



**BRECKENRIDGE TOWN COUNCIL REGULAR MEETING**

Tuesday, May 23, 2017; 7:00 PM

Town Hall Auditorium

<b>I</b>	<b>CALL TO ORDER, ROLL CALL</b>	
<b>II</b>	<b>APPROVAL OF MINUTES - MAY 9, 2017</b>	<b>3</b>
<b>III</b>	<b>APPROVAL OF AGENDA</b>	
<b>IV</b>	<b>COMMUNICATIONS TO COUNCIL</b>	
	A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)	
	B. BRECKENRIDGE SKI RESORT UPDATE	
	C. CITIZEN RECOGNITION	
<b>V</b>	<b>CONTINUED BUSINESS</b>	
	A. SECOND READING OF COUNCIL BILLS, SERIES 2017 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 15, SERIES 2017 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 3 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODE BOARD OF APPEALS	<b>7</b>
	2. COUNCIL BILL NO. 16, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE," CONCERNING REQUIREMENTS FOR THE ADVERTISING OF ACCOMMODATION UNITS OFFERED FOR RENT	<b>16</b>
<b>VI</b>	<b>NEW BUSINESS</b>	
	A. FIRST READING OF COUNCIL BILLS, SERIES 2017 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 17, SERIES 2017 - AN ORDINANCE APPROVING A MASTER LEASE WITH OPTION TO PURCHASE WITH COLORADO MOUNTAIN COLLEGE, A COLORADO STATUTORY LOCAL COLLEGE DISTRICT (Tract D-2, A Resubdivision Of Tracts C And D, Runway Subdivision)	<b>20</b>
	2. COUNCIL BILL NO. 18, SERIES 2017 - AN ORDINANCE CONCERNING TERM LIMITS FOR MEMBERS OF THE TOWN OF BRECKENRIDGE PLANNING COMMISSION, THE TOWN OF BRECKENRIDGE OPEN SPACE ADVISORY COMMISSION, AND THE TOWN OF BRECKENRIDGE LIQUOR AND MARIJUANA LICENSING AUTHORITY	<b>71</b>
	B. RESOLUTIONS, SERIES 2017	
	1. RESOLUTION NO. 15, SERIES 2017 - A RESOLUTION AUTHORIZING THE EXECUTION AND RECORDING OF A DENSITY SUNSET COVENANT (For The Denison Placer 2 Attainable Workforce Housing Project)	<b>76</b>
	C. OTHER	
<b>VII</b>	<b>PLANNING MATTERS</b>	
	A. PLANNING COMMISSION DECISIONS	<b>83</b>
<b>VIII</b>	<b>REPORT OF TOWN MANAGER AND STAFF</b>	
<b>IX</b>	<b>REPORT OF MAYOR AND COUNCILMEMBERS</b>	
	A. CAST/MMC (MAYOR MAMULA)	
	B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BERGERON)	
	C. BRECKENRIDGE TOURISM OFFICE (MS. GIGLIELLO)	

\*Report of the Town Manager, Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:00 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item.

- 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**

**XII ADJOURNMENT**

\*Report of the Town Manager, Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:00 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item.

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, May 09, 2017**  
**PAGE 1**

1 of 4

**CALL TO ORDER, ROLL CALL**

Mayor Mamula called the meeting of May 9, 2017 to order at 7:00 pm. The following members answered roll call: Mr. Dudick, Ms. Lawrence, Mr. Burke, Ms. Wolfe, Ms. Gigliello and Mayor Mamula. Mr. Bergeron was absent.

**APPROVAL OF MINUTES - APRIL 25, 2017**

With no changes or corrections to the meeting minutes of April 25, 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. Mental Health Awareness Month Mayoral Proclamation  
Mayor Mamula read into record the proclamation for Mental Health Awareness Month.
- B. Citizen's Comment - (Non-Agenda Items ONLY: 3-minute limit please)  
Mayor Mamula opened Citizen's Comment.

Mr. John Warner, former Mayor and a Breckenridge resident, thanked the Town for the proclamation and support of the Building Hope mental health initiative. He also thanked the Restaurant Association for its support of the initiative, and stated the community should be thinking about this year round. Mr. Warner stated he appreciates the Town's leadership in these important matters.

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

- C. Breckenridge Tourism Update  
Mr. Bill Wishowski, Director of Operations for the BTO, stated the BTO is hiring a digital marketing manager. Also, they will be holding their annual meeting in June, which will include awards, a keynote and breakout sessions. Mr. Wishowski stated the snow sculpture competition dates have changed for next year, and Oktoberfest is working on a "no dogs" policy. In addition, the latest occupancy report shows winter season closed down 5% over last year, and RevPAR is down about 3%. Also, while summer is only 45% on the books, occupancy is down about 14% from last year, while ADR continues to go up (at 9% up). Mr. Wishowski also stated they are watching July and interesting patterns during the week related to trends in group bookings.

**CONTINUED BUSINESS**

- A. Second Reading of Council Bills, Series 2017 - Public Hearings
  - 1. COUNCIL BILL NO. 13, SERIES 2017 - AN ORDINANCE AUTHORIZING THE CONVEYANCE OF TOWN-OWNED REAL PROPERTY (Broken Compass Brewing Company)  
Mayor Mamula read the title into the minutes. Mr. Tim Berry stated a change to this ordinance from first reading includes instruction for the Town Manager to enter into a letter of intent for a contract when it is ready.

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

**TOWN OF BRECKENRIDGE**  
**TOWN COUNCIL REGULAR MEETING**  
**Tuesday, May 09, 2017**  
**PAGE 2**

2 of 4

Mr. Dudick moved to approve COUNCIL BILL NO. 13, SERIES 2017 - AN ORDINANCE AUTHORIZING THE CONVEYANCE OF TOWN-OWNED REAL PROPERTY (Broken Compass Brewing Company). Mr. Burke seconded the motion. The motion passed 6 - 0. Mr. Bergeron was absent.

2. COUNCIL BILL NO. 14, SERIES 2017 - AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE PLANT INVESTMENT FEE FOR RESTAURANTS AND LOUNGES  
Mayor Mamula read the title into the minutes. Mr. Tim Berry stated there were no changes to this ordinance from first reading.

Ms. Wolfe stated for the record that she feels there may be unintended consequences to this ordinance down the road and she will vote no.

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

Ms. Gigliello moved to approve COUNCIL BILL NO. 14, SERIES 2017 - AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE PLANT INVESTMENT FEE FOR RESTAURANTS AND LOUNGES. Mr. Burke seconded the motion. The motion passed 5 - 1. Ms. Wolfe dissented. Mr. Bergeron was absent.

**NEW BUSINESS**

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

1. COUNCIL BILL NO. 15, SERIES 2017 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 3 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODE BOARD OF APPEALS

Mayor Mamula read the title into the minutes. Mr. Berry stated the building code makes reference to a Board of Appeals, but it is infrequently used. He further stated we are moving away from a system where we appoint 5 people to serve on the Board of Appeals and wait for an appeal to be made, and moving to 3 people appointed by the Town Manager as needed for appeals as they are made. Mr. Berry stated the appeals board is good for the Town, and it serves as an intermediary before going to District Court.

Ms. Lawrence moved to approve COUNCIL BILL NO. 15, SERIES 2017 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 3 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODE BOARD OF APPEALS. Ms. Wolfe seconded the motion. The motion passed 6 - 0. Mr. Bergeron was absent.

2. COUNCIL BILL NO. 16, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE," CONCERNING REQUIREMENTS FOR THE ADVERTISING OF ACCOMMODATION UNITS OFFERED FOR RENT

Mayor Mamula read the title into the minutes. Mr. Waldes stated this ordinance would help ensure compliance in the short-term rental market for accommodations licensing with the Town. This ordinance would require a business license number to be posted on rental advertising.

Mr. Michael Hessel, of Peak Property Management, stated the Town has been working

with the Lodging Association on this, and the Lodging Association will meet with the Town further and bring possible changes to the second reading.

Ms. Lawrence stated she is mostly concerned about the method used to contact staff about changes, and the use of staff time to handle the changes. She also stated she isn't necessarily in agreement with the fee structure either, but understands the point is to gain compliance and its importance for tax revenue from this source. Mr. Waldes stated the fee structure is there as a strong incentive to comply, and the hope is the fees will compel people to comply with the licensing regulations. Also, he stated, we are already in contact with license holders regularly, so there shouldn't be that much of a change for staff time.

Ms. Wolfe asked about how they will get out this information to those posting ads, and should we be using social media and be proactive in getting this information out to the public who might not know about the license and the tax? Mr. Waldes stated we already contact people we see advertising without licenses, and we'll continue to do this and have information on our website about this. Ms. Heather Pezzella, Tax Auditor for the Town of Breckenridge, stated a letter will be sent out on May 24th to current license holders about the change. Mr. Holman stated it will be obvious from the ads not listing the license number who is not complying. Also, when there is a property sale, we contact the new owner about the accommodations license requirements. Mayor Mamula stated we could consider sending a letter to everyone who owns a home in Breckenridge about the licensing requirements and this change, although it wouldn't apply to some deed restricted units that cannot rent.

Ms. Gigliello moved to approve COUNCIL BILL NO. 16, SERIES 2017 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE," CONCERNING REQUIREMENTS FOR THE ADVERTISING OF ACCOMMODATION UNITS OFFERED FOR RENT. Mr. Burke seconded the motion. The motion passed 6 - 0. Mr. Bergeron was absent.

**B. Resolutions, Series 2017**

1. RESOLUTION NO. 14, SERIES 2017 - A RESOLUTION APPROVING AN ASSIGNMENT OF PARTIAL INTEREST IN REAL ESTATE OPTION AGREEMENT WITH SUMMIT COUNTY, COLORADO (Sadie and Nellie Lodes)

Mayor Mamula read the title into the minutes. Mr. Reid stated this resolution would allow for a partial interest in the Sadie and Nellie Load with the County.

Ms. Wolfe moved to approve RESOLUTION NO. 14, SERIES 2017 - A RESOLUTION APPROVING AN ASSIGNMENT OF PARTIAL INTEREST IN REAL ESTATE OPTION AGREEMENT WITH SUMMIT COUNTY, COLORADO (Sadie and Nellie Lodes). Ms. Gigliello seconded the motion.

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

**C. Other**

**PLANNING MATTERS**

**A. Planning Commission Decisions**

With no request to call an item off the consent calendar, Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.

**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
Tuesday, May 09, 2017  
PAGE 4**

4 of 4

**REPORT OF TOWN MANAGER AND STAFF**

Mr. Holman stated he had no report.

**REPORT OF MAYOR AND COUNCILMEMBERS**

The Reports of Mayor and Councilmembers were covered in the afternoon Work Session.

- 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)  
Breckenridge Events Committee (Ms. Lawrence)

**OTHER MATTERS**

Ms. Gigliello stated she got a call about holiday lights at the marijuana shops still being up. She also asked about then the dark sky laws start? Ms. Gigliello also asked about taking out the crosswalk signs on Main Street, and noted that traffic speeds seem to have increased there. Mr. Phelps stated the crosswalk signs were removed due to larger trucks now using that road.

**SCHEDULED MEETINGS**

**ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 8:30 pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

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Helen Cospolich, CMC, Town Clerk

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Eric S. Mamula, Mayor

**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 15 (Building Code Board of Appeals Ordinance)  
DATE: May 16, 2017 (for May 23<sup>rd</sup> meeting)

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The second reading of the Building Code Board of Appeals ordinance is scheduled for your meeting on May 23<sup>rd</sup>. 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 – MAY 23***

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. 15

9  
10 Series 2017

11  
12 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 3 OF  
13 TITLE 2 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODE  
14 BOARD OF APPEALS

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

18  
19 Section 1. Chapter 3 of Title 2 of the Breckenridge Town Code is repealed and readopted  
20 with changes to read as follows:

21  
22 **CHAPTER 3**

23  
24 **BUILDING CODE BOARD OF APPEALS**

25  
26 **SECTION:**

27  
28 **2-3-1: Findings**

29 **2-3-2: Definitions**

30 **2-3-3: Creation of Board**

31 **2-3-4: Appointment and Qualifications of Members**

32 **2-3-5: Terms of Office**

33 **2-3-6: Compensation**

34 **2-3-7: Powers, Duties, and Responsibilities**

35 **2-3-8: Operation**

36 **2-3-9: Meetings**

37 **2-3-10: Rules and Regulations**

38 **2-3-11: Applicability of Code of Ethics**

39 **2-3-12: Legal Advisor**

40 **2-3-13: Town Clerk**

41 **2-3-14: Oaths; Subpoenas**

42 **2-3-15: Appeals Process**



- 1 2-3-16: Failure to Appeal
- 2 3-3-17: Appeal From Board Decision
- 3 3-3-18: Chapter Controls In the Event of A Conflict

4

5 2-3-1: FINDINGS: The Town Council finds and determines as follows:

- 6
- 7 A. Section 9.5 of the Town Charter authorizes the Town Council to create by ordinance
- 8 permanent boards and commissions for the Town, and sets forth certain
- 9 requirements that must be met with respect to the creation of a permanent Town
- 10 board or commission.
- 11 B. Section 9.2(a) of the Town Charter provides that neither the Mayor nor any Town
- 12 employee shall serve on any Town board or commission.
- 13 C. The Town of Breckenridge Building Code Board of Appeals should be created to
- 14 hear and decide appeals of orders, decisions, or determinations made by the Town’s
- 15 building official relative to the application and interpretation of the Town’s building
- 16 and technical codes adopted in Chapter 1 of Title 8 of the Breckenridge Town Code.

17 2-3-2 DEFINITIONS: When used in this Chapter the following words have the following

18 meanings:

BOARD: The Town of Breckenridge Building Code Board of Appeals created and established by this Chapter.

BUILDING CODE: Any of the Town’s building and technical codes adopted in Chapter 1 of Title 8 of this Code.

BUILDING OFFICIAL: The Building Official of the Town of Breckenridge, or such person’s authorized agent or representative acting pursuant to Section 1-7-2 of this Code.

19

20 2-3-3: CREATION OF BOARD: There is hereby created and established the Town of

21 Breckenridge Building Code Board of Appeals. The Board shall be a permanent board of

22 the Town, and shall operate in accordance with and subject to the provisions, duties, and

23 limitations of this Chapter, and other applicable law.

24 2-3-4: APPOINTMENT AND QUALIFICATION OF MEMBERS:

- 25
- 26 A. The Board shall consist of three (3) members who shall be appointed by the Town

1 Manager as and when needed to hear and decide an appeal filed with the Board  
2 pursuant to this Chapter.

3 B. Members of the Board shall be residents and electors of the Town, and shall be  
4 persons qualified by experience and training to pass upon matters pertaining to  
5 building construction.

6 C. Neither the Mayor nor any Town employee shall serve on the Board.

7 2-3-5: TERMS OF OFFICE: There shall be no fixed term of office for the members of the  
8 Board. All members of the Board shall serve at the pleasure of the Town Manager, and  
9 may be removed by the Town Manager at any time without cause.

10 2-3-6: COMPENSATION: Members of the Board shall serve without compensation.

11  
12 2-3-7: POWERS, DUTIES, AND RESPONSIBILITIES: The Board shall act as the board  
13 of appeals required or authorized by any building code. The Board shall have those powers  
14 and authority provided for in this Chapter, and the building code that is applicable to a  
15 particular appeal.

16  
17 2-3-8: OPERATION: The Board shall elect a chair prior to holding an appeal hearing.  
18 There shall be no other officers of the Board. The Board shall keep an electronic record of  
19 its meetings and shall further keep written minutes thereof as required by the Colorado  
20 Open Meetings Law, Title 24, Chapter 6, Part 4, C.R.S. Two (2) members of the Board  
21 shall constitute a quorum for the transaction of business, and a decision agreed to by two  
22 (2) members shall be required for a Board decision.

23  
24 2-3-9: MEETINGS: The Board shall meet at Town Hall, or such other location within the  
25 Town as the Board shall determine. The Board shall meet on such dates as the Board may  
26 determine. All meetings of the Board shall be subject to the provisions of the Colorado  
27 Open Meetings Law, Title 24, Chapter 6, Part 4, C.R.S.

28  
29 2-3-10: RULES AND REGULATIONS: The Board shall have the power to adopt rules and  
30 regulations governing its operation. Such rules shall not be inconsistent with this Chapter  
31 or other applicable law.

32  
33 2-3-11: APPLICABILITY OF CODE OF ETHICS: The provisions of the Breckenridge  
34 Town Code of Ethics (Title 1, Chapter 16 of this Code) shall apply to all members of the  
35 Board.

36  
37 2-3-12: LEGAL ADVISOR: The Town Attorney shall be the legal advisor to the Board. In  
38 the event that it would be a conflict of interest for the Town Attorney to both present  
39 evidence to the Board on any matter and to advise the Board as to such matter, the Town

1 Attorney shall continue to advise the Board on the matter and shall engage independent  
2 counsel to present the evidence.

3  
4 2-3-13: TOWN CLERK: The Town Clerk shall serve as the official secretary of the Board,  
5 and shall designate a person or persons to provide the necessary administrative services for  
6 the Board. The Town Clerk or the Clerk's designee shall attend the meetings of the Board.

7  
8 2-3-14: OATHS; SUBPOENAS: The Board shall have the power to administer oaths and  
9 issue subpoenas to require the presence of persons and the production of papers, books,  
10 and records necessary to the determination of any hearing which the Board is authorized to  
11 conduct. It shall be unlawful and a violation of this Code for any person to fail to comply  
12 with any subpoena issued by the Board in the proper conduct of its hearings, and upon  
13 conviction for such violation the offender shall be punished as provided in Title 1, Chapter  
14 4 of this Code. A subpoena shall be served in the same manner as a subpoena issued by the  
15 district court of the state.

16  
17 2-3-15: APPEALS PROCESS:

18  
19 A. Form Of Notice of Appeal: Those matters subject to decision by a board of appeals  
20 under a building code may be appealed to the Board by filing a written notice of  
21 appeal with the Town's building official. A notice of appeal shall contain all of the  
22 following information:

- 23 1. A heading in the words: "Before the Building Codes Board of Appeals of the  
24 Town of Breckenridge."
- 25 2. A caption reading: "Appeal of," giving the name of the appealing party.
- 26 3. A brief statement setting forth the legal interest of the appealing party in the  
27 building or the land involved in the notice and order appealed from.
- 28 4. A statement that the appeal is based on a claim by the appealing party that  
29 either: (i) the true intent of the applicable building code has been incorrectly  
30 interpreted; (ii) the provisions of the applicable building code do not fully apply;  
31 or (iii) an equally good or better form of construction is proposed by the  
32 appealing party. No other basis for an appeal shall be permitted.
- 33 5. A brief statement in ordinary and concise language of the specific order or action  
34 appealed from, together with any material facts claimed to support the  
35 contentions of the appealing party.
- 36 6. A brief statement in ordinary and concise language of the relief sought by the  
37 appealing party.

- 1           7. The signatures of the appealing party and the appealing party's mailing address.
- 2           8. The verification (by declaration under penalty of perjury) of the appealing party
- 3           as to the truth of the matters stated in the appeal.

4 **The Board shall not consider an appeal that is incomplete or untimely filed.**

5           B. **Filing of Appeal: The appeal shall be filed within thirty (30) days from the date of**

6           issuance of an appealable order or appealable action of the building official;

7           provided, however, that if the building or structure is in such condition as to make it

8           immediately dangerous to the life, limb, property, or safety of the public or adjacent

9           property and is ordered vacated and posted in accordance with the uniform code for

10           the abatement of dangerous buildings, or other building code, such appeal shall be

11           filed within ten (10) days from the date of the service of the notice and order of the

12           building official.

13           C. **Processing Of Appeal: Within five (5) days of receipt of a complete notice of appeal**

14           the building official shall notify the Town Manager of the filing of the appeal. The

15           Town Manager shall then promptly appoint the members of the Board who will

16           hear and decide the appeal.

17           D. **Scheduling And Noticing of Hearing of Appeal: The Board shall conduct a hearing**

18           on each appeal that is timely and properly filed under this Chapter. As soon as

19           practicable after the Town Manager has appointed a Board to hear the appeal, the

20           Board shall fix a date, time, and place for the hearing of the appeal. Such date shall

21           be not less than ten (10) nor more than thirty (30) days from the date the appeal was

22           filed with the building official, unless the appealing party agrees to a later hearing

23           date. Written notice of the time and place of the hearing shall be given at least five

24           (5) days (or such shorter time as may be agreed upon by the appealing party) prior

25           to the date of the hearing to each appealing party by the Town Clerk, either by

26           causing a copy of such notice to be delivered to the appealing party personally or by

27           mailing a copy thereof, postage prepaid, addressed to the appealing party at the

28           address shown in the notice of appeal. The Board may continue any hearing, upon

29           timely request, for good cause shown, or upon its own initiative, and such

30           rescheduled hearing date may be later than thirty (30) days from the date the appeal

31           was filed with the building official.

32           E. **Conduct of Hearing: The following rules shall govern the conduct of an appeal**

33           hearing before the Board:

- 34           1. **Scope Of Hearing On Appeal: Only those matters or issues specified by the**
- 35           appealing party in the appealing party's notice of appeal shall be considered,
- 36           unless the Board for good cause determines to consider other issues.

- 1           2. Representation: Any person may appear or be represented by an authorized  
2           agent or an attorney at their own expense. An attorney who appears before the  
3           Board shall be required to state the name and address of all persons whom he or  
4           she has been authorized to represent at the hearing.
  
- 5           3. Right To Present Evidence And Cross-Examine Witnesses: Each party shall  
6           have the right to present such evidence as may be relevant, and to cross-examine  
7           all witnesses. The Town's building official shall be deemed to be a party to any  
8           appeal filed under this Chapter.
  
- 9           4. Testimony Under Oath: All testimony shall be given under oath or affirmation.
  
- 10          5. Rules Of Evidence: The strict rules of evidence shall not apply.
  
- 11          6. Audio Recording: An audio record shall be made of each hearing. The Town  
12          Clerk shall retain the original audio record as required by Town's record  
13          retention policy. A copy of an audio record of a hearing shall be made available  
14          to any party upon written request and payment of a fee determined by the Town  
15          Clerk to be sufficient to reimburse the Town for the cost of providing such copy.  
16          A court reporter may be employed by any party, at the expense of such party, to  
17          prepare a verbatim written record of the hearing.
  
- 18          7. Burden of Proof: The burden of proof shall be on the appealing party. The  
19          burden of proof shall be by a preponderance of the evidence. "Preponderance of  
20          the evidence" means to prove that something is more probably true than not.

21          F. Decision: The Board shall render its decision based upon the evidence presented at  
22          the hearing and any written legal or other argument presented by the parties; the  
23          requirements of the applicable building code; and whatever additional evidence or  
24          knowledge that may be relevant. All decisions shall be issued within thirty (30) days  
25          after the hearing, and shall be transmitted in writing to the appealing party.

26          G. Staying Of Order Under Appeal: Enforcement of any order, decision, or  
27          determinations of the building official that is the subject of a notice of appeal shall  
28          be stayed during the pendency of an appeal.

29          2-3-16: FAILURE TO APPEAL: Failure of any person to file a timely and complete notice  
30          of appeal in accordance with of this Chapter shall constitute a waiver of such person's right  
31          to an administrative hearing before the Board, and the right to an adjudication by the  
32          Board of any order, decision, or determination made the Town's building official.

33          2-3-17: APPEALS FROM BOARD DECISION: The decision of the Board shall be final,  
34          subject to the right of any aggrieved party to contest the matter in an appropriate court  
35          action commenced under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. For

1 purposes of determining the time limit for the commencement of an action under Rule  
2 106(a)(4) of the Colorado Rules of Civil Procedure, the decision of the Board shall be  
3 deemed to be final upon the Board's issuance of a written finding or decision following the  
4 conclusion of the hearing. If the appealing party receives a copy of the written decision of  
5 the Board at the time of the hearing, the time for the filing of the appeal pursuant to Rule  
6 106(a)(4) of the Colorado Rules of Civil Procedure shall commence from the date the  
7 appealing party receives the written decision. If the written decision of the Board is  
8 transmitted to the appealing party by mail, the time for the filing of the appeal Rule  
9 106(a)(4) of the Colorado Rules of Civil Procedure shall commence from the date of the  
10 mailing of the written decision.

11  
12 **2-3-18: CHAPTER CONTROLS IN THE EVENT OF A CONFLICT: The provisions of**  
13 **this Chapter supersede any conflicting provision of a building code.**

14  
15 Section 2. Except as specifically amended by this ordinance, the Breckenridge Town  
16 Code, and the various secondary codes adopted by reference therein, shall continue in full force  
17 and effect.

18  
19 Section 3. The Town Council finds, determines, and declares that it has the power to  
20 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX  
21 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

22  
23 Section 4. This ordinance shall be published and become effective as provided by Section  
24 5.9 of the Breckenridge Town Charter.

25  
26 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
27 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2017. A Public Hearing shall be held at the  
28 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
29 \_\_\_\_\_, 2017, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
30 Town.

31  
32 TOWN OF BRECKENRIDGE, a Colorado  
33 municipal corporation

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35  
36 By: \_\_\_\_\_  
37 Eric S. Mamula, Mayor  
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ATTEST:

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Helen Cospolich, CMC,  
Town Clerk



**TO:** BRECKENRIDGE TOWN COUNCIL  
**CC:** RICK HOLMAN, TOWN MANAGER; SHANNON HAYNES, ASSISTANT TOWN MANAGER  
**FROM:** REVENUE SERVICES ADMINISTRATOR – HEATHER PEZZELLA  
**SUBJECT:** TOWN TAX CODE REVISIONS  
**DATE:** 05/23/2017

---

Please find attached the modification to the Town of Breckenridge Town Code proposed revisions to business and occupational licenses. These changes were brought for first reading on May 9, and were outlined in the memo included in the May 9th work session packet.

The intent of these revisions is to update our code to require accommodation units to list the business/occupational license in advertisements. There was one minor grammatical edit from first reading, which is noted with a strike-out and double underline. This item is up for second reading tonight.



1 ***FOR WORKSESSION/SECOND READING – MAY 23***

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. 16

7  
8 Series 2017

9  
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE  
11 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE BUSINESS AND  
12 OCCUPATIONAL LICENSES AND TAX ORDINANCE,” CONCERNING  
13 REQUIREMENTS FOR THE ADVERTISING OF ACCOMMODATION UNITS OFFERED  
14 FOR RENT

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

18  
19 Section 1. The definition of “Accommodation Unit” in Section 4-1-2 of the Breckenridge  
20 Town Code is amended to read as follows:

21  
22  
23 ACCOMMODATION UNIT: Separate and distinct living units including condominium,  
24 townhome, house, trailer, studio unit, condo-hotel units,  
25 or any such other similar unit which is rented to any  
person, who, for consideration, uses, possesses or has the  
right to use or possess such accommodation unit for a  
period of 30 consecutive days or less, regardless of the  
number of days during a license year such unit is rented.

26  
27 Section 2. Section 4-1-2 of the Breckenridge Town Code is amended by the addition of  
28 the following definition:

29  
30 ADVERTISEMENT: A form of marketing communication that employs a  
nonpersonal message to promote the rental of an  
accommodation unit. This includes, but is not limited to,  
signage, mailing, brochures, print, radio, television, internet  
listing, e-mail publication, social media, other electronic  
means, telephone, or other means or methods regardless of  
the medium used.

26  
27 Section 3. Section 4-1-3 of the Breckenridge Town Code is amended to read as follows:

28  
29 4-1-3: LICENSE REQUIRED:  
30

1 It shall be unlawful for any person to maintain, operate, or conduct any retail  
2 business or engage in any business activity in the town, including the delivery of  
3 goods (excluding wholesale) within the town which are purchased or contracted  
4 for outside the corporate limits of the town, without having first obtained a  
5 business and occupational license pursuant to this chapter. Advertisement of  
6 accommodation unit that is located within the town is considered engaging in a  
7 business activity within the town. If business is transacted at two (2) or more  
8 separate locations by one person, a separate license for each place of business  
9 shall be required.

10  
11 Section 4. Chapter 1 of Title 4 of the Breckenridge Town Code is amended by the  
12 addition of a new Section 4-1-8-3, to be entitled “Special Conditions of a License;  
13 Advertisement of an Accommodation Unit,” which shall read as follows:

14  
15 4-1-8-3: SPECIAL CONDITIONS OF A LICENSE: ADVERTISEMENT OF AN  
16 ACCOMMODATION UNIT

17  
18 A. In addition to the other requirements of this chapter, the owner of an accommodation  
19 unit licensed pursuant to this chapter shall, as a condition of such license, be subject  
20 to the following requirements:

- 21 1. The owner of the accommodation unit shall list in the initial license  
22 application filed pursuant to this chapter all means, methods, and locations  
23 of advertisement for the rental of the accommodation unit that the owner  
24 intends to use, including, but not limited to, print publications  
25 advertisement and website advertisements.
- 26  
27 2. After a license has been issued, a licensee shall update the list of  
28 advertising information that was provided to the town with the initial  
29 license application within thirty (30) days of utilizing a means, method, or  
30 location of advertising the accommodation unit for rental.
- 31  
32 3. An advertisement offering to rent an accommodation unit must  
33 prominently display the Town’s business and occupational license number  
34 in the advertisement as, “Breckenridge Business License No. [insert  
35 number].” The failure to prominently display the required information in  
36 any advertisement of accommodation shall be a violation of this section.

37  
38 B. The licensee and owner of the accommodation unit shall each be liable for  
39 compliance with the requirements of this section. The licensee and owner of an  
40 accommodation ~~unit~~ units shall be given written notice of a violation of this section  
41 and fifteen (15) days within which to comply with the requirements of this section. It  
42 shall be an infraction for a licensee and owner of an accommodation unit to fail to  
43 comply with the requirements of this section. A person found to be in violation of this  
44 section, or against whom a default judgment has been entered, shall be subject to a  
45 minimum fine of two hundred dollars (\$200.00) up to a maximum fine of one  
46 thousand dollars (\$1,000.00) for each day of a violation of this section.

1           Section 5. Except as specifically amended by this ordinance, the  
 2 BreckenridgeTownCode, and the various secondary codes adopted by reference therein, shall  
 3 continue in full force and effect.  
 4

5           Section 6. Based upon the information provided to it in connection with the adoption of  
 6 this ordinance by the Financial Services Manager of the Town, the Town Council finds,  
 7 determines, and declares that the adoption of this ordinance will not result in a net tax revenue  
 8 gain to the Town within the meaning of Article X, Section 20 of the Colorado Constitution, also  
 9 known as the “TABOR Amendment.”  
 10

11           Section 7. Except as specifically amended hereby, the Breckenridge Town Code, and the  
 12 various secondary codes adopted by reference therein, shall continue in full force and effect.  
 13

14           Section 8. The Town Council finds, determines, and declares that it has the power to  
 15 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX  
 16 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.  
 17

18           Section 9. This ordinance shall be published and become effective as provided by Section  
 19 5.9 of the Breckenridge Town Charter.  
 20

21           INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
 22 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_, 2017. A Public Hearing shall be held at the  
 23 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
 24 \_\_\_\_, 2017, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
 25 Town.

26  
 27   TOWN OF BRECKENRIDGE, a Colorado  
 28   municipal corporation  
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 32   By: \_\_\_\_\_  
 33   Eric S. Mamula, Mayor  
 34

35       ATTEST:  
 36  
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39 \_\_\_\_\_  
 40 Helen Cospolich  
 41 Town Clerk  
 42

**MEMO**

**TO: Breckenridge Town Council**

**FROM: Laurie Best-Community Development Department**

**RE: First Reading-AN ORDINANCE APPROVING A MASTER LEASE WITH OPTION TO PURCHASE WITH COLORADO MOUNTAIN COLLEGE, A COLORADO STATUTORY LOCAL COLLEGE DISTRICT (Tract D-2, A Resubdivision of Tracts C and D, Runway Subdivision)**

**DATE: May 16, 2017 (for May 23<sup>rd</sup> Meeting)**

---

An Ordinance authorizing the master lease of twenty apartments within the D-2 project and option to purchase between the Town of Breckenridge and Colorado Mountain College (CMC) is attached for your review. This lease/purchase has been discussed and approved by the Council and the Housing Committee, and staff has been working with CMC to finalize the document. The key deal points include:

- CMC agrees to lease 20 apartments (14 studios and 6 one bedroom units) in two buildings for a maximum term of three years
- The rent due from CMC to the Town is \$247,200 for the initial year-the rent is expected to increase annually based on the 80% AMI rental rate provided a 90% occupancy rate is achieved
- CMC will sublease the 20 apartments in the following order of priority-CMC students or employees, then other Upper Blue Employees, and then other Summit County Employees
- The Town will retain one building containing 10 apartments (4 one bedrooms and 6 studios) for Town employee one year leases
- The Town will engage a manager to administer the Town employee leases and oversee the property, and CMC will engage a manager to administer their sub-leases
- Within the three year lease term, CMC may exercise their option to purchase the entire D-2 project (30 apartments) for \$5,794,152 which covers the Town's construction costs (hard and soft), exclusive of the land and approximately \$312,500 in offsite infrastructure
- In the event CMC exercises the purchase option, the Town employee leases would be honored for the remainder of their term and a Town Deed Restriction will be recorded to restrict occupancy in perpetuity to students and/or employee

Staff has worked with CMC on the form of this agreement and it is generally in final form with the exception of a few final edits that we have asked CMC to make. The only substantive

change is in regard to Section 9.5 (Waiver of Subrogation) and we expect that those changes will be made prior to second reading.

In summary, staff supports this lease and the sale of the apartments to CMC. With the master lease the net operating income (revenue to the Town) is projected at approximately \$174,700 annually. If CMC exercises the purchase option the sales proceeds will be available to cover additional housing development. Staff recommends approval of the Ordinance as presented and will be available at your meeting if there are questions. Thank you.

1                   ***FOR WORKSESSION/FIRST READING – MAY 26***

2  
3                   COUNCIL BILL NO. \_\_\_\_

4  
5                   Series 2017

6  
7                   AN ORDINANCE APPROVING A MASTER LEASE WITH OPTION TO PURCHASE WITH  
8                   COLORADO MOUNTAIN COLLEGE, A COLORADO STATUTORY LOCAL COLLEGE  
9                   DISTRICT  
10                  (Tract D-2, A Resubdivision of Tracts C and D, Runway Subdivision)

11  
12                  WHEREAS, the Town owns Tract D-2, A Resubdivision of Tracts C and D, Runway  
13                  Subdivision, as shown on the plat as recorded on April 25, 2016 under Reception No. 1109588 in  
14                  the office of the Summit County Clerk and Recorder; and

15  
16                  WHEREAS, the Town desires to lease the subject property to Colorado Mountain  
17                  College, a Colorado statutory local college district (“CMC”); and

18  
19                  WHEREAS, the Town has also agreed to grant to CMC an option to purchase the subject  
20                  real property; and

21  
22                  WHEREAS, a proposed Master Lease With Option to Purchase with respect to the  
23                  subject property has been prepared and reviewed by the Town Council; and

24  
25                  WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

26  
27                  The council may lease, for such time as council shall determine, any real or  
28                  personal property to or from any person, firm, corporation, public and private,  
29                  governmental or otherwise.

30  
31                  and;

32  
33                  WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate  
34                  lease entered into by the Town which exceeds one year in length must be approved by ordinance;  
35                  and

36  
37                  WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town  
38                  Council may lawfully authorize the sale of Town-owned real property by ordinance.

39  
40                  NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
41                  BRECKENRIDGE, COLORADO:

1           Section 1. The Master Lease With Option to Purchase between the Town and Colorado  
2 Mountain College, a Colorado statutory local college district (**Exhibit “A”** hereto), is approved;  
3 and the Town Manager is authorized, empowered, and directed to execute such document for and  
4 on behalf of the Town of Breckenridge.  
5

6           Section 2. If CMC exercises the option to purchase contained within the approved  
7 Master Lease With Option to Purchase, the Town Manager is authorized, empowered, and  
8 directed to take all necessary and appropriate action to close the sale of the real property that is  
9 the subject of the Master Lease With Option to Purchase. In connection therewith, the Town  
10 Manager shall have full power and authority to do and perform all matters and things necessary  
11 to the sale of the real property that is the subject of the Master Lease With Option to Purchase,  
12 including, but not limited to, the following:  
13

- 14           1.       The making, execution, and acknowledgement of settlement  
15                   statements, closing agreements, and other usual and customary  
16                   closing documents;
- 17           2.       The execution, acknowledgement, and delivery to the buyer of the  
18                   deed of conveyance for the subject property; and
- 19           3.       The performance of all other things necessary to the sale of the  
20                   subject property by the Town pursuant to the Master Lease With  
21                   Option to Purchase.  
22  
23  
24

25 The Town Council hereby ratifies and confirms, in advance, all action taken by the Town  
26 Manager pursuant to this Section 2.  
27

28           Section 3. The Town Council hereby finds, determines, and declares that it has the power  
29 to adopt this ordinance pursuant to: (i) Sections 15.3 and 15.4 of the Breckenridge Town Charter;  
30 (ii) Section 1-11-4 of the Breckenridge Town Code; (iii) the authority granted to home rule  
31 municipalities by Article XX of the Colorado Constitution; and (iv) the powers contained in the  
32 Breckenridge Town Charter.  
33

34           Section 4. This ordinance shall be published and become effective as provided by Section  
35 5.9 of the Breckenridge Town Charter.  
36

37           INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
38 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2017. A Public Hearing shall be held at the  
39 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
40 \_\_\_\_\_, 2017, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
41 Town.  
42  
43

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
Eric S. Mamula, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk



**MASTER LEASE WITH OPTION TO PURCHASE**

**BETWEEN**

**TOWN OF BRECKENRIDGE,**  
a Colorado municipal corporation

and

**COLORADO MOUNTAIN COLLEGE,**  
a Colorado statutory local college district

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**MASTER LEASE WITH OPTION TO PURCHASE**

THIS MASTER LEASE WITH OPTION TO PURCHASE (“Lease”) is dated \_\_\_\_\_, 2017, and is between the **TOWN OF BRECKENRIDGE**, a Colorado municipal corporation (“the **Landlord**”) and **COLORADO MOUNTAIN COLLEGE**, a Colorado statutory local college district (“the **Tenant**”). The Landlord and the Tenant are sometimes individually referred to in this Lease as a “**Party**”, and are collectively referred to in this Lease as the “**Parties**.”

**ARTICLE 1 - BASIC LEASE PROVISIONS**

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

**1.2 Use Of Leased Premises.**

(a) The Tenant shall sublease the individual units within the Leased Premises to the following persons in order of priority: (i) to the Tenant’s students or employees; then (ii) to Upper Blue Employees; and then (iii) Other Summit County Employees. As used in this Section “**Upper Blue Employee**” means an employee of a business physically located in and serving the Upper Blue River Basin. “**Upper Blue River Basin**” means the geographic area bounded by Farmers Korner to the north; Hoosier Pass to the south; the Continental Divide to the East; and the top of the Ten Mile Range to the west. “**Other Summit County Employee**” means an employee of a business physically located in and serving any portion of Summit County, Colorado other than the Upper Blue River Basin. Such persons are referred to in this Lease as “**qualified subtenants**.”

(b) Notwithstanding Section 1.2A, the Tenant may also rent the Leased Premises to its students, faculty, or staff on a short-term basis for Tenant’s programs or events, or to provide for student or employee transition to long-term housing.

(c) The Tenant may determine the amount of the rent to be charged to its renters or subtenants, as well as the other terms and conditions of its rental agreements and subleases, and the Tenant’s rental agreement and sublease forms shall not require the approval of the Landlord; provided, however, no rental agreement or sublease shall be inconsistent with the terms and conditions of this Lease.

(d) The Tenant shall not use the Leased Premises for any other purpose without the Landlord’s prior written consent.

**1.3 Term.** Subject to earlier termination as hereafter provided, the term of this Lease shall be for a period of three (3) years, commencing on the later of (i) July 1, 2017, or the

1 date that the Lease Conditions are satisfied and Tenant accepts occupancy of the Premise (the  
2 “**Commencement Date**”), and terminating June 30, 2020, or the date that is the last day of the  
3 month in which the third (3<sup>rd</sup>) anniversary of the Commencement Date occurs. Nothing in this  
4 Lease permits the Tenant to use or occupy the Leased Premises after the expiration or earlier  
5 termination of this Lease, except if Tenant exercises its Option to purchase provided in Article  
6 14. Unless Tenant exercises its Option to purchase provided in Article 14, if the Tenant  
7 continues to occupy the Leased Premises after such expiration or termination, such occupancy  
8 shall (unless the Parties otherwise agree in writing) be an extension of this Lease on a month-to-  
9 month basis only, and such occupancy shall be subject to all of the terms and conditions of this  
10 Lease.

11           1.4     **Lease Year Defined.** Each Lease Year, except the First Lease Year, consists of a  
12 period of 12 consecutive months. The First Lease Year commences on the Commencement Date  
13 and ends on July 31, 2018. The Second Lease Year commences August 1, 2018 and ends on July  
14 31, 2019. The Third Lease Year commences August 1, 2019 and ends on July 31, 2020.

15           1.5     **Conditions Before Lease Becomes Commencement.** The conditions set forth on  
16 the attached **Exhibit “B”** (“**Lease Conditions**”) must be satisfied before the Term commences.  
17 The Tenant’s acceptance of possession of the Leased Premises shall be conclusive evidence that  
18 the Lease Conditions have been fully satisfied. The Tenant can terminate this Lease in its sole  
19 and absolute discretion if it determines that any of the Lease Conditions have not been satisfied  
20 prior to accepting possession of the Leased Premises and, in such event, any rent paid to the  
21 Landlord prior to termination shall be refunded to the Tenant. If the Tenant takes possession of  
22 the Leased Premises it shall be conclusively presumed that all of the Lease Conditions were  
23 satisfied to the Tenant’s satisfaction.

24           1.6     **Surrender of Leased Premises.**

25           (a)     Unless Tenant purchases the Premises as contemplated herein, upon the  
26 expiration or earlier termination of this Lease the Tenant shall surrender the Leased Premises to  
27 the Landlord in good condition, ordinary wear and tear excepted. Not later than the last day of  
28 the term of this Lease, the Tenant shall remove its personal property and fixtures from the  
29 Leased Premises. The cost of such removal shall be borne by the Tenant, and the Tenant shall  
30 repair all injury or damage done to the Leased Premises in connection with the installation or  
31 removal of the Tenant’s personal property and fixtures. All of the Tenant’s fixtures that are so  
32 attached to the Leased Premises that they cannot be removed without material injury to the  
33 Leased Premises shall, at the Landlord’s option, become the property of the Landlord upon  
34 installation and remain with the Leased Premises upon surrender.

35           (b)     The Landlord may retain or dispose of any personal property, fixtures, alterations,  
36 or improvements left remaining by the Tenant at or upon the Leased Premises following the  
37 expiration or earlier termination of this Lease, and the Landlord is not accountable to the Tenant  
38 for any damages for the loss or destruction thereof, or for any part of the proceeds of sale, if any,  
39 realized by the Landlord. The Tenant waives all claims against the Landlord for any damages  
40 suffered by the Tenant resulting from the Landlord’s retention or disposition of such personal

1 property, fixtures, alterations, or improvements. The Tenant shall be liable to the Landlord for  
2 the Landlord's costs for storing, removing and disposing of any such personal property, fixtures  
3 (including trade fixtures) or alterations.

4           **1.7 Governmental Powers of the Landlord and the Tenant.**

5           (a) The Tenant acknowledges that throughout the term of this Lease the Landlord  
6 has, and shall continue to have, those governmental rights, powers, and authority provided by  
7 applicable law, including, but not limited to, the *Breckenridge Town Charter* and the ordinances  
8 of the Town of Breckenridge, all as amended from time to time. The Tenant further  
9 acknowledges that the provisions of this Lease do not limit or restrict such rights, powers, and  
10 authority of the Landlord with respect to the Leased Premises when the Landlord is acting in its  
11 governmental capacity as a home-rule municipality under Colorado law.

12           (b) The Landlord acknowledges that throughout the term of this Lease the Tenant  
13 has, and shall continue to have, those governmental rights, powers, and authority provided by  
14 applicable law. The Landlord further acknowledges that the provisions of this Lease do not limit  
15 or restrict such rights, powers, and authority of the Tenant with respect to the Leased Premises  
16 when the Tenant is acting in its governmental capacity as a statutory local college district under  
17 Colorado law.

18           **1.8 Property Management Services.**

19           (a) Throughout the term of this Lease Landlord will contract with and pay a qualified  
20 property manager (the "**Property Manager**") selected by Landlord to provide property  
21 management services for the Leased Premises other than those set forth in Section 1.8(b) below.  
22 To the extent that Tenant elects to include within the property management agreement any of the  
23 services described in Section 1.8(b), Tenant shall execute a separate property management  
24 agreement and pay for such services.

25           (b) It is agreed that the Tenant may elect at its expense to hire the Property Manager  
26 to perform the following:

- 27           (i) Collect rent payments or other funds from Tenant's subtenants;
- 28           (ii) Pre-qualify or approve Tenant's subtenants, including background checks;
- 29           (iii) Track levels of occupancy at the Leased Premises; and
- 30           (iv) Generally manage Tenant's subleases, except as specifically provided in  
31 subsection (c), below.

32           (c) The Property Manager shall, as part of its duties to the Landlord:

- 33           (i) coordinate the cleaning and maintenance of the Building in which the Leased  
34 Premises are located; and

1 (ii) coordinate the move in and move-out of Tenant's subtenants.

2 **ARTICLE 2- RENT AND SECURITY DEPOSIT**

3 **2.1 Rent.**

4 (a) For the First Lease Year the Tenant agrees to pay the Landlord, without prior  
5 demand therefor and without any deduction or offset whatsoever, the total sum of \$247,200.00 as  
6 rent. Such rent shall be paid in consecutive monthly installments of \$20,600.00 each. Such rental  
7 represents the monthly rent of \$1,000.00 for each of the fourteen (14) studio units within the  
8 Leased Premises, and \$1,100.00 for each of the six (6) one-bedroom units [14 x \$1,000.00 + 6 x  
9 \$1,100.00 = \$20,600.00].

10 (b) For the Second Lease Year and the Third Lease Year the rent shall be increased to  
11 reflect 80% of the local Area Median Income (AMI) rate and can be further increased, in an  
12 amount not to exceed 3% over the prior year, to reflect corresponding AMI increases, but in  
13 either or both years only if the Tenant has achieved at least 90% average occupancy over the  
14 course of the prior 12-month period. The local AMI rate adjustment shall never result in a  
15 reduction of rent due under the Lease.

16 **2.2 "Additional Rent" Defined.** Any amount due to the from the Tenant under this  
17 Lease that is not specifically identified as "rent" pursuant to Section 2.1 is additional rent.

18 **2.3 Payment of Monthly Rent.** The monthly rent due to the Landlord shall be paid  
19 in advance each month during the term of this Lease of this Lease. The monthly rent for the first  
20 month of the term of this Lease shall be paid to upon the execution of this Lease. Thereafter, the  
21 monthly rent shall be paid to the Landlord not later than the 5<sup>th</sup> day of each month.

22 **2.4 Interest On Past Due Amounts.** The Tenant shall pay interest to the Landlord  
23 on any sum due to the Landlord under this Lease that is 30 days or more past due at the legal rate  
24 from the date due until the date such payment is fully paid.

25 **2.5 Place And Manner Of Payments.** All payments due to the Landlord under this  
26 Lease shall be made to:

27  
28 Town of Breckenridge Finance Director  
29 P. O. Box 168  
30 Breckenridge, CO 80424  
31

32 or at such other place as the Finance Director of the Town of Breckenridge may hereafter  
33 designate by written notice provided to the Tenant in accordance with Section 16.2 of this Lease.  
34 All sums shall be made in legal tender of the United States. Any check given to the Landlord  
35 shall be received subject to collection, and the Tenant agrees to pay any charges, fees, or costs  
36 incurred by the Landlord for the collection, including reasonable attorney's fees.  
37

1           2.6     **Security Deposit.** Upon signing this Lease, the Tenant shall pay the Landlord the  
2 sum of \$50,000.00 for a security deposit (“**Security Deposit**”). The Security Deposit shall be  
3 held by the Landlord as security for the faithful performance by the Tenant of all the terms and  
4 conditions of this Lease. The Landlord shall not be required to segregate the Tenant’s Security  
5 Deposit from its other funds. In no event shall the Landlord be obligated to apply the Security  
6 Deposit to rent or other charges in arrears or to damages resulting for failure of the Tenant to  
7 perform the terms and conditions of this Lease. Application of the Security Deposit to the arrears  
8 of rental payments or damages shall be at the option of the Landlord. The Security Deposit shall  
9 be returned to the Tenant, without interest, within 60 days after this Lease expires or is  
10 terminated if not applied by the Landlord toward the payment of: (i) rent in arrears; (ii) damages  
11 suffered by the Landlord by reason of any breach of the terms and conditions of this Lease by the  
12 Tenant; or (iii) the expense of any cleaning that must be done if the Leased Premises are not left  
13 clean. In no event is the Security Deposit to be returned until the Tenant has vacated the Leased  
14 Premises and delivered possession (including the keys) to the Landlord. If the Tenant exercises  
15 the Option to Purchase the Leased Premises provided in Article 14 the Security Deposit shall  
16 become the earnest money for such purchase, and shall be applied to the Purchase Price at the  
17 Closing.

18                                   **ARTICLE 3 - LANDLORD’S DISCLAIMERS AND EXCULPATORY**  
19   **PROVISIONS**

20           3.1     **“As Is” Condition of Leased Premises.** Once the Tenant determines that all of  
21 the Lease Conditions described in Section 1.5 have been satisfied, and except as specifically  
22 agreed in this Lease to the contrary, the Leased Premises are leased “**AS IS,**” “**WHERE IS,**”  
23 and “**WITH ALL FAULTS,**” and the Landlord does not warrant or make any representation,  
24 express or implied, relating to the **MERCHANTABILITY**, quantity, quality, condition,  
25 suitability or **FITNESS FOR ANY PURPOSE WHATSOEVER** of the Leased Premises or any  
26 portion thereof. Except as expressly provided in this Lease, the Landlord has no liability  
27 whatsoever to undertake any repairs, alterations, removal, remedial actions, or other work of any  
28 kind with respect to any portion of the Leased Premises, or any portion thereof.

29           3.2     **Landlord’s Non-liability.** As a material part of the consideration to be received  
30 by the Landlord under this Lease, the Tenant assumes all risk of damage to property or injury to  
31 persons in or upon the Leased Premises from any cause other than the Landlord’s or the Property  
32 Manager’s negligence or intentional act, and the Tenant waives all claims in respect thereof  
33 against the Landlord.

34                                   **ARTICLE 4 - TENANT’S AFFIRMATIVE OBLIGATIONS**

35           4.1     **Taxes.**

36           (a)    As used in this Section, the term “**Taxes**” means all personal property and real  
37 property taxes levied, assessed or imposed by any taxing authority arising out of the Tenant’s  
38 occupancy and use of the Leased Premises pursuant to this Lease.

1 (b) Pursuant to Section 39-3-105, C.R.S., all real or personal property owned by the  
2 Landlord is exempt from taxation. However, the Parties acknowledge that the Tenant's  
3 occupancy and use of the Leased Premises pursuant to this Lease may be deemed to be a  
4 "taxable possessory interest" pursuant to Section 39-1-103(17)(a), C.R.S.

5 (c) If applicable, the Landlord shall pay all Taxes lawfully assessed arising from the  
6 Tenant's occupancy and use of the Leased Premises pursuant to this Lease, and shall indemnify  
7 and defend the Tenant from any such Taxes. The Landlord shall pay all Taxes in a timely  
8 manner. Upon the Tenant's written request the Landlord shall provide to the Tenant a photostatic  
9 copy of the receipt(s) or cancelled check(s) showing payment of the Taxes. The Landlord may  
10 pay any Taxes in installments if permitted by law.

11 (d) If the Landlord is liable for the payment of any Taxes arising from the Landlord's  
12 occupancy and use of the Leased Premises pursuant to this Lease, the Landlord may, at its sole  
13 expense, contest such Taxes by the commencement and prosecution, in good faith and with due  
14 diligence, of appropriate legal proceedings. The Landlord shall make timely payment of such  
15 Taxes if the Landlord loses the contest. The Landlord shall advise the Tenant prior to instituting  
16 any such contest and shall as a condition of exercising such right provide the Tenant such  
17 reasonable assurance as it may request that such contest shall be in compliance with the  
18 provisions of this Section. The Tenant, at the Landlord's sole cost and expense, shall reasonably  
19 cooperate with the Landlord in any such contest; may join in the contest; and shall execute and  
20 deliver such documents and instruments as may be necessary or appropriate for prosecuting an  
21 effective contest.

22 4.2 **Non-Discrimination.** The Tenant:

23 (i) shall not discriminate against any employee or applicant for employment to  
24 work at the Leased Premises, or any applicant for a rental or sublease of any portion of the  
25 Leased Premises, because of race, color, creed, sex, sexual orientation, religion, national origin,  
26 or disability;

27 (ii) shall insure that applicants who are to work at the Leased Premises are  
28 employed and that employees are treated during employment without regard to their race, color,  
29 creed, sex, sexual orientation, religion, national origin, or disability;

30 (iii) shall in all solicitations or advertisements for employees to be engaged in the  
31 performance of work at the Leased Premises state that all qualified applicants shall receive  
32 consideration for employment without regard to race, color, creed, sex, sexual orientation,  
33 religion, national original or disability; and

34 (iv) shall comply with all applicable federal, state, and local laws, rules and  
35 regulations. The indemnification and termination provisions of this Lease apply to the Tenant's  
36 failure to comply with all applicable laws or regulations; provided that such indemnification and  
37 termination provisions shall not be applicable in the event that any such discrimination is caused  
38 by the Property Manager or Landlord's agents or contractors.

1 **ARTICLE 5 - TENANT'S NEGATIVE OBLIGATIONS**

2 **5.1 Improvements.**

3 (a) As used in this Article 5, “**Improvement**” means any physical improvement  
4 made, or proposed to be made, to the Leased Premises.

5 (b) No Improvement may be made to the Leased Premises by the Tenant except  
6 under the following conditions:

7 (i) No Improvement may be undertaken until the Tenant has obtained approval of  
8 plans and specifications for such Improvement from the Landlord, acting in its capacity as owner  
9 of the Leased Premises (and not in its governmental capacity). In connection therewith, the  
10 Landlord has the right to review and approve a proposed Improvement in its sole and absolute  
11 discretion.

12 (ii) The Tenant must also obtain a “Development Permit” from the Landlord, acting  
13 in the Landlord’s governmental capacity.

14 (iii) An Improvement must be constructed under the supervision of an architect or  
15 engineer licensed in the State of Colorado, selected and paid by the Tenant.

16 (iv) All work done in connection with the construction of an Improvement must be  
17 done in a good and workmanlike manner and in material conformity with the plans and  
18 specifications that are approved by the Landlord.

19 (v) The construction of an approved Improvement must be prosecuted with  
20 reasonable dispatch, subject to delays caused by Force Majeure Events (See Section 16.11).  
21 before any work begins. The Tenant must procure or cause the contractor for the work to procure  
22 insurance in accordance with Article 8 of this Lease, including worker’s compensation insurance  
23 covering all persons employed in connection with the work.

24 **5.2 Subleasing.**

25 (a) The Leased Premises have been leased to the Tenant with the expectation that the  
26 Tenant shall sublease the Leased Premises for the allowed uses described in Section 1.2 of this  
27 Lease. Accordingly, the Tenant may sublease the Leased Premises without the Landlord’s  
28 consent to Qualified Subtenants described in Section 1.2 of this Lease. The Tenant’s permitted  
29 subleases under this Section are, however, subject to the following requirements:

30 (i) All subleases shall be subject to the terms of this Lease;

31 (ii) Each sublease shall be for a minimum term of twelve (12) months; provided,  
32 that this requirement shall not apply to Tenant’s students, faculty, or staff occupying the  
33 Leased Premises on a short-term basis pursuant to Section 1.2(b);



1 (iii) The term of a sublease shall not extend beyond the term of this Lease; and

2 (iv) The Tenant shall remain liable for all of its obligations under this Lease,  
3 notwithstanding the execution of a sublease.

4 The Tenant may not sublease any portion of the Leased Premises to any person who is not a  
5 Qualified Subtenant as described in Section 1.2 of this Lease without obtaining the prior written  
6 consent of the Landlord.

7 5.3 **Assignment.** The Tenant may not assign or transfer any of its rights under this  
8 Lease without the prior written consent of the Landlord. If the Tenant attempts to make any  
9 assignment without the requisite consent of the Landlord, such assignment shall be void and, at  
10 the option of the Landlord, shall terminate this Lease. Any consent by the Landlord to any  
11 assignment of this Lease shall not be a waiver by the Landlord of the provisions of this Section  
12 as to subsequent transactions of the same or similar nature. In the event of any permitted  
13 assignment, the Landlord may, but is not required to, release the Tenant from its obligations  
14 hereunder for the remainder of the term of this Lease.

15 5.4 **Waste or Nuisance.** The Tenant shall not commit any waste, any public or  
16 private nuisance, or any other act or thing prohibited by law.

17 5.5 **Mechanic's Liens.**

18 (a) In connection with the construction of any Improvements, the Tenant shall cause  
19 the payment of all proper and valid invoices and charges of all contractors, subcontractors,  
20 suppliers, materialmen, and similar persons who furnish services or materials in connection with  
21 the construction process. If any person ever records a mechanic's lien to enforce any claim for  
22 services or materials alleged to have been provided in connection with the Leased Premises, the  
23 Tenant shall cause the same to be released of record within 60 days after the recordation thereof,  
24 and the Tenant shall be liable to satisfy and cause a discharge of any such mechanic's lien claim.  
25 Notwithstanding the foregoing, the Tenant may contest any such mechanic's lien claim, provided  
26 that the Tenant conducts such contest in a timely manner and with due diligence, and that the  
27 Tenant provides the Landlord with such security in connection therewith as the Landlord may  
28 reasonably require. In connection with any such contest, the Landlord may join and participate in  
29 any such contest, at the Tenant's expense (with participation to include, without limitation, the  
30 execution and filing of pleadings and the provision and gathering of testimony and other  
31 evidence). If the Tenant loses any such contest, with all further rights of appeal having expired,  
32 the Tenant must satisfy the mechanic's lien claim in full prior to any foreclosure sale or other  
33 disposition of the Leased Premises which is made for the purpose of satisfying the claim.

34 (b) Prior to commencement of construction of any Improvements, the Tenant shall  
35 deliver notices to all contractors and subcontractors and post notices in accordance with Section  
36 38-22-105, C.R.S. (as it may be amended or in accordance with similar statutes that may be  
37 substituted therefor in the future), in locations that shall be visible by persons performing any  
38 work, which notices shall state that the Landlord is not responsible for the payment of such work

1 and setting forth such other information as may be reasonably required pursuant to such statutory  
2 provisions.

3 **ARTICLE 6 - PERSONAL PROPERTY WARRANTY**

4 **6.1 Personal Option Parcel Warranty.**

5 (a) The Landlord warrants that all personal property to be included within each unit  
6 of the Leased Premises shall be fully operational at the commencement of the term of this Lease.

7 (b) If the Option to purchase provided in Article 14 is exercised, all remaining  
8 manufacturer and contractor warranties, if any exist at the time of the closing, shall be assigned  
9 to the Tenant.

10 **ARTICLE 7 - UTILITIES, TRASH REMOVAL, AND MAINTENANCE**

11 **7.1 Utilities.**

12 (a) The Landlord shall pay for the following utilities used or consumed by the Tenant  
13 (or a subtenant) at the Leased Premises:

14 (i) Water;

15 (ii) Sewer;

16 (iii) Electricity;

17 (iv) Natural gas; and

18 (v) Trash removal.

19 (b) The Tenant shall pay for the following utilities used or consumed by the Tenant  
20 (or a subtenant) at the Leased Premises:

21 (i) Cable television (if desired); and

22 (ii) Internet service (if desired).

23 **7.2 Trash Dumpster.** The Landlord shall arrange for a trash dumpster(s), including a  
24 dumpster for all recycling products, to be provided for the use of the Tenant and any occupants at  
25 the Leased Premises. Each sublease shall require all trash generated at the Leased Premises to be  
26 placed in the trash dumpster(s). Each sublease shall require all recycling generated at the Leased  
27 Premises to be placed in the recycling dumpster(s).

28 **7.3 Repairs and Maintenance.**

1 (a) The Landlord shall be responsible for major or emergency repairs of the two  
2 buildings located on the Leased Premises (the “**Buildings**”). With respect to any Building, the  
3 term “**Major repairs**” include the substantial repair or replacement of the roof, foundation,  
4 exterior walls and glass, plumbing system, heating and ventilation systems, electrical system, and  
5 the painting of the exterior of any Building. “**Emergency repairs**” include the substantial repair  
6 or replacement of any structural or non-structural component of the Buildings that must be  
7 performed immediately in order to maintain the structure in a safe and useable condition.

8 (b) The Landlord shall provide all required maintenance and upkeep of the Leased  
9 Premises and Buildings, including:

10 (i) any required “Major Repair” as defined above;

11 (ii) any required minor maintenance of the Leased Premises and Buildings; and

12 (iii) all required maintenance of and repairs to all personal property located in the  
13 units in the Building.

14 (c) The Property Manager shall keep the Leased Premises in a clean and sanitary  
15 condition at all times. However, all contracts for required janitorial and trash services for the  
16 Leased Premises shall be placed solely in the Landlord’s name.

17 (d) The Landlord shall provide all required watering, mowing, and maintenance of  
18 the landscaping of the grounds surrounding the Leased Premises. The Tenant shall not permit  
19 any person to provide maintenance work at the Buildings or Leased Premises until such person  
20 has been approved by the Town.

21 (e) The Landlord shall provide all necessary snow and ice plowing and removal from  
22 the parking lot(s), sidewalks, and walkways that serve the Leased Premises.

23 7.4 **Inspection And Entry.** The Landlord and the Landlord’s authorized  
24 representatives may enter the Leased Premises at all times during reasonable business hours to  
25 inspect the Leased Premises., provided that reasonable advance notice is delivered to Tenant and  
26 provided further that Landlord will not unreasonably interfere with subtenant's occupancy. The  
27 Tenant further agrees that the Landlord may go upon the Leased Premises at reasonable times in  
28 order to:

29 (i) make any necessary repairs to the Leased Premises and perform any work  
30 therein that may be necessary to comply with the Landlord’s obligations under this Lease; any  
31 laws, ordinances, rules or regulations of any public authority; or that the Landlord may deem  
32 necessary to prevent waste or deterioration of the Leased Premises;

33 (ii) post any notice provided for by law; or

34 (iii) otherwise protect any and all rights of the Landlord.

1 Nothing in this Section implies or creates any duty on the part of the Landlord to do any work  
2 that under any provision of this Lease the Tenant is required to do, nor shall it constitute a waiver  
3 of the Tenant's default in failing to do such work. No reasonable exercise by the Landlord of any  
4 rights herein reserved shall entitle the Tenant to any damage or compensation of any kind from  
5 the Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any  
6 abatement of rent.

## 7 **ARTICLE 8 - INSURANCE**

8 **8.1 Tenant's Liability Insurance.** Throughout the term of this Lease the Tenant  
9 shall, at its expense, continuously maintain commercial general liability insurance covering the  
10 Tenant's operations on the Leased Premises with minimum limits of liability of not less than  
11 \$1,000,000 per occurrence and \$1,000,000 aggregate. The Tenant's liability insurance policy  
12 shall be endorsed to include the Landlord as an additional insured.

13 **8.2 Worker's Compensation Insurance.** Throughout the term of this Lease the  
14 Tenant shall, at its expense, continuously maintain worker's compensation insurance as required  
15 by Colorado law insuring the payment of compensation to all its employees engaged in the  
16 performance of work at the Leased Premises.

17 **8.3 Additional Insurance Provisions.** Every insurance policy required to be carried  
18 by the Tenant by this Article 8 shall be primary insurance, and any insurance carried by the  
19 Landlord, its officers, or its employees, or carried by or provided through any insurance pool of  
20 which the Landlord is a member, shall be excess and not contributory insurance to that provided  
21 by the Tenant. The Tenant is solely responsible for any deductible losses under its required  
22 insurance policies.

23 **8.4 Insurance Criteria.** Insurance policies required by this Lease shall:

24 (i) be issued by insurance companies licensed to do business in the State of  
25 Colorado with general policyholder's ratings of at least A and a financial rating of at least XI in  
26 the most current *Best's Insurance Reports* available at the time such insurance is to be procured;  
27 and

28 (ii) provide that the insurance cannot be cancelled or materially changed in the  
29 scope or amount of coverage unless 30 days' advance notice is given to the Landlord.

30 **8.5 Evidence of Insurance.** Prior to the commencement of this Lease, and on each  
31 subsequent renewal or replacement of the required insurance policies, the Tenant shall provide  
32 to the Landlord a certificate of insurance evidencing compliance with the requirements of this  
33 Section. All required insurance policies shall be renewed or replaced and maintained by the  
34 Tenant throughout the term of this Lease to assure continuous coverage. If the Tenant fails to  
35 give the required insurance certificate within 10 days after notice or demand for it, such action  
36 shall constitute a default under this Lease, and the Landlord may then proceed as provided in

1 Article 10 of this Lease, and/or the Landlord may obtain and pay for that insurance and receive  
2 reimbursement from the Tenant, together with interest thereon at the legal rate.

3 8.6 **Landlord's Insurance.** Throughout the term of this Lease the Landlord shall, at  
4 its expense, keep the Leased Premises insured against damage and destruction by fire,  
5 earthquake, vandalism, and other perils, including maintenance of commercial general liability  
6 insurance of not less than One Million Dollars (\$1,000,000) each occurrence/Two Million  
7 Dollars (\$2,000,000) aggregate, and all risk property insurance covering the leased premises in  
8 an amount equal to the full replacement value of the Leased Premises. **Policies shall include**  
9 **wavier of subrogation in favor of CMC.** The Tenant shall reimburse the Landlord, as Additional  
10 Rent, for any deductible loss paid by the Landlord arising from any loss to the Leased Premises  
11 caused by the negligence or intentional act of the Tenant, or its agents, employees, contractors,  
12 subcontractors or invitees, or any subtenant or a subtenant's guest.

## 13 **ARTICLE 9 - INDEMNIFICATION**

14 9.1 **Indemnification By Tenant.** To the fullest extent permitted by law, the Tenant  
15 shall indemnify, defend, and hold the Landlord, its officers and employees, harmless from and  
16 against all liability, claims, and demands, on account of injury, loss, or damage, including,  
17 without limitation, claims arising from bodily injury, personal injury, sickness, disease, death,  
18 property loss or damage, or any other loss of any kind whatsoever, that arise out of or are in any  
19 manner connected with this Lease or the Tenant's or a subtenant's use or possession of the  
20 Leased Premises, to the extent that such injury, loss, or damage is caused by the negligent,  
21 intentional, or willful wrongful act of: (i) the Tenant, its officers, employees, or agents; (ii) any  
22 subtenant of the Tenant, a subtenant's guest, or any other person permitted to occupy or use the  
23 Leased Premises by a subtenant; (iii) anyone directly or indirectly employed by the Tenant or a  
24 subtenant, and (iv) anyone for whose acts the Tenant is liable under applicable law; except to the  
25 extent such liability, claim, or demand arises through the negligent, intentional, or willful  
26 wrongful act of the Landlord, its officers, employees, or agents.

27 9.2 **Indemnification By Landlord.** To the fullest extent permitted by law, the  
28 Landlord shall indemnify, defend, and hold the Tenant, its officers and employees harmless from  
29 and against all liability, claims, and demands, on account of injury, loss, or damage, including,  
30 without limitation, claims arising from bodily injury, personal injury, sickness, disease, death,  
31 property loss or damage, or any other loss of any kind whatsoever, that arise out of or are in any  
32 manner connected with this Lease, to the extent that such injury, loss, or damage is caused by the  
33 negligent, intentional, or willful wrongful act of: (i) the Landlord, its officers, employees, or  
34 agents; (ii) anyone directly or indirectly employed by the Landlord, and (iii) anyone for whose  
35 acts the Landlord is liable under applicable law; except to the extent such liability, claim, or  
36 demand arises through the negligent, intentional, or willful wrongful act of the Tenant, its  
37 officers, employees, agents, a subtenant, a subtenant's guest, or any other person permitted to  
38 occupy or use the Leased Premises by a subtenant.

39 9.3 **Duty to Defend.** To the extent indemnification is required under this Agreement,  
40 the indemnifying Party shall investigate, handle, respond to, and provide defense for and defend

1 against (with counsel acceptable to indemnified Party) any liability, claim, or demand at its  
2 expense, and bear all other costs and expenses related thereto, including court costs and  
3 attorney's fees.

4 9.4 **Survival.** All indemnity obligations required by this Lease shall survive the  
5 completion or termination of this Lease and shall be fully enforceable thereafter, subject to any  
6 applicable statute of limitation.

7 9.5 **Waiver Of Subrogation.** Landlord and Tenant agree to have all insurance which  
8 may be carried by either of them endorsed with a clause providing that any release from liability  
9 of or waiver of claim for recovery from the other party entered into in writing by the insured  
10 thereunder prior to any loss or damage shall not affect the validity of said policy or the right of  
11 the insured to recover thereunder and providing further that the insurer waives all rights of  
12 subrogation which such insurer might have against the other party. Without limiting any release  
13 or waiver of liability or recovery contained in any other Section of this Lease but rather in  
14 confirmation and furtherance thereof, each of the parties hereto waive all claims for recovery  
15 from the other party for any loss or damage to any of its property insured under valid and  
16 collectible insurance policies to the extent of any recovery collectible under such insurance  
17 policies. Notwithstanding the foregoing or anything contained in this Lease to the contrary, any  
18 release or any waiver of claims shall not be operative, nor shall the foregoing endorsements be  
19 required, in any case where the effect of such release or waiver is to invalidate insurance  
20 coverage or the right of the insured to recover thereunder or increase the cost thereof (provided  
21 that in the case of increased cost the other party shall have the right, within ten (10) days  
22 following written notice, to pay such increased cost keeping such release or waiver in full force  
23 and effect).

## 24 **ARTICLE 10 - DEFAULT**

25 10.1 **Default By Tenant.** The occurrence of any one or more of the following events  
26 shall constitute a default and breach of the Lease by the Tenant:

27 (a) The vacating or abandonment of the Leased Premises by the Tenant.

28 (b) The failure by the Tenant to make any payment of rent, additional rent, or any  
29 other payment required to be made by the Tenant hereunder, as and when due, when such failure  
30 continues for a period of 10 days after service of written notice thereof by the Landlord to the  
31 Tenant.

32 (c) The failure by the Tenant to observe or perform any of the other covenants,  
33 conditions, or provisions of this Lease to be observed or performed by the Tenant, or to obey  
34 rules promulgated by the Landlord, within 30 days after service of written notice thereof by the  
35 Landlord to the Tenant. In the case of a non-monetary default that is not capable of being  
36 corrected within 30 days, the Tenant shall not be default if it commences correcting the default  
37 within 30 days of service of a demand for compliance notice and thereafter corrects the default  
38 with due diligence.

1           10.2   **Landlord’s Remedies Upon Default.** If the Tenant is in default under this  
2 Lease, the Landlord shall have all of the remedies provided for in such circumstances by  
3 Colorado law.

4           10.3   **Default By Landlord.** The Landlord shall be in default under this Lease if the  
5 Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within 30  
6 days following service of written notice thereof by the Tenant. In the case of a non-monetary  
7 default that is not capable of being corrected within 30 days, the Landlord shall not be default if  
8 the Landlord commences correcting the default within 30 days of receipt of notification thereof  
9 and thereafter corrects the default with due diligence.

10           10.4   **Tenant’s Remedies Upon Default.** If the Landlord is in default under this Lease,  
11 the Tenant shall have all of the remedies provided for in such circumstances by Colorado law.

12   **ARTICLE 11 - NONDISTURBANCE**

13           11.1   **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, the  
14 Landlord covenants that so long as there is no default (after notice and opportunity to cure have  
15 been given) in any of the covenants, conditions, or provisions of this Lease to be performed,  
16 observed, or kept by the Tenant, the Tenant shall peaceably and quietly hold and enjoy the  
17 Leased Premises for the entire term of this Lease.

18   **ARTICLE 12 - LANDLORD’S RULES**

19           12.1   **Rules.** The Tenant shall faithfully observe and comply with any rules and  
20 regulations promulgated by the Landlord with respect to the Leased Premises. The Landlord’s  
21 rules and regulations must be reasonable, and may not unilaterally change or significantly alter  
22 the material terms and conditions of this Lease. The rules and regulations, and any amendments  
23 thereto, shall be binding upon the Tenant upon delivery to the Tenant.

24   **ARTICLE 13 - HAZARDOUS MATERIALS**

25           13.1   **Hazardous Materials - Defined.** As used in this Section, the term “**Hazardous**  
26 **Materials**” means any chemical, material, substance or waste:

- 27           (i)       exposure to which is prohibited, limited, or regulated by any federal, state,  
28 county, regional or local authority, or other governmental authority of any nature; or
- 29           (ii)      that, even if not so regulated, may or could pose a hazard to the health or safety  
30 of the occupants of the Leased Premises including, without limitation, any petroleum, crude oil  
31 (any fraction thereof), natural gas, natural gas liquids, and those substances defined as  
32 “hazardous substances”, “hazardous materials”, “hazardous wastes” or other similar designations  
33 in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as  
34 amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C.

1 Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations,  
2 and precautions.

3           13.2 **Hazardous Materials - Prohibited.** The Tenant shall full comply with all  
4 statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or  
5 advised by any federal, state, local, or other governmental agency with respect to the use,  
6 generation, storage, or disposal of Hazardous Materials. The Tenant shall not cause, or allow  
7 anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or  
8 about the Leased Premises without the prior written consent of the Landlord, which consent may  
9 be revoked at any time. The Tenant’s indemnification of the Landlord pursuant to this Lease  
10 extends to all liability, including all foreseeable and unforeseeable consequential damages,  
11 directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous  
12 Materials at the Leased Premises by the Tenant, any subtenant or subtenant’s guest, or any  
13 person claiming under the Tenant, including, without limitation, the cost of any required or  
14 necessary repair, cleanup, or detoxification and the preparation of any closure or other required  
15 plans, whether such action is required or necessary prior to or following the termination of this  
16 Lease, to the full extent that such action is attributable, directly or indirectly, to the use,  
17 generation, storage, or disposal of Hazardous Materials by the Tenant or any person claiming  
18 under the Tenant; provided, however, the written consent by the Landlord to the use, generation,  
19 storage, or disposal of Hazardous Materials shall excuse the Tenant from the Tenant’s obligation  
20 of indemnification. If the Tenant is in breach of the covenants herein, after notice to the Tenant  
21 and the expiration of the earlier of:

22           (i) the cure period provided in Section 10.1(c);

23           (ii) the cure period permitted under applicable law, regulation, or order,

24 then the Landlord may, in its sole discretion, declare a default under this Lease and/or cause the  
25 Leased Premises to be freed from the Hazardous Material and the cost thereof shall be deemed  
26 additional rent hereunder and shall immediately be due and payable from the Tenant. The  
27 obligations of the Tenant under this Section 13.2 shall survive the expiration or termination of  
28 this Lease and be fully enforceable thereafter, subject to any applicable statute of limitation.

29                           **ARTICLE 14 - TENANT’S OPTION TO PURCHASE**

30           14.1 **Seller and Buyer Defined.** As used in this Article 14 the Landlord is the  
31 “**Seller**” and the Tenant is the “**Buyer**.”

32           14.2 **Grant of Option To Purchase.** As additional consideration for Buyer to enter  
33 into this Lease, the Seller grants to the Buyer the exclusive, irrevocable right and option  
34 (“**Option**”) to purchase the real property described on the attached **Exhibit “C”** (“**Option**  
35 **Parcel**”). The Option Parcel includes the Leased Premises, and one additional building owned  
36 by the Landlord. There are no water or water rights, ditch or ditch rights, well permits, or water  
37 storage rights appurtenant to the Option Parcel, and no water and water rights, ditch and ditch  
38 rights, well permits, or storage rights shall be conveyed by the Seller to the Buyer in the event



1 the Buyer exercises the Option. The Option is subject to the terms, conditions, and  
2 requirements of this Article 14.

3           **14.3 Term and Exercise of Option.** The Buyer may exercise the Option at any time  
4 during the term of this Lease by giving 75 days' prior written notice to the Seller; provided,  
5 however, that the Buyer may not exercise the Option if, at the time of attempted exercise of the  
6 Option, the Buyer is in default under this Lease for which notice and an opportunity to cure  
7 have been provided. To exercise the Option, the Buyer must deliver written notice to the Seller  
8 in accordance with Section 16.2 of this Lease.

9           **14.4 If Timely Notice of Exercise of The Option Is Given.** Upon the timely giving  
10 of notice of the exercise of the Option, the remaining provisions of this Article 14 shall govern  
11 the closing of the sale and purchase of the Option Parcel. Such sale and purchase is hereafter  
12 referred to as the "**Closing**."

13           **14.5 If Timely Notice of The Exercise of The Option Is Not Given.** Time is of the  
14 essence with respect to the Option exercise provided for in this Article 14. Accordingly, it is  
15 agreed that if the Buyer fails, for any reason, to give timely notice of the exercise of the Option  
16 prior to the expiration or termination of this Lease the Option shall terminate and each Party shall  
17 be released from any further obligations under this Article 14. Notwithstanding the foregoing, if  
18 proper notice was given at a time prior to the expiration of the term of this Lease, but the Closing  
19 would occur after such termination, then the notice shall be deemed timely, and this Lease shall  
20 automatically be extended by the time necessary to effect the Closing after the original  
21 termination date.

22           **14.6 Purchase and Sale of the Option Parcel.** On the Closing Date (as later defined  
23 in this Article 14) the Buyer shall purchase the Option Parcel from the Seller, and the Seller  
24 shall sell and convey the Option Parcel to the Buyer, all in accordance with and subject to the  
25 terms and conditions contained in this Article 14.

26           **14.7 Purchase Price.** The purchase price to be paid by the Buyer to the Seller for the  
27 Option Parcel (the "**Purchase Price**") shall be \$5,794,152. Rent paid to Seller under this Lease  
28 shall not be credited toward the Purchase Price.

29           **14.8 Payment of Purchase Price.** The Purchase Price shall be paid to the Seller by  
30 the Buyer in cash at Closing, subject to an adjustment for closing costs as provided in Section  
31 14.16.

32           **14.9 Earnest Money.** The Security Deposit described in Section 2.6 shall serve as  
33 earnest money ("**Earnest Money**") for the Option, and shall be credited toward the Purchase  
34 Price at Closing. If the Option does not close for any reason, the Earnest Money shall revert to  
35 the Security Deposit for this Lease.

36           **14.10 Due Diligence Documents.** Seller agrees to furnish to Buyer within 5 business  
37 days after Buyer's exercise of the Option the following due diligence materials related to the

1 Option Parcel, and such other documents reasonably requested by Buyer which are in Seller's  
2 possession:

3 (a) Any survey, architectural plans, studies and specifications that may have been  
4 developed for the Option Parcel;

5 (b) All studies and reports in the possession of Seller relating to environmental status,  
6 soil tests, and any other information regarding the environmental and soil conditions;

7 (c) Summary and copies of all service contracts and management agreements,  
8 warranties, guarantees, licenses, permits, certificates of occupancy and building inspection  
9 approvals;

10 (d) All service contracts provided shall be redacted to exclude any confidential or  
11 pricing information;

12 (e) An inventory of all personal property that is anticipated to be included in the sale;

13 (f) A complete set of all as-built construction, site and development plans;

14 (g) A list of any pending litigation relating to the Option Parcel;

15 (h) A summary of the existing fire, extended risk, liability and other insurance  
16 policies held by Seller with respect to the Option Parcel, and a property and liability insurance  
17 loss report; and

18 (i) Any other information reasonably requested by Buyer and in the possession or  
19 control of Seller.

20

21 **14.11 Title Insurance.**

22 (a) Within 30 days from the date of the Buyer's timely notice of the exercise of the  
23 Option the Seller shall obtain and deliver to the Buyer, at the Seller's expense, a certificate of  
24 taxes due on the Option Parcel and a current title insurance commitment ("**Commitment**")  
25 issued by Land Title Guarantee Company - Breckenridge office ("**Title Company**"). The  
26 Commitment shall include legible copies of all instruments referred to in the Commitment. The  
27 Commitment shall provide for the deletion of all standard printed exceptions of Schedule B-2  
28 thereof.

29 (b) All items on the Commitment shall be permitted title exceptions ("**Permitted**  
30 **Exceptions**") unless the Buyer notifies the Seller within 20 days of receipt of the Commitment  
31 of any particular item(s) to which the Buyer objects. If the Buyer gives the Seller timely notice of  
32 a title objection then the Seller shall have 15 days within which to remove such exceptions, or to  
33 notify the Buyer that it is unable or unwilling to remove such exceptions, in which case the

1 Buyer may elect to terminate the Option, or accept such exceptions and proceed to close the  
2 transaction.

3 (c) After Closing, the Seller shall obtain and deliver to the Buyer, at the Seller's  
4 expense, a title insurance policy for the Option Parcel in the amount of the Purchase Price  
5 showing fee simple absolute title being vested in the Buyer, subject only to the Permitted  
6 Exceptions.

7 14.12 **Survey.** Within 30 days of the Buyer's exercise of the Option, or such longer  
8 period of time as may be reasonably required for the completion of the survey, Buyer may  
9 obtain, at its cost, a current ALTA survey of the Option Parcel prepared by a Colorado registered  
10 land surveyor containing such information and detail as are sufficient to obtain extended title  
11 insurance coverage over survey exceptions and otherwise reasonably acceptable to Buyer's  
12 counsel and the mortgage lender. The survey shall be a document of title and shall be subject to  
13 the provisions of Section 14.11(b) of this Contract.

14 14.13 **Inspection Period.** Buyer shall have 60 days subsequent to the exercise of the  
15 Option to evaluate and inspect the Option Parcel and to verify to Buyer's satisfaction, in its sole  
16 and absolute discretion, that all aspects of the Option Parcel, including its condition, are  
17 acceptable ("**Inspection Period**"). Evaluations shall include, but not be limited, to the following:

18 (a) Soils/environmental testing (Phase I and II, if necessary);

19 (b) Inspect roof and structural components;

20 (c) Inspect all building systems such as plumbing, electrical, mechanical and HVAC  
21 equipment;

22 (d) Verify plan compliance with ADA Standards;

23 (e) Verify that there are no current code/zoning violations;

24 (f) Verify access to and from the Option Parcel, connections to utilities, storm and  
25 sewer, and appropriate easements off the Option Parcel to ensure legal operation of the  
26 improvements on the Option Parcel.

27 14.14 **Seller's Closing Certificate.** At Closing Seller shall deliver to Buyer a certificate  
28 confirming that, to the best of Seller's knowledge, there are no known material physical defects  
29 or environmental law violations, and no pending litigation involving the Option Parcel. If, for  
30 any reason, the Seller is unable to deliver this certificate the Buyer may waive the requirements  
31 of this Section 14.14, or Buyer may terminate this Article 14.

32 14.15 **Closing Date.** The transaction shall be closed at the offices of Land Title  
33 Guarantee Company - Breckenridge office ("**Title Company**"), 200 North Ridge Street,  
34 Breckenridge, Colorado, on or before the expiration of 75 days after the timely exercise of the  
35 Option by the Buyer (the "**Closing Date**"). The Parties shall mutually agree on the Closing Date

1 and time of Closing, but if the Parties are unable to agree, the Closing Date and time of Closing  
2 shall be established by the Title Company. The Closing Date may be extended by mutual  
3 agreement of the Parties.

4       **14.16 Conveyance of the Option Parcel.** On the Closing Date, the Seller shall convey  
5 to the Buyer marketable fee simple absolute title to the Option Parcel, subject only to: (a) the  
6 Permitted Exceptions; and (b) the remaining term of Landlord’s various leases for the portion of  
7 the Option Parcel located at 73 Denison Placer Road, Breckenridge, Colorado. Such conveyance  
8 shall be by special warranty deed. The form of the deed shall be subject to the review and  
9 approval of both the Seller and the Buyer.

10       **14.17 Closing Costs.** At Closing, the Buyer shall pay the cost of recording the deed  
11 conveying the Option Parcel to it. The Seller shall pay the cost of the title insurance premium,  
12 and tax certificate. Each Party shall pay one-half of the reasonable cost of closing services  
13 charged by the Title Company. Otherwise, each Party shall pay the usual and customary closing  
14 costs.

15       **14.18 Special Restrictive Covenant.** At Closing the Parties shall execute a  
16 Restrictive Covenant substantially in the form that is attached as Exhibit “D” (“**Restrictive**  
17 **Covenant**”). The Restrictive Covenant shall be recorded with the Clerk and Recorder of Summit  
18 County, Colorado immediately following the deed conveying the Option Parcel to the Buyer, and  
19 shall be subordinate to no liens or encumbrances, other than the lien of the general property taxes  
20 for the year of Closing and the Permitted Title Exceptions set forth in the deed conveying the  
21 Option Parcel to the Buyer.

22       **14.19 No Tax Apportionment.** The Parties expect that the Option Parcel shall have  
23 been tax-exempt while owned by the Seller, and will remain tax-exempt while owned by Buyer.  
24 Accordingly, no apportionment of real property taxes is expected to be required at Closing.

25       **14.20 Seller’s General Disclaimer.** The Buyer acknowledges that the Option Parcel  
26 shall be conveyed and transferred at Closing “**AS IS**”, “**WHERE IS**”, and “**WITH ALL**  
27 **FAULTS**”, and that the Seller shall not warrant or make any representations, express or implied,  
28 relating to the **MERCHANTABILITY**, quality, condition, suitability, or **FITNESS FOR ANY**  
29 **PURPOSE WHATSOEVER** of the Option Parcel. The Seller shall have no liability to  
30 undertake any repairs, alterations, removal, remedial actions, or other work of any kind with  
31 respect to any portion of the Option Parcel. The Buyer also acknowledges and agrees that by  
32 virtue of its possession of the Option Parcel pursuant to this Lease, the Buyer shall be able to  
33 make the Buyer’s own determination concerning the merchantability, quality, condition, and  
34 suitability, or fitness for any purpose of the Option Parcel.

35       **14.21 Covenant Not to Convert Option Parcel to For Sale Units.** At Closing, Buyer  
36 shall covenant and agree with Seller not to convert the Option Parcel to “for sale” units without  
37 Seller’s consent until the time allowed for the filing of claims under the “Colorado Construction  
38 Defect Action Reform Act” (Part 8 of Article 20 of Title 13, C.R.S.) has expired. The Parties  
39 acknowledge that as of the date of this Lease such time is eight (8) years from the date of

1 substantial completion of the initial construction of the improvements made by Seller to the  
2 Option Parcel. The Parties agree to amend this Section 14.21 if the applicable provisions of  
3 Colorado Construction Defect Action Reform Act or Section 13-80-104, C.R.S., are amended  
4 prior to Closing.

5 14.22 **Survival.** All warranties, covenants, representations, agreements and guarantees  
6 contained in this Article 14 shall survive the closing, execution and delivery of the documents  
7 contemplated by this Article 14; and all Parties shall continue to be bound by this the provisions  
8 of this Article 14 until all of their respective obligations hereunder have been performed or  
9 satisfied.

10 14.23 **Termination of Existing Lease.** At Closing, the Parties shall execute a  
11 document in recordable form sufficient to terminate this Lease.

12 14.24 **Default by Seller.** If the Closing fails to occur by reason of Seller's improper  
13 failure or refusal to perform its obligations hereunder and same is not cured within seven (7)  
14 days after Seller's receipt of written notice thereof from Buyer, then Buyer shall be entitled as its  
15 sole remedies either (a) to terminate this Agreement and to the return of the Deposit, or (b) to  
16 seek specific performance of Seller's obligation to sell the Property to Buyer.

17 **ARTICLE 15 - RIGHT OF FIRST OFFER AND RIGHT OF FIRST REFUSAL**

18 15.1 **Right of First Offer and Right of First Refusal.** At Closing the Parties shall  
19 execute Right of First Offer/Right of First Refusal Agreement substantially in the form that is  
20 attached as **Exhibit "E"**. Such agreements shall be recorded with the Clerk and Recorder of  
21 Summit County, Colorado immediately following the deed conveying the Option Parcel to the  
22 Buyer, and the Restrictive Covenant described in Section 14.18.

23 **ARTICLE 16 - MISCELLANEOUS**

24 16.1 **Attorney's Fees/Costs.** If any action is brought in a court of law by either Party  
25 to this Lease concerning the enforcement, interpretation, or construction of this Lease, the  
26 prevailing Party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as  
27 well as costs, including expert witness' fees, incurred in the prosecution or defense of such  
28 action.

29 16.2 **Notices.** All notices required or permitted under this Lease must be given by  
30 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial  
31 carrier delivery, or by telecopies or electronic mail directed as follows:

32 If intended for the Landlord to:

33  
34 Town of Breckenridge  
35 P.O. Box 168  
36 150 Ski Hill Road

1 Breckenridge, Colorado 80424  
2 Attn: Town Manager  
3 Telecopier number: (970)547-3104  
4 Telephone number: (970)453-2251  
5 Email: \_\_\_\_\_

6 with a copy in each case (that shall not constitute notice) to:

7  
8 Timothy H. Berry, Esq.  
9 Timothy H. Berry, P.C.  
10 131 West 5th Street  
11 P. O. Box 2  
12 Leadville, Colorado 80461  
13 Telecopier number: (719)486-3039  
14 Telephone number: (719)486-1889  
15 Email \_\_\_\_\_

16  
17 If intended for the Tenant, to:

18  
19 Matt Gianneschi, COO and Chief of Staff  
20 Colorado Mountain College  
21 802 Grand Avenue  
22 Glenwood Springs, Colorado 81601

23  
24 Telecopier number: (970) 384-8550 \_\_\_\_\_  
25 Telephone number: (970) 947-8321 \_\_\_\_\_  
26 Email: mgianneschi@coloradomtn.edu

27  
28 with a copy in each case (that shall not constitute notice) to:

29  
30 Richard Gonzales, General Counsel  
31 Colorado Mountain College  
32 802 Grand Avenue  
33 Glenwood Springs, Colorado 81601  
34 Email: rgonzalesgc@coloradomtn.edu

35  
36 AND

37  
38 Jay F. Kamlet  
39 Kamlet LLP  
40 3900 E. Mexico Ave., Suite 300  
41 Denver, Colorado 80210  
42 Email: jkamlet@kamletlaw.com  
43

1 Any notice delivered by mail in accordance with this Section shall be effective on the second  
2 business day after the same is deposited in any post office or postal box regularly maintained by  
3 the United States postal service. Any notice delivered by telecopier or electronic mail in  
4 accordance with this Section shall be effective upon receipt if concurrently with sending by  
5 telecopier or electronic mail receipt is confirmed orally by telephone and a copy of said notice is  
6 sent by certified mail, return receipt requested, on the same day to that intended recipient. Any  
7 notice delivered by hand or commercial carrier shall be effective upon actual receipt. Either  
8 Party, by notice given as above, may change the address to which future notices may be sent.  
9

10           **16.3 Incorporation of Exhibits.** All of the exhibits that are described in this Lease  
11 are attached hereto and incorporated into this Lease by reference.

12           **16.4 Additional Instruments.** The Parties shall deliver or caused to be delivered  
13 upon request such additional documents and instruments as may be required to accomplish the  
14 intent of this Lease.

15           **16.5 Waiver.** The failure of either Party to exercise any of its rights under this  
16 Agreement is not a waiver of those rights. A Party waives only those rights specified in writing  
17 and signed by the Party waiving such rights.

18           **16.6 Time of the Essence.** Time is of the essence under this Lease for the  
19 performance and observance of all obligations of the Landlord and the Tenant hereunder, and  
20 all provisions of this Lease are to be strictly construed.

21           **16.7 Severability.** If any provision of this Lease are held invalid or unenforceable,  
22 the remainder of this Lease shall not be affected thereby, it being the intent of the Parties that  
23 the provisions of this Lease shall be enforceable to the fullest extent permitted by law. There  
24 shall be substituted for any invalid or unenforceable provision a valid and enforceable  
25 provision as similar as possible to the invalid provision.

26           **16.8 Integration.** This Lease constitutes the entire agreement between the Parties  
27 with regard to the Leased Premises, and any extrinsic covenants, agreements, representations,  
28 warranties, conditions, or terms are superseded hereby and are no force or effect.

29           **16.9 Brokerage Commission.** The Landlord and the Tenant mutually warrant and  
30 represent to one another that neither of them has incurred any liability arising by, though, or  
31 under that Party for the payment of any brokerage fee or commission in connection with the  
32 transaction contemplated herein. If either of the Parties breaches the foregoing warranty and  
33 representation, it shall be liable to the other Party for any damage, liability, loss, claim or  
34 expense, including attorneys' fees, suffered by the other Party as a result of such breach. The  
35 liable Party shall pay to the other Party such sums as are due and owing pursuant to the  
36 foregoing within 30 days after demand by the other Party.

37           **16.10 Authority.** The person signing this Lease for the Landlord represents and  
38 warrants to the Tenant that the Landlord has all inherent legal power and authority requisite to

1 entering into this Lease; has taken all action necessary to authorize the execution of this Lease  
2 and to perform and satisfy the transactions and obligations contained herein; and has duly  
3 authorized the signatory to execute and deliver this Lease on behalf of the Landlord. The  
4 person signing this Lease for the Tenant represents and warrants to the Landlord that the  
5 Tenant has all inherent legal power and authority requisite to entering into this Lease; has taken  
6 all actions necessary to authorize the execution and delivery of this Lease and to perform and  
7 satisfy the transactions and obligations contained herein; and has duly authorized the signatory  
8 to execute and deliver this Lease on behalf of the Tenant.

9           **16.11 Force Majeure Events.** Except to the extent otherwise expressly provided by  
10 this Lease, if either the Landlord or the Tenant is delayed in the performance of any act  
11 required under this Lease by reason of strikes, boycotts, labor dispute, embargoes, shortages of  
12 materials, acts of God, acts of the public enemy, acts of superior governmental authority,  
13 weather conditions, floods, riots, rebellion, terrorism, sabotage, or any other circumstance for  
14 which such Party is not responsible or that is not in its power to control, the time for the  
15 performance of any such act shall be extended for a period equivalent to the period of such  
16 delay. Notwithstanding any indications to the contrary contained in the foregoing, Force  
17 Majeure Events do not include: (a) any financial incapacities or burdens suffered by either  
18 Party; (b) the effect of laws and regulations or the application and enforcement of the same by  
19 any governmental entity, or (c) a failure of timely performance by an agent or contractor of  
20 either Party. The application of Force Majeure Events is subject to the express limitations  
21 thereon contained in the other provisions of this Lease.

22           **16.12 Recording.** A fully signed copy of this Lease **SHALL BE** recorded in the real  
23 property records of the Clerk and Recorder of Summit County, Colorado.

24           **16.13 “Day” Defined.** Unless otherwise indicated, the term “day” means a calendar day  
25 (and not a business day).

26           **16.14 Amendment.** This Lease may not be modified except by a written Lease signed  
27 by both the Landlord and the Tenant. Oral modifications of this Lease are not permitted.

28           **16.15 Captions.** The headings of the sections and paragraphs contained in this Lease are  
29 for convenience only and do not define, limit, or construe the contents of the articles, sections  
30 and paragraphs.

31           **16.16 Advances By Landlord For Tenant.** If the Tenant fails to do anything required  
32 to be done by it under the terms of this Lease (other than a failure to make the payments to the  
33 Landlord herein required) the Landlord may, at its sole option, but without any obligation to do  
34 so, do or perform such act or thing on behalf of the Tenant, and in doing so the Landlord shall  
35 not be deemed to be a volunteer; provided, however, that before exercising its rights under this  
36 Section the Landlord must give notice to the Tenant as provided in Section 16.2, and afford the  
37 Tenant not less than 5 days from the giving of such notice within which to do or perform the act  
38 required by the Tenant. Upon notification to the Tenant of the costs incurred by the Landlord the



1 Tenant shall promptly pay to the Landlord the full amount of costs and/or expenses incurred by  
2 the Landlord pursuant to this Section, together with interest thereon at the legal rate.

3       **16.17 Governmental Immunity.** In entering into this Lease both the Landlord and the  
4 Tenant are relying on, and do not waive or intend to waive by any provision of this Lease, the  
5 monetary limitations or any other rights, immunities, and protections provided by the Colorado  
6 Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended,  
7 or any other limitation, right, immunity or protection otherwise available to the Landlord or the  
8 Tenant, their officers, or their employees.

9       **16.18 No Adverse Construction Based On Authorship.** Each of the Parties stipulate  
10 and agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not  
11 to be construed against either Party by virtue of such Party having drafted this Lease.

12       **16.19 Landlord's Consent.** Except as otherwise expressly provided to the contrary in  
13 this Lease, wherever in this Lease it is provided that some act requires the Landlord's prior  
14 consent, such consent shall not be unreasonably withheld by the Landlord.

15       **16.20 Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of  
16 Colorado shall govern the interpretation, validity, performance, and enforcement of this Lease.  
17 Any litigation brought to interpret or enforce this Lease shall be commenced in Summit County,  
18 Colorado. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE,  
19 INTERPRET, OR CONSTRUE THIS AGREEMENT.**

20       **16.21 No Partnership.** The Landlord is not a partner, associate, or joint venturer of the  
21 Tenant in the conduct of the Tenant's business at the Leased Premises. The Tenant is an  
22 independent contractor without the right or authority to impose tort or contractual liability upon  
23 the Landlord.

24       **16.22 Annual Appropriation.**

25       (a) Notwithstanding anything herein contained to the contrary, the Landlord's  
26 financial obligations under this Lease are subject to an annual appropriation being made by the  
27 Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow the  
28 Landlord to perform its obligations hereunder. If sufficient funds are not appropriated, this Lease  
29 may be terminated by either Party without penalty, unless Tenant elects to perform Landlord's  
30 obligations under this Lease. The Landlord's obligations under this Lease do not constitute a  
31 general obligation indebtedness or multiple year direct or indirect debt or other financial  
32 obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

33       (b) Notwithstanding anything herein contained to the contrary, the Tenant's financial  
34 obligations under this Lease are subject to an annual appropriation being made by the governing  
35 board of the Colorado Mountain College in an amount sufficient to allow the Tenant to perform  
36 its obligations hereunder. If sufficient funds are not appropriated, this Lease may be terminated  
37 by either Party without penalty. The Tenant's obligations under this Lease do not constitute a

1 general obligation indebtedness or multiple year direct or indirect debt or other financial  
2 obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

3 16.23 **Binding Effect.** This Lease extends to and is binding upon the successors and  
4 permitted assigns of the respective Parties. The terms, covenants, agreements, and conditions in  
5 this Lease shall be construed as covenants running with the Leased Premises.

6 16.24 **Approval By Ordinance.** The execution of this Lease was authorized by  
7 Ordinance No. [redacted], Series 2017, adopted by the Town Council of the Town of Breckenridge  
8 on [redacted], 2017.

9 LANDLORD:

10  
11 TOWN OF BRECKENRIDGE, a Colorado  
12 municipal corporation  
13

14  
15  
16 By: \_\_\_\_\_  
17 Rick G. Holman, Town Manager  
18

19 ATTEST:

20  
21  
22 \_\_\_\_\_  
23 Helen Cospolich, CMC,  
24 Town Clerk  
25

26 TENANT:

27  
28 COLORADO MOUNTAIN COLLEGE, a Colorado  
29 statutory local college district  
30

31  
32  
33 By: \_\_\_\_\_  
34

35 Title: \_\_\_\_\_  
36  
37  
38  
39  
40  
41

1 STATE OF COLORADO )  
2 ) ss.  
3 COUNTY OF SUMMIT )  
4

5 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
6 \_\_\_\_\_, 2017, by Rick G. Holman, Town Manager, and Helen Cospolich, CMC,  
7 Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.  
8

9 WITNESS my hand and official seal.

10  
11 My commission expires: \_\_\_\_\_.  
12  
13  
14

15 \_\_\_\_\_  
16 Notary Public  
17

18 STATE OF COLORADO )  
19 ) ss.  
20 COUNTY OF SUMMIT )  
21

22 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
23 \_\_\_\_\_, 2017, by \_\_\_\_\_,  
24 as \_\_\_\_\_, of Colorado Mountain College, a statutory local college  
25 district.  
26

27 WITNESS my hand and official seal.

28  
29 My commission expires: \_\_\_\_\_.  
30  
31

32 \_\_\_\_\_  
33 Notary Public  
34  
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Exhibit "A"

**LEGAL DESCRIPTION OF LEASED PREMISES**

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The Leased Premises consist of two (2) buildings containing a total of fourteen (14) studio units and six (6) one-bedroom units located at 45 Denison Placer Road and 61 Denison Placer Road in Breckenridge, Colorado. The Leased Premises also includes the subdivided lot(s) upon which the two (2) buildings are located.

1 Exhibit "B"

2 **LEASE CONDITIONS**

---

3  
4  
5 1. The Landlord shall have completed all of the site work (including paved parking areas,  
6 landscaping and drive aisles), substantially in accordance with the site plans and construction  
7 documents provided to the Tenant.  
8

9 2. The Landlord shall have completed the exterior and interiors of the two buildings, each  
10 building containing 10 dwelling units, that constitute the Leased Premises, including fixtures,  
11 carpeting, kitchen and bath appliances, washers/dryers, and other personal property proposed to  
12 be delivered at commencement), all as depicted in the site plans and construction documents  
13 provided to the Tenant, and have received a certificate of occupancy for the same, subject to  
14 minor punch-list items to be approved by the Tenant prior to commencement, and which will be  
15 completed by Landlord within 30 days thereafter. The Landlord anticipates being able to  
16 complete the foregoing and obtain the certificates of occupancy no later than July 1, 2017.  
17

18 3. The Tenant and the Landlord shall do a walk-through of the improvements 10 business days  
19 prior to commencement date of the Lease to develop a punch-list of items requiring the Landlord  
20 completion prior to commencement. The Tenant shall be satisfied in its sole discretion.  
21  
22  
23  
24  
25  
26

Exhibit "C"

**LEGAL DESCRIPTION OF OPTION PARCEL**

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TRACT D-2, A RESUBDIVISION OF TRACTS C AND D, RUNWAY SUBDIVISION, AS SHOWN ON THE PLAT AS RECORDED ON APRIL 25, 2016 UNDER RECEPTION NO. 1109588 IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER.

Exhibit "C"

2 **RESTRICTIVE COVENANT**

3  
4  
5 **RESTRICTIVE COVENANT AND AGREEMENT**

6  
7 THIS RESTRICTIVE COVENANT AND AGREEMENT ("**Restrictive Covenant**")  
8 dated \_\_\_\_\_, 20\_\_\_\_, is between COLORADO MOUNTAIN  
9 COLLEGE, a Colorado statutory local college district (the "**Owner**"), and the TOWN OF  
10 BRECKENRIDGE, a Colorado municipal corporation ( the "**Town**").

11  
12 Recitals

13  
14 A. The Owner owns the real property described in Section 1 of this Restrictive  
15 Covenant.

16  
17 B. The Owner acquired the real property described in Section 1 from the Town  
18 concurrently with the execution of this Restrictive Covenant.

19  
20 C. It was a condition of the purchase contract between the Owner and the Town that the  
21 Owner create a valid and enforceable covenant running with the land assuring that the real  
22 property described in Section 1 will be used solely by a "Qualified Occupant" as defined in this  
23 Restrictive Covenant.

24  
25 D. The Owner declares and covenants that the regulatory and restrictive covenants  
26 contained in this Restrictive Covenant are covenants running with the land and are binding upon  
27 the Owner, and all subsequent owners of the real property described in Section 1, unless this  
28 Restrictive Covenant is released and terminated by the Town.

29  
30 NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby  
31 acknowledged, the Owner and the Town agree as follows:

32  
33 1. Property Subject To Covenant. This Restrictive Covenant applies to the following  
34 real property located in the Town of Breckenridge, Summit County, Colorado:

35  
36 TRACT D-2, A RESUBDIVISION OF TRACTS C AND D, RUNWAY  
37 SUBDIVISION, AS SHOWN ON THE PLAT AS RECORDED ON APRIL 25,  
38 2016 UNDER RECEPTION NO. 1109588 IN THE OFFICE OF THE SUMMIT  
39 COUNTY CLERK AND RECORDER.

40  
41 Also known as: 45, 61 and 73 Denison Placer Road, Breckenridge, Colorado  
42 80424

43  
44 2. Definitions. As used in this Restrictive Covenant:  
45

1           **“Any Other Summit County Employee”** means an employee of a business physically  
2 located in and serving any portion of Summit County, Colorado, other than the Upper  
3 Blue River Basin.

4  
5           **“Property”** means the real property described in Section 1 of this Restrictive Covenant.  
6

7           **“Qualified Occupant”** means: (i) a student or employee of Colorado Mountain College;  
8 (ii) an Upper Blue Employee; and (iii) any other Summit County Employee. In order for  
9 an Upper Blue Employee or other Summit County Employee to meet the definition of a  
10 Qualified Occupant, such person must be a subtenant of the Property pursuant to a  
11 sublease with a term of not less than twelve (12) months and shall, during the entire  
12 period of his or her occupancy of the Property, earn his or her living by working in  
13 Summit County, Colorado at least 30 hours per week.  
14

15           **“Upper Blue Employee”** means an employee of a business physically located in and  
16 serving the Upper Blue River Basin.  
17

18           **“Upper Blue River Basin”** means the geographic area bounded by Farmers Korner to  
19 the north; Hoosier Pass to the south; the Continental Divide to the East; and the top of the  
20 Ten Mile Range to the west.  
21

22           3. Occupancy Restriction. Except as provided in Section 4, the Property, and each of the  
23 individual units located within the Property, will only be used and occupied by a Qualified  
24 Occupant, together with such person’s spouse and minor children, if any.  
25

26           4. Exception. It shall not be a violation of this Restrictive Covenant if the Owner rents  
27 the Property, and any of the individual units within the Property, to its students, faculty, or staff  
28 on a short-term basis for Owner’s programs or events, or to provide for student or employee  
29 transition to long-term housing.  
30

31           5. Records; Inspection; Monitoring.  
32

33           A. The Town may examine, inspect, and copy the Owner’s records concerning the use  
34 and occupancy of the Property upon reasonable advance notice. The Town may enter the  
35 Property to determine compliance with this Restrictive Covenant, but the Town will first notify  
36 the Owner at least 24 hours in advance before making entry. The Town’s rights under this  
37 Section 5A may also be exercised by the Town’s authorized agent.  
38

39           B. The Owner will submit to the Town any information, document or certificate  
40 regarding the occupancy and use of the Property which the Town reasonably deems to be  
41 necessary to confirm the Owner’s compliance with the provisions of this Restrictive Covenant.  
42

43           6. Default; Notice. If the Owner fails to comply with this Restrictive Covenant, the Town  
44 may notify the Owner by written notice of such failure and provide the Owner a period of time to  
45 correct such failure. If the failure is not corrected to the satisfaction of the Town within the  
46 specified time, which will be at least 30 days after the date the Town mails the written notice to



1 the Owner, or within such further time as the Town determines is necessary to correct the  
2 violation (but not to exceed any limitation set by applicable law), the Town may, without further  
3 notice, declare a default under this Restrictive Covenant effective on the date of such declaration  
4 of default. The Town may then proceed to enforce this Restrictive Covenant.  
5

6 7. Equitable Relief. The Town may specifically enforce this Restrictive Covenant. The  
7 Town may obtain from any court of competent jurisdiction a temporary restraining order,  
8 preliminary injunction, and permanent injunction to obtain specific performance. Any equitable  
9 relief provided for in this Section 7 may be sought singly or in combination with such legal  
10 remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive  
11 Covenant or under the laws of the State of Colorado.  
12

13 8. Town Authority To Enforce. The restrictions, covenants, and limitations created by  
14 this Restrictive Covenant are only for the benefit of the Town. Only the Town may enforce this  
15 Restrictive Covenant.  
16

17 9. Waiver; Termination; Modification Of Covenant.

18  
19 A. The restrictions, covenants, and limitations of this Restrictive Covenant may be  
20 waived, terminated, or modified only with the written consent of both the Town and the Owner  
21 or other person who owns the Property on the date of the waiver, termination, or modification.  
22 No waiver, modification, or termination will be effective until the proper instrument is executed  
23 and recorded in the office of the Clerk and Recorder of Summit County, Colorado. The Town  
24 may also terminate this instrument by recording a release in recordable form without the  
25 signature of the owner of the Property. For convenience, such instrument may run to “the owner  
26 or owners and parties interested” in the Property.  
27

28 B. The Town and the Owner acknowledge that prior to the date of this Restrictive  
29 Covenant the Town has placed, or has required other owners of real property to place, certain  
30 restrictions on the use of real property located immediately adjacent to or within the Upper Blue  
31 River Basin. During the term of this Restrictive Covenant the Town and the Owner agree that if  
32 any of the land use restrictions described in the preceding sentence are modified or released by  
33 the Town, or if the Owner demonstrates to the reasonable satisfaction of the Town that it is no  
34 longer feasible for market, competitive, or economic reasons to achieve Owner’s public purpose  
35 objectives of owning the Property (i.e., the provision of student or local employee housing at a  
36 reduced but sustainable rent level), then the Town will consider modifying or releasing this  
37 Restrictive Covenant in written form acceptable for recording; provided, however, nothing in this  
38 sentence requires the Town to modify or release this Restrictive Covenant so long as the Town  
39 considers the request in good faith and acts reasonably in light of the Owner's demonstration. No  
40 modification or termination of this Restrictive Covenant pursuant to this Section 9B shall be  
41 effective unless a proper document is recorded with the Clerk and Recorder of Summit County,  
42 Colorado pursuant to Section 9A.  
43

44 10. Statute of Limitations. The Owner hereby waives the benefit of and agrees not to  
45 assert in any action brought by the Town to enforce this Restrictive Covenant any applicable  
46 statute of limitation, including, but not limited to, the provisions of Section 38-41-119, C.R.S. If

1 any statute of limitation may lawfully be asserted by The Owner in connection with an action  
2 brought by the Town to enforce the terms of this Restrictive Covenant, each and every day  
3 during which any violation of this Restrictive Covenant occurs is to be deemed to be a separate  
4 breach of this Restrictive Covenant for the purposes of determining the commencement of the  
5 applicable statute of limitations period.  
6

7 11. No Conflicting Agreement. The Owner warrants to the Town that the execution and  
8 delivery of this Restrictive Covenant does not violate any existing agreement by Owner  
9 concerning the Property. The provisions of this Restrictive Covenant are paramount and  
10 controlling, and supersede any conflicting provision of any other agreement concerning the  
11 Property.  
12

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

18 13. Notices. All notices provided for or required under this Restrictive Covenant must  
19 be in writing, signed by the party giving the notice, and will be deemed properly given when  
20 actually received or 2 days after mailed, postage prepaid, certified, return receipt requested,  
21 addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by  
22 written notice to the other party, may specify any other address for the receipt of such  
23 instruments or communications. A notice to any owner of the Property subsequent to the Owner  
24 may be sent to the address to which tax notices are sent according to the records of the Summit  
25 County Treasurer. E-mail is not a valid method of giving notice under this Restrictive Covenant.  
26

27 14. Recording And Filing; Covenant Running With The Land.  
28

29 A. This Restrictive Covenant is to be recorded in the real property records of Summit  
30 County, Colorado.  
31

32 B. The Owner agrees that all of the requirements of the State of Colorado which must be  
33 satisfied for the provisions of this Restrictive Covenant to constitute a restrictive covenant  
34 running with the land are deemed to be fully satisfied. All requirements of privity of estate are  
35 intended to be satisfied, or in the alternative, an equitable servitude is created to insure that these  
36 restrictions run with the land. During the term of this Restrictive Covenant, each and every  
37 sublease relating to the Property will expressly provide that such contract, deed or instrument is  
38 subject to this Restrictive Covenant. However, the covenants contained in this Restrictive  
39 Covenant survive and will continue to be effective as to successors and assigns of all or any  
40 portion of the Property regardless of whether such contract, deed or other instrument provides  
41 that it is subject to this Restrictive Covenant.  
42

43 15. Mortgagee's Consent. Attached hereto as Exhibit "A" is the written consent to this  
44 Restrictive Covenant executed by all prior recorded lienholders on the Property as of the date of  
45 this Restrictive Covenant.  
46

1           16. Owner’s Covenant Of Title And Authority. The Owner covenants, represents, and  
2 warrants to the Town that The Owner has good and marketable title to the Property and full and  
3 complete legal authority to execute and deliver this Restrictive Covenant to the Town, subject  
4 only to the lien of the general property taxes for 20\_\_ and subsequent years.

5  
6           17. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with  
7 the laws of the State of Colorado.

8  
9           18. Vesting and Term. The Town’s rights and interests under this Restrictive Covenant  
10 are vested immediately, and this Restrictive Covenant, and any amendments hereto, are binding  
11 and in full force and effect in perpetuity, unless terminated as provided in Section 9. Each  
12 provision contained in this Restrictive Covenant that is subject to the laws or rules sometimes  
13 referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on  
14 alienation will continue and remain in full force and effect for the period of twenty one years  
15 following the death of the last survivor of the issue of President Donald Trump, and the now  
16 living children of said issue, or until this Restrictive Covenant is terminated earlier by recorded  
17 instrument as provided in Section 9.

18  
19           19. Section Headings. Section headings are inserted for convenience only and in no way  
20 limit or define the interpretation to be placed upon this Restrictive Covenant.

21  
22           20. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant  
23 designating the masculine or neuter apply equally to the feminine, neuter, and masculine  
24 genders. Wherever applicable within this Agreement, the singular includes the plural, and the  
25 plural includes the singular.

26  
27           21. Severability. If any provision of this Restrictive Covenant is finally determined to be  
28 invalid, illegal, or unenforceable, such determination does not affect the remaining provisions of  
29 this Restrictive Covenant.

30  
31           22. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and  
32 understanding between the parties relating to the subject matter of this Restrict Covenant, and  
33 supersedes any prior agreement or understanding relating thereto.

34  
35           23. Binding Effect. This Restrictive Covenant is binding upon, and inures to the benefit  
36 of parties, and their successors and assigns, and all subsequent owners of the Property, or any  
37 interest therein.

38  
39  
40   OWNER:  
41  
42   COLORADO MOUNTAIN COLLEGE, a Colorado  
43   statutory local college district  
44  
45  
46

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By: \_\_\_\_\_  
Title: \_\_\_\_\_

Owner's Address:

802 Grand Avenue  
Glenwood Springs, Colorado 81601

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
Rick G. Holman, Town Manager

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

Town's Address:

P. O. Box 168  
Breckenridge, CO 80424

1 STATE OF COLORADO )  
2 ) ss.  
3 COUNTY OF SUMMIT )  
4

5 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
6 \_\_\_\_\_, 2017, by Rick G. Holman, Town Manager, and Helen Cospolich, CMC,  
7 Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.  
8

9 WITNESS my hand and official seal.

10  
11 My commission expires: \_\_\_\_\_.  
12  
13  
14

15 \_\_\_\_\_  
16 Notary Public  
17

18 STATE OF COLORADO )  
19 ) ss.  
20 COUNTY OF SUMMIT )  
21

22 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
23 \_\_\_\_\_, 2017, by \_\_\_\_\_,  
24 as \_\_\_\_\_, of Colorado Mountain College, a statutory local college  
25 district.  
26

27 WITNESS my hand and official seal.

28  
29 My commission expires: \_\_\_\_\_.  
30  
31

32 \_\_\_\_\_  
33 Notary Public  
34  
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1 EXHIBIT "A"

2  
3 CONSENT AND SUBORDINATION AGREEMENT

4  
5 The undersigned, being the beneficiary of that certain deed of trust to the Public Trustee  
6 of Summit County, Colorado dated \_\_\_\_\_ and recorded \_\_\_\_\_ under Reception  
7 No. \_\_\_\_\_ of the records of the Clerk and Recorder of Summit County, Colorado  
8 (the "**Deed of Trust**") consents to the execution and recording of this Restrictive Covenant and  
9 Agreement ("**Restrictive Covenant**"), and agrees that the lien of the Deed of Trust is  
10 subordinated and made junior and subject to this Restrictive Covenant. If the Deed of Trust is  
11 foreclosed, this Restrictive Covenant will be treated as a prior and superior encumbrance, and  
12 any foreclosure sale will be made subject to this Restrictive Covenant.

13  
14 LIENHOLDER:

15  
16  
17 By: \_\_\_\_\_

18  
19 \_\_\_\_\_  
20 Title

21  
22  
23 STATE OF \_\_\_\_\_ )  
24 ) ss.  
25 COUNTY OF \_\_\_\_\_ )

26  
27 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
28 \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_,  
29 as \_\_\_\_\_ of \_\_\_\_\_.

30  
31 WITNESS my hand and official seal.

32  
33 My commission expires: \_\_\_\_\_

34  
35  
36  
37 \_\_\_\_\_  
38 Notary Public  
39  
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41  
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45

Exhibit "E"

**RIGHT OF FIRST OFFER/RIGHT OF FIRST REFUSAL AGREEMENT**

---

**RIGHT OF FIRST OFFER/RIGHT OF FIRST REFUSAL AGREEMENT**

THIS RIGHT OF FIRST OFFER/RIGHT OF FIRST REFUSAL AGREEMENT (the "**Agreement**") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between COLORADO MOUNTAIN JUNIOR COLLEGE DISTRICT, a Colorado statutory junior college district, whose address is 802 Grand Avenue, Glenwood Springs, Colorado 81601 ("**CMC**"), and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation, whose address is P.O. Box 168, Breckenridge, Colorado 804234 ("**Town**").

1. Recitals

1.1 Town, by Special Warranty Deed (the "**Deed**") dated \_\_\_\_\_, 20\_\_\_, and recorded \_\_\_\_\_, 20\_\_\_, at Reception No. \_\_\_\_\_ of the real estate records in the Office of the Clerk and Recorder of Summit County, Colorado, conveyed to CMC certain real property described in the Deed (the "**Property**"), which real property is the subject of this Agreement, and which CMC owns in fee simple, as more particularly described in **Exhibit A**, consisting of one page, attached hereto and by this reference made a part hereof.

1.2 CMC has agreed to grant to Town a right of first offer to acquire the Property upon the terms and conditions herein set forth. CMC has also agreed to grant to Town a right of first refusal to acquire the Property upon the terms and conditions herein set forth.

2. Consideration

2.1 In consideration of the sale and conveyance by Town to CMC of the Property, and for the further consideration of Ten Dollars (\$10.00) in hand paid to Town by CMC, and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged by CMC, the parties hereto agree as hereinafter set forth.

3. Right of First Offer

3.1 CMC, for itself and its successors and assigns, hereby agrees that CMC will not sell the Property, or any part thereof, without first offering same to Town for purchase. This Agreement creates in Town a right of first offer to purchase the Property, or any portion thereof, according to the terms and conditions hereof.

3.2 The right of first offer granted in Section 3.1 above shall be honored by CMC and exercised by Town in the following manner:

(a) In case CMC desires to sell the Property, or any portion thereof, CMC shall first send a written offer to Town. Said offer shall state a specified price and all terms and conditions of the proposed sale.

(b) If Town desires to accept said offer, Town shall, within 30 days from receipt thereof, send its acceptance in writing to CMC.

(c) If a valid offer of sale is made by CMC to Town, and said offer is not accepted by Town as provided in subsection (b) above, then and for a period of one year from the date of mailing of the offer, CMC shall be free to sell the Property, or the portion thereof offered to Town, to any party whomsoever, but not at a lesser price or upon more favorable terms and conditions than offered to Town.

(d) If CMC does not sell the Property, or the portion thereof offered, before the expiration of said one-year period, then, before the Property or portion offered is sold to any other party, CMC shall make a new offer to Town of the Property, or any portion thereof, under the provisions of this Agreement. The Property or portion offered shall be considered sold on the date of execution of a valid and binding purchase and sale contract with no outstanding conditions or contingencies, provided that the Property or portion offered is conveyed to and accepted by the vendee under said contract according to the terms and conditions of said contract within six months thereafter. Town's failure to exercise, or Town's disclaimer of, such right with respect to any transfer of less than all of the Property shall not be deemed a waiver of such right with respect to that part of the Property owned by CMC after such transfer.

3.3 If any offer made by CMC according to the terms and conditions herein stated is rejected or is allowed to expire without acceptance by Town, Town agrees, within 10 days of receipt of a written request from CMC, to give to CMC or to any third person CMC shall designate, a written statement properly signed and acknowledged in recordable form that:

(a) an offer has been made by CMC in accordance with the terms and conditions of this Agreement, together with disclosure of the offering price and the terms of a proposed sale;

(b) said offer has been rejected by Town or has been allowed to expire; and

(c) CMC or any designated third person may rely upon such statement by Town as evidence of the submission and rejection or expiration of a valid offer made to Town pursuant to and in accordance with this Agreement.

3.4 This right of first offer shall apply to all transactions involving a conveyance of title to the Property, or any portion thereof, including but not limited to a purchase, an exchange, or any other transfer of an interest in the Property for consideration, other than a lease of no more than three years' duration.

#### 4. Terms and Conditions of Sale



4.1 Within 30 days after Town's acceptance of an offer from CMC, CMC shall deliver to Town a commitment for title insurance in the amount of the purchase price describing the Property, or portion thereof as the case may be, certified to a current date, and Town shall have 30 days after receipt of said commitment to examine title. Should such title examination disclose one or more defects sufficient to render title to the Property unmerchantable, Town may, within said 30-day period, and upon notification thereof to CMC in writing:

(a) waive said title defect or defects and accept title subject thereto, in which case the special warranty deed specified in Section 4.3 below shall expressly except said defects;

(b) reject title and withdraw its acceptance of the offer; or

(c) allow CMC 60 days within which to cure said defects. CMC agrees to use best efforts to cure said defects within such period of time, and agrees to notify Town when such defects have been cured, but in the event CMC is unable to cure all such defects within such period of time, Town shall, within 15 days after the end of such 60-day period, elect alternatives (a) or (b) of this section 4.1. In the event CMC cures such defects and gives Town notice thereof within said 60-day period, CMC shall, within a reasonable time, deliver to Town a current commitment for title insurance evidencing such cure of title defects, and thereafter the closing procedures set forth in this Agreement shall be followed.

4.2 If Town fails to give written notice of title defects and specify its election of alternatives 4.1(a), (b), or (c) above, it shall be conclusively presumed, for the purposes of this Agreement, that CMC's title is good and merchantable and is accepted by Town, except for defects of title or matters affecting title arising subsequent to the effective date of the title insurance commitment referred to in Section 4.1 above.

4.3 Within 30 days after acceptance of title, however such acceptance may be evidenced, and upon payment to CMC of the specified price and fulfillment by Town of the other terms of said offer, CMC shall convey title to the Property, or portion thereof, to Town in fee simple by good and sufficient special warranty deed acceptable to the title insurance company. Thereafter CMC shall pay the premium for and cause to be delivered to Town an ALTA owner's policy of title insurance in the amount of the purchase price insuring title to the Property, or portion thereof, in Town, subject only to title defects accepted by Town. Taxes, assessments, and any other charges against the Property shall be apportioned as of the date of closing.

## 5. Right of First Refusal

5.1 CMC, for itself and its successors and assigns, hereby agrees that CMC will not sell the Property, or any part thereof, without first offering same to Town for purchase. This Agreement creates in Town a right of first refusal to purchase the Property, or any part thereof, according to the terms and conditions hereof.

5.2 The right of first refusal granted in Section 5.1 above shall be honored by CMC and exercised in the following manner:

Exhibit "E"

(a) If, at any time, CMC receives a bona fide third-party offer to purchase or otherwise acquire title to the Property, or any part thereof, any contract which may be entered into between CMC and such bona fide purchaser shall specifically provide that the transaction shall be subject to the right of first refusal set forth in this document.

(b) In the event that CMC enters into such contract with a bona fide third-party purchaser, Town shall have the prior right to purchase and acquire title to the Property, or the portion thereof described in such contract, upon the same terms and conditions as therein provided or, at Town's option, for cash.

(c) CMC shall submit to Town a duplicate original of an executed contract with the bona fide purchaser, together with duplicate originals executed by CMC of a contract between CMC and Town, containing the same terms and conditions as the purchase and sale contract with the third-party bona fide purchaser. If, after the receipt of such documents, Town shall fail to exercise Town's right of first refusal by signing and returning to CMC, within 15 days of receipt, a signed copy of said contract, together with the earnest money payment therein provided, CMC shall have the right to conclude the proposed sale and conveyance on the same terms and conditions, and no other, as in the contract with the bona fide third-party purchaser.

(d) Town's failure to exercise Town's right of first refusal, or Town's written disclaimer of such right, shall be deemed a waiver and cancellation of such right of first refusal if the proposed sale and conveyance to the same bona fide third-party purchaser is consummated. If the proposed sale and conveyance to the same bona fide third-party purchaser is not consummated, the right of first refusal herein set forth shall not be deemed waived or cancelled but shall remain in full force and effect. Town's failure to exercise, or Town's disclaimer of, such right with respect to any transfer of less than all of the Property shall not be deemed a waiver of such right with respect to that part of the Property owned by CMC after such transfer.

5.3 If any offer made by CMC according to the terms and conditions herein stated is rejected or is allowed to expire without acceptance by Town, Town agrees, within 10 days after receipt of a written request from CMC, to give to CMC or to any third person CMC shall designate, a written statement properly signed and acknowledged in recordable form that:

(a) an offer has been made by CMC in accordance with the terms and conditions of this Agreement, together with disclosure of the offering price and the terms and conditions of a proposed sale;

(b) said offer has been rejected by Town or has been allowed to expire; and

(c) CMC or any designated third person may rely upon such statement by Town as evidence of the submission and rejection or expiration of a valid offer made to Town pursuant to and in accordance with this Agreement.

5.4 This right of first refusal shall apply to all transactions involving a conveyance of title to the Property, or any portion thereof, including but not limited to a purchase, an exchange,

or any other transfer of an interest in the Property for consideration, other than a lease of no more than three years' duration.

## 6. Exempt Transfer

6.1 The parties hereto agree that a transfer of the Property, or any portion thereof, shall be made only after compliance with all of the provisions of this Agreement, except that the a transfer to the Colorado Mountain College Foundation, Inc. shall be exempt from the terms and conditions of this Agreement; provided, however, that if a transfer is made to Colorado Mountain College Foundation, Inc., Colorado Mountain College Foundation, Inc. shall be bound by all the covenants, terms, and conditions of this Agreement to the same extent as CMC.

## 7. Term of Existence

7.1 All rights and interests herein created and set forth in this Agreement shall remain in existence and shall constitute a valid encumbrance upon the Property during the life of President Donald Trump, and his issue living at the date of execution of this Agreement, as set forth on the first page hereof, plus 21 years thereafter, but no longer; except that the same shall be extinguished by the occurrence of any one or more of the following events:

(a) a sale of the entire Property to Town pursuant to the exercise of the right of first offer, as herein provided, and upon compliance by CMC with all of the terms and conditions of this Agreement; or

(b) a sale of the entire Property to any person other than the Colorado Mountain College Foundation, Inc. mentioned in Section 6.1 above pursuant to and upon compliance by CMC with all of the terms and conditions of this Agreement.

## 8. Miscellaneous

8.1 All offers, acceptances and any other notices or statements contemplated or required by this Agreement shall be sent by certified or registered United States mail, return receipt requested, to the intended recipient thereof at the addresses stated on the first page of this Agreement, or to such other addresses as may be designated in writing by any party. Any periods of time within which action is to be taken hereunder shall commence on the date notice thereof is received.

8.2 Subject to the limitation expressed in Section 7.1 above, this Agreement shall be binding upon and shall inure to the benefit of the successor and assigns of the parties hereto.

8.3 This Agreement is made in Colorado and shall be governed by and interpreted in accordance with the law of Colorado.

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

CMC:

COLORADO MOUNTAIN JUNIOR COLLEGE  
DISTRICT, a Colorado statutory junior college  
district

By: \_\_\_\_\_

Title: \_\_\_\_\_

TOWN:

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
Rick G. Holman, Town Manager

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by Rick G. Holman, Town Manager, and Helen Cospolich, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, of Colorado Mountain Junior College District, a statutory junior college district.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

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EXHIBIT "A"  
TO  
RIGHT OF FIRST OFFER/RIGHT OF FIRST REFUSAL AGREEMENT

Legal Description of the Property

TRACT D-2, A RESUBDIVISION OF TRACTS C AND D, RUNWAY  
SUBDIVISION, AS SHOWN ON THE PLAT AS RECORDED ON APRIL 25,  
2016 UNDER RECEPTION NO. 1109588 IN THE OFFICE OF THE SUMMIT  
COUNTY CLERK AND RECORDER.

# MEMORANDUM

**To:** Mayor and Town Council  
**From:** Rick Holman, Town Manager  
**Date:** May 17, 2017 for First Reading on May 23, 2017  
**Subject:** Ordinance to Amend to Town Code on Boards and Commissions

---

Attached is an ordinance that will amend the Town Code in 3 areas pertaining to Town Boards and Commissions. This ordinance if passed by the Council will enact term limits for Breckenridge Planning Commission, Breckenridge Open Space Advisory Commission, and the Breckenridge Liquor and Marijuana Licensing Authority. These are the highlights of the changes proposed in the ordinance:

### **Breckenridge Planning Commission**

- No member of the Planning Commission shall serve more than 3 consecutive four-year terms. Time served for current commissioners shall count when their current term is up. No member's current term shall be shortened by this change. If someone is term-limited they must wait 4 years to reapply and they cannot be appointed to finish out a term that has been vacated during that 4 year period.

### **Breckenridge Open Space Advisory Commission**

- This change becomes effective January 1, 2018 because there are no terms that expire currently until 2018. The length of the terms will be changed from two-years to four-years and that change occurs when a current member's term expires. Time of service shall apply to existing members and no current member shall be reappointed if they have already served 8 consecutive years. A person who is term-limited must wait 4 years before they can reapply or be appointed to finish out a term that has been vacated. No current member's term shall be shortened by this change.

### **Breckenridge Liquor and Marijuana Licensing Authority**

- No member of this licensing authority shall serve more than 2 consecutive four-year terms. Time served for current authority members shall count when their current term is up. No member's current term shall be shortened by this change. If someone is term-limited they must wait 4 years to reapply and they cannot be appointed to finish out a term that has been vacated during that 4 year period.

The Town Attorney and I will be present at the work session to discuss this with the Town Council.

1 **FOR WORKSESSION/FIRST READING – MAY 23**

2  
3  
4 COUNCIL BILL NO. \_\_\_\_

5  
6 Series 2017

7  
8 AN ORDINANCE CONCERNING TERM LIMITS FOR MEMBERS OF THE TOWN OF  
9 BRECKENRIDGE PLANNING COMMISSION, THE TOWN OF BRECKENRIDGE OPEN  
10 SPACE ADVISORY COMMISSION, AND THE TOWN OF BRECKENRIDGE LIQUOR  
11 AND MARIJUANA LICENSING AUTHORITY

12  
13 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,  
14 COLORADO:

15  
16 Section 1. Chapter 2 of Title 2 of the Breckenridge Town Code, concerning the Town of  
17 Breckenridge Planning Commission, is amended by the addition of the following new Section 2-  
18 2-3-1, which shall read as follows:

19 **2-2-3-1: TERM LIMITS:**

20  
21 **A. In order to allow for more direct citizen participation in Town government, no**  
22 **member of the planning commission shall serve more than three (3) consecutive**  
23 **four-year terms in office, and no member of the planning commission shall be**  
24 **reappointed to the commission if he or she has already completed three (3)**  
25 **consecutive four-year terms in office. Time served on the commission resulting from**  
26 **an appointment made by the Town Council to fill a vacancy on the commission does**  
27 **not count in determining compliance with the limitation of this Section A.**

28  
29 **B. The current members of the commission who are in office when Section A is**  
30 **adopted shall be subject to Section A when their current terms of office expire. No**  
31 **member of the commission may be reappointed if such action would violate Section**  
32 **A. Section A shall not be applied to shorten the term of any member of the planning**  
33 **commission.**

34  
35 **C. A person who is term-limited under Section A may not be appointed to the**  
36 **planning commission until four (4) years have expired following the end of term of**  
37 **office that resulted in the person being term-limited.**

38  
39 **D. A person who is term-limited under Section A may not be appointed to fill a**  
40 **vacancy and serve out the remainder of the term of office of a member of the**  
41 **commission until four (4) years have expired following the end of term of office that**  
42 **resulted in the person being term-limited.**  
43



1 Section 2. Effective January 1, 2018 Section 2-4-3 of the Breckenridge Town Code,  
2 concerning the Town of Breckenridge Open Space Advisory Commission, is amended to read as  
3 follows:

4 2-4-3: TERM OF OFFICE; TERM LIMITS; VACANCIES

5  
6 A. The term of the members of the commission shall be ~~two (2)~~ **four (4)** years.,  
7 ~~except that the term of four (4) of the members appointed to the first commission~~  
8 ~~shall be only one year, and the term of the remaining three (3) members of the~~  
9 ~~first commission appointed shall be for two (2) years.~~ In the event that a vacancy  
10 shall occur during the term of any appointed member, a successor shall be  
11 appointed by the town council to serve the unexpired portion of the term. Any  
12 appointment made to fill a vacancy on the commission shall be made in  
13 compliance with the requirements of section 9.4 of the town charter.

14  
15 B. In order to allow for more direct citizen participation in Town government, no  
16 member of the commission shall serve more than two (2) consecutive four-year  
17 terms in office, and no member of the commission shall be reappointed to the  
18 commission if he or she has already completed two (2) consecutive four-year terms  
19 in office. Time served on the commission resulting from an appointment made by  
20 the Town Council to fill a vacancy on the commission does not count in determining  
21 compliance with the limitation of this Section B.

22  
23 C. The current members of the commission who are in office on January 1, 2018  
24 shall be subject to Section B when their current terms of office expire. Section B  
25 shall not be applied to shorten the term of any member of the commission. In 2018  
26 and 2019 no person shall be reappointed to the commission who has at that time  
27 served eight (8) or more consecutive years on the commission.

28  
29 D. A person who is term-limited under Section B may not be appointed to the  
30 commission until four (4) years have expired following the end of term of office that  
31 resulted in the person being term-limited.

32  
33 E. A person who is term-limited under Section B of this Section may not be  
34 appointed to serve out the remainder of another person's term of office on the  
35 commission until four (4) years have expired following the end of term of office that  
36 resulted in the person being term-limited.

37  
38 F. In the event that a vacancy shall occur during the term of any appointed  
39 member of the commission, a successor shall be appointed by the town council to  
40 serve the unexpired portion of the term. Any appointment made to fill a vacancy  
41 on the commission shall be made in compliance with the requirements of section  
42 9.4 of the town charter.

43  
44 Section 3. Chapter 5 of Title 2 of the Breckenridge Town Code, concerning the Town of  
45 Breckenridge Liquor and Marijuana Licensing Authority, is amended by the addition of the  
46 following new Section 2-5-4-1, which shall read as follows:

1           2-5-4-1: TERM LIMITS:  
2

3           A. In order to allow for more direct citizen participation in Town government, no  
4           member of the authority shall serve more than two (2) consecutive four-year terms  
5           in office, and no member of the authority shall be reappointed to the authority if he  
6           or she has already completed two (2) consecutive four-year terms in office. Time  
7           served on the authority resulting from an appointment made by the Town Council  
8           to fill a vacancy on the authority does not count in determining compliance with the  
9           limitation of this Section A.

10  
11           B. The current members of the authority who are in office when Section A is  
12           adopted shall be subject to Section A when their current terms of office expire. No  
13           member of the authority may be reappointed if such action would violate Section A.  
14           Section A shall not be applied to shorten the term of any member of the authority.

15  
16           C. A person who is term-limited under Section A may not be appointed to the  
17           authority until four (4) years have expired following the end of term of office that  
18           resulted in the person being term-limited.

19  
20           D. A person who is term-limited under Section A may not be appointed to fill a  
21           vacancy and serve out the remainder of the term of office of a member of the  
22           authority until four (4) years have expired following the end of term of office that  
23           resulted in the person being term-limited.

24  
25           Section 4. Except as specifically amended hereby, the BreckenridgeTownCode, and the  
26 various secondary codes adopted by reference therein, shall continue in full force and effect.

27           Section 5. The Town Council hereby finds, determines and declares that it has the power  
28 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
29 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

30           Section 6. This ordinance shall be published as provided by Section 5.9 of the  
31 Breckenridge Town Charter. Section 2 of this ordinance shall become effective January 1, 2018.  
32 All other provisions of this ordinance shall become effective as provided by Section 5.9 of the  
33 Breckenridge Town Charter.

34           INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
35 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2017. A Public Hearing shall be held at the  
36 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
37 \_\_\_\_\_, 2017, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
38 Town.  
39  
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TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By: \_\_\_\_\_  
Eric S.. Mamula, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

## MEMORANDUM

**TO:** Town Council

**FROM:** Mark Truckey, Assistant Director of Community Development

**SUBJECT:** Density Sunset Covenant for the Carter Museum Property/Denison Placer 2

**DATE:** May 17, 2017 for May 23 Meeting

### **JUBMP Policy Direction**

The Joint Upper Blue Master Plan (JUBMP) provides policy direction on a number of land use issues in the Upper Blue Basin. The JUBMP has been adopted by the towns of Breckenridge and Blue River and Summit County. One of the major policy discussions that occurred in the 2011 update to the JUBMP was density for affordable housing. After much deliberation, the Town Council agreed to a policy that for every four units of affordable housing constructed, one development right would be transferred from Town-owned property to partly mitigate the impacts of the new density. The JUBMP policy is listed below, with the Breckenridge provisions highlighted:

*Policy/Action 2. The impacts of new affordable workforce housing on the overall density and activity levels within the Basin should be mitigated by permanently extinguishing density on County and/or Town of Breckenridge-owned properties. Recommended guidelines or goals for each jurisdiction to take into consideration when evaluating implementation of this policy are as follows:*

- The County should strive to permanently extinguish density on County-owned properties at a minimum 1:2 ratio (i.e., extinguish 1 development right for every 2 affordable workforce housing units permitted to be built).*
- When new affordable workforce housing units are developed, the Town of Breckenridge should transfer density it owns to the affordable workforce housing site at a 1:4 ratio (i.e., transfer one development right for every four affordable workforce housing units permitted to be built).*
- This policy of extinguishing density to offset the impacts of new affordable workforce housing units is not applicable within the Town of Blue River.*

### **Density at Denison Placer 2 and the Carter Museum**

The Denison Placer 2 affordable housing project includes a total of 15,665 square feet of density (13.05 single-family equivalent units) currently under construction. At the 1:4 ratio, 3.26 units of Town-owned density need to be extinguished to account for the Denison Placer 2 density and comply with the JUBMP provisions. Staff is thus proposing to extinguish 3.26 units of density on the Carter Museum property. With the Council's action to approve the resolution for the density sunset covenant, a total of seventy-four one-hundredths (0.74) units of density will remain on the Carter Museum property.

This is the second time that the Town has extinguished density off the Carter Museum property. In April, 2012 the Council adopted a resolution that extinguished nine units of density off the property in order to account for the density associated with the Valley Brook housing project. After the 2012 density sunset, there remained four units on the Carter Museum property.

### **Council Action**

The Council is asked to review the attached resolution and density sunset covenant, provide any additional direction or revisions regarding the wording in the documents, and then take action to adopt the attached resolution.

1                                    ***FOR WORKSESSION/ADOPTION – MAY 23***

2  
3                                    A RESOLUTION

4  
5                                    SERIES 2017

6  
7                                    A RESOLUTION AUTHORIZING THE EXECUTION AND RECORDING OF A DENSITY  
8                                    SUNSET COVENANT

9                                    (For the Denison Placer 2 Attainable Workforce Housing Project)

10  
11                                    WHEREAS, pursuant to policies set forth in the Joint Upper Blue Master Plan, and in  
12 accordance with Section E of Policy 3(Absolute) (Density/Intensity) of Section 9-1-19 of the  
13 Breckenridge Town Code, the Town is required to transfer density it owns to approved attainable  
14 workforce housing projects at a 1:4 ratio (i.e., transfer one development right for every four  
15 attainable workforce housing development rights permitted to be built); and

16  
17                                    WHEREAS, the Town of Breckenridge recently developed an attainable workforce  
18 housing project known as “Denison Placer 2”; and

19  
20                                    WHEREAS, the Town Council finds and determines it is therefore necessary and  
21 appropriate to permanently extinguish three and twenty-six one-hundredths (3.26) single family  
22 equivalents of density from the Town’s “Carter Museum” property in order to account for the  
23 density that was used to construct the “Denison Placer 2” attainable workforce housing project;  
24 and

25  
26                                    WHEREAS, a proposed “Density Sunset Covenant” has been prepared by the Town  
27 Attorney, a copy of which is marked Exhibit “A”, attached hereto and incorporated herein by  
28 reference; and

29  
30                                    WHEREAS, the proposed Density Sunset Covenant permanently extinguishes three and  
31 twenty-six one-hundredths (3.26) single family equivalents of density previously allocated to the  
32 Town’s Carter Museum property in order to account for the density that was used to construct  
33 the “Denison Placer 2” attainable workforce housing project; and

34  
35                                    WHEREAS, the Town Council has reviewed the proposed Density Sunset Covenant, and  
36 finds and determines that it should be approved.

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

40  
41                                    Section 1. The Density Sunset Covenant that is attached as Exhibit “A” to this  
42 resolution is approved, and the Town Manager is authorized, empowered, and directed to sign  
43 such document for and on behalf of the Town. After it is signed, the approved Density Sunset  
44 Covenant shall be recorded in the real property records of the Clerk and Recorder of Summit  
45 County, Colorado in order to give record notice that the Town has accounted for the density that

1 was used by the Town of Breckenridge to construct the “Denison Placer 2” attainable workforce  
2 housing project.

3 Section 2. This resolution is effective upon adoption.

4  
5 RESOLUTION APPROVED AND ADOPTED this \_\_\_ day of \_\_\_, 2017.

6  
7 TOWN OF BRECKENRIDGE

8  
9  
10  
11 By: \_\_\_\_\_  
12 Eric S. Mamula, Mayor

13  
14 ATTEST:

15  
16  
17  
18 \_\_\_\_\_  
19 Helen Cospolich, CMC,  
20 Town Clerk

21  
22 APPROVED IN FORM

23  
24  
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26 \_\_\_\_\_  
27 Town Attorney Date

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1 EXHIBIT A

2  
3 DENSITY SUNSET COVENANT

4  
5 This Covenant (“**Covenant**”) is made \_\_\_\_\_, 2017 by the TOWN  
6 OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”).

7  
8 WHEREAS, Town owns the following described real property situate in the Town of  
9 Breckenridge, Summit County, Colorado:

10  
11 Parcel “A”

12  
13 A parcel of land lying wholly within the Abbett Addition to the Town of  
14 Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and  
15 more particularly described as follows:

16  
17 Beginning at Corner No. 8 of U.S. Survey No. 843, Abbett Placer;  
18 thence North 7° East, 123.32 feet along the West line of said Abbett Placer;  
19 thence East 158.2 feet to the West line of Ridge Street;  
20 thence South 123.16 feet to line 7-8 of Survey No. 843;  
21 thence North 89° 45' West 173.25 feet to the Point of Beginning.

22  
23 Parcel “B”

24  
25 A parcel of land lying wholly within the Abbett Addition to the Town of  
26 Breckenridge, known also as the Abbett Placer, U.S. Mineral Survey No. 843 and  
27 more particularly described as follows:

28  
29 Beginning at a point whence Corner No. 8 of U.S. Survey No. 843, Abbett Placer,  
30 bears South 7° West, 123.32 feet;  
31 thence North 7° East, 75.76 feet to the South line of Carter Avenue;  
32 thence East 149 feet to Corner of Carter Avenue and Ridge Street;  
33 thence South 75 feet;  
34 thence West 158.2 feet to the Point of Beginning.

35  
36 (“**Town’s Property**”)

37 ; and

38  
39 WHEREAS, the Town’s Property is commonly known as the Town’s “Carter Museum”  
40 property; and

41  
42 WHEREAS, pursuant to policies set forth in the Joint Upper Blue Master Plan, and in  
43 accordance with Section E of Policy 3(Absolute) (Density/Intensity) of Section 9-1-19 of the  
44 Breckenridge Town Code, the Town is required to transfer density it owns to attainable

DENSITY SUNSET COVENANT



1 workforce housing projects at a 1:4 ratio (i.e., transfer one development right for every four  
2 attainable workforce housing development rights permitted to be built); and  
3

4 WHEREAS, the Town of Breckenridge recently developed an attainable workforce  
5 housing project known as “Denison Placer 2”; and  
6

7 WHEREAS, the Town Council finds and determines it is therefore necessary and  
8 appropriate to transfer three and twenty-six one-hundredths (3.26) single family equivalents of  
9 density from the Town’s “Carter Museum” property in order to account for the density being  
10 constructed at the “Denison Placer 2” attainable workforce housing project.  
11

12  
13 NOW, THEREFORE, Town agrees as follows:  
14

- 15 1. Extinguishment of Density. Three and twenty-six one-hundredths (3.26) single family  
16 equivalents (“SFEs”) of density previously allocated to Town’s Property is forever  
17 extinguished. Following the execution of this Covenant, there will be seventy-four one-  
18 hundredths (0.74) SFEs of density remaining on the Town’s Property.  
19
- 20 2. Recording; Covenant to Run With Land. This Covenant shall be placed of record in the  
21 real property records of Summit County, Colorado, and the covenants contained herein  
22 shall run with the land and shall bind the Town and all subsequent owners of Town’s  
23 Property, or any interest therein.  
24
- 25 3. Town’s Acknowledgment of Covenant Validity. Town agrees that any and all  
26 requirements of the laws of the State of Colorado to be satisfied in order for the  
27 provisions of this Covenant to constitute a restrictive covenant running with the land shall  
28 be deemed to be satisfied in full, and that any requirements of privity of estate are  
29 intended to be satisfied, or, in the alternative, that an equitable servitude has been created  
30 to insure that the covenant herein contained shall run with the land. This covenant shall  
31 survive and be effective as to successors and/or assigns of all or any portion of Town’s  
32 Property, regardless of whether such contract, deed or other instrument hereafter  
33 executed conveying Town’s Property or portion thereof provides that such conveyance is  
34 subject to this Covenant.  
35
- 36 4. Authorization By Resolution. The execution and recording of this Covenant was  
37 authorized by Town of Breckenridge Resolution No. [REDACTED], Series 2017, adopted May 23,  
38 2017.  
39  
40  
41



**MEMORANDUM**

**To:** Town Council

**From:** Peter Grosshuesch, Director of Community Development

**Date:** May 17, 2017

**Re:** Planning Commission Decisions of the May 16, 2017, Meeting.

---

***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF May 16, 2017:***

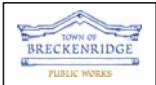
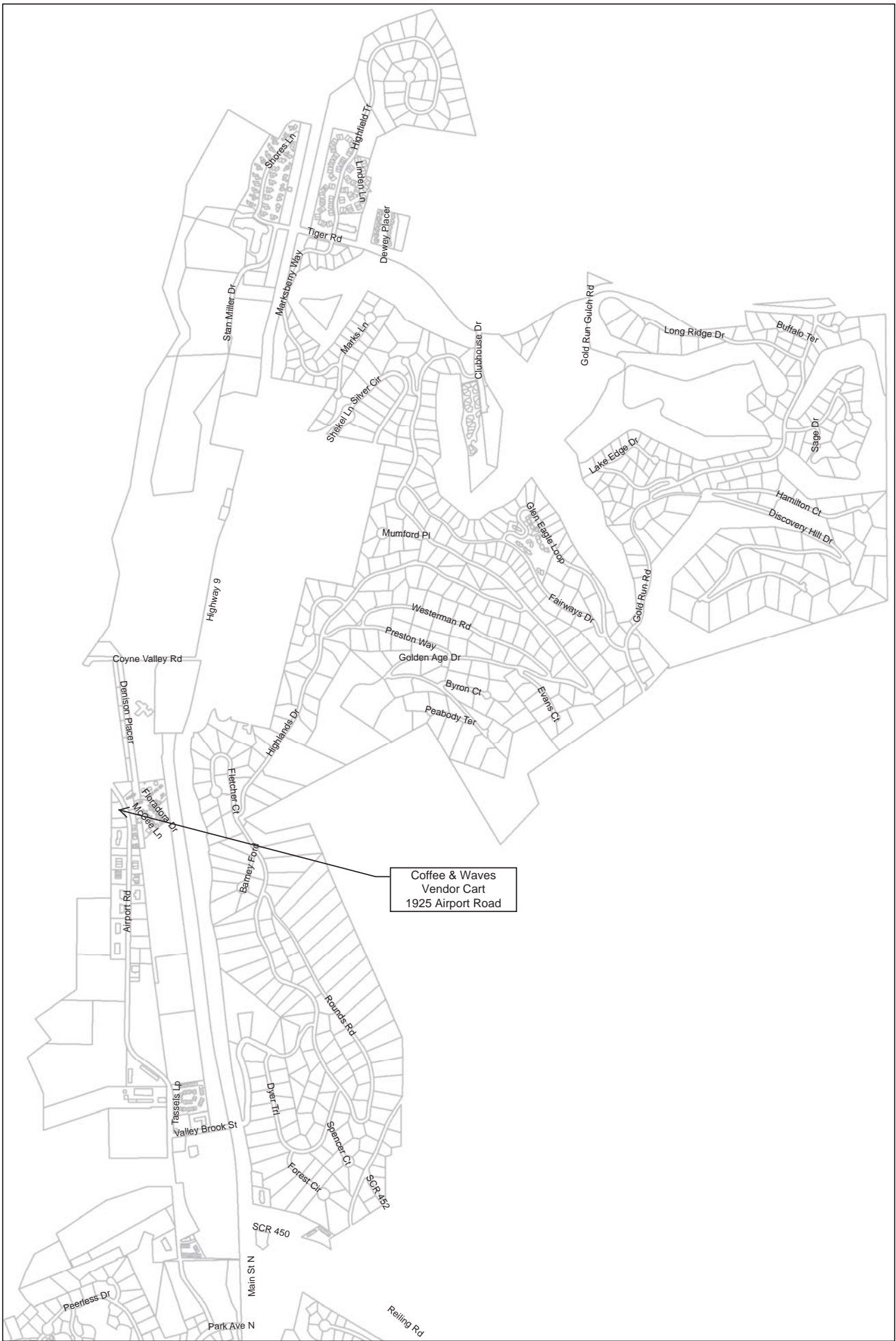
**CLASS C APPLICATIONS:**

- 1) Shock Hill Overlook Lot 10 Duplex PL-2017-0131; 75 and 59 West Point Lode  
Build a new duplex, Unit A with 4 Bedrooms and 4.5 Bathrooms and a 2,499 sq. ft density and a 3,115 mass; Unit B with 4 Bedrooms and 4.5 Bathrooms and a 2,499 density and a 3,115 sq ft. mass; for a F.A.R. of 1:1.28. *Approved.*
- 2) Shock Hill Overlook Lot 1 Duplex PL-2017-0140; 90 and 84 West Point Lode  
Build a new duplex, Unit A with 4 Bedrooms and 4.5 Bathrooms and a 2,494 sq. ft. density and a 3,110 sq. ft. mass; Unit B with 4 Bedrooms and 4.5 Bathrooms and a 2,505 sq. ft. density and a 3,121 sq. ft. mass; for a F.A.R. of 1:1.28. *Approved.*

**CLASS B APPLICATIONS:**

- 1) Coffee and Waves Vendor Cart PL-2017-0129; 1925 Airport Road  
Installation of a 98 square foot large vendor cart on Lot 1BC, Block 9, Breckenridge Airport Subdivision. Site upgrades include planters and outside seating for customers. *Approved.*

**OTHER:** None.



Shock Hill Overlook Lot 10  
75 & 59 West Point Lode

Shock Hill Overlook Lot 1  
90 & 84 West Point Lode



printed 4/11/2017

### Breckenridge South



**PLANNING COMMISSION MEETING**

The meeting was called to order at 6:00pm by Chair Schroder.

**ROLL CALL**

Christie Leidal	Gretchen Dudney	Jim Lamb
Mike Giller	Steve Gerard	Ron Schuman
Dan Schroder		

**APPROVAL OF MINUTES**

Mr. Giller: On page 9 of the packet, at the bottom, on the 3<sup>rd</sup> sentence, please change “new work” to “rehab work” as you would not rehab a new building. Also, after “solid to void,” please change “busier” to “different.”

Ms. Leidal: On page 10 of the packet, under item 1, please change “I agree” to “I agree with Mr. Schuman; I only support the landmarking if no windows are added.”

With no other changes, the May 2, 2017, Planning Commission Minutes were approved as presented.

**APPROVAL OF AGENDA**

Mr. Truckey added an additional item at the end of the agenda.

With no other changes, the May 16, 2017, Planning Commission Agenda was approved.

**PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:**

- None

**CONSENT CALENDAR:**

- 1) Shock Hill Overlook Lot 10 Duplex (MM) PL-2017-0131, 75 and 59 West Point Lode
- 2) Shock Hill Overlook Lot 1 Duplex (MM) PL-2017-140; 90 and 84 West Point Lode

Mr. Giller asked if it was the upper level decks that were heated. (Ms. Puester: yes.) With no requests for call up, the consent calendar was approved as presented.

**TOWN COUNCIL REPORT:**

Mr. Truckey:

- The only Planning issue that was discussed was the PIF Fee ordinance. The Council approved that on 2<sup>nd</sup> reading.

Ms. Dudney: So no more differentiation between disposable and re-usable dishes? (Mr. Truckey: Correct.) Has the fee increased? (Mr. Kulick: They are eliminating the Snack Bar category. There was some discussion of rates and they did a slight adjustment downward. They are trying to give people time to adjust.)

Ms. Puester: In the past, the Commission has seen some Change of Use applications because of the difference between the categories. We will not be seeing those change of uses now (between snack bar deli and restaurant).

Mr. Schroder: Does that get rid of disposable? Mr. Truckey: No, that is a business choice and there are plenty of places that still have it.

Mr. Kulick: There are a lot of places that probably preferred to use non-disposable, but were not using them before because of the PIF cost difference.

**COMBINED HEARINGS:**

1) Coffee and Waves Vendor Cart (CK) PL-2017-0129, 1925 Airport Road

Mr. Kulick presented an application for installation of a 98 square foot large vendor carton Lot 1BC, Block 9, Breckenridge Airport Subdivision. Site upgrades include planters and outside seating for customers.

Chair Schroder opened the hearing to public comment. There was no public comment and the hearing was closed.

*Commissioner Questions / Comments:*

Ms. Leidal: Is there an exterior electrical outlet to hook this up to? (Ms. Caitlin Kontak, Applicant: I will be plugging into an exterior outlet that is integrated into one of the Distillery's exterior light poles.)

Mr. Schroder: What are you going to do for signage? (Ms. Kontak: there is still some logistical stuff we are working on.) (Mr. Kulick: All signage must be reviewed through a separate Sign Permit.)

Mr. Schuman: Meets all policies. Great application.

Ms. Leidal: I support the analysis.

Mr. Gerard: I support the staff analysis. I think it is a great idea, and I love to support small business.

Mr. Schroder: It meets the Code and I support.

Ms. Dudney made a motion to approve Coffee and Waves Vendor Cart, PL-2017-0129, 1925 Airport Road, with the presented point analysis showing a passing score of zero points and the presented findings and conditions. Ms. Leidal seconded and the motion was carried unanimously (7-0).

**DEVELOPMENT CODE STEERING COMMITTEE UPDATE:**

Mr. Truckey:

- We have not had a meeting since we last updated you.

**OTHER MATTERS:**

1) Planning Commission Retreat Discussion (JP)

Ms. Puester: We typically go on a retreat in September / October. I just wanted to start the conversation and talk about some possibilities. We want to focus on what is relevant to us right now or upcoming. I would like you to think about the main issues we are looking at in the next year and relate that to these retreat ideas. Aspen always has a lot of relevant things happening. Another one was Telluride because they have a lot of development issues that are similar to ours. That is actually the location of the State APA Conference this year. If we favored that this year, maybe we can do those at the same time. I know that Mr. Giller had an idea about the Grand Canyon Village as well; do you want to talk about that Mr. Giller?

*Commissioner Questions / Comments:*

Mr. Giller: We just finished a generation long project regarding the Grand Canyon Village and there may be some relevancy such as trail heads, transportation systems, historic preservation, visitor amenities and lodging.

Mr. Schroder: Trailheads.

Ms. Dudney: There is a lot going on in Summit County. It might be nice to find out what is going on in our backyard. Dredge, Silverthorne Theatre, Affordable Housing on the Dillon Dam, Water issues.

Mr. Schuman: Dillon has that hotel that they are working on. (Ms. Puester: Could be possible. We did a session a few years ago where we tried to get all the Commissioners in the County together to discuss projects. We do this currently with all the municipal and county planning departments a few times a year.) (Mr. Kulick: I think there is a benefit of going to place that has existing developments rather than staying here and look at places like Silverthorne that are more suburban so we can get some post-construction insight that is more applicable to here.)

Ms. Dudney: I think our biggest issue will be scraping and rebuilding.

Mr. Lamb: We are going to be doing that here in Breckenridge very soon. (Mr. Truckey: Vail has been

doing that. They have given a pretty big density incentive to do that. We have not had the stomach to do that. Aspen is also experiencing this.)

Mr. Schuman: I think transportation is going to be a big issue in the next year, such as roundabouts, gondola, etc. (Ms. Puester: I will expand on some of these and narrow it down and return with that list at another worksession.)

2) A reminder to the Commission: Starting June 6<sup>th</sup>, the Planning Commission meetings will start at 5:30pm.

3) Other:

Mr. Truckey: I talked to Summit County Planning today and they are in the process of updating their Countywide Comprehensive Plan. It is pretty high level, but there is some overlap on issues like housing and TDRS. They are going to be having some focus meetings. They are going to invite members of all county commissions, so I wanted you to be aware in case you wanted to have a representative present. The first meetings are going to start in June. If anyone wants to volunteer, let me know. (Mr. Schroder: I work with Summit County Planning, so it would be little overlap for me.) We have a Committee up and running in an effort to have all Town facilities be 100% renewable. I am going to Aspen with the Mayor Mamula for a summit on climate change and renewable energy. I think we are on our way in terms of making some sort of goal statement regarding renewable energy. It would require working with Xcel. They are shutting down some of their coal plants. Natural gas is becoming more competitive pricewise, as are wind and solar. The hope is that Xcel could make a shift towards more renewables. Aspen is already at 100%. They have a hydro plant that produces about 50% of their energy. They bought wind credits to get to the end game of 100%. We are probably not going to do that. Our Council is more interested in taking on projects ourselves. We are looking at a solar project in Leadville that may increase our renewable supply significantly.

**ADJOURNMENT:**

The meeting was adjourned at 6:38 pm.

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Dan Schroder, 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.*

### May 2017

Tuesday, May 23, 2017	3:00pm / 7:00 pm	Town Hall Chambers	Second Meeting of the Month
Tuesday, May 30, 2017	5:30pm - 7:00pm	Town Hall Chambers	State of the Town

### June 2017

Tuesday, June 13, 2017	3:00pm / 7:00 pm	Town Hall Chambers	First Meeting of the Month
Tuesday, June 27, 2017	3:00pm / 7:00 pm	Town Hall Chambers	Second Meeting of the Month

### July 2017

Tuesday, July 11, 2017	3:00pm / 7:00 pm	Town Hall Chambers	First Meeting of the Month
Friday, July 21, 2017	8:00am - 9:00am	Ice Rink	Coffee Talk
Tuesday, July 25, 2017	3:00pm / 7:00 pm	Town Hall Chambers	Second Meeting of the Month

### Other Meetings

May 24th, 2017	Summit Combined Housing Authority	9:00am
May 25th, 2017	Northwest Council of Governments	10:00am
May 30th, 2017	RW&B Board Meeting	3:00pm
June 6th, 2017	Planning Commission Meeting	6:00pm
June 7th, 2017	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	3:00pm
June 8th, 2017	Upper Blue Sanitation District	5:30pm
June 13th, 2017	Breck Forward Task Force Meeting	8:00am
	Workforce Housing Committee	1:30pm
	Board of County Commissioners Meeting	1:30pm
June 14th, 2017	Breckenridge Heritage Alliance	Noon
June 20th, 2017	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission	6:00pm
June 20th - 23rd	Colorado Municipal League Annual Conference	Beaver Run
June 22nd, 2017	Breckenridge Tourism Office Board Meeting	8:30am
	CAST	2:30pm
June 26th, 2017	Open Space & Trails Meeting	6:00pm
June 27th, 2017	Board of County Commissioners Meeting	1:30pm
June 28th, 2017	QQ - Quality and Quantity - Water District	10:00am
July 13th, 2017	I-70 Coalition	1:00pm
July 5th, 2017	Police Advisory Committee	7:30am
July 11th, 2017	Board of County Commissioners Meeting	1:30pm
July 17th, 2017	Breckenridge Creative Arts	4:15pm