

MARBLE PARK MEMORANDUM OF UNDERSTANDING

THIS MARBLE PARK MEMORANDUM OF UNDERSTANDING (the “MOU”) is entered into this ____ day of _____, 2017 (the “Effective Date”), by and between the Town of Marble (“Town”) and the Aspen Valley Land Trust, a Colorado nonprofit corporation (“AVLT”) (collectively, referred to as the “Parties” and individually, as a “Party”).

1. Purpose and Duration. AVLT is under consideration for the donation of the Marble Park, described as Lots F, G, H, I, K, M N, O, P and Q, Block 15, Town of Marble, according to the plat recorded October 2, 1975 at Reception No. 307946, also known as 212 E. Main Street, Marble, CO 81623 (“Property”). During the past ~~xx~~ years, the Town has used the Property for its community members to enjoy an in town outdoor space. In exchange for AVLT allowing the Town to use the Property, the Town agrees to routinely maintain the Property in its current condition including mowing, bathroom maintenance, and trashcan emptying. The Parties have entered into this MOU for the purpose of establishing certain terms, conditions, and obligations regarding the Town’s use and maintenance of the Property. This MOU shall remain in effect until jointly amended by the Parties or until execution by the Parties of any subsequent agreement that may be intended to replace the MOU. This MOU does not prohibit the Parties from entering into additional agreements as mutually desired.

Commented [EQ1]: Ron- Can you fill this in, please?

2. Property Donation. By executing this MOU, AVLT hereby confirms that it has accepted the donation of the Property, and that there are no restrictions of title on the Property that would interfere with the Property being maintained as a public park. The public’s use of the Property shall not be prohibited or impaired by the terms of this MOU, except occasionally and temporarily for property maintenance, safety reasons, hosting of certain events, and other approved purposes.

3. Town of Marble Contribution. In exchange for use of the Property as described herein, the Town will be in charge of routine maintenance of the Property, or coordinate with someone to do so, as described below. In addition, the Town may use the Property for special events subject to agreement with AVLT and additional fees as deemed appropriate by AVLT at the time.

4. Maintenance of the Property. The Town shall be responsible for exercising reasonable care in maintaining and repairing the Property on a day-to-day basis (not less than monthly in the winter, or weekly in the summer); however, AVLT makes no warranty, express or implied, of any kind or nature concerning the safety, condition, suitability, or use of the Property for the Town. The Town or anyone using the Property with the express or implied consent of the Town shall use the Property at their own risk. In the event that the Town discover a hazardous condition on the Property, the Town shall notify AVLT immediately and may undertake to repair and remediate the hazardous condition. All non-emergency management activities and hazard mitigation that the Town desires to undertake shall be approved by AVLT prior to taking action. The Town shall otherwise maintain the Property in good condition and repair as related to its use thereof, including: periodic mowing of grass as necessary to maintain a neat appearance; removal of all trash, downed tree limbs, and debris; port-a-potty maintenance; dog pot maintenance; and

generally maintaining the Property as a safe and welcoming place for the community of Marble. The Town shall not permit, commit or allow waste, impairment or deterioration of the Property by its use other than reasonable wear and tear.

The Town shall not be responsible for capital improvements or maintenance of structures installed after the date of this MOU unless otherwise agreed, nor for Acts of God nor other substantial damage or changes to the Property caused by the public or forces outside of the Town's control, nor for illegal or improper use of the Property by the public. The Town agrees to notify AVL T if it observes damage to the Property, identifies maintenance or repair needs beyond the scope of the Town's maintenance obligations, or observes improper or illegal use of the Property.

5. Use of Property. The Town shall be entitled to use the Property consistent with its historical practices at no charge. The right for the Town to use the Property shall be for as long as AVL T owns the Property or as long as AVL T agrees, subject to the terms and conditions specified herein below in Section 5. Additional use of the Property by the Town shall be at the sole discretion of AVL T, as Property availability and capacity allow.

6. Use Agreement. In order to allow use of the Property by the Town, the Town agrees to enter into a binding agreement to establish the terms understood here including that the Town will be responsible for the ground maintenance of the Property (Use Agreement).

7. Management Fund. AVL T is in the process of raising \$100,000 for a restricted land management fund, which may be used for payment of taxes and insurance, and routine and special maintenance of the Property. AVL T agrees to repay the Town for all approved hard costs incurred by the Town in maintaining the Property and its improvements, provided there are sufficient funds remaining in the Management Fund for this purpose.

8. Indemnification. To the extent permitted by law, the Town shall indemnify and hold AVL T harmless from and against any liability for personal injury or property damage, including, without limitation, all attorney's fees and costs arising out of any acts undertaken under or pursuant to the Use Agreement or this MOU by the Town or anyone using the Property with the express or implied consent of the Town, including undertaking emergency or non-emergency management, maintenance, construction, or hazard mitigation. The Town does not intend by this provision to waive or limit any rights or defenses against liability available to them pursuant to law, including but not limited to the rights and defenses available pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.* and Article 11, Section 1 of the Colorado Constitution.

9. Liability Insurance. The Parties shall each maintain liability insurance, with limits recommended by their respective insurance carriers. The Town shall name AVL T as an additional insured for all activities or events undertaken on the Property.

10. Signatures. In witness whereof, the Parties, through their authorized representatives, have executed this MOU on the date set forth above and certify that they have read, understood, and agree to the terms and conditions of this MOU as set forth herein. This

MOU may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same.

ASPEN VALLEY LAND TRUST

Suzanne Stephens, Executive Director

TOWN OF MARBLE

Name, Title

Commented [EQ2]: Ron, who will be signing on the Town’s behalf? We will need a Statement of Authority from the Town’s Board, or something similar.

ATTEST:
