

GLENWOOD SPRINGS OFFICE
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ATTORNEYS AT LAW
Since 1975
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July 29, 2015

MEMORANDUM

TO: New Castle Town Council

FROM: Haley Carmer, Assistant Town Attorney

RE: 8/4/15 Meeting Packet Items – License Agreement

This Memorandum addresses the context and issues associated with the proposed License Agreement (“Agreement”) between the Town and the 4th Street Plaza Owners’ Association (“Association”).

At its July 21, 2015 meeting, Council agreed to accept a parcel of land donated by TAZM, LLC (Michael and Charlie Watts). Council also approved the donation agreement that sets forth the terms of the donation. The donation agreement provides that the Town will work with the Association to maintain the parking spaces currently located on the donated land and used by 4th Street Plaza residents. The Town municipal code requires that the Association maintain a certain number of parking spaces, and two of the Association’s parking spaces are currently located on the donated parcel.

The Agreement grants the Association a license to continue to use the parking spaces and memorializes the terms of the license. The license is not a permanent easement and can be revoked by the Town at any time. If the Town chooses to revoke the license to allow for a different or expanded use of the donated parcel, the Agreement provides that the Town will waive the parking requirement as it pertains to the Association. The Association must maintain insurance for the parking spaces and is responsible for all maintenance and repair costs. The license agreement will not be executed until the Town receives title to the property, which, per the donation agreement, must occur within 30 days of the signing of the donation agreement.

The Agreement has been sent to the 4th Street Owners’ Association, and as of the date of this letter, the Association has not submitted comments or proposed changes to the Agreement. Should Council choose to approve the Agreement, it should do so subject to non-substantive edits from the Association, which non-substantive edits will be subject to Town Staff review and approval. If the Association requests substantive changes to the Agreement, the Agreement will be brought back to Council for review and approval.

I look forward to discussing the Agreement with you at the meeting on August 4th.

LICENSE AGREEMENT

This LICENSE AGREEMENT (“Agreement”), with an effective date of the ____ day of _____, 2015, is entered into by and between the TOWN OF NEW CASTLE, COLORADO, a municipal corporation (“Town”) and 4TH STREET PLAZA OWNERS’ ASSOCIATION, a Colorado non-profit corporation (“4th Street”) (collectively, “Parties”).

RECITALS

WHEREAS, 4th Street manages the 4th Street Plaza building located at 386 W. Main Street, New Castle, Colorado (“Building”), which is composed of three commercial units and four residential units; and

WHEREAS, the Building is located in the C-1 zone district;

WHEREAS, Chapter 17.76.120 of the New Castle Municipal Code (“Code”) requires one and one-half parking spaces per residential dwelling unit located in the C-1 zone district; and

WHEREAS, two of the Building’s required parking spaces are located on a parcel of land adjacent to the Building; and

WHEREAS, pursuant to an Agreement to Gift Real Property (“Gift Agreement”), the Town received title to the adjacent parcel that contains the parking spaces, said parcel being that which is commonly known as 376 W. Main Street, a.k.a. 360 W. Main Street, New Castle, Colorado, and is fully described in **Exhibit A** attached hereto and incorporated herein by reference (“Town Property”); and

WHEREAS, to ensure 4th Street’s continued compliance with the Code and as required by the Gift Agreement, the Town intends to grant 4th Street a license to use the Town Property in accordance with the terms and conditions expressed herein.

THEREFORE, in consideration of the promises and agreements set forth below, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are incorporated by reference herein as affirmative and material representations and acknowledgements of the Parties.

2. Grant of License. The Town hereby grants to 4th Street an exclusive license (“License”) to use that area of the Town Property that, as of the date of this Agreement, contains two (2) parking spaces (“License Area”).

3. Termination. The Town reserves the right to revoke the License with or without cause at any time upon sixty (60) days’ written notice (“Notice of Termination”) to 4th Street. 4th Street may terminate this Agreement upon delivery of a Notice of Termination to the Town. This License does not constitute a permanent easement. Once the License is terminated, continued use of the License Area by Building residents or other licensees or invitees of 4th Street will be considered a trespass and prosecuted accordingly. Upon termination, 4th Street shall remove any temporary or permanent improvements it may have installed, and if 4th Street fails to do so, the

New Castle, Colorado 81647
Attn: Tom Baker, Town Administrator

With copy to: Garfield & Hecht, P.C.
420 7th Street, #100
Glenwood Springs, Colorado 81601
Fax: 970-947-1937
Attention: David McConaughy

To 4th Street: 4th Street Plaza Owners' Association
386 W. Main St.
P.O. Box 262
New Castle, Colorado 81520
Attention: John Carlton, President

Any notice, demand or document so given, delivered or made by United States mail shall be deemed to have been received on the earlier of the date actually received or the third business day after the same is deposited in the United States mail as certified mail, addressed as above provided, with postage prepaid.

10. Assignment. Neither this Agreement nor the License may be assigned by 4th Street without the prior written consent of the Town, which consent shall not be unreasonably withheld. In the event 4th Street desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

11. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

12. Binding Effect; Recording. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. Upon the parties' executing this Agreement, the Town shall record this Agreement in the office of the Garfield County Clerk & Recorder.

13. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then the remainder of this Agreement shall be interpreted to as fully as possible give force and effect to the intent of the parties as evidenced by the original terms and conditions of this Agreement, including the invalidated provision.

14. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado. Any monetary obligations of the Town herein are subject to all requirements and limitations of the Colorado Constitution including but not limited to annual budgeting and appropriation procedures.

15. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation to resolve a claim of default in performance, to the extent permitted by law the prevailing party shall be entitled to attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

16. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

18. TABOR. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate the Town to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant to or in aid of any person, company or corporation within the meaning of Colorado law.

SO AGREED, effective as of the date first written above.

TOWN OF NEW CASTLE, COLORADO

Mayor Bob Gordon

Attest: _____
Melody Harrison, Town Clerk

4TH STREET OWNERS' ASSOCIATION

By: _____
John Carlton, President

COUNTY OF _____)
) ss.
STATE OF _____)

Subscribed before me this ____ day of _____, 2015, by _____ as
_____ on behalf of 4th Street Owners' Association.

Witness my hand and official seal:

My commission expires:

Notary Public

EXHIBIT A
Legal Description

The property that is the subject of this **LICENSE AGREEMENT** is fully described as follows:

Section: 31 Township: 5 Range: 90 Subdivision: ORIGINAL TWNSTE NEW CASTLE
Block: B Lot: 7