427	15.32%
September	40,822	38,141	43,829	36,846	44,719	40,602	49,018	8,416	9.61%
October	52,476	41,588	48,803	75,818	61,167	55,602			
November	93,746	94,044	93,822	29,570	71,384	76,009			
December	80,985	72,059	69,258	77,672	112,201	81,892			
<b>Total</b>	<b>\$ 792,769</b>	<b>\$ 738,277</b>	<b>\$ 741,394</b>	<b>\$ 708,889</b>	<b>\$ 801,102</b>	<b>\$ 751,500</b>	<b>\$ 608,268</b>	<b>\$ 70,270</b>	<b>9.33%</b>



# General Fund September 2016 Expenditures to Date

## Department Expenditure Summaries

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
<b>General Government:</b>						
111	Mayor and Town Council	\$ 211,907	\$ 11	\$ 158,791	\$ 53,105	74.94%
112	Boards and Commissions	15,300	-	8,115	7,185	53.04%
113	Town Attorney	130,000	40,567	88,458	975	99.25%
115	Town Clerk	158,811	10,436	98,378	49,997	68.52%
121	Municipal Court	124,826	3,011	70,534	51,281	58.92%
131	Town Manager	367,267	-	260,116	107,151	70.82%
133	Community Relations	149,897	3,457	78,462	67,978	54.65%
<b>Total General Government</b>		<b>1,158,008</b>	<b>57,482</b>	<b>762,854</b>	<b>337,672</b>	<b>70.84%</b>
<b>Human Resources Department:</b>						
132	Human Resources	412,319	3,864	297,979	110,476	73.21%
<b>Finance &amp; IT Department:</b>						
141	Finance	819,334	9,640	579,473	230,221	71.90%
143	Information Systems	388,494	14,224	277,440	96,830	75.08%
149	Nondepartmental	401,231	27,205	350,516	23,510	94.14%
<b>Total Finance &amp; IT</b>		<b>1,609,059</b>	<b>51,069</b>	<b>1,207,429</b>	<b>350,561</b>	<b>78.21%</b>
<b>Total General Gov't Departments</b>		<b>3,179,386</b>	<b>112,415</b>	<b>2,268,262</b>	<b>798,709</b>	<b>74.88%</b>
<b>Community Development:</b>						
212	Planning	317,767	19,914	135,557	162,296	48.93%
213	Building Inspection	146,758	3,350	99,333	44,075	69.97%
214	Economic Development	65,600	-	36,955	28,645	56.33%
215	Town Produced Events	335,502	9,551	254,365	71,586	78.66%
216	Signature Event Seed Funding	400,000	-	366,438	33,562	91.61%
217	Community Grants	230,150	-	197,750	32,400	85.92%
<b>Total Community Development</b>		<b>1,495,777</b>	<b>32,815</b>	<b>1,090,398</b>	<b>372,564</b>	<b>75.09%</b>
<b>Police Department:</b>						
311	Administration	658,759	15,277	400,805	242,677	63.16%
312	Patrol	2,331,166	26,865	1,756,917	547,384	76.52%
313	Investigations	263,742	73	181,869	81,800	68.98%
<b>Total Police</b>		<b>3,253,667</b>	<b>42,215</b>	<b>2,339,591</b>	<b>871,861</b>	<b>73.20%</b>
<b>Public Works:</b>						
412	Engineering	273,664	1,910	191,703	80,051	70.75%
413	Roads and Bridges	1,612,864	93,633	1,042,174	477,057	70.42%
415	Parks	1,133,005	62,625	746,536	323,844	71.42%
418	Buildings & Facilities	1,124,910	58,972	787,115	278,823	75.21%
<b>Total Public Works</b>		<b>4,144,443</b>	<b>217,140</b>	<b>2,767,528</b>	<b>1,159,775</b>	<b>72.02%</b>
<b>Recreation Department:</b>						
514	Administration	245,396	6,004	176,898	62,494	74.53%
515	Adult Programs	58,827	-	38,339	20,488	65.17%
516	Aquatics	427,447	4,782	310,558	112,107	73.77%
518	Fitness	132,740	-	116,120	16,620	87.48%
519	Guest Services	292,090	3,613	210,266	78,211	73.22%
521	Youth Programs	132,412	1,061	105,158	26,193	80.22%
<b>Total Recreation</b>		<b>1,288,912</b>	<b>15,460</b>	<b>957,339</b>	<b>316,113</b>	<b>75.47%</b>
<b>TOTAL OPERATING EXPENDITURES</b>		<b>\$ 13,362,185</b>	<b>\$ 420,045</b>	<b>\$ 9,423,118</b>	<b>3,519,022</b>	<b>73.66%</b>

## Fleet Maintenance Enterprise Fund September 2016 Expenditures to Date

### Expenditure Summary

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
<b>EXPENDITURES</b>						
Public Works:						
434	Fleet Maintenance	\$ 1,817,945	\$ 35,454	\$ 1,067,306	\$ 715,185	60.66%
	<b>Total Operating Expenditures</b>	<u>1,817,945</u>	<u>35,454</u>	<u>1,067,306</u>	<u>715,185</u>	<u>60.66%</u>
	<b>TOTAL EXPENDITURES</b>	<u>\$ 1,817,945</u>	<u>\$ 35,454</u>	<u>\$ 1,067,306</u>	<u>\$ 715,185</u>	<u>60.66%</u>

# Transit Enterprise Fund

## September 2016 Expenditures to Date

### Expenditure Summary

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
<b>EXPENDITURES</b>						
431	Transit Administration	\$ 240,052	\$ 20,878	\$ 171,691	\$ 47,483	80.22%
432	Transit Operations	1,684,207	2,265	1,005,630	676,312	59.84%
435	Wash Bay	159,486	6,212	76,127	77,147	51.63%
<b>Total Operating Expenditures</b>		<u>2,083,745</u>	<u>29,355</u>	<u>1,253,448</u>	<u>800,942</u>	<u>61.56%</u>
<b>TOTAL EXPENDITURES</b>		<u>\$ 2,083,745</u>	<u>\$ 29,355</u>	<u>\$ 1,253,448</u>	<u>\$ 800,942</u>	<u>61.56%</u>



## Preston Neill

---

**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:54 PM  
**To:** Preston Neill  
**Subject:** FW: Opposed to the Request for Continuance

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** Spitzer Richard [spitzerr@comcast.net]  
**Sent:** Sunday, October 23, 2016 7:17 PM  
**To:** Jennie Fancher; Matt Gennett; Scott Prince; Buz Reynolds; Sarah Smith Hymes; Jake Wolf; Debbie Hoppe; Megan Burch  
**Subject:** Opposed to the Request for Continuance

Town Council,

I have learned that Mr. Gennett has filed a "Request for Continuance," to delay the October 25th public hearing on the Trails Plan. This date has been known for more than a month. It is Mr. Gennett's responsibility to schedule his time for these meetings.

Why the request to continue this one item? Would it be appropriate to cancel the meeting so that he can vote on all other issues before council originally scheduled for this meeting?

The Avon Town Council asked the Planning and Zoning Commission to study the bike trail proposal. The P&ZC recommended that the trails not be built.

The Avon Town Council asked the Colorado Parks and Wildlife to study the impact on wildlife. The CPW recommended that the trails not be built.

By one of the council member's admission, one of the largest turnouts ever seen at a council meeting objected to the trails. The vast majority of the turnout was of Wildridge residents. Emails to council were opposed by a margin of more than 4 to 1.

The Town Council has studied all of that information and voted to not build the trails.

A continuance means that a newly constituted Council with as many as 3 new members would make the decision.

If the council delays the 2nd reading until January 10th, it is no longer a 2nd reading because as many as three new council members were not around for the 1st reading?

Few, if any, governmental institutions ever carry over a second reading to a new elected group. Does this mean that it is now the 1st reading for the new council, and if so, do we go through all the presentations again? Bring in the CPW and go through all the "testimony" heard by the old council? Then schedule a 2nd reading for a future date?

If it is the 2nd reading, will new council members have any knowledge of all that has occurred and be able to vote in a responsible manner?

I think it is the responsibility of this council to move forward on October 25th and ratify their decision from the 1st reading.

I believe that a failure to do so will bring the integrity of the current Avon Council Members into question.

Do the right thing!

Rick

=====  
Rick Spitzer  
Spitzer Photography  
PO Box 7443  
3170 Wildridge Rd., Unit E  
Avon, CO 81620-7443  
970-845-5067  
[spitzerr@comcast.net](mailto:spitzerr@comcast.net)  
<http://spitzerphoto.com>  
=====

## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:55 PM  
**To:** Preston Neill  
**Subject:** FW: 2016 Avon Master Trails Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** McDavid, Janet L. [janet.mcdavid@hoganlovells.com]  
**Sent:** Sunday, October 23, 2016 10:49 AM  
**To:** Jennie Fancher; Megan Burch; Sarah Smith Hymes; Buz Reynolds; Scott Prince; Jake Wolf; Matt Gennett  
**Cc:** Debbie Hoppe; John Gary McDavid ; Peter Warren  
**Subject:** RE: 2016 Avon Master Trails Plan

My husband and I own a home at 5531 Coyote Ridge in Wildridge. I join in Pam & Peter Warren's request that the Avon Town Council take the following actions:

(a) Reject Mr. Gennett's proposed continuance of the 2d reading of the Trails Plan Ordinance. This matter has been carefully and thoughtfully considered by the entire Council and Planning & Zoning Committee for many months. A continuance of the meeting would likely involve additional discussion and consideration, potentially by new Council members who have not participated in the extended debate and consideration of the issues. That would not be a prudent or efficient use of Council time and resources. The date for the 2d reading has been set for many weeks. If Mr. Gennett is now unable to attend on the long-planned date of October 25, he can provide a written statement for consideration by other members of the Council. He participated in the September 13 meeting and the other members of the Council are aware of his views, but he could be given an opportunity to provide his views in writing.

(b) Sustain your favorable votes in favor of the ordinance as proposed by the Planning and Zoning Commission and amended by you at that meeting on September 13, for all of the reasons discussed at that meeting.

Janet McDavid  
5531 Coyote Ridge  
Avon, CO 81620  
970-748-5048 Home  
202-494-3119 Cell  
[Janet.mcdavid@hoganlovells.com](mailto:Janet.mcdavid@hoganlovells.com)

**From:** Peter Warren [<mailto:pgwarren@comcast.net>]  
**Sent:** Sunday, October 23, 2016 12:34 PM  
**To:** [jfancher@avon.org](mailto:jfancher@avon.org); [mburch@avon.org](mailto:mburch@avon.org); [shymes@avon.org](mailto:shymes@avon.org); [breynolds@avon.org](mailto:breynolds@avon.org); [sprince@avon.org](mailto:sprince@avon.org); [jwolf@avon.org](mailto:jwolf@avon.org); [mgennett@avon.org](mailto:mgennett@avon.org)  
**Cc:** [dhoppe@avon.org](mailto:dhoppe@avon.org)  
**Subject:** 2016 Avon Master Trails Plan

Mayor Fancher and Members of the Town Council –

We strongly urge you to complete the following at the upcoming meeting on October 25th:

- 1) Vote against the Mr. Gennett's proposed continuance of the 2nd reading of the Trails Plan ordinance as voted for at the September 13th meeting, and
- 2) Sustain your favorable votes in favor of the ordinance as proposed by the Planning and Zoning Commission and amended by you at that meeting on the 13th.

We look forward to the conclusion of this issue and thank you for all of your work on this issue throughout this past year.

Regards,

---

Pam and Peter Warren  
4181 Little Point  
Avon, CO

(970) 445-0120 (cell)  
(970) 845-0796 (Home/FAX)

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About Hogan Lovells

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## Preston Neill

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**To:** Jennie Fancher  
**Subject:** RE: October 25th meeting

On Oct 22, 2016, at 10:07 PM, Bob Willoughby <[bwiloby@comcast.net](mailto:bwiloby@comcast.net)> wrote:

To Members of Avon Town Council:

I attended the council meeting on the proposed Wildridge Trails at which you wisely voted 5-2 to NOT proceed with trail development.

Subsequently, I wrote to each of you praising your wisdom in following the recommendations of the Planning & Zoning Commission and the wildlife experts from Colorado Parks & Wildlife.

I also commended you for actually HEARING your Wildridge constituents, who universally agreed with your decision to not move forward with this poorly conceived trails plan.

You have yet another opportunity to represent your constituent's wishes in the second reading of this proposal on October 25th.

However I hear that one member of council ....Mr. Gennett.....is requesting that the final vote on this issue.....a vote on which he and Mr. Wolf were outvoted 5-2 ! ..... be postponed until JANUARY of next year.

Is there anyone that does not see how obvious this feeble 'stall' tactic is?. Gennett (and Wolf) did not like the outcome of the first vote and are counting on raising the issue with a new council in 2017. Pretty lame.

The fact is, neither Gennett nor Wolf need to be present. We know they will vote against the wishes of Wildridge residents once again.

Let their opposition be noted and let's move on.

The voters of Wildridge/ Mountain Star are not going anywhere. If this matter is delayed, they will show up in even greater numbers, and they will feel 'played' by council.

We care deeply about our neighborhood and will resist....make that fight.. having these trails built ..... as long as it takes.

Like all residents of Eagle County, I got my ballot the other day. I haven't filled it out yet, And I won't until after the council meeting on Tuesday. I'm sure that my Wildridge neighbors will do the same thing.

My advice: You know what your's constituents want. Represent them. See this "continuance" for what it is.....a desperate ploy by a one of two council members ( out of 7 )

to push through an idea that nobody wants.

It's just so painfully obvious.

So, do the wise thing.....again..... Get this thing settled on Tuesday.

Like I said, the folks in Wildridge aren't going anywhere.

Bob Willoughby  
Wildridge resident

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**Preston Neill**

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**To:** Jennie Fancher  
**Subject:** RE: Avon Master Trails Plan

On Oct 22, 2016, at 4:46 PM, Jack Gardner <[Jack-Gardner@comcast.net](mailto:Jack-Gardner@comcast.net)> wrote:

**Dear Mayor Fancher and Members of Town Council:**

**Per our previous email below, we are opposed to the development of trails in Metcalf Gulch, and we greatly appreciate your time and patience in dealing with this issue over so many months and passing Ordinance No. 16-20 on first reading on September 13. The delay for second reading until October 25 was unusual and did not fit with many of the schedules of those opposed to these trails. However, we made other plans, and we are now planning to attend the October 25 hearing.**

**We learned today that there has been a requested continuance of the hearing and second reading until January 10, 2017. We urge you to deny this request and to proceed with the hearing and second reading of the Ordinance this coming Tuesday, as planned and previously announced.**

**It may be your thinking that it "doesn't matter" if there is another continuance, since the Ordinance was approved by a 5-2 vote, and "the vote on ordinances is usually the same on second reading as on first." Please be assured that even if it doesn't matter to your Council, it matters greatly to your constituents for the following reasons:**

- 1. The issue of a new trails plan has been the topic of heated discussion and debate for much of this year. There have been numerous meetings and public hearings on this subject, culminating in the Council's action on September 13. Many of us in Wildridge, Wildwood and Mountain Star were shocked to learn that our open space was threatened with illegal development. The large public outcry against these trails was the result, and the issue should be finally resolved as soon as possible.**
- 2. The Ordinance should be voted on by the same Town Council that initiated the planning process, held the public hearings and considered the Ordinance on first reading. Any further delay will mean that a new post-election Council, with new members (and possibly new leadership), will have final say on this Ordinance. While the Town Home Rule Charter may not forbid a delay of almost four months between first and second readings, this kind of delay is highly unusual and certainly not in keeping with the spirit of the Charter.**
- 3. Many of us have gone to great lengths and personal expense to carefully analyze the trails proposals, communicate with our fellow neighbors, and follow the progress on these issues over the course of many months. We deserve to have these issues finally resolved, and it is an insult to your public for the process to be needlessly interrupted again for several months.**

**If Councilman Gennett cannot attend the October 25 meeting and wants to express a different opinion on Ordinance No. 16-20, we encourage him to write a statement to be read into the record. As we have heard from some of you, the result will be the same on October 25 or January 10, so it isn't really a matter of great importance or urgency to the Town that the continuance be granted. On the other hand, common courtesy to your public constituents demands that action be taken by your Council on October 25. Please respect our views!!**

Respectfully,

**Jack and Greer Gardner  
5723 Wildridge Road  
Avon**

**To the Avon Town Council:**

We have owned property and paid taxes in Avon since 1992 (24 years), and we have lived here full-time since 2000 (16 years). We decided to live here because of the views and open space, and we have enjoyed the "wild" in Wildridge ever since.

**We oppose the adoption of the proposed Master Trails Plan for the following reasons:**

- 1. Your Planning and Zoning Commission voted to eliminate all trails in Metcalf Gulch.** Your P&Z, after an extensive public hearing and discussion, found that the ***"land is not compatible with the proposed development of trails"***, and ***"unavoidable natural impacts***



## Preston Neill

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**From:** RAYMOND OLIVAS <RAYMONDMARY@msn.com>  
**Sent:** Sunday, October 23, 2016 8:10 AM  
**To:** Preston Neill  
**Cc:** Avon Council Web; Matt Pielsticker; Debbie Hoppe  
**Subject:** Re: TOA Recreational Trails - Needs to occur immediately

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

I understand that a continuance has been requested but I urge the council to take action now! Too many issues need resolution and not postponement!

Raymond Olivas  
2165 Saddle Ridge Loop A  
Avon, CO

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## Preston Neill

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**From:** Jim Horan <Vailmtneer@comcast.net>  
**Sent:** Sunday, October 23, 2016 9:38 AM  
**To:** Avon Council Web  
**Cc:** Debbie Hoppe  
**Subject:** Second Reading of Ordinance 16-20

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Honorable Mayor Jennie Fancher and Avon Town Council Members:

We received a TOA email regarding Council member Matt Gennett asking for a continuance of the Second Reading which would put that into 2017.

With the November election close at hand, my wife and I believe it would be in the best interest of the Avon community that you proceed with the Second Reading as scheduled on October 25th.

Sincerely,

Jim & Sam

Jim Horan & Diane "Sam" Sampson  
P.O. Box 7480  
2165B Saddle Ridge Loop  
Avon, CO 81620  
970-845-7922 (H)  
970-376-1378 (C)



## Preston Neill

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**From:** Marc Slatkoff <slatkoff@me.com>  
**Sent:** Sunday, October 23, 2016 3:12 PM  
**To:** Avon Council Web  
**Subject:** Request for Continuance

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mayor Fancher and Members of the Town Council,

We are aware that a Request for a Continuance has been filed with regard to the second reading of the Trails Plan. We strongly disagree with this request and urge that it be denied. Much time and energy has been expended by many people. This issue needs to be dealt with by those Council Members who have been in place during that time frame. Delaying this process due to one person's absence is unwarranted.

Marc and Carel Slatkoff  
4191A Little Point  
Avon, CO



## Preston Neill

---

**From:** Terese Holmquist <tholmquist1@live.com>  
**Sent:** Sunday, October 23, 2016 8:15 PM  
**To:** Avon Council Web  
**Subject:** P trails

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mayor Fancher and Council members,

I am writing to ask that you make, as planned, your final vote regarding the P series mountain bike trails in Avon and Wildridge on Tuesday October 25, 2016 as scheduled. The issue, as well as the citizens of Avon have been through a long and tedious due process.

If councilman Matt Gennett cannot be present, that seems to be his issue, and delaying the vote until January 10, 2017 seems ludicrous. Is Matt hoping 3 new council members are voted in November 8 and he then has a shot at getting the trails voted through in January?

I would love to hear back from each of you.

Those of you that respect the citizens and wildlife of Avon and specifically, Wildridge, I thank you from the bottom of my heart.

Terie Holmquist





## Preston Neill

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**To:** Peter P. Copses  
**Subject:** RE: Avon Master Trails Plan Ordinance

**From:** "Peter P. Copses" <[peter\\_copses@mac.com](mailto:peter_copses@mac.com)>

**Subject:** Avon Master Trails Plan Ordinance

**Date:** October 24, 2016 at 8:09:13 AM PDT

**To:** Jennie Fancher <[jfancher@avon.org](mailto:jfancher@avon.org)>, [mburch@avon.org](mailto:mburch@avon.org), [shymes@avon.org](mailto:shymes@avon.org),  
[breyolds@avon.org](mailto:breyolds@avon.org), [sprince@avon.org](mailto:sprince@avon.org), [jwolf@avon.org](mailto:jwolf@avon.org), [mgennett@avon.org](mailto:mgennett@avon.org)

**Cc:** Debbie Hoppe <[dhoppe@avon.org](mailto:dhoppe@avon.org)>, Matt Pielsticker <[mpielsticker@avon.org](mailto:mpielsticker@avon.org)>, Charles McWilliams <[cmcwilliams@avon.org](mailto:cmcwilliams@avon.org)>

Members of the Town Council,

We strongly urge you to vote to reject Mr. Gennett's proposed continuance of the 2nd reading of the Trails Plan ordinance that you duly passed at the Town Council's September 13th meeting and vote to approve the Trails Plan ordinance in the 2nd reading at your upcoming meeting on Tuesday, October 25th.

The Town Council meetings are scheduled far in advance, so the scheduling conflict basis for the continuance does not seem justified in the slightest, particularly in light of the fact that the second reading was deferred with the full concurrence of all the members of the Council, including Mr. Gennett, to the October 25th date rather than the meeting immediately following the September 13th meeting at which the ordinance was approved. In light of the intervening election that will occur prior to the January 10, 2017 date proposed in Mr. Gennett's continuance, it seems extremely inappropriate, given the effort that has been expended on this issue, for the Council as currently constituted to fail to complete this aspect of its business.

Thank you for your consideration.

Respectfully,

Judy and Peter Copses  
1378 Wildwood Road  
Avon, CO 81620



## Preston Neill

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**From:** Sherry Bunting <stbunting@yahoo.com>  
**Sent:** Monday, October 24, 2016 1:13 PM  
**To:** Avon Council Web  
**Cc:** Debbie Hoppe  
**Subject:** Continuation Motion

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Avon City Council,

\*Please, please do not have a continuation of the vote on the Trails plan.

\*Please sustain with the favorable vote of the Trails Plan ordinance voted for at the Sept. 13 meeting.

\*Please respect all the time, effort, studies, information and recommendations from the Planning and Zoning commission, the Colorado Parks and Wildlife, and the residents of the Wildridge Residential area.

\*Please, do not let a new, and maybe uninformed, city council vote for this already passed plan.

\*Please do not use the delay tactic of putting off a second vote until Jan. It is truly hard to understand the reason for that length of time for a second vote.

\*Please do vote have the second reading and do vote at the Oct. 25 city council meeting. Please have confidence that you made a good decision in Sept.

Thank you for your time and consideration of this matter that is very, very important to a large number of Wildridge residents.

Sherry Bunting  
4015 Wildridge Rd.



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:48 PM  
**Cc:** Preston Neill  
**Subject:** FW: Trails vote

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** [coot13@comcast.net](mailto:coot13@comcast.net) [coot13@comcast.net]  
**Sent:** Monday, October 24, 2016 2:49 PM  
**To:** [jafancher@avon.org](mailto:jafancher@avon.org); Megan Burch; Buz Reynolds; Debbie Hoppe; [mgennet@avon.org](mailto:mgennet@avon.org); Jake Wolf; Sarah Smith Hymes; Scott Prince  
**Subject:** Trails vote

Dear council and associated members. Please let us put the issue of the trails to bed. The due diligence was done and the people responded that they did not want to see the trails put trough. A delay is a waste of time and money. Please do what the people ask.

Thank you



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:49 PM  
**To:** Preston Neill  
**Subject:** FW: Oct. 25 Council meeting resident comment

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** Marjorie Fink [mfink10090@aol.com]  
**Sent:** Monday, October 24, 2016 1:45 PM  
**To:** Jennie Fancher; Matt Gennett; Scott Prince; Buz Reynolds; Sarah Smith Hymes; Jake Wolf; Debbie Hoppe  
**Subject:** Fwd: Oct. 25 Council meeting resident comment

Sent from my iPad

Begin forwarded message:

**From:** Marjorie Fink <[mfink10090@aol.com](mailto:mfink10090@aol.com)<<mailto:mfink10090@aol.com>>>  
**Date:** October 24, 2016 at 12:58:37 PM EDT  
**To:** Marjorie Fink <[mfink10090@aol.com](mailto:mfink10090@aol.com)<<mailto:mfink10090@aol.com>>>  
**Subject:** Oct. 25 Council meeting resident comment

We are unable to attend the Council meeting on Oct 25. As a result we wanted you to be aware of our strong conviction that the vote to approve an ordinance eliminating the P- trails occur now and not be delayed. We are totally against a Continuance being granted.

Thank you for your consideration,  
Margie and Bob Fink  
2345E Fox Lane,  
Avon, CO.

Sent from my iPad





## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:50 PM  
**To:** Preston Neill  
**Subject:** FW: 2016 Avon Master Trails Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** Leslie Roubos [leslie.roubos@gmail.com]  
**Sent:** Monday, October 24, 2016 12:47 PM  
**To:** Jennie Fancher; Megan Burch; Buz Reynolds; Debbie Hoppe; Matt Gennett; Jake Wolf; Sarah Smith Hymes; Scott Prince  
**Subject:** 2016 Avon Master Trails Plan

Dear Mayor Fancher and Members of the Avon Town Council,

I am writing to ask you to complete the process for approving the 2016 Avon Master Trails Plan at the upcoming town council meeting on October 25th:

It is unfortunate that Councilman Gennett has chosen not to attend the meeting, but it is imperative that you vote against his proposed continuance of the 2nd reading of the Trails Plan ordinance as voted for at the September 13th meeting. Council has already voted on this issue, and I ask that you uphold your votes in favor of the ordinance as proposed by the Planning and Zoning Commission and approved by you at that meeting on the 13th.

This is been a great source of stress for everyone involved, so I urge you to complete the process and put this issue to bed at tomorrow's meeting.

We all look forward to the conclusion of this issue, and I thank you for listening to your constituents in this matter.

Sincerely,

Leslie Roubos  
Wildridge Resident



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:54 PM  
**To:** Preston Neill  
**Subject:** FW: P1,2,3,4,6,7, and the Pump Track in Nottingham Park

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** William Reisinger [wer007@cox.net]  
**Sent:** Sunday, October 23, 2016 8:07 PM  
**To:** Megan Burch; Jennie Fancher; Matt Gennett; Scott Prince; Buz Reynolds; Sarah Smith Hymes; Jake Wolf; Debbie Hoppe  
**Subject:** P1,2,3,4,6,7, and the Pump Track in Nottingham Park

We love our four-legged friends!

Please do not accept a continuance requested by Matt Gennett.

Maintaining the wildlife in Avon and especially in Wildridge should not be thwarted by political hubris.

Thank you,  
Bill Reisinger



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:55 PM  
**To:** Preston Neill  
**Subject:** FW: Wildridge Trails Final Vote

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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From: [youngwiley@comcast.net](mailto:youngwiley@comcast.net) [youngwiley@comcast.net]  
Sent: Sunday, October 23, 2016 6:01 PM  
To: Sarah Smith Hymes; Buz Reynolds; Megan Burch; Jennie Fancher; Scott Prince; Jake Wolf  
Cc: Debbie Hoppe; Matt Pielsticker  
Subject: Wildridge Trails Final Vote

Dear Council Members:

It has come to our attention that Matt Gennett has asked for a Continuance of the vote on the Trails Plan until January 10, 2017. Since he voted against removing the P-trails from the Plan, it is quite obvious that he has a personal agenda in asking for a Continuance, which sounds a lot like another politician who does not want to accept the outcome of a vote not in his favor.

You listened to the residents of Wildridge, the PZC and the CPW and voted "with" us in September. Please do NOT accept this Continuance and put this issue to a final vote on Tuesday, October 25 as planned.

Thank you,

Patty Young and Jim Wiley  
5591 Coyote Ridge



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 3:57 PM  
**To:** Preston Neill  
**Subject:** FW: Avon Trails Master Plan

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** John Perdzock [j.perdzock@comcast.net]  
**Sent:** Saturday, October 22, 2016 6:08 PM  
**To:** Jennie Fancher; Jake Wolf; Matt Gennett; Scott Prince; Megan Burch; Buz Reynolds; Sarah Smith Hymes  
**Cc:** Debbie Hoppe  
**Subject:** Avon Trails Master Plan

Dear Mayor Fancher and Avon Town Council Members,

We remain opposed to any trail development in Metcalf Drainage and along Nottingham Road.

We urge you to vote against any trail development in Metcalf Drainage and along Nottingham Road and sustain the previous vote to remove those trails from the Avon Trails Master Plan.

We are also against any continuance past October 25th as this issue would then be dealt with by a new council and should be resolved by the current council.

On Oct 25th, we urge you to vote against any continuance AND to vote at that time to remove these trails from the Avon Trails Master Plan.

We urge you to take this action and put this issue behind us PRIOR to the election on Nov 7th.

Respectfully,

John and Janet Perdzock  
5729 Wildridge Rd E  
Avon CO 81620





## Preston Neill

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**Subject:** RE: 2016 Avon Master Trails Plan

On Oct 23, 2016, at 10:34 AM, Peter Warren <[pgwarren@comcast.net](mailto:pgwarren@comcast.net)> wrote:

Mayor Fancher and Members of the Town Council –

We strongly urge you to complete the following at the upcoming meeting on October 25<sup>th</sup>:

- 1) Vote against the Mr. Gennett's proposed continuance of the 2<sup>nd</sup> reading of the Trails Plan ordinance as voted for at the September 13<sup>th</sup> meeting, and
- 2) Sustain your favorable votes in favor of the ordinance as proposed by the Planning and Zoning Commission and amended by you at that meeting on the 13<sup>th</sup>.

We look forward to the conclusion of this issue and thank you for all of your work on this issue throughout this past year.

Regards,

Pam and Peter Warren  
4181 Little Point  
Avon, CO

(970) 445-0120 (cell)  
(970) 845-0796 (Home/FAX)



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Monday, October 24, 2016 8:51 PM  
**To:** Preston Neill  
**Subject:** FW: Vote on the trails issue

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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From: Terie ROUBOS [taroubos@me.com]  
Sent: Monday, October 24, 2016 8:38 PM  
To: "[To:jfanher@avon.org](mailto:To:jfanher@avon.org)"; Megan Burch; Buz Reynolds; Debbie Hoppe; Matt Gennett; Jake Wolf; Sarah Smith Hymes; Scott Prince  
Subject: Vote on the trails issue

Please uphold your previous vote and do not allow the trails to invade the residential area of Wildridge. Do not scar the hillsides - they can be seen from the entire valley.

Terie Roubos  
PO Box 2641  
Edwards  
Sent from Terie's iPhone



## Preston Neill

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**From:** Steve Coyer <scoyer@hotmail.com>  
**Sent:** Tuesday, October 25, 2016 8:29 AM  
**To:** Avon Council Web  
**Subject:** Item 5.1

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Council Members....I just want to urge you to not to vote to continue this item tonight. We all know how large the turn-outs were on the hearings on the Metcalf Gulch trails, and how a very large majority of town residents are against this proposal. Nothing has changed, and if you continue the discussion you will simply re-engage the majority on this point, to a level of great frustration on their part, as well as Council's. We have enough frustration nationally this election season - let's put his issue to bed!

You probably don't hear this enough, so I want to thank you for performing your duties as Council Members. I know it isn't an easy ting to do....

Steve Coyer

P.S. I visited the new water tank up here in Mountain Star yesterday, and can report that it is very nearly finished. So far, within budget and schedule.



## Preston Neill

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**From:** Debbie Hoppe  
**Sent:** Tuesday, October 25, 2016 9:55 AM  
**To:** Preston Neill  
**Subject:** FW: P trail continuance

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** Dan Griffith [electromechsolutions@yahoo.com]  
**Sent:** Monday, October 24, 2016 9:57 PM  
**To:** Jennie Fancher; Matt Gennett; Scott Prince; Buz Reynolds; Sarah Smith Hymes; Jake Wolf; Debbie Hoppe; Megan Burch  
**Subject:** P trail continuance

Dear Mayor and all Council Members,

It would appear that there is more afoot than business as usual when it comes to the declined P Trails when it comes to the request for continuance. It seems the 2nd reading would be hi jacked by one member of the Council who will not accept the results of the public process. Shame on you Matt and those who might stand with you. This is the most egregious assault against the Public Trust that I have ever personally witnessed. This smacks of personal desires and endeavors over representation, again, shame on you,

Respectfully,

Daniel B. Griffith  
5571 Coyote Ridge  
Avon, Co

