



Town Council Regular Meeting
Tuesday, December 12, 2017, 7:00 PM
Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

- A. TOWN COUNCIL MINUTES - NOVEMBER 28, 2017

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

- A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)
B. BRECKENRIDGE TOURISM OFFICE UPDATE

V. CONTINUED BUSINESS

- A. SECOND READING OF COUNCIL BILLS, SERIES 2017 - PUBLIC HEARINGS
1. *COUNCIL BILL NO. 33, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE," CONCERNING MURALS WITHIN THE CONSERVATION DISTRICT*
 2. *COUNCIL BILL NO. 34, SERIES 2017 - AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE TOWN'S MUNICIPAL WATER SYSTEM*

VI. NEW BUSINESS

- A. FIRST READING OF COUNCIL BILLS, SERIES 2017
1. *COUNCIL BILL NO. 35, SERIES 2017 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH LIONHEART BGV VENTURES, LLC, A COLORADO LIMITED LIABILITY COMPANY*
- B. RESOLUTIONS, SERIES 2017
1. *RESOLUTION NO. 33, SERIES 2017 - A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2018*
 2. *RESOLUTION NO. 34, SERIES 2017 - A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH ROBERT GREGORY OF WEST BROWN HUNTLEY PC FOR 2018*
 3. *RESOLUTION NO. 35, SERIES 2017 - A RESOLUTION APPROVING THE "TOWN OF*

BRECKENRIDGE HOUSING GUIDELINES (DECEMBER 12, 2017)”

4. *RESOLUTION NO. 36, SERIES 2017 - A RESOLUTION APPROVING AN AMENDMENT TO EMPLOYMENT AGREEMENT WITH RICK G. HOLMAN*

C. OTHER

1. *LIQUOR AND MARIJUANA LICENSING AUTHORITY APPOINTMENTS*

VII. PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

A. CAST/MMC (MAYOR MAMULA)

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BERGERON)

C. BRECKENRIDGE TOURISM OFFICE (MS. GIGLIELLO)

D. BRECKENRIDGE HERITAGE ALLIANCE (MS. WOLFE)

E. WATER TASK FORCE (MR. DUDICK)

F. BRECKENRIDGE CREATIVE ARTS (MS. LAWRENCE)

G. BRECKENRIDGE EVENTS COMMITTEE (MS. LAWRENCE)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

A. SCHEDULED MEETINGS FOR DECEMBER, 2017 AND JANUARY, 2018

XII. ADJOURNMENT

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
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CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of November 28, 2017 to order at 7:00 pm. The following members answered roll call: Mr. Bergeron, Ms. Lawrence, Mr. Dudick, Ms. Wolfe, Ms. Gigliello and Mayor Mamula. Mr. Burke was absent.

APPROVAL OF MINUTES – NOVEMBER 14, 2017

With no changes or corrections to the meeting minutes of November 14, 2017, Mayor Mamula declared they would stand approved as submitted.

APPROVAL OF AGENDA

Mr. Holman stated there were no changes to the agenda. Mayor Mamula declared the agenda approved as presented.

COMMUNICATIONS TO COUNCIL

A. Citizen's Comment - (Non-Agenda Items ONLY: 3-minute limit please)

Mayor Mamula opened Citizen's Comment.

Mr. James Lee, representing Startup Weekend Breck, thanked Council for supporting the event. He further stated they had three businesses present their ideas on the final night, and at least one plans to be based in Breckenridge.

Mr. John Warner, Breckenridge resident and former Mayor, thanked the Council for the parking structure conversation and the housing discussion. He further stated Mr. Bergeron has good concerns about density, and he suggests the Council use due diligence moving forward with this issue, and think about land banking for the future.

There were no additional comments and Citizen's Comment was closed.

Mayor Mamula then presented the *Citizen Leadership Award* to Mr. Turk Montepare. This award honors local leaders who have had a significant impact on the community. Mr. Montepare has been instrumental in land acquisitions, planning and preservation over many years as part of the Breckenridge Open Space Advisory Committee and in his role as a local resident.

Mr. Montepare thanked everyone for their parts in these accomplishments over many years, including Town and County staff, elected officials and BOSAC board members.

B. Breckenridge Ski Resort Update

Mr. Kevin Burns, representing Breckenridge Ski Resort, stated terrain is open and despite the warm weather, the ski resort had a successful holiday weekend and will be ramping up for the next one. He further stated the mountain is still skiing well, and they are hoping to have more terrain open for the Dew Tour soon. He also stated the Superchair is ready to go when the terrain is ready and the Ten Mile Station has a new sweet shop. Mr. Burns stated uphill access is open, they are working with Uber and Lyft for pick up and drop off locations on the mountain, and Interstate Parking operations are underway for Vail Resorts locations. Mr. Burns stated the Hartford Ski Spectacular and Dew Tour are coming up, if there are changes, we'll communicate them as they occur.

CONTINUED BUSINESS

A. Second Reading of Council Bills, Series 2017 - Public Hearings

1. COUNCIL BILL NO. 30, SERIES 2017 - AN ORDINANCE ADOPTING CHAPTER 14 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING UNMANNED AIRCRAFT SYSTEMS

Mayor Mamula read the title into the minutes. Mr. Berry stated there were no changes to this ordinance from the first reading.

Mayor Mamula opened the public hearing. There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 30, SERIES 2017 - AN ORDINANCE ADOPTING CHAPTER 14 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING UNMANNED AIRCRAFT SYSTEMS. Ms. Wolfe seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

2. COUNCIL BILL NO. 31, SERIES 2017 - AN ORDINANCE SETTING THE MILL LEVY WITHIN THE TOWN OF BRECKENRIDGE FOR 2018

Mayor Mamula read the title into the minutes. Mr. Waldes stated there were no changes to this ordinance from the first reading.

Mayor Mamula opened the public hearing. There were no comments and the public hearing

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was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 31, SERIES 2017 - AN ORDINANCE SETTING THE MILL LEVY WITHIN THE TOWN OF BRECKENRIDGE FOR 2018. Ms. Lawrence seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

3. COUNCIL BILL NO. 32, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 8 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE SEALING OF RECORDS IN THE MUNICIPAL COURT

Mayor Mamula read the title into the minutes. Mr. Berry stated there were no changes to this ordinance from the first reading.

Mayor Mamula opened the public hearing. There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 32, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 8 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE SEALING OF RECORDS IN THE MUNICIPAL COURT. Ms. Gigliello seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

NEW BUSINESS

A. First Reading of Council Bills, Series 2017 - Public Hearings

1. COUNCIL BILL NO. 33, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE," CONCERNING MURALS WITHIN THE CONSERVATION DISTRICT

Mayor Mamula read the title into the minutes. Mr. Mark Truckey stated this ordinance would prohibit murals within the conservation district with the definition as public art.

Mayor Mamula opened the public hearing. There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 33, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE," CONCERNING MURALS WITHIN THE CONSERVATION DISTRICT. Ms. Gigliello seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

2. COUNCIL BILL NO. 34, SERIES 2017 - AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE TOWN'S MUNICIPAL WATER SYSTEM

Mr. Berry stated this ordinance would make two substantive changes to the water ordinance, as detailed in the memo in the packet.

Mayor Mamula opened the public hearing. There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 34, SERIES 2017 - AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE TOWN'S MUNICIPAL WATER SYSTEM. Ms. Lawrence seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

B. Resolutions, Series 2017

1. RESOLUTION NO. 31, SERIES 2017 - A RESOLUTION ADOPTING THE 2018 BUDGET AND MAKING APPROPRIATIONS THEREFOR; AND APPROVING THE 2018-2022 CAPITAL IMPROVEMENT PLAN

Mayor Mamula read the title into the minutes. Mr. Brian Waldes stated this resolution would adopt the 2018 budget and make appropriations, as well as approve the capital improvement plan.

Mayor Mamula opened the public hearing.

Mr. John Warner, Breckenridge resident and former Mayor, stated he wants to talk about the Real Estate Transfer Tax funds, and would like to see more of that money spent on housing or childcare, for example. He also stated he is not thrilled about the proposed Four O'Clock Road sidewalk improvements and the skate park shade structure cost. Also, for the

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lower AMIs, we don't have enough housing available, including for those starting at 30% AMI.

There were no additional comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 31, SERIES 2017 - A RESOLUTION ADOPTING THE 2018 BUDGET AND MAKING APPROPRIATIONS THEREFOR; AND APPROVING THE 2018-2022 CAPITAL IMPROVEMENT PLAN. Ms. Wolfe seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

2. RESOLUTION NO. 32, SERIES 2017 - A RESOLUTION APPROVING AN AMENDED FORM OF HOUSING RESTRICTIVE COVENANT FOR USE IN CERTAIN TOWN SUBDIVISIONS AND DEVELOPMENTS

Mayor Mamula read the title into the minutes. Mr. Berry stated the Town has developed a new restrictive covenant that can be used for Vic's Landing and other projects. He further stated staff recommends approval.

Mayor Mamula opened the public hearing. There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 32, SERIES 2017 - A RESOLUTION APPROVING AN AMENDED FORM OF HOUSING RESTRICTIVE COVENANT FOR USE IN CERTAIN TOWN SUBDIVISIONS AND DEVELOPMENTS. Ms. Gigliello seconded the motion.

The motion passed 6-0. Mr. Burke was absent.

PLANNING MATTERS

A. Planning Commission Decisions

Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.

REPORT OF TOWN MANAGER AND STAFF

Mr. Holman stated Town Employee Party is this Friday for those who can attend. He further stated Ms. Peyton Rogers has been communicating information about upcoming events, and we will be planning a tour of the Recreation Center Remodel on December 12th at 2:00pm.

REPORT OF MAYOR AND COUNCILMEMBERS

A. Cast/MMC

Mayor Mamula stated there was no report.

B. Breckenridge Open Space Advisory Committee

Mr. Bergeron stated BOSAC is exploring winter grooming for fat bikes and possibly grooming the bike path for fat bikes and skiing from Breckenridge to Frisco. He stated the committee also looked at Summit Public Radio utility easements, and approved 2 licenses for fat bike tours held on Town property. Ms. Gigliello asked about fat bike etiquette on powder days and staff stated there are videos on our website for this purpose, and bikes should be cautious about riding when there is a lot of fresh snow.

C. Breckenridge Tourism Office

Ms. Gigliello stated there was no report.

D. Breckenridge Heritage Alliance

Ms. Wolfe stated this Friday will be a brainstorming session about ski history, and the annual holiday party at Barney Ford will take place on December 7th.

E. Water Task Force

Mr. Dudick stated there was no report.

F. Breckenridge Creative Arts

Ms. Lawrence stated there was no report.

G. Breckenridge Events Committee

Ms. Lawrence stated there was no report.

Mayor Mamula asked about the quaffing event during the Dew Tour and Ms. Shannon Haynes stated the BTO has recommended to the Dew Tour they find a private property to use for this activity.

OTHER MATTERS

Ms. Wolfe asked about timeframe for response on a recent letter about PIFs? Mr. Holman

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stated staff will follow up.

Ms. Wolfe also stated that regarding the speed limit sign on Highway 9 as you go out of town toward the roundabout seems to be a low speed and very few people can go that slow. Mr. Holman stated staff will look into this.

Ms. Gigliello read a message about Breckenridge native Katie Uhlaender being awarded the bronze medal from Sochi in Skeleton after the Russia doping scandal. Council agreed to explore the idea of honoring Ms. Uhlaender at the Ullr Parade with the help of the BTO. Staff will follow up with Ms. Uhlaender.

Ms. Gigliello stated she will be taking the executive director job at the Breckenridge Theatre.

Mr. Bergeron asked about the Free Ride App for iPads and Mr. Holman stated staff will look into his concerns.

Ms. Lawrence stated people are missing the Union Mill bus stop because of the new shelter possibly blocking the view. Mayor Mamula reminded Ms. Lawrence about using the app to know when the bus is coming.

Ms. Wolfe stated Interstate Parking is being diligent, and there are some challenges with paying tickets and with special events. Also, she stated we need some clarity about the Town not being the same as Breck Park. Mr. Holman asked for more information about parking enforcement in the Stables Lot.

Mayor Mamula stated he would like to revisit the snow removal ordinance, as he would like to consider repealing that ordinance in the future. Mr. Holman stated staff will consider that request.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:51 pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

Memo



To: Breckenridge Town Council Members
From: Mark Truckey, Assistant Director of Community Development
Date: 12/6/2017
Subject: Proposed Code Amendment Prohibiting Murals in the Conservation District

Attached is the ordinance that would prohibit murals within the Conservation District. It is included for second reading. Staff has included a couple minor additions to the ordinance from first reading, based on Council comments. These include:

- A provision that allows murals in the Conservation District for special events.
- Clarification that a painting attached to a wall also is defined as a mural.

Staff will be available at the meeting to discuss this with Council.

1 **FOR WORKSESSION/SECOND READING – DEC. 12**

2
3 Additions To The Ordinance As Approved on First Reading Are
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. 33

7
8 Series 2017

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE,”
12 CONCERNING MURALS WITHIN THE CONSERVATION DISTRICT

13
14 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO:

16
17 **Section 1. Section 4-3-11 of the Breckenridge Town Code is amended by the**
18 **addition of a new Section E, which shall read as follows:**

19
20 **E. Notwithstanding Section 9-1-19-43A, Policy 43 (Absolute) Public Art, a**
21 **permit issued under this chapter may authorize the permittee to display a**
22 **mural in connection with the holding of the special event for which the**
23 **permit is issued.**

24
25 Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
26 the following definition:

27
MURAL: A painting or other work of art applied directly on **or**
attached to a wall.

28
29 Section 3. The definition of “Public Art” in Section 9-1-5 of the Breckenridge Town
30 Code is amended to read as follows:

31
PUBLIC ART: A work of art located on public or private property which is
accessible to the public. Public art includes, but is not
limited to, painting, murals, sculpture, graphic arts, tile,
mosaics, photography, earthworks, environmental
installations and decorative arts.

32
33 Section 4. Section 9-1-19-43A, “Policy 43 (Absolute) Public Art,” of the Breckenridge
34 Town Code is amended to read as follows:

35
36 9-1-19-43A: POLICY 43 (ABSOLUTE) PUBLIC ART:
37

1 A. An application for a class C or class D minor development permit for the
2 placement of public art shall be reviewed only for site function suitability, and not
3 for content of the public art or aesthetics. The public art commission shall not
4 review such applications unless specifically requested to do so by the planning
5 commission.
6

7 B. Notwithstanding anything contained in this Code to the contrary, murals are
8 prohibited within the Conservation District; **provided, however, a mural may be**
9 **displayed in the Conservation District pursuant to a permit issued under title**
10 **4, chapter 3 of this Code.**
11

12 Section 5. Except as specifically amended by this ordinance, the Breckenridge Town
13 Code, and the various secondary codes adopted by reference therein, shall continue in full force
14 and effect.
15

16 Section 6. The Town Council finds, determines, and declares that this ordinance is
17 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
18 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
19 thereof.
20

21 Section 7. The Town Council finds, determines, and declares that it has the power to
22 adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
23 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
24 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
25 Section 31-15-401, C.R.S. (concerning municipal police powers); (v) the authority granted to
26 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
27 contained in the Breckenridge Town Charter.
28

29 Section 8. This ordinance shall be published and become effective as provided by Section
30 5.9 of the Breckenridge Town Charter.
31

32 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
33 PUBLISHED IN FULL this ____ day of _____, 2017. A Public Hearing shall be held at the
34 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
35 _____, 2017, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
36 Town.
37

38 TOWN OF BRECKENRIDGE, a Colorado
39 municipal corporation
40

41
42 By: _____
43 Eric S. Mamula, Mayor
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ATTEST:

Helen Cospolich, CMC,
Town Clerk

Memo



To: Breckenridge Town Council Members
From: Town Attorney
Date: 12/6/2017
Subject: Council Bill No. 34 (Water Ordinance Amendments)

The second reading of the ordinance amending the Town's Water Ordinance is scheduled for your meeting on December 12th.

You will recall that the ordinance amends the timeline for the required correction of a faulty backflow prevention device, and clarifies that the Town does not own or have obligations with respect to a "submain loop."

There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 **FOR WORKSESSION/SECOND READING – DEC. 12**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 34

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10 Series 2017

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12 AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE
13 CONCERNING THE TOWN’S MUNICIPAL WATER SYSTEM

14
15 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
16 COLORADO:

17
18 Section 1. Section 12-3-6(B) of the Breckenridge Town Code is amended to read as
19 follows:

20
21 B. Within ~~one hundred twenty~~ **sixty** (~~120~~ **60**) days of a failed test, the backflow
22 prevention devices shall be repaired and retested or replaced and tested at the
23 expense of the owner. If not properly repaired **and retested** or replaced and tested
24 within ~~one hundred twenty~~ **sixty** (~~120~~ **60**) days of a failed test, the Town has to
25 authority to complete one of the following actions:

- 26
27 1. Control the cross-connection;
28 2. Remove the cross-connection; or
29 3. Suspend water service to the water using property where the cross-
30 connection is located.

31
32 Section 2. Section 12-2-10(C) of the Breckenridge Town Code is amended to read as
33 follows:

34
35 C. Individual townhouse unit connections are prohibited. Townhouse units shall
36 be served by individual connections into a project submain loop. **Such project**
37 **submain loop shall not be owned by the Town, and the Town has no**
38 **obligation to maintain, repair, or replace such loop, or to locate and mark the**
39 **location of such loop.** Such loop shall be valved and connected into the water
40 system at both ends. Temporary dead ends will only be allowed for good cause by
41 special approval of the director.

42
43 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
44 various secondary codes adopted by reference therein, shall continue in full force and effect.



Memo

To: Town Council
From: Town Attorney
CC:
Date: 12/6/2017
Subject: Request For Development Agreement By Lionheart BGV Ventures, LLC

At the Town Council's worksession on November 14, 2017 the Town Council received a memo from Lionheart BGV Ventures, LLC ("Lionheart") requesting that the Town Council consider a Development Agreement for the development of the "East Peak 8 Parcel." You will recall that at that meeting staff noted that the letter did not constitute a formal application for a development agreement, and representatives of Lionheart indicated that a formal application would be forthcoming.

Lionheart has now submitted a formal application for a development agreement in accordance with the requirements of the Town's Development Agreement Ordinance. Enclosed with this memo you will find the following:

1. Letter from Steve West dated December 1, 2017 which constitutes the formal development agreement application; and
2. Draft of proposed Development Agreement.

I have reviewed the development agreement application and the supporting documents, and believe that the application complies with the requirements of the Town's Development Agreement Ordinance.

Now that a formal application for a development agreement has been received, the Council is required to review Lionheart's request at a worksession. Your review of the application and proposed Development Agreement has been scheduled for your worksession on December 12th. Staff will be present at the worksession to provide assistance to you as you review and consider Lionheart's development agreement request.

When considering the request, please recall that the Town's Development Agreements Ordinance provides that:

The decision by the Town Council to enter into a development agreement with an applicant is always discretionary; nothing in this code shall be interpreted or construed as requiring the Town Council to approve a development agreement under any circumstances.

and further,

There is never an entitlement on the part of the applicant to the approval of a development agreement.

At the conclusion of your worksession discussion next Tuesday, the Town's Development Agreements Ordinance requires you to take one of the following actions:

1. If either the development concept or the proposed Development Agreement submitted by Lionheart are not acceptable, Council may properly terminate all discussions with Lionheart concerning the proposed Development Agreement; or

2. If the development concept and the proposed Development Agreement are both acceptable to the Council, Council can proceed to formally consider the ordinance approving the proposed Development Agreement. The ordinance has been scheduled for first reading next Tuesday night, but may be pulled if the Council is not ready to move forward with the Development Agreement.

The Development Agreements Ordinance also allows you to refer the application and proposed Development Agreement to the Planning Commission for its review and recommendation before deciding how to proceed.

Implicit in this list of options is that the Council can also direct Lionheart to revise the proposed Development Agreement and bring it back to the Council for further discussions at a later worksession.

I hope that the enclosed documentation provides you with enough information regarding the proposed Development Agreement so that you can decide how to proceed. I look forward to discussing this matter with you on Tuesday.

LAW OFFICES
WEST BROWN HUNTLEY PC
 100 SOUTH RIDGE STREET, SUITE 204
 POST OFFICE BOX 588
 BRECKENRIDGE, COLORADO 80424
 TELEPHONE (970) 453-2901
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 WWW.WESTBROWN.COM

STEPHN C. WEST
 FELICE F. HUNTLEY
 ROBERT N. GREGORY

D. WAYNE BROWN
 RETIRED

JILL D. BLOCK
 Paralegal

December 1, 2017

Rick Holman, Town Manager
 Town of Breckenridge
rickh@townofbreckenridge.com

Peter Grosshuesch, Director
 Department of Community Development
 Town of Breckenridge
peter@townofbreckenridge.com

Re: Development Agreement proposed by Lionheart BGV Ventures, LLC concerning amendment of Peaks 7 & 8 Master Plan, development permit, TDRs and parking

Dear Rick and Peter

In connection with an application to be filed by Lionheart BGV Ventures, LLC (“Applicant”) for an amendment of the Amended Peaks 7 & 8 Master Plan approved by Development Permit PL-2015-0444 on January 12, 2016 (“Master Plan”) as it relates to the area of such Master Plan located east of One Ski Hill Place and representing the remainder of the developable area of Planning Area B, Peak 8 Base (“Property”), the Applicant is requesting that the Town Council approve the attached Development Agreement (“Agreement”). The Agreement would authorize the Town’s Planning Commission, first, to approve amendments to the Master Plan and, second, to approve a development permit for the Applicant’s proposed project for the Property, neither of which could be approved if various provisions the Town Code were applied to the applications for the proposed amendments and development permit.

A Memo dated November 1, 2017 from representatives of the Applicant, which was provided to the Town Council for its November 14, 2017 meeting, set forth the proposed elements of and reasons for the Agreement. Two elements of the Memo (extended vesting and completion of 200 winter recreational parking requirement) are not included in the Agreement because extended vesting cannot be addressed until after the permit that might receive extended vesting is approved and the 200 spaces are already required to be provided with the build-out of the Master Plan area. Two additional elements of the Memo (proposed 105,000 square feet of condominiums and 56 residential SFEs/TDRs) have been increased slightly to 110,000 square feet of condominiums and 60 residential SFEs/TDRs to account for the possible increase in the size of the parcel to be acquired by Applicant, with the understanding that the additional square footage

and SFEs must fit on the property in accordance with the terms and conditions of the Master Plan and Development Code, as determined by the Planning Commission and ultimately the Town Council. The proposed Agreement attached to this letter provides in greater detail the reasons for and the terms of the request, including an increase in and potential expanded use of the payment to be made to satisfy the commitments encouraged to be made in Section 9-9-4 of the Town Code in connection with an application for a development agreement. The purpose of this letter is to serve as the required application and address the submittal requirements for a development agreement.

The Applicant respectfully requests that this letter be considered as the formal application for consideration of the proposed Agreement. Because the proposed Agreement is filed in connection with the application that will be filed for the amendment of the Master Plan after approval by Council of the Agreement, a separate application fee has not been included with this letter. The remainder of the submittal requirements set forth in Section 9-9-9 of the Town Code are complied with as follows: Subsection A is satisfied by the simultaneous delivery to the Town Attorney of a commitment for title insurance showing ownership of the Property to be in the name of Vail Summit Resorts, Inc.; Subsections B and C have been previously satisfied by the submission to the Department of Community Development of a letter dated November 3, 2017 from Vail Summit Resorts, Inc., the owner of the Property, authorizing the Applicant to file applications with respect to the development of the Property, including this application; Subsections D and E are satisfied by this letter and the attached Agreement; and Subsection F is satisfied with the submittal of the proposed Agreement itself. If any additional information or documentation is needed, please do not hesitate to let me know.

The Applicant looks forward to working with the Town Council, Tim Berry, and both of you on approval of this Agreement.

Respectfully,



Stephen C. West

c: Timothy H. Berry, Esq. (tberrylaw3@gmail.com w/ enc.)
 Julia Puester (juliap@townofbreckenridge.com w/ enc.)

APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
STATUTES, AS AMENDED

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made as of the ____ day of _____, 201__ (the “Effective Date, which shall be the date when the ordinance approving this Agreement becomes effective) between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado, (the “Town”) and LIONHEART BGV VENTURES, LLC, a Colorado limited liability company, (the “Developer”).

Recitals

A. Vail Summit Resorts, Inc. (“Owner”) is the owner of the Remainder of Tract C, Peak 8 Subdivision according to the Third Resubdivision Plat of The Remainder of Tract C, Peak 8 Subdivision Filing No. 1 recorded September 19, 2016 at Reception No. 1121860, Summit County, Colorado (the “Property”).

B. The Property is subject to the Amendment to Amended Peaks 7 & 8 Master Plan approved by Development Permit PL-2015-0444 on January 12, 2016, the Notice of Approval of Master Plan for which Amendment was recorded August 30, 2016 at Reception No. 1120265 of the Summit County, Colorado records (the “Master Plan”).

C. Owner and Lionheart Capital, LLC, an affiliate of Developer, have entered into an agreement for the potential sale of the portion of the Property located to the east of One Ski Hill Place and representing the remainder of the developable area of Planning Area B, Peak 8 Base of the Master Plan (the “Sale Parcel”) for Developer to develop a hotel, condominiums, commercial facilities, amenities and space for Owner’s use.

D. As owner of the Property, Owner has the right to authorize and has provided to the Town written authorization for the Developer to propose an amendment to the Master Plan, to request density transfers to the Sale Parcel, to request Town approval for the gross density recommended by the Town’s Land Use Guidelines (“Guidelines”) to be exceed as provided for in Subsection 9-1-19-39A:I.(2) of the Breckenridge Town Code, and to enter into agreements with the Town concerning such amendment to the Master Plan, such a density transfer, such density in excess of that recommended by the Guidelines, and such other matters as the Town and the Developer may agree is appropriate.

E. Pursuant to Chapter 9 of the Breckenridge Town Code the Town Council has the authority to enter into a development agreement. Further, in connection with a master plan amendment, there is no process in the Town’s Development Code for approval of density in excess of that recommended by the Guidelines and the transfer of density pursuant to a certificate of development rights (“TDRs”) issued pursuant to the Intergovernmental Agreement

concerning transfer of development rights between the Town and Summit County, Colorado (“IGA”), and, therefore, a development agreement provides a means for such an approval and transfer.

F. In order for Developer to develop the Sale Parcel in a manner that will include a four star, flagged, luxury hotel containing approximately 150 rooms and 110,000 square feet of condominiums, with the amenities and commercial services required for such a project, up to an additional 60 SFEs of residential density and 2.0 SFEs of commercial density will be required and an amendment to the Master Plan and authorization to acquire and transfer TDRs to accommodate such density will be required.

G. In connection with the review of the amendment of the Master Plan, to allow for the approval of a mixed use development containing not less than one hundred thousand (100,000) square feet to have the off-street parking requirements of Section 9-3-8 of the Breckenridge Town Code decreased, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, it is required that the Breckenridge Planning Commission be authorized to approve a reduction in the off-street parking requirements to no less than .85 spaces per hotel room if such reduction is supported by a written analysis prepared by a qualified parking consultant and paid for by the Developer.

H. Because there is no provision in the Breckenridge Town Code allowing site work to begin prior to issuance of a building permit, in order to facilitate the beginning of vertical construction of Developer’s proposed project in the spring of 2020, the Town is prepared to authorize its Department of Community Development (“Department”) to grant permission for the commencement of infrastructure improvements, including, but not limited to, demolition of Owner’s administration office building and ski patrol locker building located on the Sale Parcel (“Administration Facilities”), construction of storm water management facilities, relocation of utilities, and site excavation prior to issuance of a building permit, but subject to receipt of assurances of completion deemed satisfactory by the Department.

I. In order to accommodate Owner’s administration functions necessary or appropriate for the operation of the Breckenridge Ski Resort, which currently occur in the Administration Facilities, the Town acknowledges and understands that one or more temporary structures will need to be placed in acceptable locations on the Sale Parcel or elsewhere within the Property and maintained in such locations until the proposed Guest Services (as defined in the Master Plan) spaces to be included in Developer’s proposed development on the Sale Parcel (the “Guest Services Spaces”) are completed and ready for occupancy by Owner and a temporary permit will need to be issued. The permit referenced in this paragraph must be reviewed and approved by the Town’s Planning Commission and Town Council as provided for in subparagraph 1(a)(iv) below.

J. As the commitment encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Developer has proposed a payment to the Town of \$125,000 to be applied toward the Town’s

improvements to and maintenance of its Cucumber Gulch property or as otherwise directed by the Town Council.

K. The Town Council has received a completed application and all required submittals for a development agreement, had a preliminary discussion of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement and, in accordance with the procedures set forth in Subsection 9-9-10:C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. Upon: (a) final approval of (i) the transfer of TDRs consisting of up to 62 SFEs (60 for residential use and 2.0 for commercial use) to the Sale Parcel, (ii) a Class A development permit amending the Master Plan to allow for such transferred density in addition to the 71.6 residential SFEs and 9.0 commercial SFEs remaining available for the Sale Parcel under the Master Plan (the “Master Plan Amendment”), (iii) a Class A development permit acceptable to Developer allowing for the development of the Sale Parcel to accommodate: a four star, flagged, luxury hotel containing approximately 150 rooms; approximately 110,000 square feet of residential condominiums; approximately 11,000 square feet of commercial; and approximately 10,300 square feet of Guest Services and Support Facilities (as defined in the Master Plan) space for acquisition and use by Owner (the “Permit”), (iv) such permit as may be required by the Town to allow one or more temporary structures accommodating Owner’s administration functions necessary or appropriate for the operation of the Breckenridge Ski Resort to be placed in acceptable locations on the Sale Parcel or elsewhere within the Property and maintained in such locations until the proposed Guest Services Spaces are completed and ready for occupancy by Owner, and (v) a Class B subdivision permit approving the subdivision of the Property to create the Sale Parcel; and (b) the passage of any time periods within which any referendums, appeals or other challenges to such approvals must be brought, without any such referendums, appeals or other challenges having been filed, commenced or asserted, or, if filed, commenced or asserted, after any such appeal, referendum or challenge is resolved with affirmation that the Development Agreement is effective, Developer shall: (A) pay \$125,000 to the Town to be applied to the improvement and maintenance of the Town’s Cucumber Gulch property or as otherwise directed by the Town Council; and (B) pursuant to the terms of the IGA, pay the then-current price per TDR for each TDR required to support the total residential and commercial density authorized by the Permit minus the residential density of 71.6 SFEs and the commercial density of 9.0 SFEs remaining available for the Sale Parcel under the Master Plan.

2. Pursuant to Subsection 9-1-19:39.I.(2) of the Development Code, the Town’s Planning Commission is hereby authorized to review and approve, within 1 year of the Effective Date and subject to compliance with all other applicable development policies of the Town, both an application for the Master Plan Amendment and an application for the Permit.

3. Upon approval of the Master Plan Amendment and the Permit, the Developer is hereby authorized to process the transfer to the Sale Parcel of up to 62 TDRs providing for up to 60 residential SFEs and 2.0 commercial SFE, pursuant to the terms of the IGA.

4. The requirements of Section 9-3-8 of the Breckenridge Town Code may be decreased for Developer's proposed development of the Sale Parcel to no less than .85 spaces per hotel room, if the Planning Commission finds that the written analysis prepared by a qualified parking consultant and paid for by Developer supports such decrease. Further, the Planning Commission is hereby authorized to review and approve, within 1 year from the Effective Date, an amendment to the Master Plan providing for parking in accordance with the foregoing, which will be less than required by the Breckenridge Town Code.

5. Subject to the Department's receipt of adequate assurances of or security for completion of the authorized infrastructure improvements or return of the Sale Parcel generally to the condition it was in before the commencement of any work, the Department, after final approval of the Master Plan Amendment and the Permit, is hereby authorized to permit the demolition of Administration Facilities and the excavation for and construction of infrastructure improvements, including, but not limited to, construction of storm water management facilities, relocation of utilities, and site excavation, after issuance of the Permit but before issuance of a building permit.

6. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to the Property (collectively, "laws"), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town's Development Code, Subdivision Standards and other land use laws, as the same may be in effect from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of the Sale Parcel which is the subject of this Agreement, the Master Plan Amendment and the Permit shall be done in compliance with the then-current laws of the Town.

7. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the Town to adopt or amend any Town law, including, but not limited to the Town's: (i) Development Code, (ii) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

8. Prior to any action against the Town for breach of this Agreement, Developer shall give the Town a sixty (60) day written notice of any claim by the Developer of a breach or default by the Town, and the Town shall have the opportunity to cure such alleged default within such time period.

9. The Town shall not be responsible for and the Developer shall have no remedy against the Town if the development of the Sale Parcel is prevented or delayed for reasons beyond the control of the Town.

10. Actual development of the Sale Parcel shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

11. No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

12. Developer with respect to its interests or benefits provided for in paragraphs 1, 2, 3, 4, and 5 agrees to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with such benefits under this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or wrongful intentional act or omission of Developer; any subcontractor of Developer, or any officer, employee, representative, or agent of Developer or of any subcontractor of Developer, or which arise out of any worker's compensation claim of any employee of Developer, or of any employee of any subcontractor of Developer; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Developer agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Developer. Developer also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

13. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the Agreement.

14. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.

15. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvements.

16. This Agreement shall be binding upon and inure to the benefit of Town and Developer, and their successors and assigns.

17. If and only if Developer has acquired title to the Sale Parcel, this Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado promptly after

Developer has acquired title to the Sale Parcel and all documents required to be recorded in connection with such acquisition of title have been recorded, and, thereafter, shall run with title to the Property.

18. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

19. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. The Developer and Town expressly waive their right to bring such action in or to remove such action to any other court, whether state or federal.

20. Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

If to the Town: Rick Holman, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

With a copy (which shall not constitute notice to the Town) to: Timothy H. Berry, Esq.
Town Attorney
P.O. Box 2
Leadville, CO 80461

If to the Developer: Graham Frank
Lionheart BGV Ventures, LLC
100 S. Main Street
P.O. Box 6879
Breckenridge, CO 80424

With a copy (which shall not constitute notice) to: Jessica Wasserstrom
Lionheart Capital, LLC
4218 NE 2nd Avenue, 2nd Floor
Miami, FL 33137

With a copy (which shall not constitute notice) to: John L. Palmquist, Esq.
GC Legal Strategies
2520 S. St. Paul Street
Denver, CO 80210

With a copy (which shall not constitute notice) to:

Vail Resorts Management Company
390 Interlocken Crescent
Broomfield, CO 80021
Attn: Legal Department

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given upon delivery. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

21. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

22. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the Town and the Developer have executed this Agreement as of the date first above set forth.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

TOWN OF BRECKENRIDGE

Attest:

Helen Cospolich, Town Clerk

By:_____
Rick Holman, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 201____ by Rick Holman as Town Manager and Helen Cospolich as Town Clerk of the Town of Breckenridge.

Witness my hand and official seal.
My commission expires:_____

Notary Public

LIONHEART BGV VENTURES, LLC
a Colorado limited liability company

By: _____
_____, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
201____ by _____ as the Manager of Lionheart BGV Ventures, LLC, a
Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____

Notary Public

1 ***FOR WORKSESSION/FIRST READING – DEC. 12***

2
3 COUNCIL BILL NO. _____

4
5 Series 2017

6
7 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
8 LIONHEART BGV VENTURES, LLC, A COLORADO LIMITED LIABILITY COMPANY

9
10 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
11 COLORADO:

12
13 Section 1. Findings. The Town Council of the Town of Breckenridge finds and
14 determines as follows:

15
16 A. Vail Summit Resorts, Inc. (“**Owner**”) is the owner of the Remainder of Tract C, Peak
17 8 Subdivision according to the Third Resubdivision Plat of The Remainder of Tract C, Peak 8
18 Subdivision Filing No. 1 recorded September 19, 2016 at Reception No. 1121860, Summit
19 County, Colorado (the “**Property**”).

20 B. The Property is subject to the Amendment to Amended Peaks 7 & 8 Master Plan
21 approved by Development Permit PL-2015-0444 on January 12, 2016, the Notice of Approval of
22 Master Plan for which Amendment was recorded August 30, 2016 at Reception No. 1120265 of
23 the Summit County, Colorado records (the “**Master Plan**”).

24 C. Owner and Lionheart Capital, LLC, an affiliate of Developer, have entered into an
25 agreement for the potential sale of the portion of the Property located to the east of One Ski Hill
26 Place and representing the remainder of the developable area of Planning Area B, Peak 8 Base of
27 the Master Plan (the “**Sale Parcel**”) for Developer to develop a hotel, condominiums,
28 commercial facilities, amenities and space for Owner’s use.

29 D. As owner of the Property, Owner has the right to authorize and has provided to the
30 Town written authorization for the Developer to propose an amendment to the Master Plan, to
31 request density transfers to the Sale Parcel, to request Town approval for the gross density
32 recommended by the Town’s Land Use Guidelines (“**Guidelines**”) to be exceeded as provided
33 for in Subsection 9-1-19-39A:I.(2) of the Breckenridge Town Code, and to enter into agreements
34 with the Town concerning such amendment to the Master Plan, such a density transfer, such
35 density in excess of that recommended by the Guidelines, and such other matters as the Town
36 and the Developer may agree is appropriate.

37 E. Pursuant to Chapter 9 of the Breckenridge Town Code the Town Council has the
38 authority to enter into a development agreement. Further, in connection with a master plan
39 amendment, there is no process in the Town’s Development Code for approval of density in
40 excess of that recommended by the Guidelines and the transfer of density pursuant to a
41 certificate of development rights (“**TDRs**”) issued pursuant to the Intergovernmental Agreement
42 concerning transfer of development rights between the Town and Summit County, Colorado

1 (“IGA”), and, therefore, a development agreement provides a means for such an approval and
2 transfer.

3 F. In order for Developer to develop the Sale Parcel in a manner that will include a four
4 star, flagged, luxury hotel containing approximately 150 rooms and 110,000 square feet of
5 condominiums, with the amenities and commercial services required for such a project, up to an
6 additional 60 SFEs of residential density and 2.0 SFEs of commercial density will be required
7 and an amendment to the Master Plan and authorization to acquire and transfer TDRs to
8 accommodate such density will be required.

9 G. In connection with the review of the amendment of the Master Plan, to allow for the
10 approval of a mixed use development containing not less than one hundred thousand (100,000)
11 square feet to have the off-street parking requirements of Section 9-3-8 of the Breckenridge
12 Town Code decreased, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, it
13 is required that the Breckenridge Planning Commission be authorized to approve a reduction in
14 the off-street parking requirements to no less than .85 spaces per hotel room if such reduction is
15 supported by a written analysis prepared by a qualified parking consultant and paid for by the
16 Developer.

17 H. Because there is no provision in the Breckenridge Town Code allowing site work to
18 begin prior to issuance of a building permit, in order to facilitate the beginning of vertical
19 construction of Developer’s proposed project in the spring of 2020, the Town is prepared to
20 authorize its Department of Community Development (“**Department**”) to grant permission for
21 the commencement of infrastructure improvements, including, but not limited to, demolition of
22 Owner’s administration office building and ski patrol locker building located on the Sale Parcel
23 (“**Administration Facilities**”), construction of storm water management facilities, relocation of
24 utilities, and site excavation prior to issuance of a building permit, but subject to receipt of
25 assurances of completion deemed satisfactory by the Department.

26 I. In order to accommodate Owner’s administration functions necessary or appropriate
27 for the operation of the Breckenridge Ski Resort, which currently occur in the Administration
28 Facilities, the Town acknowledges and understands that a one or more temporary structures will
29 need to be placed in acceptable locations on the Sale Parcel or elsewhere within the Property and
30 maintained in such locations until the proposed Guest Services (as defined in the Master Plan)
31 spaces to be included in Developer’s proposed development on the Sale Parcel (the “**Guest
32 Services Spaces**”) are completed and ready for occupancy by Owner and a temporary permit
33 will need to be issued. The permit referenced in this paragraph must be reviewed and approved
34 by the Town’s Planning Commission and Town Council in accordance with such permit process
35 as is required by the Department.

36 J. As the commitment encouraged to be made in connection with an application for a
37 development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code,
38 Developer has proposed a payment to the Town of \$125,000 to be applied toward the Town’s
39 improvements to and maintenance of its Cucumber Gulch property or as otherwise directed by
40 the Town Council.

41

1 K. The Town Council has received a completed application and all required submittals
2 for a development agreement, had a preliminary discussion of the application and this
3 Agreement, determined that it should commence proceedings for the approval of this Agreement
4 and, in accordance with the procedures set forth in Subsection 9-9-10(C) of the Breckenridge
5 Town Code, has approved this Agreement by non-emergency ordinance.

6 L. A proposed development agreement between the Town and the Owner addressing the
7 topics described above has been prepared, a copy of which is marked **Exhibit “A”**, attached
8 hereto and incorporated herein by reference (“**Development Agreement**”).

9 M. The Town Council had a preliminary discussion of the development agreement
10 application, and the proposed Development Agreement, as required by Section 9-9-10(A) of the
11 Breckenridge Town Code.

12 N. The Town Council determined that request for a development agreement need not be
13 referred to the Breckenridge Planning Commission for its review and recommendation.

14 O. The Town Council has reviewed the Development Agreement.

15 P. The approval of the Development Agreement is warranted in light of all relevant
16 circumstances.

17 Q. The procedures to be used to review and approve a development agreement are
18 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
19 Chapter have substantially been met or waived in connection with the approval of the
20 Development Agreement and the adoption of this ordinance.

21 Section 2. Approval of Development Agreement. The Development Agreement between
22 the Town and Lionheart BGV Ventures, LLC, a Colorado limited liability company (**Exhibit**
23 **“A”** hereto) is approved, and the Town Manager is authorized, empowered, and directed to
24 execute such agreement for and on behalf of the Town of Breckenridge.

25
26 Section 3. Notice of Approval. The Development Agreement must contain a notice in the
27 form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in
28 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code must be
29 published by the Town Clerk one time in a newspaper of general circulation in the Town within
30 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of
31 Section 24-68-103, C.R.S.

32
33 Section 4. Inapplicable Code Provision. Because the Development Agreement involves
34 constitutionally protected property rights, the Town Council finds, determines, and declares that
35 Section 1-16-15 of the Breckenridge Town Code does not apply to the Development Agreement.
36 If Section 1-16-15 of the Breckenridge Town Code is ever determined to apply to the
37 Development Agreement, the Town Council irrevocably waives any right it might have to seek
38 to void the Development Agreement based upon such determination.

Memo



To: Breckenridge Town Council Members
From: Helen Cospolich, Municipal Services Manager
Date: 12/5/2017
Subject: Town Attorney Reappointment Resolution

Council is required by Charter to appoint the Town Attorney. This is an annual appointment.

The Resolution to be considered at this meeting reappoints Mr. Timothy H. Berry as the Town Attorney for the Town of Breckenridge. His letter and agreement are included for your review.

Mr. Berry and staff will be available to answer questions.

TIMOTHY H. BERRY, P.C.

A Professional Corporation
Attorney At Law

P.O. Box 2
Leadville, CO 80461

Telephone (719) 486-1889
Facsimile (719) 486-3039

Timothy H. Berry

December 4, 2017

Town Council
Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

RE: Proposed 2018 Legal Services Agreement

Dear Mayor Mamula and Councilmembers:

My current agreement with the Town expires at the end of 2017. I would like to be considered for reappointment as the Town Attorney for 2018.

Enclosed is a proposed agreement for 2018. There are no important substantive changes in the proposed agreement from last year's contract.

I look forward to continuing my relationship with the Town. I will be happy to discuss these proposed agreement with you on Tuesday.

Very truly yours,



Timothy H. Berry

THB

RESOLUTION NO. _____

SERIES 2017

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2018

WHEREAS, the Town of Breckenridge desires to enter into a Town Attorney Agreement with Timothy H. Berry, P.C. for 2018;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The Town Attorney Agreement with Timothy H. Berry, P.C. for 2018, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, is hereby approved by the Town Council.

Section 2. The Mayor of the Town of Breckenridge be and hereby is authorized, empowered and directed in the name of the Town of Breckenridge and on behalf of its Town Council to make, execute and deliver the Town Attorney Agreement attached hereto as Exhibit "A".

RESOLUTION ADOPTED AND APPROVED this 12th day of December, 2017.

ATTEST:

TOWN OF BRECKENRIDGE

Helen J. Cospolich, Town Clerk

Eric S. Mamula, Mayor

APPROVED IN FORM

Town Attorney Date

TOWN ATTORNEY AGREEMENT

This Agreement (“**Agreement**”) is made and entered into this _____ day of _____ 20__, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and TIMOTHY H. BERRY, P.C., a Colorado corporation (“**Attorneys**”).

WITNESSETH:

1. The Town does hereby employ and retain the Attorneys as Town Attorney for the period commencing January 1, 2018 and ending December 31, 2018. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.
2. The Attorneys accept such employment and agree to perform the duties required of it as Town Attorney in a competent and professional manner.
3. The Attorneys are hired to, and shall perform, the following duties:
 - A. Act as legal advisor to, and be the attorney and counsel for, the Town Council.
 - B. Advise any Town officer, department head, or staff member in matters relating to his or her duties. To facilitate the performance of this duty, Timothy H. Berry, President of Attorneys, shall be available in the Town Hall offices from 9:00 a.m. to 4:30 p.m. each Tuesday, except on those Tuesdays when Timothy H. Berry is to attend a Town Council or Planning Commission meeting, in which event he shall be available until the conclusion of such meeting.
 - C. Prepare and review ordinances, contracts, and other written instruments when requested by the Town Council, municipal officials, or staff members, and promptly give its opinion as to the legal consequences thereof.
 - D. Call to the attention of the Town Council, Town officials, and staff members all matters of law, and changes and developments therein, which affect the Town.
 - E. Have Timothy H. Berry attend all regular and special meetings of the Town Council, unless his attendance at such meetings is not required.
 - F. Have Timothy H. Berry attend regular and special Town Planning Commission meetings when requested to do so by the Town staff or the Planning Commission.
 - G. Have Timothy H. Berry attend meetings of the Breckenridge Open Space Advisory Commission when requested to do so by the Town staff or the Open Space Advisory Commission.
 - H. Have Timothy H. Berry attend meetings of the Town’s Liquor and Marijuana Licensing Authority when requested to do so by the Town staff or the Liquor and Marijuana Licensing Authority.

2018 TOWN ATTORNEY AGREEMENT

- I. Unless otherwise directed by the Town Council, the Attorneys shall represent the Town in any litigation in state or federal courts or before administrative agencies.
4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of \$190.00 per hour for each hour of time, whether litigation or non-litigation, expended by Timothy H. Berry (whether in the Town's offices or the Attorneys' offices). Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with litigation matters including, but not limited to, the cost of subpoenas and witness fees. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorney for such services. The Attorneys shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorneys' monthly statement for services rendered shall be mailed to the Town on or before the fifth day of each month and shall be paid by the Town in the normal course of the Town's business.
5. Notwithstanding the provisions of Paragraph 4 of this Agreement, legal services performed by the Attorneys for the Town that are to be reimbursed by third parties (such as real estate developers or property owners) shall be billed at the rate of \$220.00 per hour. Such services shall be separately billed and accounted for as directed by the Final Director of the Town.
6. The Attorneys shall not bill the Town for travel time to and from Attorneys' Leadville office and Breckenridge. In lieu thereof, the Town shall pay to the Attorneys a mileage allowance of \$0.25 per mile round trip for each regularly scheduled trip made on Town business by Attorneys.
7. The Attorneys shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$1,000,000.00 yearly aggregate.
8. The Attorneys shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees.
9. The Attorneys understands that: (i) Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Attorneys are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorneys are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorneys are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Attorneys or some other entity. Attorneys agree to indemnify and hold Town harmless from any liability resulting from Attorneys' failure to pay or withhold state or federal taxes on the compensation paid hereunder.

2018 TOWN ATTORNEY AGREEMENT

10. The Attorneys shall devote so much of the firm’s time to the business of the Town as may be required to assure proper representation of the Town, but the Attorneys shall not be prevented from taking other employment by reason of this Agreement; provided, however, that the Attorneys shall not enter into other contractual or business relationships, nor undertake to represent a client, when such contract, business relationship, or representation would create a conflict of interest as to Attorneys’ continued representation of Town.
11. The Attorneys understand and acknowledge that the firm serves at the pleasure of the Town Council, and that this Agreement may be terminated at any time by the Town Council, without liability to the Attorneys for breach, and without the need for either cause for the termination or a hearing.
12. Throughout the extended term of this Agreement, Attorneys shall not:
 - A. knowingly employ or contract with an illegal alien who will perform work under this Agreement; or
 - B. enter into a contract with a subcontractor that fails to certify to Attorneys that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Attorneys have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Colorado Department of Labor and Employment employment verification program. As used in this provision: (i) the term “E-Verify Program” means the electronic employment verification program created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program; and (ii) the term “Colorado Department of Labor and Employment employment verification program” means the program established by Section 8-17.5-102(5)(c), C.R.S.

Attorneys are prohibited from using E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.

If Attorneys obtain actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Attorneys shall:

- A. notify such subcontractor and the Town within three days that Attorneys have actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

- B. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Attorneys shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Attorneys shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Attorneys violate any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section 12, the Town may terminate this Agreement for a breach of the contract. If this Agreement is so terminated, Attorneys shall be liable for actual and consequential damages to the Town.

- 13. The Town shall contract with another attorney or law firm to handle the prosecution of municipal ordinance violations in the Town’s Municipal Court, and appeals from the judgments of such court. Such services are excluded from this Agreement.

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

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

TIMOTHY H. BERRY, P.C., a Colorado
corporation

By: _____
Timothy H. Berry, President

100-2-0\2018 Retainer Agreement (12-04-17)

2018 TOWN ATTORNEY AGREEMENT

Page 5 of 5

Memo



To: Breckenridge Town Council Members
From: Helen Cospolich, Municipal Services Manager
Date: 12/5/2017
Subject: Prosecuting Attorney Reappointment Resolution

Council is required by Charter to appoint an assistant to the Town Attorney as necessary. It has been tradition to appoint the Town of Breckenridge Prosecuting Attorney, specifically for Municipal Court, separate from the Town Attorney. This position is required to be reappointed on an annual basis.

The Resolution to be considered at this meeting reappoints Mr. Robert Gregory, of West Brown Huntley PC, as the Prosecuting Attorney for the Breckenridge Municipal Court. His agreement is included for your review. Mr. Gregory is requesting a \$10/hour increase in compensation for this year, which will be his third with the Town.

If approved, the term will begin January 1, 2018. Mr. Gregory and staff will be available to answer questions.

LAW OFFICES
WEST BROWN HUNTLEY PC
100 SOUTH RIDGE STREET, SUITE 204
POST OFFICE BOX 588
BRECKENRIDGE, COLORADO 80424
TELEPHONE (970) 453-2901
FAX (970) 453-0192
WWW.WESTBROWN.COM

STEPHEN C. WEST
FELICE F. HUNTLEY
ROBERT N. GREGORY

D. WAYNE BROWN
RETIRED

JILL D. BLOCK
Paralegal

November 15, 2017

Mayor Eric Mamula
Breckenridge Town Council
150 Ski Hill Rd.
Breckenridge, CO 80424

Re: Breckenridge Municipal Court Prosecutor

Dear Mayor Mamula:

I am writing to express my interest in continuing to serve the Town of Breckenridge as the prosecutor for Breckenridge Municipal Court. My current annual contract with the Town expires on December 31, 2017. I have submitted a proposed contract for year 2017 with this letter. Under the proposed contract, I am requesting a modest increase of \$10 per hour in my hourly rate, which would put my hourly rate at \$125 for year 2018. The proposed rate increase is reasonable and would put the Town of Breckenridge's rate on par with what other comparable mountain communities pay for the same services. The remaining terms of the proposed contract contain no material changes.

The role of prosecutor is one that I take great pride in, as I believe it is critical to upholding the integrity of the justice system in our community. It takes a unique set of skills to effectively represent the law enforcement goals of the community and protect victims of crime, while respecting the rights of criminal defendants. I hope you and Town Council have the opinion that I have served the Town well in this capacity.

I plan on attending the work session and/or meeting where my re-appointment is considered. I welcome any feedback you are willing and able to provide and will be happy to address any of Councils' questions or concerns.

Sincerely,



Robert N. Gregory, Esq.

1 **FOR WORKSESSION/ADOPTION – December 12**

2
3
4 RESOLUTION NO. ____

5
6 SERIES 2017

7
8
9 A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY
10 SERVICES WITH ROBERT GREGORY OF WEST BROWN HUNTLEY PC FOR 2018

11
12
13 WHEREAS, the Town of Breckenridge desires to enter into a Municipal Court Prosecutor
14 agreement with WEST BROWN HUNTLEY PC for 2018;

15
16 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
17 BRECKENRIDGE, COLORADO:

18
19 Section 1. The Municipal Court Prosecutor agreement for 2018, a copy of which
20 is attached hereto as Exhibit "A" and by this reference made a part hereof, is
21 hereby approved in substantially the form attached as Exhibit "A" by the Town
22 Council.

23
24 Section 2. The Mayor of the Town of Breckenridge is authorized, empowered
25 and directed in the name of the Town of Breckenridge and on behalf of its Town
26 Council to make, execute and deliver the Municipal Court Prosecutor Agreement
27 in substantially the form attached hereto as Exhibit "A".

28
29 Section 3. Minor changes to or amendments of the approved agreement may be made
30 by the Town Manager if the Town Attorney certifies in writing that the proposed changes
31 or amendments do not substantially affect the fee to paid by the Town pursuant to the
32 approved agreement, or the essential elements of the approved agreement.

33
34
35 RESOLUTION ADOPTED AND APPROVED this ____ day of _____, 2017.

36
37
38 ATTEST:

TOWN OF BRECKENRIDGE

39
40
41 _____
42 Helen J. Cospolich, Town Clerk

Eric S. Mamula, Mayor

43
44
45 APPROVED IN FORM

46
47
48 _____
49 Town Attorney

Date

MUNICIPAL COURT PROSECUTOR AGREEMENT

This Agreement ("Agreement") is made and entered into this _____ day of December, 2017, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and WEST BROWN HUNTLEY P.C., a Colorado professional corporation ("Attorneys").

WITNESSETH:

1. The Town does hereby employ and retain the Attorneys to act as the prosecutor in the Town's Municipal Court ("Prosecutor") for the period commencing January 1, 2018 and ending December 31, 2018. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.

2. The Attorneys accept such employment and agree to perform the duties required of it as Prosecutor in a competent and professional manner.

3. The Attorneys are hired to, and shall perform, the following duties:

A. Prosecute all matters brought in the Town's Municipal Court ("Municipal Court"), including having Robert Gregory, or another competent prosecuting attorney, appear on behalf of the Town in each session of the Municipal Court, which sessions are generally scheduled on the second and fourth Wednesday of each month, with additional sessions scheduled as required by the Municipal Court's schedule.

B. Unless otherwise requested by the Town, represent the Town in any appeals of Municipal Court matters.

C. Advise any Town officer, department head or staff member in matters relating to Municipal Court.

D. Have Robert Gregory attend Town Council or other Town meetings when requested to do so by the Town Council or Town staff.

E. Prosecute disciplinary actions against liquor licensees before the Town of Breckenridge Liquor Licensing Authority.

F. Prosecute disciplinary actions against marijuana licensees before the Town of Breckenridge Marijuana Licensing Authority.

4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of One Hundred Twenty Five Dollars (\$125.00) per hour for each hour expended by Robert Gregory on matters related to the Municipal Court. Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with Municipal Court matters including, but not limited to, the cost of subpoenas, witness fees and photocopying costs incurred

outside of Attorneys' office, and in the event any of those expense are chargeable to any defendant, defense attorney, or other third party under the Colorado Municipal Court Rules of Procedure or through common custom, the Attorneys agree to charge such amount to such third party, rather than seeking reimbursement for such items from the Town. It will occasionally be necessary and appropriate for the Attorneys' paralegals or support staff to perform services on certain matters related to the Municipal Court rather than the Attorneys, which shall be billed at a rate of Eighty Dollars (\$80.00) per hour. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorneys for such services, and the Town shall provide the Attorneys with a portable laptop computer and remote access to court software (Justware). The Attorneys shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorneys' monthly statement for services rendered shall be mailed to the Town on or before the fifth day of each month and shall be paid by the Town not later than the 15th day of each month.

5. The Attorneys shall not bill the Town for travel time to and from the Municipal Court. In the event that any other travel is required as part of Attorneys' duties, such travel shall be billed at the hourly rate set forth above.

6. The Attorneys shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$1,000,000.00 yearly aggregate.

7. The Attorneys shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees.

8. The Attorneys understand that (i) Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Attorneys are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorneys are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorneys are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Attorneys or some other entity. Attorneys agree to indemnify and hold Town harmless from any liability resulting from Attorneys' failure to pay or withhold state or federal taxes on the compensation paid hereunder.

9. The Attorneys shall devote so much of the firm's time to the business of the Town as may be required to assure proper representation of the Town, but the Attorneys shall not be prevented from taking other employment by reason of this Agreement. The Town understands that the Attorneys represent clients, in the past, present and future, which have business with and against other Departments within the Town government, including, but not limited to, the Department of Community Development, the Planning Commission and the Town Council. Pursuant to Rule 1.7 of the Colorado Rules of Professional Conduct, the Town hereby waives any conflict presented by the Attorneys' representation of clients where a Department within the Town government is an adverse party, so long as (i) there is no direct conflict with Breckenridge Municipal Court; (ii) the Attorneys reasonably believe they will be able to provide competent and diligent representation to each affected client; and (iii) the representation is not prohibited by law.

10. The Attorneys understand and acknowledge that the firm serves at the pleasure of the Town Council, and that this Agreement may be terminated at any time by the Town Council, without liability to the Attorneys for breach, except liability for compensation due the Attorneys for services performed prior to the termination, and without the need for either cause for the termination or a hearing.

11. Throughout the extended term of this Agreement, Attorneys shall not:

A. knowingly employ or contract with an illegal alien to perform work under this Agreement; or

B. enter into a contract with a subcontractor that fails to certify to Attorneys that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Attorneys have verified or have attempted to verify through participation in the Federal Basic Pilot Program that Attorneys do not employ any illegal aliens; and if Attorneys are not accepted into the Federal Basic Pilot Program prior to the extension of the term of this Agreement, Attorneys shall apply to participate in the Federal Basic Pilot Program every three months thereafter, until Attorneys are accepted or this Agreement has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.

Attorneys are prohibited from using Federal Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

12. If Attorneys obtain actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Attorneys shall:

A. notify such subcontractor and the Town within three days that Attorneys have actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Attorneys shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Attorneys shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Attorneys violate any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section 13, the Town may terminate this Agreement for a

breach of the contract. If this Agreement is so terminated, Attorneys shall be liable for actual and consequential damages to the Town.

13. Attorneys may contract with another qualified attorney to act as a substitute prosecutor in the event that Robert Gregory is unavailable to attend any Municipal Court session. The Attorneys shall pay such substitute prosecutor directly at the hourly rate set forth in this Agreement, and the Town shall reimburse Attorneys for such costs.

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

ATTEST:

TOWN OF BRECKENRIDGE

Town Clerk

Eric Mamula, Mayor

WEST BROWN HUNTLEY P.C.

By: Robert Gregory, Attorney



Memo

To: Breckenridge Town Council Members

From: Laurie Best-Community Development Department
Nichole Rex-Community Development Department

Date: 12/4/2017

Subject: A RESOLUTION APPROVING THE "TOWN OF BRECKENRIDGE HOUSING GUIDELINES (DECEMBER 12, 2017)"

On November 28th, the Council approved a new master template for a deed restriction (Amended and Restated Residential Housing Restriction and Notice of Lien) that is based on the Blue 52 deed restriction. This updated deed restriction will be available for owners of existing deed restricted units to opt into, and also for use when the Town moves forward with new developments. Among other things, the new template includes a revised appreciation formula, caps on sales expenses that may be added to sale price, right of acquisition to preserve affordability, and rental restrictions. One of the other, and most significant changes, is the reliance on the **Guidelines** for details and as a mechanism to amend/update the covenant. The goal of the Guidelines is to formalize the administrative rules, regulations, policies, and standards that will be used by staff to interpret, implement, and enforce various housing covenants. The Guidelines will be reviewed periodically and updated/amended when necessary.

Because the new deed restriction that was approved on November 28th points to Guidelines, and the Town has never adopted Housing Guidelines, staff has prepared an initial set of Housing Guidelines for Councils' endorsement. We are currently working with owners in several neighborhoods who are considering opting into the new template and it is important to provide them with the Town's initial Guidelines so they can have all the information necessary to consider the impacts of opting into the new template or keeping their existing deed restriction.

The proposed Guidelines are attached. It is anticipated that these Guidelines will be amended periodically. These Guidelines are consistent with the Blue 52 Guidelines which were approved in October by the Breckenridge Housing Authority.

It should be noted that neither the Blue 52 Guidelines or the proposed Town of Breckenridge Guidelines include any provision for early retirement. We would like input from the Council on this issue. If there is consensus we can incorporate that in the Guidelines to be adopted.

Currently in the Blue 52, Valley Brook, Vic's Landing, and Maggie Placer neighborhoods a person over 65 who has lived in their deed restricted unit for at least 7 years is permitted to fully retire and remain in their deed restricted unit. There are no provisions for early retirement in those newer neighborhoods. Several other older

neighborhoods (Wellington, Lincoln Park, Gibson Heights, and Vista Point) have always allowed for semi-retirement, specifically a person age 55 may decrease their work from 30 hours/week down to 15/week and remain in the unit as a qualified occupant. To date, long time employees retiring and staying in their unit has not been a significant issue in those older neighborhoods, but because many owners have been in their deed restricted unit for more than 7 years there is considerable risk that we will lose employee occupied deed restricted units to retirement. It should be noted that approximately half of the owners in Wellington 1 have been in their unit more than 7 years, some as long as 20 years, which put those units at risk. The retirement policies from other communities are below.

Aspen	For employee housing, occupants must work full time until they reach the age of full retirement benefits per Social Security (currently 65-67)
Vail	Employees may fully retire at age 60 if they have occupied the unit for 5 years-no provision for semi-retirement prior to age 60
Summit County	Full retirement OK at age 65 if in the unit for previous 7 years-no provision for semi-retirement (note the BOCC will be re-reviewing the retirement policy in January)

Recommendation:

We are happy to do further research on the retirement risk and report back. But, at this time, given that our need for workforce housing is so significant, staff does not recommend adding an allowance for early retirement (age 55) to Blue 52 or the Town's Housing Guidelines unless there has been a long, extensive work history (20 +/-years). We look for you feedback on this issue.

Staff recommends approval of the initial Housing Guidelines as presented.

1 ***FOR WORKSESSION/ADOPTION – DEC. 12***

2
3 RESOLUTION NO. ____

4
5 Series 2017

6
7 A RESOLUTION APPROVING THE “TOWN OF BRECKENRIDGE HOUSING
8 GUIDELINES (DECEMBER 12, 2017)”

9 WHEREAS, the Town staff has prepared and submitted to the Town Council the “Town
10 of Breckenridge Housing Guidelines (December 12, 2017),” a copy of which is marked **Exhibit**
11 **“A”**, attached to this resolution, and incorporated herein by reference; and
12

13 WHEREAS, the “Town of Breckenridge Housing Guidelines (December 12, 2017)” are
14 administrative rules, regulations, policies, and standards that will be used by the staff to interpret,
15 implement, and enforce various housing covenants held by the Town; and
16

17 WHEREAS, the Town Council has reviewed the “Town of Breckenridge Housing
18 Guidelines (December 12, 2017),” and finds and determines that such document should be
19 approved.
20

21 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
22 BRECKENRIDGE, COLORADO:
23

24 Section 1. The “Town of Breckenridge Housing Guidelines (December 12, 2017)”
25 (**Exhibit “A”** hereto) are approved.
26

27 Section 2. This resolution is effective upon adoption.
28

29 RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2017.
30

31 TOWN OF BRECKENRIDGE
32

33
34
35 By: _____
36 Eric S. Mamula, Mayor
37

38 ATTEST:
39
40
41

42 _____
43 Helen Cospolich, CMC,
44 Town Clerk
45

1 APPROVED IN FORM

2

3

4

5

6 _____
Town Attorney Date

7

Approved by the Town of Breckenridge

Signature

Date

THE TOWN OF BRECKENRIDGE HOUSING GUIDELINES

December 12th, 2017

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INTRODUCTION

Pursuant to Article 10 of the Amended and Restated Residential Housing Restriction and Notice of Lien adopted by Resolution No.32, Series 2017(Restriction) the Town of Breckenridge (Town) has the right to periodically review and amend certain provisions of the Restriction through Guidelines adopted by the Town. The goal of these Guidelines is to formalize the administrative rules, regulations, policies, and standards that will be used by staff to interpret, implement, and enforce the Restriction. The provisions that may be amended in the Guidelines include:

- A. Article 1 (Definitions);
- B. Article 5 (Ownership Restrictions);
- C. Article 6 (Use Restrictions);
- D. Article 7 (Resale of a Unit);
- E. Article 8 (Foreclosure)

These Guidelines may be amended from time to time and any amendments made to these Guidelines shall be effective immediately upon approval by the Town.

ARTICLE 1-DEFINITIONS

Assets

Assets means the sum of all real and personal property, money, and other things of value owned or controlled by a person at the time of his or her purchase or lease of a Unit. Applicants will be required to complete a Buyer Qualification Application and provide a comprehensive list of family assets and liabilities. Applicants will be disqualified if assets exceed \$225,000. Some assets will be exempt, such as primary residence equity, retirement accounts, health savings and college savings accounts.

Eligible Household (Income)

Income that will be subject to the income test/cap for a Unit includes the income of all person(s) listed on the deed with the exception of non-occupant co-signers. Documents that will be used to determine the income of a household may include, but are not limited to:

- W2 forms – (income from box #5)
- Federal Tax Returns
- Employment Verification Forms
- Most Recent Pay Stubs

ARTICLE 5-OWNERSHIP RESTRICTIONS

5.3 Compliance

An Owner shall submit any information, documents, or certificates requested from time to time by the Town (or its Agent) with respect to the occupancy and use of the Owner's Unit that the Town reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Restriction. Such information shall be submitted to the Town within such reasonable time period as the Town may establish. Documents to be requested can include, but are not limited to:

- Affidavit of Compliance
- Asset Accounting Form
- Driver's License
- Employer Verification Form
- Income Verification Form
- Tax Returns

5.4 Appreciating Limiting Promissory Note and Deed of Trust

See Exhibit A for the Appreciating Limiting Promissory Note and Exhibit B for the Deed of Trust.

ARTICLE 6-USE RESTRICTIONS

(Left Blank Intentionally)

Currently, there are no updates to Article 6 of the Restriction.

ARTICLE 7-RESALE OF A UNIT

7.3 Capital Improvements-addition to resale price

The only Capital Improvements that may be reimbursed (added into the resale calculation) at time of resale are improvements made by the owner that increase energy efficiency or water conservation or improvements that result in the addition of garage and/or storage or the finishing of unfinished space. The amount that may be added into the resale calculation is capped at ten percent (10%) of the original Purchase Price for a residential unit paid to the developer by the first unit owner. Capital Improvements made by previous unit owners shall be counted against the cap in determining the amount of Capital Improvements to be allowed for a selling unit owner.

In calculating the amount of Capital Improvements to be allowed under this section, only the selling unit owner's actual out-of-pocket costs and expenses for labor and materials shall be eligible for inclusion, provided, however, that if the selling unit owner purchases only materials and does not pay any third party for labor, then such amount to be allowed shall include an amount attributable to the selling unit owner's personal labor or "sweat equity", which shall be determined by: (i) multiplying the amount paid for materials times two (2) as compensation for the selling unit owner's personal labor in making the Improvements; and (ii) adding to such sum the amount paid for materials.

A selling unit owner must submit to the Town prior to selling the residential unit a copy of a development permit or other permit and a certificate of occupancy or compliance issued by the Town for the improvements that demonstrates that the improvements were made/completed by the unit owner during the unit owner's period of ownership of the residential unit, together with copies of invoices, receipts or other similar evidence of the costs and expenses for labor and materials, or materials alone. The Town shall provide each selling unit owner who makes a proper submission for allowance of Capital Improvements with a receipt or certificate verifying the amount of Capital Improvements and, after such receipt or certificate is issued by the Town, no subsequent unit owner may challenge the allowed amount of Capital Improvements as described in the receipt or certificate issued by the Town.

Expenses related to long term maintenance subject to an approved schedule and inclusion of a depreciation schedule may be considered as permissible Capital Improvement at a future date.

ARTICLE 8-FORECLOSURE

(Left Blank Intentionally)

Currently, there are no updates to Article 8 of the Restriction.

APPROVED December 12, 2017

TOWN OF BRECKENRIDGE

By: _____
Eric S. Mamula, Mayor

ATTEST:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Eric S. Mamula, as Mayor, and Rick G. Holman, as Town Manager, of the Town of Breckenridge.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL

THIS IS A LEGAL INSTRUMENT IF NOT UNDERSTOOD, LEGAL, TAX, OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING

DEED OF TRUST
(Due on Transfer – Strict)

(_____)

THIS DEED OF TRUST is made this _____ day of _____, 2017 between _____ (Borrower), whose address is _____ and the Public Trustee of the County in which the Property (see paragraph 1) is situated (Trustee); for the benefit of the TOWN OF BRECKENRIDGE (Lender), whose address is P.O. Box 168, Breckenridge, CO 80424.

Borrower and Lender covenant and agree as follows:

1. **Property is Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following described property located in the County of Summit, State of Colorado:

LOT _____ BLOCK _____ SUBDIVISION _____, _____, according to the map thereof recorded or to be recorded in the records of the Clerk and Recorder of the County of Summit, Colorado and as defined and described in the _____ Declaration to be recorded in the Records, subject to the rules and regulations of the Association (as hereinafter defined), together with any “Common Elements” of the Townhomes, in each case that are appurtenant to such Unit (Property).

2. **Note; Other Obligations Secured.** This Deed of Trust is given to secure to Lender Borrower’s obligations as set forth in the Appreciation Limiting Promissory Note of even date herewith. Without limiting the generality of the preceding sentence, this Deed of Trust secures Borrower’s obligations to Lender as set forth in the Amended and Restated Residential Housing Restriction And Notice Of Lien For “_____” Town Of Breckenridge, Summit County, Colorado, dated _____, 2017 and recorded _____, 2017 under Reception No. _____ of the records of the Clerk and Recorder of Summit County, Colorado.

3. **Title.** Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date.

4. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

5. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this paragraph if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

6. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on Leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership, or occupancy of the Property.

7. **Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under paragraph 6 above, if the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to:

- (a) any general or special taxes or ditch or water assessments levied or accruing against the Property;
- (b) the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
- (c) sums due on any prior lien or encumbrance on the Property;
- (d) if the Property is a leasehold or is subject to a lease, all sums due under such lease;
- (e) the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of the Lender or holder of the certificate of purchase;
- (f) all other costs and expenses allowable by the evidence of debt or this Deed of Trust, and
- (g) such other costs and expenses which may be authorized by the court of competent jurisdiction.

Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from the Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any actions hereunder.

8. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

9. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

10. Remedies Cumulative. Each Remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 18 Transfer of the Property; Assumption. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

12. Notice. Except for any notice required by law to be given in another manner: (a) any notice to Borrower provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such notice by first-class mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first-class mail, addressed to Lender at Lender's address stated herein or at such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower and Lender when given in any manner designated herein.

13. Governing Law; Severability. The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts

with the law, such conflict shall not affect other provisions of the Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

14. Acceleration: Foreclosure: Other Remedies. Except as provided in paragraph 18 Transfer of Property; Assumption, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrower has exercised Borrower's rights under paragraph 5 above), at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give notice to Borrower of Borrower's rights as provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county for which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcel as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the Purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order; (a) to all reasonable costs and expenses of the sale, including but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

15. Borrower's Right to Cure Default. Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payment due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

16. Release. Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, the Lender, upon notice in accordance with paragraph 12 (Notice) from Borrower to Lender, shall obtain , at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

17. Waiver of Exemptions. Borrower hereby waives all right of homestead and any other exemptions in the Property under state or federal law presently existing or hereafter enacted.

18. Transfer of Property; Assumption. The following events shall be referred to herein as a “Transfer”: (1) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrower, (v) the reorganization, liquidation or dissolution of the Borrower. Not to be included as a Transfer are (1) the creation of the lien or encumbrance subordinate to this Deed of Trust, (ii) the creation of a purchase money security interests for household appliances, or (iii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every transfer:

- (a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).
- (b) If a Transfer occurs and should Lender not exercise Lender’s option pursuant to this paragraph 18 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrower’s liability hereunder for the obligations hereby secured.
- (c) Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender’s right to make such election nor shall Lender be stopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender’s said rights.

19. Borrower’s Copy. Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.

EXECUTED BY BORROWER:

STATE OF COLORADO)
)ss
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before this _____ day of _____, 2017
by _____ and
_____.

Witness my hand and official seal.

My commission expires: _____

Notary Public



Memo

To: Breckenridge Town Council Members
 From: Town Attorney
 Date: 12/7/2017
 Subject: Proposed Amendment to the Town Manager's Employment Agreement

Enclosed with this memo is a proposed amendment to Rick Holman's employment agreement.

The proposed changes to Rick's current agreement are summarized as follows:

TERM OF THE AGREEMENT

Current Agreement	Amendment
<p>Specifies an "Initial Term" of two years, followed by successive automatic two year "Rollover Terms." The Rollover Terms continue indefinitely until the agreement is terminated by either Rick or the Town. Town can terminate the Agreement without liability by giving Rick at least 180 days' notice prior to end of then-current Rollover Term.</p>	<p>Establishes a fixed term of six years that began on the original effective date of Rick's agreement (January 1, 2016) and end December 31, 2021 unless either Rick or the Town elect to sooner terminate the agreement sooner.</p>

REASONS FOR TERMINATION OF THE AGREEMENT BY TOWN

Current Agreement	Amendment
<p>A. Rick resigns; B. Rick: (i) fails to maintain permanent, full-time residence in the Upper Blue Basin; (ii) is convicted of certain crimes; (iii) commits an act of gross negligence or malfeasance in office as determined by the Town Council; (iv) is found to have commitment fraud in connection with the information provided to the Town Council when he was originally hired as the Town Manager; or (v) is disabled and unable to perform his duties for more than 90 consecutive days.</p>	<p>Adds Rick's breach of the contract to reasons Town can terminate contract without liability for breach.</p>

<p>C. The Town Council simply elects to terminate Rick agreement without being liable for a breach of the agreement by the vote of a majority of the Council as a public meeting. The termination right is required by Section 7.1 of the Town Charter.</p>	
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SEVERANCE COMPENSATION/SEVERANCE BENEFITS

Current Agreement	Amendment
<p>A. If Rick resigns, he receives only his salary and benefits earned to the effective date of his resignation. Town is not required to provide any severance compensation or severance benefits.</p> <p>B. If Rick’s employment ends because he: (i) fails to maintain permanent, full-time residence in the Upper Blue Basin; (ii) is convicted of certain crimes; (iii) commits an act of gross negligence or malfeasance in office as determined by the Town Council; (iv) is found to have commitment fraud in connection with the information provided to the Town Council when he was originally hired as the Town Manager; or (v) is disabled and unable to perform his duties for more than 90 consecutive days, then he receives his salary and benefits earned to the effective date of his resignation, but the Town is not required to provide any severance compensation or severance benefits.</p> <p>C. If Rick’s employment ends without cause under Town Council’s discretionary authority under Section 7.1 of the Charter, then the Town owes Rick both severance compensation and a continuation of benefits. The amount due is determined by where in a particular “Rollover Term” termination occurs. The required severance pay is equal in amount to the total annual salary which Holman would have received during the entirety of the then-current Rollover Term, less any annual salary previously paid by the Town. In addition to the cash payment, the Town is required to continue Holman’s</p>	<p>A. No change.</p> <p>B. Adds Rick’s breach of contract to a reasons for termination by the Town without requirement to pay severance compensation or severance benefits.</p> <p>C. If Rick’s employment ends without cause under Town Council’s discretionary authority under Section 7.1 of the Charter, then the severance pay owed to Rick is the balance due for the remainder of the Term of the Agreement, not, however, to exceed 12 months’ of his annual salary. Similarly, the Town would be required to provide individual health care and life insurance for Rick for the remainder of the Term of the Agreement, not, however, to exceed 12 months from the date of his termination.</p>

individual health care and life insurance coverage for six (6) months from the effective date of termination. There is a separate method of calculating severance pay and benefits continuation if Rick is terminated without cause during the six month period immediately following the swearing in of a new Mayor.	
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Please note that under the Amendment, the maximum amount of severance compensation that would be owed to Rick would be 12 months' salary plus 12 months' of health and life insurance. This could be a savings to the Town, because under the current agreement the severance compensation could potentially be (depending where in the current Rollover Term Rick was when he was terminated) perhaps as much as 23 months' salary plus 6 months' health and life insurance.

A proposed form of resolution to approve the Amendment to Employment Agreement is also enclosed with this memo.

I will be happy to discuss this matter with you on Tuesday.

1 **FOR WORKSESSION/ADOPTION – DEC. 12**

2
3 RESOLUTION NO. _____

4
5 SERIES 2017

6
7 A RESOLUTION APPROVING AN AMENDMENT TO EMPLOYMENT AGREEMENT
8 WITH RICK G. HOLMAN
9

10 WHEREAS, the Town is a home rule municipal corporation organized and existing
11 pursuant to Article 20, Section 6 of the Colorado Constitution; and
12

13 WHEREAS, the electors of the Town have adopted the Town of Breckenridge Home
14 Rule Charter (“**Charter**”); and
15

16 WHEREAS, Section 2.1 of the Charter provides that Town government is to be a
17 “Council-Manager” form of government; and
18

19 WHEREAS, the office of Town Manager of the Town of Breckenridge was created by
20 Section 2.1 of the Charter; and
21

22 WHEREAS, pursuant to that certain Employment Agreement dated August 11, 2015
23 (“**Agreement**”), the Town Council of the Town of Breckenridge, acting for and on behalf of the
24 Town, employed Rick G. Holman (“**Holman**”) as the Town Manager pursuant to Sections 2.1
25 and 7.1 of the Charter; and
26

27 WHEREAS, the Town and Holman desire to amend the Agreement as set forth in the
28 proposed Amendment To Employment Agreement, a copy of which is marked **Exhibit “A”**,
29 attached hereto, and incorporated herein by reference; and
30

31 WHEREAS, the Town Council has reviewed the proposed Amendment To Employment
32 Agreement, and finds and determines that it would be in the best interests of the Town to
33 approve and enter into such agreement.
34

35 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
36 BRECKENRIDGE, COLORADO, as follows:
37

38 Section 1. The Amendment To Employment Agreement with Rick G. Holman (**Exhibit**
39 **“A”** hereto) is approved; and the Mayor is hereby authorized, empowered, and directed to
40 execute such agreement for and on behalf of the Town of Breckenridge.
41

42 Section 2. This resolution shall become effective upon its adoption.
43

44 RESOLUTION APPROVED AND ADOPTED this ____ day of _____, 2017.
45
46

TOWN OF BRECKENRIDGE

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney Date

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1 Amendment To Employment Agreement

2
3 This Amendment To Employment Agreement (“**Amendment**”) is made and entered into
4 at Breckenridge, Colorado between the TOWN OF BRECKENRIDGE, a Colorado municipal
5 corporation (“**Town**”) and RICK G. HOLMAN (“**Holman**”), and is effective January 1, 2018.
6

7 WHEREAS, Town and Holman entered into that certain Employment Agreement, dated
8 August 11, 2015 (“**Agreement**”), pursuant to which Town employed Holman to serve as the
9 Town Manager of the Town; and
10

11 WHEREAS, the Town and the Holman desire to amend the Agreement as hereafter set
12 forth.
13

14 NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein,
15 and intending to be legally bound, the parties agree as follows:
16

17 1. Paragraph 3 of the Agreement, entitled “Term; Termination,” is hereby amended so
18 as to read in its entirety as follows:
19

20 3. Term; Termination.
21

22 A. The term of this Agreement (“**Term**”) shall be a fixed term of six (6) years,
23 beginning on the Effective Date (January 1, 2016) and ending, subject to earlier
24 termination by either the Town or Holman as hereafter provided, on December
25 31, 2021.
26

27 B. Holman may resign his employment as the Town Manager, and thereby
28 terminate this Agreement, at any time; provided, that Holman shall give the Town
29 Council not less than one hundred eighty (180) days’ prior written notice of his
30 resignation.
31

32 C. The Town may terminate this Agreement, without being liable for breach of
33 this Agreement, for any of the following reasons. The action to terminate this
34 Agreement shall occur at a public meeting at which Holman is given an
35 opportunity to be present and to participate in any discussion concerning the
36 termination of his employment with the Town.
37

38 1. If Holman fails to maintain permanent, full-time residence in the Upper
39 Blue River Basin as required by Paragraph 8 of this Agreement.
40

41 2. If Holman is convicted of any felony offense; an offense involving
42 fraud or dishonesty; any offense related to governmental operations under
43 Article 8 of Title 18 of the Colorado Criminal Code; or if Holman
44 evidences undesirable character traits as determined by the Town Council.
45

1 3. If Holman commits an act of gross negligence or malfeasance in office
2 as determined by the Town Council, or if Holman defaults in his
3 obligations under this Agreement.
4

5 4. Upon proof of fraud, misstatement of a material fact, or omission to
6 state a material fact in connection with the information provided by
7 Holman to the Town Council as part of the Town Manager hiring process.
8 All of such information, whether provided in writing, verbally, or
9 otherwise, is deemed to be material to the Town Council's decision and
10 determination to employ Holman as the Town Manager.
11

12 5. Subject to any limitation imposed by applicable law, if Holman is
13 disabled and unable to perform the duties of the Town Manager for more
14 than ninety (90) consecutive calendar days.
15

16 D. The Town may also terminate this Agreement for any reason other than one of
17 the reasons described in Subparagraph 3C1-5, inclusive, without being liable for
18 breach of this Agreement upon the vote of the majority of the entire the Town
19 Council in accordance with the provisions of Section 7.1 of the Charter. Such vote
20 shall occur at a public meeting at which Holman is given an opportunity to be
21 present and to participate in any discussion concerning the termination of his
22 employment with the Town.
23

24 2. Paragraph 4 of the Agreement, entitled "Compensation; Retirement Plan", is hereby
25 amended to read in its entirety as follows:
26

27 4. Severance Compensation and Benefits.
28

29 A. If this Agreement is terminated by Holman's resignation as provided in
30 Paragraph 3B, then the Town shall pay Holman his salary and benefits earned to
31 the effective date of his resignation, but the Town shall not be obligated to pay
32 Holman any severance compensation or provide any other severance benefits,
33 except as provided in the Town's Employee Guidelines in effect on the date of
34 termination.
35

36 B. If this Agreement is terminated by the Town for one of the reasons described
37 in Subparagraphs 3C1 – 5, inclusive, then the Town shall pay Holman his salary
38 and benefits earned to the effective date of his termination, but the Town shall not
39 be obligated to pay Holman any severance compensation or provide any other
40 severance benefits, except as provided in the Town's Employee Guidelines in
41 effect on the date of termination.
42

43 C. If this Agreement is terminated by the Town for any reason other than one of
44 the reasons described in Subparagraph 3C1-5, inclusive, then the Town shall pay
45 Holman severance compensation and additional severance benefits as follows:

AMENDMENT TO EMPLOYMENT AGREEMENT

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1. The Town shall pay Holman a lump sum cash payment equal in amount to the total annual salary which Holman would have received during the remainder of the term of this Agreement, but in no event greater than an amount equal to twelve (12) months of his annual salary at the time of termination; and

2. In addition to the cash payment described in Subparagraph 4C1, the Town shall additionally pay to continue Holman’s individual health care and life insurance coverage for the remaining term of this Agreement, but in no event longer than twelve (12) months from the effective date of termination.

D. Any monetary compensation due to Holman pursuant to this Paragraph 4 shall be paid by the Town in full within twenty (20) days of the date of Holman’s termination.

3. Paragraph 5A of the Agreement, entitled “Compensation; Retirement Plan”, is hereby amended to read in its entirety as follows:

A. For services rendered pursuant to this Agreement, the Town agrees to pay Holman an initial annual salary of One Hundred Seventy Five Thousand Dollars (\$175,000), payable in the same manner and as such time as all other employees of the Town are paid.

4. All capitalized terms used in this Amendment shall have the same meaning as provided in the Agreement.

5. Except as expressly amended by this Amendment the Agreement shall remain in full force and effect.

Executed the date first written above.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Eric S. Mamula, Mayor

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ATTEST:

Helen Cospolich, CMC, Town Clerk

Rick G. Holman

1400-51\Amendment (12-01-17)



Memo

To: Breckenridge Town Council Members
From: Taryn Power, Deputy Town Clerk
Date: 12/5/2017
Subject: Liquor & Marijuana Licensing Authority Appointments

The Liquor & Marijuana Licensing Authority consists of five members who are appointed by the Town Council. Current members include:

J.B. Katz, Chair
Dave Blank, Vice Chair
Bill Tatro
Leigh Girvin
Tim Faust

The terms of the Authority members are four years. Terms are staggered and expire at the end of December in alternating, odd-numbered years. The three members whose terms expire this year are J.B. Katz, Bill Tatro and Tim Faust.

Ads seeking applicants recently ran in the local newspaper and on social media. Four letters of interest were received from:

Tim Faust (Incumbent)
J.B. Katz (Incumbent)
Hal Vatcher
Jack Wilkinson

Copies of their letters are attached for your review.

Three (3) seats may be appointed at this time. Appointment may be made by motion and a sample motion follows.

Sample Motion:

"I move that we appoint _____, _____ and _____ to four-year terms on the Breckenridge Liquor & Marijuana Licensing Authority."

In addition to these appointments, we are asking Council for a recommendation on how to appoint the alternate seat of this committee as approved by a recent ordinance. Turk Montepare has expressed interest in this position.

From: Timothy Faust
To: [Power, Taryn](#)
Subject: RE: LMLA Terms Expiring
Date: Monday, November 27, 2017 11:38:32 AM

Thanks Taryn. Here is mine:

Members of Breckenridge Town Council:

I have been serving on the Breckenridge Liquor and Marijuana Licensing Authority for the past year, and would like to continue to do so. I feel like I finally have my head wrapped around the process and am able to confidently contribute to the authority. I enjoy the opportunity I have been given, and if the Town Council feels that I am a good fit, I would appreciate the opportunity to continue serving the town of Breckenridge in this capacity.

Sincerely,
Timothy Faust

Timothy Faust Photography
www.timothyfaust.com
North America Toll Free: 800.501.2213
International +1 970 453 4538

PO Box 9874
Breckenridge, CO 80424
USA

-----Original Message-----

From: Power, Taryn [<mailto:tarynp@townofbreckenridge.com>]
Sent: Monday, November 27, 2017 11:20 AM
To: J.B. Katz <jbkatzlaw@gmail.com>; Timothy Faust (tfaust@timothyfaust.com) <tfaust@timothyfaust.com>; Bill Tatro (bill@snowbridgeinc.com) <bill@snowbridgeinc.com>
Subject: LMLA Terms Expiring

Good morning,

I'm writing to give you all a quick reminder that if you are interested in reapplying for the LMLA that I will need to have a letter from you by Friday.

Please let me know if you have any questions.

Taryn Power, CMC
Deputy Town Clerk
Town of Breckenridge
Municipal Services

Law Offices of J.B. Katz, P.C.

P.O. Box 5200

101 N. Main Street - Suite 3

Breckenridge, CO 80424

Telephone: 970.453.5533 Facsimile: 720.208.0630

e-mail: jbkatzlaw@gmail.com

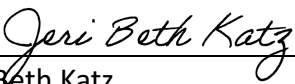
November 27, 2017

To the Mayor and Town Council:

I would like to apply for a final term with the Liquor and Marijuana Licensing Board. I have greatly enjoyed my time on the Board, in particular this last term as Chairman. During my tenure, we have answered the call to expand our authority to marijuana licenses as well as liquor licenses. As a Board, we have navigated an expanding number of violations, including two hearings that arose from the undercover drug arrests a year ago. It seems now the Town is on the cusp of a new direction as long-time establishments change hands. I know I have a lot to offer the Board if I can serve out my final term before I am term limited. To me, it feels like continuity on the Board at this time is important as the Town sees new owners and operators enter the market.

I hope the Town considers my application favorably. I look forward to sitting down with the Council for an interview.

Very truly yours,



Jeri Beth Katz

**Hal Vatcher
344 Broken Lance Drive
PO Box 9832
Breckenridge CO 80424
November 4, 2017**

**Town Clerk
Town of Breckenridge
PO Box 168
Breckenridge CO 80424**

Dear Town Clerk:

I am writing this letter to express interest in the open positions on the Liquor & Marijuana Authority. I do meet the basic requirements of being a full-time resident of the Town of Breckenridge, and an elector. As well I have no interest in any Liquor or Marijuana licensed business in Breckenridge nor anywhere else. In addition, I am retired and have the time to give to this effort.

I have no specific qualification as it relates to the position (beyond being a frequent visitor to several liquor licensed establishments in our town.) I am actively involved in Advisory Committee, as well as the Police Advisory Board. I attempt to attend Town Council Work Sessions as often as possible. I find that attending these work sessions gives me the insight to how decisions are made for our town.

Prior to retirement I was an Information Technology Executive for all my work years. This background does bring with it a good understanding of working as a team member to effect good decisions.

Thank you for the opportunity to express interest in the role. If you have any questions, feel free to contact me via my cell phone (310-594-4615) or email: hal@vatcher.com

Sincerely,

Hal Vatcher

From: [Cospolich, Helen](#)
To: [Power, Taryn](#)
Subject: FW: LMLA
Date: Tuesday, November 21, 2017 8:43:38 AM

From: Cospolich, Helen
Sent: Wednesday, November 8, 2017 4:52 PM
To: 'Jack Wilkinson'
Cc: WebsiteClerk
Subject: RE: LMLA

Hi Jack,

Thank you for your interest. We will be in touch with next steps in a couple of weeks. In the meantime, please reserve December 12th in the afternoon (after 3pm) for a possible interview with Breckenridge Town Council.

Helen Cospolich, CMC

Town Clerk/ Town of Breckenridge

150 Ski Hill Rd. - PO Box 168

Breckenridge, CO 80424

[\(970\) 547-3127](tel:(970)547-3127) main phone [\(970\) 547-3126](tel:(970)547-3126) direct line

Visit us online at www.townofbreckenridge.com.

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Keep Breck Moving

From: Jack Wilkinson [<mailto:JackW@summithousing.us>]
Sent: Wednesday, November 8, 2017 4:49 PM
To: WebsiteClerk
Subject: LMLA

To whom it may concern,

I am interested in serving on this authority/board. I am a program coordinator with Summit Combined Housing Authority and want to get more involved in the local community in a service capacity. I feel that this could be a good fit for me and would like to learn more about the level of time commitment necessary to serve the town in this role. I am a licensed attorney and have strong qualitative and quantitative skills. Please let me know if you have a formal application or would like a resume, references, etc.

Best regards,

Jack

Memo



To: Breckenridge Town Council
From: Peter Grosshuesch, Director of Community Development
Date: 12/6/2017
Subject: Planning Commission Decisions of the December 5, 2017 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, DECEMBER 5, 2017:

CLASS C APPLICATIONS:

1. Reliance Place/BIC Condo Unit RP-20 Change of Use, PL-2017-0631, 226 S Main Street. A proposal to change the use of Reliance Place/BIC Condo Unit RP-20 from commercial office use to a 3 bedroom, 1 bathroom residential workforce housing condominium. No proposed changes to the density. 1:1 FAR and 20 UPA. *Approved.*
2. Grand Colorado Peak 8 Building 3 (AKA Grand Colorado on Peak 8 East/Building 804) Exterior Material Change, PL-2017-0638, 1595 Ski Hill Rd. A proposal to modify the primary siding exterior building material from natural cedar wood lap siding to fiber cement lap siding and remove some natural stone from Grand Colorado Peak 8 Building 3. *Approved.*
3. 6th Amended Master Plan Delaware Flats Planning Area C-1 "West Braddock", PL-2017-0618, 639 Stan Miller Drive. A proposal to amend the current Master Plan for Delaware Flats Planning Area 3A to combine Parcels C, D-1A and D-1B into one single Master Plan Parcel to be labeled C-1. *Approved.*

CLASS B APPLICATIONS:

1. Searle House Renovation, Restoration, and Landmarking, PL-2017-0070, 300 E. Washington Street. A second preliminary hearing for a proposal to restore and locally landmark the historic house, remove the non-historic structures, add a full basement beneath the historic portion of the house, build a new addition with garage including an accessory apartment. Proposed above ground density of 8.71 UPA. *Continued to future meeting, date TBD.*

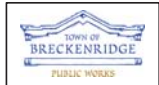
CLASS A APPLICATIONS: None

TOWN PROJECT HEARINGS: None

OTHER: None



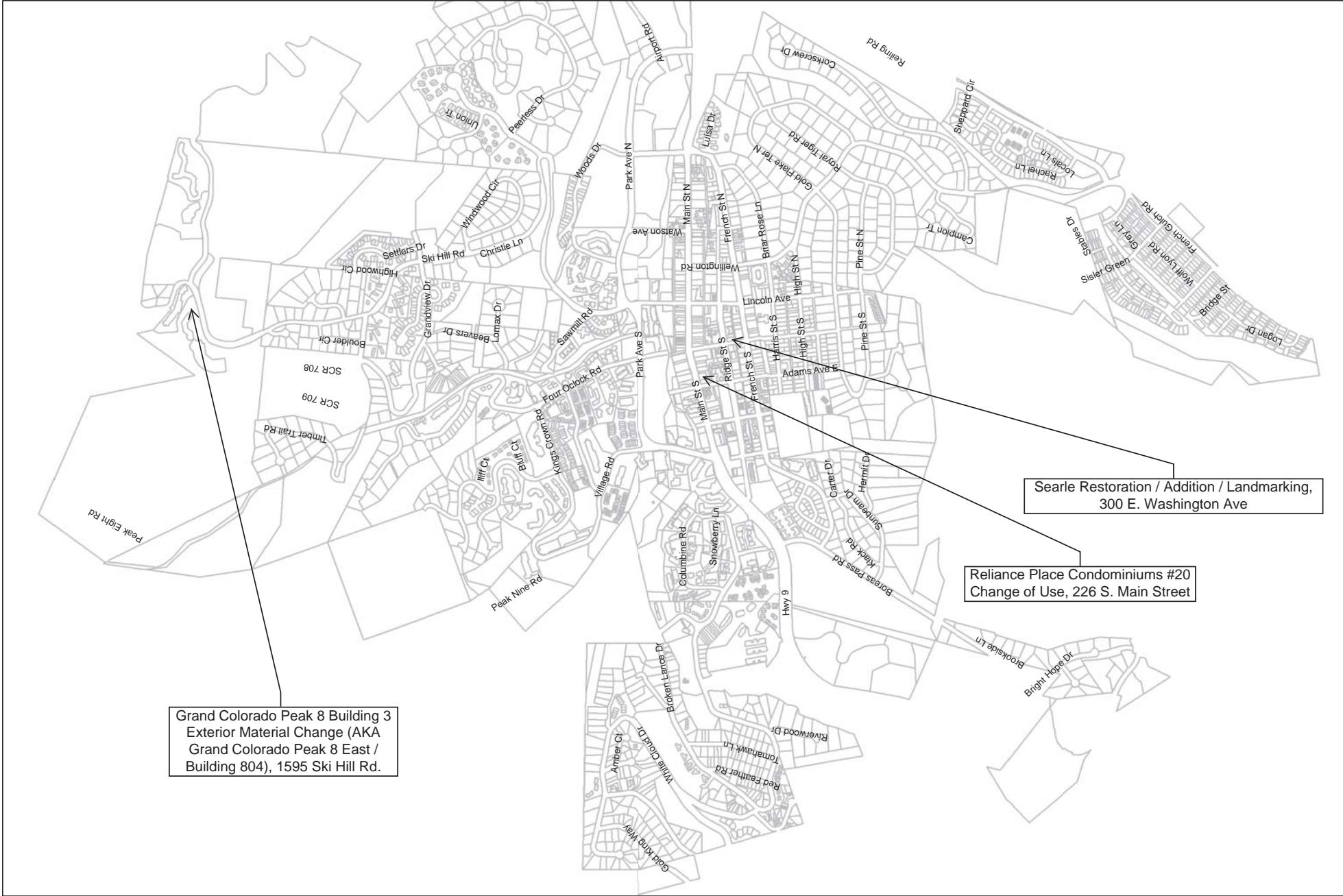
6th Amended Master Plan Delaware Flats
 Planning Area 3A, 13541 CO State Hwy 9





printed 4/11/2017

Breckenridge South



Grand Colorado Peak 8 Building 3
 Exterior Material Change (AKA
 Grand Colorado Peak 8 East /
 Building 804), 1595 Ski Hill Rd.

Reliance Place Condominiums #20
 Change of Use, 226 S. Main Street

Searle Restoration / Addition / Landmarking,
 300 E. Washington Ave

PLANNING COMMISSION MEETING

The meeting was called to order at 5:30pm by Chair Mathews-Leidal.

ROLL CALL

Christie Mathews-Leidal Jim Lamb - left at 7pm Ron Schuman
Mike Giller Steve Gerard
Dan Schroder Gretchen Dudney

APPROVAL OF MINUTES

With changes to page 2, 1st line, “we will be seeing very all buildings”, to “we will be seeing very tall buildings”, the November 21, 2017 Planning Commission Minutes were approved.

APPROVAL OF AGENDA

With changes below, the December 5, 2017, Planning Commission agenda was approved.
Moving town council report to the end of the meeting.
Remove Fireside Inn Work Session from agenda per request of the applicant’s agent.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No Comment

CONSENT CALENDAR:

1. Reliance Place BIC Building Condo Unit RP-20 Change of Use (CL), PL-2017-0631, 226 S. Main Street

A proposal to change the use of Reliance Place BIC Building Condo Unit RP-20 from commercial office use to a 3 bedroom, 1 bath residential workforce housing condominium.

2. Grand Colorado Peak 8 Building 3 (AKA Grand Colorado on Peak 8 East/Building 804) Exterior Material Change (JP), 1595 Ski Hill Rd, PL-2017-0638

A proposal to modify the primary siding exterior building material from natural cedar wood lap siding to fiber cement lap siding and remove some natural stone from Grand Colorado Peak 8 Building 3.

Mr. Lamb motioned to call up Grand Colorado, second by Mr. Schroder passed unanimously.

The Reliance Place BIC Building Change of Use was approved.

Ms. Puester presented an overview the project currently just starting construction and the surrounding buildings. Typically, exterior building materials are reviewed under Policy 5 of the Development Code. However, this property is governed by the Peak 7&8 Master Plan design standards. The design standards of the master plan state that the buildings at Peak 7 and 8 should have natural materials unless required by fire or building code to be synthetic. Natural appearing synthetic materials may only be used as exterior building materials where fire retardant materials are required by building and/or fire codes, or for elements, where in the determination of the Planning Commission, the synthetic material is indistinguishable from pedestrian level. The entirety of the language is in the staff report. As this is a decision that must be determined by the Planning Commission per the master plan, staff requests the Commission look at the proposed exterior building changes detailed in the packet where the bubbled areas are on the elevations and materials board as

well as the physical material sample comparisons of the natural siding and proposed fiber cement siding handed out this evening. Please note that staff has also changed the findings handed out this evening from those that are in the packet to reflect the 18 month Class C approval permit vesting timeframe should this be approved this evening. Existing conditions of approval for the original development permit approval for the project last year will carry over as well.

Fred Newcomer and Matt Stais, Architects:

Commissioner Questions / Comments:

- Ms. Dudney: The bubbles on the elevations and materials boards indicate changes? (Ms. Puester: Yes.) So The first level will change? (Ms. Puester: No, it will remain natural material.) (Mr. Newcomer: The material is and will remain natural wood siding, it is just a change to the detail for purpose of pointing it out to the construction team.)
- Mr. Giller: Did you consider sheen of the hardie plank vs siding? (Ms. Puester: The samples provided tonight are colored as proposed. If there are concerns, you can deny or add conditions if needed.)
- Mr. Schroder: Do you want us to walk through this should another situation come up? (Ms. Puester: Staff is not able to approve it, but it can be approved, if found acceptable, by the Planning Commission per the master plan. We need a formal weigh in on this issue which is why we requested a call up. The master plan acts as an absolute policy in this case.)
- Ms. Dudney: Do they have to comply with the master plan? (Ms. Puester: Yes. The Commission can make a determination in this instance.) Can a master plan be amended to reflect the change in a zoning code? (Ms. Puester: Yes, but they are not currently requesting an amendment. There was an amendment to the plan last year but this design standard language was not requested to be changed.)
- Mr. Schroder: Has the material been applied yet? (Ms. Puester: No, this site has an active building permit however, is just a hole in the ground right now. They are just starting construction.)
- Ms. Dudney: Maybe it is too legalistic, but does the master plan mean indistinguishable from the pedestrian level looking up or from (the materials at) the pedestrian level?
- Ms. Leidal: Although not applicable here necessarily, Policy 5R has a non-natural 25% rule. (Ms. Puester: However, that piece of the policy does not relate to fiber cement which is called out separately regarding no negative points if there is natural material such as a stone base or other accents on the building. When this piece of the policy was recently added, the Commission and Council discussion was around wildfire concern, will the fiber cement look like natural wood, would it hold up over time? The results of those work sessions led to the language we now have in the policy. Fiber cement was separated out and doesn't come into play for the 25%.) (Mr. Truckey: There was a discussion more recently with the code steering group with no change to this code provision recommended. When this was written, the Commission looked at examples in the field and most everyone was pleased with what we saw, the fiber cement siding was durable.)
- Mr. Giller: Where is the reduction and what is the percentage? (Mr. Newcomer: The owner requested the fiber siding change for cost, maintenance and longevity. There was a transition between fire code material and it created a stripe so we took advantage of the request to change material in part to get rid of the stripe.) Was stone replaced with hardie plank? (Mr. Newcomer: Yes.) How much? (Mr. Newcomer called out the chimney-like area, top portions of stone columns, pillars on deck, and grade change.) Is there anywhere you added stone? (Mr. Newcomer: No.) It looks like you value engineered out the stone and it's a loss to the project.
- Mr. Gerard: Does it go below 40 ft on the other buildings? (Mr. Stais: Yes. The much steeper grade on the site to the north affected the 40 foot line. This building however, is a much flatter site than the other buildings.)

- Mr. Lamb: We can tell the difference between hardie and natural but a typical person can't. Likes hardie as a material in part because of the fire safety up here.
- Ms. Dudney: We should not be the designer of the building. Doesn't seem like a big issue to me.
- Mr. Gerard: Hardie plank is fine. It comes off brighter but that may be the color rendering. Loss of stone is what I find unfortunate. Looks like you value engineered stone out of the project. I agree with Mr. Giller with respect to the stone. Concerned this building will look different from adjacent Buildings 1 and 2 per the land use guideline language in our staff report. I like the safety of the fire rating of hardie plank.
- Mr. Schroder: Agree with Mr. Lamb. The material looks like natural wood, has wood grain. I support the siding modification.
- Ms. Leidal: Disappointed about losing natural materials but the proposed material looks nice and meets the intent of the master plan. I support changes and staff recommendations.

Mr. Schuman made a motion to approve, seconded by Mr. Lamb.

Mr. Gerard requested to modify or discuss the motion to keep the natural stone proposed to be eliminated, no concern regarding the change from natural siding to fiber cement siding.

Commissioner Questions / Comments:

- Mr. Giller: Language regarding stone is in the master plan as increasing the quality of the building. Clearly losing that much stones reduces the quality and the master plan called for the higher quality.
- Ms. Dudney: Will we still have stone chimneys? (Mr. Stais: What Fred pointed out was not really a chimney.)

Mr. Gerard's suggested modification to the analysis was supported by Mr. Giller and Mr. Gerard. The remainder of the Planning Commission did not support the suggestion.

Mr. Schuman's motion to approve with the findings and conditions handed out this evening passed 6-1 (Mr. Gerard dissenting).

PRELIMINARY HEARINGS:

1. Searle House Renovation, Restoration and Landmarking (CK), PL-2017-0070, 300 E. Washington
Mr. Kulick presented a second preliminary hearing for a proposal to restore and locally landmark the historic house, remove the non-historic structures, add a full basement beneath the historic portion of the house, build a new addition with garage including an accessory apartment.

Policy 9a and 9r

Commissioner Questions / Comments:

- Mr. Schroder: The rear set back wouldn't be met because it is now a side setback? (Mr. Kulick: Correct, it will now be treated as a side setback, which reinforces the overall block unity and the settlement pattern. The historic house doesn't have a front on French St. but treating the frontage along French St. as a front yard works with the design of the block. It keeps the rhythm on French street. It allows for a nice front yards on both French St. and Washington Ave. The proposed design is supported by Design Standards 4, 5 and 8 from the Handbook of Design Standards.)
- Ms. Dudney: Are we creating problems with other corner properties? (Mr. Kulick: To my knowledge, no. This design is unique in the historic district that it solely fronts the east/ west road. The others typically have frontages on the north/south roads. I can't think of any examples like

this one.) When the setback issue came up in 2016 did you get a letter of support from the neighbor? (Ms. Sutterley: Yes, I did.) How did the McMenemy windows get around property standard 76 which is absolute? (Mr. Kulick: There were a lot of Design Standards reviewed as part of that application. However, it appears Design Standard 76 was never specifically addressed from reading through the minutes and staff reports. At 100 S. Harris St. the policy was looked at during the preliminary meeting but the commission focused on the windows proposed in the out building.) On what basis can you be comfortable with it when it says “avoid adding new windows to facades visible from the street on contributing buildings”. How can you violate this Priority Design Standard. (Mr. Grosshuesch: We had precedence, so you go with precedence. You can reset the policy in a separate action apart from this application if you so desire.)

Ms. Dudney: I expect they didn’t address it. I am looking for something to hang my hat on. (Mr. Kulick: I didn’t find anything definite in the minutes.)

Mr. Giller: What is the front porch decking material? (Ms. Sutterley – Trex on the addition? 1 x wood decking for the historic front porch which is historically accurate.) Is the 4 1/2 inch bevel lap siding new or existing? (Ms. Sutterley: That is existing.)

Ms. Leidal: Did the footprint of the building move at all? (Mr. Kulick: The structure got moved back by 5 feet from the previously reviewed design to allow for a 20’ garage setback.)

Mr. Schroder: Will the precedence with the window allow us to move forward with land marking? (Mr. Kulick: Yes, it will.)

Janet Sutterley, Architect, presented: Showed the commission the old plan. The old plan looks more forced and the new one looks better. I like the idea that the connector and addition is moved back from Washington. It looks much more natural. The proposed window in the historic house solves a livability issue. If you are dependent solely on the historic windows for ventilation, it doesn’t work. They are hard to open. On my house I can only open the added window that aren’t historic. Livability is a real issue. You need to be able to open windows. I ask you to consider the addition of the one window. Janet presented the color board to the commission.

The hearing was opened for public comment:

Lee Edwards commented: Important to note that the south yard is traditionally open to gardens and north yard setbacks were less. Thank the staff for the correct interpretation. Has the basement been discussed? The fact that the building is not being lifted is an error of the town regulations. It is appropriate to bring the historic home to its historic proximity to the public right of way. It doesn’t affect the historic setting and allows for better drainage. Bringing it up would be a win for everyone.

Commissioner Questions / Comments:

Based on the proposed changes, staff had the following questions for the Commission:

1. **Setbacks** - Staff supports the revised corner lot setback designation. Does the Commission agree?
2. **Historic Fabric** - Previously the Commission did not support the removal of historic fabric or the change to the façade with the additions of windows on the east side of the historic building based on Priority Design Standards 76 and believed the window addition warranted negative points under Design Standard 23. Does the Commission continue to support these recommendations?
3. **Landmarking** – Is the Commission supportive of landmarking the historic house with the window addition?
4. **Connector** - The connector facing the Washington Avenue ROW was revised to show a single door flanked by double hung windows. Staff believes this design complies with section 6 of Absolute Policy 80A, Connectors and Design Standard 96. Does the Commission concur?
5. **Windows** – Staff believes the proposed windows abide with Priority Design Standards 95 and 96 and

Design Standard 128. Does the Commission agree?

All Commissioners: answered yes to all five questions listed at the end of the staff report.

Mr. Giller: Great project, well designed, I like the wood deck. The window on the north side is compatible with the design. The new window design is better than the previous.

Mr. Gerard: The historic building establishes the set back. There is no violation. Yes. The standard says "avoid a window" it doesn't say do not add a window. Past precedence says we should access -3 points for the window. It can be landmarked with the window. I support +6 points for historic.

Mr. Schroder: I support staff's interpretation of design standards 76 and 23. Removing the fabric would be ok based on past precedence. Support land marking with the window addition. Modification of the connector brings it into compliance, Yes.

Mr. Schuman: Good staff report. Thank applicant for their efforts.

COMBINED HEARINGS:

1. 6th Amended Master Plan Delaware Flats Planning Area C-1 "West Braddock" (CK), PL-2017-0618, 639 Stan Miller Dr.

Mr. Kulick presented a proposal to amend the current Master Plan for Delaware Flats Planning Area 3A to combine Parcels C, D-1A and D-1B into one single Master Plan Parcel to be labeled C-1. Parcel C-1 will have all the acreage and SFEs from the three existing parcels as was contemplated from the Welk Riverfront Resort Development Permit #2012044. No additional uses or density are proposed as part of this application. There are no other substantive changes with this master plan amendment beyond the consolidation of Parcels. The applicants have provided a draft illustrative Master Plan that shows the proposed modifications.

The hearing was opened for public comment:

Lee Edwards commented: Where is the river on the plan? Chris Kulick pointed out the location of the river and location of the Stan Miller property. Is there a subdivision of what the Welks bought? (Mr. Kulick: The Welk subdivision has been platted. A copy of the plat is in the office.) Is there commercial included in the Welk development? (Mr. Kulick: Yes, there is a small amount of commercial approved (0.5 SFES) inside the Welk development.)

Commissioner Questions / Comments:

No Comments.

Mr. Giller made a motion to approve, seconded by Mr. Gerard. The motion passed unanimously.

TOWN COUNCIL REPORT:

Mr. Grosshuesch gave a report on last weeks Town Council meeting:

- No call ups
- Recognition to Tim Berry for 30 years of service
- Ordinance prohibiting murals in the Conservation District was approved
- 2018 town budget was approved
- A revision to the standard Affordable housing covenant approved
- Golf course clubhouse will be remodeled. Almost all interior.
- Citizen leadership awarded to Turk Montepare.
- Refinement of parking structure was presented, and Council supported the gable roof design recommendation

OTHER MATTERS:

No second meeting in December.

Will have three meetings in January, only one in February on the 20th.

ADJOURNMENT:

The meeting was adjourned at 7:25 pm.

Christie Mathews-Leidal, Chair



Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

December 2017

Tuesday, Dec. 12, 2017	3:00pm / 7:00 pm	Town Hall Chambers	First Meeting of the Month
Dec. 14 - 17, 2017	All Day	Breckenridge Ski Resort	Dew Tour
Friday, Dec. 15, 2017	8:00am - 9:00am	Town Hall Chambers	Coffee Talk - Parking Structure

January 2018

Tuesday, Jan. 9, 2018	2:00pm	Town Hall Chambers	Grants Reception
Tuesday, Jan. 9, 2018	3:00pm / 7:00 pm	Town Hall Chambers	First Meeting of the Month
Jan. 10 - 13, 2018	All Day	Main Street	ULLR Festival
Friday, Jan. 12, 2018	8:00am - 9:00am	Breck Rec Center	Coffee Talk & Open House
Wednesday, Jan. 17, 2018	Town Council Meet and Greet with Candidates		
Tuesday, Jan. 23, 2018	3:00pm / 7:00 pm	Town Hall Chambers	Second Meeting of the Month
Jan. 22 - 29, 2018	All Day	Riverwalk Center	28th Annual ISSC

Other Meetings

December 11th, 2017	Open Space & Trails Meeting	5:30pm
December 12th, 2017	Board of County Commissioners Meeting Workforce Housing Committee	9:00am / 1:30pm 1:30pm
December 13th, 2017	Breckenridge Heritage Alliance Childcare Advisory Committee	Noon 3:00pm
December 14th, 2017	Upper Blue Sanitation District	5:30pm
December 19th, 2017	Board of County Commissioners Meeting Liquor & Marijuana Licensing Authority	9:00am 9:00am
December 26th, 2017	Board of County Commissioners Meeting	9:00am / 1:30pm
January 2nd, 2018	Board of County Commissioners Meeting Planning Commission Meeting	9:00am 5:30pm
January 3rd, 2018	Police Advisory Committee Breckenridge Events Committee Childcare Advisory Committee	7:30am 9:00am 3:00pm
January 9th, 2018	Board of County Commissioners Meeting	9:00am / 1:30pm
January 10th, 2018	Summit Stage Transit Board Meeting	8:15am
January 11th, 2018	I-70 Coalition	1:00pm
January 15th, 2018	Breckenridge Creative Arts	4:15pm
January 16th, 2018	Board of County Commissioners Meeting Liquor & Marijuana Licensing Authority Planning Commission Meeting	9:00am 9:00am 5:30pm
January 18th, 2018	Northwest Council of Governments	9:30am
January 19th, 2018	CAST	7:45am
January 22nd, 2018	Open Space & Trails Meeting	5:30pm
January 23rd, 2018	Board of County Commissioners Meeting	9:00am / 1:30pm
January 24th, 2018	Breckenridge Events Committee Summit Combined Housing Authority	9:00am 9:00am
January 25th, 2018	Breckenridge Tourism Office Board Meeting RW&B Board Meeting	8:30am 3:00pm
March 1st, 2018	QQ - Quality and Quantity - Water District	10:00am