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July 15, 2015

MEMORANDUM

TO: New Castle Town Council

FROM: Haley Carmer, Assistant Town Attorney

RE: 7/21/15 Meeting – Watts Land Donation

This Memorandum addresses the background and issues surrounding the proposed Agreement for Gift of Real Estate (“Agreement”) between the Town and TAZM, LLC (Michael and Charlie Watts).

Michael and Charlie Watts are proposing to donate to the Town a parcel of vacant land located near 4th and Main. The parcel is currently owned by an LLC managed by the Wattses. Part of this parcel is currently used for parking for the residential units in 4th Street Plaza building. To remain in compliance with the Town’s parking requirements, 4th Street needs to retain the parking spaces currently located on the parcel. There are at least two options whereby the Town can receive the parcel and 4th Street can maintain its parking spaces.

The first option is an easement. Under this option, the LLC would grant a private easement for the parking spaces to 4th Street before deeding the parcel to the Town. After granting the easement, the LLC would execute a deed to the Town for the entire parcel, and the Town would take the property subject to the existing private easement. This easement would be permanent, which provides additional security to 4th Street that it will remain in compliance with the Town’s zoning requirements. It would be up to the Wattses and 4th Street to negotiate and execute the easement deed.

If 4th Street ceases to exist or can eventually satisfy its parking needs elsewhere, the easement could be extinguished by 4th Street’s deeding the easement to the Town at a later date. As such, the drawback of this option is that the Town could not eliminate the easement without 4th Street’s cooperation and consent unless the Town exercised its right to condemn the easement in exchange for payment of its fair market value.

The second option is a license agreement between the Town and 4th Street. Under this scenario, the Wattses would donate the entire parcel to the Town without reserving an easement, and the Town and 4th Street would deal directly with one another to negotiate a license agreement. A license is not permanent and could be revoked at any time so long as 4th Street is

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provided with adequate notice as provided for in a license agreement. Accordingly, this option provides the Town with more flexibility than an easement. 4th Street has expressed some concern to Town staff that a license arrangement will not adequately protect 4th Street's needs and would prefer an easement.

The Wattses are amenable to either option, but will defer to the Town's preference. Both Michael Watts and John Carlton, president of the 4th Street Owners' Association, will attend the meeting on Tuesday.

Council must decide whether (1) it wants to accept the donation at all and if so, (2) whether the Town will accept the donation subject to a private easement or (3) with the requirement that the Town grant 4th Street a license to use the parking spaces. If Council votes to accept the donation, Council will also need to approve the Agreement. Paragraphs 5 and 6 of the Agreement address these options, and depending on which option the Town chooses, one of the paragraphs will be deleted from the Agreement. If Council chooses to accept the donation subject to the license agreement requirement, a separate license agreement will be brought to Council for review and approval at its next meeting.

In addition to reviewing and possibly approving the Agreement, 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.

We look forward to discussing these documents with you at the meeting on July 21st.

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 4th 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. **Easement.** The Town acknowledges that prior to its receiving title to the Property, Donor will grant a private easement to the Association over and across the parking spaces that currently exist on the Property. The Town accepts the Property subject to said easement.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

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

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

17. **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.

18. **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.

19. **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

20. **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