



**Town of New Castle**  
450 W. Main Street  
PO Box 90  
New Castle, CO  
81647

**Planning and Code Administration  
Department**  
**Phone:** (970) 984-2311  
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# Memo

**To:** Mayor Bob Gordon & Town Councilors  
**From:** Tim Cain  
**Date:** June 30, 2015  
**RE:** Watts Land Donation

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## **Purpose:**

The purpose of this memo is to begin the process of transferring title to the vacant lot that is owned by Michael Watts to the Town of New Castle. In addition, it is to secure a license agreement with the 4<sup>th</sup> Street Plaza HOA who controls the building with residential units and subsequent requirement to provide two off-street parking spaces located in the rear of Mr. Watts lot that he plans to donate to the Town.

## **Background/Discussion:**

Several weeks ago Mr. Watts decided to donate the vacant lot between the 4<sup>th</sup> Street Plaza building and the Silver Club to the Town of New Castle for use as a pocket park. The Downtown Group with Mr. Watts approval have been meeting to help decide the appropriate active community use, fundraising and securing volunteers to help construct the park amenities. Discussions are still very preliminary about the aforementioned.

Attached to this memo is a License Agreement as drafted by Assistant Town Attorney, Haley Carmer. The purpose is to guarantee there will continue to be two off-street parking spaces that are located in the rear portion of the vacant lot next to the 4<sup>th</sup> Street Plaza building.

## **Recommendation:**

Staff would like Mayor Bob Gordon to sign the Off-Street Parking Agreement with 4<sup>th</sup> Street Plaza HOA and approve the vacant lot donation by Michael Watts to the Town of New Castle.

GLENWOOD SPRINGS OFFICE  
The Denver Center  
420 Seventh Street, Suite 100  
Glenwood Springs, Colorado 81601  
Telephone (970) 947-1936  
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**GARFIELD & HECHT, P.C.**  
ATTORNEYS AT LAW  
Since 1975  
www.garfieldhecht.com

July 2, 2015

**MEMORANDUM**

TO: New Castle Town Council

FROM: Haley Carmer, Assistant Town Attorney

RE: 7/7/15 Meeting Packet Items – Watts Donation

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Included with this Memorandum are the following documents:

- 1) Agreement for Gift of Real Estate between the Town and TAZM, LLC (Michael and Charlie Watts); and
- 2) License Agreement between the Town and 4<sup>th</sup> Street Plaza Owners' Association.

These documents relate to the proposed donation to the Town of a parcel of vacant land located near 4<sup>th</sup> and Main. Staff will advise Council of the details and background of the donation. The first document outlines the details of the donation itself, while the second allows the residents of the 4<sup>th</sup> Street Plaza Condos to continue using the parking spaces currently located on the donated property. The license agreement will not be executed until the Town receives title to the property, which, per the donation agreement, may not occur until August 31<sup>st</sup> at the latest. However, we feel that it is important that Council consider these two agreements together so that Council would be fully informed of the impact and effects of accepting the donation.

The documents have been sent to the respective parties, and as of the date of this letter, neither party has submitted comments or proposed changes to the respective documents. Should Council choose to approve the documents, it should do so subject to non-substantive edits to the agreements from the other parties, which non-substantive edits will be subject to Town Staff review and approval. If the other parties request substantive changes to the documents, the documents will be brought back to Council for review and approval.

In addition to reviewing and approving the attached documents, Council will need to consider whether or not to purchase title insurance for the donated property. Our office highly recommends doing so. The county assessor currently values the donated property at \$37,500, and we recommend insuring the property for that amount. If Council agrees, it should make a motion approving the purchase of title insurance and designating the amount of coverage.

I look forward to discussing these documents with you at the meeting on July 7<sup>th</sup>.

**AGREEMENT FOR THE GIFT OF REAL PROPERTY**

This AGREEMENT FOR THE GIFT OF REAL PROPERTY (“Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between TAZM, LLC, a Colorado limited liability company (the “Donor”) and THE TOWN OF NEW CASTLE, COLORADO (the “Town”), a Colorado home-rule municipality as follows:

WHEREAS, Donor desires to gift and grant in fee to the Town the real property commonly known as 376 West Main Street in New Castle, Colorado, a.k.a. 360 Main Street, and as more fully described in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, the 4<sup>th</sup> Street Plaza Owners’ Association (the “Association”) currently uses a portion of the Property for parking, and the Town intends to accommodate said use as provided herein; and

WHEREAS, the Town desires to receive the above gift and grant and shall use the Property for park or other similar recreational purposes.

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

1.     **Recitals.** The Recitals to this Agreement are true and correct and are incorporated herein.
2.     **Donation.** Donor hereby gifts to New Castle in fee the Property as fully described in Exhibit A and consisting of 2,500 square feet of vacant land.
3.     **Acceptance.** The Town hereby accepts the Property as a gift from Donor.

4. **Use.** The Town agrees to use the Property for park or other recreational purposes unless and until the Town, in its sole discretion, determines that a different use of the Property would better promote the health, safety, and welfare of the citizens of the Town.

5. **License Agreement.** The Association manages certain retail and residential units in the building located on one of the parcels adjacent to the Property. The Town's zoning provisions require that such residential units have associated off-street parking. As of the date of this Agreement, a portion of the Property is being used by the Association to satisfy that parking requirement.

- a. Condition. Donor grants the above-mentioned Property in fee to the Town on the condition that the Town allow the Association to continue using the parking spaces that currently exist on the Property or that the Town provide other accommodations therefor.
- b. Satisfaction. Simultaneously with this Agreement, the Town shall enter into a long-term licensing agreement with the Association that grants the Association a license to continue to use the two (2) parking spaces currently located on the Property. If the Town desires to terminate the license in the future, the Town hereby agrees to waive the parking restriction currently imposed on the Association.
- c. Third-Party Beneficiary. It is understood and agreed by the parties hereto that the Association is not intended to be a third-party beneficiary of this Agreement, and no provision herein shall be construed as granting any right to or imposing any obligation on the Association. The Town's relationship with

and obligations to the Association shall be governed solely by the licensing agreement entered into with the Association.

6. **Actions.** The parties agree the Town and Donor shall act as follows:
  - a. Donor agrees to execute all documents as are necessary to accomplish and complete the gift and grant the above-mentioned Property in fee;
  - b. The Town shall use the land for park or other recreational purposes; and
  - c. The Town shall enter into a licensing agreement with the Association for the Association's continued use of the parking spaces currently located on the Property.

7. **Title.** Donor shall convey the Property to the Town by good and sufficient Special Warranty Deed ("Deed"). Donor shall execute the Deed for the Property on or before July 31, 2015, and the Town shall record the Deed on or before August 31, 2015. The Deed shall be free and clear of all liens and encumbrances subject only to the exceptions shown on any Title Commitment obtained pursuant to Paragraph 8 below.

8. **Title Insurance.** The Town shall have the option of obtaining a title insurance policy for the Property ("Title Policy") at the Town's sole cost and expense, including the cost of extended coverage. In the event the Town elects to obtain a Title Commitment, the Town must do so at least thirty (30) days prior to the Town's recording of the Deed. If the information contained in the Title Policy is unsatisfactory to the Town, the Town shall be entitled to (1) come to an agreement with Donor regarding the title issue or (b) terminate this Agreement and Donor will be under no obligation to donate the Property to the Town.

9. **Gift Authority.** Donor hereby represents that it has full authority, power and right to make the herein described gift and grant of the above-mentioned Property in fee simple to the Town.

10. **Authority to Contract.** The parties hereto mutually warrant and represent that the parties hereto have full power and authority to both execute and perform all of the terms and conditions under this Agreement.

11. **Captions.** The captions appearing in this Agreement are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this Agreement.

12. **Colorado Law to Apply.** All questions concerning the validity, interpretation, and administration of this Agreement, shall be governed by the laws of the State of Colorado.

13. **Entire Agreement.** This Agreement memorializes and constitutes the final, complete and exclusive Agreement and understanding between the Town and Donor relative to the above-mentioned gift of real property in fee simple, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral relative to the above-mentioned gift. Donor acknowledges that no officer, partner, agent, attorney or representative of the Town has made any promises or representations whatsoever, express or implied which is not expressly contained in this Agreement; and Donor further acknowledges that it has not executed this Agreement in reliance upon any representation, or in reliance upon any belief as to any fact not expressly stated in this Agreement.

14. **Amendment.** This Agreement may not be amended or modified, except in a writing signed by all parties to this Agreement.

15. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

16. **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 give force and effect, as fully as possible, to the intent of the parties as evidenced by the original terms and conditions of this Agreement, including the invalidated provision.

17. **Attorneys' Fees; Survival.** Should this Agreement become the subject of litigation, 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.

18. **Notice.** Notifications regarding this Agreement shall be sent to the following individual or entity:

- a. TAZM, LLC  
419 County Road 250  
Silt, Colorado 81652
- b. Tom Baker  
Town of New Castle Administrator  
450 W. Main St.  
P.O. Box 90  
New Castle, Colorado 81647

19. **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 Article XI, Section 2 of the Colorado Constitution.

**AGREED TO** by the parties on the date first set forth above.

By: \_\_\_\_\_  
Cherry Watts, Manager  
TAZM, LLC

By: \_\_\_\_\_  
Bob Gordon, Mayor  
Town of New Castle, Colorado

Attest: \_\_\_\_\_  
Melody Harrison, Town Clerk

**EXHIBIT A**  
(Property Description)

The property that is the subject of this **AGREEMENT FOR THE GIFT OF REAL PROPERTY** is fully described as follows:

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

## 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 4<sup>TH</sup> STREET PLAZA OWNERS’ ASSOCIATION, a Colorado non-profit corporation (“4<sup>th</sup> Street”) (collectively, “Parties”).

### RECITALS

WHEREAS, 4<sup>th</sup> Street manages the 4<sup>th</sup> 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 4<sup>th</sup> Street’s continued compliance with the Code and as required by the Gift Agreement, the Town intends to grant 4<sup>th</sup> 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 4<sup>th</sup> 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 this license with or without cause at any time upon sixty (60) days’ written notice (“Notice of Termination”) to 4<sup>th</sup> Street. 4<sup>th</sup> 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 4<sup>th</sup> Street will be considered a trespass and prosecuted accordingly. Upon termination, 4<sup>th</sup> Street shall remove any temporary or permanent improvements it may have installed, and if 4<sup>th</sup> Street fails to do so, the



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

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

To 4<sup>th</sup> Street: 4<sup>th</sup> 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 4<sup>th</sup> Street without the prior written consent of the Town, which consent shall not be unreasonably withheld. In the event 4<sup>th</sup> 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.



STATE OF \_\_\_\_\_ )

Subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as  
\_\_\_\_\_ on behalf of 4<sup>th</sup> 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