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**LEASE
(New Recycling Center)**

THIS LEASE (“**Lease**”) is dated _____, 2014 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). Town and County are sometimes collectively referred to in this Lease as the “**Parties**”, and individually as a “**Party**.”

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ARTICLE 1 – BASIC LEASE PROVISIONS

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1.1 **Leased Premises.** In consideration of County’s keeping of the promises, covenants, and conditions required of it by this Lease, Town leases to County, and County leases from Town, for the term and upon the conditions of this Lease, the real property described on the attached **Exhibit “A”** (“**Leased Premises**”).

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1.2 **Use Of Leased Premises.** As of the date of this Lease the Leased Premises consist of vacant, unimproved land. County will use the Leased Premises only to construct and operate a new facility for the public collection of recyclable and reusable materials and public education related to those uses. County will not use the Leased Premises for any other purpose without Town’s prior written consent.

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1.3 **Term.** The term of this Lease (“**Term**”) begins at 12:01 A.M., local time, on June 1, 2014 and ends, unless sooner terminated as hereafter provided, at 11:59 P.M., local time, on, May 31, 2034, and may be extended upon mutual agreement of the Parties.

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1.4 **Surrender of Leased Premises.**

(a) Upon the expiration or earlier termination of this Lease, County will surrender the Leased Premises to Town in good condition, ordinary wear and tear excepted. Not later than the last day of the Term, County will remove its personal property and fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The cost of such removal will be borne by County, and County will repair all injury or damage done to the Leased Premises in connection with the installation or removal of County’s personal property and trade fixtures. All of County’s fixtures (including, but not limited to trade fixtures) that are so attached to the Leased Premises that they cannot be removed without material injury to the Leased Premises will, at Town’s option, become the property of Town upon installation and remain with the Leased Premises upon surrender.

(b) Town may retain or dispose of any personal property, fixtures (including, but not limited to, trade fixtures), alterations or improvements left remaining by County at or upon the Leased Premises following the expiration or earlier termination of this Lease, and Town is not accountable to County for any damages for the loss or destruction thereof, or for any part of the proceeds of sale, if any, realized by Town. County waives all claims against Town for any damages suffered by County resulting from Town’s retention or disposition of such personal

LEASE

1 property, fixtures (including, but not limited to, trade fixtures), alterations or improvements.
2 County will reimburse the Town for Town's costs for storing, removing and disposing of any
3 such personal property, fixtures (including trade fixtures) or alterations.

4 1.5 **Early Termination.** Notwithstanding the stated term of this Lease as provided in
5 Section 1.3, either Party may terminate this Lease, without being liable to the other Party for
6 breach of this Lease, by giving the other Party not less than one (1) year's prior written notice in
7 the manner provided in Section 13.3.

8 **ARTICLE 2 – RENT**

9 2.1 **Rent.** The Parties understand and agree that the consideration for this Lease is the
10 public benefit to the citizens of and visitors to the respective Party's jurisdiction and that there is
11 to be no monetary rent paid by the County for the lease of the Leased Premises. Notwithstanding
12 the foregoing, the County will remain obligated to pay all other amounts owing pursuant to the
13 terms of this Lease.

14 2.2 **Interest On Past Due Amounts.** County will pay interest to Town on any sum
15 due to Town under this Lease that is 30 days or more past due at the rate of 12% per annum from
16 the date due until the date such payment is fully paid.

17 **ARTICLE 3 – TOWN'S DISCLAIMERS AND EXCULPATORY PROVISIONS**

18 3.1 **"As Is" Condition of Leased Premises.** County acknowledges that it had
19 adequate and fair opportunity to inspect the Leased Premises prior to taking possession. The
20 Leased Premises are leased by Town to County, and accepted by County, in "**AS IS**" condition.
21 County's act of taking possession of the Leased Premises is conclusive evidence that County
22 accepted the Leased Premises in then "**AS IS**" condition, and that the Leased Premises were in
23 satisfactory condition at the time of commencement of County's possession.

24 3.2 **Delay In Delivery of Possession of Leased Premises.** Town is not liable to
25 County for any delay in delivery of possession of the Leased Premises.

26 3.3 **Town's Non-liability.** As a material part of the consideration to be received by
27 Town under this Lease, County assumes all risk of damage to property or injury to persons in or
28 upon the Leased Premises from any cause, other than Town's gross negligence or intentional
29 wrongful act, and County waives all claims in respect thereof against Town.

30 3.4 **Limitation of Remedies.** Town is not liable for any indirect, special, or
31 consequential damages, including, but not limited to, loss of anticipated profits, revenue or
32 savings, business interruption, or any similar claim arising from the Town's breach of this Lease,
33 even if Town has been advised of the possibility of such damages. This limitation applies
34 notwithstanding the failure of an essential purpose of any limited remedy.

1 **ARTICLE 4 – COUNTY’S AFFIRMATIVE OBLIGATIONS**

2 4.1 **County Liable For Costs to Prepare Leased Premises For Use By County.**

3 County is responsible for all work required to be done, and costs incurred in connection with, the
4 preparation of the Leased Premises for County’s use.

5 4.2 **Utilities.** County will initiate, contract for, and obtain in its name, all utility

6 services required on the Leased Premises, including, but not limited to, water, gas, electricity and
7 telephone, and County will pay all charges for such services as they become due. Town is not
8 liable for any personal injury or property damage resulting from the negligent operation or faulty
9 installation of utility services provided for use on the Leased Premises, nor is Town liable for
10 any injury or damage suffered by County as a result of the failure to make necessary repairs to
11 the utility facilities. To the extent allowed by law, the County will be liable for any injury or
12 damages to the equipment or service lines of the utility suppliers that are located on the Leased
13 Premises resulting from the negligent or deliberate acts of County, or its members, agents or
14 visitors. In particular, County will be liable for any loss or damage due to freezing, stoppage, or
15 blockage of water pipes or plumbing fixtures on the Leased Premises.

16 4.3 **Taxes.** Because both Town and Country are tax-exempt entities under Colorado

17 law, the parties anticipate that the Leased Premises will be tax-exempt throughout the Term.
18 However, if any taxes are lawfully assessed against the Leased Premises as a result of County’s
19 use of the Leased Premises County will pay such taxes before they become delinquent.

20 4.4 **Maintenance And Snow Plowing.**

21 (a) County will, at its sole expense, keep and maintain the Leased Premises in as
22 good and sanitary a condition and state of repair as existed at the commencement of the Term.

23 (b) County will, at its sole expense, provide all required maintenance and snow
24 plowing necessary for the safe and lawful operation of the New Facility.

25 4.5 **Signs.** County will not post, place, affix, erect, or display any sign within or

26 outside of the Leased Premises without Town’s prior written approval, which approval may be
27 granted, withheld, or conditionally approved in Town’s sole and absolute discretion. In
28 considering County’s request to place a sign within or outside of the Leased Premises, Town acts
29 in its capacity as landlord of the Leased Premises, and not in its governmental capacity. Town
30 may remove any sign placed within or outside of the Leased Premises in violation of the portions
31 of this subsection. In addition to obtaining Town’s discretionary permission as described above,
32 County must also obtain any required sign permit from Town acting in its governmental
33 capacity. County will maintain all signs located within or outside of the Leased Premises in
34 good, clean, and attractive condition. County will remove all signs placed by it within or outside
35 of the Leased Premises at the expiration or earlier termination of this Lease, and repair any
36 damage or injury caused thereby. If not so removed by County, the Town may remove such
37 sign(s) at County’s expense. However, the Town agrees that once it has given its discretionary
38 approval to County under this Section, such decision may not be revoked or materially changed

1 employees, or agents, or Town's breach of this Lease. If indemnification is required under this
2 Section, County will investigate, handle, respond to, and to provide defense for and defend
3 against, any such liability, claims, or demands at its expense, and bear all other costs and
4 expenses related thereto, including court costs and attorney fees.

5 8.2 **Survival.** The obligations of this Article 8 will survive the expiration or
6 termination of this Lease.

7 **ARTICLE 9– DEFAULT**

8 9.1 **Default By County.** The occurrence of any one or more of the following events
9 will constitute a default and breach of the Lease by County:

10 (a) The vacating or abandonment of the Leased Premises by County, or the
11 permanent closure to the public of the New Facility.

12 (b) The failure by County to make any payment required to be made by it under
13 this Lease, as and when due, when such failure will continue for a period of 10 days after service
14 of written notice thereof by Town to County.

15 (c) The failure by County to observe or perform any of the other covenants,
16 conditions, or provisions of this Lease to be observed or performed by the County, or to obey
17 rules promulgated by Town, within a reasonable time not to exceed 90 days after service of
18 written notice thereof by the Town to the County. In the event of a non-monetary default that is
19 not capable of being corrected within 90 days, County will not be in default if it commences
20 correcting the default within 90 days of service of a demand for compliance notice and thereafter
21 corrects the default with due diligence.

22 9.2 **Town's Remedies Upon Default.** If the County is in default under this Lease,
23 and does not cure the subject default in a timely manner as described in Section 9.1(c) above,
24 Town has all of the remedies provided for in such circumstances by Colorado law, including but
25 not limited to early termination of the Lease in accordance with Section 1.5.

26 9.3 **Default By Town.** Town will be in default under this Lease if Town fails to
27 comply with any of the terms, provisions, or covenants of this Lease within a reasonable time not
28 to exceed 90 days following service of written notice thereof by County. In the event of a non-
29 monetary default that is not capable of being corrected within 90 days, Town will not be default
30 if Town commences correcting the default within 90 days of receipt of notification thereof and
31 thereafter corrects the default with due diligence.

32 **County's Remedies Upon Default.** If the Town is in default under this Lease, County has all of
33 the remedies provided for in such circumstances by Colorado law, including but not limited to
34 early termination of the Lease in accordance with Section 1.5

1 **ARTICLE 10 - NONDISTURBANCE**

2 10.1 **Quiet Enjoyment.** So long as there is no default in any of the other covenants,
3 conditions, or provisions of this Lease to be performed, observed, or kept by County, Town
4 covenants that County will peaceably and quietly hold and enjoy the Leased Premises for the
5 entire Term.

6 **ARTICLE 11 – TOWN’S RULES**

7 11.1 **Rules.** County will faithfully observe and comply with any rules and regulations
8 promulgated by Town with respect to the Leased Premises. The Town’s rules and regulations
9 must be reasonable, and may not unilaterally change or significantly alter the material terms and
10 conditions of this Lease. Subject to the terms hereof, the rules and regulations, and any
11 amendments thereto, will be binding upon the County upon delivery to County.

12 **ARTICLE 12 – HAZARDOUS MATERIALS**

13 12.1 **Hazardous Materials – Defined.** As used in this Article 13, the term
14 “**Hazardous Materials**” means any chemical, material, substance or waste:

15 (i) exposure to which is prohibited, limited, or regulated by any federal, state,
16 county, regional or local authority, or other governmental authority of any nature; or

17 (ii) that, even if not so regulated, may or could pose a hazard to the health or safety of
18 the occupants of the Leased Premises including, without limitation, any petroleum, crude oil (any
19 fraction thereof), natural gas, natural gas liquids, and those substances defined as “hazardous
20 substances”, “hazardous materials”, “hazardous wastes” or other similar designations in the
21 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended,
22 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section
23 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations, and
24 precautions.

25 12.2 **Hazardous Materials – Prohibited.** County will fully comply with all statutes,
26 laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by
27 any federal, state, local, or other governmental agency with respect to the use, generation,
28 storage, or disposal of Hazardous Materials. The Town understands that County intends to
29 collect, handle, store and transport household hazardous waste on, to and from the Leased
30 Premises as part of its standard recycling program and will do so in accordance with all
31 applicable regulations as described in Article 12.1 above. Subject to any applicable limitations
32 provided by law, County’s indemnification of Town pursuant to this Lease extends to all
33 liability, including all foreseeable and unforeseeable consequential damages, directly or
34 indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the
35 Leased Premises by County, or any person claiming under County, including, without limitation,
36 the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any
37 closure or other required plans, whether such action is required or necessary prior to or following

1 the termination of this Lease, to the full extent that such action is attributable, directly or
2 indirectly, to the use, generation, storage, or disposal of Hazardous Materials by County or any
3 person claiming under County; provided, however, the written consent by Town to the use,
4 generation, storage, or disposal of Hazardous Materials will excuse County from County's
5 obligation of indemnification. In the event County is in breach of the covenants herein, after
6 notice to County and the expiration of the earlier of:

- 7 (i) the cure period provided in Section 10.1(c);
- 8 (ii) the cure period permitted under applicable law, regulation, or order,

9 then Town may, in its sole discretion, declare a default under this Lease and/or cause the Leased
10 Premises to be freed from the Hazardous Material and the cost thereof will be deemed additional
11 rent hereunder and will immediately be due and payable from County. The obligations of County
12 under this Section will survive the expiration or termination of this Lease.

13 **ARTICLE 13 – MISCELLANEOUS**

14 13.1 **Attorneys Fees/Costs.** If any action is brought in a court of law by either party to
15 this Lease concerning the enforcement, interpretation, or construction of this Lease, the
16 prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as
17 costs, including expert witness' fees, incurred in the prosecution or defense of such action.

18 13.2 **Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of
19 Colorado will govern the interpretation, validity, performance, and enforcement of this Lease.
20 Any litigation brought to interpret or enforce this Lease must be commenced in Summit County,
21 Colorado. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE,
22 INTERPRET, OR CONSTRUE THIS AGREEMENT.**

23 13.3 **Notices.** All notices required or permitted under this Lease must be given by
24 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
25 carrier delivery, or by telecopies, directed as follows:

26 If intended for Town to:

27
28 Town of Breckenridge
29 P.O. Box 168
30 150 Ski Hill Road
31 Breckenridge, Colorado 80424
32 Attn: Timothy J. Gagen, Town Manager
33 Telecopier number: (970)547-3104
34 Telephone number: (970)453-2251
35

36 with a copy in each case (that will not constitute notice) to:
37

1 Timothy H. Berry, Esq.
2 Timothy H. Berry, P.C.
3 131 West 5th Street
4 P. O. Box 2
5 Leadville, Colorado 80461
6 Telecopier number: (719)486-3039
7 Telephone number: (719)486-1889
8

9 If intended for County to:

10
11 Board of County Commissioners
12 P.O. Box 68
13 Breckenridge, Colorado 80424
14 Attn: Gary Martinez, County Manager
15 Telephone number: (970)453-3401
16 Telecopier number: (970)453-3535
17

18 with a copy in each case (which will not constitute notice) to:

19
20 Jeff Huntley, Esq.
21 Summit County Attorney
22 P.O. Box 68
23 Breckenridge, Colorado 80424
24 Telephone number: (970)453-3407
25 Telecopier number: (970)454-3535
26

27 Any notice delivered by mail in accordance with this Section will be effective on the third
28 business day after the same is deposited in any post office or postal box regularly maintained by
29 the United States postal service. Any notice delivered by telecopier in accordance with this
30 Section will be effective upon receipt if concurrently with sending by telecopier receipt is
31 confirmed orally by telephone by the sending party. Any notice delivered by hand or commercial
32 carrier will be effective upon actual receipt. Either party, by notice given as provided above, may
33 change the address to which future notices may be sent. The provisions of this Section will not
34 apply to any notice or demand that is required to be served in a particular manner by applicable
35 law; and any such notice or demand will be served as required by law notwithstanding the
36 provisions of this Section. E-mail is not a valid way to give notice under this Lease.
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38 13.4 **“Day” Defined.** Unless otherwise indicated, the term “day” means a calendar day
39 (and not a business day).

40 13.5 **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory
41 obligation to act or to refrain from acting as specifically indicated in the context of the sentence
42 in which such word is used.

1 13.6 **Complete Agreement.** It is understood and agreed that this Lease contains the
2 complete and final expression of the agreement between the parties, and there are no promises,
3 representations, or inducements except as are herein provided. All negotiations, considerations,
4 representations, and understandings between the parties related to this Lease are contained
5 herein.

6 13.7 **Amendment.** This Lease may not be modified except by a written Lease signed
7 by both the Town and County. Oral modifications of this Lease are not permitted.

8 13.8 **Captions.** The headings of the sections and paragraphs contained in this Lease are
9 for convenience only and do not define, limit, or construe the contents of the articles, sections
10 and paragraphs.

11 13.9 **Waiver.** The failure of either party to exercise any of such party's rights under
12 this Lease is not a waiver of those rights. A party waives only those rights specified in writing
13 and signed by the party waiving such rights.

14 13.10 **Severability.** If any provision of this Lease is held to be invalid, illegal, or
15 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
16 contained in this Lease and the application hereof will not in any way be affected or impaired
17 thereby.

18 13.11 **Force Majeure.** Neither party will be liable to the other for any failure, delay, or
19 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to
20 causes beyond the control of that party including, without limitation, strikes, boycotts, labor
21 dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of
22 terrorism, acts of superior governmental authority, weather conditions, floods, riots, rebellion,
23 terrorism, sabotage or any other circumstance for which such party is not responsible or that is
24 not in its power to control.

25 13.12 **Advances By Town For County.** If County fails to do anything required to be
26 done by it under the terms of this Lease (other than a failure to make the payments to Town
27 herein required) the Town may, at its sole option, but without any obligation to do so, do or
28 perform such act or thing on behalf of County, and in doing so the Town will not be deemed to
29 be a volunteer; provided, however, that before exercising its rights under this Section Town must
30 give notice to County as provided in Section 13.3, and afford the County a reasonable amount of
31 time to do or perform the act required by County. Upon notification to County of the herein
32 authorized costs incurred by the Town, County will promptly pay to Town the full amount of
33 such costs and/or expenses, together with interest thereon at the rate of 12% per annum.

34 13.13 **Governmental Immunity.** Both the Town and the County are relying on, and do
35 not waive or intend to waive by any provision of this Lease, the monetary limitations or any
36 other rights, immunities, and protections provided by the Act, as from time to time amended, or
37 any other limitation, right, immunity or protection otherwise available to Town or the County, or
38 their respective elected officials, officers, or employees.

1 13.14 **No Adverse Construction Based On Authorship.** Each of the parties stipulate
2 and agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not
3 to be construed against either party by virtue of such party having drafted this Lease.

4 13.15 **Town's Consent.** Except as otherwise expressly provided to the contrary in this
5 Lease, wherever in this Lease it is provided that some act requires the Town's prior consent, such
6 consent will not be unreasonably withheld by Town.

7 13.16 **Third Parties.** There are no third party beneficiaries of this Lease.

8 13.17 **Lease Not To Be Recorded.** This Lease **MAY NOT BE RECORDED** with the
9 Clerk and Recorder of Summit County, Colorado.

10 13.18 **Time of Essence.** Time is of the essence of this Lease.

11 13.19 **Non-Discrimination; Compliance With Applicable Laws.** County:

12 (a) will not discriminate against any employee or applicant for employment to
13 work at the Leased Premises because of race, color, creed, sex, sexual orientation, religion,
14 national origin, or disability;

15 (b) will insure that applicants who are to work at the Leased Premises are
16 employed and that employees are treated during employment without regard to their race, color,
17 creed, sex, sexual orientation, religion, national origin, or disability;

18 (c) will in all solicitations or advertisements for employees to be engaged in the
19 performance of work at the Leased Premises state that all qualified applicants will receive
20 consideration for employment without regard to race, color, creed, sex, sexual orientation,
21 religion, national original or disability; and

22 (d) will comply with all applicable federal, state, and local laws, rules and
23 regulations. Without limiting the generality of the foregoing, County will comply with the
24 applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
25 Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory
26 agency. The indemnification provisions of this Lease apply to County's failure to comply with
27 all applicable laws or regulations.

28 13.20 **No Partnership.** The Town is not a partner, associate, or joint venturer of the
29 County in the conduct of County's business at the Leased Premises. County is an independent
30 contractor without the right or authority to impose tort or contractual liability upon the Town.

31 13.21 **Binding Effect.** The covenants, conditions, and obligations of this Lease extend
32 to, bind, and inure to the benefit of, not only the parties, but their respective successors and
33 permitted assigns.

34

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By:

Chair

ATTEST:

Kathleen Neel, Clerk and Recorder, and ex-officio
clerk to the Board of County Commissioners

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Exhibit "A"

LEASED PREMISES

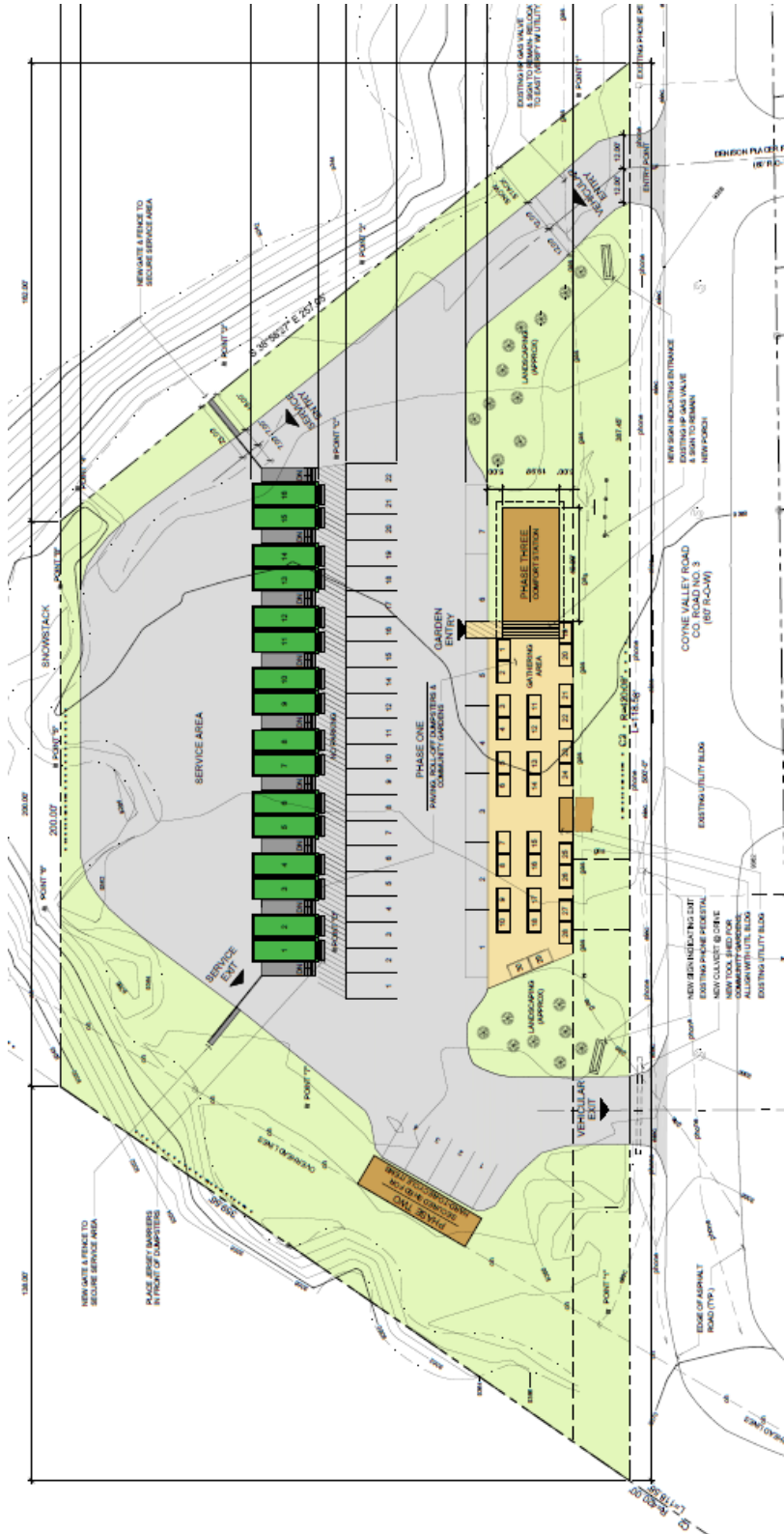


Exhibit "A"