



## **AGENDA**

The agenda is subject to change, including the addition of items 24 hours in advance or the deletion of items at any time. The order and times of agenda items listed are approximate and intended as a guideline for the Town Council.

### **MEETING OF THE MINTURN TOWN COUNCIL**

**Minturn Town Center 302 Pine Street  
Minturn, CO 81645 • (970) 827-5645**

**Wednesday September 2, 2020**

**Meeting to be held via Zoom Conferencing and call-in.  
Public welcome to join meeting using the following methods:**

**Join the online webinar <https://us02web.zoom.us/j/87602974473>  
Or Telephone: 1 651 372 8299 or 1 301 715 8592  
Webinar ID: 876 0297 4473**

**Regular Session – 5:30pm**

**MAYOR – John Widerman  
MAYOR PRO TEM – Earle Bidez**

#### **COUNCIL MEMBERS:**

Terry Armistead  
George Brodin  
Brian Eggleton  
Eric Gotthelf  
Gusty Kanakis

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

**Regular Session – 5:30pm**

- 1. Call to Order**
  - Roll Call
  - Pledge of Allegiance
  
- 2. Public comments on items which are ON the consent agenda or are otherwise NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

### 3. Approval of Consent Agenda (5Min)

*A Consent Agenda is contained in this meeting agenda. The consent agenda is designed to assist making the meeting more efficient. Items left on the Consent Agenda may not be discussed when the Consent Agenda comes before the Council. If any Council member wishes to discuss a Consent Agenda item please tell me now and I will remove the item from the Consent Agenda and place it in an appropriate place on the meeting agenda so it can be discussed when that item is taken up by the Board. Do any Council members request removal of a Consent Agenda item?*

- August 19, 2020 Meeting Minutes Pg 4
- USPS Lease Agreement Pg 13

### 4. Approval of Agenda

- Items to be Pulled or Added
- Declaration of Conflicts of Interest

### 5. Special Presentations

- Council Comments/Committee Reports
  - Water Update – Brodin Pg 18

### 6. Liquor Authority

- Liquor License – Hotel and Restaurant License application: The Daily Grind Coffee Co, Inc, DBA Vail Mountain Coffee & Tea, Craig Arseneau, President/Manager 23698 Hwy 24 (30 min) – Brunvand Pg 19

### 7. Public comment on items which are NOT on the agenda as a public hearing or action item. (5-minute time limit per person)

## COUNCIL DISCUSSION/DIRECTION

8. **Discussion/Direction:** Minturn Fitness Center Review (30 min) – Metteer Pg 35
9. **Discussion/Direction:** Short Term Rental update and review (30 min) – Metteer Pg 77
10. **Discussion/Direction:** Review MMC Sec. 7-3-120 Garbage Containers & Junk (required to be obscured from view) (30 min) – Metteer Pg 85

## PUBLIC HEARINGS AND/OR ACTION ITEMS

11. **Public Hearing/Action Item:** Resolution 24 – Series 2020 Consideration of CUP 1-2020 for Burk Harrington Construction and Darin Tacholke (20 min) – Hunn Pg 86

## COUNCIL INFORMATION / UPDATES



**12. Staff Updates (5 Min)**

- Manager's Report Pg 115
- Future Agenda Items Pg 118

**MISCELLANEOUS ITEMS**

**13. Future Meeting Dates**

- a) Council Meetings:
- September 16, 2020
  - October 7, 2020
  - October 21, 2020

**14. Other Dates:**

**15. Adjournment**



## OFFICIAL MINUTES

### MEETING OF THE MINTURN TOWN COUNCIL

Minturn Town

Center 302

Pine Street

Minturn, CO 81645 • (970) 827-5645

**Wednesday August 19, 2020**

**Meeting to be held via Zoom Conferencing and call-in.  
Public welcome to join meeting using the following  
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**Regular Session – 5:30pm**

**MAYOR – John Widerman**

**MAYOR PRO TEM – Earle Bidez**

#### **COUNCIL MEMBERS:**

Terry Armistead

George Brodin

Brian Eggleton

Eric Gotthelf

Gusty Kanakis

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/827-5645 302 Pine St. Minturn, CO **81645**.

**Regular Session – 5:30pm**

#### **1. Call to Order**

- Roll Call

The meeting was called to order by Mayor John W. at 5:34pm using the ZOOM on-line meeting format due to the COVID-19 pandemic concerns.

Those present include: Mayor John Widerman, Mayor Pro Tem Earle Bidez and Town Council members George Brodin, Brian Eggleton, Terry Armistead, Eric Gotthelf, and Gusty Kanakis.

Staff present: Town Manager Michelle Metteer, Town Attorney Richard Peterson-Cremer, and Town Treasurer/Town Clerk Jay Brunvand.

- Pledge of Allegiance

**2. Public comments on items which are ON the consent agenda or are otherwise NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

**3. Approval of Consent Agenda (5Min)**

*A Consent Agenda is contained in this meeting agenda. The consent agenda is designed to assist making the meeting more efficient. Items left on the Consent Agenda may not be discussed when the Consent Agenda comes before the Council. If any Council member wishes to discuss a Consent Agenda item please tell me now and I will remove the item from the Consent Agenda and place it in an appropriate place on the meeting agenda so it can be discussed when that item is taken up by the Board. Do any Council members request removal of a Consent Agenda item?*

- August 5, 2020 Meeting Minutes

Motion by Gusty K., second by Eric G., to approve the Consent Agenda of August 5, 2020 as presented. Motion passed 7-0.

**4. Approval of Agenda**

- Items to be Pulled or Added

Motion by Earle B., second by George B., to approve the agenda as presented. Motion passed 7-0.

- Declaration of Conflicts of Interest

**5. Special Presentations**

- Council Comments/Committee Reports
  - Sales Tax Update – Eggleton

Brian E. reviewed his report in the packet. He noted we are up over last year and 2018. He noted we have also exceeded the budgeted Real Estate Transfer Tax for 2020 as well. He stated he did not recommend further changes in the revenue budget.

Brian E. noted the Stage 2 fire restrictions.

George B. updated on the water system. He also up dated on the fires that are affecting our community in Glenwood Canyon and Minturn will be meeting with representatives from the Colorado Rural Water Association for the purposes of adding Minturn's water infrastructure

assets to the Wildland Fire Decision Support System (WFDSS).

#### Current system operational update

John Volk's loss computation for July is 5% and Martin & Woods detailed calculation confirmed this number. We have been replacing meters for about a month. There are about 740 meters. Roughly 40 Water Meters have been replaced so far. The Town is paying for the new Water Meters and doing the replacement. Thank you to Public Works for handling this task. The Water Leak Detection System is operational and collecting data. There have been some leaks identified already. Most are service line leaks, which are some of the oldest water pipes in Town. Water service lines are the pipes that extend from the Town main water lines to the house. There is a shut-off or curb-stop generally near the property edge on each pipe. Responsibility or, WHO PAYS: the Town handles leaks from the main to the curb-stop and the homeowner pays for repair from the curb-stop on. The raw water line to the bike park is complete, the pump is working, trees have been planted there and are being watered. The Bike Park is scheduled to open Saturday, August 29<sup>th</sup> at 11am. Special thanks to the Public Works guys are, as always, working hard. WELL DONE!!! Monitoring Well 3; GOOD NEWS!\_Preliminary result from water testing has not shown any red flags on water quality from this source. We will have a more detailed report and interpretation at a future Council Meeting. Well- 4 pipeline to clear well This fall yet!!! Water Tank Construction Need site and road expansion for larger drilling rig. The Town has engaged the services of GROUND Engineering Consultants, Inc. To do soil testing at the proposed Water Tank site and at the proposed water plant site.

#### Existing Water Tank Leak Repairs

- I.) Active testing of Potential additional source water and water quality to add to Town Use. Lotic Hydrological
- II.) A type and model was researched and selected. Replacement of Old Water Meters is underway. Public Works
- III.) Security Fencing around Town Water Plant. Public Works
- IV.) Site location and soil testing for new Tanks SGM, GROUND Engineering Consultants, Inc.
- V.) Soil testing for new Water Plant Building. GROUND Engineering Consultants, Inc.
- VI.) Raw water to Minturn Bike Park Project. Public Works
- VII.) Installation of Leak Detection System. John Volk/Public Works
- VIII.) System leak repairs. Public Works
- IX.) System loss reduction and management. Public Works, John Volk, Martin & Wood
- X.) Cultural survey for Well 4 maintenance extension. Flattops Archaeological Consultants
- XI.) SUE Survey: State required Underground survey for Well 4 pipeline maintenance extension. SGM
- XII.) Identifying Water Infrastructure and planning grants. Town Manager

#### Still Possible this Construction Season:

- Existing Water Tank Leak Repair.
- Water Plant Security Fence Completion.
- Well 4 Pipeline Maintenance Extension.

Water Tank Farm Platform Ground Work.  
Road Improvement to Water Tank Farm.  
Identify and repair system Leaks and water meter replacement is on-going

Gusty K. updated on the snow removal program. They are looking at adding additional contract snow plowing and reviewing the snow removal program. Michelle M. noted the plan will be in place for the beginning of the season.

John W. noted yesterday's Minturn Matters Zoom event. It is streaming and available on Facebook. He noted the schedule is the Third Tuesday of each month. George B. noted he felt more people are available to attend when it is on-line.

John W. attended the ECO Transit meeting last week. Electronic fares are still moving forward. He noted a process SNAFU where for safety the buses were loaded from the rear but the pay meters were at the front of the buses.

**6. Public comment on items which are NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

**COUNCIL DISCUSSION/DIRECTION**

**7. Discussion/Direction: Shooting Range Discussion – Metteer**

Michelle M. introduced Ms. Leanne Veldhuis and Ms. Paula Paterson both of the USFS. Terry A. was available for the Shooting Range Committee.

Ms. Paterson, USFS, updated on several shooting range cleanups over last summer. The range is closed 1/1-4/15 of each year for the winter season. Once the range opened for 2020 the volunteer force was shut down due to COVID issues. They have had several smaller clean-ups meets so far this summer. Terry A. stated that she and the committee feel the USFS management should increase, a strong volunteer force organized, or the range should be closed down. The residents are concerned about fire risk as well as noise.

Brian E. noted, although it is referenced as the Minturn Shooting Range, in fact it is not within the town boundaries and the town does not have management control of the site.

**Citizen Comments:**

Mr. Steven Sweeney, Avon, he is a user and on the committee. Noted safety, noise, wildfire, and trash are all on-going issues. The short-term concern is to address the concerns of the range. He noted they are working to get volunteers to maintain the range and there is a possibility to do more.

Ms. Shelley Bellm, 470 Pine St, stated her family is active users of the range and have been members of the committee from the beginning. She stated the first item addressed was to clean up the range. She looks forward to a greater partnership with the USFS than just the clean-up of the range.

Mr. Rob Davis, 1793 Main St, noted the range has expanded from a place to sight in guns to a full-blown gun range used by many. This growth is not beneficial to the community adjacent. The impacts out weight the need to shoot guns in the area when residents are 150 feet from the range and hikers are also affected by the actions of a few. He noted the intent is NOT to close the range, rather to move it to a less populated area than its current location. He noted this would require about 5 acres and we should be able to locate an area suitable.

Ms. Lynne Blum, 1892 Cross Creek Ln, moved here several years ago and did not know it was a shooting range directly across the river from them. She stated this affects them daily.

Ms. Deb Davis, 1793 Main St, stated the town has a noise ordinance and the range exceeds those levels.

Ms. Linda Osterberg, 1725 Main St, concurred with what the others had said.

#### Council Comments

John W. said the Council and Town are in the middle of this and feels one person's rights should not overrun another's rights. He feels this goes beyond a management plan and that we should be able to find a suitable location that does not have the proximity to a municipality that this one does.

Earle B. commented the goal of the Council is public safety. He was concerned the range stays open with the extreme fire danger and feels the USFS should have a bigger hand in the management and operation in light of the issues and concerns constantly expressed. He asked the USFS representatives if they have the capability to address shutting down the range before it becomes a fire safety issue.

Ranger Leanne Veldhuis, USFS, said the authority to close the range for fire is addressed by the Manager of the forest, not her. She said Stage 2 is when they can shut down the range but the Stages are different from the County. Michelle M. clarified we are at Stage 2 currently, there was confusion at the County level if we were in Stage 2 or 3.

Terry A. noted several emails that had come in and read them in to the record.

- Ms. Laura Wolf noted the fire started two years ago from the use of tracer rounds. No arrests have been made and the investigation appears to have stalled.
- Ms. Ashely Saunders was pleased to see it closed and encouraged the relocation of the range further from the Minturn community. She noted the new concern of the proximity of the range to the Minturn Bike Park
- Chris Alexander commented of the lack of oversight, high caliber use, and dangerous activities.

Terry A. stated we have a lot of residents that enjoy and like the range and many that do not.

George B. felt the issues were well laid forth. He felt we were a great distance from writing a letter to close the range and that we still have a lot of discussion to address.

Gusty K. thanked all and supported closing during a Stage 2 Fire restriction. He felt closing would just move people into the forest, 50feet from the roads. This would cause a greater concern for all citizens.

Brian E. agreed with the closing during Stage 2 restrictions and higher. He asked what the USFS next step are. Ranger Peterson is going out every few days to address the closure and ensure the closure is not being circumvented, they are assessing the conditions in the fire. They also will continue working with the Shooting Committee.

John W. said we constantly are addressing these concerns. What is “this Process”? He asked USFS to reach out to Staff to emphasize the Process. No one knows how it is enforced, how it is managed, what the steps are. He asked that be addressed. We don’t have a budget, enforcement, or jurisdiction on this shooting range. He felt sitting back and doing nothing is not a sound option.

Terry A. stated she is committed to this process but would like to follow up more with this. She felt this was a discussion and we have a lot to discuss. She stated the biggest frustration is the lack of accountability. She felt the Council needs to be able to handle this in during an in-person meeting with the community.

Brian E. spoke to several issues that have been illegal actions since the range opened this summer. It is just a dangerous situation and a more responsible use of the site needs to be addressed and users held accountable. Safety for our citizens, our community, and our water supply is a foremost concern. He asked if the USFS could address the noise concerns which may be in violation of the Town noise regulations and if the elk herd is affected by the range? All this lends to the question is this the best use of this land for the public?

Eric G. agreed with previous statements. He agreed with John’s statement that we do need to take action not kick it down the road. He supports moving forward and getting something done.

Earle B. understands the process but suggests we move this up the chain of command with the USFS and Federal avenues.

John W. summarized that we include this on an upcoming agenda and have the process of how we can comment to the USFS most effectively. He asked the USFS representatives to outline the process and note what changes they can implement as we move forward with the process.

Ranger Veldhuis felt this could be done and would work the Town and the Shooting Range Committee over the next month or so to address this. Terry A. felt the committee is educated on this and they understand this process could take up to four or more years for a resolution. The committee will continue to work with both short- and long-term goals and will work with the USFS to ensure the committee is working efficient. Terry A. stated the range will not be closed soon so a management solution to alleviate the long-term goals and the short-term issues is the direction we need to pursue as a committee.

Ranger Peterson, USFS, stated the work we could do together should be accomplished faster than the full-blown forest plan. This is a small area of a large forest and should be addressed that way. We all understand the issues and we can work together to accomplish them without the inordinate time frame.

Michelle M. noted we will take a month or so to develop a strategy outline. If Council desires Staff to develop letters, we can do that. We will move forward with the strategy outline with the USFS, work with the committee for short term goals, and report back with Council in a month or so.

**8. Discussion/Direction: Sustainable Building Codes:**

- Install electric capacity to accommodate future electric heating and EV charging needs
- Area for storage and collection of recyclables and discarded goods
- Encourage HERS Performance Path

Sustainable building code amendments are a natural next step in the progression of working toward long-term environmental health. That being said, although there are an endless number of sustainable building codes, Minturn representatives of the Climate Action Collaborative have identified three for initial consideration:

1. Install electric capacity to accommodate future electric heating and EV charging needs
2. Area for storage and collection of recyclables and discarded goods
3. Encourage HERS Performance Path

Brian E. stated these were approved by the Town of Avon and Council requested these three items be considered separately in order to move some of these codes forward to consider including them in the municipal code in advance of several potential new large projects being proposed.

John W. discussed the three codes and how he felt they should be addressed to best accomplish the goals of the sustainable building codes. He felt the HERS Performance Path was important to lead the direction for eventually accomplishing all of the Climate Collaborative goals.

George B. felt this would increase the cost of homes, cut into developers and homebuyers rights, it would drive workforce housing up yet possibly cut first to entice workforce housing.

Eric G. felt the codes were a good path forward and it follows what other communities are considering, and recommended it be brought forward as an ordinance.

Terry A. was in support and is in line with our Bear Ordinance that requires citizens to put their trashcans away from wildlife. She was concerned with the potential added cost to construction and asked if this would be required of remodels?

Earle B. was in support as he felt it would inform the buyer. He was concerned with the cost involved to build additional square footage for the recycle/compost.



Gusty K. supported in general. He was concerned the recycle would eat into other requirements such as snow storage or required parking.

Direction was to move forward with an Ordinance.

## COUNCIL INFORMATION / UPDATES

### 9. Staff Updates (5 Min)

- Manager's Report

Reviewed the budget schedule. Terry A. asked about the funding for the concert series. The money was not spent on concerts. It will continue to be committed to that project. The hope is to provide other avenues before the year runs out.

- Future Agenda Items

Terry A. and George B. would like to consider a Master Plan of the Little Beach park and adjacent areas. Terry A. and George B. will begin with a staff meeting with Michelle M.

Discussion ensued as to when we will begin with in-person meetings. Michelle M. updated audio/visual equipment has been ordered and will be installed as it arrives. Even in public meetings we are limited to the social distancing numbers. Live Zoom meetings, in-person, and on-line technology will all be used.

John W. asked to revisit the Short-Term Rental for Council update and an update/discussion on existing in-town parking regulations.

## MISCELLANEOUS ITEMS

### 10. Future Meeting Dates

- a) Council Meetings:
  - September 2, 2020
  - September 16, 2020
  - October 7, 2020

### 11. Other Dates:

- Labor Day – Offices Closed September 7, 2020

## **12. Adjournment**

Motion by Earle B., second by Brian E., to adjourn the meeting at 9:14pm. Motion passed 7-0.

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John Widerman, Mayor

ATTEST:

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Jay Brunvand, Town Clerk



August 5, 2020

CITY OF MINTURN  
PO BOX 309  
MINTURN CO 81645-0309

SUBJECT: Lease Amendment - United States Post Office  
301 Boulder St  
Minturn CO 81645-9997

Dear Landlord:

The Postal Service is pleased to inform you that we have been authorized to renew our lease at the above mentioned location.

We request that no other modifications be made to the amendment unless first discussed. Should the lease document meet with your approval, please sign, witness and date where indicated and return to my attention using the enclosed postage-paid envelope. **You will need to return 1 electronically signed copy.**

The following instructions have been added for your convenience to help expedite the matter:

- Please date the agreement at the top of page 3 on the date that you sign it.
- Your signature(s) must be **witnessed by two (2) parties or** witnessed by a notary.
- Updated W-9(s). This is required.
- Conflict of Interest Form. This is required. If there is no family relationship with a postal employee. The typical choice is **(vi) None of the above.**
- Copy of Council meeting minutes approving the Amendment

Notice: All owners of record are advised to read the Amendment thoroughly to ensure that each party is in total agreement with the terms and conditions of this document. Owners should make no changes to this document without consultation and approval of the Contracting Officer.

The Postal Service respectfully requests that the signed documents be returned within 10 days of receiving them. Please contact me at 303.227.5655 to discuss any modifications, or should you have any questions. Thank you for providing this facility for US Postal Service use.

Sincerely,

v/r

Brenda L. Myers  
Real Estate Specialist



## Lease Amendment

Facility Name/Location

MAIN OFFICE (076246-004)

301 BOULDER ST, MINTURN, CO 81645-9997

Amendment No: 001

Lease: E00000064498

This refers to the Lease accepted by the United States Postal Service, hereinafter called the Postal Service, under date of 11/03/1999, whereby there is leased to the Postal Service the above-described facility.

WHEREAS, the Postal Service desires and Landlord is willing to amend the Lease as specified below;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows, effective on the date this document is executed by the Postal Service.

See Addendum

In all other respects, the Lease shall remain the same and is hereby confirmed.

Facility Name/Location  
MAIN OFFICE (076246-004)  
301 BOULDER ST, MINTURN, CO 81645-9997

County: Eagle  
Lease: E00000064498

1. The Lease at Paragraph 4. Renewal Options is hereby amended as follows:

The Annual Rent for the First Renewal Option for the period 6/18/2021 through 6/17/2026 shall be \$79,823.00.

The parties agree that notwithstanding any notice requirements to the contrary, for the purpose of exercising the First renewal option the Postal Service's execution of this Lease Amendment shall be a legally sufficient exercise of the First renewal option.

The Annual Rent for the Second Renewal Option for the period 6/18/2026 through 6/17/2031 shall be \$87,805.00

2. The parties agree that if the signature(s) of either Landlord or the Postal Service on this Lease or any amendments, addendums, assignments, or other records associated with this Lease is not an original but is an electronic signature, scanned signature or a digitally encrypted signature, then such electronic signature, scanned signature or digitally encrypted signature shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic original wet signature penned manually by its signatory.



# Lease Amendment

EXECUTED BY LANDLORD this [redacted] day of [redacted], [redacted].

### GOVERNMENTAL ENTITY

By executing this Lease Amendment, Landlord certifies that Landlord is not a USPS employee or contract employee (or an immediate family member of either), or a business organization substantially owned or controlled by a USPS employee or contract employee (or an immediate family member of either).

Name of Governmental Entity: CITY OF MINTURN

[redacted]  
Name & Title John Widerman, Mayor Name & Title \_\_\_\_\_

Name & Title \_\_\_\_\_ Name & Title \_\_\_\_\_

Name & Title \_\_\_\_\_ Name & Title \_\_\_\_\_

Name & Title \_\_\_\_\_ Name & Title \_\_\_\_\_

Landlord's Address: CITY OF MINTURN  
PO BOX 309  
\_\_\_\_\_  
\_\_\_\_\_  
MINTURN, CO

Zip+481645-0309

Landlord's Telephone Number(s): (970) 827 - 5645

Federal Tax Identification No.: XX-XXX0697

[redacted] Witness  
[redacted] Witness

- a. Where the Landlord is a governmental entity or other municipal entity, the Lease must be accompanied by documentary evidence affirming the authority of the signatory(ies) to execute the Lease to bind the governmental entity or municipal entity for which he (or they) purports to act.
- b. Any notice to Landlord provided under this Lease or under any law or regulation must be in writing and submitted to Landlord at the address specified above, or at an address that Landlord has otherwise appropriately directed in writing. Any notice to the Postal Service provided under this Lease or under any law or regulation must be in writing and submitted to "Contracting Officer, U.S. Postal Service" at the address specified below, or at an address that the Postal Service has otherwise directed in writing.

### ACCEPTANCE BY THE POSTAL SERVICE

Date: \_\_\_\_\_

Terrence P Brennan  
Contracting Officer

\_\_\_\_\_  
Signature of Contracting Officer

Western FSO 7500 E 53RD PL RM 1108, DENVER, CO 80266-9918  
Address of Contracting Officer

Facility Name: MAIN POST OFFICE  
Address: 301 BOULDER ST

Fin/Sub No. 076246-001  
City, ST, ZIP: MINTURN CO 81645-9997

### Real Estate Conflict of Interest Certification

To avoid actual or apparent conflicts of interest, the United States Postal Service ("Postal Service") requires the following certification from you as a potential Landlord/Supplier/Contractor to the Postal Service. Please check all that apply in item A below. Further, please understand that the Postal Service will be relying on the accuracy of the statements made by you in this certification in determining whether to proceed with any possible transaction with you.

I, JANET DAUGHENBAUGH hereby certify to the Postal Service as follows:  
[PRINT: name of potential Landlord/Supplier/Contractor]

- A. **(Check all that apply)** I am:
- (i)  A Postal Service employee;
  - (ii)  The spouse of a Postal Service employee;
  - (iii)  A family member of a Postal Service employee; (*Relationship*) \_\_\_\_\_
  - (iv)  An individual residing in the same household as a Postal Service employee;
  - (v)  A controlling shareholder or owner of a business organization leasing space or intending to lease space to the Postal Service and I am one of the individuals listed in (i) through (v) above; or
  - (vi)  None of the above.

- B. **(Complete as applicable):**
- i. I have the following job with the Postal Service (*Title*) \_\_\_\_\_  
(*Location*) \_\_\_\_\_
  - ii. My Spouse who works for the Postal Service holds the following job:  
(*Title*) \_\_\_\_\_ (*Location*) \_\_\_\_\_
  - iii. My family member who works for the Postal Service holds the following job:  
(*Title*) \_\_\_\_\_ (*Location*) \_\_\_\_\_
  - iv. My household member who works for the Postal Service holds the following job: \_\_\_\_\_  
(*Title*) \_\_\_\_\_ (*Location*) \_\_\_\_\_

C. If you have checked "none of the above" and during the lease term or any renewal term, you do fall into any of the categories listed in A (i) through (v) above, you shall notify the Postal Service Contracting Officer in writing within 30 days of the date you fall into any of the such categories and shall include an explanation of which of the above categories now applies.

D. The person signing this certification has full power of authority to bind the potential Landlord/Supplier/Contractor named above.

Executed this  day of , 20 by

BY: \_\_\_\_\_

[Insert Signature]

BY: JOHN WIDERMAN

[PRINT: name of entity or person]

Title: MAYOR

[Insert title]

[INTERNAL USE ONLY: TM / RES: 1) If A(vi) 'none of the above' is selected, stop, file form with the lease. 2) If other items are selected, submit form to [Ethics.help@usps.gov](mailto:Ethics.help@usps.gov). File form and Ethics determination with the lease.]

## Water Report 2 September 2020

- I.) Everyday items: Thank goodness the fires near us are being contained and the smoke is lessening. We are thankful for the rain we have been receiving now and then. Special Thanks to all involved with the firefighting, control, and containment efforts!
- II.) Operational and infrastructure update
  - a. System Water Loss: This is monitored and computed monthly and loss percentage is reducing.
  - b. Water Meter Replacement: Water Meter Replacement has slowed down, pending receiving a “master reader,” to wirelessly read all the new meters.
  - c. Water Leak Detection System  
The Leak Detection System continues on an ongoing basis.
  - d. Road and Tank farm site improvements: The road and platform for a possible new water tank are underway. Improvements were required to get a larger drill rig on site due to the large boulder encountered. Soil testing should still occur this fall.
  - e. Well 4 pipeline maintenance extension: The excavator used for road and platform improvement will be used to install the Well 4 extension. All materials and tools necessary to this project have been ordered as well. The pipeline should be completed this fall.
  - f. MW 3 Monitoring Well 3: Water quality testing on MW 3 is ongoing and will influence WTP size and complexity.
  - g. Security Fence Installation on Cross Creek is on-going
- II. USFS Permitting of Bolts Ditch Headgate is in Process
- III. Water Tank Leak Repair
- IV. Still Possible this Construction Season:
  - a. Existing Water Tank Leak Repair.
  - b. Water Plant Security Fence Completion.
  - c. Well 4 Pipeline Maintenance Extension.
  - d. Water Tank Farm Platform Ground Work for soil testing.
  - e. Road Improvement to Water Tank Farm.
- II. Completed Items
  - a. Location and water testing started MW 3.
  - b. Raw water line installed and operational.
  - c. Leak Detection Installed and operational.
  - d. SUE survey: Sub-Utility Engineering completed, Cross Creek Road.
  - e. Cultural survey: Cross Creek Road.
  - f. Water Meters selected and being installed.
  - g. Possible site for new water tank identified.





To: Mayor and Council

From: Jay Brunvand

Date: August 28, 2020

Agenda Item: Public Hearing and consideration for approval – NEW Beer and Wine Liquor License

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**REQUEST:**

Staff is requesting Council to review and approve the attached New Hotel and Restaurant Liquor License for The Daily Grind Coffee Co, Inc., dba Vail Mountain Coffee & Tea CO located at 23698 Hwy 24, Meadow Mountain Business Park.

**INTRODUCTION:**

This location has long been a small restaurant/coffee house establishment in Minturn. With this application they are expanding the operation to include spirits, wine and beer sales and have requested to add a liquor license to the premises.

In addition to the business, the location includes several other commercial units in a Mall type layout which will be unaffected by this application.

The recommended procedure to follow during the formal consideration of this agenda item should include:

- Public Hearing is Opened
- Staff Presentation
- Applicant Presentation
- Citizen comment
- Council Comment and/or questions
- Close Public Hearing
- Council vote

I have included the formal Findings of Fact for Council's review and summarized below:

1. The Neighborhood for the application has been established by historical practice as the complete boundaries of the Town of Minturn and as such the approval of this establishment would not create an undue concentration of licensed establishments, thereby finding:
  - The current use of this premise is that of a retail coffee house and commercial coffee roaster and the proposed use of this address will be that of a restaurant serving spirits, wine and beer. This is an application to add to the use the right to sell full strength spirits, wine and beer by single serving for consumption on premises.
  - The granting of this license meets the desires of the adult inhabitants as evidence by enclosed petition, as well as any remonstrances, or otherwise or the lack thereof. Staff has received no written or verbal concerns with this application. In addition, the applicant has submitted a petition of customers in support of the application.
  - The application has been previously reviewed by the Planner at the time it became a coffee house and was found:

- i. To meet the needs of the Town of Minturn Zoning as reviewed. The Planner has confirmed that parking be provided of the scale of one parking space per six seats in the restaurant pursuant to MMC 16-16-30. The address has been reviewed and it has plenty of serviceable parking spaces to continue this additional use.
  - ii. That selling liquor in the manner currently proposed in the application is not in violation of the zoning codes as stated in the Minturn Municipal Building Code – Chapter 16.
2. That the application was filed on July 24, 2020 in the Town Clerk/Treasurer’s office and a public hearing has been scheduled for Wednesday September 2, 2020. In accordance with C.R.S. 44-3-311(1) the Town must hold the application for not less than 30 days; this hearing date represents 34 days.
3. The liquor license applied for is for that of a Hotel and Restaurant Liquor License as defined by the State of Colorado and that the type of Liquor License is appropriate for the needs and desires of the applicant.
4. That the Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on July 24, 2020 at least 30 days prior to the hearing, and that the publication of the hearing was published in a newspaper of general circulation on July August 16, 2020 at least 10 days prior to the Public Hearing.
5. That from the evidence submitted the applicant is leasing the premises where the proposed liquor license is proposed from BB Development, LLC, and that BB Development, LLC is the lawful owner of the premises. Further, the premise lease exceeds the term of the proposed license as required by Colorado State Law.
6. That pursuant to C.R.S. 44-3-313(1)(d) – Restrictions for applications for new license, the building where the applicant proposes selling liquor is not within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.
7. Fingerprints of the applicant(s) holding 10% or more ownership have been taken and sent to the Colorado Bureau of Investigation. No issues were found that would affect the character of the applicants.
8. That Minturn Police/ECSO has conducted a background investigation on Mr.’s Craig Avseneau and Chris Chantler, the owners The Daily Grind Coffee Co, Inc., dba Vail Mountain Coffee & Tea CO. During this investigation, Minturn Police/ECSO did not find any unresolved issues that would preclude obtaining a liquor license. Although, staff recommends approval by the Minturn Town Council it is recommended the following conditions to be placed on the license approval:
  - It is recommended at a minimum the licensee/manager, and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served.
  - the Liquor Authority emphasize the requirement of operating an orderly establishment.
  - The public hearing on this application will be held on Wednesday, February 5, 2020 at 6:30pm in the Council Chambers of the Minturn Town Hall, 302 Pine St, Minturn, CO. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to this application, including all matters set forth herein.

**ANALYSIS:**

Not Applicable

**COMMUNITY INPUT:**

As of this writing I have not received any remonstrances from the public in any form.

**BUDGET / STAFF IMPACT:**

The applicant has submitted the required fees for a new Hotel and Restaurant Liquor License in the amount of \$2,225.00 to the state and \$1,150.00 to the Town.

**STRATEGIC PLAN ALIGNMENT:**

In accordance with Strategy #4 the Town will advance decisions/projects/initiatives that expand future opportunity and viability for Minturn. Both as an employer and a sales tax contributor these businesses each help further Minturn.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Motion to approve the proposed Hotel and Restaurant Liquor License application for The Daily Grind Coffee Co, Inc., dba Vail Mountain Coffee & Tea CO 23698 Hwy 24 as presented with the following conditions:

- The Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on July 24, 2020 at least 30 days prior to the hearing, and the publication for the hearing was published in a newspaper of general circulation on August 16, 2020 at least 10 days prior to the Public Hearing.
- That the selling liquor in the manner currently proposed in the application is not in violation of the Minturn Municipal Code.
- That pursuant to C.R.S. 12-47-313(1)(d) – Restrictions for applications for new license: the physical location where the applicant proposes to exercise the privilege of selling liquor is not within 500 feet from any public or parochial school or principal campus of any college, university, or seminary.
- That Minturn Police Dept/ECSO and the Colorado Bureau Of Investigation have conducted background investigations on the listed owner(s). These investigations were not able to identify any conditions or information, which in and of itself would forbid the approval of the applicant’s license. However, the following considerations will be attached to the approval:
  - The Local Liquor Authority has duly emphasized the requirement of operating an orderly establishment as related to noise and or live entertainment and the wellbeing of the neighborhood.
  - Staff recommends the establishment maintain server training certification on all servers.

**ATTACHMENTS:**

- Application and supporting documentation for the license renewal. Note: not all documentation is included for security reasons. Please contact Jay B. in the event you have questions.

## Colorado Liquor Retail License Application

New License  
  New-Concurrent  
  Transfer of Ownership  
  State Property Only  
  Master file

• All answers must be printed in black ink or typewritten  
 • Applicant must check the appropriate box(es)  
 • Applicant should obtain a copy of the Colorado Liquor and Beer Code: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor)

1. Applicant is applying as a/an  
  Individual  
  Limited Liability Company  
  Association or Other  
 Corporation  
 Partnership (includes Limited Liability and Husband and Wife Partnerships)

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation      FEIN Number  
 The Daily Grind Coffee Co, Inc.

2a. Trade Name of Establishment (DBA)      State Sales Tax Number      Business Telephone  
 Vail Mtn Coffee + Tea Co      11      827-4008

3. Address of Premises (specify exact location of premises, include suite/unit numbers)  
 23698 Hwy 24, Meadow Mtn. Bus. Park

City      County      State      ZIP Code  
 Minturn      Eagle      CO      81645

4. Mailing Address (Number and Street)      City or Town      State      ZIP Code  
 P.O. Box 549      Minturn      CO      81645

5. Email Address  
 Craig @ vailcoffee.com

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

**Section A      Nonrefundable Application Fees\*      Section B (Cont.)      Liquor License Fees\***

Application Fee for New License ..... \$1,550.00  
 Application Fee for New License w/Concurrent Review ..... \$1,650.00  
 Application Fee for Transfer ..... \$1,550.00

**Section B      Liquor License Fees\***  
 Add Optional Premises to H & R.....\$100.00 X \_\_\_\_\_ Total \_\_\_\_\_  
 Add Related Facility to Resort Complex \$75.00 X \_\_\_\_\_ Total \_\_\_\_\_  
 Add Sidewalk Service Area..... \$75.00  
 Arts License (City) ..... \$308.75  
 Arts License (County) ..... \$308.75  
 Beer and Wine License (City)..... \$351.25  
 Beer and Wine License (County) ..... \$436.25  
 Brew Pub License (City) ..... \$750.00  
 Brew Pub License (County)..... \$750.00  
 Campus Liquor Complex (City)..... \$500.00  
 Campus Liquor Complex (County) ..... \$500.00  
 Campus Liquor Complex (State)..... \$500.00  
 Club License (City) ..... \$308.75  
 Club License (County) ..... \$308.75  
 Distillery Pub License (City)..... \$750.00  
 Distillery Pub License (County) ..... \$750.00  
 Hotel and Restaurant License (City) ..... \$500.00  
 Hotel and Restaurant License (County) ..... \$500.00  
 Hotel and Restaurant License w/one opt premises (City) ..... \$600.00  
 Hotel and Restaurant License w/one opt premises (County)..... \$600.00  
 Liquor-Licensed Drugstore (City) ..... \$227.50  
 Liquor-Licensed Drugstore (County) ..... \$227.50  
 Liquor-Licensed Drugstore (State) ..... \$227.50  
 Lodging & Entertainment - L&E (City) ..... \$500.00  
 Lodging & Entertainment - L&E (County) ..... \$500.00  
 Manager Registration - H & R ..... \$75.00  
 Manager Registration - Tavern ..... \$75.00  
 Manager Registration - Lodging & Entertainment..... \$75.00  
 Manager Registration - Campus Liquor Complex ..... \$75.00  
 Optional Premises License (City)..... \$500.00  
 Optional Premises License (County) ..... \$500.00  
 Racetrack License (City)..... \$500.00  
 Racetrack License (County)..... \$500.00  
 Resort Complex License (City)..... \$500.00  
 Resort Complex License (County)..... \$500.00  
 Related Facility - Campus Liquor Complex (City) ..... \$160.00  
 Related Facility - Campus Liquor Complex (County) ..... \$160.00  
 Related Facility - Campus Liquor Complex (State)..... \$160.00  
 Retail Gaming Tavern License (City) ..... \$500.00  
 Retail Gaming Tavern License (County)..... \$500.00  
 Retail Liquor Store License-Additional (City)..... \$227.50  
 Retail Liquor Store License-Additional (County) ..... \$312.50  
 Retail Liquor Store (City)..... \$227.50  
 Retail Liquor Store (County)..... \$312.50  
 Tavern License (City)..... \$500.00  
 Tavern License (County)..... \$500.00  
 Vintners Restaurant License (City) ..... \$750.00  
 Vintners Restaurant License (County)..... \$750.00

2125.00

\* Note that the Division will not accept cash

**Questions? Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information**

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

Liability Information

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total \$
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## Application Documents Checklist and Worksheet

**Instructions:** This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable. **Questions? Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information**

Items submitted, please check all appropriate boxes completed or documents submitted	
<b>I.</b>	<b>Applicant information</b> <input checked="" type="checkbox"/> A. Applicant/Licensee identified <input checked="" type="checkbox"/> B. State sales tax license number listed or applied for at time of application <input checked="" type="checkbox"/> C. License type or other transaction identified <input type="checkbox"/> D. Return originals to local authority (additional items may be required by the local licensing authority) <input type="checkbox"/> E. All sections of the application need to be completed <input type="checkbox"/> F. Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application
<b>II.</b>	<b>Diagram of the premises</b> <input checked="" type="checkbox"/> A. No larger than 8 1/2" X 11" <input checked="" type="checkbox"/> B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.) <input checked="" type="checkbox"/> C. Separate diagram for each floor (if multiple levels) <input checked="" type="checkbox"/> D. Kitchen - identified if Hotel and Restaurant <input checked="" type="checkbox"/> E. Bold/Outlined Licensed Premises
<b>III.</b>	<b>Proof of property possession (One Year Needed)</b> <input type="checkbox"/> A. Deed in name of the applicant (or) (matching question #2) date stamped / filed with County Clerk <input checked="" type="checkbox"/> B. Lease in the name of the applicant (or) (matching question #2) <input type="checkbox"/> C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant <input type="checkbox"/> D. Other agreement if not deed or lease. (matching question #2)
<b>IV.</b>	<b>Background information (DR 8404-I) and financial documents</b> <input type="checkbox"/> A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members) <input type="checkbox"/> B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved state vendor. <b>Do not complete fingerprint cards prior to submitting your application.</b> The Vendors are as follows: <b>IdentoGO</b> – <a href="https://uenroll.identogo.com/">https://uenroll.identogo.com/</a> Phone: 844-539-5539 (toll-free) Identogo FAQs: <a href="https://www.colorado.gov/pacific/cbi/identification-faqs">https://www.colorado.gov/pacific/cbi/identification-faqs</a> <b>Colorado Fingerprinting</b> – <a href="http://www.coloradofingerprinting.com">http://www.coloradofingerprinting.com</a> Appointment Scheduling Website: <a href="http://www.coloradofingerprinting.com/cabs/">http://www.coloradofingerprinting.com/cabs/</a> Phone: 720-292-2722 Toll Free: 833-224-2227 <input type="checkbox"/> C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license <input type="checkbox"/> D. List of all notes and loans (Copies to also be attached) ?
<b>V.</b>	<b>Sole proprietor/husband and wife partnership (if applicable)</b> <input type="checkbox"/> A. Form DR 4679 <input type="checkbox"/> B. Copy of State issued Driver's License or Colorado Identification Card for each applicant
<b>VI.</b>	<b>Corporate applicant information (if applicable)</b> <input checked="" type="checkbox"/> A. Certificate of Incorporation <input checked="" type="checkbox"/> B. Certificate of Good Standing <input type="checkbox"/> C. Certificate of Authorization if foreign corporation (out of state applicants only)
<b>VII.</b>	<b>Partnership applicant information (if applicable)</b> <input type="checkbox"/> A. Partnership Agreement (general or limited). <input type="checkbox"/> B. Certificate of Good Standing
<b>VIII.</b>	<b>Limited Liability Company applicant information (if applicable)</b> <input checked="" type="checkbox"/> A. Copy of articles of organization <input checked="" type="checkbox"/> B. Certificate of Good Standing <input checked="" type="checkbox"/> C. Copy of Operating Agreement (if applicable) <input type="checkbox"/> D. Certificate of Authority if foreign LLC (out of state applicants only)
<b>IX.</b>	<b>Manager registration for Hotel and Restaurant, Tavern, Lodging &amp; Entertainment, and Campus Liquor Complex licenses when Included with this application</b> <input checked="" type="checkbox"/> A. \$75.00 fee <input type="checkbox"/> B. Individual History Record (DR 8404-I) <input type="checkbox"/> C. If owner is managing, no fee required



<b>Name</b> The Daily Grind Coffee Co., Inc	<b>Type of License</b> H+R License	<b>Account Number</b>		
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):				
a. Been denied an alcohol beverage license?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
b. Had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Had interest in another entity that had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
If you answered yes to 8a, b or c, explain in detail on a separate sheet.				
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
Waiver by local ordinance? <input type="checkbox"/> <input type="checkbox"/>				
Other: _____				
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,0000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,0000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
13 a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
13 b. Are you a Colorado resident?		<input checked="" type="checkbox"/> <input type="checkbox"/>		
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement? <input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) <u>Landlord - BB Development, LLC</u> <u>Tenant - The Daily Grind Coffee Co</u>		<input checked="" type="checkbox"/> <input type="checkbox"/>		
a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease: <u>January 17<sup>th</sup>, 2028</u>				
Landlord	Tenant	Expires		
<u>BB Development, LLC.</u>	<u>Daily Grind Coffee Co.</u>	<u>Jan 17, 2028</u>		
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".				
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.				
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.				
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted?		<input type="checkbox"/> <input type="checkbox"/>		
Number of additional Optional Premise areas requested. (See license fee chart)		<input type="text"/>		
18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.				
19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:				
a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? If "yes" a copy of license must be attached.		<input type="checkbox"/> <input type="checkbox"/>		

Name <b>Daily Grind Coffee Co. Inc</b>	Type of License <b>H+R License</b>	Account Number		
<b>20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation</b>				
a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
c. How long has the club been incorporated?				
d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:</b>				
a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>22. Campus Liquor Complex applicants answer the following:</b>				
a. Is the applicant an institution of higher education?		Yes <input type="checkbox"/> No <input type="checkbox"/>		
b. Is the applicant a person who contracts with the institution of higher education to provide food services? If "yes" please provide a copy of the contract with the institution of higher education to provide food services.		Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>23. For all on-premises applicants.</b>				
a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details.				
b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application - DR 8000 and fingerprints.				
Last Name of Manager <b>Arseneau</b>		First Name of Manager <b>Craig</b>		
<b>24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.</b>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>25. Related Facility - Campus Liquor Complex applicants answer the following:</b>				
a. Is the related facility located within the boundaries of the Campus Liquor Complex? If yes, please provide a map of the geographical location within the Campus Liquor Complex. If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.		Yes <input type="checkbox"/> No <input type="checkbox"/>		
b. Designated Manager for Related Facility- Campus Liquor Complex				
Last Name of Manager		First Name of Manager		
<b>26. Tax Information.</b>				
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-1 (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.</b>				
Name <b>Craig Arseneau</b>	Home Address, City & State <b>4802 Meadow Ln. Vail, CO</b>	DOB <b>10/26/62</b>	Position <b>Pres.</b>	%Owned <b>50</b>
Name <b>Chris Chantler</b>	Home Address, City & State <b>4840 Meadow Ln. Vail CO</b>	DOB <b>2/19/62</b>	Position <b>Vice Pres.</b>	%Owned <b>50</b>
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above. ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable) ** If total ownership percentage disclosed here does not total 100%, applicant must check this box: <input type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.				

Name <b>Daily Grind Coffee Co., Inc.</b>	Type of License <b>HTR License</b>	Account Number
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**Oath Of Applicant**

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

Authorized Signature <i>Craig Arsenneau</i>	Printed Name and Title <b>Craig Arsenneau - President</b>	Date <b>7/21/2020</b>
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**Report and Approval of Local Licensing Authority (City/County)**

Date application filed with local authority <b>7/24/2020</b>	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) <b>9/2/2020</b>
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The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-1 (Individual History Record) or a DR 8000 (Manager Permit) has been:

- Fingerprinted
- Subject to background investigation, including NCIC/CCIC check for outstanding warrants

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

(Check One)

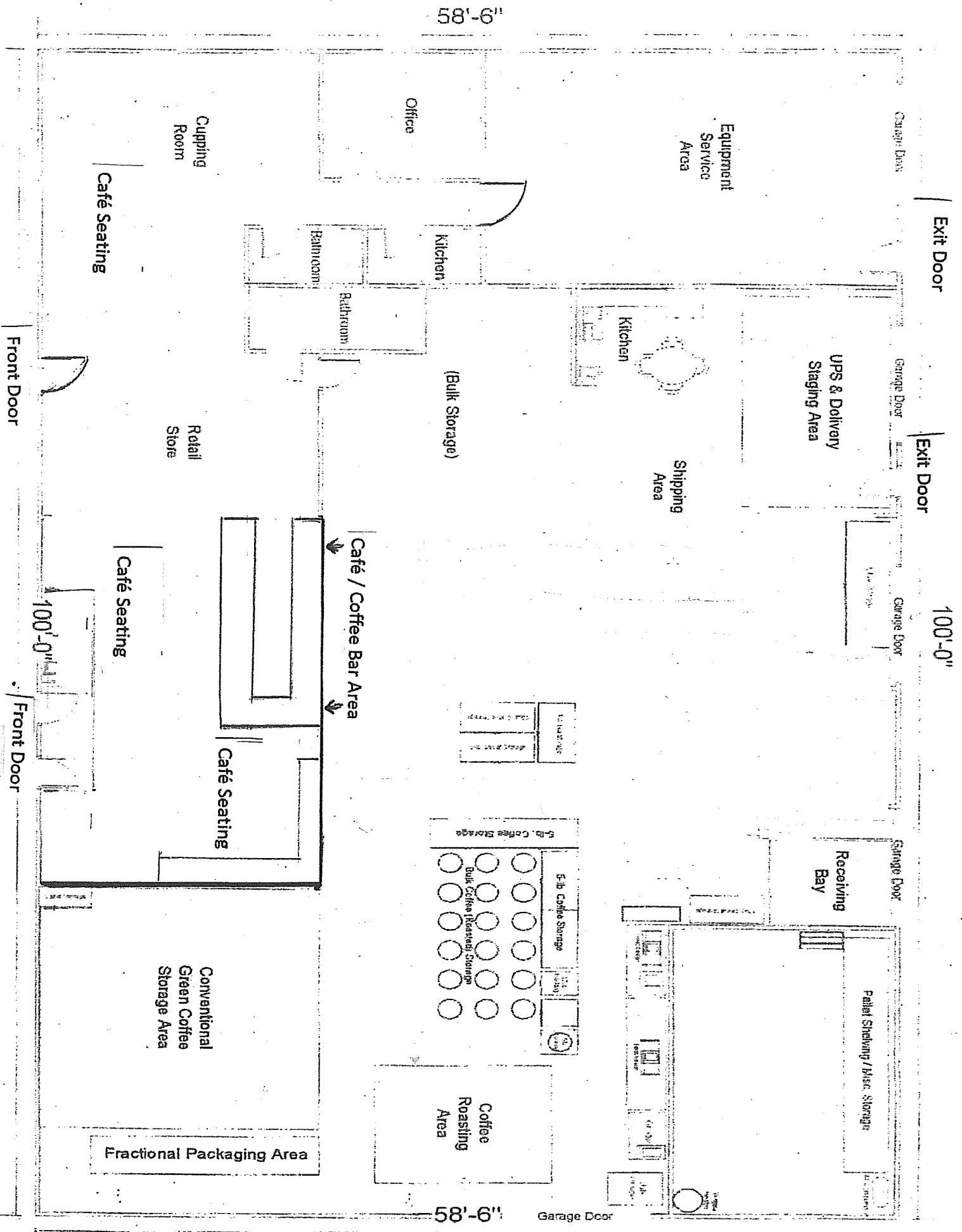
- Date of inspection or anticipated date \_\_\_\_\_
- Will conduct inspection upon approval of state licensing authority

- |   |                          |                          |
|---|--------------------------|--------------------------|
| <input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?                | Yes                      | No                       |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Is the Liquor Licensed Drugstore(LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?                 |                          |                          |
|   | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. |                          |                          |
| <input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?                  |                          | <input type="checkbox"/> |

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. **Therefore, this application is approved.**

Local Licensing Authority for <b>Town of Minturn</b>	Telephone Number <b>9708275645</b>	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County
Signature <i>Tom W. Weisman</i>	Print <b>Tom W. Weisman</b>	Title <b>Mayor</b>
Signature <i>By Brandon</i>	Print <b>Brandon</b>	Title <b>Town Clerk</b>
		Date <b>9/2/2020</b>
		Date <b>9/2/2020</b>







Exterior Control Fence

dock

BUILDING E  
6080 sq. ft. total  
1420 sq. ft. office  
4660 sq. ft. wareh

BUILDING F  
6080 sq. ft. total  
1420 sq. ft. office  
4660 sq. ft. warehouse

dock

Sidewalk Café Seating

Entry Door

Exit Door

Entry Door

Exit Door

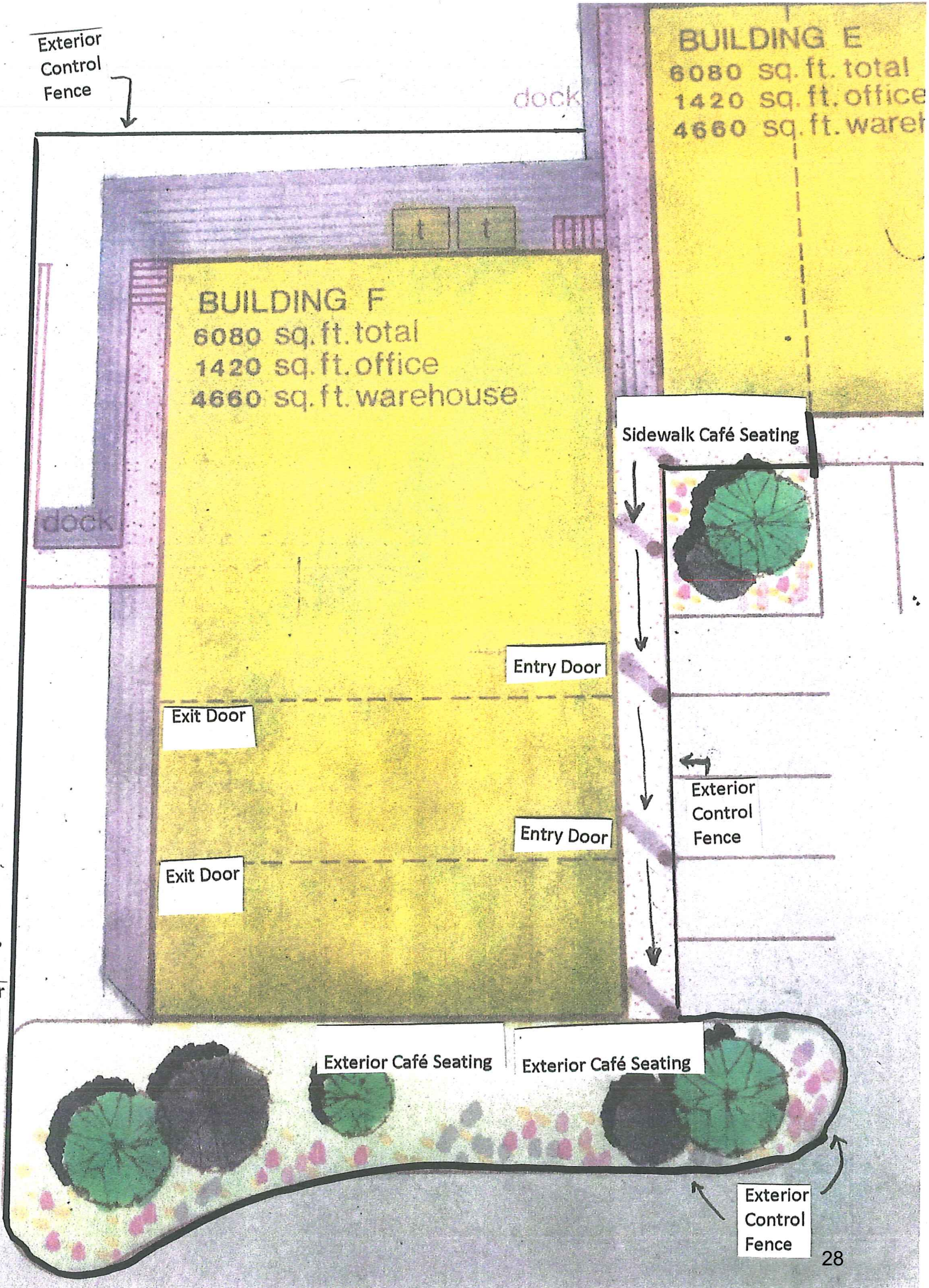
Exterior Control Fence

Exterior Control Fence

Exterior Café Seating

Exterior Café Seating

Exterior Control Fence







TOWN OF MINTURN  
P.O. Box 309 (243 Boulder Street)  
Minturn, Colorado 81645-0309  
970-827-5645 Fax: 970-827-4049  
treasurer@minturn.org

**FROM THE DESK OF  
JAY BRUNVAND, TREASURER/FINANCE**

**MEMORANDUM**

To: Liquor License applicant  
CC:  
Date: 7/24/20 9:12 AM  
RE: Requirements of a new license

- Done* 1) State Application (DR 8404)
- Complete and signed
  - Class/type of license
  - Fees
- Done* 2) Lease – Correct Term and Tenant
- Done* 3) Individual History Records filed for ALL listed below (DR8404-I)
- 10% or more stockholders/LTD partners
  - All general partners
  - Principals/applicants
  - Corporate officers
  - Directors
- Done* 4) Drawing of the premises to be licensed. If more than one level, submit a plan for each level and label the floors. Drawing no larger than 8-1/2 x 11"
- Done* 5) Proof of sales tax license, Federal Tax stamp, and Fingerprints (~~payable on company check to CBI~~)  
*Fingerprints Filed Electronically - NO Payment Due at this time*

Hearing requirements for a New License Applications:

- 1) May not hold a hearing until application has been on file 30 days. If counting the day the application was filed, do not count the day you end up on. (44-3-311) *Filed 7/24 Hearing sept 2 = 34 days*
- 2) Must post premises at least 10 days before hearing can be held. (44-3-311) *Posted 7/24/20*
- 3) Must publish in local newspaper at least 10 days before hearing. (44-3-311) *Aug 17, 2020*
- 4) Must give notice to applicant and other interested parties at least 5 days before hearing.
  - Results of investigation by Local Authority, 44-3-312
  - Character of Applicant, 44-3-307
  - Zoning/distance, 12-47-313
  - Reasonable requirements of the neighborhood, 44-3-301 and 44-3-307(3)(a)
  - Desires of the adult inhabitants of the neighborhood, 44-3-301 and 44-3-307(3)(a)
  - Qualifications of the applicant for the proposed business, 44-3-301 and 44-3-307(3)(a)
- 5) Hearing must be held to establish the reasonable requirements of the neighborhood and the applicant's good moral character before license can be issued, 44-3-301 and 44-3-307(3)(a)
- 6) Inspection of the premises prior to issuance of the license

# **NOTICE**

## **PURSUANT TO THE LAWS OF COLORADO**

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### **NOTICE OF CONSIDERATION OF AN APPLICATION FOR A HOTEL AND RESTAURANT LIQUOR LICENSE BEFORE THE TOWN OF MINTURN LIQUOR AUTHORITY.**

NOTICE IS HEREBY GIVEN THAT THE MINTURN TOWN COUNCIL ACTING AS THE LOCAL LIQUOR AUTHORITY WILL CONSIDER THE APPLICATION FILED ON JULY 24, 2020 BY AND FOR THE DAILY GRIND COFFEE CO, DBA VAIL MOUNTAIN COFFEE AND TEA CO LOCATED AT 23698 HWY 24, MINTURN, CO 81645 FOR A HOTEL AND RESTAURANT (CITY) LIQUOR LICENSE. CONSIDERATION WILL BE HELD IN THE MINTURN TOWN HALL COUNCIL CHAMBERS AT 302 PINE STREET, MINTURN, CO, ON WEDNESDAY SEPTEMBER 2, 2020 AT 5:30PM. REMONSTRANCES MAY BE FILED WITH THE TOWN TREASURER AT 302 PINE STREET OR P.O. BOX 309 MINTURN, CO 81645.

**TOWN OF MINTURN  
LIQUOR LICENSING AUTHORITY**

Follow-up findings and report for application for granting a New Beer and Wine Liquor License.

Owner Name and Address: The Daily Grind Coffee CO, dba Vail Coffee Roasters P. O. Box 549 Minturn,  
Co 81645

Establishment Name and Address: The Daily Grind Coffee CO, dba Vail Coffee Roasters, 23698 Hwy 24  
Meadow Mtn Business Park Minturn, CO 81645

**TO THE ABOVE APPLICANT AND OTHER INTERESTED PARTIES;**

Pursuant to Colorado Revised Statutes, 44-47-312(1), the applicant is hereby advised that with regard to the application for a Hotel and Restaurant Liquor License, an investigation has been made, and based on the results thereof, the following has been determined:

1. The Neighborhood for the application has been established by historical practice as the complete boundaries of the Town of Minturn and as such the approval of this establishment would not create an undue concentration of licensed establishments, thereby finding:
  - This application meets the reasonable requirements of the neighborhood.
  - The previous use of this building has been that of a hotel and restaurant establishment, this is not a change of use; rather this is an application to add to the use the right to sell alcohol by single serving for consumption on premises.
  - The granting of this license does meet the desires of the adult inhabitants as evidence by petitions, remonstrances, or otherwise or the lack thereof.
  - The application has been reviewed and has been found:
    - i. To meet the needs of the Town of Minturn Zoning as reviewed. The Planner has confirmed that parking be provided of the scale of one parking space per six seats in the restaurant pursuant to MMC 16-16-30.
    - ii. That selling liquor in the manner currently proposed in the application is not in violation of the zoning codes as stated in the Minturn Municipal Building Code – Chapter 16.
2. That the application was filed on July 24, 2020 in the Town Clerk/Treasurer's office and a public hearing has been scheduled for Wednesday September 2, 2020. In accordance with C.R.S. 44-3-311(1) the Town must hold the application for not less than 30 days; this hearing date represents 34 days. As of this writing I have received no concerns either written or verbal, pro or con.
3. The liquor license applied for is for that of a Hotel and Restaurant Liquor License as defined by the State of Colorado and that the type of Liquor License is appropriate for the needs and desires of the applicant.
4. That the Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on July 24, 2020 at least 30 days prior to the hearing, and that the publication of the hearing was published in a newspaper of general circulation on August 16, 2020 at least 10 days prior to the Public Hearing.
5. That from the evidence submitted the applicant is leasing the premises where the proposed liquor license is proposed from BB Development, Inc and that BB Development, Inc is the lawful owner of the premises. Further, the premise lease exceeds the term of the proposed license as required by Colorado State Law.
6. That pursuant to C.R.S. 44-3-313(1)(d) – Restrictions for applications for new license, the building where the applicant proposes to exercise the privilege of selling liquor at retail does not appear to be within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.
7. That Minturn Police/ECSO has conducted a background investigation on Mr.'s Craig Avseneau and Chris Chantler, the owners and managers of The Daily Grind Coffee CO, dba Vail Coffee Roast. During this investigation, Minturn Police/ECSO did not find any unresolved issues that would preclude obtaining a

investigation, Minturn Police/ECSO did not find any unresolved issues that would preclude obtaining a liquor license. Although, staff recommends approval by the Minturn Town Council it is recommended the following conditions to be placed on the license approval:

- It is recommended at a minimum the licensee/manager, and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served.
- That the Liquor Authority emphasize the requirement of operating an orderly establishment.
- The public hearing on this application will be held on Wednesday, September 2, 2020 at 5:30pm in the Council Chambers of the Minturn Town Hall, 302 Pine St, Minturn, CO. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to this application, including all matters set forth herein.

The applicant is advised and encouraged to read a copy of the State of Colorado Liquor and Beer Codes and Regulations.

Local Liquor Licensing Authority  
Minturn Town Treasurer

  
Jay Brunvand

Dated this 26 day of August, 2020.

Delivered VIA email attached.

## Petition

Applicant: The Daily Grind Coffee CO., Inc.  
Trade Name of Establishment: Vail Mountain Coffee & Tea Co.  
Proposed Location: 23698 Hwy 24, Minturn CO 81645  
Application for (Type of License): Hotel & Restaurant Liquor License

### Public Hearing before the Local Licensing Authority:

Date & Time: September 2, 2020 ~ the time To Be Determined  
Location: Town of Minturn Chambers, 302 Pine Street, Minturn, CO 81645

### DO NOT SIGN THIS PETITION UNLESS:

1. You are at least twenty-one (21) years of age.
- 2 You are a resident within the designated affected area (the designated affected area is within a one (1) mile radius of the proposed location).
3. You are the owner or manager of a business located within the designated affected area.
4. You sign your name only (first and last). You cannot sign for another individual.
5. You have not signed another petition concerning the same application.
6. You have read the petition in its entirety and understand its meaning.
7. The petition circulator witnesses your signature.

CHECK the **SUPPORT** column if you desire that this type of license be issued and/or the existing outlets do not adequately serve the reasonable requirements of the designated affected area

CHECK the **OPPOSE** column if you desire that this type of license not be issued and/or the existing outlets adequately serve the reasonable requirements of the designated affected area.







To: Mayor and Council  
From: Michelle Metteer  
Date: September 2, 2020  
Agenda Item: Minturn Fitness Center

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**REQUEST:** Minturn representatives will be attending the next quarterly scheduled Minturn Fitness Center (MFC) Board meeting on September 23, 2020. Prior to this meeting, Minturn's Fitness Center board members; Terry Armistead, George Brodin and Michelle Metteer, seek direction from the Minturn Council at-large regarding the direction of the Center as it pertains to:

- Minturn's commitment level to the public benefit of the Fitness Center
- Minturn's commitment level to the 501c7 partnership with Ski and Snowboard Club Vail (SSCV)

**INTRODUCTION:**

In 2012 the Minturn Town Council approved Resolution 05 – Series 2012. This Resolution authorized the amendment of the Battle Mountain Development agreement regarding escrow funds and funding, and subsequently made funds available to the Town as outlined within Section 6 *Permitted Uses of Town's Funds* of the Agreement:

6. ***Permitted Uses of Town's Funds:*** *The Town may only use the Town's Funds to pay for: (a) the creation of a scholarship program as set forth in Paragraph 7 below, in the amount of 350,000; (b) the Town's actual administrative costs, in an amount equal to \$15,000 in any given calendar month, not to exceed \$540,000 in the aggregate; (c) legal and consulting costs actually incurred by the Town that are directly related to the Project ("Legal and Consulting Costs"), not to exceed \$1,240,000 in the aggregate; and (d) the following costs to the extent they are actually incurred by the Town and directly and solely attributable to the Project:*

- a. to purchase of one or more of the USFS parcels;*
- b. for water infrastructure improvements to main water lines;*
- c. to finish improvements to Little Beach Park;*
- d. for Town street and streetscape improvements (provided that if and only if Developer is not required to pay such costs for the same improvements a second time, such as in the case of a street improvement that is reconstructed in the future to accommodate utility installation);*
- e. to develop a Town recreation center (if and only if the parties obtain an agreement acceptable to both with the Vail Ski and Snowboard Club for its participation in the recreation center);*
- f. for such other projects, activities, purchases, improvements, facilities or the like, including but not limited to a bike recreational trail that the parties agree upon from time to time.*

*So long as a given cost meets the foregoing requirements, the Town shall have the right to use the Town's Funds to pay for such cost, in such amounts and at such times as the Town shall determine, without requiring the prior consent of Developer.*

With the 2012 Agreement in place, Minturn proceeded to work in partnership with Ski and Snowboard Club Vail to create a fitness center for joint use by the public and SSCV athletes. Given the Town of Minturn did not have adequate funds for the creation of a fully-operational recreation center – which was identified as a desired public amenity in the 2009 Community Plan, a fitness center in partnership with an athletic organization willing to handle all operations seems like a good fit, and on June 18, 2013 the Minturn Fitness Center Nonprofit Corporation was formed.

Since its initial formation the Town of Minturn has received increasing complaints from resident MFC members indicating the gradual limiting of facility hours to the public, minimizing of class offerings, and eventually the full closure of the facility on Sundays. All of the aforementioned occurred without going through the Board programming approval process – the Board was instead updated after-the-fact.

**ANALYSIS:**

Through the 2009 Community Plan process, Minturn residents expressed an interest in a community recreation center. Traditionally, recreation centers include amenities such as swimming pools, rock climbing walls, multi-use courts, workout areas, and a variety of additional amenities deemed valued by the community. Knowing that Minturn neither had the funds for the creation of such a facility, or the ongoing operational and maintenance costs associated, the Minturn Town Council sought to find compromise when approached by Ski and Snowboard Club Vail for a partnership to create a fitness facility to jointly accommodate Minturn residents and SSCV athletes.

During the MFC's creation, the Minturn Town Council was diligent to ensure oversight of operations and programming as outlined in the Bylaws (see Minturn Fitness Center By-Laws Section 3.05 Programming Plan included with this memo) which requires Board-level approval for hours of operation, programming, class offerings and times the Center may be closed for Club-related purposes.

Additionally, to address the concerns related to ongoing operational and maintenance costs, the Minturn Town Council entered into the *Agreement Concerning the Minturn Fitness Center*, also included with this memo, which specifically identifies in Section 3(a) Funding, that the Town is under no obligation to make financial contributions to the MFC above and beyond the initial construction costs of the facility. Initial construction was estimated at \$1,000,000 per entity totaling a \$2,000,000 however, the construction ran over budget and each entity contributed an additional \$250,000 for completion of the facility.

Since initial construction, SSCV has requested additional labor and funding support from the Town of Minturn for a variety of items including water billing, building maintenance (re-staining of the facility), facility cleaning, outdoor lawn and irrigation maintenance, snowplowing, backflow prevention testing and labor to staff the facility – the Town has been unable to support all of these requests however, the Town currently utilizes the Minturn Public Works crew for the weekly mowing of the facility grass. The Town has also recently covered the costs associated with the MFC website, irrigation system, backflow prevention testing and ongoing weed mitigation.

The Town of Minturn has made continual efforts to be a supportive partner in this joint endeavor. Although not required, and as outlined above, the Town has provided financial and labor support in an effort to create the culture of a cooperative partnership. Difficulties have arisen as the culture at SSCV seems to be one of “do first and ask forgiveness afterward.”

**COMMUNITY INPUT:** Significant – This has been an ongoing discussion over the last several years with increasing public concerns.

**BUDGET / STAFF IMPACT:** TbD

**STRATEGIC PLAN ALIGNMENT:**

Practice fair, transparent and communicative local government

Sustain and invest in the things that define Minturn as a proud, sturdy mountain town to “keep Minturn Minturn”

Advance decisions/projects/initiatives that expand future opportunity and viability for Minturn

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Council to provide direction to MFC Board representatives as outlined in the “Request” section of this memo or, if needed, request additional discussions on future Council agendas.

**ATTACHMENTS:**

- Minturn Fitness Center By-Laws
- Agreement Concerning the Minturn Fitness Center
- Minturn Fitness Center Articles of Incorporation

## **Bylaws of the Minturn Fitness Center**

These Bylaws are based in part on provisions of the Colorado Revised Nonprofit Corporation Act (the “Act”) and provisions of the Articles of Incorporation of the Minturn Fitness Center, a Colorado nonprofit corporation (the “Nonprofit”), which were in effect when these Bylaws were adopted. If and to the extent that any conflict exists between these Bylaws and the Act, the Act will control. If and to the extent that there is any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation will control. In interpreting and following these Bylaws, reference also should be made to the then-current provisions of the Act and the Articles of Incorporation.

### **Article One Introduction**

#### **Section 1.01 Purpose**

The purpose of the Nonprofit is to fund, construct, maintain, and participate in the management of a fitness center for the benefit of the residents of the Town of Minturn, a Colorado municipal corporation (the “Town”) and the Vail Valley, and a training center for the Ski and Snowboard Club Vail, a Colorado nonprofit corporation. The fitness and training center will be referred to in these Bylaws as the “Center.” The Center may provide programming, training, rehabilitation services, and sell concessions for a fee.

The Nonprofit has no capital stock. The Nonprofit has no members. The Town of Minturn, through its Town Council (the “Council”) and the Ski and Snowboard Club Vail (the “Club”), as Incorporators, have certain rights to appoint Directors under these Bylaws.

#### **Section 1.02 Name**

The name of the Nonprofit is the **Minturn Fitness Center**.

#### **Section 1.03 Seal**

The Nonprofit may, but is not required to, adopt a corporate seal. A seal used to be required in Colorado to transfer real estate owned by a corporation, but a seal is no longer required for any purpose under Colorado law.

#### **Section 1.04 Fiscal Year**

The fiscal year of the Nonprofit will end December 31 each year.

## **Article Two**

### **Board of Directors**

The Nonprofit's business will be managed by a Board of Directors (the "Board"), as provided in this Article.

#### **Section 2.01 Number and Qualifications**

The Board will be comprised of six Directors. The initial Directors, or their successors, have been appointed and are serving as of the date of the adoption of these Bylaws. To qualify as a Director, each Director must review and agree to adhere to the Bylaws and its addenda and the other policies and procedures established by the Board. Voting Directors must be natural persons, eighteen years of age or older. Honorary Directors appointed pursuant to Section 2.12 may be of any age.

#### **Section 2.02 Appointment of Voting Directors**

The number of directors will be six. Three of these Directors (the "Council Directors") will be appointed by the Council in accordance with its rules of procedure and three of these Directors (the "Club Directors") will be appointed by the Club in accordance with its rules of procedure.

Beginning July 2015, the Directors will be appointed by the Council and the Club to serve in staggered three-year terms. At the time of the Director's appointment, each Director will be assigned to one of three classes of Directors, namely, Class "A," Class "B," or Class "C." Each Class will consist of two Directors, one of which will be a Council Director and one of which will be a Club Director. Each Director will hold office for a term of three years, except that, for the classes of Directors appointed in 2015, the term of the Directors in Class A will expire on July 1, 2016 and every three years thereafter, the term of the Directors in Class B will expire on July 1, 2017 and every three years thereafter, and the term of the Director in Class C will expire on July 1, 2018 and every three years thereafter. Notwithstanding the foregoing, each Director will hold office until his or her successor is appointed and qualified. Directors may serve an unlimited number of Terms in succession.

Neither the Council nor the Club may assign its right to appoint Directors without the unanimous approval of the entire Board.

If the Town is incorporated into another municipality or governmental or public authority, its right to appoint Directors will succeed to whichever authority has jurisdiction over the premises of the Center.

If the Club dissolves, merges with another entity whereby the non-party entity is the surviving entity, or converts to a for-profit form of organization, or if the Club, as a nonprofit corporation, otherwise ceases to exist, the Town or its successor will thereafter have the exclusive right to appoint all Directors.

#### **Section 2.03 Removal and Resignation**

Any Director appointed by the Council may be removed by the Council and any director appointed by the Club may be removed by the club for cause. Cause shall include: (a) a director



who is a member of the Council no longer being on Council, (b) a director appointed by Council or the Club no longer being employed by Council or the Club, or (c) a director appointed by Council or the Club having their duties and responsibilities reassigned by either Council or the Club. Any Director may resign at any time, effective upon delivery of, or upon the terms stated in, a written letter or notice of resignation.

#### **Section 2.04 Vacancies**

A vacancy on the Board will be filled by the organization that appointed the Director, namely, the Council or the Club, as the case may be. A Director appointed to fill a vacancy will be appointed for the unexpired term of his or her predecessor.

#### **Section 2.05 Place of Meetings**

Meetings of the Board, whether annual, regular or special, will be held within 25 miles of the Town of Minturn at an ADA compliant facility. Any Director meeting, including special meetings, may also take place, in whole or in part, in person or by virtual meeting technology, including by telephone, Skype, or other such technology that permits each participant in the meeting to monitor and fully participate in all deliberations and proceedings.

#### **Section 2.06 Annual Meeting**

The Board will meet on the second Tuesday of June of each year, or another date and time in the month of June, as determined by the Board, to elect officers, consider and approve the annual budget for the Nonprofit's operations, to consider and approve the annual appropriations for capital improvements and investments, and to consider any other matters properly before the Board. Failure to hold the annual meeting will not cause the Nonprofit to be dissolved. Notice of the annual meeting must be given to the members of the Board, but no less than five and no more than 30 days prior to the annual meeting.

#### **Section 2.07 Meeting Notice**

Notice of regular meetings will be deemed to be given when the Board adopts a regular meeting schedule (such as the second Tuesday of each month at 12:00 pm at the Nonprofit's primary place of business). Notice of other meetings may be given by regular mail, fax, or email and will be deemed given if received at least five days before the date of the meeting. The business to be transacted at and the purpose of any special meeting of the Board should be specified in the notice in general terms. No lawful act of the Board, appropriately adopted, will be invalid if the matter acted upon at a special meeting reasonably relates to the contents of the notice.

#### **Section 2.08 Waiver of Notice**

Notice of any meeting may be waived either orally or in writing by any Director at any time.

#### **Section 2.09 Quorum and Voting**

Subject to the provisions below concerning action with respect to certain extraordinary matters, the presence of no less than two Council Directors and two Club Directors will constitute a quorum for the transaction of business. Except as otherwise provided in these Bylaws, the act of the majority of the Directors present at a meeting at which a quorum is present will be the act of

the Board. If there is a tie vote, the matter voted upon will be deemed to have failed. A Director may appoint another Voting Director as his or her proxy for purposes of determining a quorum and for purposes of voting on a particular proposal, but the appointment must be in writing, must describe the particular proposal to be voted upon, must direct the vote to be cast by the proxy, and must be subscribed by the Director giving such proxy.

**Section 2.10 Action without a Meeting**

Any action that may be taken at a meeting of the Directors may be taken by unanimous written consent of all of the Directors.

**Section 2.11 Unanimous Decision on Certain Extraordinary Matters**

The unanimous vote or consent of all of the Directors will be required to encumber or dispose of any real property owned by the Company, to incur over \$15,000 in debt, or to amend or repeal these Bylaws.

**Section 2.12 Honorary Directors**

The Board may appoint honorary Directors, who may not vote as Directors, but may attend and otherwise participate in all meetings of the Board. The term of office of an honorary Director will be as specified by the Board.

**Article Three  
Budgeting and Operations**

**Section 3.01 Annual Budget, Maintenance Reserves, and Insurance**

The Board of Directors will, at its annual meeting, adopt a budget (“Budget”) for the operation of the Center. The Budget will include an amount to be placed in a separate capital reserve account dedicated exclusively to the repair of the Center and maintenance, upgrade, and replacement of its equipment. A capital reserve account schedule (2014 – 2024) will be adopted by the Board and a line item for contributions to the capital reserve account will be included in every Budget approved by the Board. The Budget will include provisions for the center to maintain adequate insurance. The Budget will include amounts for audits, tax counseling, and other professional fees that may be required to comply with regulations imposed by the IRS, the Colorado Department of Revenue, or other regulators or authorities with jurisdiction over the Nonprofit, the Center, its finances, and its operations.

**Section 3.02 Insurance**

The Nonprofit will maintain adequate insurance for the Center, including as follows:

<b>Insurance Item</b>	<b>Amount</b>
Building and Equipment	\$2.5 Million
General Liability	\$1 Million/Occurrence/\$2 Million Overall
D&O	As determined by the Board
Workers Comp & Unemployment	As legally required



The Board shall, on an annual basis evaluate the insurance policies and amounts and adjust as needed to account for inflation, changes in operations or activities undertaken by the Center, for any other reasonable purpose. The provision of this insurance is not a waiver of any governmental immunity that may otherwise apply.

### **Section 3.03 Revenue from Membership Dues, Use Fees, and Sales**

Income to the Nonprofit from Membership Dues, use fees, and sales will be used exclusively to fund operations of and maintenance, repair, replacement, or enhancements to the Center, its equipment, its offerings, and its facilities. Remittance of these funds for any other otherwise-lawful, tax exempt and nonprofit purposes may only be made upon the unanimous consent or resolution of the Board. The Board, upon unanimous vote, may authorize a distribution of income to Club and Town in equal amounts, so long as said distribution complies with applicable tax laws and does not violate the tax exempt status of the Nonprofit.

### **Section 3.04 Recovery of Costs**

At such time that the annual Budget foresees revenues in excess of expenses (including making contributions to the capital reserve account), the Board shall budget payments to Club and/or Town for purposes of reimbursing operating capital contributions to the Nonprofit and out-of-pocket costs previously absorbed by the Club and the Town. Reimbursements shall be made in the following order:

1. Club shall be reimbursed for advances of operational capital made to the Nonprofit during periods when expenses were in excess of revenues. Operational capital advances shall directly relate to operation of the Center and its programs that are equally available to Club participants and Minturn residents. Operational capital advances shall not relate to programs or personnel that are exclusively for the benefit of Club participants. The Club shall maintain records of operational capital contributions made to Nonprofit and shall submit such records for Board review and approval on an annual basis as part of the Board's adoption of the Budget.
2. Club and Town shall be reimbursed for out-of-pocket costs absorbed by those entities related to land acquisition, design and construction of the Center. Club shall be reimbursed \$161,500 and Town shall be reimbursed \$45,000 of out-of-pocket costs related to the Center. Reimbursements of out-of-pocket costs shall be made pro-rata (78% to Club and 22% to Town).

Reimbursement payments shall only be made at the end of the Nonprofit's fiscal year when actual revenue in excess of expenses is available. No reimbursement item described herein shall bear or accrue interest. No reimbursement item shall be deemed a debt entitled to be repaid by any date certain.

### **Section 3.05 Programming Plan**

The Board will prepare and approve an annual programming plan for the Center. The Plan will include hours of operation, target for number of hours of group programming available to the public and the type of group programming, and times when portions of the Center will be closed to the members or the public for Club-related purposes.



### **Section 3.06 Membership Rates; Town Residents**

The Center will offer membership rates at a fee reasonably calculated to facilitate use and membership of the Center by the general public. Town residency will apply to any person residing within the Minturn Zip Code, 81645, as well as any business owners whose business is located in Minturn, any police and fire department employees assigned to the Town and their families. Residents will receive access to the Center and certain programming at the Center at reduced rates. The Nonprofit will offer to the public use or membership plans on a daily, monthly, and annual basis. Family memberships will be offered. There will be no initiation fee for residents of the Town. Residency may be established with a driver's license or utility bill in the name of the applicant. The Town may designate persons who are entitled to use basic Center facilities and programming without charge: (i) full-time Town employees, and (ii) police and fire department employees who are primarily assigned to work in Minturn.

### **Section 3.07 Non-Discrimination**

The Nonprofit will prohibit discrimination against and harassment of any employee, member, or any applicant for employment or membership because of race, color, national or ethnic origin, age, religion, disability, sex, sexual orientation, gender identity and expression, veteran status (special disabled veterans, disabled veterans and Vietnam-era veterans), or any other characteristic protected under applicable federal or state law. All personnel who are responsible for hiring and promoting employees and for the development and implementation of Center programs or activities are charged to support this effort and to respond promptly and appropriately to any concerns that are brought to their attention.

## **Article Four Center Property**

### **Section 4.01 Property.**

Unless otherwise specifically agreed to, the real property, improvements, and personal property inside the Center are the property of the Nonprofit. The Board may authorize, in writing, the Club or the Town to locate personal property or equipment for the exclusive use of its or their members or constituents. Such "individual" property shall be noted in the minutes of the Board

### **Section 4.02 Dissolution.**

#### **(a) Personal Property**

Upon dissolution of the Nonprofit, the personal property within the Center will be (i) sold in whole or in part with the proceeds distributed in equal portions to the Town and to the Club, or (ii) distributed in kind, in whole or in part, in equal proportions to the Town and to the Club. To receive distribution of property upon dissolution, the Town and the Club must be tax-exempt, nonprofit entities. If one does not qualify as a tax exempt, nonprofit entity, the undistributed property will be distributed to the other.

(b) Real Property

Upon dissolution of the Nonprofit, the real property and fixtures of the Nonprofit will be distributed to the Town.

## **Article Five Officers**

### **Section 5.01 Officers**

The officers of the Nonprofit will consist of a president, secretary, and treasurer, and other officers and agents deemed necessary by the Board, including any vice president, each of whom will be elected by the Board at its annual meeting. The offices of treasurer and secretary may be held by the same person. The President and the Treasurer may not both be Council Directors or both be Club Directors. The offices of President and Vice-President shall alternate between a Council Director and a Club Director every two calendar years. Upon unanimous vote of the Board, a Council Director or a Club Director may continue serving as President or Vice-President for a period in excess of two years.

Officer vacancies will be filled by the Board, and the new officer will hold office until a successor is chosen and qualified. If there is a deadlock with respect to the appointment of the president, then there will be no president, so long as there is a deadlock, and the Council Directors and the Club Directors will each appoint a senior vice president, who, together, will jointly serve as executive officers of the Nonprofit. The officers must undertake their duties at all times in conformance with the directives of the Board, as expressed in its duly enacted resolutions and consents and in accordance with the annual budgets and appropriations approved by the Board at its annual meeting.

### **Section 5.02 President**

The president will be the chief executive and manager of the Nonprofit and will in general oversee the day-to-day business and affairs of the Nonprofit, subject to the direction and control of the Board. The president will carry out the directives of the Board, as expressed in its duly enacted resolutions and consents and in accordance with the annual budgets and appropriations approved by the Board at its annual meeting. The President may be a voting Director, if so appointed by the Council or the Club. Otherwise, the President will serve as an *ex officio*, non-voting member of the Board, facilitate all meetings of the Board, and, as necessary and appropriate, facilitate Committee meetings. The President is responsible for keeping the Board apprised of material information concerning the performance of the Nonprofit in general.

The President will manage and implement any agreements entered into by the Nonprofit with respect to the management of the Nonprofit's facilities, subject to his or her duty of loyalty to the Nonprofit.

### **Section 5.03 Vice-Presidents**

Vice-presidents, if any, will perform the duties set forth by the president or by the Board. If the Nonprofit has more than one vice-president, the senior vice-president will perform all the duties incumbent upon the President during the absence or disability of the President.

#### **Section 5.04 Secretary**

The secretary will keep, or will cause to be kept, a true and complete record of the proceedings of the Board. The secretary will be custodian of the records (and of the seal of the Nonprofit and will see that the seal is placed on documents whenever required, if the Nonprofit has obtained a seal). The secretary will give all notices and perform other duties as the Bylaws or the Board require.

#### **Section 5.05 Treasurer**

The treasurer will keep correct and complete records of account, showing accurately at all times the financial condition of the Nonprofit. The treasurer will be the legal custodian of all monies, notes, securities and other valuables that may from time to time come into the possession of the Nonprofit. If there is no treasurer, the secretary will assume these duties.

#### **Section 5.06 Absent Officer**

In case of the absence of any officer of the Nonprofit or for any other reason that the Board may deem sufficient, the Board may transfer the powers or duties of that officer to any other officer or to any Director or employee of the Nonprofit, provided that the majority of the full Board concurs.

#### **Section 5.07 Compensation**

Officers will receive no compensation unless otherwise authorized by the Board.

## **Article Six Committees**

#### **Section 6.01 Director Committees**

The Board may designate and appoint one or more committees, each of which will have at least one Director. Committees will have the authority of the Board to manage the Nonprofit as may be authorized by the Board, except that no committee can amend the Bylaws; change the committee membership or the Directors of the Nonprofit; amend the Articles of Incorporation; adopt a plan to merge or consolidate with another corporation, or adopt a plan to convert to another type of entity; authorize the sale, lease, exchange or mortgage of all or substantially all of the Nonprofit's assets outside the ordinary course of business; distribute the assets of the Nonprofit; or amend any resolution of the Board.

#### **Section 6.02 Other Committees**

The Board may appoint committees that lack authority to manage the Nonprofit. The Board may also remove committee members if, in their judgment, removal is in the best interests of the Nonprofit.



**Article Seven**  
**Nonprofit Policies and Procedures.**

The Board may adopt certain policies and procedures (“Policies and Procedures”) as standard operating practices of the Company, including those policies and procedures set forth on the attached Exhibits A through E, which are incorporated in these Bylaws as if set out in full.

**Article Eight**  
**Negotiable Instruments, Deeds and Contracts.**

The President and Treasurer may jointly sign checks, instruments, and other written contracts that bind the Nonprofit, provided however, that the following transactions may only be entered into by these officers with the express authorization of the requisite number of Directors:

- (a) Conveyance or encumbrance of any (i) real property or (ii) personal property in excess of \$15,000;
- (b) Any single expenditure or series of related expenditures that is in excess of \$15,000 that is not expressly authorized in an annual budget of the Nonprofit approved by the Board;
- (c) Any agreement or written contract that purportedly binds the Nonprofit to a term in excess of one year;
- (d) Any employment, compensation, rental, independent contractor, or other agreement in excess of \$15,000 that is not expressly authorized in an annual budget of the company approved by the Board.

**Article Nine**  
**General Provisions**

**Section 9.01 No Private Inurement**

No part of the net earnings of the Nonprofit may inure to the benefit of, or be distributable to, its Directors, officers or other private persons, except that the Nonprofit may be authorized to pay reasonable compensation for services rendered and to make payments and distributions for the Nonprofit's charitable purposes to the extent consistent with law, the Articles of Incorporation and these Bylaws. The Nonprofit may not carry on any other activities not permitted to corporations exempt from federal income tax under IRC § 501(c)(3).

**Section 9.02 Indemnification**

The Nonprofit waives all personal liability of its Directors, officers, employees, and volunteers for any breach of fiduciary duty owed to the nonprofit, and the Nonprofit must pay their legal

defense costs in advance arising from all acts within the scope of their official functions for the Nonprofit, except for the following: breach of loyalty, acts or omissions in bad faith, intentional misconduct, known violations of law, loans to any officer or Director, or any transaction when the Director obtained an improper financial benefit. The nonprofit also waives all personal liability of its Directors or officers for any injury to persons or property arising out of a tort committed by an employee unless the Director or officer was personally involved in this tort, or committed a criminal offense, pursuant to CRS § 7-128-402. The Nonprofit hereby adopts the provisions regarding Director liability and indemnification in the Colorado Business Nonprofit Act at CRS §§ 7-108-401 through 7-108-501, and CRS §§ 7-109-101 through 7-109-110, and incorporating CRS §§ 13-21-115.7 and 13-21-116, which generally provide that any Director who is not compensated by a nonprofit will be immune from civil liability for any act or omission which results in damage or injury if the Director was acting within the scope of his or her official functions.

*End of Bylaws  
Execution and Certification Page Follows Immediately*

## Signature and Acknowledgment

IN WITNESS WHEREOF, we, being all of the Directors of Minturn Fitness Center, ~~Inc.~~ <sup>NON-profit</sup>, have hereunto set our hands this 17 day of DECEMBER, 2014. This document may be executed in counterparts, each of which, when taken together, will constitute one and the same document.




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Aldo Radamus, Director




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John Cole, Director



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Glenn Davis, Director



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Earle Bidez, Director



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John Rosenfeld, Director



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Michelle Metteer, Director

## CERTIFICATION

I, the undersigned, do hereby certify that I am the duly elected and acting secretary of Minturn Fitness Center, a Colorado nonprofit corporation and that the foregoing Bylaws constitute the Bylaws of the Nonprofit, as duly adopted at a meeting of the Board of Directors held on 13 day of ~~December~~, 2014.

NOVEMBER

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17 day of DECEMBER, 2014.



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Michelle Metteer, Secretary

## **Minturn Fitness Center**

### **Appendix A – Compensation Policy and Conflict of Interest Disclosure**

#### **Section 1.01 Conflicts of Interest.**

Directors must disclose any financial or other conflict of interest ("interested director(s)") before the Board votes on a matter involving the conflict of interest. Interested directors may count toward board quorums but they may not vote on the matter of conflict. If an interested director fails to disclose a conflict of interest, then that director's vote cannot be counted in any board vote approving a transaction, and any contract entered into between the interested director and the Nonprofit will be voidable upon the approval of a majority of disinterested directors present at a board meeting at which a quorum is present. Directors, officers and key employees shall annually affirm the conflict of interest policy attached to these Bylaws.

#### **Section 1.02 Nonprofit Compensation.**

The Nonprofit will follow these guidelines when determining the compensation of officers and highest compensated employees and independent contractors. Directors will not receive a salary.

- (a) The Nonprofit will follow the conflict of interest policy. This means that the person being paid will not vote on compensation matters or be present when compensation is discussed.
- (b) Compensation will be agreed upon in advance before it is paid.
- (c) Compensation decisions will be recorded in writing and dated.
- (d) Each person's vote on the compensation will be recorded if it is not unanimous. If unanimous, the minutes will state that.
- (e) Compensation decisions will be based on salary surveys. If the executive director compensation is less than \$100,000, and if every other employee's compensation is below \$65,000, the Nonprofit will comply with these guidelines merely by stating the compensation amount in writing.
- (f) If compensation exceeds these limits, the Nonprofit will explain compensation decisions in minutes based national and local salary surveys, the cost of living index in the Nonprofit's location, history of compensation paid to the individual, and other relevant factors. Salary surveys are available online at various locations including <http://www.shopthenonprofittimes.com/nonprofit-salary-and-benefits-reports>). The average cost of living of the Nonprofit's place of business when compared to the national average can be found at [www.bestplaces.net](http://www.bestplaces.net). If compensation exceeds the amounts reported here, the online information that was relied upon will be printed out and attached to the compensation decision minutes or the online location will be noted in the minutes.

#### **Section 1.03 IRS Best Practices for Board Governance.**

The Nonprofit adopts the following best practices as recommended by the IRS:

- (a) IRS Form 990 will be available for review by the Board before filing. The Treasurer and other interested board members who volunteer to do so shall review Form 990 before it is filed.
- (b) Directors, officers and employees will annually review and affirm the conflict of interest policy and disclose any conflicts of interest.
- (c) IRS Forms 990 and 1023, the Articles of Incorporation, Bylaws, Conflict of Interest policy, and the annual review or audit for the prior three years shall be open for public inspection.
- (d) Whistleblowers shall be protected. If a person in good faith reports that a director, officer or employee is violating the law, the whistle blower shall be protected from retaliation by the Nonprofit.

Financial records of annual income and expense shall be retained for at seven years. Financial records reporting assets owned by the Nonprofit shall be retained for as long as the Nonprofit owns the asset and for seven years thereafter. The Nonprofit shall not destroy records that it believes could be useful in a lawsuit against the Nonprofit of which the Nonprofit is aware.

***End of Bylaws Appendix A – Compensation Policy  
and Conflict of Interest Disclosure***



## **Minturn Fitness Center**

### **Appendix B - Conflict of Interest Policy**

#### **Article One**

##### **Purpose**

The purpose of the conflict of interest policy is to protect the interests of the Minturn Fitness Center (the Nonprofit) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Nonprofit or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

#### **Article Two**

##### **Definitions**

###### **Section 2.01 Interested Person.**

Any director, officer, or member of a committee with board delegated powers who has a direct or indirect financial interest is an interested person.

###### **Section 2.02 Financial Interest.**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- (a) An ownership or investment interest in any entity with which the Nonprofit has a transaction or arrangement,
- (b) A compensation arrangement with the Nonprofit or with any entity or individual with which the Nonprofit has a transaction or arrangement, or
- (c) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Nonprofit is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Article Three**

### **Procedures**

#### **Section 3.01      Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

#### **Section 3.02      Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

#### **Section 3.03      Procedures for Addressing the Conflict of Interest**

- (a) If the board determines a conflict of interest to exist, then an interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- (b) The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (c) After exercising due diligence, the governing board or committee shall determine whether the Nonprofit can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Nonprofit's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

#### **Section 3.04      Violations of the Conflicts of Interest Policy**

- (a) If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- (b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the

member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **Article Four**

#### **Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

- (a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- (b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

#### **Article Five**

#### **Compensation**

- (a) A voting member of the governing board who receives compensation, directly or indirectly, from the Nonprofit for services is precluded from voting on matters pertaining to that member's compensation.
- (b) A voting member of any committee that reviews compensation matters and who receives compensation, directly or indirectly, from the Nonprofit for services is precluded from voting on matters pertaining to that member's compensation.
- (c) No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Nonprofit, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### **Article Six**

#### **Annual Statements**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy,

- (c) Has agreed to comply with the policy, and
- (d) Understands the Nonprofit is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

### **Article Seven**

#### **Periodic Reviews**

To ensure the Nonprofit operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, consider the following:

- (a) Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- (b) Whether partnerships, joint ventures, and arrangements with management conform to the Nonprofit's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further the Nonprofit's charitable purposes, and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

### **Article Eight**

#### **Use of Outside Experts**

When conducting the periodic reviews as provided for in Article Seven, the Nonprofit may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

**Minturn Fitness Center**  
**Affirmation of Conflict of Interest Policy**

Any director, principal officer, or member of a committee with governing board delegated powers, who receives compensation from or has a direct or indirect financial interest in a transaction with the Minturn Fitness Center is an interested person.

The signature below is an affirmation that the interested person:

- (a) Has received a copy of the conflicts of interest policy,
- (b) Has read and understands the policy,
- (c) Has agreed to comply with the policy, and
- (d) Understands the Nonprofit is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Signature of Interested Person: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Capacity: \_\_\_\_\_  
Date: \_\_\_\_\_

*End of Appendix B - Conflict of Interest Policy*

## **Minturn Fitness Center**

### **Appendix C – Whistleblower Policy**

The Minturn Fitness Center (the “Nonprofit”) is committed to the highest possible standards of ethical, moral and legal business conduct. In line with this commitment, this policy aims to provide an avenue for employees to raise concerns, while providing reassurance that they will be protected from reprisals or victimization for whistle blowing in good faith.

This policy is intended to cover serious concerns that could have a major impact on the Nonprofit such as actions that:

- May lead to incorrect financial reporting
- Are unlawful
- Are not in line with company policy
- Amount to serious, improper conduct

Harassment or victimization of the complainant will not be tolerated. Every effort will be made to protect the complainant’s identity.

The policy encourages employees to put their names to allegations because appropriate follow-up questions and investigations may not be possible unless the source of the information is identified. Concerns expressed anonymously will be investigated, but consideration will be given to:

- The seriousness of the issue raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources.

#### **Section 1.01 Malicious Allegations**

Malicious allegations will not be tolerated and will result in disciplinary action, up to and including termination.

#### **Section 1.02 Process for Raising Concerns**

The whistle blowing procedure is intended to be used for serious and sensitive issues relating to financial reporting, unethical or illegal conduct. These concerns should be reported to human resources. Please remember that the earlier a concern is expressed, the easier it is to take action.

Employment-related concerns should continue to be reported through normal channels such as your supervisor or human resources.

Although the complainant is not expected to prove the truth of an allegation, the complainant needs to demonstrate to the contact in Human Resources that there are sufficient grounds for concern.

### **Section 1.03      How the Complaint Will Be Handled**

The action taken will depend on the nature of the concern. The president and the Board of Directors will receive a written report on each complaint and follow-up reports on actions taken, which notice must be remitted to the Board.

Initial inquiries will be made to determine whether an investigation is appropriate and the form that it should take. Some concerns may be resolved by agreed action without the need for investigation. A Human Resources committee of the Board of Directors or other qualified individuals will conduct the necessary inquiries and investigations.

### **Section 1.04      Report to Complainant**

The complainant will be given the opportunity to receive follow-up on their concern in two weeks. The follow-up will consist of:

- Acknowledgement that the concern was received
- Indication of how the Nonprofit plans to deal with the matter
- Estimate of the time that it will take for a final response
- Information regarding whether initial inquiries have been made
- Information regarding whether further investigations will follow, and if not, why not

The amount of contact between the complainant and those investigating the concern will depend on the nature of the issue and the clarity of information provided. Further information may be sought from the complainant. Subject to legal constraints the complainant will receive information about the outcome of any investigations.



## Minturn Fitness Center

### Appendix D – Document Retention and Destruction Policy

This appendix was adopted by and incorporated into the Bylaws of the Minturn Fitness Center.

#### Section 1.01 Purpose

This policy provides for the systematic review, retention and destruction of documents received or created by the Minturn Fitness Center (the “Nonprofit”) in connection with the transaction of organization business. This policy covers all records and documents, regardless of physical form, contains guidelines for how long certain documents should be kept and how records should be destroyed. The policy is designed to ensure compliance with federal and state laws and regulations, to eliminate accidental or innocent destruction of records and to facilitate the Nonprofit’s operations by promoting efficiency and freeing up valuable storage space.

#### Section 1.02 Document Retention

The Nonprofit follows the document retention procedures outlined below. Documents that are not listed, but are substantially similar to those listed in the schedule will be retained for the appropriate length of time.

(a)	Corporate Records	
	Annual Reports to Secretary of State/Attorney General	Permanent
	Articles of Incorporation	Permanent
	Board Meeting and Board Committee Minutes	Permanent
	Board Policies/Resolutions	Permanent
	Bylaws	Permanent
	Construction Documents	Permanent
	Fixed Asset Records	Permanent
	IRS Application for Tax-Exempt Status (Form 1023)	Permanent
	IRS Determination Letter	Permanent
	State Sales Tax Exemption Letter	Permanent
	Contracts (after expiration)	7 years
	Correspondence (general)	3 years
(b)	Accounting and Corporate Tax Records	
	Annual Audits and Financial Statements	Permanent
	Depreciation Schedules	Permanent
	General Ledgers	Permanent
	IRS 990 Tax Returns	Permanent
	Business Expense Records	7 years
	IRS 1099s	7 years
	Journal Entries	7 years
	Invoices	7 years
	Sales Records (box office, concessions, gift shop)	5 years
	Petty Cash Vouchers	3 years

	Cash Receipts	3 years
	Credit Card Receipts	3 years
(c)	Bank Records	
	Check Registers	Permanent
	Bank Deposit Slips	7 years
	Bank Statements and Reconciliation	7 years
	Electronic Fund Transfer Documents	7 years
(d)	Payroll and Employment Tax Records	
	Payroll Registers	Permanent
	State Unemployment Tax Records	Permanent
	Earnings Records	7 years
	Garnishment Records	7 years
	Payroll Tax returns	years
	W-2 Statements	7 years
(e)	Employee Records	
	Employment and Termination Agreements	Permanent
	Retirement and Pension Plan Documents	Permanent
	Records Relating to Promotion, Demotion or Discharge	7 years after
	Termination Accident Reports and Worker's Compensation Records	5 years
	Salary Schedules	5 years
	Employment Applications	3 years
	I-9 Forms	3 years after
	termination	
	Time Cards	2 years
	Donor Records and Acknowledgement Letters	7 years
	Grant Applications and Contracts completion	5 years after
(f)	Legal, Insurance and Safety Records	
	Appraisals	Permanent
	Copyright Registrations	Permanent
	Environmental Studies	Permanent
	Insurance Policies	Permanent
	Real Estate Documents	Permanent
	Stock and Bond Records	Permanent
	Trademark Registrations	Permanent
	Leases	6 years after
	expiration	
	OSHA Documents	5 years
	General Contracts	3 years after
	termination	

### **Section 1.03      Electronic Documents and Records**

Electronic documents will be retained as if they were paper documents. Therefore, any electronic files, including records of donations made online, that fall into one of the document types on the above schedule will be maintained for the appropriate amount of time. If a user has sufficient reason to keep an email message, the message should be printed in hard copy and kept in the appropriate file or moved to an “archive” computer file folder. Backup and recovery methods will be tested on a regular basis.

### **Section 1.04      Emergency Planning**

The Nonprofit records will be stored in a safe, secure and accessible manner. Documents and financial files that are essential to keeping the Nonprofit operating in an emergency will be duplicated or backed up at least every week and maintained off site.

### **Section 1.05      Document Destruction**

The Nonprofit’s chief financial officer is responsible for the ongoing process of identifying its records, which have met the required retention period and overseeing their destruction. Destruction of financial and personnel-related documents will be accomplished by shredding. Document destruction will be suspended immediately, upon any indication of an official investigation or when a lawsuit is filed or appears imminent. Destruction will be reinstated upon conclusion of the investigation.

### **Section 1.06      Compliance**

Failure on the part of employees to follow this policy can result in possible civil and criminal sanctions against the Nonprofit and its employees and possible disciplinary action against responsible individuals. The chief financial officer and finance committee chair will periodically review these procedures with legal counsel or the organization’s certified public accountant to ensure that they are in compliance with new or revised regulations.

*End of Appendix D – Document Retention and Destruction Policy*

## **Minturn Fitness Center**

### **Appendix E – General standards of conduct for directors and officers**

#### **Section 1.01**

Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

#### **Section 1.02**

In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence;
- (c) Religious authorities or ministers, priests, rabbis, or other persons whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence and who the director or officer believes to be reliable and competent in the matters presented; or
- (d) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.
- (e) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.
- (f) A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.
- (g) A director, regardless of title, shall not be deemed to be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by

the nonprofit corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

**Section 1.03**

A director or officer of a nonprofit corporation, in the performance of duties in that capacity, shall not have any fiduciary duty to any creditor of the nonprofit corporation arising only from the status as a creditor.

**Section 1.04**

No person shall be liable in contract or tort merely by reason of being a director, officer, or member of a nonprofit corporation that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and the business or activities of which have been continued for nonprofit purposes, with or without knowledge of the suspension, declaration, or dissolution, and the business and activities of which have not been wound up.

*End of Appendix E – General standards of conduct for directors and officers*

## Agreement Concerning the Minturn Fitness Center

THIS AGREEMENT is entered into as of the \_\_\_ day of December, 2014 between and among the Town of Minturn, a Colorado municipal corporation (the "Town"), Ski and Snowboard Club Vail a Colorado nonprofit corporation (the "Club"), and the Minturn Fitness Center, a Colorado nonprofit corporation (the "Center") (all together, the "Parties").

### Introduction

A. The Town and the Club are tax-exempt organizations under applicable State and Federal law.

B. The Center is an independently-managed nonprofit corporation incorporated by the Town and the Club to fund, construct, maintain, and manage (i) a fitness center for the benefit of the residents of the Town and the greater Vail Valley and (ii) a training center for the Club (the "Facility").

C. The Center was and will be capitalized with certain contributions from the Town and the Club. The Town has contributed to the Center human resources, money, and marketing. The Club has contributed to the Center money, human resources, and real property.

D. Town and the Club made these contributions in reliance upon the understanding that the Center, once established, would offer or make available certain services to the community and to the Club and that certain rights and privileges would be extended by the Center to the Town and the Club. These understandings were memorialized, in part, in that certain Memorandum of Understanding dated March 29, 2013.

E. Town has contributed to the construction of the Facility in reliance that Club will pay any operational deficits related to the operation, maintenance, and repair of the Facility.

F. The Center has been constructed and operations have commenced. Accordingly, the Parties wish to further memorialize and formalize certain agreements as provided in this Agreement.

### Agreement

IN CONSIDERATION OF AND RELIANCE UPON the mutual promises and understandings of the Parties set forth above and in consideration of and reliance upon other mutual promises and understandings, the Parties agree and represent as provided in this Agreement.

**Section 1. Recitals.** The foregoing recitals are incorporated as the mutual understandings of the Parties.

**Section 2. Future Expansion.**

- (a) In the future, the Town, in possible conjunction with third-parties, may develop a community Center in the area of the Facility. The Center agrees to grant to the Town, or an entity it may create, easements and other servitudes that may be



necessary for the purposes of constructing and operating a community center or aquatic facility on adjoining property (the "Community Center"), provided that such easements will not unduly frustrate the services performed by the Center or substantially add costs for operating and maintaining the Center. Temporary, short-term interferences ordinarily and reasonably relating to construction will not be deemed to frustrate the services performed by the Center.

- (b) The Center agrees that it will share parking facilities with the Community Center, if any, provided that the Town will pay for, at its own expense, a study confirming that the design and size of the parking facilities for the Community Center, in addition to the parking facilities of the Center, will adequately service the safe and efficient use of both centers, without prejudice to one or the other.

**Section 3. Funding.**

- (a) The Town provided resources for construction of the Center in reliance upon the Club's representation that the Club would provide funds necessary to operate and maintain the Facility, to the extent that the income generated by the Center is insufficient. Further, the Town may be subject to certain budgetary and spending constraints under law that legally precludes the Town from being obligated to make contributions to the Center in the future. To that effect, the Parties agree that the Town is under no obligation and will not be required to make financial contributions to the Center unless such expenditures are appropriated by the Town Council and any other formalities, procedures, and conditions precedent required under law are duly observed and accomplished.
- (b) The Club agrees that it shall be solely responsible for any funding deficiencies related to operation and maintenance of the Center. The Club shall ensure that adequate funds are provided to the Center to make all payments of bills, utilities, wages, taxes and like expenses in a timely manner so the Center does not incur any liability, claim, late penalties, or interest charges. The Club agrees to indemnify, defend, and hold the Town harmless from any failure to provide sufficient funds to the Center for operation and maintenance to occur in accordance with the budget approved by the Center's Board on an annual basis.

**Section 4.** The parties agree that this Agreement is entered into freely, voluntarily and without duress and that the parties have each read and understood this agreement and acknowledge that it represents the agreement of the parties. Each party believes that this Agreement is fair, reasonable, and not unconscionable. The Parties agree and represent that each party has had an opportunity to review this Agreement and otherwise obtain independent representation with respect to the review and negotiation of this Agreement. Accordingly, the Parties waive any presumption or inference under law in favor or for the benefit of a non-drafting Party.

**Section 5.** In the event of any litigation, other proceeding, or other action arising from breach or enforcement of this agreement, the substantially prevailing party will be entitled to recover from the non-prevailing party all reasonable expenses, costs, and disbursements incurred, including but not limited to court costs, attorneys' fees, expert fees and costs, and mediation fees and costs. The Parties further agree that any court action will be tried to a judge



without a jury. The Parties expressly waive any right to a trial by jury. This section applies to any action, proceeding, or counterclaim brought by any Party against another Party. Notwithstanding any other provisions regarding governing law and disputes that may be applicable, this Agreement is governed by the laws of the State of Colorado. All disputes with respect to this Agreement will be subject to the exclusive jurisdiction of courts sitting in the County of Eagle, State of Colorado in accordance with the rules and procedures of such courts.

**Section 6.** The Parties agree that the remedy at law for any breach of this Agreement will be inadequate. Any party may, in its sole discretion, apply to any court of competent jurisdiction for specific performance or injunctive or such other relief as the court may deem just and proper in order to enforce this Agreement or prevent any violation hereof and, to the extent permitted by applicable law, each Party waives any objection to the application of a party for such relief.

**Section 7.** Any provision of this Agreement that is determined to be void or unenforceable will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Parties, who agree that the Agreement will be reformed to replace the stricken provision, or any part thereof, with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**Section 8.** The Parties shall at their own cost and expense execute and deliver other documents and instruments and must take other actions that may be reasonably required or necessary to evidence or carry out the intent and purposes of this Agreement or to demonstrate the ability to carry out the intent and purposes of this Agreement.

**Section 9.** This Agreement may be executed and delivered (including by facsimile transmission) in any number of counterparts, each of which, when taken together, will constitute one and the same document, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement will become effective when each party has received a counterpart, signed by the other Parties. This Agreement is not intended to be for the benefit of, and will not be enforceable by, any person or entity who or which is not a Party to this Agreement, other than permitted successors and assigns of the Parties.

**Section 10.** If and to the extent that this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it will be subject to annual appropriation pursuant to the legal authority governing the Town pursuant to Article X, Section 20 of the Colorado Constitution. The Town will have no obligation to continue the portions of this Agreement affected by this provision in any fiscal year in which no annual appropriation is made.

**Section 11.** This Agreement may only be modified in a writing executed by all Parties.


*End of document*

*Signature page follows immediately*


**Signature Page**

THIS AGREEMENT is entered into by the Parties and made effective as of the date first written above.

MINTURN FITNESS CENTER

By:   
John Rosenfeld, its President

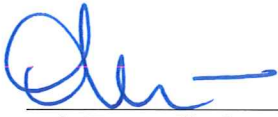
ATTEST

By:   
Michelle Metteer, its Secretary

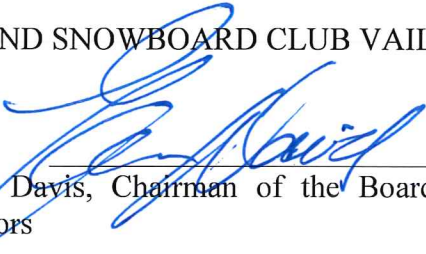
TOWN OF MINTURN

By:   
Gordon "Hawkeye" Flaherty, its Mayor

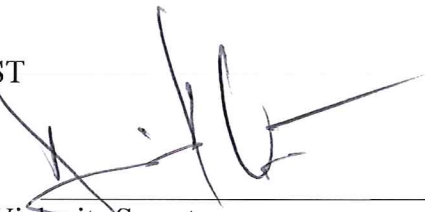
ATTEST

By:   
Jay Brunvand, Town Clerk  
*DEPUTY*  
*MICHELLE METTEER*

SKI AND SNOWBOARD CLUB VAIL

By:   
Glenn Davis, Chairman of the Board of Directors

ATTEST

By:   
David Viele, its Secretary

**AMENDMENT TO THE ARTICLES OF INCORPORATION OF  
Minturn Fitness Center, a Colorado nonprofit Corporation**

Pursuant to § 7-130-101, C.R.S., et seq., the following are submitted as amendments to the Articles of Incorporation of the Minturn Fitness Center (the "Corporation"). Except as otherwise amended or restated by this document, the Articles of Incorporation as filed on November 26, 2012 will remain in full force and effect.

The Corporation adopts the following as amendments to the Articles of Incorporation:

**FIRST:**

Article Four of the Articles of Incorporation is hereby revoked and restated in its entirety as follows:

The number of directors will be an even number, no less than two and no more than eight. One-half of these Directors (the "Council Directors") will be appointed by the Council (the "Council") for the Town of Minturn (the "Town") in accordance with its rules of procedure and one-half of these Directors (the "Club Directors") will be appointed by the Ski and Snowboard Club Vail (the "Club") in accordance with its rules of procedure. The number and terms of the directors will be as further stated in the Bylaws of the Corporation.

Neither the Council nor the Club may assign its right to appoint Directors without the unanimous approval of the entire Board of Directors. If the Town is incorporated into another municipality or governmental or public authority, its right to appoint Directors will succeed to whichever authority has jurisdiction over the premises of the Center.

If the Club dissolves, merges with another entity whereby the non-party entity is the surviving entity, or converts to a for-profit form of organization, or if the Club, as a nonprofit Corporation, otherwise ceases to exist, the Town or its successor will thereafter have the exclusive right to appoint all Directors.

**SECOND:**

Article Six of the Articles of Incorporation is hereby revoked and restated in its entirety as follows:

Upon dissolution of the Corporation, the personal property assets of the Corporation will be (i) sold in whole or in part with the proceeds distributed in equal portions to the Town of Minturn and to the Club, or (ii) distributed in kind, whole or in part, in equal proportions to the Town and to the Club, provided however, to receive distribution of property upon dissolution, the receiving entity must be a tax-exempt, nonprofit entity. If one of the Club or the Town does not qualify as a tax exempt, nonprofit entity, the undistributed property will be distributed to the other of them that is a nonprofit, tax exempt entity. If neither of

them is a nonprofit, tax exempt entity, the assets of the Corporation will be distributed to one or more exempt purposes within the meaning of 26 U.S.C.A. 501(c)(7), or shall be distributed to the federal government or a state or local government, for public purposes.

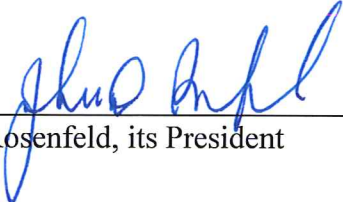
THIRD:

The Articles of Incorporation are hereby amended to provide that that the Registered Agent of the Corporation will be as follows:

**Michael Sawyer**  
**Karp Neu Hanlon PC**  
**201 14<sup>th</sup> Street**  
**Glenwood Springs, CO 81601**

DATED as of the 17 day of DECEMBER, 2014.

MINTURN FITNESS CENTER

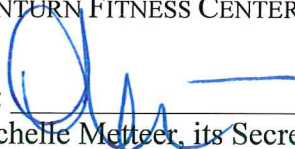
By:   
John Rosenfeld, its President

### Secretary's Certificate

I, Michelle Metteer, certify that I am the duly-elected Secretary of the Minturn Fitness Center, a Colorado nonprofit Corporation and that the attached Amendment to the Articles of Incorporation of the Minturn Fitness Center, a Colorado nonprofit Corporation, are a true and correct copy of that document, authorized by resolution or consent of the Board of Directors.

IN WITNESS WHEREOF, I affix my name as Secretary, effective this \_\_\_\_\_ day of December, 2014.

MINTURN FITNESS CENTER

By:   
Michelle Metteer, its Secretary



OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE**

I, Scott Gessler, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

**Minturn Fitness Center**

is a **Nonprofit Corporation** formed or registered on 06/18/2013 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20131354330.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 08/29/2014 that have been posted, and by documents delivered to this office electronically through 09/02/2014 @ 10:32:02.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, authenticated, issued, delivered and communicated this official certificate at Denver, Colorado on 09/02/2014 @ 10:32:02 pursuant to and in accordance with applicable law. This certificate is assigned Confirmation Number 8943834.



A handwritten signature in blue ink that reads "Scott Gessler".

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Certificate Confirmation Page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click Business Center and select "Frequently Asked Questions."*

ARTICLES OF INCORPORATION  
OF  
Minturn Fitness Center

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The undersigned person, acting as incorporator of a non-profit corporation under the Colorado Revised Nonprofit Corporation Act, executes the following Articles of Incorporation for such corporation.

Article One: NAME

The name of the nonprofit corporation is Minturn Fitness Center.

Article Two: INCORPORATOR, INITIAL REGISTERED AGENT AND  
INITIAL REGISTERED OFFICE

The incorporator and initial registered agent of the Corporation is Allen C. Christensen. The address of the incorporator, the initial registered agent of the Corporation is: 97 Main St., Suite W-206, Edwards, Colorado, with a mailing address of P.O. Box 4128, Edwards, Colorado 81632. The registered agent has consented to being appointed as registered agent for the corporation.

The initial registered office for the Corporation is 302 Pine Street, Minturn, Colorado, with a mailing address of P.O. Box 309, Minturn, Colorado 81645.

Article Three: PURPOSE

The Corporation shall be a nonprofit corporation qualifying for exemption from federal income tax under section 501 (c) (7) of the Internal Revenue Code. The purpose or purposes for which the corporation is organized are exclusively for charitable, educational, and a social recreation club, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(7) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue law).

The Corporation is established to fund the creation of a premier fitness facility to provide an incomparable environment for increasing athletic performance where professional and amateur athletes are able to train under the direction and supervision of Ski and Snowboard Club Vail, a Colorado non-profit corporation; and to construct a recreation center where the general population of Minturn, Colorado, is able to participate in exercise for general fitness, recreational athletics and improving quality of life; and to oversee the investment of funds and, administration of the programs.



Article Four: DIRECTORS

The number of directors shall be six (6).

The directors shall be as stated by resolution adopted by the board of directors. The names and addresses of the persons who are to serve as the initial directors of the Corporation are as follows:

Jim White	P.O. Box 309, Minturn, Colorado 81645
Earle Bidez	23698 US Highway 24 # E2, Minturn, CO 81645
John Rosenfeld	1021 Main Street, Minturn, Colorado 81645
Aldo Radamus	598 Vail Valley Drive, Vail, Colorado 81657
John Cole	598 Vail Valley Drive, Vail, Colorado 81657
Glenn Davis	2841 Oneal Spur, Avon, Colorado 81620

Article Five: INDEMNIFICATION

The corporation shall indemnify any director or officer or former director or officer of the Corporation, or any person who may have served at its request as a director or officer of another corporation, as set forth in the Bylaws. In no case, however, shall the Corporation indemnify or reimburse any person for any federal excise taxes imposed on such individual under Chapter 42 of the Internal Revenue Code. Further, if at any time or times the Corporation is a private foundation within the meaning of Section 509 of the Internal Revenue Code, then, during such time or times, no payment shall be made under this Article if such payment would constitute an act of self-dealing (as defined in Section 4941(d) of the Code), or a taxable expenditure (as defined in Section 4945(d) of the Code).

The Corporation shall indemnify or advance expenses of litigation to its, directors, officers, employees and agents as provided in the Bylaws.

Article Six: DISTRIBUTION OF ASSETS UPON DISSOLUTION

Upon the dissolution of the corporation, the assets of the corporation shall be distributed for one or more exempt purposes within the meaning of Code § 501(c) (7), or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be

disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

Article Seven:           NONDISCRIMINATORY POLICY

The Corporation shall make its services and programs available to all persons regardless of race, color, creed, national origin, gender, sexual orientation, or handicap, and the Corporation shall not in any way discriminate against any person on the basis of race, color, creed, national origin, gender, sexual orientation, handicap, or any other protected status.

Article Eight:           ADDITIONAL PROVISIONS

At all times and notwithstanding any merger, consolidation, reorganization, termination, dissolution, or winding up of the Corporation, voluntary or involuntary, or by operation of law, or any other provisions hereof:

1. The Corporation shall not possess or exercise any power or authority, whether expressly, by interpretation, or by operation of law, that will or might prevent it at any time from qualifying and continuing to qualify as a non-profit corporation described in Section 501(c)(7) of the Code, contributions to which are deductible for federal income tax purposes; nor shall the Corporation engage directly or indirectly in any activity that might cause the loss of such qualification under Section 501(c)(7) of the Code.
2. No part of the assets or net earnings of the Corporation shall ever be used, nor shall the Corporation ever be organized or operated, for purposes that are not exclusively for clubs organized for pleasure, recreation, and other non-profitable purposes within the meaning of Section 501(c)(7) of the Code.
3. The Corporation shall never be operated for the primary purpose of carrying on a trade or business for profit.
4. No substantial part, and, during such time or times that the Corporation is a private foundation within the meaning of Section 509 of the Code, shall the activities of the Corporation consist of attempting to influence legislation (including action by Congress, any state legislature, any local council or similar governing body, or the public in referendum, initiative, constitutional amendment, or similar procedure) through propaganda or otherwise (including contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or advocating the adoption or rejection of legislation, or advocating the adoption or rejection of legislation). Nor shall the Corporation, directly or indirectly, participate in or intervene in (including

the publishing or distributing of statements) for any political campaign on behalf or in opposition to any candidate for public office.

5. At no time shall the Corporation engage in any activities that are unlawful under the laws of the United States, the state of Colorado, or any other jurisdiction where its activities are carried on.

6. No solicitation of contributions to the Corporation shall be made, and no gift, bequest, or devise to the Corporation shall be accepted, upon any condition or limitation that in the opinion of the Corporation may cause the Corporation to lose its Federal income tax exemption.

7. Notwithstanding any other provision of these Articles, if at any time or times the Corporation is a private Foundation within the meaning of Section 509(c)(7) of the Code, then during such time or times:

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing, as defined in Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings, as defined in Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditure as defined in Section 4945(d) of the Code.

8. The private property of the officers and directors of the Corporation shall not be subject to payment of corporate debts to any extent whatever.



**AMENDMENT TO THE ARTICLES OF INCORPORATION OF  
Minturn Fitness Center, a Colorado nonprofit Corporation**

Pursuant to § 7-130-101, C.R.S., et seq., the following are submitted as amendments to the Articles of Incorporation of the Minturn Fitness Center (the "Corporation"). Except as otherwise amended or restated by this document, the Articles of Incorporation as filed on June 18, 2013 will remain in full force and effect.

The Corporation adopts the following as amendments to the Articles of Incorporation:

**FIRST:**

Article Four of the Articles of Incorporation is hereby revoked and restated in its entirety as follows:

The number of directors will be an even number, no less than two and no more than eight. One-half of these Directors (the "Council Directors") will be appointed by the Council (the "Council") for the Town of Minturn (the "Town") in accordance with its rules of procedure and one-half of these Directors (the "Club Directors") will be appointed by the Ski and Snowboard Club Vail (the "Club") in accordance with its rules of procedure. The number and terms of the directors will be as further stated in the Bylaws of the Corporation.

Neither the Council nor the Club may assign its right to appoint Directors without the unanimous approval of the entire Board of Directors. However, if the Town is incorporated into another municipality or governmental or public authority, its right to appoint Directors will succeed to whichever authority has jurisdiction over the premises of the Center. Further, if the Club merges with another entity, and the other entity survives the merger, or if the Club transfers ownership of itself or all or substantially all of its assets to another entity, then the Club's right to appoint directors will succeed to the Club's successor in interest, subject to the following limitations:

- 1.) The successor has an educational, charitable, or other non-profit purpose within the meaning of 501(c)(3) of the Internal Revenue Code; and
- 2.) The Town, having received 30 days' notice, consents in a written instrument specifically intended for such a purpose, signed by duly authorized Town personnel, to the transfer or succession of the right to appoint Directors, which consent may not be unreasonably withheld.

If the Club (or its successor) dissolves or converts to a for profit form of organization, or if the Club, as a nonprofit Corporation, otherwise ceases to exist, the Town or its successor will thereafter have the exclusive right to appoint all Directors.

**SECOND:**

Article Six of the Articles of Incorporation is hereby revoked and restated in its entirety as follows:

Upon dissolution of the Corporation, the personal property assets of the Corporation will be (i) sold in whole or in part with the proceeds distributed in equal portions to the Town of Minturn and to the Club, or (ii) distributed in kind, whole or in part, in equal proportions to the Town and to the Club, provided however, to receive distribution of property upon dissolution, the receiving entity must be a tax-exempt, nonprofit entity. If one of the Club or the Town does not qualify as a tax exempt, nonprofit entity, the undistributed property will be distributed to the other of them that is a nonprofit, tax exempt entity. If neither of them is a nonprofit, tax exempt entity, the assets of the Corporation will be distributed to one or more exempt purposes within the meaning of 26 U.S.C.A. 501(c)(7), or shall be distributed to the federal government or a state or local government, for public purposes.

**THIRD:**


The Articles of Incorporation are hereby amended to provide that that the Registered Agent of the Corporation will be as follows:

**Michael Sawyer  
Karp Neu Hanlon PC  
201 14<sup>th</sup> Street  
Glenwood Springs, CO 81601**

*Remainder of page intentionally left blank*

DATED as of the 24<sup>th</sup> day of OCTOBER, 2016.

MINTURN FITNESS CENTER


By:   
John Cole, its President

### Secretary's Certificate

I, John Wideman, certify that I am the duly-elected Secretary of the Minturn Fitness Center, a Colorado nonprofit Corporation and that the attached Amendment to the Articles of Incorporation of the Minturn Fitness Center, a Colorado nonprofit Corporation, are a true and correct copy of that document, authorized by resolution or consent of the Board of Directors.

IN WITNESS WHEREOF, I affix my name as Secretary, effective this 9 day of Nov, 2016.

MINTURN FITNESS CENTER

By:   
John Wideman (print name), its Secretary





To: Mayor and Council  
From: Michelle Metteer  
Date: September 2, 2020  
Agenda Item: Short Term Rental Program Review

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**REQUEST:** Review the Short-Term Rental program as outlined in Ordinance 04 – Series 2017 and evaluate the program for any modifications or changes to better meet the ongoing needs of Minturn residents, property owners and visitors.

**INTRODUCTION:**

With the creation of Vacation Rentals by Owner in 1995 and Air B&B in 2008, Short-Term rentals of residential properties came into popularity. For towns like Minturn with minimal lodging accommodations, this new offering filled a gap in the tourism market but also created strains in residential areas not accustomed to commercial activity and thus regulations have been trying to catch up ever since.

Minturn approved Ordinance 04 – Series 2017 for the allowance of short-term rentals with the understanding that these regulations would need to be periodically reviewed and adjusted to remain in the spirit of Minturn’s goals of being a working-class mountain town community. This discussion is a periodic review of the short-term rental program.

**ANALYSIS:**

Minturn has averaged around 25 short-term rental properties a year since the inception of the program. 2020 has been the exception to this average. Due to COVID-19 the Town currently has under 10 approved short-term rental properties.

Historically license compliance and inspections have been the most time consuming for staff, but that being said, there have been few red flags with the program in general. Two items of note are:

- Residents who have expressed frustration with a commercial operation in a residential area. Examples are:
  - Visitors using the wrong trash bins
  - Visitors having multiple vehicles and taking much-needed residential on-street parking
  - Visitors being inconsiderate of neighbors who have to work the next morning
  - Not providing on-site parking after the inspection has been conducted
  - Not complying with sidewalk snow removal policies
- Property buyers wanting to purchase a home but need the short-term rental income to cover the mortgage gap and can not financially cover the two-year ownership requirement before short-term renting.

Most of the ongoing issues expressed by neighbors of short-term rental properties can be addressed on an as-needed basis and do not warrant a significant adjustment to the program at this time.

For prospective property buyers needing to fill a financial gap with the short-term rental program, an adjustment to the two-year ownership requirement may be beneficial, especially to first-time buyers. The spirit of the two-year ownership requirement is to keep locals in Minturn and cut down on housing purchases for the sole purpose of commercial gain. To that end, Minturn could adjust the two-year requirement to allow for a new property owner, who lives on-site, to immediately (not wait two years) short-term rent a room(s) in their home through Air B&B, which is a platform utilized by home owners who short-term rent while simultaneously living in the house. This would keep the local(s) on-site and help fill a financial gap.

**COMMUNITY INPUT:** Significant – This has been an ongoing discussion and has impacts to residents as well as property owners.

**BUDGET / STAFF IMPACT:** None

**STRATEGIC PLAN ALIGNMENT:**

Practice fair, transparent and communicative local government

Sustain and invest in the things that define Minturn as a proud, sturdy mountain town to “keep Minturn Minturn”

Advance decisions/projects/initiatives that expand future opportunity and viability for Minturn

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Council to determine direction to staff for any amendments to Ordinance 04 – Series 2017.

**ATTACHMENTS:**

- Ordinance 04 – Series 2017

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 04 – SERIES 2017**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO, AMENDING CHAPTERS 4 AND 6 OF THE  
MINTURN MUNICIPAL CODE BY THE ADOPTION OF  
NEW REGULATIONS FOR SHORT-TERM RENTALS.**

**WHEREAS**, the Town of Minturn (“Minturn” or the “Town”) is a home-rule municipality organized under Article XX of the Colorado Constitution and with the authority of the Minturn Home Rule Charter; and

**WHEREAS**, the Town is authorized by the Local Government Land Use Control Enabling Act of 1974, C.R.S. §§ 29-20-108 and 31-23-301, to plan for and regulate the use of land within the Town’s jurisdiction, and to enact zoning, subdivision, and other land use and development regulations; and

**WHEREAS**, Minturn is authorized to regulate the construction of buildings and improvements within the Town, C.R.S. § 31-15-601, and to enact building codes and other regulations; and

**WHEREAS**, the Town is authorized to exercise reasonable financial and police powers to permit and regulate commercial activities and businesses within its boundaries; and

**WHEREAS**, after public hearings by and before the Minturn Town Council and Planning Commission, the Town Council finds and declares that it is in the interest of the public health, safety, and welfare to amend the Town Code to provide for the reasonable regulation of short-term rentals within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein as if set forth in full.
2. Chapter 4 Amendments. Chapter 4 of the Minturn Municipal Code is amended as follows, with double underlined text added:

**Sec. 4-4-30. - Definitions.**

When not clearly otherwise indicated by the context, the following terms, words and phrases as used in this Article have the following meanings:

*Lodging accommodation* means any room in a hotel, apartment hotel, lodging house, short-term rental, fractional fee club, time share, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park or any such similar place.

*Lodging customer* means any person who, through a taxable lodging transaction, acquires lodging services from a lodging provider.

*Lodging price* means the gross price paid, exclusive of other taxes paid or value given, by the lodging customer for the lodging services.

*Lodging provider* means any person furnishing lodging services or such provider's authorized agent.

*Lodging services* means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, apartment hotel, lodging house, short-term rental, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, for a period of less than thirty (30) consecutive days under any concession, permit, right of access, license to use or other agreement, or otherwise.

*Lodging tax* means an excise tax payable by the purchaser of lodging services or the aggregate amount of taxes due from a lodging provider during the period for which such person is required to report the collections of lodging tax as herein specified.

*Lodging transaction* means the furnishing of lodging services to any person who, for consideration, uses, possesses or has the right to use or possess any lodging accommodation under any concession permit, right of access, license to use or other agreement, or otherwise

Short-Term Rental means any residential property dwelling unit or portion thereof rented for a period of less than thirty (30) consecutive days. Rentals of entire dwelling units, individual rooms, or portions of rooms shall each be considered Short-Term Rentals.

3. Chapter 6, Article 7 Adoption. Chapter 6 of the Minturn Municipal Code is hereby amended by the adoption of a new Article 7, "Short Term Rentals" consistent with the following double underlined text:

**Sec. 6-7-10. – Applicability and purpose.**

The purpose of this Article is to establish within the Town of Minturn reasonable regulations and procedures for the licensing of Short-Term Rentals. As a mountain community geographically limited in growth, the Town of Minturn is impacted by high costs of land and development, which adversely affect the stock of affordable, work-force housing and the residential, community-oriented nature of the Town. By reasonably regulating Short-Term Rentals, the negative impacts of transiency and added commercial activity and business enterprises in residential zone districts, including the impacts on long-term housing, community character, code compliance, and system and infrastructure deterioration can be addressed while protecting the rights of the Town's citizens and property owners.

**Sec. 6-7-20. – Definitions.**

When not clearly otherwise indicated by the context, the following terms, words, and phrases as used in this Article have the following meanings:

*Building Code* includes the International Building Code, International Residential Code, International Fire Code, International Mechanical Code, International Plumbing Code, International Fuel Gas Code, International Energy Conservation Code, International Performance Code, Uniform Code for the Abatement of Dangerous Buildings and the National Electrical Code, as adopted by the Town.

*Building Official* means the Building Official as defined in the Building Code as adopted by the Town, or his or her designee.

*Short-Term Rental* means any residential property dwelling unit or portion thereof rented for a period of less than thirty (30) consecutive days. Rentals of entire dwelling units, individual rooms, or portions of rooms shall each be considered Short-Term Rentals. Short-term rentals are considered lodging accommodations under Chapter 4, Article 4 of this Code.

*Local Property Manager* means any person or entity with a physical place of business located or residing in Eagle County or within 50 miles of the Town of Minturn, Colorado and identified on a Short-Term Rental License as the local property manager and who is a contract person responsible for the handling of maintenance of the short-term rental, snow removal, and complaints associated with the short-term rental property. If the Local Property Manager is a person or entity other than the owner of the property, the Local Property Manager shall be licensed as may be required under Colorado law.

*License* means a Short Term Rental License, as prescribed in this Article.

**Sec. 6-7-30. – License Application.**

(a) License required. All Short-Term Rentals shall be registered and licensed under the terms and provisions of this Article prior to renting the property identified as a Short-Term Rental or listing the Short-Term Rental in any advertisement or with any brokerage or listing agency.

(b) Business and sales tax license. Prior to the issuance of a Short-Term Rental License, the owner of the property shall provide to the Town proof of an active local and state sales tax licenses. A separate Minturn business license is not required if a Short Term Rental License is issued.

(c) Proof of ownership.–The property owner shall provide evidence ownership of the Short Term Rental property.

(d) Fee. In addition to any sales tax license, and inspection fees made applicable under this Code, a fee of \$300.00 shall be paid to the Town for any Short-Term Rental License issued under this Article.

(e) Site plan. The owner shall provide to the Town a site plan for the property showing the number of on-site parking spaces and bedrooms. The number of bedrooms shall be determined according to the records of the Eagle County Assessor.

(f) If a property was constructed before the adoption of the 1982 Zoning Codes, and does not meet the parking requirements, it is at staff discretion to approve the Short Term Rental License without meeting on-site parking requirements.

(g) Management. Proof of a contract or agreement with a Local Property Manager that resides within 50 miles of the Town of Minturn or is in Eagle County shall be provided to the Town.

(h) Initial Inspection. Upon filing a complete application for a Short-Term Rental License under the terms and provisions of this Article, the property owner shall schedule inspections of the property with the Building Official and Code Enforcement for fire and CO<sub>2</sub> Inspection and with the Code Enforcement Officer for on-site parking compliance. No property shall be granted a Short-Term Rental License unless certified to be in compliance with all applicable provisions of the Minturn Municipal Code, including adopted codes and regulations.

(i) Annual Inspection. The owner shall schedule and permit the Town to inspect the property annually during the first month of the anniversary date of a Short-Term Rental License. Such inspection shall include inspection of the property's fire and CO<sub>2</sub> detectors as well as parking and Town building and zoning code compliance. The owner shall pay an inspection fee in the amount included with the license fee established by the Town.

(j) Each Short-Term Rental property shall post the local license number and any license conditions (i.e. maximum occupancy, parking limitations) within the residential unit and on the first page of any advertisement for the Short-Term Rental, whether such advertisement is printed or in digital/online format.

(k) In addition to the requirements of this Article, the Town Clerk may require such additional information as the Town Clerk deems reasonably necessary to effectuate the purpose and intent of this Article.

#### **Sec. 6-7-40. – License restrictions.**

(a) Zoning. A Short-Term Rental License may be issued in all zone districts.

(b) Parking requirement. Parking shall be provided consistent with the requirements of Article 16 of this Code.

(c) Number of inhabitants. No more than three (3) people per bedroom, including children, shall be permitted to occupy a Short-Term Rental.

(d) Two-year ownership. No property shall be licensed as a Short-Term Rental unless the owner has owned the property for two (2) or more years before a license application is filed. Transfers to a trust where the owner of the property is the beneficiary of the trust or to a corporate entity where the owner of the property is the majority owner of the entity shall not constitute a break in the period of ownership. This sections shall not be read to prohibit the long-term rental of properties (for periods in excess of thirty (30) days) within the first two years of ownership. The short term rental license is non-transferable with the sale of the property

(e) Housing stock. No more 10% or 50, whichever is fewer, of the residential housing units shall be licensed as Short-Term Rentals in the Town at any time.



**Sec. 6-7-50. – License Contents.**

The Town Clerk shall issue a license upon confirming compliance with the application requirements. The Short Term Rental License shall include: the name and contact information for the property owner, the name and contact information for the property manager (if different), the maximum number of occupants of the property, conditions related to parking (if any) and the date of issuance and expiration of the license.

**Sec. 6-7-60. – Duration and renewal.**

(a) Short-Term Rental Licenses issued under this Article shall be valid until March 31 of the succeeding year. A license holder may submit an application for renewal of a Short-Term Rental License no more than thirty (30) days prior to expiration and may rely on the same application materials previously submitted when seeking renewal of an expired license, unless circumstances have materially changed. Short-Term Rental Licenses shall not represent or convey to License holders any property interest in the renewal thereof.

(b) Short-Term Rental Licenses are non-transferrable and non-assignable.

**Sec. 6-7-70. – Taxes.**

A Short-Term Rental License holder must collect and submit all applicable taxes in conformance with local, state, and federal law, including local sales and lodging taxes established under Chapter 4 of this Code.

**Sec. 6-7-80. – Enforcement and revocation.**

(a) Code Enforcement. The property owner of any property licensed as a Short-Term Rental shall be liable for any violation of Chapters 7, 11, 13, 16, and 18 of the Minturn Municipal Code upon the property, and shall abate any nuisance or other violation as required under the Code.

(b) Revocation. Three (3) or more violations of the Code upon the licensed property shall be grounds for revocation of a Short-Term Rental Licenses, and the licensed property shall not be eligible for a Short-Term Rental License for a period of two (2) years following revocation.

(c) Appeal. Appeal of an administrative decision to revoke a Short-Term Rental license shall be in accordance with Section 6-1-80 of this Code.

**INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 7<sup>th</sup> DAY OF JUNE, 2017. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 21<sup>ST</sup> DAY OF JUNE, 2017 AT 6:30 P.M. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**Matt Scherr, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**Jay Brunvand, Town Clerk**

**THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 21<sup>ST</sup> DAY OF JUNE, 2017.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**Matt Scherr, Mayor**

**ATTEST:**

By: \_\_\_\_\_  
**Jay Brunvand, Town Clerk**



To: Mayor and Council  
From: Michelle Metteer  
Date: September 2, 2020  
Agenda Item: MMC Sec. 7-3-120 Garbage Containers and Junk (required to be obscured from view)

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**REQUEST:** Review Minturn Municipal Code Section 7-3-120 Garbage Containers and Junk.

**INTRODUCTION:**

Town staff has received a complaint regarding the needed enforcement of MMC Sec. 7-3-120.

*Sec. 7-3-120. - Garbage containers and junk.*

*The storing or keeping by any person within the Town of any old articles or materials which may be classified as junk, adjacent to or in close proximity to any public building, public park or grounds, business buildings or residences, without first providing fully enclosed buildings for storage of the same, shall be deemed a public nuisance. It is specifically provided that trash, garbage and refuse and trash, garbage and refuse containers, barrels and cans must be obscured from view and not accessible to scavenging animals.*

**ANALYSIS:**

Unobscured storage of garbage and recycling containers is prevalent throughout town. This section of the MMC has not traditionally been enforced and Council should consider either its enforcement or removal from the code.

**COMMUNITY INPUT:** Significant – This will impact the majority of town as most residents and businesses are either in violation or located next to someone in violation.

**BUDGET / STAFF IMPACT:** None for staff, but potentially significant for property owners currently in violation.

**STRATEGIC PLAN ALIGNMENT:**

Practice fair, transparent and communicative local government

Sustain and invest in the things that define Minturn as a proud, sturdy mountain town to “keep Minturn Minturn”

Long-term stewardship of the natural beauty and health of Minturn’s environment

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Council to provide direction to staff regarding enforcement efforts for this section of code.

**ATTACHMENTS:**

- Photos to be provided at Council meeting

**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 24 – SERIES 2020**

**A RESOLUTION APPROVING CONDITIONAL USE APPLICATION CU 01 – 2020  
FOR BURKE HARRINGTON CONSTRUCTION AND DARIN TUCHOLKE, UPRR  
RAILROAD AVE, TOWN OF MINUTURN**

**WHEREAS**, The Burke Harrington Construction and Darin Tucholke have submitted a land use application for a Conditional Use Permit to allow for contractor and personal storage; and

**WHEREAS**, The Town of Minturn Town Council is commissioned with certain powers and duties contained in the Minturn Municipal Code Sec. 16.21.30; and

**WHEREAS**, public notice was given pursuant to Minturn Municipal Code Sec. 16.21.610; and

**WHEREAS**, on August 26, 2020 the Planning Commission held a public hearing on the application pursuant to Minturn Municipal Code Section 16.21.620 and approved the application as presented with conditions; and

**WHEREAS**, on September 2, 2020 the Town Council held a public hearing on the application pursuant to Minturn Municipal Code Section 16.21.620; and

**WHEREAS**, The Town Council may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purpose of this Article, or the Town Council may deny the application including the following findings:

- 1) Upon receipt of a completed and proper application, the Planning Director shall set a public hearing for the Planning Commission and give public notice as required by this Chapter.
- 2) Criteria; findings. Before acting on a conditional use permit application, the Planning Commission and Town Council shall consider the following factors with respect to the proposed use:
  - a. The relationship and impact of the use on the community development objectives of the Town.
  - b. The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.
  - c. The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.

d. The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.

e. Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:

1. That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.
2. That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
3. That the proposed use will comply with each of the applicable provisions of this Chapter.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO HEREBY AND HEREWITH:**

Section 1. that the application for a Conditional Use Permit for File No. CU 01 – 2020 be approved subject to the following conditions:

1. Request that only business-related items related to the expressed business be located on leased property. No vehicle shall exceed 40'2" in length.
2. No recreational vehicles or ATV's of any kind. Not limited to boats, snowmobiles, ATV's, RV's, campers, pop-ups, conversion vans, trailers, un-related work vehicles, etc.
3. No inoperable/unlicensed vehicles kept on property for longer than five (5) days. Sec.7-2-70.
4. Leased lots to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. Sec. 7-4-50.
5. Lessees are to maintain business in contained areas only.
6. Annual report by the Code Compliance Officer to Council – re: Violations
  - a. 3 violations in 1 year
  - b. Recommendation to Council to revoke CUP
7. Lessees to meet with Town Council every 3 years for CUP review.
  - a. Report from Code Compliance Office

b. Report from Planning Department

8. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
9. Maintain noise and vibration standards. Sec. 16-18-30
10. All leased areas to be fenced and screened (Green covering) on all perimeter fencing of leased property
11. Supplies, parking, vehicles, and equipment within fenced area or designated leased area only
12. Proper fuel containment / inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
13. All parking must be done within the fenced yard and/or building
14. Any chemical storage will require material safety data sheets. No chemical storage within 30' river setback
15. Emergency access of 20' through the yard and at both access gates
16. Off-season use will require site storage of snow and keeping emergency access cleared.
  - a. Maintain proper snow storage or sufficient snow removal
17. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
18. Town staff inspects the site for compliance at any time.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 2<sup>nd</sup> day of SEPTEMBER, 2020**

**TOWN OF MINTURN**

By: \_\_\_\_\_  
John Widerman, Mayor

ATTEST:

\_\_\_\_\_  
Jay Brunvand, Town Clerk

Minturn Planning Department  
Minturn Town Center  
302 Pine Street  
Minturn, Colorado 81645



Minturn Planning Commission  
Chair – Lynn Teach  
Jeff Armistead  
Lauren Dickie  
Burke Harrington  
Christopher Manning  
Jena Skinner

## Town Council Public Hearing

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### Burke Harrington Construction and Darin Tucholke

### Conditional Use Permit for Contractor and Personal Storage

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<b>Hearing Date:</b>	September 2, 2020
<b>File Name and Process:</b>	Burke Harrington Construction Conditional Use Permit
<b>Property Owner:</b>	Union Pacific Railroad
<b>Applicant:</b>	Burke Harrington and Darin Tucholke
<b>Representative:</b>	Burke Harrington
<b>Legal Description:</b>	N/A
<b>Zoning:</b>	Game Creek Character Area PUD Holding Zone
<b>Staff:</b>	Scot Hunn, Planning Director Madison Harris, Planner I
<b>Recommendation:</b>	<b>Approval with Conditions</b>

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### Staff Report

#### I. Summary of Request:

The Applicants, Burke Harrington Construction and Darin Tucholke, request review of a new Conditional Use Permit for leased portions of the Union Pacific Railroad (UP) property to allow for contractor and personal storage, as well as parking generally located approximately .2 miles north of the Turntable Restaurant, east of the Meadow Mountain Business Park and the Eagle River, and just west of the Union Pacific rail line.





Figure 1: Vicinity Map

BHC has leased different properties from UP over the past 20 years for contractor storage uses. The current location of BHC operations on UP property, which is located closer to the Minturn Municipal Parking Lot, includes several buildings or enclosures where the majority of equipment and materials associated with BHC business operation are stored. The new location is intended to allow additional storage for BHC, along with personal storage by Darin Tucholke, mainly within an existing building.

While Burke Harrington Construction proposes to continue to use and maintain the lease area associated with his first CUP for the time being, he is now proposing to use another lease area located further north within the UP property for additional storage associated with the same business. The current proposal by the Applicant includes:

1. Use of an approximately 2,700 square foot building in a 15,400 square foot lease area for storage of construction related equipment and materials, household items (furniture, cabinetry and/or fixtures, and appliances) associated with remodel projects that BHC works on, as well as personal items owned by both Burke Harrington and Darin Tucholke.

2. Use of fenced area surrounding the building for parking of business-related and/or personal vehicles (but not recreational vehicles or trailers pursuant to the standards for contractor storage).



**Figure 2: Lease Area Boundary**

From the application, the following description is provided by the Applicant:

*“The building will be used for construction material, vehicle, and tool storage for or related to Burke Harrington Construction. The leased area will be fenced and screened. There is very little or no activity on a daily basis. We do not run our company from this property so there is no employee parking or worker impact. We also use the building storage for personal and household goods that change with the seasons and storage of client belongings when renovating properties. It is a big convenient indoor space that meets our needs.”*

At their regularly scheduled meeting of August 26, 2020, the Minturn Planning Commission reviewed the CUP request during a properly noticed public hearing. Following presentation by staff and the applicant, the Planning Commission deliberated and voted unanimously to recommend approval of the CUP request with conditions.

At the Planning Commission hearing Town staff had originally recommended tabling of this review until such time that the Town can complete annual compliance reviews for all existing CUPs on UP property in the fall of 2020.

However, prior to the start of the Planning Commission meeting, staff determined that this CUP application should be judged on its own merits and not be dependent on audits or annual reviews of existing CUPs located elsewhere on UP property; that, as presented and if properly conditioned, this CUP application could meet the necessary findings for approval of a CUP. Staff notified the Planning Commission of this change in position during the public hearing. The Planning Commission's feedback was in favor of recommending approval with only a couple of concerns.

Therefore, as outlined within this report, **staff is recommending approval with conditions** of this Conditional Use Permit for Burke Harrington Construction.

## **II. Summary of Process and Code Requirements:**

A Conditional Use Permit (CUP) requires review by the Town of Minturn Planning Commission, as well as the Town Council - acting as the Town of Minturn Zoning Board of Appeals. The Planning Commission is responsible for forwarding recommendations to the Town of Minturn Town Council for approval, for approval with conditions, or denial of CUP requests in accordance with the standards, criteria and findings outlined in Section 16-21-620 – *Conditional Use*, Minturn Municipal Code.

Specifically, the Planning Commission's recommendation and any action of the Town of Minturn Town Council should be based on the following standards and findings:

*(e) Conditions and procedure of issuance.*

*(1) The Town Council may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purpose of this Article, or the Town Council may deny the application*

*(d) Administrative procedure.*

*(1) Upon receipt of a completed and proper application, the Planning Director shall set a public hearing for the Planning Commission and give public notice as required by this Chapter.*

*(2) Criteria; findings. Before acting on a conditional use permit application, the Planning Commission and Town Council shall consider the following factors with respect to the proposed use:*

*a. The relationship and impact of the use on the community development objectives of the Town.*



- b. *The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*
- c. *The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*
- d. *The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*
- e. *Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*
  - 1. *That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*
  - 2. *That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*
  - 3. *That the proposed use will comply with each of the applicable provisions of this Chapter.”*

**III. Chronology/Background:**

In 2017, the Minturn Town Council listed compliance and enforcement of the Minturn Municipal Code, as well as adherence to recommendations of the 2009 Community Plan, as a priority for the entire town. In doing so, the Council also focused on uses and, in certain instances, ongoing code enforcement and nuisance-related issues occurring at the UP properties located within the “Game Creek Character Area PUD Holding Zone District” which is generally situated north of the Eagle River Inn and Saloon buildings, west of Taylor Avenue, and east of the Eagle River.

In order to address such issues and concerns, the Town initiated outreach to existing leaseholders on UP property in 2017 with several existing lease holders operating contractor storage, as well as commercial uses (Turn Table Restaurant and lodging uses) on UP property with the goal to allow those uses to continue, but only via the approval of Conditional Use Permits (CUPs) as a means to regulate those uses more closely through the imposition and enforcement of “conditions” or standards for storage (fencing, screening, and hours of operation for instance).

According to the Minturn Municipal Code, any uses occurring on the UP properties – located within the “Game Creek Character Area PUD Holding Zone District” - require the approval of a Planned Unit Development (PUD), or, if master planning the UP property is not proposed, a Conditional Use Permit. Unfortunately, UP has been largely uninvolved in the CUP process; typically, UP executes leases for various lease areas within the railroad property without consultation with the Town, leaving the Town to discover 1) new leases and uses occurring in the railyard through code enforcement activity, and 2) changes in lessors (subleasing) making it difficult for the Town to determine who to contact as a matter of code compliance.

Conditional Use Permits were ultimately issued in late 2018 for the following business entities operating with leases on the UP property:

- Burke Harrington Construction (BHC)
- Happy Hammer Carpentry (Cozzens Construction)
- The Turntable Restaurant / Minturn Mountain Motel
- Minturn Builders Alliance Cooperative

The CUPs were approved with the following conditions or standards:

1. Request that only business- related items related to the expressed business be located on leased property. No vehicle shall exceed 40' 2" in length.
2. No recreational vehicles or ATV' s of any kind. Not limited to boats, snowmobiles, ATV' s. RV' s, campers, pop-ups, conversion vans, trailers, un-related work vehicles, etc.
3. No inoperable / unlicensed vehicles kept on property for longer than five (5) days. Sec. 7- 2-70.
4. Leased lots to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. Sec. 7- 4- 50.
5. Lessees are to maintain business in contained areas only.
6. Annual report by the Code Compliance Officer to Council — re: Violations
  - a. 3 violations in 1 year
  - b. Recommendation to Council to revoke CUP
7. Lessees to meet with Town Council every 3 years for CUP review.
  - a. Report from Code Compliance Office
  - b. Report from Planning Director
8. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
9. Maintain noise and vibration standards. Sec. 16-18-30
10. All leased areas to be fenced and screened (Green covering) on all perimeter fencing of leased property
11. Supplies, parking, vehicles, and equipment within fenced area or designated leased area only
12. Proper fuel containment/inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
13. All parking must be done within the fenced yard and/or building
14. Any chemical storage will require material safety data sheets. No chemical storage within 30' river setback
15. Emergency access of 20' through the yard and at both access gates

16. Off-season use will require site storage of snow and keeping emergency access cleared.
  - a. Maintain proper snow storage or sufficient snow removal
17. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
18. Town staff inspects the site for compliance at any time.

***Note:*** *Staff is recommending approval of this CUP request with the above conditions. However, staff has also made slight revisions to the above standards or conditions as part of Section VII - Planning Commission and Staff Recommendation of this report. The revisions shown in Section VII are intended to clarify language and, in one instance, add a condition that puts the Applicants on notice that any material representations made in their written application or during hearing testimony will become conditions of approval, enforceable by the Town.*

Following approval of the CUPs, no significant code enforcement investigations or actions (notices of violation) on UP property were necessary or taken in 2019, with business activities occurring on each lease site in general compliance with the approved CUP terms of use.

However, in Spring 2020 the Town began receiving complaints regarding the state of some of the lease areas. Complaints and investigations by the Town identified issues related to:

- A lack of 100% screening (or lack of maintenance of green mesh fabric on fencing) of lease area boundaries
- Noise and/or hours of operation
- Use of sites for operation contractor yards rather than for “contractor storage”
- Parking of unregistered/unlicensed vehicles
- Storage of non-business-related vehicles, trailers and equipment

Following investigations by the Town, two CUP holders – Burke Harrington Construction and Minturn Builders Alliance – were notified of violations of the terms of their respective Conditional Use Permits. Following such notifications, both CUP holders worked with the Town staff to address complaints and to rectify violations prior to the Town needing to take action (i.e. levying of fines or pursuing action in the courts). To staff’s knowledge, both CUPs are now in compliance with the terms of their 2018 CUP approvals.

### **General Chronology:**

- **September 2018** – Business owners operating on UP property applied for Conditional Use Permits to continue contractor storage/light industrial uses.
- **November 2018** – Following public hearings before the Planning Commission and Town Council, the Council signed resolutions permitting these uses conditional on adherence with the approved contractor standards.
- **December 2019** – Burke Harrington Construction obtained a new lease for a new storage site through Union Pacific Railroad but failed to apply for a new Conditional Use Permit for the new location.

- **May 2020** – The Town received several complaints regarding the storage of non-work-related vehicles; the absence of fencing and/or green screening around lease area boundaries; and, the operation of machinery outside of specified operating hours 7am-7pm.
- **June 2020** – Site visits were conducted with Minturn Builders Alliance representative and Burke Harrington to discuss issues of non-compliance.
- **June 2020** – Letters were sent to these CUP holders (Minturn Builders Alliance and Burke Harrington Construction) detailing specific areas of non-compliance and providing a warning period to correct the potential violations before official violation notices were sent.
- **July 2020** – Two violation notices were sent to Burke Harrington Construction for failure to remove a non-work-related vehicle and for failure to erect screening fence.
- **August 2020** – Burke Harrington Construction installed fencing and mesh screening material around the existing Conditional Use and lease area boundaries for BHC while also removing the offending vehicle on the existing CUP lease area.
- **August 2020** – Burke Harrington Construction applied for a new Conditional Use Permit for contractor storage at the proposed lease site.

#### IV. Zoning Analysis:

##### **Zoning**

The subject property is located within the “Game Creek Character Area” PUD Holding Zone District. The description and purposes of the PUD Holding Zone District are as follows:

***Sec. 16-12-10. - Character Area characteristics.***

*The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.*

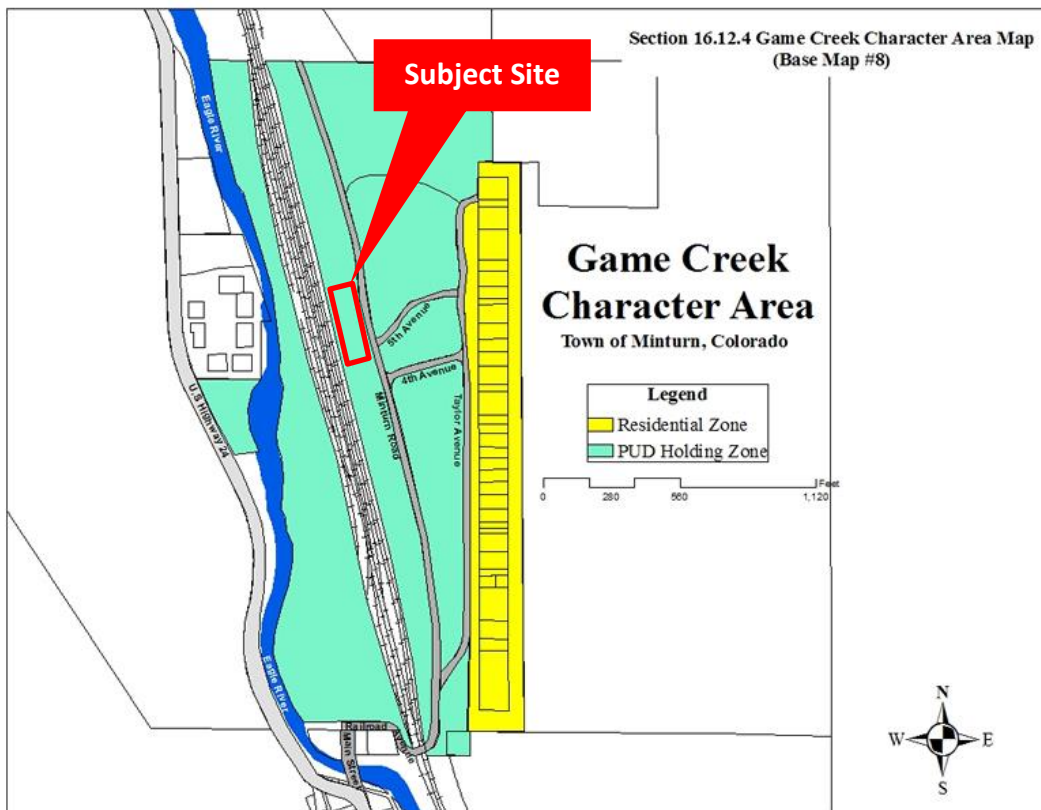
- Town of Minturn Municipal Code Section 16-12-10

***Sec. 16-12-30. - Game Creek PUD Holding Zone.***

- (a) *This area is currently owned by the Union Pacific Railroad; however, trains are no longer utilizing the corridor or the rail yard. **The historic industrial zoning is no longer appropriate due to the probable abandonment of the rail line and potential conflict with future commercial and residential development.** Redevelopment of this area will have a significant impact on the future character and size of the Town.*



- (b) *It is an objective of the Town to plan and redevelop the rail yard as a master planned development that is compatible with the existing Town character. Future development and land use decisions for this area need to incorporate community input and involve an open public process. The PUD Holding Zone and the PUD review process will provide for the flexibility, innovation and public input necessary to achieve the goals and objectives of the Community Plan and this Chapter. This area has been identified in the Community Plan as an area suitable for expansion of Old Town and as a "potential Town Center" site. Development in this area needs to incorporate appropriate residential and low-impact land uses along Taylor Avenue to minimize impacts to the existing neighborhood. The rail corridor should be maintained and improved access to and across the Eagle River should be incorporated into proposed development plans.*
- (c) *PUD or special review required: Planned Unit Development master development plan for the PUD Holding Zone is the preferred review process for future development of the Game Creek Holding Zone. **If circumstances arise that do not provide for the submittal of a PUD master development plan for the entire Game Creek PUD Holding Zone, the owners may apply to the Town for a Planned Unit Development on a portion of the property or may apply for a special review use permit for consideration of a temporary use.***



**Figure 3: Game Creek Character Area Zoning Map**

### **Dimensional Limitations and Development Standards**

The only applicable dimensional limitation and/or development standard for the PUD Holding Zone is the 30' river setback to be measured from the mean highwater mark on the Eagle River. The lease area boundary for the proposed Burke Harrington Construction Conditional Use Permit is located approximately 50 feet from the Eagle River.

Because it is anticipated by the Town that any future development or redevelopment of the holding zone will be master planned and reviewed as part of a Planned Unit Development (PUD) or special use permit, dimensional limitations and other standards are also anticipated to be established as part of any such review.

The Town of Minturn Design Standards and Guidelines, under Section C – *Design Criteria*, subsection 'c' – *Materials and Screening*, offers the following guidance:

#### **c. Screening**

*Both residential and commercial areas within the Town shall be required to screen certain visually obtrusive areas, including, but not limited to, refuse storage, general storage, loading areas, mechanical equipment and parking areas.*

*“The screening may occur with landscaping, compliant with Sections 16-16-140, 16-16-150 and 16-16-160, or these uses may be screened with fencing or by containing the uses within a structure or parapet walls. Fences shall not exceed 3-feet in height for opaque fences and 4 feet in height for fences with you can see through. Higher fences may be used to screen the sides and rear of the lot but should not exceed 6 feet in height. In no case shall a fence or screening structure obstruct a driver's view of an intersection.”*

### **V. Issues and Discussion Topics:**

#### **Visibility / Unsightliness**

While a majority of equipment and/or personal items associated with this CUP request are to be stored within an existing building, areas outside the building and within the lease area will be used for storage and parking of occasional vehicles and trailers as well. This area is visible from certain vantage points from Taylor Avenue residential zone district and U.S. Highway 24. The site currently has fencing installed at the lease area boundary surrounding the building and green mesh screening will be installed in the event the CUP is approved by the Town (the applicant was instructed by Town staff to not install screening until such time that the CUP was acted upon).

As with CUPs approved in 2018, certain conditions and standards directed at ensuring that the site is maintained in an orderly fashion and also limiting the storage of certain equipment and/or vehicle types and sizes will apply to this CUP.

An advantage in this case – for the Applicant and the Town – is the fact that the existing building is fully enclosed, in relatively good condition and repair, and, if items are concentrated within the building, should serve to reduce any visual impacts from the storage of materials.

### **Planning Commission Review**

During the Planning Commission’s review, the Commission confirmed that Darin Tucholke is a co-signer on the Union Pacific lease agreement. The Planning Commission asked that, for the record, Mr. Tucholke be listed as a co-applicant on the CUP application. The Commission also clarified, and Mr. Harrington confirmed, that Mr. Tucholke – owner of West Vail Shell station and Vail Valley Towing – would not be using the lease area for storage of business related vehicles (tow trucks, for instance) or towed or inoperable vehicles associated with his local business operations.

Another issue raised concerned fencing, with the Planning Commission confirming that the fencing erected around the lease area does not impact the adjacent gravel road. The Commission stated that there should be no fencing or gating installed across this access road.

## **VI. Staff Findings and Analysis:**

The following section provides staff responses to each of the applicable Conditional Use criteria.

### ***a. The relationship and impact of the use on the community development objectives of the Town.***

#### **Staff Response:**

Under “Community Character / Urban Design” of the 2009 Community Plan (the Town’s comprehensive plan), strategy number CCS 1.8 states – “*Enforce ordinances aimed at maintaining the health, safety, welfare and aesthetic of the town – snow, trash, nuisance abatement and zoning/land use.*”

Under “Economy” of the 2009 Plan, the Economy vision statement states, in part, that “*A diverse mix of businesses catering to the local community and tourist are necessary for a stable, year-round economy. Special efforts should be made to promote the existing businesses in town and to also facilitate new business development.*”

In 2018, the intent of the Town – working *with* existing lease holders to identify and propose solutions to existing conditions and issues – was to provide the CUP process so that existing uses could continue as a means to protect existing business operations in the Town while also allowing the Town to regulate such uses and enforce Town Code provisions for safety, nuisances, and general aesthetics. Ultimately, the goals of this process were to:

- Maintain the diversity and mix of businesses

- Contribute to the year-round economy
- Protect the health, safety, welfare, and the aesthetics of the town.

Testimony and participation at public hearings before approval of the CUPs led to the development of the contractor storage standards and terms of use that were attached to the CUPs as conditions of approval.

However, in the interim year and a half, compliance with those conditions – and maintenance of the sites - has waned or was never fully realized in some instances. In other instances, original lease and CUP holders have since sub-leased their areas to secondary users who may or may not have been aware of the terms of use.

In 2020, this has resulted in numerous complaints being received by the Town and has caused the Town to spend considerable time and resources responding to those complaints while increasing monitoring of business operations and existing conditions at all of the existing CUP lease areas.

The UP property – and the lease areas - is one of the first things people see when they enter Town from the North, and often it is not an aesthetically pleasing sight. While it is true that this is a unique piece of land which allows light industrial/contractor storage uses that are not permitted elsewhere in Town and thus adds to the diversity and mix of businesses, it has become apparent that more work is needed to ensure that such uses can remain in this area while not becoming a detriment to the image of the town, the enjoyment of adjacent or nearby properties, or the resources and efficacy of the Town government.

In accordance with the terms of CUP approvals for the contractor storage uses on UP property, the Town will be conducting reviews of each existing CUP in the Fall of 2020, nearly two years following their original approval. Staff anticipates that as part of this review process the Town will re-examine the 18 conditions or standards/terms of use to better understand which standards are “working” or enforceable, and which are not. Staff will likely recommend revisions to the list of eighteen standards for contractor storage at that time.

That being said, staff is reviewing the current CUP request for Burke Harrington Construction and Darin Tucholke on its own merits; staff’s position is that if the use is properly conditioned and if the Applicant maintains the use and the property as represented in the application and in testimony given during public hearings, the use can meet this criteria.

- b. The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*

**Staff Response:**

The intended use of the lease area, inclusive of parking and requested storage uses within an existing building and within the lease boundaries, likely will have minimal material impact or effect on the distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and/or needs.

- c. *The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*

**Staff Response:**

Use of the proposed lease area for contractor storage associated with an existing business in close proximity to an existing storage site associated with the same business will likely not result in a material increase in local traffic, congestion, pedestrian safety, traffic flow and control, access, maneuverability and snow removal in the immediate vicinity of the subject property.

- d. *The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*

**Staff Response:**

Staff believes that the main factor impacting the character of the surrounding area or, importantly, the compatibility of the use within the Game Creek Character Area is the visual or aesthetic quality of the lease area. The Applicant has stated that his intent is to primarily utilize an existing building for storage of materials and equipment; and, to not use the lease area outside that building but for occasional parking of personal vehicles. Fencing has already been erected around the lease area boundaries and green mesh screening will be installed in the event that this CUP request is approved. No additional site (exterior) lighting is proposed with this CUP request and staff does not anticipate that the use of the building will generate noise, glare, or dust. The proposal does not include any activities outside the building other than parking of vehicles and/or trailers.

- e. *Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*

1. *That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*

**Staff Response:**

Generally, the subject site is located within a historically industrial and commercial area. Yet, the Town's master plan and guiding policy statements for the Game Creek Character PUD Holding Zone anticipate the discontinuance of industrial uses in favor of commercial and residential re-development:

*"The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the*

*railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.”*

- Town of Minturn Municipal Code Section 16-12-10

It should be noted that the Community Plan does provide goals and strategies geared toward supporting existing businesses, and the uses proposed for this CUP primarily include storage within an existing building. As such, staff suggests that the use proposed does not constitute “high impact industrial uses.”

A primary purpose of the Conditional Use Permit review is to ensure that permitted uses are, in effect, temporary and inspected on some regular basis for compliance; that, any such approval granted by the Town is valid so long as the terms and conditions are adhered to which has been an issue with existing contractor storage CUPs in recent months requiring more staff time than originally anticipated.

For these reasons, Planning Commission is recommending that the Town Council *approve with conditions* the proposed Burke Harrington Construction/Darin Tucholke Conditional Use Permit application.

2. *That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

**Staff Response:**

Generally, the location and uses proposed, if properly conditioned, should not be detrimental to the public health, safety or welfare, nor should they be materially injurious to the properties or improvements in the vicinity if the site is maintained in accordance with the standards of the Minturn Municipal Code and any conditions of approval.

3. *That the proposed use will comply with each of the applicable provisions of this Chapter.*

**Staff Response:**

If appropriate conditions of approval are attached with any granting of a CUP in this instance, and if such conditions are adhered to by the Applicant and enforced by the Town, staff believes that this finding can be met.



## **VII. Planning Commission and Staff Recommendation:      Approval with Conditions**

Staff and the Minturn Planning Commission are recommending approval with conditions of this CUP request. In the event the Town Council votes to approve this request, staff respectfully forwards the following suggested conditions or terms of use for the CUP:

1. All material representations made by the Applicant as part of the application and during public hearings on the matter shall become conditions of approval and enforceable by the Town.
2. Only business-related items related to the expressed business shall be located on leased property. No vehicle shall exceed 40' 2" in length.
3. No recreational vehicles or ATV' s of any kind. Not limited to boats, snowmobiles, ATV' s, RV' s, campers, pop-ups, conversion vans, trailers, un-related work vehicles, etc.
4. No inoperable / unlicensed vehicles kept on property for longer than five (5) days (pursuant to Section 7-2-70 Minturn Municipal Code).
5. Leased lots to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended (pursuant to Section 7- 4- 50 Minturn Municipal Code).
6. Lessees are to maintain and conduct business in contained areas only.
7. Annual report by the Code Compliance Officer to Council — re: Violations
  - a. 3 violations in 1 year
  - b. Recommendation to Council to revoke CUP
8. Lessees to meet with Town Council every 3 years for CUP review.
  - a. Report from Code Compliance Office
  - b. Report from Planning Director
9. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
10. Maintain noise and vibration standards (pursuant to Sec. 16-18-30, Minturn Municipal Code).
11. All leased areas to be fenced and screened (green mesh screening materials) on all perimeter fencing of leased property
12. Supplies, parking, vehicles, and equipment shall be located only within fenced areas or designated leased area only.
13. Proper fuel containment/inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) shall be required in OSHA approved containers.
14. All parking must be located within the fenced yard and/or building(s).
15. Any chemical storage will require material safety data sheets be maintained on the lease site at all times. No chemical storage is permitted within 30' river setback areas along the Eagle River.
16. Emergency access of 20' through the Union Pacific railyard and at both access gates shall be maintained.
17. Off-season use will require site storage of snow and keeping emergency access cleared.
  - a. Maintain proper snow storage or sufficient snow removal.
18. Conditional Use Permit is granted conditional upon the applicant complying with these standards and so long as the grantee maintains a valid lease agreement with the owner of the property.
19. Town staff may inspect the site for compliance at any time.

























400





400









# CONDITIONAL USE PERMIT APPLICATION

TOWN OF MINTURN PLANNING AND ZONING DEPARTMENT

P.O. Box 309 - 302 Pine Street- Minturn, Colorado 81649-0309

Phone: 970-827-5645

Email: [planner@minturn.org](mailto:planner@minturn.org)

**Project Name:**

Burke Harrington Construction

**Project Location**

Street Address: 400 N Main St

Legal Description (Lot, Block, Subdivision):

Parcel Number(s):

**Application Request:**

Construction storage building. Fencing and screening will be around leased area.

**Applicant:**

Name: Burke Harrington

Mailing Address: POB 425  
Minturn, Co. 81645

Phone: 9703762256

Email: [office@bhcvail.com](mailto:office@bhcvail.com)

**Property Owner:**

Name: Union Pacific Railroad

Mailing Address: 1400 Douglas St MS1690  
Omaha, Nebraska 68179

Phone: 4025442255

Email: [aldancer@up.com](mailto:aldancer@up.com)

**Required Information:**

Lot Size: 15,400 sq ft	Type of Residence (Single Family, ADU, Duplex)	# of Bedrooms 0	# On-site Parking Spaces
# of Stories: 2	Snow storage sq ft: a lot	Building Footprint sq ft: 2700	Total sq ft Impervious Surface:

**Signature:**

\$800+Costs attributable to the review by consultant time are billed at actual hourly rates. Cost assessed after first hour.

Fee Paid: \_\_\_\_\_

Date Received: \_\_\_\_\_

Planner: \_\_\_\_\_

Burke  
**HARRINGTON CONST.**



**BHC**

PO Box 2943, Vail, CO 81658  
970.476.1026 p 970.476.7167 f  
970.376.2256 c  
bhcco@comcast.net

July 24,2020

Letter of Intent for use of Building 1682 at 400 N Main St under a conditional use permit:

The building will be used for Construction material ,vehicle, and tool storage for or related to Burke Harrington Construction. The leased area will be fenced and screened. There is very little or no activity on a daily basis. We do not run our company from this property so there is no employee parking or worker impact. We also use the building storage for personal and household goods that change with the seasons and storage of client belongings when renovating properties. It is a big convenient indoor space that meets our needs.

Burke Harrington  
9703762256





NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS, EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**  
 MINTURN, EAGLE COUNTY, CO  
 M.P. 302 - TENNESSEE PASS

DRG/CO/V-TA/23  
 SCALE: 1" = 200'  
 OFFICE OF REAL ESTATE  
 OMAHA, NEBRASKA DATE: 9-11-2019  
 DSK FILE: 3168-95

**LEGEND:**

- LEASE AREA: [Red hatched box symbol]
- NON-EXCLUSIVE ROADWAY: [Yellow dashed line symbol]
- UPPRCO. R/W OUTLINED: [Dashed line symbol]

CADD FILENAME	0316895
SCAN FILENAME	AERIAL PRINT

LEASE AREA: 15,400 SQ.FT. / 0.35 AC. +/-  
 NON-EXCLUSIVE ROADWAY: 39,717 SQ.FT. / 0.91 AC. +/-  
 TOTAL AREA: 55,117 SQ.FT. / 1.27 AC. +/-



ESTIMATED FUND BALANCE WORKSHEET

Revised 8/26/2020

	GENERAL FUND	ENTERPRISE FUND
Beg Fund Bal 01/01/2021	1,455,055.00	2,833,664.00
INCOME - 2021		
General - est YE	1,799,067.00	1,586,941.00
Grants - est YE	0.00	0.00
Total Income	<u>1,799,067.00</u>	<u>1,586,941.00</u>
EXPENSE - 2021		
General - est YE	1,811,328.00	1,273,175.00
Grants/Misc - est YE	0.00	0.00
Total Expense	<u>1,811,328.00</u>	<u>1,273,175.00</u>
Net Income/(Loss)	<u>-12,261.00</u>	<u>313,766.00</u>
ESTIMATED END Fund Bal	<u>1,442,794.00</u>	<u>3,147,430.00</u>
TABOR (3% of non-enterprise expenses)	70,600.00	
Restricted by TABOR-Real Estate Trans (1)	0.00	
6 Mo Reserve Target (50% of Net Exp)	912,336.00	
Fixed Assests from Audit		1,810,088.00
Restricted for System Improvement Fee		56,815.00
Restricted for Infrastructure		<u>1,249,278.00</u>
Total Restricted Revene	<u>982,936.00</u>	<u>3,116,181.00</u>
Cash Available after Restricted	<u>459,858.00</u>	<u>31,249.00</u>

NOTES

(1) This is largely due to the CIP work of Lead Detection and new water tanks background.

2021 does NOT include potential debt service issued for the water tank construction.

This would result in an income/expense wash for the most part.

**GENERAL FUND AS YET UNFUNDED EXPENSES (ESTIMATES)**

Currently our budget for 2021 Revenue over Expense is (\$12,261)

- 1) \$35,000 - Land Trust Right Of Way for bike path
- 2) \$15,000 - Minturn Fitness Center retrofit to allow unattended entry
- 3) \$30,000 - Contracted Snow Removal
- 4) Unknown - Increase to 6mo Reserve
- 5) \$47,715 - 2021 Employee Raise Pool
- 6) \$40,000 - Community Plan Update
- 7) \$50,000 to develop the bike path bridge above the ERWSD sewer line at USFS Bridge
- 8) We have developed a General Fund CIP which is comprehensive and extensive. Long term funding has not been developed and it takes years to accumulate funds for large projects such as street paving.

**GENERAL FUND REVENUE ISSUES (ESTIMATES)**

- 1) It is a potential concern that the economy will be shut down again due to COVID-19. The effect and degree of a shutdown is unknown but it is assured it will have a negative effect which will be lasting.
- 2) Due to Gallagher Issues our property Tax is anticipated to increase \$5,580 over 2019  
In 2019, due to Gallagher our property tax grew 6.17%. This is an issue because 2019 was a re-assessment year. In the previous re-assessment year of 2017 we saw a 26% increase in assessed values.
- 3) Sales Tax continues to strive but is still close tied to the COVID-19 progress.
- 4) In 2019 we earned \$10,500 in snowdump leases, this is budgeted at zero for zero for 2020
- 5) In 2020 we removed a lease lot parcel to develop a sledding hill. This will result in a \$9,000 annual reduction.

**OTHER ISSUES:**

- 1) The temporary moratorium on water taps will limit construction. This will limit the revenue generated from the sale of taps of which the revenue is used to maintain/improve the water plant (Catch-22)
- 2) The temporary moratorium on water taps will limit construction. This will limit the revenue generated from the Construction Use Tax which funds our non-Enterprise Fund CIP projects.



COLORADO  
Parks and Wildlife  
Department of Natural Resources

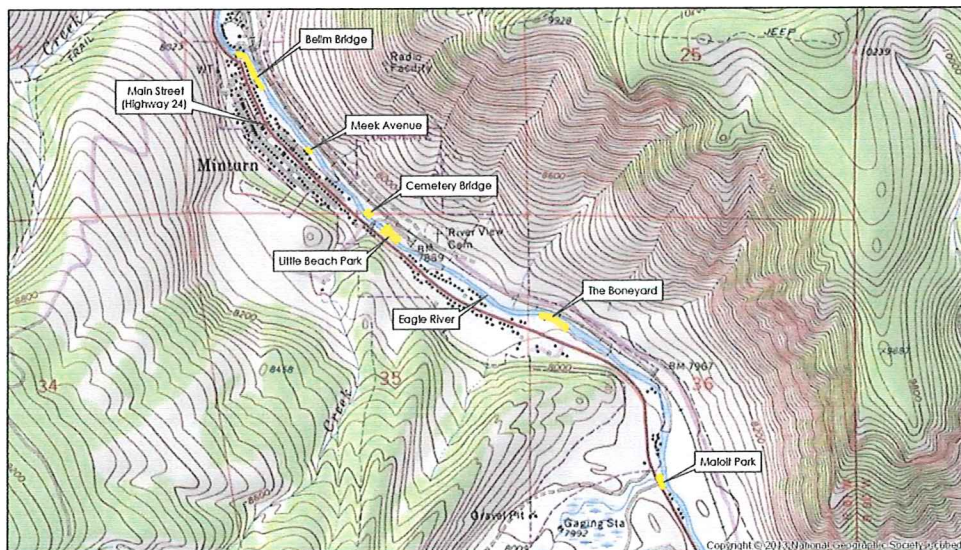


# VOLUNTEER NIGHT

THURSDAY SEPT. 3RD - 5:00-8:00pm

The Town has been awarded a Grant to create 5 new Fishing Access points on the Eagle River between Maloit Park and Bellm Bridge and we need helping hands to clear brush and prepare for the First Phase of Construction of these new fishing access areas.

Please come out and join us at The Boneyard Open Space at 5:00 Thursday night. Bring Shovels, Tools for clearing Brush, gloves etc. If you have any questions, please email: [jafamilyman@gmail.com](mailto:jafamilyman@gmail.com)





Jay Brunvand  
 Clerk/Treasurer  
 301 Pine St #309 ♦ 302 Pine St  
 Minturn, CO 81645  
 970-827-5645 x1  
[treasurer@minturn.org](mailto:treasurer@minturn.org)  
[www.minturn.org](http://www.minturn.org)



Town Council  
 Mayor – John Widerman  
 Mayor Pro Tem – Earle Bidez  
 Council Members:  
 Terry Armistead  
 George Brodin  
 Brian Eggleton  
 Eric Gotthelf  
 Gusty Kanakis

Below reflects proposed topics to be scheduled at future Town Council meetings and is informational only. Dates and topics are subject to change.

<b>REGULAR TOWN COUNCIL MEETINGS</b>
<b>September 2, 2020</b>
Liquor License – New Hotel and Restaurant License application: The Daily Grind Coffee Co, Inc, DBA Vail Mountain Coffee & Tea, Craig Arseneau, President/Manager 23698 Hwy 24 – Brunvand
Short Term Rental Program Review
Resolution __ - 2020 CUP for Burk Harrington
<b>September 16, 2020</b>
Ord __ - Series 2020 an Ordinance adopting Specified Sustainability Building Codes
Strategic Plan Update
<b>October 7, 2020</b>
Action Item: Acceptance of the 2021 Fiscal Budget (Draft)
Discussion/Direction: Minturn Parking regulations
<b>October 21, 2020</b>
Shooting Range update and discussion