

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 1 – SERIES 2014

AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN  
OF MINTURN TO ENTER INTO AN AMENDED LEASE TO A-  
PEAK ASPHALT FOR REAL PROPERTY OWNED BY THE  
TOWN OF MINTURN

**WHEREAS**, A-PEAK Asphalt ("NAME OF LESSOR"), a Colorado Corporation has petitioned the Town of Minturn ("The Town") to lease of a parcel of land owned by the Town; and

WHEREAS, it is in the mutual interest of The Town and A-PEAK Asphalt to enter into the lease agreement; and

WHEREAS, in the interest of protecting and preserving public health, safety and welfare, it is desirable that the citizens of the Town of Minturn, Eagle County, Colorado be provided with adequate rental income for land owned by the Town.

WHEREAS, the Home Rule Charter of the Town of Minturn, Colorado, The Town Ordinances, and C.R.S. § 31-15-714, as amended authorizes the Town as a home rule municipal corporation to lease any real estate, together with any facilities thereon, owned by the municipality, when deemed by the governing body to be in the best interest of the municipality, with any lease for a period of one year or more to be done by ordinance and any lease for one year or less by resolution or ordinance.

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

Section 1. The Mayor is authorized to execute such documents and to do such other acts and things as may be necessary or advisable in association with the execution and delivery of a lease of real property.

SECTION 2. The 2004 lease agreement, the 2009 amendment, and the 2014 amendment attached hereto as Exhibit A and incorporated into this Ordinance by reference is approved, and the Mayor is authorized to execute it on behalf of the Town of Minturn, and the Town and its officers and employees are authorized to perform under it on behalf of the Town of Minturn, according to its terms.

SECTION 3. This Ordinance shall not be effective until the lease agreement attached hereto is signed by the representatives of all the necessary parties thereto.

SECTION 4. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed

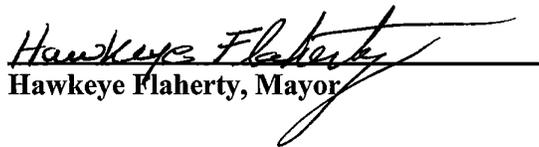
this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

SECTION 6. The repeal or the repeal and reenactment of any provisions of the Minturn Municipal Code as provided in this ordinance shall not affect any right with has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any protection commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

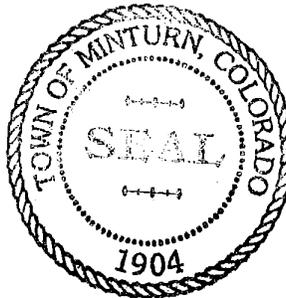
**INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 15<sup>th</sup> DAY OF JANUARY, 2014. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 5<sup>TH</sup> DAY OF FEBRUARY, 2014 AT 6:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.**

**TOWN OF MINTURN, COLORADO**

  
Hawkeye Flaherty, Mayor

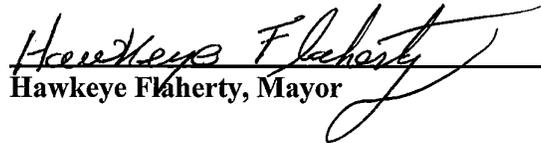
**ATTEST:**

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 5<sup>TH</sup> DAY OF FEBRUARY, 2014.**

**TOWN OF MINTURN, COLORADO**

  
Hawkeye Flaherty, Mayor

**ATTEST:**

By:   
Jay Brunvand, Town Clerk



## SECOND AMENDMENT TO GROUND LEASE

This amendment to Ground Lease is made and entered into this 1st day of April, 2014, by and between the Town of Minturn, Colorado, a municipal corporation (the "Town") and A-Peak, Inc., a Colorado Company ("A-Peak").

WHEREAS, the Town and A-Peak entered into a lease for real property on or about March 15, 2004, a copy of which is attached hereto and made a part hereof by reference; and

WHEREAS, the Town and A-Peak have entered into negotiations to modify certain provisions of the lease and extend the term of the lease by five years.

NOW, THEREFORE, for Twenty-Five Dollars and other good and valuable consideration, receipt of which is acknowledged, the parties agree the lease shall be amended in the following manner.

1. Amendment. The WITNESSETH provisions of the lease are modified as follows:

The Town does hereby lease to A-Peak, and A-Peak does hereby lease from the Town certain real property situated in the Town of Minturn, Eagle County, Colorado as described in Exhibit A to the Ground Lease, which is attached hereto and made a part hereof by reference. The real property which is subject of this Lease is owned by the Town, in fee simple, and is referred to herein as "the property". The property is used by A-Peak as the site for its Asphalt operations. During the term of this lease the Town may relocate A-Peak to a comparable site within the Town with sixty (60) days advance written notice.

TO HAVE AND TO HOLD the premises commencing on the 15<sup>th</sup> day of March 2014 and ending on the 15<sup>th</sup> day of March 2019, subject to acceleration, or earlier termination as herein provided below on the following terms and conditions:

Paragraph 3 of the March 2004 lease is amended to allow consecutive five year lease extensions.

2. Amendment. Paragraph 1 of the lease is amended as follows:

RENT. a. Monthly Rent. A-Peak covenants and agrees to pay the Town monthly installments of SIX HUNDRED DOLLARS (\$600.00) payable in advance on or before 12:00 p.m. on the first day of each calendar month during the term of this Lease to the Town of Minturn, Colorado, P.O. Box 309, Minturn, Colorado 81645 or at any other place with the Town may direct in writing. This rate may be adjusted during the second year by mutual agreement of the parties. In the event mutual agreement is not reached this agreement may be terminated upon 30 days notice by either party.

All other terms of the lease agreement not specifically modified by this AMENDMENT TO GROUND LEASE shall remain in full force and effect.

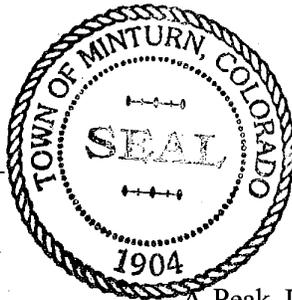
IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Ground Lease the day and year first written above.

TOWN OF MINTURN, COLORADO

By: *Haukeye Flaherty*  
Mayor

Attest:

*[Signature]*  
Town Clerk



A-Peak, Inc.

By: *Bruce Lanke*

It's: *President*

Attest:

\_\_\_\_\_



**A-Peak New Site at Rec Center Property**

A-Peak Area Dimensions:  
New Site: 120' x 80' = 9,600 sq ft

Old Site: shared with the Town of Minturn Public Works - A-Peak paid for asphalt pad at Public Works site -

size of new and old site similar size:  
 120' x 80' = 9,600 sq ft

A-Peak tanks and trailer to sit in the back of the property to hide view from residential neighborhood: XXX



Design by:

Arnold Martinez, Public Works Supervisor  
 Janet Hawkinson, Minturn Town Planner

**A-Peak New Site**

**Public Works Rec Field Site Design**

Town of Minturn  
 Jim White, Town Manager



**A-PEAK ASPHALT LAND LEASE**

**GROUND LEASE**

THIS GROUND LEASE is made and entered into this 15<sup>th</sup> day of March, 2004 by and between the TOWN OF MINTURN, Colorado, a municipal corporation (the "Town") and A-Peak Inc., a Colorado Company ("A-Peak" or the "Tenant").

**WITNESSETH:**

The Town does hereby lease to A-Peak, and A-Peak does hereby lease from the Town certain real property situated in the Town of Minturn, Eagle County, Colorado as described in Exhibit A, which is attached hereto and made a part hereof by reference. The real property which is the subject of this Lease is owned by the Town in fee simple, and is referred to hereinafter as "the property". The property is used by A-Peak as the site for its Asphalt operations.

TO HAVE AND TO HOLD the premises commencing on the day and year first written above and ending on the 15<sup>th</sup> day of March, 2009, subject to acceleration, an extension or earlier termination as herein provided below, on the following terms and conditions:

1. **RENT.**

a. **Monthly Rent.** A-Peak covenants and agrees to pay the Town monthly installments of FOUR HUNDRED FIFTY DOLLARS (\$450.00) payable in advance on or before 12:00 p.m. on the first day of each calendar month during the term of this Lease to the Town of Minturn, Colorado, P. O. Box 309, Minturn, Colorado, 81645; or at any such other place which Landlord may direct in writing. This rate may be adjusted during the third (3), fifth (5), and, if extended as provided for in paragraph 3 below, in the seventh (7) years by mutual agreement of the parties. In the event mutual agreement is not reached this agreement may be terminated upon 30 days notice by either party.

b. **Additional Charges.** A-Peak agrees that, in case any rent or other charges payable hereunder shall not be paid upon the date when the same shall become due, A-Peak shall pay to Landlord a late payment charge at the rate of eighteen percent (18%) per annum from the due date to the date of payment.

2. **NON-EXCLUSIVE USE.** A-Peak shall be entitled to enter on the property in order to operate an Asphalt storage lot.

During the term of this Lease, or during the option period described herein, A-Peak shall have the right to construct or maintain a small storage facility on the property. Such construction shall comply with all applicable Federal, State, County and Municipal laws and codes, and shall be approved in advance by the Town Planning & Zoning Commission and the Town Council.

3. **OPTION TO RENEW.** A-Peak shall have the right to extend the term of this Lease for a period of five (5) years, at the rental rate of Four Hundred Fifty dollars PER MONTH (\$450.00) unless adjusted as provided for in paragraph 1(a) above upon the following terms and conditions:

a. That at the time of the exercise of such right tenant shall not be in default in the performance of any of the terms, covenants, or conditions therein contained with respect to a matter as to which notice of default has been given hereunder and which has not been remedied within the time limited in this Lease;

b. That such an extension shall be upon the same terms, covenants, and conditions as in this Lease provided except that such minimum annual rent shall be payable in twelve (12) equal monthly installments as provided hereinabove.

## A-PEAK ASPHALT LAND LEASE

c. A-Peak shall exercise its right to extend the term of this Lease by notifying the Town of its election to exercise such right at least sixty (60) days prior to the expiration of the primary term of this Lease. Such notice shall be sent to the Town by certified mail, return receipt requested. Upon the giving of such notice, this Lease shall be extended upon all its terms and conditions as set forth in this article for the extended term without execution of any further instrument or document.

4. **TAXES.** A-Peak shall pay in each year of the term of this Lease and any extensions thereof all general real estate and ad valorem taxes due and payable with respect to the premises. The Town shall provide A-Peak with actual copies of any and all notices, assessments, tax bills, receipts for payment, or other documentation related to taxes on the Property within ten (10) days of its receipt of the same to enable A-Peak to contest the taxes as provided herein; A-Peak shall have the right in its name to contest the validity of any tax or assessment which A-Peak is required to bear, pay and discharge hereunder by appropriate legal proceedings.

5. **INSURANCE; WAIVER OF SUBROGATION.** During the term of this Lease, A-Peak, at its sole cost and expense, and for the mutual benefit of A-Peak and the Town, covenants and agrees to carry and maintain the following types of insurance:

a. Fire and extended coverage insurance covering any improvements constructed on the Property against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "extended coverage"; and

b. Comprehensive public liability insurance including property damage with respect to the Property and its use insuring A-Peak and the Town against liability for injury to persons or property occurring in or about the Property or arising out of the ownership of, maintenance, use, or occupancy thereof with the limit of liability coverage not less than \$5,000,000.00 per person and \$1,000,000.00 for each accident or occurrence for bodily injury, and \$1,000,000.00 for property damage. A-Peak and the Town shall periodically (but no less often than every two (2) years) assess, and if appropriate, modify A-Peak's property damage insurance coverage to assure that limits of coverage accurately reflect current valuations of the assets located on the Property. The parties hereto agree that if the improvements constructed on the Property at any time shall be damaged or destroyed by an insured peril, neither party shall have any liabilities to the other nor to any insurer of the other for or in respect of such damage or destruction, and both parties hereto shall require all policies of risk insurance to be endorsed with a provision in and by which the insurer designated therein shall waive its right of subrogation.

c. Workman's Compensation Insurance in compliance with Colorado law. A-Peak shall furnish certification of such insurance in force. All policies of insurance shall provide by endorsement that any loss shall be payable to the Town or A-Peak as their respective interests may appear, and shall further provide that the company so insuring may not terminate any coverage outlined above without first giving the Town 30 days' prior written notice by Certified mail.

6. **INDEMNITY AND NON-LIABILITY.** A-Peak agrees to indemnify and save the Town harmless against any and all claims, demands, damages, costs and expenses, including reasonable attorneys' fees for the defense thereof, arising from the conduct or management of the business conducted by A-Peak in the leased premises or from any breach or default on the part of A-Peak in the performance of any covenant or agreement on the part of A-Peak to be performed pursuant to the terms of this Lease, or from any act or negligence of A-Peak, its agents, contractors, servants, employees, sub-lessees, concessionaires or licensees, in or about the demised premises, the sidewalks adjoining the same, the loading area allocated to the use of A-Peak. In case of any action or proceeding brought against Landlord by reason of any such claim, upon notice from the Town, A-Peak covenants to defend such action or proceeding by counsel reasonably satisfactory to the Town.

## A-PEAK ASPHALT LAND LEASE

All property kept, stored or maintained in the leased premises shall be so kept, stored or maintained at the sole risk of A-Peak.

7. **LIABILITY FOR COST OF IMPROVEMENTS INSTALLED.** Except as may be subsequently agreed between the parties hereto, the Town shall not, under any circumstances, be liable for the payment of any expense incurred or the value of any work done or materials furnished to the Property by virtue of construction of improvements on the Property by A-Peak for construction or maintenance of the Asphalt. All such work shall be at A-Peak's sole cost and expense and A-Peak be wholly responsible to all contractors, laborers and material therefore. A-Peak shall pay for all or any of the foregoing so that no lien shall be asserted the premises.

8. **OWNERSHIP OF IMPROVEMENTS.** A-Peak shall be the exclusive owner of any and all trade fixtures and equipment on the Property. However, upon the expiration of the initial term and any extensions thereof, A-Peak may remove trade fixtures and equipment from the Property whereupon the building improvements shall become the exclusive property of the Town. This paragraph shall not be construed to grant A-Peak any interest in the personal property of the Town, which may be located on the Property.

9. **ASSIGNMENT AND SUBLEASE.** This Lease may be the subject of an assignment or sublease by A-Peak provided that no such assignment or sublease shall be valid unless the Town consents in writing thereto, which consent shall not be unreasonably withheld. Further, the assignee or sublessee shall expressly assume and agree to perform each and every one of the covenants of this Lease. The Town's consent shall be deemed to be unreasonably withheld if the proposed assignee of A-Peak is of such financial standing and responsibility at the time of such assignment or sublease as to give reasonable assurance of the payment of all rents and other amounts reserved in this Lease and compliance with all the terms, covenants, provisions, and conditions of this Lease.

10. **MAINTENANCE.** During the term of this Lease, or any extension or renewal thereof, A-Peak shall at its sole expense make all repairs as is reasonably necessary to keep the leased premises and equipment in good condition and repair. At the expiration or termination of this Lease, A-Peak shall surrender and deliver the premises in good order and condition.

11. **DEFAULT-REMEDIES.** Upon happening of any one or more of the following events, the Town at its election may terminate this Lease upon three (3) days written notice to A-Peak, and unless A-Peak shall have cured the default complained of within the three (3) day period, this Lease shall be deemed terminated upon expiration of said three (3) day period, and A-Peak shall quit and surrender the premises on the date of such termination, but A-Peak shall remain liable hereunder.

(a) The failure of A-Peak to make payment of any installment of rent, taxes, assessments or other charges required to be paid by A-Peak under this Lease, after the same shall become due and payable under this Lease.

(b) The failure of A-Peak to make any payment to the Town of any lease payment after the same shall become due and payable or failure to pay personal or real property taxes or security; or failure to keep required insurance or security in force.

(c) The default by A-Peak in the performance of any of the other terms, covenants or conditions of this Lease, and such default shall not have been remedied three (3) days after written notice by the Town to A-Peak specifying such default and requiring it to be remedied.

(d) The abandonment of the leased premises by A-Peak for more than three (3) days during the term or any extensions or renewals thereof.

## A-PEAK ASPHALT LAND LEASE

(e) The issuance of a writ of execution or attachment on or against the property of A-Peak, and such execution or attachment shall not be vacated or removed by court order bonding, or otherwise, within a period of ten (10) days after the issuance thereof.

(f) The instituting of proceedings for the voluntary reorganization, bankruptcy, liquidation or dissolution of A-Peak or if A-Peak shall otherwise take advantage of any state or federal bankruptcy or insolvency act.

(g) The doing, or permitting to be done by A-Peak of any act which creates a mechanic's lien or claim therefore against the demised premises and the same is not released or otherwise provided for by indemnification satisfactory to the Town within thirty (30) days thereafter.

Upon the termination of the Lease by the Town pursuant to this paragraph, the term of this Lease shall terminate and come to an end, and all rights of occupancy hereunder on the part of A-Peak shall cease with the same force and effect as though the term originally reserved herein had terminated and A-Peak shall quit and surrender said premises to the Town, but A-Peak shall remain liable as herein provided.

a. If this lease shall be terminated, as provided in this paragraph, or if A-Peak shall be in default in the payment of any installment of rent, additional rent, assessments, taxes, or other charges required to be paid by A-Peak under this Lease, for a period of three (3) days after written notice to A-Peak of its default.

(i) The Town may immediately, or at any time thereafter, re-enter and resume possession of the leased premises and remove all persons and property therefore either by summary dispossession proceedings or by a suitable action or proceeding at law or in equity, or by force or otherwise, without being liable for any damages therefore. No re-entry by the Town shall be deemed an acceptance of a surrender of this Lease.

(ii) The Town may re-let the whole or any part of the leased premises for a period equal to, or greater or less than the remainder of the then-existing term of this Lease, at such rental and upon such terms and concession as the Town shall deem reasonable, to any tenant which it may deem suitable and satisfactory and for any use and purpose which it may deem appropriate. In no event shall the Town be liable in any respect for failure to re-let the leased premises, or in the event of such re-letting, for failure to collect the rent thereunder. Any sums received by the Town on a re-letting in excess of the rent reserved in this Lease shall belong to the Town.

(iii) If this Lease shall be terminated as provided in this paragraph or by summary proceedings or otherwise, the Town, in addition to any other right under this paragraph, shall be entitled to recover the cost of placing the leased premises in the same condition as that in which A-Peak is required to surrender them to the Town under this Lease.

(iv) In the event this Lease is terminated by the Town pursuant to any of the terms of this paragraph, it shall be entitled to retain and set off against its damages any monies being held as deposits hereunder.

(v) In the event of any breach hereunder by A-Peak, the Town may immediately or at any time thereafter, without notice, cure such breach for the account and at the expense of A-Peak. If the Town at any time, by reason of such breach, is compelled to pay, or elects to pay, any sum of money, or is compelled to incur any expense, including reasonable attorneys fees, in instituting or prosecuting any action or proceeding to enforce the Town's rights hereunder, the sum so paid by the Town, with interest hereon at eighteen percent (18%) from the date of payment thereof, shall be deemed to be additional rent hereunder and shall be due from A-Peak to the Town on the first day of the month following the payment of such respective claims or expenses.

## A-PEAK ASPHALT LAND LEASE

(vi) A-Peak will pay, in addition to the rent and other sums agreed to be paid hereunder, such additional sums as a court of competent jurisdiction may adjudge reasonable as attorneys' fees in any suit or action instituted by the Town to enforce the provisions of this Lease, or the collection of the rent or other sums due Landlord hereunder provided the Town prevails in such suit or action.

(vii) Any property belonging to A-Peak or any person holding by, through or under A-Peak, or otherwise found upon the leased premises may be removed therefrom and stored in any warehouse at the cost and for the account of A-Peak.

(viii) A-Peak shall not remove its equipment, furniture or furnishings, fixtures, or other personal property from the leased premises, without the consent of the Town, in the event of breach of this Lease; and in the event rent, additional rent, taxes assessments and all other charges have not been paid by A-Peak, the Town may take possession of said property either to its own use or to sell the same for the best price that can be obtained at public or private sale, and out of the money arising therefrom, pay any chattels on said property and the amount due the Town, and all costs growing out of the execution of the provisions hereof, paying the surplus, if any, to A-Peak.

(ix) A-Peak hereby expressly waives the service of any notice of intention to re-enter provided in any statute or of the institution of legal proceedings to that end and A-Peak for and on behalf of itself and all persons claiming through or under A-Peak, including any assignee or creditor of A-Peak, also waives any and all right of redemption or re-entry or re-possession or to restore the operation of this Lease in case A-Peak shall be dispossessed by summary proceedings or otherwise or in case of re-entry or re-possession by the Town or in case of any expiration or termination of this Lease in accordance with its terms.

12. **TOWN'S COVENANT OF QUIET ENJOYMENT.** The Town hereby covenants that so long as the rental is current for the Property and there is no default in any of the covenants to be performed by A-Peak, A-Peak shall peaceably and quietly hold and enjoy the leased premises for the entire term of this Lease and any extensions thereof, free of hindrance or interruption by the Town.

13. **CONDEMNATION.** If the whole or a substantial part of the Property shall be taken for any public or quasi-public use under any statute or by right of eminent domain or private purchase in lieu thereof by the Town, then, when possession shall be taken thereunder, A-Peak shall be entitled to reimbursement by the Town for all costs and expenses incurred by A-Peak in relocating its broadcasting facilities to another site in order to comply with the requirements of the Federal Communications Commission.

14. **BINDING EFFECT.** All the rights and liabilities, terms, conditions, and covenants to be observed and performed by the parties hereto shall extend to, be applicable and binding upon, the personal representatives, successors in interest and duly approved assigns of the respective parties hereto.

15. **NO PARTNERSHIP OR JOINT VENTURE.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by a third, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method or computation of rent nor any good provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of the Town and A-Peak. Whenever herein the singular number is used, the same shall include plural, and the masculine gender shall include the feminine and neuter genders.

16. **AMENDMENTS AND MODIFICATIONS.** The Town agrees and acknowledges that it has not relied upon any statement, representations, agreements or warranties except such as are expressed herein, and that no amendment or modification of this Lease shall be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Lease.

A-PEAK ASPHALT LAND LEASE

17. **SEVERABILITY CLAUSE.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

18. **NOTICE.** Any notice which may be required to be given under this Lease to the others shall be in writing. Said notice may be served personally or shall be deemed duly served by mailing certified mail, return receipt requested.

THE TOWN:

Town Clerk  
Town of Minturn  
P. O. Box 309  
Minturn, CO 81645

A-Peak:

A-Peak Inc., Inc.  
P.O. Box 1433  
Vail, CO 81658

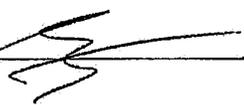
IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first written above.

TOWN OF MINTURN, COLORADO

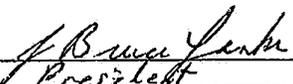
Attest:

  
Town Clerk



By:   
Mayor

A-Peak INC., ~~INC~~  
A Colorado Limited Liability Company

By:   
Its: President

Attest:

\_\_\_\_\_

## AMENDMENT TO GROUND LEASE

This amendment to Ground Lease is made and entered into this 1st day of April, 2009, by and between the Town of Minturn, Colorado, a municipal corporation (the "Town") and A-Peak, Inc., a Colorado Company ("A-Peak").

WHEREAS, the Town and A-Peak entered into a lease for real property on or about March 15, 2004, a copy of which is attached hereto and made a part hereof by reference; and

WHEREAS, the Town and A-Peak have entered into negotiations to modify certain provisions of the lease and extend the term of the lease by five years.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, receipt of which is acknowledged, the parties agree the lease shall be amended in the following manner.

1. Amendment. The WITNESSETH provisions of the lease are modified as follows:

The Town does hereby lease to A-Peak, and A-Peak does hereby lease from the Town certain real property situated in the Town of Minturn, Eagle County, Colorado as described in Exhibit A to the Ground Lease, which is attached hereto and made a part hereof by reference. The real property which is subject of this Lease is owned by the Town, in fee simple, and is referred to herein as "the property". The property is used by A-Peak as the site for its Asphalt operations. During the term of this lease the Town may relocate A-Peak to a comparable site within the Town with sixty (60) days advance written notice.

TO HAVE AND TO HOLD the premises commencing on the 15<sup>th</sup> day of March 2009 and ending on the 15<sup>th</sup> day of March 2014, subject to acceleration, or earlier termination as herein provided below on the following terms and conditions:

2. Amendment. Paragraph 1 of the lease is amended as follows:

RENT. a. Monthly Rent. A-Peak covenants and agrees to pay the Town monthly installments of FIVE HUNDRED DOLLARS (\$500.00) payable in advance on or before 12:00 p.m. on the first day of each calendar month during the term of this Lease to the Town of Minturn, Colorado, P.O. Box 309, Minturn, Colorado 81645 or at any other place with the Town may direct in writing. This rate may be adjusted during the second year by mutual agreement of the parties. In the event mutual agreement is not reached this agreement may be terminated upon 30 days notice by either party.

All other terms of the lease agreement not specifically modified by this AMENDMENT TO GROUND LEASE shall remain in full force and effect.

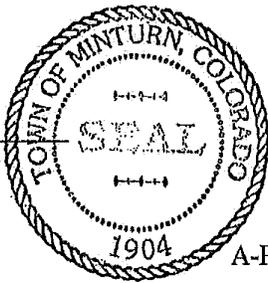
IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Ground Lease the day and year first written above.

TOWN OF MINTURN, COLORADO

By: *Howard Flaherty*  
Mayor

Attest:

*[Signature]*  
Town Clerk



A-Peak, Inc.

By: *J. Bruce Jank*

It's: *President*

Attest:

*[Signature]*



P.O. Box 1433 • Vail, Colorado 81658  
970-476-8855 • 970-468-8644 • Fax 970-476-3450  
apeakasphalt@comcast.net

**Ray-Tech Infrared Equipment**

November 11, 2013

Town of Minturn  
P.O. Box 309  
Minturn, CO 81645

To Whom It May Concern:

A-Peak, Inc. currently has a ground lease with the Town of Minturn. As per the original lease agreement, we are required to request an extension prior to the March 15, 2014 expiration date. At this time, we (A-Peak, Inc.) are requesting to extend our lease with a 5 year extension.

Our purpose to request an extension of another 5 year lease, is to maintain a storage yard for equipment and materials used in our business.

Over the years, we have developed a good working relationship with the Town of Minturn and public works department. We thank you for the opportunity to extend our current lease another 5 years. and are looking forward to your response regarding our request

If you have any questions, please do not hesitate to call me on my cell (970) 390-1026, or office (970) 476-8855.

Sincerely,

J. Bruce Yanke  
A-Peak, Inc., President

Thu, Jan 16, 2014  
9880111

10:14:46

Ad Ticket #5

**Acct:** 1032852  
**Phone:** (970)827-5645  
**E-Mail:** MANAGER@MINTURN.OR  
**Client:**  
**Caller:** Jay  
**Receipt**

**Name:** Town of Minturn  
**Address:** P.O. Box 309

**City:** MINTURN  
**State:** CO  
**Zip:** 81645

**Ad Name:** 9880111A

**Editions:** 8VD/8VDI/

**Start:** 01/20/14

**Color:**

**Copyline:** Ordinance No. 1- 2014

**Original Id:** 0

**Class:** 0990

**Stop:** 01/20/14

**Issue** 1

**Rep:** Pam Schultz

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 1 - SERIES 2014

Lines:	30
Depth:	2.51
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
<b>Total</b>	<b>14.40</b>
Payment	0.00

AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO ENTER INTO AN AMENDED LEASE FOR REAL PROPERTY OWNED BY THE TOWN OF MINTURN.

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 15th DAY OF JANUARY, 2014. 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 5TH DAY OF FEBRUARY, 2014 AT 6:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO

Hawkeye Flaherty, Mayor

ATTEST:

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

Published in the Vail Daily January 20, 2014.  
(9880111)

Ad shown is not actual print size

Thu, Feb 06, 2014  
9935561

11:05:34

Ad Ticket #5

**Acct:** 1032852  
**Phone:** (970)827-5645  
**E-Mail:** MANAGER@MINTURN.OR  
**Client:**  
**Caller:** Jay  
**Receipt**

**Name:** Town of Minturn  
**Address:** P.O. Box 309

**City:** MINTURN  
**State:** CO

**Zip:** 81645

**Ad Name:** 9935561A

**Editions:** 8VD/8VDI/

**Start:** 02/10/14

**Color:**

**Copyline:** Ordinance No. 1-2014

**Original Id:** 0

**Class:** 0990

**Stop:** 02/10/14

**Issue** 1

**Rep:** Pam Schultz

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 1 - SERIES 2014**

Lines:	26
Depth:	2.18
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
<b>Total</b>	<b>12.48</b>
Payment	0.00

AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO ENTER INTO AN AMENDED LEASE TO A-PEAK ASPHALT FOR REAL PROPERTY OWNED BY THE TOWN OF MINTURN

**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 5TH DAY OF FEBRUARY, 2014.**

TOWN OF MINTURN, COLORADO

Hawkeye Flaherty, Mayor

ATTEST:

By: Jay Brunvand, Town Clerk

Published in the Vail Daily February 10, 2014.  
(9935561)

Ad shown is not actual print size