1. CALL TO ORDER:

2. ROLL CALL:

3. EXECUTIVE SESSION:

4. ACTION ITEM:

   A. Resolution 84-2016, A Resolution Approving the Demolition Permit Agreement Between the City of Black Hawk and Monarch Black Hawk, Inc.

5. ADJOURNMENT:

MISSION STATEMENT

The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community.
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 84-2016  

TITLE: A RESOLUTION APPROVING THE DEMOLITION PERMIT AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND MONARCH BLACK HAWK, INC.  

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, COLORADO, THAT:  

Section 1. The City Council hereby approves the Demolition Permit Agreement as set forth in Exhibit A, and authorizes the Mayor to execute the same on behalf of the City.  

RESOLVED AND PASSED this 28th day of November, 2016.  

_______________________________  
David D. Spellman, Mayor  

ATTEST:  

_______________________________  
Melissa A. Greiner, City Clerk
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Monarch Demolition Permit Agreement

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE Resolution 84-2016, A Resolution Approving the Demolition Permit Agreement Between the City of Black Hawk and Monarch Black Hawk, Inc.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
Demolition of existing Monarch Parking Structure.

AGENDA DATE: November 28, 2016
WORKSHOP DATE: N/A
FUNDING SOURCE: N/A
DEPARTMENT DIRECTOR APPROVAL: [ X ]Yes [ ]No
STAFF PERSON RESPONSIBLE: Jack D. Lewis, City Manager
DOCUMENTS ATTACHED: Demolition Permit Agreement
RECORD: [ ]Yes [ X ]No
CITY ATTORNEY REVIEW: [ X ]Yes [ ]N/A
SUBMITTED & REVIEWED BY: Jack D. Lewis
City Manager
DEMOLITION PERMIT AGREEMENT

THIS DEMOLITION PERMIT AGREEMENT (the "Agreement") is made this ______ day of November, 2016, by and between the CITY OF BLACK HAWK, COLORADO (the "City"), and MONARCH BLACK HAWK, INC., a Colorado corporation (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the City of Black Hawk known as the Monarch Casino property, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. The Developer has obtained a Demolition Permit, with conditions, and one of the conditions requires the construction of a pedestrian sidewalk in order to allow pedestrian access on Main Street during demolition activities (the "Temporary Sidewalk"), which Temporary Sidewalk would be located on property owned by a private property owner.

C. As of the date of this Agreement, the Developer has been unable to acquire or otherwise secure the permission necessary to construct the Temporary Sidewalk, and thus seeks to provide a mechanism by which the Developer will cause all pedestrian traffic to be transported via a shuttle, and otherwise close the Demolition Permit Area as more particularly described in Exhibit B, attached hereto and incorporated herein by this reference, to all pedestrian traffic of any kind.

D. The City and the Developer desire to enter into this Demolition Permit Agreement which memorializes the closure of the Demolition Permit Area to all pedestrian traffic, and includes an indemnity by the Developer in favor of the City for any potential liability associated with pedestrian traffic in the Demolition Permit Area.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions for the Developer being able to obtain a Demolition Permit without satisfaction of the condition requiring the construction of a Temporary Sidewalk. All conditions contained herein are in addition to any and all requirements of the City of Black Hawk Building Codes, the City of Black Hawk Home Rule Charter, any and all state statutes, and any other sections of the City of Black Hawk Municipal Code, and are not intended to supersede any requirements contained therein.

2. Closure of Demolition Permit Area to All Pedestrian Traffic. The Developer shall cause the Demolition Permit Area to be closed in its entirety to all pedestrian traffic through signage, traffic control barriers, and the use of pedestrian shuttles for the time determined necessary by the City Manager, or the City Manager’s designee, in conjunction with the demolition of the Developer’s existing parking garage, and the demolition permit issued by the
City to cause such demolition, but in no event later than the expiration, completion or termination of the demolition permit. Provided, however, the City and Developer acknowledge and agree that the Demolition Permit Area may be required to be closed to all pedestrian traffic following the expiration, completion or termination of the demolition permit, and that the City Manager may authorize an extension of this Agreement in the event construction activities require the Demolition Permit Area to remain closed to pedestrian traffic.

3. Breach by the Developer; the City's Remedies; Indemnity. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, and if such breach is not cured within five (5) business days after Developer’s receipt of written notice of such breach from the City, the City Council shall be notified immediately and the City, may take such action as permitted and/or authorized by law, this Agreement, or the ordinances and Charter of the City to protect the public health, safety and welfare, and to protect the citizens of the City from hardship and undue risk. These remedies include, but are not limited to:

   a. The revocation of the Demolition Permit; and/or

   b. Any other remedy available at law; and

   c. Because of the inherently dangerous nature of the activity, and the requirement that the Demolition Permit Area remain closed to all pedestrian traffic, the Developer specifically agrees to indemnify and hold harmless the City, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from, or on account of any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to this Demolition Permit Agreement, including but not limited to claims arising from pedestrians entering into the Demolition Permit Area and claims of third parties arising from impacts otherwise caused by the issuance of the Demolition Permit without satisfaction of the condition requiring the construction of a Temporary Sidewalk; and the Developer shall pay any and all judgments rendered against the City as the result of any suit, action, or claim, together with all reasonable expenses and attorneys’ fees incurred by the City in defending any such suit, action or claim. Developer and the City specifically acknowledge and agree that Developer is assuming any and all risk associated with the City’s potential risk under the Colorado Governmental Immunity Act, C.R.S.§ 24-10-101, et seq. (the "Immunity Act"), to the extent the provisions of the Immunity Act could be deemed to have been waived pursuant to C.R.S. § 24-10-106 by the conditions of this Demolition Permit Agreement. Provided however, the parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to otherwise waive by any provision of this Agreement, the monetary limitations (presently three hundred fifty, thousand dollars ($350,000) per person and nine hundred ninety thousand dollars ($990,000) per occurrence) and all other rights, immunities, and protections provided by the Immunity Act.

4. Waiver of Defects. In executing this Agreement the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the City to impose conditions on the Developer as set forth herein, and
concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

5. **Modifications.** This Agreement shall not be amended except by subsequent written agreement of the parties.

6. **Release of Liability.** It is expressly understood that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the City of Black Hawk Municipal Code and the laws of the State of Colorado.

7. **Captions.** The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

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

9. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Gilpin County, Colorado.

10. **Notice.** All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the City:  
City Manager  
City of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422

With copy to:  
Corey Y. Hoffmann  
Black Hawk City Attorney  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 16th Street, Suite 610  
Denver, Colorado 80202

Notice to Developer:  
Monarch Black Hawk, Inc.  
Attn: CEO  
With a copy to General Counsel  
3800 S. Virginia St.  
Reno, Nevada 89502
WHEREFORE, the parties hereto have executed this Agreement on the day and year first above-written.

CITY OF BLACK HAWK, COLORADO

______________________________
David D. Spellman, Mayor

ATTEST:

___________________________________
Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

___________________________________
Corey Y. Hoffmann, City Attorney

DEVELOPER

By: _______________________________
Name: ___________________________
Title: ___________________________

STATE OF COLORADO

) ss.

COUNTY OF _________________ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _______________________, 20__, by ______________________________ as the ______________________________ of (Developer) _______________________

My commission expires: __________________________

(S E A L)

___________________________________
Notary Public