



**TOWN OF  
BRECKENRIDGE**

**Town Council Work Session**

Tuesday, December 10, 2019, 3:00 PM

Council Chambers

150 Ski Hill Road

Breckenridge, Colorado

**I. PLANNING COMMISSION DECISIONS (3:00-3:05pm)**

Planning Commission Decisions

**II. LEGISLATIVE REVIEW (3:05-3:45pm)**

2018 Building Code Adoption (Second Reading)

Child Advocacy Center Lease (Second Reading)

Housing Buy Down Program Resale Process (Second Reading)

Authorization for the Sale of Gold Camp II Unit 163 (Emergency Ordinance)

Appointment of Town Attorney (Resolution)

Appointment of Town Prosecuting Attorney (Resolution)

Development Management Agreement for McCain (Resolution)

Huron Landing Authority IGA (Resolution)

**III. MANAGERS REPORT (3:45-4:15pm)**

Public Projects Update

Parking and Transportation Update

Housing and Childcare Update

Committee Reports

Breckenridge Events Committee

**IV. PLANNING MATTERS (4:15-4:30pm)**

Master Lease Agreement for Wireless Providers

**V. OTHER (4:30-5:30pm)**

Liquor and Marijuana Licensing Authority Appointments (2 seats)

Art Programming Follow-Up Discussion

**VI. EXECUTIVE SESSION (5:30pm)**



# Memo

To: Breckenridge Town Council Members  
From: Mark Truckey, Director of Community Development  
Date: December 4, 2019  
Subject: Planning Commission Decisions of the December 3, 2019 Meeting

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## ***DECISIONS FROM THE PLANNING COMMISSION MEETING, DECEMBER 3, 2019:***

**CLASS A APPLICATIONS:** None.

### **CLASS B APPLICATIONS:**

1. Large Vendor Cart Renewal, 327 N. Main Street, PL-2019-0561

A proposal to renew the Development Permit for the Large Vendor Cart at 327 N. Main Street. There are not any changes proposed to the existing Large Vendor Cart or the site plan with this application. *Approved.*

### **CLASS C APPLICATIONS:**

1. Val D'Isere Exterior Renovations, 301 N. French Street, PL-2019-0538

A proposal to renovate the exterior of the building, including larger open air entryways and new roof forms, replacement and enlargement of exterior walkways, new exterior stairs with slight change in location, new flat roofs over the enlarged stairs, new railings and balusters, and a new footpath connecting the southwest corner of the building to the Ridge Street alley. *Approved.*

### **TOWN PROJECT HEARINGS:**

1. South Gondola Lot Public Parking Structure, 80 N. Park Avenue, PL-2019-0523

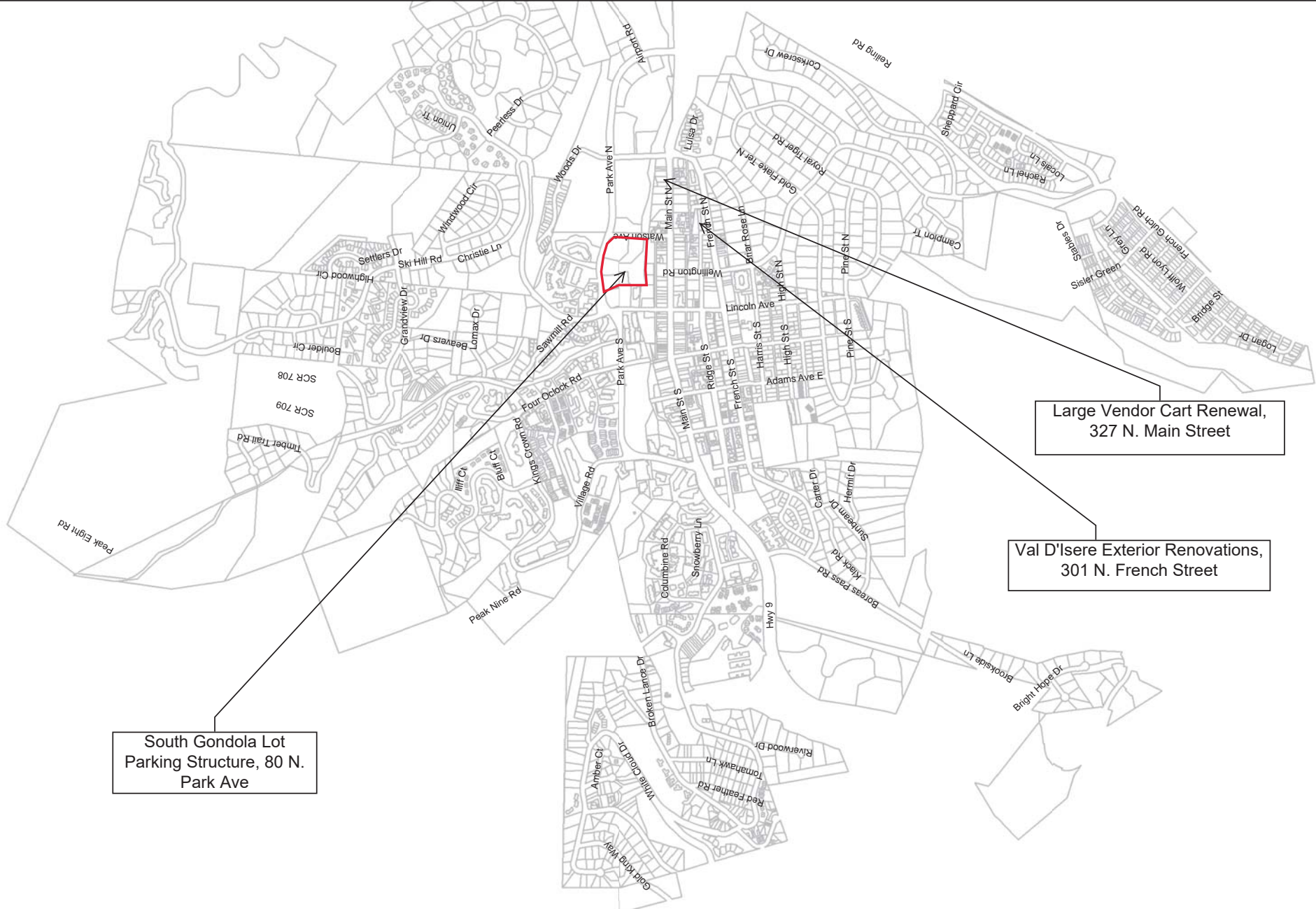
A proposal to construct a public parking structure on the South Gondola parking lot, which would provide 717 parking spaces within the structure plus 245 exterior surface parking spaces, bicycle parking, and public restrooms. The proposed structure is 249,984 square feet and will provide 405 additional spaces beyond the South Gondola lot's current capacity. *Approved.*

**OTHER:** None.



NOT TO SCALE

# Breckenridge South



South Gondola Lot  
Parking Structure, 80 N.  
Park Ave

Large Vendor Cart Renewal,  
327 N. Main Street

Val D'Isere Exterior Renovations,  
301 N. French Street

## PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 p.m. by Chair Gerard.

### ROLL CALL

Christie Mathews-Leidal	Jim Lamb	Ron Schuman
Mike Giller	Steve Gerard	
Dan Schroder	Lowell Moore	

### APPROVAL OF MINUTES

With no changes, the November 19, 2019 Planning Commission Minutes were approved.

### APPROVAL OF AGENDA

With no changes, the December 3, 2019 Planning Commission Agenda was approved.

### PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

### CONSENT CALENDAR:

1. Val D'Isere Exterior Renovations (LS), 301 N. French Street, PL-2019-0538

Mr. Gerard made a motion to call up Val D'Isere Exterior Renovations, seconded by Mr. Schroder. The motion passed 6-0, with Mr. Schuman recusing himself as a Val D'Isere employee, and the item was called up.

Mr. Sponable presented:

I would like to note we made a slight change to the findings and conditions. We have added new number 15. We do not have encroachment agreements for existing elements within the N. Ridge St. and N. French St. rights-of-way, so this is a good time to formalize an encroachment agreement here for those elements.

#### *Commissioner Questions / Comments:*

Mr. Giller: That path being changed to a gravel trail, does that require a handrail? (Mr. Sponable: I spoke to the Building Division about that and we do not need handrails.)

Mr. Gerard: Condition number 20 talks about lighting, I noticed there are a large number of lights around the building, some that look to be above 15 above the ground. How does that mesh? (Mr. Sponable: The ones on the end of the building will be removed due to staircases. The other lights are I believe grandfathered in because they are not within the scope of this project.) (Ms. Puester: All lighting needs to be in conformance with code by a certain date, I believe 2022.) Would this condition be a problem to deal with in the future? (Ms. Puester: We are just applying these conditions to the proposed project, but not the rest of the non-conforming project.) Maybe have it say 'all new exterior lighting' instead of all lighting.

Mr. Giller made a motion to approve with the updated findings and conditions, seconded by Mr. Lamb. The motion passed 6-0.

### COMBINED HEARINGS:

1. Large Vendor Cart Renewal (CL) 327 N. Main Street, PL-2019-0561

Mr. LaChance presented a proposal to renew the Development Permit for the Large Vendor Cart at 327 N. Main Street. There are no changes proposed to the existing Cart or the Site Plan with this application.

#### *Commission Questions / Comments:*

Mr. Gerard: The cart is on a paved pad already, right? (Mr. LaChance: Yes, a paver patio.)

Any questions for the applicant? None.

The hearing was opened for public comments. There were none and public comment was closed.

Mr. Schuman made a motion to approve the Large Vendor Cart Renewal with a passing point analysis of 0, seconded by Mr. Schroder. The motion passed unanimously.

**TOWN PROJECTS:**

1. South Gondola Lot Parking Structure (CK), 80 N. Park Avenue, PL-2019-0523

Mr. Kulick presented a proposal to construct a new public parking structure on the South Gondola Lot. The project will provide 717 parking spaces within the structure, plus 245 exterior surface parking spaces, bicycle parking and public restrooms. The proposed parking structure totals 249,984 sq. ft. and will provide 405 additional spaces beyond the South Gondola Lot's current capacity. Attending as the applicants are Shannon Smith, Town Engineer, and Rick Holman, Town Manager. Representing Norris Design are Elena Scott and Tori Aidala. Representing Walker Consultants was Kirk Taylor. Representing Koch and Kovotsos Architects was Michael Koch.

The following specific questions were asked of the Commission:

1. Does the Commission agree with the proposed point analysis?
2. Does the Commission support for the use of the proposed bistro lighting pursuant to Town Code Section 9-14-2?
3. Does Commission have any other comments in regards to the project?

*Commissioner Questions / Comments:*

Mr. Moore: What is the setback on the west side? (Mr. Kulick: 57' to property line. North is 292' to property line. 89' to property line adjacent to river.) So how far from that wall on the left side to the pedestrians? (Mr. Kulick: Probably another 15' to the sidewalk.) (Ms. Smith: I think 60 is a good round number for you there due to the widening of the road to accommodate a turn lane.)

Ms. Leidal: I did have a question on the landscaping plan since it wasn't in the packet. You alluded to the fact that we are under the new code for this project, with the updated code 50% of the deciduous trees need to be multi stemmed. Also for more positive points, the new code talks about a water conservation policy. (Ms. Aidala: If you look at the plant list under deciduous trees, those are all clump multi stem, so that equates to around 90 of the deciduous trees (75%) will be multi stemmed.) (Ms. Smith: We can commit to the water conservation policy because we want to meet that.)

Mr. Schroder: Curious about open space. (Mr. Kulick: The majority of the open space will be along the perimeter areas.) So it is really wrapping the entire footprint? (Mr. Kulick: The majority is along the Park Avenue corridor.) Thank you.

Mr. Schuman: The bistro lighting, where are you thinking that will flow? (Mr. Kulick: Along the west corridor from the pedestrian plaza to the end of the walkway between the Breckenridge Professional Building and Town Hall.) How many lights are we talking about? (Ms. Smith: There are a lot, they are separated 3' on center and are fully shielded. I'll try to pull up the count for you.) (Ms. Scott: I think the real thing is that the entire siting of the structure and design is based on this pedestrian connection going north to south. We are trying to include anything we can do to make it feel safe, and encourage walking. If there is a concern about too many total lights, we can look at our options for reduction while still keeping the goal.)

Mr. Schroder: Public art wasn't mentioned in the packet, but is that an element? (Mr. Kulick: We are relocating the 10<sup>th</sup> Mountain Division Structure to the pedestrian plaza in front of the structure.)

- Mr. Giller: I presume since it is a parking garage there are no windows? (Mr. Kulick: There are no windows, just wall openings. The proposal is kind of the happy medium between what we would like to see for a solid to void ratio that is consistent with historic standards and what we need for minimum air circulation.) Secondly, it appears on some of the roofs there are PV panels, but I didn't see any notation. (Mr. Kulick: Yes.) (Ms. Smith: We are fitting them where we can, but it won't offset the energy used by the facility. We are also putting in 10 car charging spaces, with another 10 that will be ready for charging if demand warrants.) Next question, looking to the future, is it possible, way down the road that there will be another garage where the surface parking is located, directly to the north? (Mr. Holman: Anything is possible.) Watch the siting of the utilities so it doesn't get messed up later. Next, at the left center here, we have an intersection where they come out of the parking garage and the lot. I can see on a busy day this offset intersection being confusing. What I might do is lose that most south west parking spot and create a true intersection there. Next, the ramp cross buck on the west side, would you speak to that? (Mr. Koch: There is a sample of an old mine shaft, and it is core ten steel with trussing. At the last meeting we had about twice as much trussing as we do now, and were directed to tone it down. So we reduced the trussing amount so it is only on the edge of the ramps as you are driving up. And that is what is visible from Park Avenue.) One more. Would you sort of go to the south end of the plan and speak to that? (Mr. Kulick: When you get to the end of the walkway between the Breckenridge Professional Building and Town Hall you have the Town Hall parking lot. It's admittedly not the best pedestrian connection from that point to Ski Hill Road. We don't have plans to do anything in there, but it is a short gap to get to Ski Hill Road. It gets most people close to where they need to be, where they can see the intersection of Ski Hill Road and Main Street. Now we will have adequate lighting and a bread crumb trail to hopefully get them into town. Whereas now, with how dark and desolate that lot is, Main Street feels much further away and people want to go somewhere else and park.) (Mr. Holman: We will probably continue the heating 30' across the sidewalk in front of the parking lot straight across to where the stairs are coming up to the sidewalk. People tend to follow heated pathways.)
- Mr. Shuman: Is there a directional plan? (Ms. Aidala: We do have some wayfinding plans. Going across the bridge, and across the East Sawmill Lot with breadcrumbs to Main Street. Also going to the gondola. We have a planned map of the whole town in the plaza. And the lighting which is the breadcrumbs going North-South.) Cellphone use? We just added another Verizon tower on the post office. Is there any concern about cellphone connectivity? (Ms. Puester: We have sent these plans to the providers to look at.) (Ms. Smith: We will also be launching some Wi-Fi in the downtown core, and this area will be covered. And there are 220 bistro light fixtures planned.)
- Mr. Moore: I take it there is not an opportunity for connectivity on the east side by the river? (Mr. Kulick: Adjacent to the Breckenridge Professional Building the land drops off immediately to the river and it is very narrow.)
- Ms. Smith: We are looking at the parking garage as phase one, then the roundabout at Park and Watson Avenues being phase two. In phase three, the Schoonover Building on the east side of the river will be removed and an enhanced river walk connection will be constructed.
- Mr. Schroder: One more question, why not make the structure larger? (Mr. Holman: It is a philosophical balance. Some of us are struggling with the fact that we are building parking. The real goal is to figure out how to get people out of cars. We are pretty sure we wouldn't get CDOT approval if we went any bigger.)
- Mr. Gerard: I had one additional question. If you go back, in the upper right corner you are showing the snow stack and a drop-off? (Mr. Kulick: The latest plan was revised to have a drop off area in the first row with the snow stacking and detention area in front of it. The landscaping plan was not updated in time to reflect this.) (Ms. Smith: I sort of forced the design team on a last minute change, moving them away from the drop off to using the front row as a drop off.

Drop off isn't as utilized in the summer, so having that flexibility in the summer will be good. (Mr. Kulick: This does give us a more sizeable area for snow storage and a larger green space area adjacent to Watson Avenue.)

Mr. Moore: In order to get us close on policy 7R, is there anyway to use some of the setback to try and soften that and get it in better alignment with 7R? (Mr. Kulick: The amount of landscaping is fairly substantial along that corridor. At its closest point being over 50' and having so much landscaping we believe it meets 7R, more so than many other large projects like this. It is tough to break up a parking structure.)(Ms. Smith: We did also add an architectural design so it gives you something to look at.) The drawing depicting the southwest corner is what concerns me with 7R. (Ms. Smith: That is an earlier rendering, the building has been pushed back from that location.) Thank you.

The hearing was opened for public comments. There were none and public comment was closed.

*Commissioner Questions / Comments:*

Mr. Schuman: 1. Agree. 2. Don't support use of bistro lighting. Not fair to others who have to abide by our code. It is our duty to say it is not acceptable. 3. I think the architecture is awesome. It is going to fit well there, traffic flow is greatly improved. It is a good plan, and I am excited to see this come to fruition.

Mr. Lamb: Really good looking parking structure. This will function really well. 1. Agree. 2. I support the bistro lighting. I see this as a safety issue. There are places we need light and this is one of them. 3. Are you going to break ground come spring? (Ms. Smith: May.)

Mr. Giller: This has a Breck feel to it. I encourage more sustainable features. I like the PV panels you have. Please do take a look at that offset intersection on the left side. I have some doubts about the ramp and the cross buck design. I would tone that down somehow visually so it reads less like a ramp. I would strengthen the pedestrian connection. 2. Bistro lighting can be done. 1. Fine with point analysis.

Ms. Leidal: I support this project. 2: Bistro lights is part of policy 46A and I side with Ron, I don't think it meets our code so I don't support it. I like them, and in regards to safety, other lights can be proposed that meet code. 1. I would also like to see the water conservation policy followed for positive points.

Mr. Schroder: 1: I agree with the point analysis. 2: In my role as a planning commissioner, I'm not able to support these (bistro lights), but if town council were to look at this and approve it, I think it might be great. I support construction in May.

Mr. Moore: 1. Agree. 2. Do not agree with bistro lighting, and I would think keeping the lighting with what we have had would be more appropriate. As Mr. Schroder said, town council can do whatever they want with that. I really appreciate the architectural changes, but my concern was always that West side. I love the East side.

Mr. Gerard: I think we've come a long way since Tiger Dredge and F Lot. This is a great project. It looks like Breckenridge. 1. Agree with point analysis. 2. I can't support bistro lighting from a legal standpoint. But personally I think they would work and if town council decides they want to ignore the law that is up to them and they can do that. Small technicality, but Chris pointed out there is no internal landscaping, and I think we should quickly get a consensus about this so town council knows where we stand. (Mr. Kulick: Most of our large lots in town do not have this, it adds maintenance and trouble for snow plowing, and reduces parking spaces.)(Ms. Puester: We can do a finding for it.)(Mr. Kulick: I will create finding 8 relating to the lack of internal landscaping.)

All: Yes for waiving internal landscaping.

Mr. Schuman made a motion to recommend the project to the Town Council with the attached point analysis

and amended findings and conditions, seconded by Mr. Schroder. The motion passed unanimously.

**OTHER MATTERS:**

1. Town Council Summary

Mr. Holman and Mr. Truckey presented an overview of the most recent Town Council meeting.

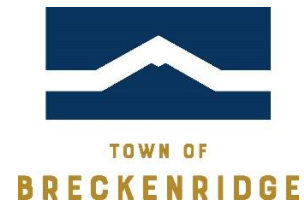
**ADJOURNMENT:**

The meeting was adjourned at 7:15 pm.

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Steve Gerard, Chair





# Memo

**To:** Town Council  
**From:** Eli Johnston, Chief Building Official  
**Date:** 12/4/2019  
**Subject:** 2018 Code Adoption Second Reading

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The Building Codes currently adopted by the Town are the 2012 International Code series. The International Code series is published and updated by the International Code Council (ICC) on a three-year basis, with the Town adopting the updated codes typically every six-years. The 2018 series of ICC Codes are the most updated published codes and staff would like to move forward to adopt these.

Staff met with Council at its November 26<sup>th</sup> work session and first reading to discuss the issues related to these code changes. Attached is the draft ordinance adopting the updated Codes. One change from first reading is the removal of the International Swimming Pool and Spa Code (ISPSC). The Colorado Health Department has been considering recommending / approving local jurisdiction adoption and enforcement of CDC's Model Aquatics Health Code (public pools only) which would pose the potential for conflicts with the design and construction requirements of the ISPSC. The Building Division will be working with the ICC on the next steps to take regarding this code. We will also be updating the Residential and Commercial Energy Codes in 2020. Staff will be available to answer any questions from Council.

1 **FOR WORKSESSION/SECOND READING – DEC. 10**

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

5  
6 COUNCIL BILL NO. 35

7  
8 Series 2019

9  
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF  
11 TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING  
12 CODES OF THE TOWN OF BRECKENRIDGE; ADOPTING BY REFERENCE AND  
13 AMENDING: THE INTERNATIONAL BUILDING CODE, 2018 EDITION; THE  
14 INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION, INCLUDING APPENDIX F  
15 AND K; THE INTERNATIONAL PLUMBING CODE, 2018 EDITION INCLUDING  
16 APPENDIX; THE INTERNATIONAL MECHANICAL CODE, 2018 EDITION, INCLUDING  
17 APPENDIX A; THE INTERNATIONAL FUEL GAS CODE, 2018 EDITION, INCLUDING  
18 ~~APPENDIX~~ APPENDIX A AND B; THE INTERNATIONAL ENERGY CONSERVATION  
19 CODE, 2018 EDITION; THE INTERNATIONAL EXISTING BUILDING CODE, 2018  
20 EDITION; ~~THE INTERNATIONAL POOL AND SPA CODE~~, 2018 EDITION; THE  
21 NATIONAL ELECTRICAL CODE, 2017 EDITION; THE ICC ELECTRICAL CODE –  
22 ADMINISTRATIVE PROVISIONS, 2006 EDITION; AND THE UNIFORM CODE FOR THE  
23 ABATEMENT OF DANGEROUS BUILDINGS, 1997 EDITION.

24  
25 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,  
26 COLORADO:

27  
28 Section 1. Chapter 1 of Title 8 of the Breckenridge Town Code is repealed and readopted  
29 with changes so as to read as follows:

30 CHAPTER 1

31 BUILDING CODES

32 SECTION:

- 33  
34 8-1-1: TITLE  
35 8-1-2: FINDINGS  
36 8-1-3: STANDARD CODES ADOPTED BY REFERENCE  
37 8-1-4: AMENDMENTS TO THE INTERNATIONAL BUILDING CODE

38 BUILDING CODES ORDINANCE

- 1 8-1-5: AMENDMENTS TO THE INTERNATIONAL RESIDENTIAL CODE
- 2 8-1-6: AMENDMENTS TO THE INTERNATIONAL PLUMBING CODE
- 3 8-1-7: AMENDMENTS TO THE INTERNATIONAL MECHANICAL CODE
- 4 8-1-8: AMENDMENTS TO THE INTERNATIONAL FUEL GAS CODE
- 5 8-1-9: AMENDMENTS TO THE INTERNATIONAL ENERGY CONSERVATION
- 6 CODE
- 7 8-1-10: AMENDMENTS TO THE INTERNATIONAL EXISTING BUILDING CODE
- 8 ~~8-1-11: AMENDMENTS TO THE INTERNATIONAL POOL AND SPA CODES~~ 8-1-12:
- 9 AMENDMENTS TO THE NATIONAL ELECTRICAL CODE
- 10 8-1-~~13~~12: AMENDMENTS TO THE ICC ELECTRICAL CODE – ADMINISTRATIVE
- 11 PROVISIONS
- 12 8-1-~~14~~13: AMENDMENTS TO THE UNIFORM CODE FOR THE ABATEMENT OF
- 13 DANGEROUS BUILDINGS
- 14 8-1-~~15~~14: PENALTIES
- 15 8-1-~~16~~15: LIABILITY
- 16 8-1-~~17~~16: REPEAL OF PREVIOUS ORDINANCES
- 17 8-1-~~18~~17: CODE COPIES

18  
19 **8-1-1: TITLE:**

20  
21 This Chapter shall be known and may be cited as the “*TOWN OF BRECKENRIDGE BUILDING*  
22 *CODES ORDINANCE.*”

23  
24 **8-1-2: FINDINGS:**

25  
26 The Town Council finds and determines as follows:

- 27
- 28 A. The Town is authorized by law to set fees for permits issued under the Town’s building
- 29 and other technical codes.
- 30
- 31 B. The Building Inspection Division of the Department of Community Development is the
- 32 primary Town department charged with the duty to process permit applications under the
- 33 Town’s building and other technical codes, but other Town departments and personnel,
- 34 such as the Engineering Department, expend time in connection with the review of such
- 35 applications. The time expended by all Town personnel in reviewing such applications
- 36 are part of the present operational cost and future expansion of the Building Inspection
- 37 Division of the Department of Community Development. Such costs are part of the
- 38 overall costs required to operate such Department.
- 39
- 38 C. On occasion the Town incurs additional out-of-pocket expenses in connection with the
- 39 review of an application for a permit under the Town’s building and other technical

BUILDING CODES ORDINANCE

1 codes. Such expenses may include, without limitation, fees paid by the Town to the Town  
2 Attorney and/or fees paid by the Town to special counsel or special consultants. Such  
3 fees are part of the overall costs required to process the permit application for which they  
4 were incurred.

5 D. Pursuant to Bainbridge, Inc. v. The Board of County Commissioners of Douglas County,  
6 964 P.2d 575 (Colo. App. 1998) the application fees that may lawfully be charged by the  
7 Town for permits under the Town’s building and other technical codes may include both  
8 the direct and indirect costs of operating the Building Inspection Division of the Town’s  
9 Department of Community Development, as well as the other Town departments and  
10 personnel which assist in the review of permit applications.

11 E. The permit fees established in this Chapter are approximately required to offset the direct  
12 and indirect costs of operating the Building Inspection Division of the Department of  
13 Community Development and the cost to the Town of actually processing building permit  
14 applications.

15 F. The application fees for Building Permits and Plan Reviews established by this Chapter  
16 do not exceed the direct and indirect costs of operating the Department of Community  
17 Development and the cost to the Town of actually processing permit applications.

18 **8-1-3: STANDARD CODES ADOPTED BY REFERENCE:** The following standard codes,  
19 as hereinafter amended, are adopted by reference as part of the Town of Breckenridge Building  
20 Code:

21  
22 A. International Building Code, 2018 Edition, published by the International Code Council,  
23 Inc.

24 B. International Residential Code, 2018 Edition, including Appendix F and K, Published by  
25 the International Code Council, Inc.

26 C. International Plumbing Code, 2018 Edition, including Appendix, published by the  
27 International Code Council, Inc.

28 D. International Mechanical Code, 2018 Edition, including Appendix A, published by the  
29 International Code Council, Inc.

30 E. International Fuel Gas Code, 2018 Edition, including Appendix A and B, published by  
31 the International Code Council, Inc.

32 F. International Energy Conservation Code, 2018 Edition, published by the International  
33 Code Council, Inc.

## BUILDING CODES ORDINANCE

1 G. International Existing Building Code, 2018 Edition, published by the International Code  
2 Council, Inc.

3 ~~H. International Pool and Spa Code, 2018 Edition, published by the International Code~~  
4 ~~Council, Inc.~~

5 ~~H. I-National Electrical Code~~, 2017 Edition, published by the National Fire Protection  
6 Association.

7 ~~I. J-ICC Electrical Code – Administrative Provisions~~, 2006 Edition, published by the  
8 International Code Council, Inc.

9 ~~J. K-Uniform Code for the Abatement of Dangerous Buildings~~, 1997 Edition, published by  
10 the International Conference of Building Officials.

11 **8-1-4: AMENDMENTS TO THE INTERNATIONAL BUILDING CODE:** The following  
12 sections of the International Building Code, 2018 Edition, are amended to read as follows:  
13

14 1. **Section 101.1 Title** is amended to read as follows:

15 **101.1 Title.** These regulations shall be known as “The TOWN OF BRECKENRIDGE  
16 BUILDING CODE” herein after referred to as “this code.”

17 2. **Section 101.4.3 Plumbing** is amended by deleting the last sentence that references the  
18 *International Private Sewage Disposal Code*.

19 3. **Section 101.4.4 Property Maintenance** is deleted in its entirety.

20 4. **Section 102.6 Existing Structures** is amended by removing the reference to the  
21 *International Property Maintenance Code*.

22 5. **Section 103.2 Appointment** is amended to read as follows:

23 **103.2 Building Official.** The Building Official is hereby authorized and directed to  
24 enforce all of the provisions of this code. However, such authorization and direction  
25 shall be neither an expressed nor implicit guaranty that all buildings and structures have  
26 been constructed in accordance with all of the provisions of this code, nor be deemed as  
27 any representation as to the quality of such buildings or structures in any manner.

28 6. **Section 103.3 Deputies** is amended to read as follows:

29 **103.3 Deputies.** In accordance with the prescribed procedures of this jurisdiction, the

## BUILDING CODES ORDINANCE

1 building official shall have the authority to appoint a deputy building official, related  
2 technical officers, inspectors, plans examiners and other employees. Such employees  
3 shall have the powers and duties as delegated by the building official.

4 **7. Section 104.8 Liability** is amended by adding the following additional first paragraph:

5 The adoption of this code, and any previous building, construction and housing standard  
6 adopted by the Town of Breckenridge, shall not be deemed to give rise to a duty of care  
7 on the part of any public entity, public employee or agent, nor shall this code or any  
8 previous building, construction and housing standard be deemed to create any civil  
9 remedy against a public entity, public employee or agent.

10 **8. Section 105.1.1 Annual Permit and Section 105.1.2 Annual Permit Records** are  
11 deleted in their entirety.

12 **9. Section 105.2 Work exempt from permit Item 11** is amended to read as follows:

13 **Item 11.** Swings and other playground equipment.

14  
15 **10. Section 105.5 Expiration** is amended to read as follows:

16 **105.5 Expiration.** Every permit issued by the building official under the provisions of  
17 this code shall expire 18 months after the date of issue. Every permit issued shall become  
18 invalid unless the work on the site authorized by such permit is commenced within 180  
19 days after its issuance, or if the work authorized on the site by such permit is suspended  
20 or abandoned for a period 180 days after the time the work is commenced. The building  
21 official is authorized to grant, in writing, extensions of time, for periods of not more than  
22 6 months. An extension shall be requested in writing and shall demonstrate justifiable  
23 cause for the extension.

24 **11. Section 107.1 General** is amended to read as follows:

25 **107.1 General.** Construction documents, special inspection and structural observation  
26 programs and other data shall be submitted in two sets with each application for a permit.  
27 A Colorado Licensed Design Professional shall prepare the construction documents. The  
28 Building Official may waive the requirement for a design professional when it is found  
29 that the nature of the scope of work is such that a design professional is not necessary to  
30 obtain compliance with this code. Where special conditions exist the building official is  
31 authorized to require additional construction documents.

32 **12. Section 107.3 Examination of documents** is amended by adding the following  
33 paragraph:

The issuance or granting of a permit by the Town of Breckenridge, based on plans and specifications and other data, shall not prevent the subsequent requiring of the correction of errors or omissions in said plans specifications and other data and shall not be construed to be a permit for approval of any violation of any of the provisions of this code or any other law of the Town of Breckenridge.

**13. Section 107.3.1 Approval of construction documents** is amended by replacing the words “reviewed for code compliance”, with “approved for issuance of building permit.”

**14. Section 109.2 Schedule of permit fees** is amended to read as follows:

**109.2 Schedule of permit fees.** On buildings, structures, electrical, gas mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the following Town of Breckenridge Building Permit and Inspection Fee Schedule:

**Town of Breckenridge Building Permit and Inspection Fee Schedule**

<b>TOTAL VALUATION</b>	<b>FEE</b>
\$1.00 TO \$500	\$23.50
\$501 TO \$2,000	\$23.50 for the first \$500, plus \$3.05 for each additional \$100 or fraction thereof, to and including \$2,000
\$2001 TO \$25,000	\$69.25 for the first \$2,000, plus \$14.00 for each additional \$1,000 or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$391.25 for the first \$25,000, plus \$10.10 for each additional \$1,000 or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$643.75 for the first \$50,000, plus \$7.00 for each additional \$1,000 or fraction thereof, to and including \$100,000
\$100,000 to \$500,000	\$993.75 for the first \$100,000, plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$3,233.75 for the first \$500,000, plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and higher	\$5,608.75 for the first \$1,000,000, plus \$3.65 for each additional \$1,000 or fraction thereof

Other Inspections and Fees:

1. Inspection outside of normal business hours  
(minimum charge – two hours) .....\$50.00/hour
2. Re-inspection .....\$50.00/hour
3. Inspection for which no fee is specifically indicated  
(minimum charge – one hour) .....\$50.00/hour
4. Additional plan review required by changes, additions or revisions  
to plans (minimum charge – one hour) .....\$50.00 /hour
5. For use of outside consultants for plan checking and inspections,  
or both..... Actual cost

1

<b>ELECTRICAL PERMIT FEES</b>	
<b>UNIT AREA</b>	<b>PERMIT FEE</b>
Not more than 1,000 sq. ft.	\$120.00
Over 1,000 sq. ft., and not more than 1,500 sq. ft.	\$168.00
Over 1,500 sq. ft., and not more than 2,000 sq. ft.	\$216.00
Over 2,000 sq. ft.	\$216.00 plus \$9.60 per 1000 sq. ft. or fraction thereof over 2,000 sq. ft.
<b>ALL OTHER FEES:</b> Except for inspection in mobile homes and travel parks, all other permit fees shall be computed on the dollar value of the electrical installation, including labor and material, and such fees shall be computed as follows:	
<b>VALUATION</b>	<b>PERMIT FEE</b>
Not more than \$2,000.00	\$120.00
More than \$2,000.00	\$9.60 per thousand or fraction thereof plus \$120.00
Mobile homes and travel parks per space	\$120.00
Additional plan review	\$65.00 per hour or fraction thereof
Re-inspection on all above	\$65.00
Temporary Power Permit	\$65.00
Hot Tub Electrical Permit	\$120.00
<b>**Plan review fees – The plan review fees for electrical work shall be calculated as 65 percent of the electrical permit fee. **</b>	

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All permits have a plan review fee of 65% in addition to the permit fee.

Hot tub permits fees are \$125.25.

Work commencing before issuance of a building permit is subject to three times the permit fee.

15. **Section 110.3.5 Lath and Gypsum Board Inspection** is amended by deleting the Exception

16. **Section 110.3.11 Final Inspection** is amended to read as follows:

**110.3.11 Final Inspection.** The final inspection is to be made only after the finished grading and the building or structure is completed in accordance with the provisions on the International Building Code, technical codes and the Town’s Development Code, including flooring, tile, wallpaper, painting, trim, finish, and final cleaning. A security deposit may be posted for work required by the Town’s Department of Community Development, i.e., landscaping, exterior painting, and paving that cannot be completed as a result of prevailing weather conditions.

17. **Section 110 Inspections** is amended by adding a new subsection, 110.7 Re-inspections, to read as follows:

**110.7 Re-inspections.** A re-inspection fee, as specified in the Town of Breckenridge Building Permit and Inspection Fee Schedule, may be assessed for each inspection or re-inspection when such portion of work for which inspection is called is not complete or when corrections called for are not made. Re-inspection fees may be assessed when the inspection records are not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, or failing to provide access on the date for which the inspection is requested, or for deviating from plans requiring the approval of the building official. In instances where re-inspection fees have been assessed, no additional inspection of the work will be performed until the re-inspection fees have been paid.

18. **Section 111.1 Change of occupancy** is amended by adding the following sentence:

Certificates presuming to give authority to violate or cancel the provisions of this code or other Town ordinances shall not be valid.

19. **Section 111 Certificate of Occupancy is amended by adding a new subsection, 111.5**

1 **Certificate of Completion to read as follows:**

2 **111.5 Certificate of completion. A certificate of completion shall be issued for**  
3 **minor work not directly related to occupancy when such work complies with the**  
4 **provisions of this code and all other laws and regulations implemented by the code**  
5 **enforcement agency.**  
6

7 **20.** **19. Section 202 Definitions** is amended by adding the following definitions with the  
8 alphabetical order of the existing definitions:

9 **LOFT:** A habitable room or floor in a building that is open to the room or floor directly  
10 below, which may or may not qualify as a mezzanine.

11 **POTENTIAL SLEEPING ROOM:** A room or space within a dwelling unit having a  
12 floor area of at least 70 square feet and a ceiling height of at least 5 feet, will be  
13 considered a sleeping room as follows:

14 In a building defined as a *dwelling* or *lodging* house, any space or room having two of the  
15 following factors shall be considered a sleeping room. In a building defined as an  
16 *apartment house* or *hotel*, any room or space having one of the following factors shall be  
17 considered a sleeping room:

- 18 a. Has walls and doors to separate it from other habitable spaces.  
19 b. Meets the definition of a loft.  
20 c. Has a closet or similar provision for clothes storage.  
21 d. Has a full or partial bathroom connected to the space or room, or has a path of  
22 travel to a full or partial bathroom which does not first pass through a  
23 habitable space.

24 Rooms or spaces determined by these criteria to be sleeping rooms, regardless of any  
25 names, labels, or intended uses proposed by the building designer or owner, shall have  
26 emergency escape and rescue openings per the 2018 IBC Section 1030, smoke detectors  
27 per IBC Section 907, and carbon monoxide detectors per IBC Section 915.

28 Any alteration to the room or space previously mentioned will be required to be made  
29 permanent in nature. The elimination of doors or closets will be made in such a manner  
30 that the construction cannot be readily reinstalled.

31 **UNFINISHED SPACE:** A room or space within a dwelling unit with no interior  
32 partition walls, no gypsum board (unless required by code), no finishes (mud, tape,  
33 and/or paint) on areas requiring gypsum board, and no floor finishes.  
34

1 **CERTIFIED SOLID FUEL BURNING DEVICE:** A solid fuel burning device that is  
2 certified by the Air Pollution Control Division of the Colorado Department of Health or  
3 approved by the building official as meeting the emission standards set forth in Section  
4 IV of Regulation No. 4 of Volume I of the Colorado Air Quality Control Commission  
5 (EPA Phase II or III).  
6

7 **NEW CONSTRUCTION:** For the purpose of section 2113 new construction” is  
8 construction of a residential, commercial, industrial, agricultural or accessory building.  
9 This shall include any modifications, replacement or relocation of existing solid fuel  
10 burning devices. However, modifications to solid fuel burning devices shall not include  
11 repair, replacement or relocation of flue pipe.  
12

13 **SOLID FUEL BURNING DEVICE:** Any fireplace, stove, firebox, or other device  
14 intended and or used for the purpose of burning wood, coal, pulp, paper, pellets or other  
15 non-liquid or non-gaseous fuel.  
16

17 21. ~~20.~~ **Section 420 Groups I-1, R-1, R-2, R-3** is amended to add a new subsection, 420.11  
18 Sustainable Building Code, to read as follows:

19 **420.11 Sustainable Building Code.** All residential (Type R) occupancies are to be  
20 LEED-H, ICC-700, Green Globes or certified through an alternate third party, approved  
21 by the building official.

22 22. ~~21.~~ **Section 502.1 Address identification** is amended by changing the minimum  
23 required height from 4 inches to 5 inches.

24 23. ~~22.~~ **Section 718 Concealed Spaces** is amended by adding two new subsections, 718.6  
25 Factory-built fireplace enclosures and 718.7 Factory-built chimney enclosures, to read as  
26 follows:

27 **718.6 Factory-built fireplace enclosures.** Combustible construction enclosing factory  
28 built fireplaces with Class A chimneys shall be protected on the interior (fireplace) side  
29 by one-hour fire resistive construction.  
30

31 **718.7 Factory-built chimney enclosures.** Factory-built Class A chimneys shall be  
32 enclosed within a continuous enclosure protected on the interior (flue) side by not less  
33 than one-hour fire resistive construction.  
34

35 **Exception.** The portion of the chimney located in the same room as the appliance and  
36 the portion of the chimney above the finished roof are not required to be enclosed.

1 However, if they are enclosed, the interior of the shaft shall be protected by one-hour fire  
2 resistive construction.

3  
4 **24.** ~~**23.**~~ **Section 901.5** **Acceptance tests** is amended by adding a new subsection, 901.5.1  
5 Special inspector required, to read as follows:

6 **901.5.1 Special inspector required.** All fire protection systems required by this code  
7 shall be reviewed, inspected, and approved by a special inspector. The special inspector  
8 shall be an authorized representative of the RWB fire department or another qualified  
9 individual with prior approval of the building official. Approvals of special inspectors,  
10 inspections approvals, and reports by special inspectors shall be in accordance with  
11 Chapter 17 of this code.

12 **25.** ~~**24.**~~ **Section 915.1** **General** is amended by adding the following sentence:

13 Carbon monoxide detection shall also be installed in accordance with *State of Colorado*  
14 *House Bill 09-1091, Article 45, Title 38, C.R.S.*

15 **26.** ~~**25.**~~ **Section 1010.1.9.4** **Locks and latches Item 2.2** is amended to read as follows:

16 **Item 2.2** A readily visible sign is posted on the egress side on or adjacent to the door  
17 stating:

18 **THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS.**

19  
20 The sign shall be in letters 1 inch (25 mm) high on a contrasting background.

21  
22 **27.** ~~**26.**~~ **Chapter 12** **Interior Environment** is amended by adding a new section to read  
23 exactly as set forth in Appendix F, Radon Control Methods, of the 2018 IRC. This shall  
24 be applicable for R2 and R3 occupancies.

25 **28.** ~~**27.**~~ **Section 1503** **Weather Protection** is amended by inserting a new subsection,  
26 1503.6 Snow-shed barriers, to read as follows:

27 **1503.6 Snow-shed Barriers.** Roofs shall be designed to prevent accumulations of snow  
28 from shedding onto exterior balconies, decks, pedestrian and vehicular exits from  
29 buildings, stairways, sidewalks, streets, alleys, areas directly above or in front of gas  
30 utility or electric utility meters, or adjacent properties.

31 **Exception:** Roof areas with a horizontal dimension of no more than 48 inches (1219mm)  
32 that will not receive snow shedding from a higher roof. The horizontal projection shall be

1 measured perpendicular to the exterior wall line from the edge of the roof or eave to any  
2 intersecting vertical surface.

3  
4 **29.** ~~**28.**~~ **Section 1505.1** **General** is amended to read as follows:

5 **1505.1 General.** All roof coverings on new construction, additions and re-roofs shall be  
6 Class A. Class A roof assemblies and roof coverings shall be tested in accordance with  
7 ASTM E 108 or UL 7901. Additionally, fire-retardant treated wood roof coverings shall  
8 be tested in accordance with ASTM D 2898.

9 **30.** ~~**29.**~~ **Table 1505.1** **Minimum Roof Covering Classification for Types of Construction**  
10 and all footnotes to the table are deleted in their entirety.

11 **31.** ~~**30.**~~ **Section 1507.1.1** **Underlayment** is amended to read as follows:

12 **1507.1.1 Underlayment.** A roof underlayment consisting of an approved self-adhering  
13 polymer modified bitumen sheet is required with all types of roof covering. The  
14 underlayment shall extend up the slope of the roof from drip-edge or eave to the roof  
15 peak. The underlayment shall cover the entire roof decking surface. In new construction  
16 the underlayment shall extend a minimum of 30 inches up the walls adjacent to the roof  
17 surface.

18  
19 **32.** ~~**31.**~~ **Section 1507.1.2** **Ice barriers** is amended to read as follows:

20 **1507.1.2 Ice dam protection.** An ice dam protection underlayment that consists of an  
21 approved self-adhering polymer modified bitumen sheet complying with ASTM D 1970  
22 shall be used with all roof coverings. This ice dam protection underlayment shall extend  
23 up the slope of the roof from the drip-edge of the roof or eave and cover the entire roof  
24 decking surface. In new construction ice dam protection shall extend a minimum 30 inch  
25 up walls adjacent to the roof surface.

26 **33.** ~~**32.**~~ **Section 1507.8** **Wood Shingles** is amended to read as follows:

27 **1507.8 Wood Shingles.** The installation of wood shingles shall comply with the  
28 provisions of this section.

29  
30 **34.** ~~**33.**~~ **Table 1507.8** **Wood Shingle and Shake Installation** is deleted in its entirety.

31 **35.** ~~**34.**~~ **Section 1507.9** **Wood Shakes** is amended to read as follows:

32 **1507.9 Wood Shakes.** The installation of wood shakes shall comply with the  
33 provisions of this section.

- 1 **36.** ~~**35.**~~ **Section 1608.1** **General** is deleted in its entirety.
- 2 **37.** ~~**36.**~~ **Section 1608.2** **Ground Snow Loads** is amended to read as follows:
- 3 **1608.2 Snow loads.** The loads to be used in determining the design snow loads for  
4 roofs shall be 90 psf for roofs located at an elevation below 10,000 feet, and 100 psf for  
5 roofs located at an elevation of 10,000 feet or higher. There shall be no reduction in snow  
6 load for pitch or duration. Ground snow load is not to be utilized, and there is no ground  
7 snow load reduction. Snow load for decks and exterior balconies shall be as required for  
8 roofs.
- 9 **38.** ~~**37.**~~ **Section 1612.3** **Establishment of flood hazard areas** is amended to read as  
10 follows:
- 11 **1612.3 Establishment of flood hazard areas.** The Town of Breckenridge flood hazard  
12 areas shall be as provided in Chapter 3 of Title 10 of the Breckenridge Town Code. The  
13 adopted flood hazard map and supporting data are adopted by reference and declared to  
14 be part of this section.
- 15 **39.** ~~**38.**~~ **Section 1703.1** **Approved agency** is amended to read as follows:
- 16 **1703.1 Approved agency.** An approved agency shall provide all information as  
17 necessary for the building official to determine that the agency meets the applicable  
18 requirements. The RWB fire department shall be an approved agency for special  
19 inspection of fire protection systems required by this code.
- 20 **40.** ~~**39.**~~ **Section 1704.2.3** **Statement of special inspections** is amended by adding an  
21 additional Exception to read as follows:
- 22 **Exception:** Special inspection required by the RWB fire department of fire protection  
23 systems.
- 24 **41.** ~~**40.**~~ **Section 1704.2.4** **Report requirement** is amended by adding an Exception to read  
25 as follows:
- 26 **Exception:** Special inspection required by the RWB fire department of fire protection  
27 systems.
- 28 **42.** ~~**41.**~~ **Section 1705** **Required Special Inspections and Tests** is amended by adding a new  
29 section, 1705.19 Fire protection and suppression systems and subsection 1705.19.1  
30 Qualifications, to read as follows:

1 **1705.19 Fire protection and suppression systems.** Fire protection and suppression  
2 systems shall have the design plans approved by a special inspector and the systems  
3 inspected and tested by a special inspector for compliance with the requirements of this  
4 code and the International Fire Code.

5 **1705.19.1 Qualifications.** Special inspectors for fire protection systems shall have  
6 expertise in fire-protection and be approved by the RWB fire department. Special  
7 inspectors for fire suppression systems shall be fire suppression systems inspectors  
8 certified by the State of Colorado Division of Fire Safety and approved by the Fire  
9 Protection District.

10 **43. ~~42.~~ Section 1809.5 Frost protection** is amended to read as follows:

11 **1809.5 Frost protection.** Except where erected on solid rock or otherwise protected  
12 from frost, foundation walls piers and other permanent supports of buildings and  
13 structures shall extend to at least 40 inches below finish grade or be designed and built in  
14 accordance with ASCE 32. Footings 24 inches deep are permitted for decks only that do  
15 not support roofs and are less than 30 inches above grade. Footings shall not bear on  
16 frozen soils. Frost reports shall be required before placement of concrete from Nov. 1  
17 through May 1, or if freezing temperatures occur, prior to Nov. 1 or after May 1.

18 **44. ~~43.~~ Section 2113 Masonry Chimneys** is amended by adding the following subsections,  
19 2113.21 Limitation on the type and number of devices and 2113.22 Factory built  
20 chimneys, to read as follows:

21 **2113.21 Limitation on the type and number of devices.** Solid fuel burning devices  
22 that are not certified are prohibited in new construction. The number of certified solid  
23 fuel burning devices that may be installed in newly constructed buildings shall be  
24 approved by the Town's Department of Community Development.

25 **2113.22 Factory built chimneys.**

26 **a.** Factory built chimneys shall be supported at intervals not to exceed 10 feet by wall  
27 straps or equivalent.

28 **b.** Factory built chimneys shall have the outer wall of adjacent chimney sections fastened  
29 together by three sheet metal screws, installed approximately 120 degrees apart. Such  
30 fastenings shall be in addition to and not in lieu of those requirements mandated by the  
31 manufacturers' instructions, except when specifically prohibited by those instructions or  
32 the terms of their listing.

33 **Exception:** Where approved manufacturers' locking bands are used.

1 c. The points of termination of a factory built chimney shall not be within 10 inches  
2 vertically of the point of termination of any adjacent chimney or appliance vent within 24  
3 inches horizontally. No factory built chimney shall terminate closer than 24 inches to  
4 combustible finish materials.

5 **45.** ~~44.~~ **Section 2302.1** **General.** The first paragraph is amended to read as follows:

6 **2302.1 General.** The design of structural elements or systems, constructed partially or  
7 wholly of wood or wood-based products shall be based on one of the following methods.  
8 The use of load duration factors for snow load shall not be permitted in any of these  
9 design methods.

10 **46.** ~~45.~~ **Section 2303.1.11** **Structural log members** is amended by adding the following  
11 paragraph:

12 All logs used in a structural capacity must be graded and marked by an approved grading  
13 agency, in conformance with DOC PS 20. In lieu of a grade mark, a certificate of an  
14 onsite inspection issued by a 3<sup>rd</sup> party lumber grading or inspection agency may be  
15 accepted.

16  
17 **47.** ~~46.~~ **Section 2303.1.12** **Round Timber Poles and Piles** is amended by adding the  
18 following paragraph:

19 All logs used in a structural capacity must be graded and marked by an approved grading  
20 agency, in conformance with DOC PS 20. In lieu of a grade mark, a certificate of an  
21 onsite inspection issued by a 3<sup>rd</sup> party lumber grading or inspection agency may be  
22 accepted.

23  
24 **48.** ~~47.~~ **Section 2308.7.13** **Wood trusses** is amended by adding the following sentence:

25 Trusses shall be blocked at bearing points.

26  
27 **49.** ~~48.~~ **Section 2901.1** **Scope** is amended by deleting the reference to the *International*  
28 *Private Sewage Disposal Code*.

29 **50.** ~~49.~~ **Section 2902.1** **Minimum Number of Fixtures** is amended to add the following  
30 paragraph:

31 An additional single-user toilet facility and bathing room shall be required where only  
32 separate sex facilities are provided. When this single-user toilet and bathing room  
33 requirement is applicable, the required separate sex toilet and bathtub/shower counts



1 required by IBC Table 2902.1 is allowed to be reduced by one in the male and female  
2 toilet facility and bathing room.

3  
4 **51.** ~~**50.**~~ **Section 2902.1.2** **Single-User Toilet Facility and Bathing Room Fixtures** is  
5 amended to read exactly as follows:

6 **2902.1.2 Single-User Toilet Facility and Bathing Room Fixtures.** The plumbing  
7 fixtures located in single-user toilet facilities and bathing rooms, including family or  
8 assisted-use toilet and bathing rooms that are required by IBC Section 1109.2, shall  
9 contribute toward the total number of required plumbing fixtures for a building or tenant  
10 space. Single user toilet facilities and bathing rooms and family or assisted-use toilet  
11 rooms and bathing rooms shall be identified as being open for use to all persons,  
12 regardless of gender. A single-occupant restroom is one that contains only one toilet and  
13 a sink, or a toilet and urinal with a sink, and is intended for use by one occupant at a time.  
14 Family or assisted-use restrooms must also be designated as gender-neutral. All gender  
15 neutral bathrooms are to be signed accordingly.

16  
17 **52.** ~~**51.**~~ **Section 2902.2** **Exception 2** is amended to read as follows:

18 **Exception 2.** Separate facilities shall not be required in structures or tenant spaces with a  
19 total occupant load, including both employees and customers, of 30 or less.

20 **53.** ~~**52.**~~ **Section 2902.2** **Separate facilities** is amended to add an additional Exception to  
21 read as follows:

22 **Exception 5.** Gender neutral single-user toilet facility and bathing room fixtures.

23  
24 **54.** ~~**53.**~~ **Section 3309.1** **Where required** is amended to read as follows:

25 **3309.1 Where required.** All structures under construction, alteration or demolition  
26 shall be provided with approved portable fire extinguishers as required by the RWB fire  
27 department.

28 **55.** ~~**54.**~~ **Section 3311.1** **Where required** is amended to read as follows:

29 **3311.1 Where required.** Buildings four stories or more in height shall be provided  
30 with standpipes as required by the RWB fire department.

31 **56.** ~~**55.**~~ **Section 3311** **Standpipes** is amended by adding subsection, 3311.4 Water supply, to  
32 read as follows:

1           **3311.4 Water supply.** Water supply for fire protection, either temporary or permanent,  
2 shall be made available as required by the RWB fire department.

3 **8-1-5: AMENDMENTS TO THE INTERNATIONAL RESIDENTIAL CODE:** The  
4 following sections of the International Residential Code, 2018 Edition, are amended to read as  
5 follows:  
6

7       **1. Section R101.1 Title** is amended by adding the name “Town of Breckenridge.”

8       **2. Section R101.2 Scope.** The exception is amended to read as follows:

9           **Exception.** The following shall be permitted to be constructed in accordance with this  
10 code.

11       **3. Section R102.7 Existing Structures** is amended by deleting the reference to the  
12 *International Property Maintenance Code*.

13       **4. Section R103.2 Appointment** is amended to read exactly as IBC Section 103.2 as  
14 amended.

15       **5. Section R103.3 Deputies** is amended to read exactly as IBC Section 103.3 as amended.

16       **6. Section R104.8 Liability** is amended by adding the first paragraph to read exactly as  
17 IBC Section 104.8 as amended.

18       **7. Section R105.5 Expiration** is amended to read exactly as IBC Section 105.5 as  
19 amended.

20       **8. Section R106.1 Submittal documents** is amended to read as IBC Section 107.1 as  
21 amended.

22       **9. Section R106.3 Examination of documents** is amended by adding the paragraph to  
23 read exactly as IBC Section 107.3 as amended.

24       **10. Section R106.3.1 Approval of construction documents** is amended to read exactly as  
25 IBC Section 107.3.1 as amended.

26       **11. Section R108.2 Schedule of permit fees** is amended by replacing “by the applicable  
27 government authority” with “in accordance with the Town of Breckenridge Building  
28 Permit and Inspection Fee Schedule. Refer to the IBC Section 109.2 as amended.”

29       **12. Section R108.3 Building permit valuations** is amended to read exactly as IBC Section

1 109.3.

2 13. **Section R108.6** **Work commencing before permit issuance** is amended to read as  
3 follows:

4 **R108.6 Work commencing before permit issuance.** Any person who commences any  
5 work on a building, structure, electrical, gas, mechanical or plumbing system before  
6 obtaining the necessary permits shall be subject to an investigation fee that shall be in  
7 addition to the required permit fees. The investigation fee shall be as set forth in the  
8 Town of Breckenridge Building Permit and Inspection Fee Schedule.

9 14. **Section R109.1.6** **Final Inspection** is amended to read as follows:

10 **R109.1.6 Final Inspection.** To be made only after the finished grading and the building  
11 or structure is completed in accordance with the provisions of the International  
12 Residential Code and Technical Codes, the Development Code, including cleaning,  
13 flooring, tile, wallpaper, paint, trim, finish, and final painting and paving. A security  
14 deposit may be posted for work required by the Town's Department of Community  
15 Development, i.e., landscaping, exterior painting, paving, that cannot be completed as a  
16 result of prevailing weather conditions.

17 15. **Section R109** **Inspections** is amended by adding a new subsection, R109.5 Re-  
18 inspections, to read as follows:

19 **R109.5 Re-inspections.** A re-inspection fee, as specified in the Town of Breckenridge  
20 Building Permit and Inspection Fee Schedule, may be assessed for each inspection or re-  
21 inspection when such portion of work for which inspection is called is not complete or  
22 when corrections called for are not made. Re-inspection fees may also be assessed when  
23 the inspection records are not posted or otherwise available on the work site, the  
24 approved plans are not readily available to the inspector, for failing to provide access on  
25 the date for which the inspection is requested, or for deviating from plans requiring the  
26 approval of the building official. In instances where re-inspection fees have been  
27 assessed, no additional inspection of the work will be performed until the re-inspection  
28 fees have been paid.

29 16. **Section R110.3** **Certificate issued** is amended by adding the following paragraph:

30 A Certificate of Occupancy shall not be construed as an approval of a violation of the  
31 provisions of this code or any other ordinance of the Town. Certificates presuming to  
32 give authority to violate or cancel the provisions of this code or other ordinances of the  
33 Town shall not be valid.

1    **17.    Section R110.4 Temporary occupancy** is deleted in its entirety.

2    **18.    Section R110 Certificate of Occupancy** is amended by adding a new subsection,  
3    R110.6 Certificate of Completion, to read as follows:

4           **R110.6 Certificate of Completion.** A Certificate of Completion shall be issued for  
5           work not directly related to occupancy when such work complies with the provisions of  
6           this code and all other relevant laws, which are enforced by the Town. A Certificate of  
7           Completion shall not be construed as an approval of a violation of the provisions of this  
8           code or other ordinances of the Town. Certificates presuming to give authority to violate  
9           or cancel the provisions of this code or other ordinances of the Town shall not be valid.

10   **19.    Section R202 Definitions** is amended by inserting the following definitions within the  
11    alphabetical order of the existing definitions and by amending the definition of a Town  
12    House:

13           **LOFT:** A habitable room or floor in a building that is open to the room or floor directly  
14           below, which may or may not qualify as a mezzanine.

15           **POTENTIAL SLEEPING ROOM:** A room or space within a dwelling unit having a  
16           floor area of at least 70 square feet and a ceiling height of at least 5 feet will be  
17           considered a sleeping room as follows: ,

18           In a building defined as a *dwelling* or *lodging* house, any space or room having two of the  
19           following factors shall be considered a sleeping room.

- 20           a. Has walls and doors to separate it from other habitable spaces
- 21           b. Meets the definition of a loft.
- 22           c. Has a closet or similar provision for clothes storage
- 23           d. Has a full or partial bathroom connected to the space or room, or has a path of  
24           travel to a full or partial bathroom which does not first pass through a habitable  
25           space.

26           Rooms or spaces determined by these criteria to be sleeping rooms, regardless of any  
27           names, labels, or intended uses proposed by the building designer or owner, shall have  
28           emergency escape and rescue opening per the 2018 IBC Section 1030, smoke detectors  
29           per IBC Section 907, and carbon monoxide detectors per IBC Section 915.

30           Any alteration to the room or space previously mentioned will be required to be made  
31           permanent in nature. The elimination of doors or closets will be made in such a manner  
32           that the construction cannot be readily reinstalled

**UNFINISHED SPACE:** A room or space within a dwelling unit with no interior partition walls, no gypsum board (unless required by code), no finishes (mud, tape, and/or paint) on areas requiring gypsum board, and no floor finishes.

**STORAGE:** A non-habitable room or space within a dwelling unit used for storage. A storage room or space shall not have TV or internet outlets, closets, or other improvements outside of what is typical for storage areas. Light and ventilation is not required in the non-habitable space per code. This space is not approved for living, sleeping, eating, or cooking.

**NEW CONSTRUCTION:** For the purpose of section 1004 “new construction” is construction of a residential, commercial, industrial, agricultural or accessory building. This shall include any modifications, replacement or relocation of existing solid fuel burning devices. However, modifications to solid fuel burning devices shall not include repair, replacement or relocation of flue pipe.

**CERTIFIED SOLID FUEL BURNING DEVICE:** A solid fuel burning device that is certified by the Air Pollution Control Division of the Colorado Department of Health or approved by the building official as meeting the emission standards set forth in Section IV of Regulation No. 4 of Volume I of the Colorado Air Quality Control Commission (EPA Phase II or III).

**SOLID FUEL BURNING DEVICE:** Any fireplace, stove, firebox, or other device intended and or used for the purpose of burning wood, coal, pulp, paper, pellets or other non-liquid or non-gaseous fuel.

**TOWNHOUSE:** A single family dwelling unit constructed in a group of two or more attached units in which each unit extends from foundation to roof and with a yard or public way on at least two sides.

20. Table R301.2(1) is amended to read as follows:

**TABLE R 301.2 (1) – CLIMATIC AND GEOGRAPHICAL DESIGN CRITERIA**

ROOF SNOW LOAD	WIND SPEED MPH <sup>d</sup>	SEISMIC DESIGN CAT <sup>f</sup>	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP <sup>e</sup>	ICE BARRIER UNDERLAYMENT REQUIRED <sup>i</sup>	FLOOD HAZARDS	AIR FREEZING INDEX <sup>j</sup>	MEAN ANNUAL TEMP <sup>k</sup>
			weathering <sup>a</sup>	frost line depth <sup>b</sup>	termite <sup>c</sup>					
h	115	B	severe	40 inches	slight	-13°	yes	g	2500	35.4°

For SI: 1 pound pursuant to square foot=0.0479 kN/m.0 2, 1 mile pursuant to hour=1.609km/h.

(a) Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The

- 1 grade of masonry units shall be determined from ASTM C 34, C 55, C 62,  
 2 C 73, C 90, C129, C 145, C 216 or C 652.
- 3 (b) The frost line depth may require deeper footings than indicated in Figure  
 4 R403.1(1). This part of the table is filled in depending on whether there has been  
 5 a history of local damage. Twenty Four (24”) inch deep footers are permitted for  
 6 decks only, which do not support roofs and are less than 30 inches above grade.
  - 7 (c) This part of the table is filled in depending on whether there has been a  
 8 history of local damage.
  - 9 (d) Wind exposure category shall be determined on a site-specific basis in  
 10 accordance with Section R301.2.1.4.
  - 11 (e) Reflects local climates or local weather experience as determined by the  
 12 building official.
  - 13 (f) Seismic Design Category determined from Section R301.2.2.2.
  - 14 (g) Refer to IBC Section 1612.3 as amended.
  - 15 (h) Snow-loads of 90 lbs. per square foot are required for construction sites below an  
 16 elevation of 10,000 feet. For construction sites at an elevation of 10,000 feet or  
 17 greater, the snow-load shall be 100 lbs per square foot. There shall be no  
 18 reduction snow-load for pitch or duration.
  - 19 (i) In accordance with R905.1.1 as amended.
  - 20 (j) From the 100 year (99%) value on the National Climatic Data Center  
 21 data table “Air Freezing Index- USA Method( Base 32degrees F)”
  - 22 (k) From the National Climatic Data Center data table “Air Freezing  
 23 Index-USA Method ( Base 32 degrees F )”

24 **21. Table R301.5 Minimum Uniformly Distributed Live Loads** is amended by deleting  
 25 exterior balconies, decks and fire escapes from the table, and by adding footnote (i) to  
 26 read as follows:

27 **Footnote (i).** The minimum uniformly distributed live loads for exterior balconies and  
 28 decks shall be the same as required for roofs.

29 **22. Section R302.1 Exterior Walls** is amended to read as follows:

30 **R302.1 Exterior walls.** Construction, projections, openings and penetrations of exterior  
 31 walls of dwellings and accessory buildings shall comply with Table R302.1(1); or  
 32 dwellings equipped throughout with an automatic sprinkler system installed in  
 33 accordance with all applicable provisions of the governing fire district’s code shall  
 34 comply with Table R302.1(2).

35 **23. Table R302.1(2) Footnote (a)** is amended to read as follows:

1 **Footnote (a).** For residential subdivisions where all dwellings are equipped throughout  
2 with an automatic sprinkler system installed, permitted and inspected to show compliance  
3 with all applicable requirements of the governing fire district’s code, the fire separation  
4 for nonrated exterior walls and rated projections shall be permitted to be reduced to 0  
5 feet, and unlimited unprotected openings and penetrations shall be permitted, where the  
6 adjoining lot provides an open setback yard that is 6 feet or more in width on the opposite  
7 side of the property line.

8 **24. Section R302.2.2 Common Walls Items 1 and 2** are amended to read as follows:

9 **Item 1.** Where a fire sprinkler system in accordance with the requirements of the  
10 governing fire district’s code is provided, the common wall shall not be less than a 1-hour  
11 fire resistance-rated wall assembly tested in accordance with ASTM E119, UL 263, or  
12 Section 703.3 of the *International Building Code*.

13 **Item 2.** Where a fire sprinkler system in accordance with the requirements of the  
14 governing fire district’s code is not provided, the common wall shall not be less than a 2-  
15 hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119, UL 263,  
16 or Section 703.3 of the *International Building Code*.

17 **25. Section R302.13 Fire protection of floors Exceptions 1 and 2** are amended as follows:

18 **R302.13 Exception 1.** Floor assemblies located directly over a space protected by an  
19 automatic sprinkler system permitted, installed, and inspected as required by the  
20 governing fire district’s code.

21  
22 **R302.13 Exception 2.** Floor assemblies located directly over a crawlspace with a  
23 maximum 4 foot headroom occurring anywhere within the crawlspace. The headroom  
24 shall be measured from grade to the bottom of the floor joists.

25  
26 **26. Section 310.1 Emergency Escape and Rescue Opening Required Exception 2** is  
27 amended as follows:

28 **R310.1 Exception 2.** Where the dwelling or townhouse is equipped with an automatic  
29 sprinkler system installed in accordance with the requirements of the governing fire  
30 district’s code, sleeping rooms in basements shall not be required to have emergency  
31 escape and rescue openings provided that the basement has one of the following:

- 32  
33 2.1. One means of egress complying with IRC Section R311 and one emergency  
34 escape and rescue opening.  
35

1           2.2. Two means of egress complying with IRC Section R311.

2  
3   27.   **Section R313 Automatic Fire Sprinkler Systems** is amended to read as follows:

4           **Section R313 Dwelling Unit Fire Sprinkler Systems and Internal Fire Protection.**

5           **R313.1 General.** Structures under the scope of this code are to be protected by fire  
6           sprinkler systems as designated, reviewed, installed and inspected by the RWB fire  
7           district per section R313.1.1 through R313.1.2.

8           **R313.1.1 Fire Sprinkler Systems required.** Structures greater than 6,000 square feet  
9           are to be protected by fire sprinkler systems per the RWB fire district. Square footages  
10          shall include all attached garages and any detached structures within 3 feet of the  
11          residence. Square footage shall be measured from exterior wall to exterior wall. Fire  
12          separations within the structure shall not be utilized to reduce the measured square  
13          footages of the structure(s).

14          **R313.1.2 Additions.** Any addition which increases the total square footage of the  
15          residence to greater than 6,600 square feet is to be provided with a fire sprinkler system  
16          at the addition only. Where the size of the addition itself is greater than 6,000 square feet,  
17          the addition as well as the existing residence shall be provided with a fire sprinkler  
18          system. Where the addition increases the total square footage of the residence to greater  
19          than 6,600 square feet and the alterations to the existing structure results in the removal  
20          of interior wall and ceiling finishes exposing the structure a fire sprinkler systems shall be  
21          retro-fitted into the existing residence as well as the addition.

22          **R313.2 Internal Fire Protection.** Residences between 4,000 and 6,000 square feet  
23          shall be provided with 5/8 inch Type 'X' drywall or 1/2 inch cementitious board  
24          throughout the structure.

25   28.   **Section R319.1 Address identification** is amended to read as follows:

26          **R319.1 Address identification.** Approved numbers or addresses shall be provided for  
27          all new and altered buildings in such a position as to be plainly visible and legible from  
28          the street or road fronting the property. Address characters shall be at least 5 inches in  
29          height and ½ inch in width, and shall be of a color that contrasts with the background on  
30          which they are mounted.

31  
32   29.   **Section R324.6.2.1 Alternative setback at ridge** shall be amended to read as follows:

33          **R 324.6.2.1 Alternative setback at ridge.** Where an automatic sprinkler system is  
34          installed within the dwelling in accordance with NFPA 13D or all applicable



1 requirements of the governing fire district's code, setbacks at ridges shall comply with  
2 one of the following:

- 3  
4 1. For photovoltaic arrays occupying not more than 66 percent of the plan view total  
5 roof area, not less than an 18 inch clear setback is required on both sides.  
6
- 7 2. For photovoltaic arrays occupying more than 66 percent of the plan view total roof  
8 area, not less than a 36 inch clear setback is required on both sides of a horizontal  
9 ridge.

10  
11 **30. Section R325.3 Area limitation exception** is amended to read as follows:

12 **R325.3 Exception.** The aggregate area of a mezzanine located within a  
13 ~~swelling~~**dwelling** unit equipped with a fire sprinkler system in accordance with the  
14 requirements of the governing fire district's code shall not be greater than one-half of the  
15 floor area of the room, provided that the mezzanine meets all of the following  
16 requirements:

- 17  
18 1. Except for enclosed closets and bathrooms, the mezzanine is open to the room in  
19 which such mezzanine is located.  
20
- 21 2. The opening to the room is unobstructed except for walls not more than 42 inches  
22 in height, columns and posts.  
23
- 24 3. The exceptions to IRC Section R325.5 do not apply.  
25

26 **31. Section R502.1.1 Sawn Lumber** is amended to read as follows:

27 **R502.1.1 Sawn Lumber.** Sawn lumber, dimensional lumber, and logs for joists, beams  
28 and girders shall be identified by a grade mark of a lumber grading or inspection body  
29 that has been approved by an accreditation agency that complies with DOC PS 20. In  
30 lieu of a grade mark, a certificate of inspection issued by a lumber grading or inspection  
31 agency meeting the requirements of this section may be accepted.  
32

33 **32. Section R602.1.1 Sawn Lumber** is amended to read as follows:

34 **R602.1.1 Sawn Lumber.** Sawn lumber, dimensional lumber, and logs for studs, plates  
35 and headers shall be identified by a grade mark of a lumber grading or inspection agency  
36 that has been approved by an accreditation body that complies with DOC PS 20. In lieu  
37 of a grade mark, a certificate of inspection issued by a lumber grading or inspection  
38 agency meeting the requirements of this section may be accepted.

- 1  
2 **33. Section R602.3 Design and construction** is amended by adding the following sentence:  
3 The use of load duration factors for snow load shall be prohibited.
- 4 **34. Section R802.1.1 Sawn Lumber** is amended to read as follows:  
5 **R802.1.1 Sawn Lumber.** Sawn lumber, dimensional lumber, and logs for rafters,  
6 trusses and ceiling joists shall be identified by a grade mark of a lumber grading or  
7 inspection agency that has been approved by an accreditation body that complies with  
8 DOC PS 20. In lieu of a grade mark, a certificate of inspection issued by a lumber  
9 grading or inspection agency meeting the requirements of this section may be accepted.  
10
- 11 **35. Section R802.2 Design and construction** is amended by adding the following sentence:  
12 There shall be no reduction in snow load for pitch or duration.
- 13 **36. Section 802.10.3 Bracing** is amended by adding the following sentence:  
14 Trusses shall be blocked at bearing points.  
15
- 16 **37. Section R902.1 Roof covering materials** is amended to read as follows:  
17 **R902.1 Roof covering materials.** Roofs shall be covered with materials as set forth in  
18 Sections R904 and R905. Class A roofing assemblies shall be installed on all new  
19 buildings, additions and re-roofs. Class A roofing required to be listed by this section  
20 shall be tested in accordance with UL 790 or ASTM E 108. Roof assemblies with  
21 coverings of brick, masonry, slate, clay or concrete roof tile, exposed concrete roof deck,  
22 ferrous or copper shingles or sheets, and metal sheets and shingles, shall be considered  
23 Class A roof coverings. Where required for roof drainage, scuppers shall be placed level  
24 with the roof surface in a wall or parapet. The scupper shall be located as determined by  
25 the roof slope and contribution roof area.
- 26 **38. Section 905.1.1 Underlayment** is amended to read as follows:  
27 **R905.1.1 Underlayment.** An underlayment that consists of an approved self-adhering  
28 polymer modified bitumen sheet shall be used with all roof coverings. The underlayment  
29 shall extend up the slope of the roof from the drip edge of the roof or eave to the ridge.  
30 The underlayment shall cover the entire roof deck surface. In new construction, the  
31 underlayment shall extend a minimum of 30 inches up the walls adjacent to the roof  
32 surface.  
33

- 1    **39.    Section R905.1.2 Ice barriers** is amended to read as follows:
- 2           **R905.1.2 Ice barriers.** An ice dam protection that consists of an approved self  
3           adhering modified bitumen sheet underlayment shall be used at all sloped roofs. This ice  
4           dam protection underlayment shall extend up the slope of the roof from the drip-edge of  
5           the roof or eave and cover the entire roof deck surface. In new construction ice dam  
6           protection shall extend a minimum 30 inches up walls and adjacent to the roof surface.
- 7    **40.    Section R1004.4 Unvented gas log heaters** is amended to read as follows:
- 8           **R1004.4 Unvented gas log heaters.** Installation of unvented gas log heaters is  
9           prohibited.
- 10   **41.    Section R1004 Factory Built Fireplaces** is amended by adding a new subsection,  
11    R1004.6 Factory-built fireplace enclosures, to read as follows:
- 12           **R1004.6 Factory-built fireplace enclosures** is to read exactly as set forth in IBC  
13    Sections 718.6 as amended.
- 14   **42.    Section R1005 Factory Built Chimneys** is amended by adding three new subsections to  
15    read as follows:
- 16           **R1005.9 Factory-built chimney enclosure** is to read exactly as set forth in IBC Section  
17    718.7 as amended.
- 18           **R1005.10 Limitations on the type and number of devices** is to read exactly as set  
19    forth in IBC Section 2113.21 as amended.
- 20           **R1005.11 Factory built chimney** is to read exactly as set forth in IBC Section 2113.22  
21    as amended.
- 22           **R1005.11 Factory built chimney** is to read exactly as set forth in IBC Section 2113.22  
23    as amended.
- 24           **R1005.11 Factory built chimney** is to read exactly as set forth in IBC Section 2113.22  
25    as amended.
- 26    **43.    Section M1701 General** is amended by adding a new subsection M1701.3 Combustion  
27    air terminations to read as follows:
- 28           **M1701.3 Combustion air terminations.** All combustion air terminations shall be a  
29    minimum of 36 inches above finished grade.
- 30    **44.    Section M1804.2.1 Through the roof** is amended to read as follows:
- 31           **M1804.2.1 Through the roof.** Vents passing through a roof shall extend through  
32    flashing and terminate in accordance with the manufacturer’s installation requirements.  
33    All vents shall terminate within 5 feet of ridgeline.

- 1    **45. Section M1804.2.6 Mechanical draft systems Item 4** is amended to read as follows:  
2           **Item 4.** The bottom of the vent terminal shall be located a minimum of 36 inches above  
3           finished grade.
- 4    **46. Section M2001.4 Flood-resistant installation** is amended by adding the follow  
5           sentence:  
6           All boiler, furnace, mechanical and water heater rooms, are to be provided with a floor  
7           drain.
- 8    **47. Section M2101.10 Tests** is amended by adding the following sentence at the end of the  
9           paragraph:  
10           Hydronic tubing may be tested with a 50 psi air test for 30 minutes.
- 11  
12   **48. Section M2103.4 Testing** is amended by adding the following sentence at the end of the  
13           paragraph:  
14           Hydronic tubing may be tested with a 50 psi air test for 30 minutes.
- 15  
16   **49. Section M2105.28 Testing** is amended by adding the following sentence at the end of  
17           the paragraph:  
18           Assembled loop systems may be tested with a 50 psi air test for 30 minutes.
- 19  
20   **50. Section G2406.2 Prohibited locations** is amended by eliminating Exceptions 3 and 4.
- 21   **51. Section G2406.3 Outdoor locations** is amended to add the following sentences at the  
22           end of the paragraph:  
23           All exterior fire pits and fireplaces shall not be installed on or under combustible  
24           structures unless the entire appliance is listed and tested as one unit for that application.  
25           All listed outdoor appliances must meet all manufactures' clearance requirements.
- 26  
27   **52. Section G2407.6 Outdoor combustion air** is amended by adding the following  
28           sentence:  
29           All exterior openings for combustion air shall terminate a minimum 36 inches above  
30           finished grade.
- 31   **53. Section G2407.11 Combustion air ducts Item 8** is amended to read as follows:

1 **Item 8.** Combustion air intake openings located on the exterior of a building shall have  
2 the lowest side of such openings located not less than 36 inches vertically from the  
3 adjoining finished grade.  
4

5 **54. Section G2417.4.1 Test pressure** is amended to read as follows:

6 **G2417.4.1 Test pressure.** The test pressure to be used shall not be less than one and  
7 one-half times the proposed maximum working pressure, but not less than 10 psig (69  
8 kPa gauge) for threaded pipe, 60 psig for welded pipe, irrespective of design pressure.  
9 Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not  
10 exceed a value that produces a hoop stress in the piping greater than 50 percent of the  
11 specified minimum yield strength of the pipe.

12 **55. Section G2425.8 Appliances not required to be vented** is amended by deleting the  
13 Item 7.

14 **Item 7.** Room heaters listed for unvented use is deleted.  
15

16 **56. Section G2427.4.1 Plastic piping** is amended by adding the following sentence:

17 All plastic piping used as vents or combustion air is to be tested with a minimum 5 psi air  
18 test for 15 minutes.  
19

20 **57. Section G2427.8 Venting system termination location Item 2** is amended to read as  
21 follows:

22 **Item 2.** A mechanical draft venting system, excluding direct vent appliances, shall  
23 terminate not less than 4 feet below, 4 feet horizontally from, or 1 foot above any door,  
24 operable window or gravity air inlet into any building. The bottom of the vent terminal  
25 shall be located not less than 36 inches above the finished grade.  
26

27 **58. Section G2432 Decorative Appliances for Installation in Fireplaces** is amended by  
28 adding a new subsection, G2432.4 Gas logs, to read as follows:

29 **G2432.4 Gas logs.** Gas logs may be installed in solid-fuel-burning fireplaces provided:

30 1. The gas log is installed in accordance with the manufacturer's installation  
31 instructions.

32 2. If the fireplace is equipped with a damper it shall either be removed or welded in  
33 an open position.

- 1           3. The flue passageway shall be not less than 1 square inch per 2,000 Btu/h input and  
2           not more than 4 square inches per 2,000 Btu/h input.
- 3           4. Gas logs shall be equipped with a pilot and shall have a listed safety shutoff valve.
- 4           5. Gas logs shall be vented with a Class A Chimney.
- 5           6. Gas logs may be installed in factory-built fireplaces only when:
- 6                 a. The fireplace and gas logs are listed for use together as an individual unit
- 7                 b. The fireplace is approved for use with any listed gas log
- 8                 c. The fireplace manufacturer provides prior written approval for the installation.
- 9           7. Gas logs shall be provided with a motorized damper interlocked with the  
10           electronic ignition of the unit.

11           **Exception:** The installation of gas logs in factory built fireplace units for which the  
12           manufacturer cannot be identified or located may be approved by the building official at  
13           his or her discretion. Any approval shall be based at a minimum, on written evidence  
14           submitted by the gas log manufacturer that the installation of their product will not  
15           compromise the integrity of the existing fireplace.

16   **59. Section G2433 Log lighters** is amended to read as follows:

17           **G2433.1 General.** Log lighters are prohibited.

18           **Exception.** Log lighters are allowed if listed as a component of EPA Phase II appliances  
19           and approved by the Building Official.

20   **60. Section G2445 Unvented Room Heaters** is amended to read as follows:

21           **G2445 .1 General.** Installation of unvented room heaters is prohibited.

22   **61. Section P2503.5.1 Rough plumbing** the first paragraph is amended as follows:

23           **P2503.5.1 Rough Plumbing.** Drain, waste, and vent systems shall be tested upon  
24           completion of the rough piping installation by water or by air with no evidence of  
25           leakage. Either test shall be applied to the drainage system in its entirety or in sections  
26           after rough piping has been installed, as follows:

27   **62. Section P2503.6 Shower liner test.** This section is deleted in its entirety.

- 1     **63.     Section P2503.7   **Water-supply system testing** is amended to read as follows:**  
2             **P2503.7   Water-supply system testing.** Upon completion of the water-supply system  
3             or a portion of it, the system or portion completed shall be tested and proved tight under a  
4             water pressure of not less than the working pressure of the system or, for piping systems,  
5             by an air test of not less than 50 psi. This pressure shall be held for not less than 15  
6             minutes. The water used for tests shall be obtained from a potable water source.
- 7     **64.     Section P2801.6.2   **Pan drain termination** is amended to read as follows:**  
8             **P2801.5.2   Pan drain termination.** The pan drain shall extend full-size and terminate  
9             over a suitably located indirect waste receptor or floor drain. All water heater rooms  
10            shall be equipped with a floor drain.
- 11    **65.     Section P2804.6.1   **Requirements for discharge pipe Item 5** is amended to read as**  
12            **follows:**
- 13            **Item 5.** Discharge to the floor where floor drain is provided, to the pan serving the water  
14            heater or storage tank, or to a waste receptor.
- 15
- 16    **66.     Section P2904   **Dwelling Unit Fire Sprinkler Systems** is deleted in its entirety.**
- 17    **67.     Section P3103.1.1   **Roof extension** is amended to read as follows:**  
18            **P3103.1.1   Roof extension.** All open vent pipes which extend through a roof shall be  
19            terminated at least 12 inches above the roof and shall terminate within 5 feet of a  
20            ridgeline.
- 21    **68.     Chapters 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 General Requirements,**  
22            **Electrical Definitions, Services, Branch Circuit and Reeder Requirements, Wiring**  
23            **Methods, Power and Lighting Distribution Devices and Luminaires, Appliance**  
24            **Installation, Swimming Pools, Class 2 Remote-Control, Signaling and Power-**  
25            **Limited Circuits** are deleted in their entirety.
- 26    **69.     The International Residential Code is amended by adding a new Chapter 45 to read as**  
27            **follows:**

28   CHAPTER 45  
29   SUMMIT COUNTY SUSTAINABLE CODE  
30   SECTION 4501

BUILDING CODES ORDINANCE

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GENERAL

**4501 Scope.** All new building construction and construction adding additional conditioned square footage shall be compliant with the Summit County Sustainable Code and the following Summit County Sustainable Code Checklist.

**4502 Summit County Sustainable Code Checklist:**

SUMMIT SUSTAINABLE BUILDING CODE CHECKLIST/NEW SFR  
MANDATORY REQUIREMENTS, 2018 IRC - Chapter 11 and 2018 IECC - Residential Provisions

- All projects to comply with all applicable requirements of the International Residential Code.
- Forced air-furnace system, minimum 91% AFUE.
- Radiant heating system, minimum 91% AFUE.
- High-efficacy lamps, minimum 75%.
- Energy efficient water heater.
  - Electric, minimum 0.95 energy factor
  - Gas, minimum 0.67 energy factor.
- Recycling; HC3 information to be provided at permit issuance.
- Provide an electrical car charging rough in, including a blanked electrical box, and a raceway terminating in the electrical panel.
- Provide PV ready construction including a metal raceway from the electrical panel to the roof location where the panels will be installed, including a roof jack, a #8 copper ground, a 2 pull blank in the electrical panel, and an electrical conduit from the electrical panel out to the electric meter.

**Please complete the following calculations and then choose from the secondary measures for every point incurred. Your plans and inspections will be reviewed and inspected according to the above mandatory requirements and your secondary choices. LEED-H, ICC-700, Green Globes certified or alternate approved third party certified program is acceptable in place of this document.**

Square footage of new conditioned (heated) space \_\_\_\_\_ ÷ 1000 sq. feet = \_\_\_\_\_

Number of outdoor fireplaces and/or fire pits \_\_\_\_\_

Hot Tub \_\_\_\_\_

Square footage of heated outdoor surfaces \_\_\_\_\_ ÷ 100 sq. feet = \_\_\_\_\_



1 Square footage of air conditioned space \_\_\_\_\_ ÷ 500 sq. feet = \_\_\_\_\_

2  
3 **Total Points Incurred** rounded to next highest whole number \_\_\_\_\_

4  
5 **SECONDARY CHOICES**

- 6  Energy Star appliances throughout.
- 7  Electric Vehicle Charging Pre-Wire in every new garage or carport.
- 8  Locally purchased compost from Summit County Resource Allocation Park(SCRAP).
- 9  Air movement at all ceilings > 15’.
- 10  Insulated exterior wall sheathing.
- 11  Blower door test of 3.0 ACH or less. *Air Changes pursuant to Hour @ 50 Pascals.*
- 12  SIP panel construction at walls. *Structural Insulated Panel.*
- 13  SIP panel construction at ceiling.
- 14  Roof framing 60% or greater renewable or engineered lumber.
- 15  Floor framing 80% or greater renewable or engineered lumber.
- 16  Beams and headers 80% or greater renewable or engineered lumber.
- 17  Energy heels at trusses, 12” or greater.
- 18  ICF foundation. *Insulated Concrete Forms.*
- 19  Insulated headers (80% minimum at R-10).
- 20  Greater than R-23 in walls.
- 21  Greater than R-49 in ceiling.
- 22  Conditioned crawlspace or slab on grade.
- 23  High efficiency boiler, AFUE 95% or greater. *Annual Fuel Utilization Efficiency.*
- 24  High efficiency furnace, AFUE 95% or greater.
- 25  Boiler or furnace centrally located; no mechanical run longer than 2/3 the distance of
- 26 the greatest diagonal dimension of the home.
- 27  HRV or ERV system installed.
- 28  Side arm water heater served by boiler.
- 29  50 year roof or greater warranty.
- 30  Alternative energy sources: *1000 British Thermal Units/Kilowatt/Photovoltaic.*
  - 31  Active solar space heating system 1 pt/25MBTU \_\_\_\_\_
  - 32  Active solar domestic hot water system 1 pt/25MBTU \_\_\_\_\_
  - 33  Ground source heating/cooling system 1 pt/25MBTU \_\_\_\_\_
  - 34  Solar generated (PV) electric system 1 pt/2.5KW \_\_\_\_\_
  - 35  Wind generated electric system 1 pt/2.5KW \_\_\_\_\_
- 36  Dual flush toilets, 1.28 gpf toilets, or Watersense toilets.
- 37  Motion sensors on a minimum of 80% of exterior lights.

- 1        Programmable thermostats.
- 2        No recessed lights in the exterior insulated ceilings.
- 3        OVE framing. *Optimal Value Engineering.*
- 4        Bamboo, concrete, stone or cork flooring, 1 pt/50%.
- 5        HERS rating. *Home Energy Rating.*
- 6            2 pts for performing HERS rating \_\_\_\_\_
- 7            4 pts HERS Index of 70 or less \_\_\_\_\_
- 8            8 pts HERS Index of 55 or less \_\_\_\_\_
- 9            12 pts HERS Index of 40 or less \_\_\_\_\_
- 10        Innovative Product, Design or Technology (Points awarded by Building Official)

11 \_\_\_\_\_ **Total Points Awarded for Secondary Choices**

12 \_\_\_\_\_ **Total Points incurred**

13 \_\_\_\_\_ **Total Net Points** (*must be greater than or equal to zero*)

14

15

16

17 **70. Section AF103.5 ~~Passive Submembrane~~Sub-membrane **Depressurization System** is**  
 18 amended to add the following Exception:

19 **Exception:** The radon vent pipe is allowed to terminate within the structure as long as it  
 20 is sealed to withstand a minimum of 5 psi of pressure.

21 **71. Section AF 103.6.1 **Vent Pipe** is amended to add the following Exception:**

22 **Exception:** The radon vent pipe is allowed to terminate within the structure as long as it  
 23 is sealed to withstand a minimum of 5 psi of pressure.

24 **8-1-6: AMENDMENTS TO THE INTERNATIONAL PLUMBING CODE:** The following  
 25 sections of the International Plumbing Code, 2018 Edition, are amended to read as follows:

26

27 **1. Section 101.1 **Title** is amended by adding the name “Town of Breckenridge”.**

28 **2. Section 101.3 **Intent** is amended to add the following sentences:**  
 29 The intent of this code is to meet or exceed the requirements of the *State of Colorado*  
 30 *Plumbing Code*. When technical requirements, specifications or standards in the  
 31 *Colorado Plumbing Code* conflict with this code, the more restrictive shall apply.

32 **3. Section 103.2 **Appointment** is amended to read exactly as set forth in IBC Section**

- 1           103.2 as amended.
- 2       **4. Section 103.3 Deputies** is amended to read exactly as set forth in IBC Section 103.3 as  
3       amended.
- 4       **5. Section 103.4 Liability** is amended by adding the first paragraph as written in IBC  
5       Section 104.8 as amended.
- 6       **6. Section 106.5.3 Expiration** is amended to read exactly as set forth in IBC Section 105.5  
7       as amended.
- 8       **7. Section 106.5.4 Extensions** is deleted in its entirety.
- 9       **8. Section 106.6.2 Fee schedule** is amended to read as follows:
- 10       **106.6.2 Fee schedule.** The fees for plumbing work shall be in accordance with the  
11       Town of Breckenridge Building Permit and Inspection Fee Schedule as set forth in IBC  
12       Section 109.2 as amended.
- 13       **9. Section 106.6.3 Fee refunds** is amended to read as follows:
- 14       **106.6.3 Fee refunds.** The building official is authorized to establish a refund policy.
- 15       **10. Section 107.2 Inspections and Testing** is amended by adding a new subsection, 107.2.6  
16       Re-inspections, to read as follows:
- 17       **107.2.6 Re-inspections** is to read exactly as set forth in IBC Section 110.7 as amended.
- 18       **11. Section 108.4 Violation penalties** is amended to read exactly as set forth in IBC  
19       Section 114.4.
- 20       **12. Section 108.5 Stop work orders** is amended to read exactly as set forth in IBC Section  
21       115.
- 22       **13. Section 109 Means of appeal** is deleted in its entirety and reenacted to read exactly as  
23       set forth in IBC Section 113.
- 24       **14. Section 301 General** is amended by adding a new subsection, 301.8 Floor drains, to  
25       read as follows:
- 26       **301.8 Floor Drains.** All mechanical, furnace, boiler and water heater rooms shall be  
27       provided with a floor drain.

- 1    **15.    Section 305.4.1 Sewer depth** is amended to read as follows:
- 2           **305.4.1 Sewer depth.** Building sewers shall be installed in accordance with the  
3           standards and approval of the governing Sanitation District.
- 4    **16.    Section 312.3 Drainage and Vent Air Test** is amended by deleting the first sentence;  
5           “Plastic pipe shall not be tested using air.”
- 6    **17.    Section 312.5 Water supply system test** is amended by deleting the portion of the  
7           sentence reading “for piping systems other than plastic.”
- 8    **18.    Section 312.6 Gravity sewer test** is amended to read as follows:
- 9           **312.6 Gravity sewer test.** Testing of the building sewer shall be in accordance with the  
10          standards and approval of the governing Sanitation District.
- 11   **19.    Section 312.7 Forced sewer test** is amended to read as follows:
- 12          **312.7 Forced sewer test.** Testing of the building sewer shall be in accordance with the  
13          standards and approval of the governing Sanitation District.
- 14   **20.    Section 312.9 Shower liner test** is deleted in its entirety.
- 15   **21.    Section 403.1 Minimum number of fixtures** is amended to read exactly as IBC Section  
16          2902.1 as amended.
- 17   **22.    Section 403.2 Separate facilities Exception 2** is amended by changing the total  
18          occupant load from 15 to 30.
- 19   **23.    Section 403.2 Separate facilities** is amended by adding a ~~exception 4~~ **Exception 5** to  
20          read as follows:
- 21          **Exception 4-5.** Gender neutral single-user toilet facility and bathing room fixtures.  
22
- 23   **24.    Section 403.2.1 Family or assisted-use toilet facilities serving as separate facilities** is  
24          amended to read exactly as IBC Section 2902.1.2 as amended.
- 25   **25.    Section 504.6 Requirements for discharge piping Item 5** is amended by deleting the  
26          portion of the sentence “to the outdoors.”
- 27   **26.    Section 504.7.2 Pan drain termination** is amended to read as follows:

1           **504.7.2 Pan drain termination.** The pan drain shall extend full-size and terminate over  
2 a suitably located indirect waste receptor or floor drain.

3   **27. Section 608.18.1 Well locations** through **Section 608.18.8 Drainage** are deleted in  
4 their entirety.

5   **28. Section 610.1 General** is amended to read as follows:

6           **610.1 General.** New or repaired potable water systems shall be purged of deleterious  
7 matter and disinfected prior to utilization. The method to be followed shall be that  
8 prescribed by the Town of Breckenridge Water Department.

9   **29. Section 701.2 Connection to sewer required** is amended to read as follows:

10           **701.2 Connection to sewer required.** Every building in which plumbing fixtures are  
11 installed and all premises having drainage piping shall be connected to a public sewer.

12   **30. Section 903.1 Roof extension** is amended to read as follows:

13           **903.1 Roof extension.** All open vent pipes which extend through a roof shall terminate  
14 at least 12 inches above the roof and within 5 feet of a ridgeline.

15  
16   **31. Section 1106.1 General** is amended to read as follows:

17           **1106.1 General.** The size of the vertical conductors and leaders, building storm drains,  
18 building storm sewers, and any horizontal branches of such drains or sewers shall be  
19 based on the 100-year hourly rainfall rate of two inches per hour.

20   **32. Section 1109.1 General** is amended to read as follows:

21           **1109.1 General.** Combination sanitary and storm drains or sewers are prohibited.

22 **8-1-7: AMENDMENTS TO THE INTERNATIONAL MECHANICAL CODE: The**  
23 **following sections of the International Mechanical Code, 2018 Edition, are amended to read**  
24 **as follows:**

25  
26   **1. Section 101.1 Title is amended by adding the name “Town of Breckenridge.”**

27  
28   **2. Section 103.2 Appointment is amended to read exactly as set forth in IBC Section**  
29 **103.2 as amended.**

- 1     **3. Section 103.3 Deputies is amended to read exactly as set forth in IBC Section 103.3**  
2     **as amended.**  
3  
4     **4. Section 103.4 Liability is amended to read exactly as set forth in IBC Section 104.8**  
5     **as amended.**  
6  
7     **5. Section 106.4.3 Expiration is amended to read exactly as set forth in IBC Section**  
8     **105.5 as amended.**  
9  
10    **6. Section 106.4.4 Extensions is deleted in its entirety.**  
11  
12    **7. Section 106.5.2 Fee Schedule is amended to read as follows:**  
13  
14    **106.5.2 Fee Schedule. The fees for mechanical work shall be in accordance with**  
15    **the Town of Breckenridge Building Permit and Inspection Fee Schedule as set forth**  
16    **in IBC Section 109.2 as amended.**  
17  
18    **8. Section 106.5.3 Fee Refunds is amended to read as follows:**  
19  
20    **106.5.3 Fee Refunds. The building official is authorized to establish a fee refund**  
21    **policy.**  
22  
23    **9. Section 107.2 Required inspections and testing is amended by adding a new**  
24    **subsection, 107.2.6 Re-inspections, to read as follows:**  
25  
26    **107.2.6 Re-inspections is to read exactly as set forth in IBC Section 110.7 as**  
27    **amended.**  
28  
29    **10. Section 108.4 Violation penalties is amended to read exactly as set forth in IBC**  
30    **Section 114.4.**  
31  
32    **11. Section 108.5 Stop work orders is amended to read exactly as set forth in IBC**  
33    **Section 115.**  
34  
35    **12. Section 109 Means of appeal is deleted in its entirety and reenacted to read exactly**  
36    **as set forth in IBC Section 113.**  
37  
38    **13. Section 202 Definitions is amended by adding the following definitions within the**  
39    **alphabetical order of the existing definitions:**  
40

1 **CERTIFIED SOLID FUEL BURNING DEVICE: A solid fuel burning device that is**  
2 **certified by the Air Pollution Control Division of the Colorado Department of**  
3 **Health or approved by the building official as meeting the emission standards set**  
4 **forth in Section IV of Regulation No. 4 of Volume I of the Colorado Air Quality**  
5 **Control Commission (EPA Phase II or III).**

6  
7 **SOLID FUEL BURNING DEVICE: Any fireplace, stove, firebox, or other device**  
8 **intended and or used for the purpose of burning wood, coal, pulp, paper, pellets or**  
9 **other non-liquid or non-gaseous fuel.**

10  
11 **14. Section 301 General is amended by adding a new subsection, 301.19 Floor Drains,**  
12 **to read as follows:**

13  
14 **301.19 Floor Drains. All mechanical rooms (furnace, boiler, water heater rooms)**  
15 **shall be provided with a floor drain.**

16  
17 **15. Section 509.1 Where required is amended by adding the following paragraph.**

18  
19 **All fire suppression systems required by this code shall be inspected and approved**  
20 **by a special inspector. The special inspector shall be an authorized representative of**  
21 **the RWB fire department.**

22  
23 **16. Section 701.1 Scope is amended by adding a new subsection, 701.1.1 Vent and**  
24 **combustion air ducts, to read as follows:**

25  
26 **701.1 Vent and combustion air ducts. Vent and combustion air ducts shall**  
27 **terminate a minimum of 36 inches above finished grade.**

28  
29 **17. Section 804.3.4 Horizontal terminations is amended by changing Item 6 to read as**  
30 **follows:**

31  
32 **Item 6. The bottom of the vent termination shall be located at least 36 inches above**  
33 **finished grade.**

34  
35 **18. Section 805 Factory-Built Chimneys is amended by adding new subsections to**  
36 **read exactly as set forth in IBC Sections 718.6, 718.7, and 2113.22 as amended.**

37  
38 **19. Section 903.3 Unvented gas log heaters is amended to read as follows:**

39  
40 **903.3 Unvented gas log heaters. Unvented gas log heaters are prohibited.**

1  
2 **20. Section 905 Fireplace Stoves and Room Heaters is amended by adding a new**  
3 **subsection, 905.4 Limitation on the type and number of devices, to read as follows:**  
4

5 **905.4 Limitation on the type and number of devices is added to read exactly as set**  
6 **forth in IBC Section 2113.21 as amended.**  
7

8 **21. Section 1208.1 General is amended by adding the following sentences at the end of**  
9 **the paragraph.**  
10

11 **Hydronic tubing may be tested with a 50 psi air test for a minimum of 30 minutes.**  
12 **Assembled loop systems may be tested with a 50 psi air test for a minimum of 30**  
13 **minutes.**  
14

15 **8-1-8: AMENDMENTS TO THE INTERNATIONAL FUEL GAS CODE:** The following  
16 sections of the International Fuel Gas Code, 2018 Edition, are amended to read as follows:  
17

18 1. **Section 101.1** Title is amended by adding the name “Town of Breckenridge.”

19 2. **Section 103.2** Appointment is amended to read exactly as set forth in IBC Section  
20 103.2 as amended.

21 3. **Section 103.3** Deputies is amended to read exactly as set forth in IBC Section 103.3 as  
22 amended.

23 4. **Section 103.4** Liability is amended to read exactly as set forth in IBC Section 104.8 as  
24 amended.

25 5. **Section 106.5.3** Expiration is amended to read exactly as set forth in IBC Section 105.5  
26 as amended.

27 6. **Section 106.5.4** Extensions is deleted in its entirety.

28 7. **Section 106.6.2** Fee schedule is amended to read as follows:

29 **106.6.2 Fee schedule.** The fees for fuel gas ~~mechanical/ plumbing~~ work shall be in  
30 accordance with the Town of Breckenridge Building Permit and Inspection Fee Schedule  
31 as set forth in IBC Section 109.2 as amended.

32 8. **Section 106.6.3** Fee refunds is amended to read as follows:

33 **106.6.3 Fee refunds.** The building official is authorized to establish a fee refund policy.



- 1     **9. Section 107.2 Required inspections and testing** is amended by adding a new  
2     subsection, 107.2.6 Re-inspections, to read as follows:
- 3             **107.2.6 Re-inspections** is to read exactly as set forth in IBC Section 110.7 as amended.  
4
- 5     **10. Section 108.4 Violation penalties** is amended to read exactly as set forth in IBC  
6     Section 114.4.
- 7     **11. Section 108.5 Stop work orders** is amended to read exactly as set forth in IBC Section  
8     115.
- 9     **12. Section 109 Means of Appeal** is deleted in its entirety and reenacted to read exactly as  
10     set forth in IBC Section 113.
- 11    **13. Section 303.2 Hazardous locations** is amended by adding the following sentences to  
12    read as follows:
- 13             All exterior fire pits and fireplaces shall not be installed on or under combustible  
14             structures unless the entire appliance is listed and tested as one unit for that application.  
15             All listed outdoor appliances must meet all manufactures' clearance requirements.  
16
- 17    **14. Section 303.3 Prohibited locations** is amended by deleting Exceptions 3 and 4.
- 18    **15. Section 304.11 Combustion air ducts Item 8** is amended to read as follows:
- 19             **Item 8.** Combustion air intake openings located on the exterior of a building shall have  
20             the lowest side of such openings located a minimum of 36 inches above finished grade.  
21
- 22    **16. Section 304.11 Combustion air ducts** is amended by adding Item 9 to read as follows:
- 23             **Item 9.** Combustion air duct terminations shall terminate a minimum of 36 inches above  
24             finished grade.  
25
- 26    **17. Section 406.4.1 Test pressure** is amended to read as follows:
- 27             **406.4.1 Test pressure.** The test pressure to be used shall not be less than one and one-  
28             half times the proposed maximum working pressure, but not less than 10 psig (69 kPa  
29             gauge) for threaded pipe, 60 psig for welded pipe, irrespective of design pressure. Where  
30             the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a  
31             value that produces a hoop stress in the piping greater than 50 percent of the specified  
32             minimum yield strength of the pipe.  
33

- 1    **18. Section 501.8 Equipment not required to be vented** is amended by deleting Items 8  
2    and 10.
- 3    **19. Section 503.4.1 Plastic piping** is amended by adding the following sentence:  
4    All plastic piping used as vents or combustion air is to be tested with a 5 psi air test for a  
5    minimum of 15 minutes.  
6
- 7    **20. Section 503.8 Venting system termination location Items 2 and 3** are amended  
8    adding a sentence to read as follows:  
9    The bottom of the vent terminal and the air intake shall be located a minimum of 36  
10   inches above finished grade.
- 11   **21. Section 506.2 Factory Built Chimneys** is amended by adding new subsections to read  
12   exactly as IBC Sections 718.6, 718.7, 2113.21, and 2113.22 as amended.
- 13   **22. Section 602.1 General** is amended to read as follows:  
14   **602.1 General.** Decorative appliances for installation in approved solid fuel-burning  
15   fireplaces shall be tested in accordance with ANSI Z21.60 and shall be installed in  
16   accordance with the manufacturer's installation instructions.
- 17   **23. Section 602 Decorative Appliances for Installation in Fireplaces** is amended by  
18   adding a new subsection, 602.4 Gas Logs, to read as follows:  
19   **602.4 Gas Logs.** Gas logs may be installed in solid-fuel-burning fireplaces provided:  
20       1. The gas log is installed in accordance with the manufacturer's installation  
21       instructions.  
22       2. If the fireplace is equipped with a damper it shall either be removed or welded  
23       in an open position.  
24       3. The flue passageway shall be not less than 1 square inch per 2,000 Btu/h input  
25       and not more than 4 square inches per 2,000 Btu/h input.  
26       4. Gas logs shall be equipped with a pilot and shall have a listed safety shutoff  
27       valve.  
28       5. Gas logs shall be vented with a Class A Chimney.

- 1           6. Gas logs may be installed in factory-built fireplaces only when:
- 2           a. The fireplace and gas logs are listed for use together as an individual unit
- 3           b. The fireplace is approved for use with any listed gas log
- 4           c. The fireplace manufacturer provides prior written approval for the
- 5           installation.
- 6           7. Gas logs shall be provided with a motorized damper interlocked with the
- 7           electronic ignition of the unit.

8           **Exception:** The installation of gas logs in factory built fireplace units for which the

9           manufacturer cannot be identified or located may be approved by the building official at

10          his or her discretion. Any approval shall be based at a minimum, on written evidence

11          submitted by the gas log manufacturer that the installation of their product will not

12          compromise the integrity of the existing fireplace.

13   **24. Section 603.1 General** is amended to read as follows:

14          **603.1 General.** Log lighters are prohibited.

15   **25. Section 618.3 Prohibited sources** is amended by adding a new subsection, 618.4.1

16          Outside air sources, to read as follows:

17          **618.3.1 Outside air sources.** Outside air shall not be obtained from an exterior opening

18          less than 36 inches from finished grade.

19   **26. Section 621 Unvented Room Heaters** is deleted in its entirety.

20   **27. Section 634.1 Chimney Damper Opening Area** is deleted in its entirety.

21   **8-1-9: AMENDMENTS TO THE INTERNATIONAL ENERGY CONSERVATION**

22   **CODE:** The following sections of the International Energy Conservation Code, 2018 Edition,

23   are amended to read as follows:

24          1. **Section C101.1 Title** is amended by adding the name “Town of Breckenridge.”

25          2. **Section C101.2 Scope** is amended by adding an additional sentence to read as follows:

26                   For residential buildings this code is to be used in conjunction with any sustainable

27                   building ordinance that may subsequently be adopted by the Town of Breckenridge.

28

1 Where there are conflicting requirements between the two codes, the most restrictive  
2 requirement shall be met.

- 3 3. **Section C102.1.1** **Above code programs** is amended by adding a new subsection,  
4 C102.1.1.1 Sustainable building code, to read as follows:

5 **C102.1.1.1 Sustainable building code.** All residential (Group R) occupancies are to  
6 be LEED-H, ICC-700, Green Globes or certified through an alternate third party  
7 approved by the building official.  
8

- 9 4. **Section R101.1** **Title** is amended by adding the name “Town of Breckenridge.”

- 10 5. **Section R102.1.1** **Above code programs** is amended by adding a new subsection,  
11 R102.1.1.1 Sustainable building code, to read as follows:

12 **R102.1.1.1 Sustainable building code.** All multi-family (Group R) new construction  
13 not under the scope of the IRC shall be compliant to be LEED-H, ICC-700, Green Globes  
14 or certified through an alternate third party, approved by the building official.  
15

16 **8-1-10: AMENDMENTS TO THE INTERNATIONAL EXISTING BUILDING CODE:**

17 The following sections of the International Existing Building Code, 2018 Edition, are amended  
18 to read as follows:  
19

- 20 1. **Section 101.1** **Title** is amended by adding the name “Town of Breckenridge.”
- 21 2. **Section 101.4.2** **Buildings previously occupied** is amended by deleting the reference to  
22 the *International Property Maintenance Code*.
- 23 3. **Section 103.2** **Appointment** is amended to read exactly as set forth in IBC Section  
24 103.2 as amended.
- 25 4. **Section 103.3** **Deputies** is amended to read exactly as set forth in IBC Section 103.3 as  
26 amended.
- 27 5. **Section 104.8** **Liability** is amended to read exactly as set forth in IBC Section 104.8 as  
28 amended.
- 29 6. **Section 105.5** **Expiration** is amended to read exactly as set forth in IBC Section 105.5  
30 as amended.
- 31 7. **Section 108.2** **Schedule of permit fees** is amended to read as follows:

1           **108.2 Schedule of permit fees.** The fees for all associated permits shall be in  
2 accordance with the Town of Breckenridge Building Permit and Inspection Fee Schedule  
3 as set forth in IBC Section 109.2 as amended.

4       **8. Section 108.6 Refunds** is amended to read as follows:

5           **108.6 Refunds.** The building official is authorized to establish a refund policy.

6       **9. Section 109 Inspections** is amended by adding a new subsection, 109.7 Re-inspections,  
7 to read as follows:

8           **109.7 Re-inspections** is to read exactly as set forth in IBC Section 110.7 as amended.

9       **10. Section 113.4 Violation penalties** is amended to read exactly as set forth in IBC  
10 Section 114.4.

11       **11. Section 1301.3.2 Compliance with other codes** is amended by deleting the reference to  
12 the *International Property Maintenance Code*.

13       **12. Section 1301.4 Investigation and evaluation** is amended to read as follows:

14           **1301.4 Investigation and evaluation.** For proposed work covered by this section, the  
15 building owner shall cause the existing building to be investigated and evaluated in  
16 accordance with the provisions of this section by a design professional licensed to  
17 practice in the State of Colorado.

18       **13. Section 1301.6 Evaluation process** is amended by adding the following first sentence:

19           The building owner shall cause the existing building to be evaluated in accordance with  
20 the provisions of this section by a design professional(s) licensed to practice in the State  
21 of Colorado.

22 ~~**8-1-11: AMENDMENTS TO THE INTERNATIONAL POOL AND SPA CODE:** The~~  
23 ~~following sections of the International Pool and Spa Code, 2018 Edition, are amended to read as~~  
24 ~~follows:~~

25  
26       ~~**1. Section 101.1 Title** is amended by adding the name “Town of Breckenridge.”~~

27       ~~**2. Section 103.2 Appointment** is amended to read exactly as set forth in IBC Section~~  
28 ~~103.2 as amended.~~

1 ~~3. Section 103.3 **Deputies** is amended to read exactly as set forth in IBC Section 103.3 as~~  
2 ~~amended.~~

3 ~~4. Section 103.4 **Liability** is amended to read exactly as set forth in IBC Section 104.8 as~~  
4 ~~amended.~~

5 ~~5. Section 105.5.3 **Expiration** is amended to read exactly as set forth in IBC Section 105.5~~  
6 ~~as amended.~~

7 ~~6. Section 105.6.2 **Fee schedule** is amended to read as follows:~~

8 ~~**105.6.2 Fee schedule.** The fees for all associated permits shall be in accordance with~~  
9 ~~the Town of Breckenridge Building Permit and Inspection Fee Schedule as set forth in~~  
10 ~~IBC Section 109.2 as amended.~~

11 ~~7. Section 105.6.3 **Fee refunds** is amended to read as follows:~~

12 ~~**105.6.3 Fee refunds.** The building official is authorized to establish a refund policy.~~

13 ~~8. Section 106.18 **Re-inspection and testing** is amended to read exactly as set forth in~~  
14 ~~IBC Section 110.7 as amended.~~

15 ~~9. Section 107.4 **Violation Penalties** is amended to read exactly as set forth in IBC~~  
16 ~~Section 114.4.~~

17 ~~10. Section 108 **Means of Appeal** is amended to read exactly as set forth in IBC Section~~  
18 ~~113.~~

19 **8-1-11: AMENDMENTS TO THE NATIONAL ELECTRICAL CODE:** There are no  
20 amendments to the National Electrical Code, 2017 Edition.

21 **8-1-1312: AMENDMENTS TO THE ICC ELECTRICAL CODE – ADMINISTRATIVE**  
22 **PROVISIONS:** The following sections of the ICC Electrical Code – Administrative Provisions,  
23 2006 Edition, are amended to read as follows:  
24

25 1. **Section 101.1** **Title** is amended to read as follows

26 **101.1 Title.** These regulations shall be known as the ICC Electrical Code™.  
27 Administrative Provisions of Town of Breckenridge and shall be cited as such. The ICC  
28 Electrical Code™ - Administrative Provisions in combination with the separately adopted  
29 National Electrical Code will be referred to herein as “this code.” The ICC Electrical  
30 Code™ - Administrative Provisions in combination with the separately adopted National

1 Electrical Code will be referred to throughout all other building construction and housing  
2 standards adopted by the Town of Breckenridge as the ICC Electrical Code.

3 **2. Section 201.3 Terms defined in other codes** is amended to read as follows:

4 **201.3 Terms defined in other codes.** Where terms are not defined in this code and are  
5 defined in the International Building Code, International Fire Code, International Fuel  
6 Gas Code, International Mechanical Code, International Plumbing Code, International  
7 Residential Code, International Energy Conservation Code or NAPA 70, such terms shall  
8 have meanings ascribed to them as in those codes.

9 **3. Section 301.2 Appointment** is amended to read exactly as set forth in IBC Section  
10 103.2 as amended.

11 **4. Section 301.3 Deputies** is amended to read exactly as set forth in IBC Section 103.3 as  
12 amended.

13 **5. Section 302.9 Liability** is amended to read exactly as set forth in IBC Section 104.8 as  
14 amended.

15 **6. Section 401.2 Types of permits** is amended by deleting the reference to “an owner.”

16 **7. Section 401.3 Work exempt from permit** is amended by adding Exceptions 6 through  
17 10.

18 **6.** Portable motors or other portable appliances energized by means of a cord or cable  
19 having an attachment plug end to be connected to an approved receptacle when that cord  
20 or cable is permitted by this code.

21 **7.** Repair or replacement of fixed motors, transformers or fixed approved appliances of  
22 the same type and rating in the same location.

23 **8.** Repair or replacement of current-carrying parts of any switch, contractor or control  
24 device.

25 **9.** The wiring for temporary theater, motion picture or television stage sets.

26 **10.** Low-energy power, control, and signal circuits of Class II and Class III as defined in  
27 this code.

28 **8. Section 403.2 Expiration** is amended to read exactly as set forth in IBC Section 105.5  
29 as amended.

- 1     **9.    Section 403.3 Extensions** is deleted in its entirety.
- 2     **10.   Section 403.6 Information on the permit** is amended to read as follows:
- 3             **403.6 Information on the permit.** The code official shall issue all permits required by  
4             this code on an approved form furnished for that purpose. The permit shall contain a  
5             general description of the operation or occupancy and its location and any other  
6             information required by the code official.
- 7     **11.   Section 404.2 Schedule of permit fees** is amended to read as follows:
- 8             **404.2 Schedule of permit fees.** The fees for all associated permits shall be in  
9             accordance with the Town of Breckenridge Building Permit and Inspection Fee Schedule  
10            as set forth in IBC Section 109.2 as amended.
- 11    **12.   Section 404.3 Work commencing before permit issuance** is amended to read as  
12            follows:
- 13            **404.3 Work commencing before permit issuance.** Any person who commences  
14            any work before obtaining the necessary permits shall be subject to an investigation fee  
15            established by the code official, which shall be in addition to the required permit fee. The  
16            investigation fee shall be as set forth in the Town of Breckenridge Building Permit and  
17            Inspection Fee Schedule.
- 18    **13.   Section 404 Fees** is amended by adding two new subsections, 404.6 Re-inspections and  
19            404.7 Plan review fees, to read as follows:
- 20            **404.6 Re-inspections.** Shall read exactly as set forth in IBC Section 110.7 as amended.
- 21            **404.7 Plan review fees.** The plan review fees for electrical work shall be in accordance  
22            with the Town of Breckenridge Building Permit and Inspection Fee Schedule as set forth  
23            in IBC Section 109.2 as amended.
- 24    **14.   Chapter 11 Means of Appeal** is amended to read exactly as set forth in IBC Section  
25            113.
- 26    **15.   Section 1202 Provisions** and all subsections therein are deleted in their entirety.
- 27    **16.   Section 1203 Existing Electrical Facilities** and all subsections therein are deleted in  
28            their entirety.



1 **8-1-1413: AMENDMENTS TO THE UNIFORM CODE FOR THE ABATEMENT OF**  
2 **DANGEROUS BUILDINGS:** The following sections of the Uniform Code For the Abatement  
3 of Dangerous Buildings, 1997 Edition, are amended to read as follows:  
4

5 1. **Section 301 General.** The definition of Building Code is amended to read as follows:

6 BUILDING CODE is defined by referring to the International Building Code or the  
7 International Residential Code, whichever is applicable, published by the International  
8 Code Council, Inc., as adopted by this jurisdiction.

9 2. **Section 501.2 Processing of Appeal** is amended to add the following sentence at the  
10 end of the section:

11 The board of appeals with the jurisdiction to hear and decide appeals  
12 under this code is the board of appeals created pursuant to Chapter 3 of  
13 Title 2 of the Breckenridge Town Code.

14 **8-1-1514: PENALTIES:**

15  
16 A. General: It is unlawful and an infraction for any person to violate any of the provisions  
17 of the Chapter, or any provision of a code adopted by reference by this Chapter. Any  
18 person who violates any provision of this Chapter or any provision of a code adopted by  
19 reference by this Chapter shall, upon a determination of liability, be punished as provided  
20 in title 1, chapter 4 of this code. Each such person shall be liable for a separate offense for  
21 each and every day during any portion of which any violation of any of the provisions of  
22 this Chapter or a code adopted by reference by the chapter is committed, continued or  
23 permitted by such person and such person shall be punished accordingly.

24 B. Injunctive Relief: In addition to other remedies available to the Town, the Town may  
25 commence an action in a court of competent jurisdiction to enjoin the alleged violation of  
26 any provision of this Chapter, or to authorize and compel the removal, termination or  
27 abatement of such violation.

28 C. Additional Remedies: Any remedies provided for in this Chapter shall be cumulative and  
29 not exclusive, and shall be in addition to any other remedies provided by law.

30 **8-1-1615: LIABILITY:** The adoption of this Chapter and the codes provided for herein shall  
31 not create any duty to any person with regard to the enforcement or non-enforcement of this  
32 Chapter or said codes. No person shall have any civil liability remedy against the Town or its  
33 officers, employees or agents, for any damage arising out of or in any way connected with the  
34 adoption, enforcement or non-enforcement of this Chapter of said codes. Nothing in this Chapter

1 or in said codes shall be construed to create any liability or to waive any of the immunities,  
2 limitations on liability or other provisions of the Colorado Governmental Immunity Act, section  
3 24-10-101 et seq., C.R.S, as amended from time to time, or to waive any immunities or  
4 limitations on liability otherwise available to the Town, or its officers, employees or agents.  
5

6 **8-1-1716: REPEAL OF PREVIOUS ORDINANCES:** Existing ordinances or parts of  
7 ordinances covering the same matters as embraced in this Chapter are repealed, and all  
8 ordinances inconsistent with the provision of the Chapter are repealed; provided, however, that  
9 this repeal shall not affect or prevent the prosecution or punishment of any person for any act  
10 done or committed in violation of any ordinance repealed prior to this Chapter taking effect.  
11

12 **8-1-1817: CODE COPIES:** At least one copy of the codes adopted by reference in this  
13 Chapter, each certified to be a true copy, has been and is now on file in the office of the Town  
14 Clerk and may be inspected by any interested person between the hours of nine o'clock (9:00)  
15 A.M. and five o'clock (5:00) P.M., Monday through Friday, holidays excepted.  
16

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

19 Section 3. The Town Council finds, determines, and declares that this ordinance is  
20 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
21 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
22 thereof.

23 Section 4. The Town Council finds, determines and declares that it has the power to  
24 adopt this ordinance pursuant to: (i) Section 31-15-601, C.R.S.; (ii) Section 5.13 of the  
25 Breckenridge Town Charter; and (iii) the powers granted to home rule municipalities by Article  
26 XX of the Colorado Constitution.

27 Section 5. This ordinance shall be published and, except as provided in Section 6, below,  
28 become effective as provided by Section 5.9 of the Breckenridge Town Charter.

29 Section 6. Notwithstanding Section 5 of this ordinance, the following sections of the  
30 International Residential Code, 2012 Edition, including Appendix Chapters F, G and K 2012  
31 IRC, and (ii) the International Energy Conservation Code, 2012 Edition, shall remain in effect  
32 until July 1, 2020:

33 A. Table N1102.1.1 (IECC R402.1.1), Fenestration U-Factor column, is amended to read  
34 0.35 for Climate Zone 7 and 8.

35 B. Table N1102.1.1 (IECC R402.1.1), footnote d, is amended to read as follows:

## BUILDING CODES ORDINANCE

1 C. Table N1102.1.1 footnote d. R-10 shall be required under the entire heated slab.

2 D. Table N1102.1.1 (R4202.1.1), “Insulation and Fenestration Requirements by  
3 Component,” is amended by adding a footnote (j) to ‘WOOD FRAME WALL R –  
4 VALUE/CLIMATE ZONE 7 and 8 to read as follows:

5 (j) Continuous wall insulation is not required where the wall cavity is insulated  
6 with a minimum R-23 blown or sprayed insulation and the reductions in roof  
7 ceiling insulation permitted by N1102.1.1 (R402.2.1) and N1102.2.2 (R402.2.20)  
8 are not used.

9 E. N1102.2.9 is amended to read as follows:

10 N1102.2.9 Slab-on-grade floors with a floor surface less than 40 inches below  
11 grade shall be insulated in accordance with Table N1102.1.1. The insulation shall  
12 extend downward from the top of the slab on the outside or inside of the  
13 foundation wall. Insulation located below grade shall be extended the distance  
14 provided in Table N1102.2.2 by any combination of vertical insulation, insulation  
15 extending under the slab or insulation extending out from the building. Insulation  
16 extending away from the building shall be protected by pavement or by a  
17 minimum of 10 inches of soil.

18 F. Section 1102.4.1.2 (R402.4.1.2) is amended to add the following Exception:

19 Exception: Homes that have been inspected by an approved third party, verifying  
20 that air barriers and air sealing has been installed in accordance with sections 3 and  
21 5 of ENERGY STAR Certified Homes, Version 3 (Rev.07), Thermal Enclosure  
22 System Rater Checklist.

23 This Section 6 is repealed effective July 1, 2020.

24  
25 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
26 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2019. A Public Hearing shall be held at the  
27 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
28 \_\_\_\_\_, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
29 Town.  
30  
31

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:

\_\_\_\_\_  
Helen Cospolich  
Town Clerk

**COPIES OF THE CODES TO BE ADOPTED BY REFERENCE PURSUANT TO THIS  
ORDINANCES AND AMENDMENTS ARE AVAILABLE FOR INSPECTION AT THE  
OFFICE OF THE TOWN CLERK BETWEEN THE HOURS OF NINE O’CLOCK (9:00)  
A.M. AND FIVE O’CLOCK (5:00) P.M., MONDAY THROUGH FRIDAY, HOLIDAYS  
EXCEPTED.**

**NONE OF THE PENALTY PROVISIONS OF THE ADOPTED CODES WERE  
ADOPTED BY REFERENCE IN THIS ORDINANCE.**



# Memo

To: Breckenridge Town Council Members  
From: Shannon Haynes, Assistant Town Manager  
Date: 12/4/2019  
Subject: Treetop Child Advocacy Center Lease

---

The second reading of the ordinance to continue to lease space in the Breckenridge Grand Vacations Community Center (BGVCC) to the Treetop Child Advocacy Center is scheduled for Council review on December 10<sup>th</sup>. There are no proposed changes from first reading.

I will be present at the work session to answer any questions.

1                   ***FOR WORKSESSION/SECOND READING – DEC. 10<sup>th</sup>***

2  
3   COUNCIL BILL NO. \_\_\_\_

4  
5   Series 2019

6  
7 AN ORDINANCE APPROVING A LEASE WITH TREETOP CHILD ADVOCACY CENTER,  
8   A COLORADO NONPROFIT CORPORATION  
9                   (Rooms 001 and 001 A-B in the “Breckenridge Grand Vacations Community Center;  
10   103 South Harris Street)

11  
12           WHEREAS, the Town of Breckenridge owns the real property commonly known as  
13 “Breckenridge Grand Vacations Community Center”, located at 103 South Harris Street in  
14 Breckenridge, Colorado; and

15  
16           WHEREAS, Treetop Child Advocacy Center, a Colorado nonprofit corporation, has  
17 proposed to lease a two rooms located within the Breckenridge Grand Vacations Community  
18 Center for the operation of a Child Advocacy Center; and

19  
20           WHEREAS, a proposed Lease between the Town and Treetop Child Advocacy Center, a  
21 Colorado nonprofit corporation, has been prepared, a copy of which is marked **Exhibit “A”**,  
22 attached hereto and incorporated herein by reference; and

23  
24           WHEREAS, the proposed Lease has been reviewed by the Town Attorney and the Town  
25 Council; and

26  
27           WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

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

31  
32  
33 and;

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

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

40  
41           Section 1. The proposed Lease between the Town and Treetop Child Advocacy Center, a  
42 Colorado nonprofit corporation, copy of which is marked **Exhibit “A”**, attached hereto and  
43 incorporated herein by reference, is approved, and the Town Manager is authorized, empowered,  
44 and directed to execute such Lease for and on behalf of the Town of Breckenridge.

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Section 2. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 3. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2019. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of \_\_\_\_\_, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:  
  
\_\_\_\_\_  
Helen Cospolich  
Town Clerk

**BRECKENRIDGE GRAND VACATIONS COMMUNITY CENTER  
OFFICE LEASE**

THIS LEASE (“**Lease**”) is made and entered into effective the \_\_\_ day of \_\_\_\_\_, 2019 between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Landlord**”) and TREETOP CHILD ADVOCACY CENTER, a Colorado nonprofit corporation (“**Tenant**”). Landlord and Tenant are sometimes collectively referred to in this Lease as the “**Parties**”, and individually as a “**Party**.”

**ARTICLE 1 - BASIC LEASE PROVISIONS**

1.1. **Leased Premises.** In consideration of Tenant’s payment of rent and the keeping of the promises, covenants, and conditions required of Tenant by this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, for the term and upon the conditions of this Lease, the premises known as Rooms 001 and 001A-B in the “Breckenridge Grand Vacations Community Center,” 103 South Harris Street, Breckenridge, Summit County, Colorado 80424 (“**Leased Premises**”). The Leased Premises are depicted on the attached **Attachment “A”**, which is incorporated into this Lease by reference. The building in which the Leased Premises are located is referred to in this Lease as the “**Building**.”

1.2. **Use Of Premises.** Tenant may use the Leased Premises only as a business office and advocacy center unless Landlord gives its advance written consent to another use.

1.3. **Square Footage.** Landlord and Tenant agree that the Leased Premises contain 787 net square feet, and that this amount will be used to calculate the rent for the Leased Premises.

1.4. **Shared Use Space.** Tenant and its agents, employees, and invitees, have the non-exclusive right with others designated by Landlord to the use the common areas of the Building for the common areas’ intended and normal purposes. Common areas include sidewalks, parking areas (as described in Section 1.6), hallways, stairways, public restrooms, common entrances, lobby, other similar public areas and access ways, the kitchen, and the Community Room (“**Shared Use Spaces**”), subject to their availability. The Community Room must be booked by Tenant in advance and no assurance is given of any particular availability of the Community Room. No common space may be used for storage and the kitchen and Community Room must be cleaned after every use.

1.5. **Term.**

A. The term of this Lease (“**Term**”) will begin on February 1, 2020 (“**Commencement Date**”) and will end, unless sooner terminated as hereafter provided, on January 31, 2022.



B. Either Landlord or Tenant may terminate this Lease, without cause and without liability for breach of this Lease, by giving the other Party 6 months' written notice of termination. A Party may not terminate this Lease under this Subsection B if it is in default when the notice of termination is given.

1.6. **Parking.** Subject to availability, Tenant and Tenant's employees and invitees will be allowed to use the Building's shared parking lot ("**Parking Lot**"). No parking spaces within the Parking Lot will be specifically assigned for Tenant's exclusive use.

1.7. **Compliance With Laws.** Tenant, at Tenant's sole cost and expense, will comply with all laws, ordinances, orders, and regulations of all governmental authorities with respect to the use of the Leased Premises. Landlord warrants that, to the best of its actual knowledge, on the Commencement Date, the Leased Premises will comply with all applicable laws, ordinances, orders, and regulations of governmental authorities. A judgment of any court of competent jurisdiction or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party to such action or proceeding or not, that Tenant has violated any law, ordinance, requirement, or order in the use of the Leased Premises will be conclusive of the fact as between Landlord and Tenant.

1.8. **Surrender of Leased Premises.**

A. Upon expiration or earlier termination of this Lease Tenant will surrender the Leased Premises to Landlord in substantially the same condition as existed on the Commencement Date, broom clean, ordinary wear and tear excepted. Not later than the last day of the Term, Tenant will remove its personal property and trade fixtures from the Leased Premises. The cost of such removal will be borne by Tenant, and Tenant will repair all injury or damage done to the Leased Premises in connection with the installation or removal of Tenant's personal property and trade fixtures. All of Tenant's fixtures and trade fixtures that are so attached to the Leased Premises that they cannot be removed without material injury to the Leased Premises will, at Landlord's option, become the property of Landlord upon installation and will remain with the Leased Premises upon surrender.

B. Landlord may retain or dispose of any personal property or fixtures (including trade fixtures) left remaining by Tenant upon the Leased Premises upon the expiration or earlier termination of this Lease, provided Landlord first delivers 15 days' written notice to Tenant, identifying the property remaining on the Leased Premises and stating whether Landlord intends to retain or dispose of the property, and Landlord affords Tenant reasonable opportunity to remove the property during such 15 day period. Landlord will not be accountable to Tenant for any damages for the loss or destruction of such property, or for any part of the proceeds of sale, if any, realized by Landlord, provided Landlord complies with the terms of this Section. Tenant waives all claims against Landlord for any damages suffered by Tenant resulting from Landlord's retention or disposition of such personal property or fixtures (including trade fixtures) if Landlord complies with the terms of this Section.

## ARTICLE 2 - RENT

### 2.1. Rent.

A. The total rent to be paid by Tenant during the first year of the Term, February 1, 2020 until January 31, 2021, is Ten Thousand Five Hundred Thirty Seven and 92/100 Dollars (\$10,537.92). Tenant promises to pay such amount to Landlord. The rent is payable to Landlord in advance in monthly installments of Eight Hundred Seventy Eight and 16/100 Dollars (\$878.16) each (“**Monthly Rent**”).

B. The total rent to be paid by Tenant during the second year of the Term, February 1, 2021 until January 31, 2022, is Ten Thousand Eight Hundred Fifty Two and 68/100 Dollars (\$10,852.68). Tenant promises to pay such amount to Landlord. The rent is payable to Landlord in advance in monthly installments of Nine Hundred Four and 39/100 Dollars (\$904.39) each (“**Monthly Rent**”).

C. The Monthly Rent has been calculated based on \$13.39 per square foot for each square foot of the Leased Premises as described and agreed in Section 1.3 for the first year of the Term. The calculation of the Monthly Rent for year two will increase 3% to \$13.79 per square foot.

D. The Monthly Rent is due and payable to Landlord on the first day of each month. The Monthly Rent will be paid, without deduction, setoff, prior notice, or demand. If the Term begins on any day other than the first day of the month, or ends on any day other than the last day of month, the Monthly Rental will be prorated accordingly.

E. A late charge of 5% will be paid on any installment of Monthly Rent not received by Landlord within five days of the due date.

F. Any amount due to Landlord from Tenant under this Lease that is not specifically identified as “rent” or “Monthly Rent” is additional rent.

G. Interest On Monthly Rent. Tenant will pay interest to Landlord on any installment of Monthly Rental that is 30 days or more past due at the rate of 8% per annum commencing on the date the installment of Monthly Rent is due and continuing until the date such installment of Monthly Rent is fully paid.

H. Interest On Other Amounts. Tenant will pay interest to Landlord on any amount other than Monthly Rental that is due to Landlord under this Lease at the rate of 8% per annum commencing 30 days after Landlord has provided Tenant with written notice that such sum is past due and continuing until the date the past due amount is fully paid.

I. Landlord's Lien and Security Interest. Landlord has a first security interest and a lien for all rent and other sums of money becoming due hereunder from

Tenant upon all goods, wares, equipment, fixtures, furniture, inventory and other personal property of Tenant situated in or located upon the Leased Premises, and such property may not be removed from the Leased Premises without the express written consent of Landlord until all arrearages in rent and other sums of money then due to Landlord under this Lease have first been paid. Upon the occurrence of any event of default by Tenant, Landlord may foreclose the security interest and lien in the manner provided by law. Landlord may file a financing statement (and necessary extensions, renewals or replacements thereof throughout the Term of this Lease) in a form legally sufficient to perfect its security interest and lien granted pursuant to this Section. Tenant will execute such documents as may be required during the Term to maintain the validity and priority of the security interest and lien provided or in this Section.

### **ARTICLE 3 - LANDLORD'S DISCLAIMER AND EXCULPATORY PROVISION**

3.1. **Landlord's Non-liability.** As between the Parties, Tenant, as a material part of the consideration to Landlord, assumes all risk of damage to property or injury to persons in or upon the Leased Premises from any cause other than Landlord's negligence or intentional wrongful act, and Tenant waives all claims in respect thereof against Landlord.

### **ARTICLE 4 – UTILITIES AND SERVICES**

#### **4.1. Utilities And Services.**

A. **Utilities.** Landlord will provide at its expense the following utility services for the Leased Premises:

- (i) all water necessary for Tenant's operations at the Leased Premises;
- (ii) all sewer service necessary for Tenant's operations at the Leased Premises;
- (iii) all natural gas necessary for Tenant's operations at the Leased Premises;
- (iv) all electricity necessary for Tenant 's operations at the Leased Premises; and
- (v) trash and recycling services for 103 S. Harris Street, which will be made available to Tenant.

B. **Tenant's Telephone and Internet.** Tenant will pay for Tenant's telephone and internet service (if any) at the Leased Premises. Tenant will cause any contracts for its telephone and internet service to be placed solely in Tenant's name. Tenant will pay all charges for such services as they become due.

### **ARTICLE 5 – REPAIRS, MAINTENANCE, SNOW REMOVAL, AND CLEANING**

#### **5.1. Maintenance.**

A. **Landlord's Repairs.** Except for required maintenance, repairs, and upkeep for which Tenant is liable under Subsection B, Landlord will pay for and make all required repairs to the Building and the Leased Premises, including:

- (i) roof;
- (ii) foundation;
- (iii) exterior walls;
- (iv) interior structural walls (excluding finish and trim of these walls);
- (v) all other structural components;
- (vi) the water, sewer, plumbing system and plumbing fixtures located outside of the walls of the building located on the Leased Premises; and
- (vii) the mechanical, electrical, and heating/ventilation systems.

B. **Tenant To Reimburse Landlord For Repairs; When.** Tenant will reimburse Landlord for any maintenance, repair, and upkeep to the Building or the Leased Premises that Landlord is required to make that is caused by the negligence, misuse, or willful act of Tenant or its employees or invitees.

5.2. **Time For Repairs.** Required repairs or maintenance will be completed within a reasonable time (depending on the nature of the repair or maintenance needed) after receiving notice or having actual knowledge of the need for the repair or maintenance.

5.3. **Snow Removal.** Landlord will provide all necessary snow and ice plowing and removal from the Parking Area, and the sidewalks and entry areas of the Leased Premises.

5.4. **Cleaning of Shared Space.** Landlord will provide any required cleaning of the Shared Space.

5.5. **Cleaning of Leased Premises.** Tenant will provide its own janitorial service to provide periodic cleaning of the Leased Premises.

## ARTICLE 6 – TAXES

### 6.1. Real Property Taxes.

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

- (ii) **Tenant To Pay Real Property Taxes.** Tenant will pay all real property taxes lawfully assessed arising from its occupancy and use of the Leased Premises pursuant to this Lease, and Tenant will indemnify and defend Landlord from any such real property taxes. Tenant will pay all real property taxes in a timely manner. Upon Landlord's written request Tenant will provide to Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the real property taxes. Tenant may pay any real property taxes in installments if permitted by law.
- (iii) **Tenant's Right to Contest Real Property Taxes.** If Tenant is liable for the payment of any real property taxes arising from Tenant's occupancy and use of the Leased Premises pursuant to this Lease, Tenant may, at its sole expense, contest such real property taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings. Tenant will make timely payment of such real property taxes if Tenant loses the contest. Tenant will advise Landlord prior to instituting any such contest and will, as a condition of exercising such right, provide Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Section. Landlord, at Tenant's sole cost and expense, will reasonably cooperate with Tenant in any such contest; may join in the contest; and will execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

6.2. **Personal Property Taxes.** Tenant will pay when due all taxes, assessments, fees, and other charges that are levied against Tenant's personal property or trade fixtures installed or located in or on the Leased Premises, and that become payable during the Term of this Lease. Within 10 days after demand, Tenant will furnish Landlord with satisfactory evidence of such payments.

## **ARTICLE 7 - TENANT'S NEGATIVE OBLIGATIONS**

### **7.1. Alterations.**

A. **"Alterations"** means alterations, additions, substitutions, installations, changes, and improvements to the Leased Premises.

B. No Alteration may be undertaken until Tenant has obtained approval of plans and specifications for such Alteration from Landlord, acting in its capacity as owner of the Leased Premises (and not in its governmental capacity). Landlord's consent will not be unreasonably withheld or unduly delayed for nonstructural interior Alterations that do not adversely affect the Building's appearance, value, and structural strength or integrity.

C. All work done in connection with the construction of an Alteration must be done in a good and workmanlike manner and in material conformity with the plans and specifications that are approved by Landlord.

D. The construction of an approved Alteration must be prosecuted with reasonable dispatch, subject to delays caused by force majeure events (See Section 14.20).

E. Any Alteration made by Tenant to the Leased Premises will become the property of Landlord; will be considered as part of the Leased Premises; and will not be removed from the Leased Premises by Tenant upon the expiration or earlier termination of this Lease.

7.2. **Signs.** Tenant may not post, place, affix, erect, or display any sign within or outside of the Leased Premises, or within or outside the Building, without Landlord's prior approval. As used in this Section, the term "sign" has the meaning provided in the Breckenridge Town Code, as amended from time to time throughout the Term of this Lease. In considering Tenant's request to place a sign within or outside of the Leased Premises or the Building, Landlord acts in its capacity as landlord of the Leased Premises, and not in its governmental capacity. Landlord may remove any sign placed within or outside of the Leased Premises or the Building in violation of this Section. In addition to obtaining Landlord's discretionary permission as described above, Tenant must also obtain any required sign permit from Landlord acting in its governmental capacity. Tenant must maintain all signs located within or outside of the Leased Premises in good, clean, and attractive condition. Tenant must remove all signs placed by Tenant within or outside of the Leased Premises and Building at the expiration or earlier termination of this Lease, and repair any damage or injury caused thereby. If not so removed by Tenant, Landlord may remove such sign(s) at Tenant's expense.

7.3. **Assignment And Subletting.** Tenant may not assign, sublet, license, or allow any other person or entity to occupy or use any or all of the Leased Premises without first obtaining Landlord's prior written consent. Any assignment, encumbrance, sublease, or license without Landlord's prior written consent will be voidable and, at Landlord's election, will constitute a default under this Lease. No consent by Landlord to any of the above acts will constitute a further waiver of the provisions of this Section.

If Landlord chooses to consent to an assignment or sublease, Tenant may be required, as a condition of granting consent, to pay Landlord's reasonable costs incurred in considering the proposed assignment or sublease including, but not limited to, legal fees and credit checks, in a total amount not to exceed \$1,000.

7.4. **Waste or Nuisance.** Tenant will not commit or permit to be committed any waste upon the Leased Premises. Tenant will not commit or permit to be committed upon the Leased Premises any public or private nuisance, or any other act or thing prohibited by law.

7.5. **Liens.** Tenant will not permit any lien to be filed against the Leased Premises or the Building, including, but not limited to, a lien arising out of any work performed, materials furnished or obligations incurred by Tenant. The indemnification provisions of this Lease will apply to any such lien. If, because of any act or omission of Tenant, and resulting from Tenant's work on the Leased Premises, any mechanic's or other lien, charge or order for the payment of money is filed against the Leased Premises or the Building, Tenant will, at its own cost and expense, cause the same to be discharged of record or bonded within 90 days from the filing of the lien. Prior to commencing the construction of any Alteration upon the Leased Premises, Tenant will post and keep posted notice of Landlord's non-liability of the Leased Premises pursuant to Section 38-22-105, C.R.S.

## ARTICLE 8 - INSURANCE

8.1. **Landlord's Building Insurance.** Landlord agrees, at Landlord's sole expense, to keep the Building insured against damage or destruction by fire, earthquake, vandalism, and other perils in the amount of its full replacement value, as such value may exist from time to time.

8.2. **Tenant's Liability Insurance.** Tenant agrees, at Tenant's sole expense, to maintain commercial general liability insurance covering Tenant's operations on the Leased Premises with minimum combined single limits of not less than One Million Dollars (\$1,000,000). The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury, blanket contractual, products, and completed operations. Tenant's liability insurance policy will be endorsed to include Landlord as an additional insured.

8.3. **Tenant's Property Insurance.** Tenant agrees, at Tenant's sole expense, to keep its personal property and trade fixtures located in or upon the Leased Premises insured with "all risks" insurance in an amount to cover one hundred percent (100%) of the replacement cost of the property and the fixtures.

8.4. **Tenant's Activities Not to Increase Insurance Rates.** Tenant will not do anything in or about the Leased Premises that will materially increase Landlord's insurance rates on the Leased Premises. Tenant agrees to pay to Landlord upon demand the amount of any increase in premiums for Landlord's insurance specifically resulting from the above, whether or not Landlord will have consented to the act on the part of Tenant. If Tenant installs any electrical equipment that overloads the lines in the Leased Premises, Tenant will make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction.

8.5. **Additional Insurance Provisions.** Every policy required above will be primary insurance. The Party required to procure and maintain a particular insurance policy will be solely responsible for any deductible losses under such policy. Every policy of insurance required by this Section will be maintained during the entire Term of this Lease.

8.6. **Insurance Criteria.** Insurance policies required by this Lease will:

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

B. provide that the insurance cannot be cancelled or materially changed in the scope or amount of coverage unless 15 days' advance notice is given to the nonprocuring Party.

8.7. **Evidence of Insurance.** Prior to the commencement of this Lease, each Party will give certificates of insurance to the other Party evidencing compliance with the requirements of this Section. The policies will be renewed or replaced and maintained by the Party responsible for such policy throughout the Term of this Lease to assure continuous coverage. If either Party fails to give the required certificate within 30 days after notice or demand for it, the other Party may obtain and pay for the insurance and receive reimbursement from the Party required to have the insurance.

8.8. **No Interest in Insurance Proceeds.** Landlord has no interest in proceeds of any insurance carried by Tenant on Tenant's interest in this Lease, and Tenant has no interest in the proceeds of any insurance carried by Landlord.

## ARTICLE 9 - INDEMNIFICATION

9.1. **Indemnification By Tenant.** To the fullest extent permitted by law, Tenant will indemnify and hold Landlord harmless against and from any and all claims arising from:

A. the conduct of Tenant's business upon the Leased Premises;

B. any activity, work, or other thing done, permitted or suffered by Tenant in or about the Leased Premises;

C. any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease;

D. any and all claims arising from any intentional or negligent act of Tenant, or any agent, employee, contractor, or invitee of Tenant; and

E. all costs, attorney's fees, and liabilities incurred in the defense of any claim for which indemnification is required under this Section.

Tenant, upon notice from Landlord, will defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord.



9.2. **Survival of Indemnity Obligation.** The indemnity obligations required by Lease will survive the termination or expiration of this Lease, and will continue to be enforceable thereafter, subject however to statutory and equitable limitation periods.

## **ARTICLE 10 - DAMAGE TO LEASED PREMISES**

10.1. **Damage To or Destruction Of Leased Premises.** If the Leased Premises are damaged by fire or other perils that are fully covered by Landlord's insurance, Landlord will promptly repair the damage, and this Lease will remain in full force and effect, except that Tenant will be entitled to terminate this Lease or obtain a proportionate reduction of the rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and the making of such repairs will reasonably interfere with the business carried on by Tenant in the Leased Premises. If the damage is due to the fault or neglect of Tenant, its employees or invitees, there will be no abatement of rent. If the Leased Premises are damaged as a result of any cause other than the perils covered by Landlord's building insurance, then Landlord will not be obligated to repair or rebuild the Leased Premises, and either Party may terminate this Lease by giving the other Party 30 days' notice in accordance with the provisions of Section 14.5 of this Lease.

## **ARTICLE 11- DEFAULT**

11.1. **Default By Tenant.** The occurrence of any one or more of the following events will constitute a default and breach of the Lease by Tenant:

- A. The abandonment of the Leased Premises by Tenant.
- B. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant pursuant to this Lease, as and when due, where such failure continues for a period of 10 days after service of written notice by Landlord to Tenant.
- C. The failure by Tenant to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Tenant, or to obey rules promulgated by Landlord in accordance with Section 13.1 of this Lease, within 20 days after service of written notice by Landlord to Tenant. In the event of a non-monetary default that is not readily susceptible of being corrected within 20 days, Tenant will not be default if it commences correcting the default within 20 days of service of a demand for compliance notice and thereafter corrects the default with due diligence.

11.2. **Landlord's Remedies Upon Default.** In addition to the remedies given in this Lease or under the law, Landlord may do any one or more of the following if Tenant is in default under this Lease;

- A. Terminate this Lease, and Tenant will then surrender the Leased Premises to the Landlord;

B. Enter and take possession of the Leased Premises, either with or without process of law, and remove Tenant, with or without having terminated this Lease; or

C. Alter the locks and security devices at the Leased Premises.

Tenant waives claims for damages by reason of Landlord's reentry, repossession, or alteration of the locks or other security devices at the Leased Premises, and for damages by reason of any legal process.

11.3. **No Surrender.** Landlord's exercise of any of its remedies or its receipt of Tenant's keys to the Leased Premises will not be considered an acceptance or surrender of the Leased Premises by Tenant. A surrender must be agreed to in a writing signed by both Landlord and Tenant.

11.4. **Default By Landlord.** Landlord will be in default under this Lease if Landlord fails to comply with any of the terms, provisions or covenants of this Lease within 20 days following service of written notice by Tenant. In the event of a non-monetary default that is not capable of being corrected within 20 days, Landlord will not be default if Landlord commences correcting the default within 20 days of receipt of notification and thereafter correct the default with due diligence.

11.5. **Tenant's Remedies Upon Default.** If Landlord is in default under this Lease, Tenant will have all of the remedies provided for in such circumstances by Colorado law.

11.6. **Self-Help.** If either Party defaults under this Lease ("**Defaulting Party**") the other Party ("**Nondefaulting Party**") may, without being obligated and without waiving the default, cure the default. The Nondefaulting Party may enter the Leased Premises or the Building to cure the default. The Defaulting Party shall pay the Nondefaulting Party, upon demand, all costs, expenses, and disbursements incurred by the Nondefaulting Party to cure the default.

11.7. **Survival.** The remedies permitted by this Article 11 will survive the termination of this Lease.

## ARTICLE 12 - NONDISTURBANCE

12.1. **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, Landlord covenants that so long as the rent for the Leased Premises is paid as and when due, and there is no default in any of the other covenants, conditions or provisions of this Lease to be performed, observed or kept by Tenant, Tenant will peaceably and quietly hold and enjoy the Leased Premises for the entire Term of this Lease.

## ARTICLE 13 - LANDLORD'S RIGHTS

13.1. **Rules.** In order to address matters that are not addressed in this Lease, or matters that arise after the commencement of this Lease, Landlord may adopt reasonable rules and regulations with respect to the Leased Premises. Tenant, its employees and invitees, must

faithfully observe and comply with any written rules and regulations with respect to the Leased Premises that are delivered to Tenant by Landlord during the Term of this Lease. No rule adopted by Landlord may unreasonably interfere with Tenant's conduct of its business or Tenant's use and enjoyment of the Leased Premises, or require payment of additional moneys by Tenant. If a rule adopted by Landlord conflicts with or is inconsistent with any Lease provision, the Lease provision controls.

13.2. **Holdover.** If Tenant continues to hold possession of the Leased Premises after the natural expiration of the Term of this Lease (without complying with the applicable provisions related to the options to renew herein granted), then such holding over will not be deemed a renewal of the Lease for the whole Term, but Tenant will be deemed to be a tenant from month to month only, at the same Monthly Rent herein specified; EXCEPT Landlord may, at Landlord's option, increase the Monthly Rent to an amount not more than 125% of the Monthly Rent described in Section 2.1 for any holdover period upon 10 days' prior written notice to Tenant.

13.3. **Inspection And Entry.** Except in case of a verifiable and actual emergency (in which event no advance notice will be required) Tenant agrees that Landlord and Landlord's authorized representatives may enter the Leased Premises following at least 48 hours' advance notice to Tenant during reasonable hours for the purposes of inspecting the Leased Premises. Tenant may require that Landlord be accompanied at all times by a representative of Tenant and Landlord will comply with Tenant's security procedures. Except in case of a verifiable and actual emergency, Tenant may specify the times when Landlord's entry will be permitted. Landlord will minimize any interference with Tenant's business. Subject to the foregoing, Tenant further agrees that Landlord may go upon the Leased Premises and:

- A. make any necessary repairs to the Leased Premises and perform any work that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, or that Landlord may deem necessary to prevent waste or deterioration of the Leased Premises;
- B. make repairs that Landlord is required to perform under the terms of this Lease;
- C. post any notice provided for by law; or
- D. otherwise protect any and all rights of Landlord.

Nothing in this Section implies any duty on the part of Landlord to do any work that under any provision of this Lease Tenant may be required to do, nor will it constitute a waiver of Tenant's default in failing to do the same. No reasonable exercise by Landlord of any rights herein reserved will entitle Tenant to any damage or compensation of any kind from Landlord for any injury, loss, damage or inconvenience occasioned thereby, nor to any abatement of rent.

## ARTICLE 14 - MISCELLANEOUS

14.1. **Governmental Immunity.** Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Landlord, its officers, or its employees.

14.2. **Hazardous Materials - Prohibited.** Tenant will not store or permit the storage on the Leased Premises of any type of hazardous or similar material that is regulated by federal, state, or local regulation, except Tenant may store and use materials customarily used in the operation and maintenance of a business office that do not violate applicable laws.

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

14.4. **Governing Law; Venue; Waiver of Jury Trial.** This Lease is to be interpreted in accordance with the laws of the State of Colorado without regard to principles of conflicts of laws. Venue for any legal action arising out of this Lease will be proper only in Summit County, Colorado. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET OR CONSTRUE THIS AGREEMENT.

14.5. **Notices.** Whenever under this Lease a provision is made for notice or demand of any kind, notice will be in writing and will be signed by or on behalf of the Party giving or making the same, and it will be deemed sufficient notice and service thereof if notice is to Tenant and sent by registered or certified mail, postage prepaid, to the last Post Office address of Tenant furnished to Landlord for this purpose; and if to Landlord, sent by registered or certified mail, postage paid, to Landlord at the address furnished for this purpose, or to the place then fixed for the payment of rent.

Tenant's initial address for notice is:

The TreeTop Center  
C/O Summit County Human Services  
Krista Burdick  
P.O. Box 869  
Frisco, Colorado 80443

Landlord's initial address for notice is:

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

Any notice with respect to this Lease that is specifically required or provided for by Colorado law must be served in the manner provided by Colorado law for the service of such notice. Nothing in this Section will prevent the giving of notice in such manner as is prescribed by the Colorado Rules of Civil Procedure for the service of legal process.

14.6. **Complete Agreement.** It is understood and agreed that this Lease contains the complete and final expression of the agreement between the Parties, and there are no promises, representations, or inducements except as are set forth in this Lease. All negotiations, considerations, representations, and understandings between the Parties related to this Lease are contained in this Lease.

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

14.8. **Captions.** The headings of the articles and sections in this Lease are for convenience only and do not define, limit, or construe the contents of the, sections and subsections.

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

14.10. **Severability.** If any provision of this Lease is held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of this Lease are not affected or impaired in any way.

14.11. **Annual Appropriation.** Financial obligations of Landlord under this Lease payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. If sufficient funds are not made available, this Lease may be terminated by either Party without penalty. Landlord's obligations under this Lease do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

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

14.13. **Landlord's Consent Or Approval.** Except as otherwise expressly provided to the contrary in this Lease, wherever in this Lease it is provided that some act requires Landlord's prior consent or approval, such consent or approval may be granted, withheld, or conditionally approved in Landlord's sole and absolute discretion.

14.14. **"Day" Defined.** Unless otherwise indicated, the term "day" means a calendar day (and not a business day).

14.15. **"Will" or "Will Not" Defined.** "Will" or "will not" indicates a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

14.16. **Authority.** The individuals executing this Lease on behalf of each of the Parties have all requisite powers and authority to cause the Party for whom they have signed to enter into this Lease and to bind such to fully perform the obligations required of such Party under this Lease.

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

14.18. **Lease Not To Be Recorded.** This Lease **WILL NOT BE RECORDED** with the Clerk and Recorder of Summit County, Colorado. The recording of this Lease by Tenant will constitute a default under this Lease.

14.19. **Time of Essence.** Time is of the essence of this Lease.

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

14.21. **Binding Effect.** The covenants, conditions, and obligations contained in this Lease extend to, bind, and inure to the benefit of, not only the Parties hereto, but their respective successors and permitted assigns.

LANDLORD:

TOWN OF BRECKENRIDGE

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

ATTEST:

---

Helen Cospolich, CMC,  
Town Clerk

TENANT:

TREETOP CHILD ADVOCACY CENTER, a  
Colorado nonprofit corporation

By \_\_\_\_\_

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



# Memo

**To:** Breckenridge Town Council Members

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

**Date:** 11/29/2019 (for 12/10/2019 meeting)

**Subject:** SECOND READING-AN ORDINANCE AUTHORIZING THE TOWN MANAGER TO ACQUIRE AND RESELL REAL PROPERTY PURSUANT TO THE TOWN OF BRECKENRIDGE "BUY DOWN" HOUSING PROGRAM

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The attached Ordinance is presented for second reading on December 10, 2019. There are no changes to the Ordinance since it was presented for first reading on November 26, 2019. If approved, this Ordinance will authorize the Town Manager to execute purchase and sales contracts as well as other documents necessary for the acquisition and resale of Buy Down properties.

Currently, under the Town Charter, the sale of any Town-owned real property can only be authorized by the Council pursuant to an Ordinance that is specific to that property. Unfortunately, a standard Ordinance can take 55-75 days because the process includes two readings plus a 30-35 day posting period. Emergency Ordinances are a quicker option for the sale of real properties, but given the number of Buy Down units that we hope to acquire, staff is recommending a more streamline process.

The Ordinance that is presented for your consideration establishes a new procedure by authorizing the Town Manager to approve the acquisition and resale of Buy Down properties in lieu of individual Ordinances. This will enable the Town to accommodate buyers who are typically trying to close in 30-45 days. It will also reduce the number of Ordinances processed and facilitate the resale of the Buy Downs which can reduce the costs and risks associated with holding these units. In order for the Buy Down Program to be most effective the ability to react and close quickly is important. It should be noted that the new procedure established by this Ordinance includes prompt reporting by the Town Manager to insure the Council is aware of the sale of these units as they occur.

Staff recommends approval of the Ordinance as presented on second reading and will be available at your meeting for any discussion.

**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 37 (Buy Down Program Ordinance)  
DATE: December 2, 2019 (for December 10<sup>th</sup> meeting)

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The second reading of the ordinance authorizing the Town Manager to acquire and resell real property as part of the Town's "Buy Down" Housing Program is scheduled for your meeting on December 10<sup>th</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 – DEC. 10***

2  
3 ***NO CHANGE FROM FIRST READING***

4  
5 COUNCIL BILL NO. 37

6  
7 Series 2019

8  
9 AN ORDINANCE AUTHORIZING THE TOWN MANAGER TO ACQUIRE AND RESELL  
10 REAL PROPERTY PURSUANT TO THE TOWN OF BRECKENRIDGE “BUY DOWN”  
11 HOUSING PROGRAM

12  
13 WHEREAS, the Town has acquired, and is expected to acquire in the near future, real  
14 property pursuant to its “Buy Down Housing Program” as defined in Section 1 of this ordinance;  
15 and

16  
17 WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town  
18 Council may authorize the sale of Town-owned real property by ordinance; and

19  
20 WHEREAS, the Town Council desires to authorize the Town Manager to acquire and then  
21 resell any Town-owned real property acquired pursuant to the Town’s Buy Down Housing  
22 Program, all as more fully set forth in this ordinance.

23  
24 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
25 BRECKENRIDGE, COLORADO:

26  
27 Section 1. As used in this ordinance the term “Town’s Buy Down Housing Program” means  
28 that policy and practice previously approved and authorized by the Town Council whereby the  
29 Town Manager will: (i) purchase certain real property for the Town; (ii) cause to be recorded in the  
30 real property records of the Clerk and Recorder of Summit County, Colorado an appropriate  
31 housing restriction on such property for the purpose of assuring that the real property will be used in  
32 the future in a manner that advances the Town Council’s established housing goals; and (iii) then  
33 resell the real property subject to such housing restriction.

34  
35 Section 2. The Town Manager is authorized, empowered, and directed to take all necessary  
36 and appropriate action to acquire and then resell any Town-owned real property acquired pursuant  
37 to the Town’s Buy Down Housing Program. In connection therewith, the Town Manager shall have  
38 full power and authority to do and perform all matters and things necessary to the acquisition and  
39 sale of such real property, including, but not limited to, the following:

- 40  
41 1. The execution of purchase and sales contracts, addenda, schedules,  
42 notices, and other documents necessary to the formation of a binding  
43 legal contract to purchase and sell such real property;  
44

- 1           2.     The making, execution, and acknowledgement of settlement  
2                   statements, closing agreements, and other usual and customary  
3                   closing documents required to purchase and then resell such real  
4                   property;
- 5
- 6           3.     The making, execution, and acknowledgement of an appropriate  
7                   housing restriction on such real property;
- 8
- 9           4.     The execution, acknowledgement, and delivery of the deed of  
10                  conveyance for the such real property; and
- 11
- 12          5.     The performance of all other things necessary to the purchase and  
13                  resale of such real property.
- 14

15           Section 3. The Town Council hereby ratifies and confirms, in advance, in all respects and  
16 for all purposes, all action taken by the Town Manager pursuant to the authority granted by this  
17 ordinance.  
18

19           Section 4. Not later than the next regular meeting of the Town Council after closing on  
20 the sale of any Town-owned real property acquired pursuant to the Town’s Buy Down Housing  
21 Program pursuant to the authority granted by this ordinance, the Town Manager shall report such  
22 sale to the Town Council.  
23

24           Section 5. If for any reason the Town Manager is unavailable to take any action required  
25 or authorized of him pursuant to this ordinance, the Assistant Town Manager is authorized,  
26 empowered, and directed to take such action, and Section 3 of this ordinance shall apply to any  
27 such action taken by the Assistant Town Manager.  
28

29           Section 6. The Town Council hereby finds, determines and declares that it has the power  
30 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
31 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.  
32

33           Section 7. This ordinance shall be published and become effective as provided by Section  
34 5.9 of the Breckenridge Town Charter.  
35

36           INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
37 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2019. A Public Hearing shall be held at the  
38 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
39 \_\_\_\_\_, 2019, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the  
40 Town.  
41  
42

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:

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



TOWN OF  
BRECKENRIDGE

# Memo

**To:** Breckenridge Town Council Members

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

**Date:** 11/29/2019 (for 12/10/2019 meeting)

**Subject:** AN EMERGENCY ORDINANCE AUTHORIZING THE SALE OF TOWN-OWNED REAL ESTATE PROPERTY (Unit 163 Bldg L Gold Camp II Condo)

---

The attached Ordinance will authorize the sale of Unit 163 Building L Gold Camp II Condo. The Town acquired this property on November 25, 2019 as a Buy Down unit. Since launching the Buy Down program in August, the Town has acquired ten condominiums and this will be the fourth resale to occur.

The goal of the program is to acquire units that are at risk of converting from local occupancy to vacation and/or non-local occupancy, to deed restrict the property, and to sell the restricted unit to a qualified buyer. For this unit, a sales contract for the resale was executed on November 27, 2019 and the deed restriction will be recorded the week of December 2<sup>nd</sup>. The buyer is Trevor Birdwell, and the projected closing date is December 27, 2019. It should be noted that there is a Right of First Refusal (FROR) in this complex, which allows any Owner in Gold Camp II to match this offer. The deadline for the FROR is December 20<sup>th</sup>. In the event that an Owner exercises their FROR the Town would be obligated to sell this unit to that Owner under the same terms and conditions. That situation was contemplated, and is addressed in Section 3 of the Ordinance as presented.

This Ordinance is proposed as an emergency ordinance. Unfortunately, under the regular ordinance process, the authorization to sell real estate could take 55-75 days (two readings and 30-35 days for effective date). Most buyers are requesting 30-45 days for closing and it would be difficult to push them out especially this time of year when there are limited housing options. It is also in the Town's best interest to dispose of the properties as soon as possible in order to minimize holding costs. As you know the Council approved a new process for the resale of Buy Down units and that is scheduled for second reading also on December 10<sup>th</sup>, but that will not be effective until mid-January so an Emergency Ordinance is requested to accommodate this closing.

Recommendation: Staff recommends approval of this Emergency Ordinance, which will allow this closing to occur on December 27<sup>th</sup>. Staff will be available at your meeting to discuss this Ordinance and answer questions.

1 ***FOR WORKSESSION/ADOPTION AS EMERGENCY***  
2 ***ORDINANCE – DEC. 10***

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

5  
6 Series 2019

7  
8 AN EMERGENCY ORDINANCE AUTHORIZING THE SALE OF TOWN-OWNED REAL  
9 PROPERTY  
10 (Condominium Unit 163, Building L, Gold Camp II Condominiums)

11  
12 WHEREAS, the Town of Breckenridge is the owner of the following described real  
13 property:

14  
15 CONDOMINIUM UNIT 163, BUILDING L, GOLD CAMP II  
16 CONDOMINIUMS, ACCORDING TO THE ELEVENTH SUPPLEMENT TO  
17 THE CONDOMINIUM MAP RECORDED SEPTEMBER 27, 1972 UNDER  
18 RECEPTION NO. 128795 AND SUBJECT TO THE AMENDED AND  
19 RESTATED CONDOMINIUM DECLARATION RECORDED AUGUST 23,  
20 2017 UNDER RECEPTION NO. 1149565, COUNTY OF SUMMIT, STATE OF  
21 COLORADO

22 (“Property”)

23 ; and

24  
25 WHEREAS, the Town desires to sell the Property to Trevor Birdwell; and

26  
27 WHEREAS, the Town Manager has entered into a contract on behalf of the Town to sell the  
28 Property to Trevor Birdwell; and

29  
30 WHEREAS, the Town Council finds and determines that it would be in the best interest of  
31 the Town and its residents for the Town to sell the Property to Trevor Birdwell pursuant to the  
32 sales contract; and

33  
34 WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town  
35 Council may authorize the sale of Town-owned real property by ordinance.

36  
37 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF  
38 BRECKENRIDGE, COLORADO:

39  
40 Section 1. The sale of the Property to Trevor Birdwell pursuant to the sales contract is  
41 approved.

42  
43 Section 2. The Town Manager is authorized to take all necessary and appropriate action to  
44 close the sale of the Property to Trevor Birdwell. In connection therewith, the Town Manager shall

1 have full power and authority to do and perform all matters and things necessary to the sale of the  
2 Property to Trevor Birdwell, including, but not limited to, the following:

- 3
- 4 1. The making, execution, and acknowledgement of settlement  
5 statements, closing agreements and other usual and customary  
6 closing documents;
- 7
- 8 2. The execution, acknowledgement and delivery to Trevor Birdwell of  
9 the deed of conveyance for the Property; and
- 10
- 11 3. The performance of all other things necessary to the sale of the  
12 Property to Trevor Birdwell.
- 13

14 Section 3. If any person properly exercises the right of first refusal to which the Property is  
15 subject, and such person lawfully becomes the purchaser of the Property, all of the provisions of this  
16 ordinance shall apply to the sale of the Property to such person.

17

18 Section 4. The Town Council hereby finds, determines, and declares that it has the power to  
19 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of  
20 the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

21

22 Section 5. The Town Council finds, determines, and declares that an emergency exists and  
23 that this ordinance is necessary for the immediate preservation of public property, health, welfare,  
24 peace or safety. The approval of this ordinance as an emergency ordinance will allow the Town to  
25 close the sale of the Property described above within the time frame provided for in the sales  
26 contract. The sale could not be closed within the time frame provided for in the sales contract if this  
27 ordinance was not adopted as an emergency ordinance. The Town Council further determines that  
28 the adoption of this ordinance as an emergency ordinance is in the best interest of the citizens of the  
29 Town of Breckenridge.

30

31 Section 6. Pursuant to Section 5.11 of the Breckenridge Town Charter this ordinance shall  
32 take effect and be in full force upon adoption of this ordinance by the affirmative votes of at least  
33 five (5) members of the Town Council.

34

35 Section 7. This ordinance shall be published in full within ten (10) days after adoption, or as  
36 soon thereafter as possible, as required by Section 5.11 of the Breckenridge Town Charter.

37

38 ADOPTED AND APPROVED as an Emergency Ordinance this \_\_\_\_ day of \_\_\_\_\_,  
39 2019.

40



TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:

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

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney



# Memo

**To:** Breckenridge Town Council Members  
**From:** Helen Cospolich, Town Clerk  
**Date:** 12/3/2019  
**Subject:** Town Attorney Appointment Resolution

---

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

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

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

**TIMOTHY H. BERRY, P.C.**

A Professional Corporation  
Attorney At Law

P.O. Box 2  
Leadville, CO 80461

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

Timothy H. Berry

November 6, 2019

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

**RE: Proposed 2020 Legal Services Agreement**

Dear Mayor Mamula and Councilmembers:

My current agreement with the Town expires at the end of 2019. I would like to be considered for reappointment as the Town Attorney for 2020.

Enclosed is a proposed agreement for 2020. There are no substantive changes from last year's agreement.

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

Very truly yours,



Timothy H. Berry

THB

RESOLUTION NO. XX

SERIES 2019

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2020

WHEREAS, the Town of Breckenridge desires to enter into a Town Attorney Agreement with Timothy H. Berry, P.C. for 2020;

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

Section 1. The Town Attorney Agreement with Timothy H. Berry, P.C. for 2020, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, is hereby approved by the Town Council.

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

RESOLUTION ADOPTED AND APPROVED this 10th day of December, 2019.

ATTEST:

TOWN OF BRECKENRIDGE

\_\_\_\_\_  
Helen J. Cospolich, Town Clerk

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

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Date

## TOWN ATTORNEY AGREEMENT

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

### WITNESSETH:

1. The Town does hereby employ and retain the Attorneys as Town Attorney for the period commencing January 1, 2020 and ending December 31, 2020. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.
2. The Attorneys accept such employment and agree to perform the duties required of it as Town Attorney in a competent and professional manner.
3. The Attorneys are hired to, and shall perform, the following duties:
  - A. Act as legal advisor to, and be the attorney and counsel for, the Town Council.
  - B. Advise any Town officer, department head, or staff member in matters relating to his or her duties. To facilitate the performance of this duty, Timothy H. Berry, President of Attorneys, shall be available in the Town Hall offices from 9:00 a.m. to 4:30 p.m. each Tuesday, except on those Tuesdays when Timothy H. Berry is to attend a Town Council or Planning Commission meeting, in which event he shall be available until the conclusion of such meeting.
  - C. Prepare and review ordinances, contracts, and other written instruments when requested by the Town Council, municipal officials, or staff members, and promptly give its opinion as to the legal consequences thereof.
  - D. Call to the attention of the Town Council, Town officials, and staff members all matters of law, and changes and developments therein, which affect the Town.
  - E. Have Timothy H. Berry attend all regular and special meetings of the Town Council, unless his attendance at such meetings is not required.
  - F. Have Timothy H. Berry attend regular and special Town Planning Commission meetings when requested to do so by the Town staff or the Planning Commission.
  - G. Have Timothy H. Berry attend meetings of the Breckenridge Open Space Advisory Commission when requested to do so by the Town staff or the Open Space Advisory Commission.

2020 TOWN ATTORNEY AGREEMENT

- H. Have Timothy H. Berry attend meetings of the Town's Liquor and Marijuana Licensing Authority when requested to do so by the Town staff or the Liquor and Marijuana Licensing Authority.
  - I. Unless otherwise directed by the Town Council, the Attorneys shall represent the Town in any litigation in state or federal courts or before administrative agencies.
4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of \$200.00 per hour for each hour of time, whether litigation or non-litigation, expended by Timothy H. Berry (whether in the Town's offices or the Attorneys' offices). Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with litigation matters including, but not limited to, the cost of subpoenas and witness fees. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorney for such services. The Attorneys shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorneys' monthly statement for services rendered shall be mailed to the Town on or before the fifth day of each month and shall be paid by the Town in the normal course of the Town's business.
  5. Notwithstanding the provisions of Paragraph 4 of this Agreement, legal services performed by the Attorneys for the Town that are to be reimbursed by third parties (such as real estate developers or property owners) shall be billed at the rate of \$220.00 per hour. Such services shall be separately billed and accounted for as directed by the Finance Director of the Town.
  6. The Attorneys shall not bill the Town for travel time to and from Attorneys' Leadville office and Breckenridge. In lieu thereof, the Town shall pay to the Attorneys a mileage allowance of \$0.25 per mile round trip for each regularly scheduled trip made on Town business by Attorneys.
  7. The Attorneys shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$1,000,000.00 yearly aggregate.
  8. The Attorneys shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees.
  9. The Attorneys understands that: (i) Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Attorneys are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorneys are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorneys are not entitled to unemployment

2020 TOWN ATTORNEY AGREEMENT

insurance benefits unless unemployment compensation coverage is provided by Attorneys or some other entity. Attorneys agree to indemnify and hold Town harmless from any liability resulting from Attorneys' failure to pay or withhold state or federal taxes on the compensation paid hereunder.

10. The Attorneys shall devote so much of the firm's time to the business of the Town as may be required to assure proper representation of the Town, but the Attorneys shall not be prevented from taking other employment by reason of this Agreement; provided, however, that the Attorneys shall not enter into other contractual or business relationships, nor undertake to represent a client, when such contract, business relationship, or representation would create a conflict of interest as to Attorneys' continued representation of Town.
11. The Attorneys understand and acknowledge that the firm serves at the pleasure of the Town Council, and that this Agreement may be terminated at any time by the Town Council, without liability to the Attorneys for breach, and without the need for either cause for the termination or a hearing. The Attorneys may also terminate this Agreement, without liability to the Town for breach by giving the Town not less than six (6) months' advance written notice.
12. Throughout the extended term of this Agreement, Attorneys shall not:
  - A. knowingly employ or contract with an illegal alien who will perform work under this Agreement; or
  - B. enter into a contract with a subcontractor that fails to certify to Attorneys that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

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

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

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

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

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

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

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

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

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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



ATTEST:

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

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

By: \_\_\_\_\_  
Timothy H. Berry, President



# Memo

**To:** Breckenridge Town Council Members  
**From:** Helen Cospolich, Town Clerk  
**Date:** 12/4/2019  
**Subject:** Prosecuting Attorney Appointment Resolution

---

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

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

If approved, the term will begin January 1, 2020. Mr. Gregory and staff will be available to answer questions.



FELICE F. HUNTLEY  
ROBERT N. GREGORY  
MEREDITH A. QUINLIVAN\*  
CARIME A. LEE\*\*  
STEPHEN C. WEST  
Retired  
JILL D. BLOCK  
Paralegal

\*Licensed in CO and WY  
\*\*Licensed in CO, FL and NJ

December 3, 2019

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

Re: Breckenridge Municipal Court Prosecutor

Dear Mayor Mamula:

I am writing to express my interest in continuing to serve the Town of Breckenridge as the prosecutor for Breckenridge Municipal Court. My current annual contract with the Town expires on December 31, 2019. I have submitted a proposed contract for year 2020 with this letter. Under the proposed contract, I am requesting a modest increase of \$10 per hour in my hourly rate, which would put my hourly rate at \$135 for year 2020. The proposed rate increase is reasonable and would put the Town of Breckenridge's rate on par with what other comparable mountain communities pay for the same services. The remaining terms of the proposed contract contain no material changes.

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

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

Sincerely,

Robert N. Gregory, Esq.

RESOLUTION NO. XX

SERIES 2019

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH ROBERT GREGORY OF WEST HUNTLEY GREGORY PC FOR 2020

WHEREAS, the Town of Breckenridge desires to enter into a Municipal Court Prosecutor agreement with WEST HUNTLEY GREGORY PC for 2020;

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

Section 1. The Municipal Court Prosecutor agreement for 2020, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, is hereby approved in substantially the form attached as Exhibit "A" by the Town Council.

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

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

RESOLUTION ADOPTED AND APPROVED this 10th day of December, 2019.

ATTEST:

TOWN OF BRECKENRIDGE

\_\_\_\_\_  
Helen J. Cospolich, Town Clerk

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

APPROVED IN FORM

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Date

MUNICIPAL COURT PROSECUTOR AGREEMENT

This Agreement ("Agreement") is made and entered into this 10<sup>th</sup> day of December, 2019, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and WEST HUNTLEY GREGORY P.C., a Colorado professional corporation ("Attorneys").

WITNESSETH:

1. The Town does hereby employ and retain the Attorneys to act as the prosecutor in the Town's Municipal Court ("Prosecutor") for the period commencing January 1, 2020 and ending December 31, 2020. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.

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

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

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

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

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

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

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

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

4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of One Hundred Thirty Five Dollars (\$135.00) per hour for each hour expended by the Attorneys on matters related to the Municipal Court. Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with Municipal Court matters including, but

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

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

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

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

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

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

Municipal Court; (ii) the Attorneys reasonably believe they will be able to provide competent and diligent representation to each affected client; and (iii) the representation is not prohibited by law.

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

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

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

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

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

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

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

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

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

Attorneys shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of

Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Attorneys violate any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section 13, the Town may terminate this Agreement for a breach of the contract. If this Agreement is so terminated, Attorneys shall be liable for actual and consequential damages to the Town.

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

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

ATTEST:

TOWN OF BRECKENRIDGE

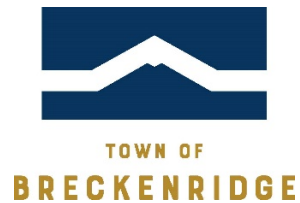
\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Eric Mamula, Mayor

WEST HUNTLEY GREGORY P.C.

\_\_\_\_\_  
By: Robert Gregory, Attorney





# Memo

**To:** Breckenridge Town Council Members  
**From:** Nichole Rex  
**Date:** 12/4/2019 (for December 10<sup>th</sup> meeting)  
**Subject:** *RESOLUTION NO. 28, SERIES 2019 - A Resolution creating a Development Management Agreement for the McCain property.*

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During the November 26<sup>th</sup> work session, Kimball Crangle with Gorman & Company (Developer) provided an update on the progress of the McCain Housing Project. The purpose of the update was to receive initial feedback from council on the project and introduce the Resolution to enter into a Development Management Agreement with Gorman & Company for the development of the McCain Housing Site (Agreement). This memo explains the purpose of the Agreement and summarizes the Agreement terms.

The current project proposal includes 80 apartments on the 4-acre McCain parcel that will be rented at 60% AMI and below. To achieve these low rents, the developer is preparing an application for 9% Low Income Housing Tax Credits (LIHTC) that are awarded each year by the Colorado Housing and Finance Authority (CHFA). One important application requirement is showing that the developer will have site control. To achieve this, the Town intends to enter into a Ground Lease with Gorman & Company. The ground lease will specify that the Town will remain the owner of the land and Gorman & Company will own the site improvements (i.e. buildings). The approval of the Resolution to enter into a Development Management Agreement with Gorman & Company (Exhibit A) is the first step in demonstrating control of the site by Gorman & Company for the LIHTC application submission.

The Agreement outlines important aspects of the deal as we move forward with the project. These items include:

- The Colorado Housing and Finance Authority Restriction and the Use Restriction in Perpetuity.
- The approximate amount of the Town Loan, when the money will be needed from the Town, and when the Town will be paid back.
- Roles and Responsibilities of the Town and the Developer.
- Preliminary Budget for the Project.
- The draft of the Agreement to Ground Lease with the Developer.

As a condition of the LIHTC financing, CHFA places a restriction on the property for 40 years that outlines compliance requirements, rental rate maximums at 60% AMI, and income testing requirements. In addition to CHFA's restriction, the Town will be entering into a Ground Lease with the Developer outlining additional requirements for the use of the property. After the CHFA restriction expires, the terms of the Ground Lease will be in effect in perpetuity. The Ground Lease will require that rents continue to be set at 60% AMI and will have a preference for Summit County workforce. The Ground Lease will be executed by summer of 2020.

The Development Management Agreement defines an approximate loan from the Town of Breckenridge that is estimated to be between \$3,200,000 and \$4,000,000. The loan will be dispersed in different amounts at different time periods throughout the development of the project and will be paid back at either the time of a refinance of the property or after 40 years. The loan will disperse as follows:

Percent of Loan	Time Loan is Dispersed
50%	Start of Construction (April 2021)
25%	50% Project Completion (November 20221)
25%	90% Project Completion (June 2022)

\*This is an estimate based on receiving the 9% LIHTC award in 2020.

Regarding roles and responsibilities for the project, the Developer is responsible for all onsite development work related to the vertical construction, securing financing, and ongoing management of the project. The Town is required to bring all utilities to site and fill the site to bring it into compliance with the FEMA floodplain requirements. While the Town is responsible to pay for and complete the off-site utility and fill work, the Developer has agreed to contract with the Town to manage this work on the Town's behalf to ensure a streamlined approach to the site preparation.

Within the Development Management Agreement are additional exhibits, including a preliminary budget for the project. This is a draft budget and is subject to change. The preliminary budget provides an anticipated project cost of \$26,021,171 based on the current project scope. Another exhibit included in the Development Management Agreement is the Agreement for Ground Lease. The Agreement for Ground Lease details the process and requirements for delivering leasehold possession of the land to the Developer (closing) and ongoing operation and process requirements of the project after closing. The Ground Lease will be executed concurrently with closing.

The information provided in this memo provides a summary of the McCain Housing Project and key deal points in the Development Management Agreement. Staff looks forward to the discussing the Resolution creating a Development Management Agreement for the McCain property Council during the December 10<sup>th</sup> Council Meeting

1 ***FOR WORKSESSION/ADOPTION – DEC. 10***

2  
3 RESOLUTION NO. \_\_\_\_

4  
5 Series 2019

6  
7 A RESOLUTION APPROVING A DEVELOPMENT MANAGEMENT AGREEMENT WITH  
8 GORMAN & COMPANY, LLC, A WISCONSIN LIMITED LIABILITY COMPANY  
9 (McCain Affordable Housing)

10  
11 WHEREAS, the Town is the owner of certain real property located at the northern most  
12 area of Tract A of the McCain Subdivision, in the Town of Breckenridge, County of Summit and  
13 State of Colorado (the “**Property**”); and

14  
15 WHEREAS, the Property is approximately 4 acres in size and is located within the 128  
16 acre Town’s McCain property; and

17  
18 WHEREAS, the Town issued a request for proposals for the delivery of affordable  
19 housing on the Property (the “**McCain RFP**”); and

20  
21 WHEREAS, Gorman & Company, LLC, a Wisconsin limited liability company  
22 (“**Gorman**”), responded to the McCain RFP, and the Town selected Gorman as the “Offeror”  
23 pursuant thereto; and

24  
25 WHEREAS, Gorman is in the business of developing, operating, and managing  
26 affordable and workforce housing developments for low and moderate residents throughout the  
27 State of Colorado and United States; and

28  
29 WHEREAS, the Town and Gorman desire to work together for the purpose of developing  
30 on the Property an approximately 80-unit housing development (the “**Development**”) financed to  
31 focus on “affordable housing,” specifically for residents earning up to 60% of AMI (as defined  
32 below), utilizing public and private financing; and

33  
34 WHEREAS, the Development will implement the McCain RFP; and

35  
36 WHEREAS, a proposed “Development Management Agreement (McCain Affordable  
37 Hosing)” between the Town and Gorman has been prepared., a copy of which is marked **Exhibit**  
38 **“A”**, attached hereto, and incorporated herein by reference; and

39  
40 WHEREAS, the proposed Development Management Agreement sets forth certain  
41 understandings regarding each party’s anticipated roles in connection with the Development of  
42 the Property; and

43  
44 WHEREAS, the Town Council has reviewed the proposed Development Management  
45 Agreement, and finds and determines that is should be approved.  
46

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

3  
4 Section 1. The Development Management Agreement (McCain Affordable Hosing)  
5 between the Town and Gorman & Company, LLC, a Wisconsin limited liability company,  
6 substantially in the form attached as Exhibit "A" to this resolution is approved, and the Town  
7 Manager is authorized to sign such agreement for and on behalf of the Town of Breckenridge.

8  
9 Section 2. Minor changes to or amendments of the approved agreement may be made by  
10 the Town Manager if the Town Attorney certifies in writing that the proposed changes or  
11 amendments do not substantially affect the consideration to be received or paid by the Town  
12 pursuant to the approved agreement, or the essential elements of the approved agreement.

13  
14 Section 3. This resolution is effective upon adoption.

15  
16 RESOLUTION APPROVED AND ADOPTED this \_\_\_ day of \_\_\_, 2019.

17  
18 TOWN OF BRECKENRIDGE

19  
20  
21  
22 By: \_\_\_\_\_  
23 Eric S. Mamula, Mayor

24  
25 ATTEST:

26  
27  
28  
29 \_\_\_\_\_  
30 Helen Cospolich, CMC,  
31 Town Clerk

32  
33 APPROVED IN FORM

34  
35  
36  
37 \_\_\_\_\_  
38 Town Attorney                      Date

1 **EXHIBIT A**

2 **Development Management Agreement**

3  
4 **DEVELOPMENT MANAGEMENT AGREEMENT**  
5 **(McCain Affordable Housing)**

6 This Development Management Agreement (this “Agreement”) is made and entered into  
7 as of this \_\_\_\_ day of December, 2019, by and among the Town of Breckenridge, a body  
8 corporate and politic of the State of Colorado (the “Town”), whose physical address is 150 Ski  
9 Hill Road, Breckenridge, Colorado 80424, and GORMAN & COMPANY, LLC, a Wisconsin  
10 limited liability company (“Gorman”), whose physical address 1060 Bannock Road, Suite 305,  
11 Denver, Colorado 80204. The Town and Gorman are entering into this Agreement based upon  
12 the following:

- 13 A. The Town is a municipal corporation created under Colorado law.
- 14 B. Gorman is in the business of developing, operating, and managing affordable and  
15 workforce housing developments for low and moderate residents throughout the  
16 State of Colorado and United States.
- 17 C. The Town is the owner of certain real property located at the northern most area  
18 of Tract A of the McCain Subdivision, in the Town of Breckenridge, State of  
19 Colorado (the “Property”). The Property is approximately 4 acres and located  
20 within the 128 acre McCain property within the Town of Breckenridge. The  
21 Town issued a request for proposals for the delivery of affordable housing on the  
22 Property (the “McCain RFP”). Gorman responded to the McCain RFP, and the  
23 Town selected Gorman as the “Offeror” pursuant thereto. This Agreement is  
24 intended to outline the significant deal points for Gorman and the Town to  
25 implement the McCain RFP.
- 26 D. The Town and Gorman desire to work together for the purpose of developing on  
27 the Property an approximately 80-unit housing development (the “Development”)   
28 financed to focus on “affordable housing,” specifically for residents earning up to  
29 60% of AMI (as defined below) during the term of the Colorado Housing and  
30 Finance use restriction, utilizing public and private financing.
- 31 E. The Town and Gorman are entering into this Agreement to set forth certain  
32 understandings regarding each party’s anticipated roles in connection with the  
33 Development, which are detailed in this Agreement and depicted on the “roles  
34 and responsibilities” exhibit attached hereto as Exhibit A.

1 F. This is not a Development Agreement pursuant to Title 9 Chapter 9 of the Town  
2 Code.

3 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of  
4 which are hereby acknowledged, the parties agree as follows:

5 1. Ground Lease.

6 a. Generally. The Town and Gorman, or an entity controlled by Gorman (in  
7 either case, the “Ground Lease Tenant”), will enter into a 75-year ground  
8 lease with respect to the Property (the “Ground Lease”). The Ground  
9 Lease Tenant shall pay \$1,000 at the commencement of the Ground Lease  
10 for the term of the Ground Lease. On or about the date hereof, the parties  
11 will enter into an Agreement to Enter Ground Lease in substantially the  
12 form attached hereto as Exhibit B. For avoidance of doubt, the Ground  
13 Lease Tenant may be the “Company” as defined below.

14 b. Subordination. The Town will not agree to subordinate its fee interest to  
15 lenders of the Ground Lease Tenant. However, the Town will reasonably  
16 cooperate with lenders and/or investors of the Ground Lease Tenant to  
17 provide estoppels confirming the validity of the Ground Lease and the  
18 lack of existing defaults. The Town shall reasonably consider requests by  
19 lenders to the Ground Lease Tenant that (i) any use restriction on  
20 affordability may encumber the Town’s fee interest in the Property, as is  
21 expected to be required by the State of Colorado; (ii) any standstill  
22 provision, restricting the Town from evicting the Ground Lease Tenant  
23 during the term of a loan; and (iii) any provision permitting the lenders to  
24 advance additional indebtedness, extend indebtedness terms, and/or  
25 receive payment on existing debt (even during an event of default under  
26 the Ground Lease). In all cases, the Town shall consider subordination  
27 and standstill requests by lenders and shall reasonably cooperate in  
28 negotiating various subordination arrangements; provided, however, the  
29 Town shall not be obligated to enter into any subordination arrangement  
30 that undermines the intended perpetual affordability of the Property.

31 c. Termination for Failure to Obtain Tax Credits. The Town shall be  
32 permitted to terminate the Ground Lease in the event Gorman is unable to  
33 secure an allocation of tax credits with respect to any application cycle  
34 with CHFA (defined below) that opens on or before the two year  
35 anniversary of the date hereof.

36 2. The Town Loan. The Town will lend to the Company (as defined below) an  
37 approximate amount of \$3,200,000 but no more than \$4,000,000 to pay for the Development (the  
38 “Town Loan”). Funds will be available generally as follows: 50% at the time of financial

1 closing/construction commencement of the Development (currently contemplated on or about  
2 April 15, 2021), 25% at 50% completion of the Development (currently contemplated on or  
3 about November 15, 2021), and 25% at 90% completion of the Development (currently  
4 contemplated on or about June 15, 2022). The Town Loan will be repaid via available cash flow,  
5 as more particularly set forth in the Company’s operating agreement, with one final balloon  
6 payment due 40 years from the closing date. The Town Loan is contemplated to accrue interest  
7 at 1% annually, compounding using simple interest.

8           3. The Town Utility and Annexation Obligations.

9                   a. *Wet and Dry Utility Access.* The Town shall cause the Property to have  
10 access to all wet and dry utilities at the Property borders, which shall be  
11 wholly paid for by the Town. Any “laterals” from the Town right of way  
12 shall be paid for by the Company, not by the Town.

13                   b. *Annexation.* The Town has caused the Property to be annexed to the Upper  
14 Blue Sanitation District as of the date hereof.

15                                 *Payment of Fees.* The Town shall have paid for any water tap fees,  
16 service and administration fees to connect water services to the Property.

17                   c. *Subdivision.* The Property is part of a larger development known as the  
18 McCain property. On or before the commencement of the Ground Lease,  
19 the Town shall subdivide the McCain property to create the Property. The  
20 parties shall work together in good faith to determine the exact boundary  
21 of the Property, but in any event the Property shall be at least 4 acres  
22 located in the northern area of the McCain Property, approximately as  
23 depicted on Exhibit C.

24                   d. *Flood zone.* The Town shall cause the Property to be removed from the  
25 FEMA designated flood zone prior to vertical construction.

26                   e. *Permit Issuance.* The Town agrees that it shall issue a grading and utility  
27 permit on or before August 2020, if Gorman causes the Development to  
28 meet the following standards: the documentation submitted for the grading  
29 and utility permit must be approved by the Town Engineer and the  
30 construction staging on the property terminates by August 2020.

31           4. Use Covenant. In consideration of the Town’s willingness to enter into the long-  
32 term Ground Lease, to provide the Town Loan, and to extend the utilities (as set forth above), the  
33 Town is requiring that the Property be encumbered by a perpetual use restriction (the “Use  
34 Restriction”), which is contemplated to require 100% of the units to be set to rents at or below  
35 60% of AMI (the “Unit Mix”) with a preference for households that work a minimum of 30  
36 hours per week for a business located in and serving Summit County. The terms of the perpetual

1 use restriction can only change by mutual agreement by both the Town and Gorman. Subject to  
 2 financial feasibility and lender consent, the Use Restriction will be recorded with respect to the  
 3 Property with priority over all Development-related debt and/or other encumbrances; provided,  
 4 however, the Use Restriction will not be in effect for any period of time during with Colorado  
 5 Finance Housing Authority (or a successor entity) (“CHFA”) is the beneficiary of a use  
 6 restriction with respect to the Property. For so long as CHFA is a beneficiary of a use restriction  
 7 on the Property, the Town may request any documents provided to CHFA with respect to the use  
 8 restriction also be provided to the Town. For purposes hereof, “AMI” means the median annual  
 9 income for Summit County adjusted for household size that is calculated and published annually  
 10 by the United States Department of Housing and Urban Development (“HUD”). During any  
 11 CHFA use restriction, the units will be rented to individuals who comply with the CHFA use  
 12 restriction and at rates that comply with the CHFA use restriction. Thereafter, the units will  
 13 initially be offered at a maximum of an average rental rate set at the respective AMI level for the  
 14 year the units are first offered for rent. Annually thereafter, rents will be the greater of (i) the  
 15 prior year’s rents, or (ii) the revised Summit County AMI as published by HUD for such year.

16 5. Ownership of the Development.

17 a. *Generally.* Gorman shall create a single-purpose entity, which shall be a  
 18 limited liability company (referred to herein as the “Company”), formed for the purpose of  
 19 acquiring, developing, operating, and managing the Development. Gorman, or an affiliate of  
 20 Gorman, shall be the managing member of the Company, and will initially own 100% of the  
 21 Company. Gorman may elect to sell interests in the Company to one or more third party  
 22 investors (the “Investors”) in exchange for equity to assist in the acquisition, development, and  
 23 financing of the Development. The Town of Breckenridge Housing Authority, will own a 0.01%  
 24 interest in the Company on or about the financial closing of the Company, timed to coincide with  
 25 the Investors becoming members of the Company.

26 b. *Sales and Property Tax Exemption.* The Town of Breckenridge Housing  
 27 Authority shall be a member of the Company for purposes (among others) of seeking local and  
 28 state sales tax exemption and local property tax exemption (in full or in part, as applicable),  
 29 pursuant to CRS Sections 29-1-204.5(10), 29-4-226 and 29-4-227. The Company (or the parties  
 30 hereto) shall sign such documents as reasonably required to achieve such exemptions, as  
 31 determined by the Company or its consultants in their reasonable discretion.

32 c. *Model.* Any financial models provided to The Town are acknowledged as  
 33 drafts for the Development (the “Model”). The parties agree that the Model is not a guaranty of  
 34 performance or outcomes and is meant only to estimate one potential set of circumstances; the  
 35 actual results can, and likely will, differ from the Model.

36 6. Entitlement of the Development.

37 a. *Development.* After consultation with the Town, Gorman will propose  
 38 architectural designs, site plans, and other documents required for obtaining approval to



1 construct the Development and will work with a third party engineer to obtain site engineering  
2 and civil engineering (collectively, the “Project Plans”).

3           b. *Predevelopment*. The Town is responsible for the cost of all  
4 predevelopment costs including site grading and bringing utilities to the site. The Town will be  
5 contracting with Gorman to complete the predevelopment site work. A list of the  
6 predevelopment work that is anticipated prior the vertical construction along with a preliminary  
7 budget is attached in Exhibit D. This is a preliminary list and is subject to change.

8           c. *Predevelopment Costs*. Each party shall incur its own predevelopment  
9 costs related to participation in the Development; provided, however, that all predevelopment  
10 costs shall be incurred on behalf of the Company and will be reimbursed on the Closing Date.  
11 The parties agree and acknowledge that if the Development does not attract any Investors and is  
12 not financed, each party may incur significant costs and expenses. However, neither party shall  
13 indemnify the other for any predevelopment costs, unless said party has acted in bad faith to  
14 cause the Development not to happen.

15           d. *Selecting Contractors*. For the avoidance of doubt, Gorman shall be  
16 solely responsible for selecting engineering consultants, accountants, lawyers, lenders, the  
17 Investors, property managers, and appropriate service providers related to the Development,  
18 which may require the approval of the Investors and financing partners. The Town agrees and  
19 acknowledges that Gorman shall select itself or affiliates to act as developer, architect, and  
20 general contractor. The Town further acknowledges that Gorman may select itself to act as  
21 property manager.

22           7. *Financing the Development*. In order to finance the Development, the  
23 Company intends to seek commitments for (i) equity investments from the Investors (the “Equity  
24 Investment”), (ii) construction loan(s) (whether one or more, referred to throughout as the  
25 “Construction Loan”), (iii) subordinate financing(s) from governmental or non-profit sources,  
26 including the Town Loan, and (iv) permanent financing(s) for the Development representing  
27 either a new loan to pay off a portion of the Construction Loan or the conversion of the  
28 Construction Loan to permanent status (whether one or more, referred to throughout as the  
29 “Permanent Loan”). The date on which the Construction Loan closes shall be deemed the  
30 “Closing Date” for purposes of this Agreement. Gorman shall have full control over which  
31 sources to pursue and use. Gorman may not obligate the Town to any financial (or other)  
32 guarantees to lenders or the Investors. Gorman shall provide all financial and performance-  
33 related guarantees required for the Development, including bonds and/or operating deficit  
34 guarantees. Under no circumstances shall the Town or its wholly owned subsidiary be required  
35 to provide capital contributions or guarantees.

36           8. *Managing the Development*. Gorman will cause the Company to enter into a  
37 management agreement for the Development with a property manager (that may be Gorman),  
38 subject to review and approval by the Investors and financing partners. The management  
39 agreement will provide a management fee based on a percentage of rents received.

1 9. Right of First Refusal. Gorman will (through the Company) grant the Town a  
2 recorded right of first refusal to purchase the Development on the terms and conditions set forth  
3 in the Memorandum to Ground Lease. This right of first refusal shall not apply during the tax  
4 credit compliance period (as such phrase is defined in the Section 42 of the Internal Revenue  
5 Code of 1986 as amended from time to time).

6 10. Indemnification. Each party (as applicable from time to time, the “Indemnifying  
7 Party”) shall indemnify, defend and hold the other party (as applicable from time to time, the  
8 “Impaired Party”) harmless from and against any and all claims, damages, losses, liabilities,  
9 costs and expenses (“Claims”) arising from any breach of this Agreement by the Indemnifying  
10 Party, including, but not limited to, any bodily injury, sickness, disease or death, or injury to or  
11 destruction of tangible property that gives rise to a Claim by the Impaired Party and occurs  
12 during the performance of this Agreement and is caused by the Indemnifying Party’s gross  
13 negligence or willful misconduct. Such indemnity shall apply only to Claims to the extent  
14 caused by an act or omission by the Indemnifying Party.

15 11. Termination.

16 a. Other than provisions governed by separate documents and Sections 4, 8-  
17 10 and 12, this Agreement shall terminate upon the commencement of the Financial Closing,  
18 unless previously terminated as permitted pursuant to this Agreement.

19 b. Gorman may terminate this Agreement at any time prior to the  
20 commencement of the Financial Closing, upon written consent from the Town.

21 c. In the event this Agreement is terminated, each party shall bear all of the  
22 costs and expenses it has incurred prior to such termination, subject to the terms set forth below.

23 12. Notices. All notices hereunder shall be in writing and shall be personally  
24 delivered or mailed, registered or certified U.S. mail, return receipt requested, first class postage  
25 prepaid, or delivered by a nationally-recognized overnight delivery service, to the Town at its  
26 address as set forth above or to Gorman at its address as set forth below, or at such other address  
27 of which either party shall notify the other party in accordance with the provisions of this  
28 Agreement.

29 If to Gorman: Gorman & Company, LLC  
30 200 North Main Street  
31 Oregon, Wisconsin 53575  
32 Attn: Kimball Crangle

33 With a copy to: Reinhart Boerner Van Deuren s.c.  
34 1000 North Water Street, Suite 1700  
35 Milwaukee, Wisconsin 53202  
36 Attn: William R. Cummings

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If to The Town:

Town of Breckenridge  
150 Ski Hill Road  
P.O. Box 168  
Breckenridge, Colorado 80424  
Attn: Town Manager

13. Entire Agreement; Counterparts. This Agreement, including the exhibits and recitals, are made a part hereof and constitutes the entire contract between the parties and supersedes all prior agreements and understandings. No change, modification, or waiver of any of the provisions of this Agreement shall be effective or binding upon the parties unless in writing and signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument. Signatures sent via facsimile or e-mail transmission shall be deemed original signatures.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Development Management Agreement as of the date first written above.

GORMAN & COMPANY, LLC

By: \_\_\_\_\_  
Brian Swanton, President

Town of Breckenridge

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

**Exhibit A**  
**Roles and Responsibilities**

<b>Task/Role</b>	<b>Primary Responsibility</b>	<b>Financial Responsibility</b>
<b>PREDEVELOPMENT</b>		
Obtain baseline information on rezoning, site plan, etc. for final development plans	Gorman	Company
Environmental review	Gorman	Company
Final development plan approval	Gorman	Company
Initial designs	Gorman	Company
Entitlements	Gorman	Company
Planning approvals	Gorman	Company
Meetings with constituent groups	Gorman + Town	Company
Engage consultants (market, geotech, etc.)	Gorman	Company
Survey	Gorman	Company
Engineering	Gorman	Company
Secure utilities	Gorman	Company
Preliminary cost estimates	Gorman	Company
Engage design architect	Gorman	Company
Detailed designs (DD, CD, CA)	Gorman	Company
Appraisal	Gorman	Company
Establish ownership structure	Gorman	Company

<b>FINANCING</b>		
Develop project proforma	Gorman	Company
LIHTC application if applicable	Gorman	Company
Secure predevelopment funding	Gorman	Company
Secure construction loan	Gorman	Company
Obtain subordinate funding	Gorman	Company
Provide funding from the Town	Town	Town
Secure permanent loan commitment	Gorman	Company
Secure equity investor(s)	Gorman	Company
Engage legal counsel for the Company	Gorman	Company
Construction loan guaranty	Gorman	Company
Construction completion guaranty	Gorman	Company
Close construction loan	Gorman	Company
Close subordinate loans	Gorman	Company
Obtain Insurance	Gorman	Company
<b>CONSTRUCTION</b>		
Construction bids	Gorman	Company
Negotiate construction contract	Gorman	Company
Obtain building permits	Gorman	Company
Obtain insurance	Gorman	Company
Oversight of architect/contractor (construction management)	Gorman	Company
Prepare construction draws	Gorman	Company
Reporting to lender, investor	Gorman	Company
<b>OPERATIONS</b>		

Initial lease-up	Gorman	Company
Permanent loan conversion	Gorman	Company
Property management	Gorman	Company
Asset management	Gorman	Company
Reporting (investor, lenders, etc.)	Gorman	Company
Operating deficit guaranty	Gorman	Company

**Note: Any predevelopment financial responsibilities incurred by Gorman in advance of the Closing Date shall be reimbursed to Gorman, as applicable, by the Company on the Closing Date.**

1 **Exhibit B**

2 **Agreement to Enter Ground Lease**

3 **AGREEMENT FOR GROUND LEASE**

4 **Article 1: Basic Terms; Title Company; Deposit; Escrow Instructions**

5 **1.1 Basic Terms.**

6 **(a) Parties and Notice Addresses:**

7 Tenant and its notice address:

Gorman & Company, LLC  
200 North Main Street  
Oregon, Wisconsin 53575  
Attn: Kimball Crangle  
Telephone: (303) 887-2707  
E-mail: kcrangle@gormanusa.com

With a copy to its legal counsel:

Moye White LLP  
1400 16<sup>th</sup> Street, 6<sup>th</sup> Floor  
Denver, Colorado 80202-1486  
Attn: Amy H. Ruhl  
Telephone: (303) 292-7937  
E-mail: amy.ruhl@moyewhite.com

Landlord and its notice address:

Town of Breckenridge  
150 Ski Hill Road  
P.O. Box 168  
Breckenridge, Colorado 80424  
Attn: Town Manager  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

8 **(b) Summary of Terms; Definitions.**

Property:

The property located at northeast corner of Tract A of the McCain Subdivision, Breckenridge, Colorado, and described on the attached Exhibit A. Tenant and Landlord agree to amend Exhibit A at such time as the Survey has been completed providing an accurate legal description for the Property.

Deposit:

\$10.00, due 5 business days after the Effective Date.

Effective Date:

The later of the dates of execution of this Agreement by Landlord and Tenant, as shown on the signature page.



Diligence and Feasibility Period: The period beginning on the Effective Date and ending at 11:59 pm (Denver time) on the date that is \_\_\_\_\_, 2020.

Entitlement and Financing Period: The period beginning upon expiration of the Diligence and Feasibility Period and ending at 11:59 pm (Denver time) on the date that is 6 months thereafter.

Closing Date: 60 days after expiration of the Entitlement and Financing Period unless extended by mutual agreement.

Tenant's Brokers: None.

Landlord's Brokers: None.

1 1.2 Title Company.

Fidelity National Title Group  
8055 E. Tufts Ave., Suite 300  
Denver, Colorado 80237  
Attn: Stephen Boyka  
Telephone: 303-692-6784  
E-mail: [sboyka@fnf.com](mailto:sboyka@fnf.com)

2  
3 1.3 Deposit. The Deposit shall be deposited by Tenant with Title Company within 5 business  
4 days after the Effective Date.  
5

6 1.4 Escrow Instructions. Tenant and Landlord (each sometimes referred to herein individually  
7 as a "Party" and collectively as the "Parties") hereby employ Title Company to act as escrow agent  
8 for the transaction contemplated by this Agreement. The terms of this Agreement set forth  
9 instructions to Title Company. THIS AGREEMENT WILL BE USED AS ESCROW  
10 INSTRUCTIONS. Should Title Company require execution of its standard form of printed escrow  
11 instructions, Tenant and Landlord agree to execute same; *provided, however*, such printed escrow  
12 instructions shall be construed as applying only to Title Company's employment and, if there are  
13 conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the  
14 terms of this Agreement shall control.  
15

16 1.5 Project. Pursuant to the terms of this Agreement, the Parties intend to enter into  
17 negotiations with respect to the terms of the Ground Lease (described below) by which Tenant will  
18 lease the Property from Landlord at Closing and construct on the Property an affordable housing  
19 project ("Project") for varying demographic levels with some portions restricted to affordability

1 in accordance with certain financing requirements, including Section 42 of the Internal Revenue  
2 Code regarding LIHTC.

3  
4 **Article 2: Diligence and Feasibility Period/Entitlement and Financing Period**

5 2.1 Property Information. Within 30 days after the Effective Date, Landlord will deliver to  
6 Tenant all documents in its possession or control related to the Property, including, but not limited  
7 to, all surveys, geotechnical reports and environmental reports (collectively, "Landlord  
8 Documents"). Within 30 days after the Effective Date, Landlord shall also cause, at Landlord's  
9 sole cost and expense, the Title Company to deliver to Tenant a leasehold title insurance  
10 commitment ("Title Commitment") from Title Company in an amount reasonably determined by  
11 Tenant, and copies of all documents referenced in the Title Commitment, in the name of Tenant  
12 or its assigns and providing for the deletion of the standard exceptions to title.

13 2.2 Landlord Cooperation. Landlord agrees that timely responses to Tenant requests related to  
14 the draft Ground Lease are necessary to achieve all approvals necessary for the Project. Therefore,  
15 Tenant requests that Landlord engage a representative ("Landlord Representative") within 15 days  
16 after the Effective Date to act on behalf of Landlord with regards to the negotiation of such  
17 documents and to carry out the obligations of Landlord under this Agreement, which Landlord  
18 Representative may change only upon the notice to Tenant. The Parties agree that the Landlord  
19 Representative must have experience in working on housing transactions, preferably involving  
20 LIHTC financing in urban settings.

21 2.3 Diligence and Feasibility Period.

22 (a) *Property Inspection.* During the Diligence and Feasibility Period, Tenant, its  
23 agents, employees and contractors, shall have the right to enter upon the Property at all  
24 reasonable times for the purpose of doing any work or investigation as may be required by  
25 Tenant in its discretion to determine the feasibility of the Property for land entitlements, design  
26 and construction. Tenant will promptly repair and restore any damage or injury to the Property  
27 caused by such investigations and shall not permit any liens or encumbrances to arise against the  
28 Property in connection with or as a result of such inspections, studies or investigations. Tenant  
29 shall indemnify and hold Landlord harmless from any losses, liabilities, costs and expenses  
30 (including reasonable attorneys' fees), arising from Tenant entering upon the Property to test,  
31 study, investigate or inspect the Property, but expressly excluding any losses, liabilities, costs  
32 and expenses arising as a result of Landlord's gross negligence or willful misconduct, which  
33 obligations shall survive termination of this Agreement for any reason. Notwithstanding anything  
34 set forth in this Agreement to the contrary, the indemnification obligations of Tenant in this  
35 paragraph shall not apply to the mere discovery of an existing condition on the Property.

36 The foregoing inspections may include a Phase 1 environmental inspection of the  
37 Property (but a Phase 2 environmental inspection will not be permitted without the Landlord's  
38 prior written consent), and any other inspection or sampling of soils, water, air and other materials,  
39 including invasive inspections such as asbestos and lead based paint inspections.  
40

1 (b) *Landlord Document Review.* During the Diligence and Feasibility Period, Tenant  
2 shall have the right to review the Landlord Documents, at no third-party cost to Landlord. The  
3 Landlord Documents shall remain confidential, other than Tenant’s right to disclose the same to  
4 its attorneys, accountants, agents, lenders, and employees.

5  
6 (c) *Survey.* During the Diligence and Feasibility Period, Tenant, at Tenant’s sole cost  
7 and expense, may obtain a new survey of the Property (“Survey”), at no cost to Landlord.

8  
9  
10 (d) *Ground Lease.* During the Diligence and Feasibility Period, Tenant and Landlord  
11 shall negotiate in their respective sole discretion, and of which shall be approved by the Town of  
12 Breckenridge Town Council, the initial terms of a ground lease by which Tenant will lease the  
13 Property from Landlord (“Ground Lease”). During the Diligence and Feasibility Period, the  
14 Parties shall also negotiate a form of “Memorandum of Ground Lease” to be recorded against the  
15 Property at Closing. At a minimum, the Ground Lease shall contain the following terms:

16  
17 (i) The term of the Ground Lease shall be for a term of 75 years with a Tenant  
18 option for an additional 75 year period.

19  
20 (ii) The total consideration for the initial term of the Ground Lease shall be  
21 \$1,000.00.

22  
23 (iii) The Ground Lease will not be subordinated to Tenant’s construction  
24 financing and permanent financing.

25  
26 (iv) In the event that Landlord decides to sell the Property (or any portion  
27 thereof), then Tenant shall have a first right of refusal to purchase such property interests; the first  
28 right of refusal shall be recorded against the land by way of a Memorandum the form of which  
29 may be attached to the Ground Lease and recorded upon execution of the Ground Lease.

30  
31 (e) *Termination.* Tenant has the right at any time before expiration of the Diligence  
32 and Feasibility Period to terminate this Agreement, for any reason or no reason at all, in which  
33 event the Deposit shall be promptly returned to Tenant without Title Company requiring the  
34 consent of Landlord. If Tenant does not terminate this Agreement by written notice to Landlord  
35 and Title Company delivered no later than the expiration of the Diligence and Feasibility Period,  
36 then Tenant shall be deemed to have waived its right to terminate this Agreement pursuant to this  
37 paragraph. Notwithstanding the foregoing, in the event that the Parties have not come to written  
38 agreement on form of the Ground Lease before the expiration of the Diligence and Feasibility  
39 Period, this Agreement shall automatically terminate in which event the Deposit shall be  
40 promptly returned to Tenant.

41  
42 2.4 Entitlement and Financing Period.

43  
44 (a) *Site Plan Approval.* During the Entitlement and Financing Period, Tenant shall use  
45 commercially reasonable efforts to obtain a non-appealable site development plan and building

1 permits for the Project acceptable to Tenant and Landlord in their respective sole discretion  
2 (“Approvals”). Landlord agrees, at no cost to Landlord, to cooperate and work diligently with  
3 Tenant in obtaining the Approvals (including executing and recording all documentation necessary  
4 for Tenant to obtain the Approvals), including, but not limited to, any required design review,  
5 neighborhood communication and Town of Breckenridge staff review. Notwithstanding anything  
6 to the contrary herein, Tenant or Landlord will not, from the Effective Date until termination of  
7 this Agreement or Closing, whichever occurs first, alter the zoning or any land use permit  
8 authorization or designation that would interfere with the Tenant’s development of the Property.  
9

10 (b) *Financing.* During the Entitlement and Financing Period, Tenant shall use its best  
11 efforts to secure construction financing and permanent financing along with an award of low  
12 income housing tax credits under Section 42 of the Code (“Tax Credits”) and other financing for  
13 the payments due under the Ground Lease and for the design and construction of the Property on  
14 terms acceptable to Tenant (“Financing/Tax Credits”).  
15

16 (c) *Termination.* In the event that Tenant has not yet received an award of Tax Credits  
17 and acceptable terms and conditions for the syndication of the Tax Credits by March 1, 2022, either  
18 Party may, at either Party’s option, terminate this Agreement at any time after such date but before  
19 the expiration of the Entitlement and Financing Period for any reason. In the event of a termination  
20 of the Agreement by Tenant pursuant to this Section 2.4(c) the Deposit shall be promptly returned  
21 to Tenant.  
22

### 23 **Article 3: Operations and Risk of Loss**

24 3.1 Ongoing Operations. During the pendency of this Agreement, Landlord shall carry on its  
25 business and activities relating to the Property substantially in the same manner as it did before the  
26 Effective Date, except as otherwise provided herein.

27 3.2 New Contracts. During the pendency of this Agreement, Landlord will not enter into any  
28 contract that will be an obligation affecting the Property subsequent to Closing without the prior  
29 written consent of Tenant.

30 3.3 Termination of Contracts. Not later than Closing, Landlord shall terminate all contracts  
31 relating to the Property and any charges or costs due or arising thereunder shall be paid by Landlord  
32 in full by Closing.

33 3.4 Damage or Condemnation. Risk of loss resulting from any condemnation or eminent  
34 domain proceeding which is commenced or has been threatened before Closing, and risk of loss  
35 to the Property due to fire, flood or any other cause before Closing, shall remain with Landlord. If  
36 before Closing the Property or any portion thereof shall be Materially Damaged (as defined below),  
37 or if the Property or any material portion thereof shall be subjected to a threat of condemnation or  
38 shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to  
39 the taking by eminent domain or condemnation, then either Party may terminate this Agreement  
40 by written notice given within 5 days after the Party learns of the damage or threat of  
41 condemnation, in which event the Deposit shall be returned to Tenant. If Closing is within the  
42 aforesaid 5-day period, then Closing shall be extended to the next business day following the end

1 of said 5-day period. If no such termination election is made this Agreement shall remain in full  
2 force and effect and the transaction contemplated herein, less any interest taken by eminent domain  
3 or condemnation, shall be effected with no further adjustment, and upon Closing, Landlord shall  
4 assign, transfer and set over to Tenant all of the right, title and interest of Landlord in and to any  
5 awards that have been or that may thereafter be made for such taking, and Landlord shall assign,  
6 transfer and set over to Tenant any insurance proceeds that may thereafter be made for such  
7 damage or destruction giving Tenant a credit at Closing for any deductible under such policies.  
8 For the purposes of this section, the phrases “Material Damage” and “Materially Damaged” means  
9 damage reasonably exceeding 50% of the Building.

#### 10 **Article 4:Closing**

11 4.1 Closing. The consummation of the transactions contemplated herein (“Closing”) shall  
12 occur on the Closing Date at the offices of Title Company. Notwithstanding the foregoing, Tenant  
13 may elect to close at any time upon 10 days prior written notice to Landlord.

14 4.2 Deliveries in Escrow. On or before the Closing Date, Landlord and Tenant shall each  
15 deliver into escrow to Title Company the following:

16 (a) Ground Lease. A fully executed Ground Lease (and Memorandum of Ground  
17 Lease) in the form agreed to by the Parties prior to the expiration of the Diligence and Feasibility  
18 Period; and

19 (b) Additional Documents. Any additional documents that Title Company or a Party  
20 may reasonably require for the proper consummation of the transaction contemplated by this  
21 Agreement.

22 4.3 Closing Statements. At Closing, Landlord and Tenant shall deposit with Title Company  
23 executed closing statements consistent with this Agreement in the form required by Title  
24 Company.

25 4.4 Title Policy. As a condition to Tenant’s obligation to close, Title Company shall deliver  
26 to Tenant at Closing an Leasehold Policy of Title Insurance, or a binding commitment to issue  
27 same (“Title Policy”), issued by Title Company as of the date and time of the execution of the  
28 Ground Lease, in an amount reasonably determined by Tenant, insuring Tenant as the holder of a  
29 good and marketable leasehold interest in the Property, subject only to the Permitted Exceptions.  
30 Landlord shall execute at Closing an affidavit(s) in such form as Title Company shall require for  
31 the issuance of the Title Policy. The term “Permitted Exceptions” shall mean: the specific  
32 exceptions (exceptions that are not part of the promulgated title insurance form) in the Title  
33 Commitment that Title Company has not agreed to insure over or remove from the Title  
34 Commitment as of the end of the Diligence and Feasibility Period; items shown on the Survey  
35 which have not been removed as of the end of the Diligence and Feasibility Period; and real estate  
36 taxes and assessments not due and payable as of the Closing Date. Notwithstanding the foregoing,  
37 Landlord shall remove all monetary liens affecting the Property as of Closing (except those caused  
38 by Tenant).

1 In the event that Title Company revises the Title Commitment after the expiration of the  
2 Diligence and Feasibility Period to add or modify exceptions to title insurance that are not  
3 caused by Tenant and such additions/modifications are not removed by Closing then Landlord  
4 shall be in default hereunder and Tenant shall be entitled to its remedies under Section 7.2 below.

5 4.5 Possession. Landlord shall deliver leasehold possession of the Property to Tenant at  
6 Closing.

7 4.6 Costs. Each Party shall pay its portion of the following costs as indicated below.

<b><u>Type of Cost:</u></b>	<b><u>Paid by:</u></b>
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**Title Policy Premiums:**

For Tenant's extended coverage:	Tenant
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For Lender's policy, if any:	Tenant
------------------------------	--------

Documentary, transfer, excise and sales taxes and similar fees	Tenant
--	--------

**Recording charges:**

Instruments to remove encumbrances that Landlord is obligated to remove:	Landlord
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Memorandum of Ground Lease and instruments related to Tenant's financing:	Tenant
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**Other Costs:**

Title Company fee:	Tenant
--------------------	--------

Other costs not specified:	Tenant
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8 4.7 Memorandum of Ground Lease. Title Company shall record the Memorandum of Ground  
9 Lease with the Summit County Clerk and Recorder at Closing in a form and substance acceptable  
10 to Landlord and Tenant.

11 4.8 Land Use Restriction Agreement. Landlord and Tenant acknowledge that Colorado  
12 Housing Finance Authority will encumber the Property with a land use restriction agreement,  
13 ensuring the Property will be operated as affordable housing. Landlord acknowledges that this  
14 document will be recorded against Landlord's fee simple interest in the Property and will bind  
15 Landlord even after a termination of the Ground Lease. As part of that document, in the event the  
16 land use restriction agreement is terminated due to foreclosure or deed-in-lieu of foreclosure,  
17 residential tenants may not be evicted from a low-income housing tax credit unit or terminating  
18 their tenancy within the lease term other than for "good cause"; and residential tenants' gross rent

1 cannot be raised other than in conformity with Section 42 of the Internal Revenue Code of 1986  
2 as amended from time to time.

3

4

#### **Article 5: Prorations**

5 5.1 Prorations. Prorations related to taxes and assessments, income and expenses, utilities and  
6 other typical prorations in the Summit County Colorado and the Town of Breckenridge shall be  
7 addressed in the Ground Lease.

8 5.2 Commissions. Landlord and Tenant represent and warrant each to the other that they have  
9 not dealt with any real estate broker, sales person or finder in connection with this transaction. If  
10 any claim is made for broker's or finder's fees or commissions in connection with the negotiation,  
11 execution or consummation of this Agreement or the transactions contemplated hereby, each Party  
12 shall defend, indemnify and hold harmless the other party from and against any such claim based  
13 upon any statement, representation or agreement of such Party.

14

#### **Article 6: Representations and Warranties**

15 6.1 Landlord's Representations and Warranties. As a material inducement to Tenant to execute  
16 this Agreement and consummate this transaction, Landlord represents and warrants to Tenant as  
17 of the Effective Date, during this Agreement and as of the Closing Date that ("Landlord's  
18 Warranties"):

19 (a) Organization and Authority. Landlord is a validly existing Colorado municipal  
20 corporation and is in good standing and/or qualified to do business in Colorado. Landlord has the  
21 full right and authority and has obtained any and all consents required to enter into this Agreement  
22 and to consummate or cause to be consummated the transactions contemplated hereby. This  
23 Agreement has been, and all of the documents to be delivered by Landlord at Closing will be,  
24 authorized and properly executed and constitute, or will constitute, as appropriate, the valid and  
25 binding obligation of Landlord, enforceable in accordance with their terms.

26 The Landlord Representative executing this Agreement has the authority to bind  
27 Landlord, and Tenant shall be permitted to rely upon all notices, approvals and statements made  
28 by Landlord Representative in connection with this transaction. Notice by Tenant to Landlord  
29 Representative shall be deemed complete and sufficient notice to Landlord for all purposes  
30 hereunder.

31 (b) Conflicts and Pending Action. Based on Landlord's current actual knowledge,  
32 there is no agreement to which Landlord is a party or to Landlord's knowledge binding on Landlord  
33 which is in conflict with this Agreement. There is no action or proceeding pending or, to  
34 Landlord's knowledge, threatened against the Property or against Landlord which challenges or  
35 impairs Landlord's ability to execute or perform its obligations under this Agreement.

36 (c) Property Information. Landlord makes no representation regarding the accuracy or  
37 completeness of any materials prepared by third parties.

1 (d) Condemnation. Landlord has received no written notice of any pending  
2 condemnation proceedings affecting the Property.

3 (e) Hazardous Materials. Except as otherwise disclosed to Tenant and to Landlord's  
4 current actual knowledge, Landlord has received no notice that the Property is in violation of any  
5 Environmental Law and Landlord has not discharged or permitted the storage on the Property of  
6 any Hazardous Materials. "Environmental Laws" means the Comprehensive Environmental  
7 Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.),  
8 the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean  
9 Water Act (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 300f  
10 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) and the  
11 Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.) or any other federal, state, local or  
12 administrative agency ordinance, law, rule, regulation, order or requirement relating to  
13 environmental conditions or Hazardous Material. "Hazardous Material" means any substance,  
14 chemical, waste or other material which is listed, defined or otherwise identified as "hazardous"  
15 or "toxic" under any federal, state, local or administrative agency ordinance or law, including,  
16 without limitation, the Comprehensive Environmental Response, Compensation and Liability Act,  
17 42 U.S.C. §§ 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901  
18 et seq., or any regulation, order, rule or requirement adopted thereunder, as well as any  
19 formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude  
20 oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture  
21 thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in  
22 the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.

23 (f) Government Approvals. To Landlord's current actual knowledge, Landlord has  
24 not received written notice from any governmental entity of any governmental policy or action  
25 precluding (i) issuance of demolition, grading or building permits with respect to the Property;  
26 (ii) approval of engineering plans, environmental impact reports, or preliminary or final plat maps  
27 with respect to the Property; (iii) issuance of certificates of occupancy for new improvements on  
28 the Property; or (iv) issuance of water, sewer, or other utility connection permits affecting the  
29 development of the Property.

30 (g) Exclusivity. During the pendency of this Agreement, neither Landlord nor any  
31 agent or consultant of Landlord shall market, negotiate, investigate, contact, or discuss a possible  
32 sale, lease or option of the Property or any development concepts or proposals relating to the  
33 Property with any person other than Tenant.

34 (h) No New Encumbrances. After the Effective Date, Landlord will not cause or  
35 consent to the Property becoming further encumbered or clouded by any "New Encumbrances."  
36 For purposes of this Agreement, "New Encumbrances" shall mean any encumbrances or  
37 exceptions of record not disclosed in the Title Commitment and not fully removed, discharged or  
38 insured over by the Title Policy on or prior to the Closing; provided, however, "New  
39 Encumbrances" shall expressly exclude any matters created by or arising from an act of Tenant,  
40 and any encumbrances consented to in writing by Tenant. "New Encumbrances" shall also mean  
41 any extension of a lease currently affecting the Property or any new lease affecting the Property.



1 6.2 Tenant's Representations and Warranties. As a material inducement to Landlord to execute  
2 this Agreement and consummate this transaction, Tenant represents and warrants to Landlord as  
3 of the Effective Date, during this Agreement and as of the Closing Date that ("Tenant's  
4 Warranties");

5 (a) Organization and Authority. Tenant has been duly organized and is validly existing  
6 as a Wisconsin limited liability company that is qualified to transact business in the State of  
7 Colorado. Tenant has the full right and authority and has obtained any and all consents required  
8 to enter into this Agreement and to consummate or cause to be consummated the transactions  
9 contemplated hereby. This Agreement has been, and all of the documents to be delivered by  
10 Tenant at Closing will be, authorized and properly executed and constitute, or will constitute, as  
11 appropriate, the valid and binding obligation of Tenant, enforceable in accordance with their terms.

12 (b) Conflicts and Pending Action. There is no agreement to which Tenant is a party or  
13 to Tenant's knowledge binding on Tenant which is in conflict with this Agreement. There is no  
14 action or proceeding pending or, to Tenant's knowledge, threatened against Tenant which  
15 challenges or impairs Tenant's ability to execute or perform its obligations under this Agreement.

16 The term "Tenant's knowledge" means the knowledge of Kimball Crangle.

17 6.3 Indemnity. Each party shall reimburse and indemnify the other party from and against any  
18 and all claims, costs, losses and liabilities (including reasonable attorneys' fees) associated with  
19 the breach and failure to cure, as provided below, by such party of a representation or warranty  
20 made by such party in this Article 6.

21 6.4 Limitations on Warranties.

22 (a) Limitations Period. Each party's liability for its "Warranties" above (i.e.,  
23 Landlord's Warranties as to Landlord and Tenant's Warranties as to Tenant) shall terminate 1 year  
24 after Closing ("Survival Period") such that a party ("Claiming Party") must give the other party  
25 ("Liable Party") written notice of any claim the Claiming Party may have for a breach of the Liable  
26 Party's Warranties prior to the expiration of the Survival Period (any such claim that is not so  
27 asserted prior to the expiration of the Survival Period shall not be valid or effective, and the Liable  
28 Party shall not have liability with respect thereto). The Claiming Party shall provide actual written  
29 notice to the Liable Party prior to the expiration of the Survival Period of any alleged breach of  
30 the Liable Party's Warranties and shall allow the Liable Party 30 days within which to cure such  
31 breach. If within the Survival Period the Claiming Party gives the Liable Party written notice of  
32 such a breach and the Liable Party notifies the Claiming Party in writing of the Liable Party's  
33 commencement of a cure, commences to cure and thereafter fails to complete such cure to the  
34 reasonable satisfaction of the Claiming Party, then the Claiming Party shall have an additional  
35 thirty days in which to commence an action at law for damages as a consequence of the Liable  
36 Party's failure to cure, notwithstanding the fact that the Survival Period may have expired.

37 (b) Dissolution. During the Survival Period, neither Landlord nor Tenant shall dissolve  
38 or terminate its legal existence.

1 6.5 Release. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET  
2 FORTH IN LANDLORD’S WARRANTIES AND THE WARRANTIES AND  
3 COVENANTS CONTAINED IN ANY DOCUMENTS EXECUTED BY LANDLORD AT  
4 CLOSING, TENANT IS ACQUIRING ITS LEASEHOLD INTEREST IN THE  
5 PROPERTY IN ITS “AS IS” “WHERE IS,” CONDITION, “WITH ALL FAULTS,” AND  
6 WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED AND, EXCEPT AS  
7 OTHERWISE PROVIDED HEREIN, TENANT IS NOT RELYING ON ANY  
8 STATEMENTS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED,  
9 MADE BY OR ENFORCEABLE DIRECTLY AGAINST LANDLORD, INCLUDING,  
10 WITHOUT LIMITATION, ANY RELATING TO THE VALUE OF THE PROPERTY,  
11 HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,  
12 TITLE (OTHER THAN AS SET FORTH IN THE GROUND LEASE), BUILDING CODE  
13 REQUIREMENTS, THE PHYSICAL CONDITIONS OF THE PROPERTY, THE  
14 SUFFICIENCY OF ANY DRAINAGE, WHETHER THE PROPERTY IS LOCATED  
15 WHOLLY OR PARTIALLY IN ANY FLOOD PLAIN OR FLOOD HAZARD BOUNDARY  
16 OR SIMILAR AREA, THE EXISTENCE OR NON EXISTENCE OF UNDERGROUND  
17 STORAGE TANKS, ANY OTHER MATTER AFFECTING THE STABILITY OR  
18 INTEGRITY OF THE LAND, THE SUITABILITY OF THE PROPERTY FOR ANY  
19 INTENDED USE, THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE  
20 PROPERTY, OR THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING  
21 ENTITLEMENTS AFFECTING THE PROPERTY, OR ANY OTHER MATTER OR  
22 THING WHATSOEVER REGARDING THE PROPERTY OR ANY OTHER  
23 ATTRIBUTE OR MATTER OF OR RELATING TO THE PROPERTY. TENANT  
24 REPRESENTS THAT AS OF THE DATE HEREOF AND AS OF THE CLOSING DATE,  
25 IT HAS BEEN PROVIDED WITH AN OPPORTUNITY TO REVIEW AND CONDUCT  
26 SUCH INDEPENDENT ANALYSES, STUDIES, REPORTS, INVESTIGATIONS AND  
27 INSPECTIONS AS IT DEEMS APPROPRIATE IN CONNECTION WITH THE  
28 PROPERTY.

29 **Article 7: Default and Damages**

30 7.1 Default by Tenant. If Tenant defaults in its obligation to close hereunder, or Tenant  
31 otherwise defaults in the performance of any other material obligation of Tenant under this  
32 Agreement and fails to cure such other default within 5 business days following written notice  
33 thereof, then so long as Landlord is not in default hereunder, Landlord shall have the right to  
34 terminate this Agreement and to have Title Company deliver the Deposit to Landlord as liquidated  
35 damages to recompense Landlord for time spent, labor and services performed, and the loss of its  
36 bargain,. Tenant and Landlord agree that it would be impracticable or extremely difficult to affix  
37 damages if Tenant so defaults and that the Deposit represents a reasonable estimate of Landlord’s  
38 damages. Landlord agrees to accept such Deposit as Landlord’s sole and exclusive remedy for a  
39 Tenant default hereunder, Landlord waiving all other rights and remedies.

40 7.2 Default by Landlord. If Landlord defaults in its obligation to sell and convey the Property  
41 to Tenant pursuant to this Agreement, or Landlord otherwise defaults in the performance of any  
42 other material obligation of Landlord under this Agreement and fails to cure such other default  
43 within 5 business days following written notice thereof, Tenant’s remedy shall be to elect one of

1 the following: (a) to terminate this Agreement, in which event Tenant shall be entitled to the return  
2 of the Deposit, together with the interest thereon, and Landlord shall pay to Tenant all documented  
3 reasonable out-of-pocket costs and expenses incurred by Tenant relating to work undertaken by  
4 Tenant's third-party consultants, attorneys' (except in connection with negotiating this Agreement,  
5 any amendments hereto or agreements between Tenant and Landlord in connection herewith),  
6 design professionals, engineers and contractors in connection with the Property up to \$10,000, or  
7 (b) to bring a suit for specific performance and damages to enforce the terms of this Agreement.

8 This Article 7 does not limit or otherwise affect the indemnity obligations of the parties set forth  
9 in Article 6 above.

## 10 Article 8: Miscellaneous

11

12 8.1 Assignment. Tenant shall be permitted to assign this Agreement, the Deposit, and the  
13 rights of "Tenant" in connection therewith at any time prior to, or on, the Closing Date to (a) an  
14 entity owned and controlled by Tenant for purposes of admitting an investment limited partner (or  
15 investment member) as part of the equity generated from low income housing tax credits under  
16 Section 42 of the Internal Revenue Code, or (b) a Tenant Affiliate, without the prior written consent  
17 of Landlord, provided that such assignee also assumes all of Tenant's obligations under this  
18 Agreement. Tenant's Affiliate" means (i) any entity that directly or indirectly controls, is  
19 controlled by or is under common control with Tenant or one or more of its principals, (ii) any  
20 entity at least a majority of whose economic interest is owned by Tenant or by one or more of its  
21 principals, or (iii) any tax credit partnership entity in which Tenant is a partner and/or manager.  
22 The term "control" means the power to direct the management of such entity through voting rights,  
23 ownership or contractual obligations. Except for the assignments permitted above, neither Party  
24 may assign this Agreement without the prior written consent of the other, and any such prohibited  
25 assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure  
26 to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the  
27 Parties.

28  
29 In the event of a permitted assignment by Tenant hereunder, prior to Closing such new  
30 "Tenant" shall provide reasonable evidence to Landlord of its construction financing allowing it  
31 to complete construction the Project.

32  
33 8.2 Headings. The article and section headings of this Agreement are for convenience only  
34 and in no way limit or enlarge the scope or meaning of the language hereof.

35 8.3 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then  
36 so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and  
37 operative, and effect shall be given to the intent manifested by the portion held invalid or  
38 inoperative. The failure by either party to enforce against the other any term or provision of this  
39 Agreement shall not be deemed to be a waiver of such party's right to enforce against the other  
40 party the same or any other such term or provision in the future.

1 8.4 Governing Law. This Agreement shall, in all respects, be governed, construed, applied,  
2 and enforced in accordance with the law of the State of Colorado.

3 8.5 No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits,  
4 rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary  
5 or otherwise.

6 8.6 Entirety and Amendments. This Agreement embodies the entire agreement between the  
7 parties and supersedes all prior agreements and understandings (including any letter of intent)  
8 relating to the Property. This Agreement may be amended or supplemented only by an instrument  
9 in writing executed by the parties.

10 8.7 Time. Time is of the essence in the performance of this Agreement.

11 8.8 Attorneys' Fees. It is understood and agreed that in the event that either party deems it  
12 necessary to take legal action to enforce or defend any part of this Agreement, the prevailing party  
13 shall be awarded reasonable attorneys' fees and other costs incurred in such action or proceeding,  
14 in addition to any other relief to which such party may be entitled, whether or not such controversy  
15 or claim is litigated and prosecuted to judgment.

16 8.9 Notices and Deliveries. All notices required or permitted hereunder shall be in writing and  
17 shall be served on the parties at the addresses set forth in Section 1.1 above. Any such notices  
18 shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in  
19 which case notice shall be deemed delivered one business day after deposit with such courier, (b)  
20 sent by email, in which case notice shall be deemed delivered upon receipt of confirmation  
21 transmission of such email notice, or (c) sent by personal delivery, in which case notice shall be  
22 deemed delivered upon receipt. A party's address may be changed by written notice to the other  
23 party; *provided, however*, that no notice of a change of address shall be effective until actual receipt  
24 of such notice. Copies of notices are for informational purposes only, and a failure to give or  
25 receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel  
26 to the Tenant shall be deemed given by Tenant, notices given by counsel to the Landlord shall be  
27 deemed given by Landlord, and notices given to a party's counsel shall be deemed given to the  
28 party.

29 8.10 Construction. The parties acknowledge that the parties and their counsel have reviewed  
30 and revised this Agreement and that the normal rule of construction – to the effect that any  
31 ambiguities are to be resolved against the drafting party – shall not be employed in the  
32 interpretation of this Agreement or any exhibits or amendments hereto.

33 8.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time  
34 described herein, the day of the act or event after which the designated period of time begins to  
35 run is not to be included and the last day of the period so computed is to be included, unless such  
36 last day is a Saturday, Sunday or legal holiday for national banks in Colorado, in which event the  
37 period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

1 8.12 Execution in Counterparts. This Agreement may be executed in any number of  
2 counterparts, each of which shall be deemed to be an original, and all of such counterparts shall  
3 constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and  
4 exchange facsimile counterparts of the signature pages.

5 8.13 WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE ANY RIGHT TO  
6 TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO  
7 THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

8 8.14 Confirmation. Within ten days of the request of either Party, the Parties will execute a  
9 document confirming (a) the Effective Date, (b) the expiration dates for the Diligence and  
10 Feasibility Period and the Entitlement and Financing Period, (c) the date of delivery of any  
11 documents hereunder, (d) the Closing Date, and (e) any other relevant dates under this Agreement,  
12 in which event that document will be deemed to be an amendment to this Agreement.

13

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall have an Effective Date as of the later of the dates of the execution below by Tenant and Landlord.

GORMAN & COMPANY, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Brian Swanton, President

Town of Breckenridge

Date: \_\_\_\_\_

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

Title Company has executed this Agreement in order to confirm that the Title Company has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

**Commonwealth Land Title Insurance Company  
a/k/a Heritage Title Company:**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**

(Property)

**EXHIBIT A  
McCain HOUSING PARCEL**

A PARCEL OF LAND BEING A PORTION OF TRACT A, OF THE Mc CAIN SUBDIVISION. A SUBDIVISION AS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER FOR SUMMIT COUNTY AT RECEPTION No. 1200093. SAID PARCEL BEING LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE 6th P. M., AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT A, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THE MILLER SUBDIVISION AND LOCATED ON THE WESTERLY RIGHT OF WAY LINE OF STAN MILLER DRIVE.

THENCE; CONTINUING ALONG SAID WEST RIGHT OF WAY FOR THE FOLLOWING 3 COURSES:

1) ALONG SAID WESTERLY RIGHT OF WAY, 130.49 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 154.98 FEET AND A CHORD WHICH BEARS S32°43'11"W, A DISTANCE OF 126.67 FEET.

2) S56°50'22"W, A DISTANCE OF 37.36 FEET.

3) 302.90 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 215.00 FEET AND A CHORD WHICH BEARS S16°28'47"W, A DISTANCE OF 278.46 FEET.

THENCE; DEPARTING SAID WESTERLY RIGHT OF WAY, FOR THE FOLLOWING 4 COURSES:

1) S89°28'33"W, A DISTANCE OF 507.47 FEET.

2) N08°58'49"E, A DISTANCE OF 167.72 FEET.

3) N02°24'25"E, A DISTANCE OF 204.07 FEET.

4) N87°26'25"E, A DISTANCE OF 652.08 FEET TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 201,529 SQUARE FEET, OR 4.6265 ACRES, MORE OR LESS.

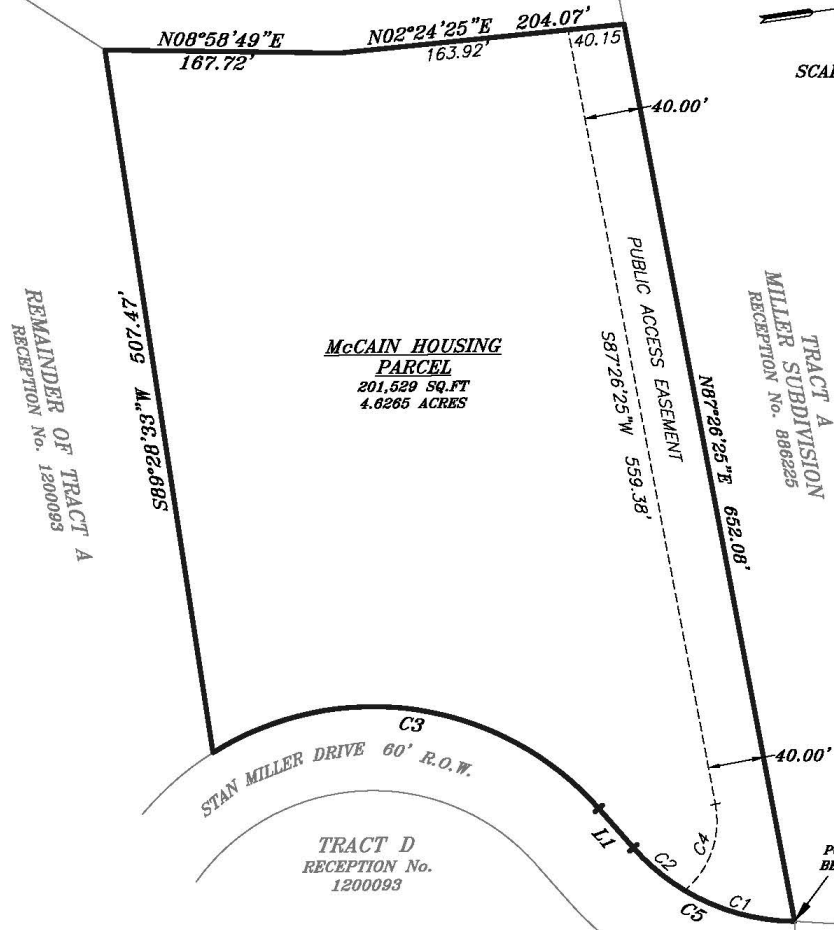
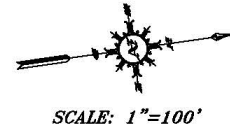
Baseline Surveys LLC  
P.O. Box 7578  
Breckenridge, CO 80424  
970-453-7155  
P:\4000\4000 McCain Housing Parcel\4000 exhibit a.docx  
11/08/2019

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**EXHIBIT B  
McCAIN HOUSING PARCEL  
TOWN OF BRECKENRIDGE  
SUMMIT COUNTY, COLORADO**

REMAINDER OF TRACT C  
RECEPTION No. 1200093



CURVE	RADIUS	ARC	CHORD	CHORD BEARING
C1	154.98'	82.53'	81.55'	S23°51'13"W
C2	154.98'	47.96'	47.77'	S47°58'30"W
C3	215.00'	302.90'	278.46'	S16°28'47"W
C4	64.69'	68.54'	65.36'	S62°12'18"E
C5	154.98'	130.49'	126.67'	S32°43'11"W

LINE	BEARING	DISTANCE
L1	S56°50'22"W	37.36'

**BASELINE SURVEYS, LLC**  
P.O. BOX 7578 BRECKENRIDGE COLO. 80424

SCALE: 1"=200'	DATE: 11/20/19	JOB NO. 4000
DRAWN BY: R.D.G.	CHECKED BY: D.E.O.	DRAWING NO. 4000 DEV #1

## Exhibit C

### Depiction of the Property within the McCain Property

#### EXHIBIT A

#### McCain HOUSING PARCEL

A PARCEL OF LAND BEING A PORTION OF TRACT A, OF THE Mc CAIN SUBDIVISION. A SUBDIVISION AS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER FOR SUMMIT COUNTY AT RECEPTION No. 1200093. SAID PARCEL BEING LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE 6th P. M., AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT A, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THE MILLER SUBDIVISION AND LOCATED ON THE WESTERLY RIGHT OF WAY LINE OF STAN MILLER DRIVE.

THENCE; CONTINUING ALONG SAID WEST RIGHT OF WAY FOR THE FOLLOWING 3 COURSES:

1) ALONG SAID WESTERLY RIGHT OF WAY, 130.49 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 154.98 FEET AND A CHORD WHICH BEARS S32°43'11"W, A DISTANCE OF 126.67 FEET.

2) S56°50'22"W, A DISTANCE OF 37.36 FEET.

3) 302.90 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 215.00 FEET AND A CHORD WHICH BEARS S16°28'47"W, A DISTANCE OF 278.46 FEET.

THENCE; DEPARTING SAID WESTERLY RIGHT OF WAY, FOR THE FOLLOWING 4 COURSES:

1) S89°28'33"W, A DISTANCE OF 507.47 FEET.

2) N08°58'49"E, A DISTANCE OF 167.72 FEET.

3) N02°24'25"E, A DISTANCE OF 204.07 FEET.

4) N87°26'25"E, A DISTANCE OF 652.08 FEET TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 201,529 SQUARE FEET, OR 4.6265 ACRES, MORE OR LESS.

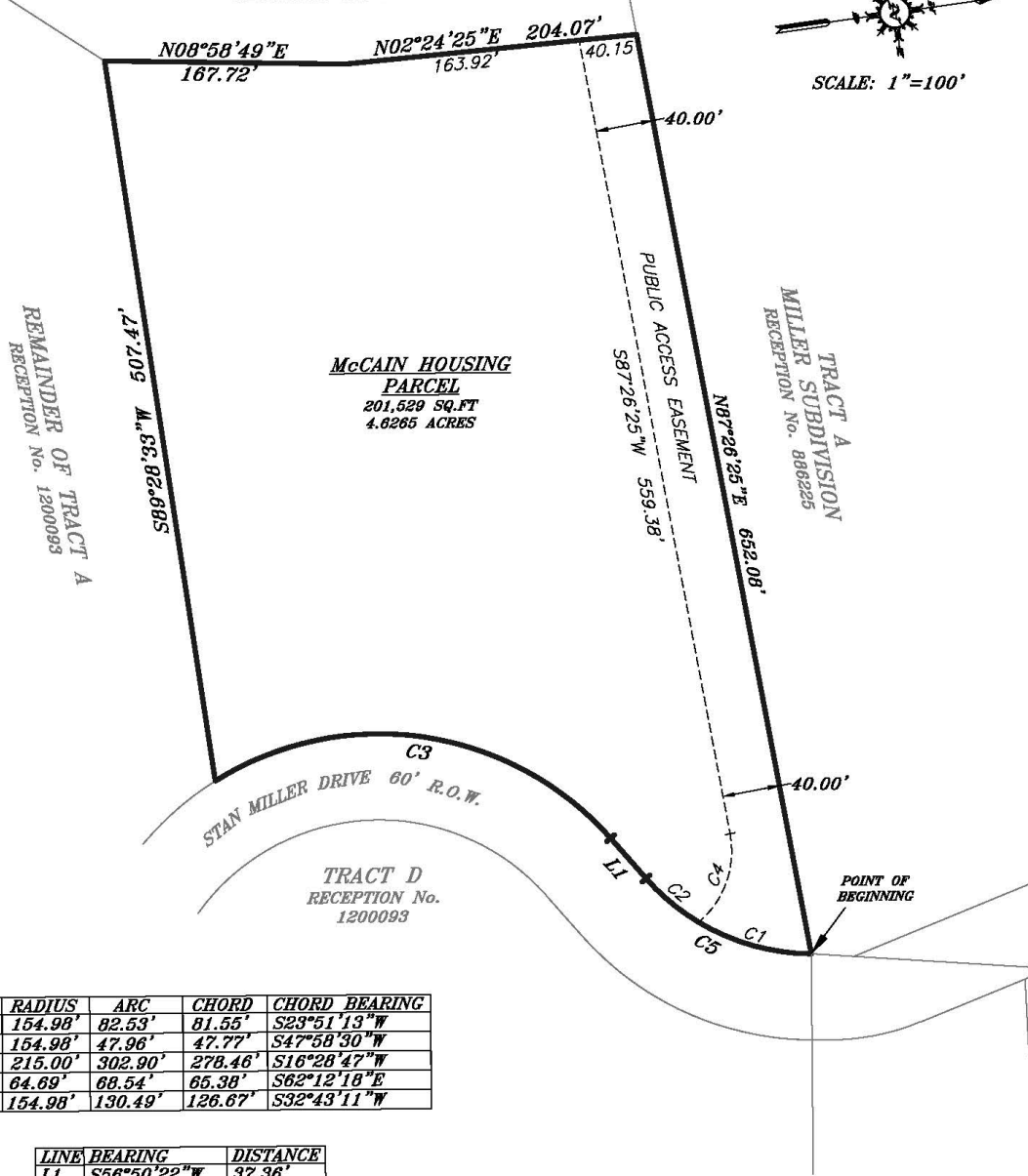
Baseline Surveys LLC  
P.O. Box 7578  
Breckenridge, CO 80424  
970-453-7155  
P:\4000\McCain Housing Parcel\4000 exhibit a.docx  
11/08/2019

**EXHIBIT B  
McCAIN HOUSING PARCEL  
TOWN OF BRECKENRIDGE  
SUMMIT COUNTY, COLORADO**

REMAINDER OF TRACT C  
RECEPTION No. 1200093



SCALE: 1"=100'



**McCAIN HOUSING  
PARCEL**  
201,529 SQ.FT  
4.6265 ACRES

REMAINDER OF TRACT A  
RECEPTION No. 1200093

TRACT A  
MILLER SUBDIVISION  
RECEPTION No. 886225

STAN MILLER DRIVE 60' R.O.W.  
C3

TRACT D  
RECEPTION No.  
1200093

CURVE	RADIUS	ARC	CHORD	CHORD BEARING
C1	154.98'	82.53'	81.55'	S23°51'13"W
C2	154.98'	47.96'	47.77'	S47°58'30"W
C3	215.00'	302.90'	278.46'	S16°28'47"W
C4	64.69'	68.54'	65.38'	S62°12'18"E
C5	154.98'	130.49'	126.67'	S32°43'11"W

LINE	BEARING	DISTANCE
L1	S56°50'22"W	37.36'

**BASELINE SURVEYS, LLC**

P.O. BOX 7578 BRECKENRIDGE COLO. 80424

SCALE: 1"=200'	DATE: 11/20/19	JOB NO. 4000
DRAWN BY: R.D.G.	CHECKED BY: D.E.O.	DRAWING NO. 4000 DEV #1

## Exhibit D

### Draft Predevelopment Budget (preliminary)

SOURCES & USES SUMMARY			
SOURCES	FINANCING	PER UNIT	%
First Mortgage	\$7,764,000	\$97,050	29.8%
Town of Breckenridge Subsidy	\$3,200,000	\$40,000	12.3%
DOH Loan	\$960,000	\$12,000	3.7%
Deferred Fee	\$1,002,171	\$12,527	3.9%
LIHTC Equity	\$13,093,691	\$163,671	50.3%
GP Equity	\$1,309	\$16	0.0%
<b>Total</b>	<b>\$26,021,171</b>	<b>\$325,265</b>	<b>100.0%</b>
USES	COST	PER UNIT	%
Acquisition (land + building)			
Hard Construction Costs	\$17,815,019	\$222,688	68.5%
Developer Fee	\$1,002,171	\$12,527	3.9%
Developer Overhead	\$1,727,829	\$21,598	6.6%
Soft Costs	\$4,967,423	\$62,093	19.1%
Reserves	\$508,729	\$6,359	2.0%
<b>Total</b>	<b>\$26,021,171</b>	<b>\$325,265</b>	<b>100%</b>
Gap Analysis	TOTAL		
Total Sources of Funds	\$26,021,171		
Total Development Costs	\$26,021,171		
Oversourced / (Undersourced)			



# Memo

To: Breckenridge Town Council Members  
From: Laurie Best and Corrie Burr, Housing Division  
Date: 12/4/2019  
Subject: IGA Resolution to Amend Proceeds and Debt to 50/50

---

The attached resolution amends the Intergovernmental Agreement (IGA) between the Town and Summit County for the Huron Landing Authority. The amended IGA clarifies that proceeds and debt associated with the Huron Landing project are an even, 50/50 split with Summit County. The original Memorandum of Understanding with the County stated the 50/50 split, but the original IGA included a 49/51 split. The Town of Breckenridge holds two out of the three board positions on the Authority, but the intent was always that the financial component would be split evenly. Staff supports the acceptance of the resolution and will be in attendance to answer questions.

1                                   **FOR WORKSESSION/ADOPTION – DEC. 10**

2  
3                                   RESOLUTION NO. \_\_\_\_

4  
5                                   SERIES 2019

6  
7                                   A RESOLUTION APPROVING AN AMENDMENT TO INTERGOVERNMENTAL  
8                                   AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT  
9                                   COUNTY, COLORADO CONCERNING THE HURON LANDING AUTHORITY

10  
11                                  WHEREAS, the Town of Breckenridge and Summit County, Colorado, acting by and  
12 through the Board of County Commissioners (“Parties”), entered into that Intergovernmental  
13 Agreement dated April 11, 2017 (“Agreement”); and

14  
15                                  WHEREAS, Section 7 of the Agreement provides that the Agreement may be amended  
16 by a duly authorized written instrument executed by the Parties; and

17  
18                                  WHEREAS, the Parties desire to amend the Agreement; and

19  
20                                  WHEREAS, a proposed Amendment to Intergovernmental Agreement between the  
21 Parties has been prepared, a copy of which is marked **Exhibit “A”**, attached hereto, and  
22 incorporated herein by reference; and

23  
24                                  WHEREAS, the Town Council has reviewed the proposed Amendment to  
25 Intergovernmental Agreement, and finds and determines that it would be in the best interest of  
26 the Town to enter into such agreement; and

27  
28                                  WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a  
29 resolution may be used to approve an agreement.

30  
31 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF  
32 BRECKENRIDGE, COLORADO:

33  
34                                  Section 1. The Amendment to Intergovernmental Agreement with Summit County,  
35 Colorado, acting by and through the Board of County Commissioners (**Exhibit “A”** hereto), is  
36 approved; and the Mayor is authorized, empowered, and directed to execute such  
37 Intergovernmental Agreement for and on behalf of the Town of Breckenridge.

38  
39                                  Section 2. Minor changes to or amendments of the approved agreement may be made by  
40 the Town Manager if the Town Attorney certifies in writing that the proposed changes or  
41 amendments do not substantially affect the consideration to be received or paid by the Town  
42 pursuant to the approved agreement, or the essential elements of the approved agreement.

43  
44                                  Section 3. This resolution is effective upon adoption.

45  
46 RESOLUTION APPROVED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019

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TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:

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

1 ***DRAFT November 26, 2019 DRAFT***

2  
3 Additions To The Current Intergovernmental Agreement Are  
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5  
6 Amendment To Intergovernmental Agreement

7  
8 This Amendment to Intergovernmental Agreement (this “**Amendment**”) is dated  
9 \_\_\_\_\_, 2019 (the “**Effective Date**”) and is between the TOWN OF  
10 BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”) and SUMMIT COUNTY,  
11 COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF  
12 SUMMIT COUNTY, COLORADO (the “**County**”). The Town and the County are sometimes  
13 referred to individually as a “**Party**,” and together as the “**Parties**.”

14  
15 WHEREAS, the Parties entered into that Intergovernmental Agreement dated  
16 \_\_\_\_\_, 20\_\_\_\_ (“**Agreement**”); and

17  
18 WHEREAS, Section 7 of the Agreement provides that the Agreement may be amended  
19 by a duly authorized written instrument executed by the Parties; and

20  
21 WHEREAS, the Parties desire to amend the Agreement as hereafter set forth.

22  
23 NOW, THEREFORE, the Parties agree as follows:

24  
25 1. Section 2 of Article 7 of the Agreement, entitled “Project Revenue,” is amended so as  
26 to read in its entirety as follows:

27  
28 Section 2. Project Revenue. All net operating revenue of the Project shall be applied  
29 toward the Project Debt Service until the Project Debt Service has been fully paid. It is  
30 understood that the net operating revenue of the Project is not anticipated to fully pay the  
31 Project Debt Service, and the Parties agree that the Town shall pay ~~51%~~ **50%** of any  
32 portion of the Project Debt Service that is not covered by the net operating revenue of the  
33 Project, and the County shall pay the remaining ~~49%~~ **50%** of any portion of the Project  
34 Debt Service that is not covered by the net operating revenue of the Project. “Net  
35 Operating Revenue” of the Project means the total of all income received by the Parties  
36 from the operation of the Project, less all expenses incurred and paid by the Parties in  
37 connection with the operation of the Project. Once the Project Debt Service for the  
38 Project has been fully paid, the Net Operating Revenue of the Project shall be distributed  
39 to the Parties as provided in Section 3 of this Article 7.

40  
41 2. Section 3 of Article 7 of the Agreement, entitled “Distribution of Net Operating  
Revenue,” is amended so as to read in its entirety as follows:

AMENDMENT TO INTERGOVERNMENTAL AGREEMENT



1  
2 Section 3. Distribution of Net Operating Revenue. Once the Project Debt Service has  
3 been fully paid, ~~51%~~ 50% of the net operating revenue of the Project shall be paid to the  
4 Town and the remaining ~~49%~~ 50% of the net operating revenue shall be paid to the  
5 County. The Parties shall agree upon the frequency of the distribution of the Net  
6 Operating Revenues.

7 3. Section 4 of Article 7 of the Agreement, entitled "Allocation of Project Losses," is  
8 amended so as to read in its entirety as follows:  
9

10 Section 4. Allocation of Project Losses. If there are losses suffered from the Project, it is  
11 agreed that the Town shall pay ~~51%~~ 50% of any such Project losses, and the County shall  
12 pay the remaining ~~49%~~ 50% of any such losses.

13 4. All capitalized terms used in this Amendment shall have the same meaning as  
14 provided in the Agreement.  
15

16 5. Except as expressly amended by this Amendment the Agreement shall remain in full  
17 force and effect.  
18

19 6. In accordance with Section 29-1-203(1), C.R.S., this Amendment shall not become  
20 effective unless and until it has been approved by the governing bodies of both the Town and the  
21 County, or by such persons as has the power to approve this Amendment on behalf of the Town  
22 and the County.

23 TOWN OF BRECKENRIDGE, a Colorado  
24 municipal corporation  
25  
26  
27

28 By: \_\_\_\_\_  
29 Eric S. Mamula, Mayor  
30

31 ATTEST:  
32  
33  
34  
35

36 \_\_\_\_\_  
37 Helen Cospolich, CMC,  
38 Town Clerk

AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, COLORADO

By:

\_\_\_\_\_  
Chair

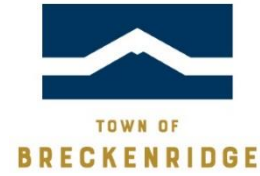
ATTEST:

\_\_\_\_\_  
Clerk and Recorder, and *ex-officio*  
clerk to the Board of the County Board members

800-111-1\Amendment to Intergovernmental Agreement (11-26-19)

AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

# Memo



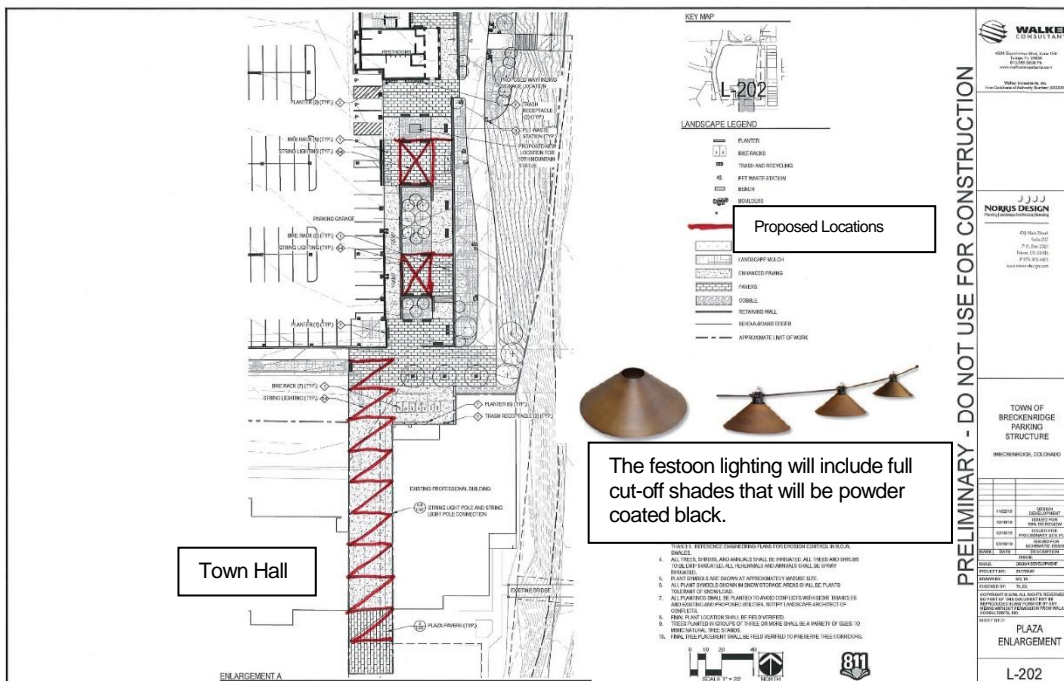
**To:** Breckenridge Town Council Members  
**From:** Shannon Haynes, Assistant Town Manager  
**Date:** 12/4/2019  
**Subject:** Breck Forward Update

## S. Gondola Parking Structure (Work Session 12-10-19)

As discussed at the last work session, the proposed bistro lighting for the pedestrian plaza and walkway adjacent to Town Hall and the Professional Building requires Council approval as this type of light fixture is prohibited under Development Code for this area of Town. This lighting is proposed by the design team to enhance the feeling of safety and encourage pedestrians to utilize this new portal toward Main Street. The designers caution that our typical pedestrian lighting, already present between Town Hall and the Professional Building, may not provide the attraction we are striving to create to promote the walkability from the parking structure to downtown.

Based on feedback from Planning, Staff proposes to reduce the number of the hanging fixtures by about half and to also plan for possible replacement of the bistro lights with more standard fixtures once the corridor between the buildings becomes an established pedestrian route.

The bistro fixtures were carefully selected by the design team to be shielded and have a warm yellow LED bulb (the Kelvin range of the bulbs is 2400 – 2700K). They will be strung at approximately 9'4" high to achieve an inviting pedestrian scale in the area adjacent to the tall buildings. The fixtures will be attached to steel cable to eliminate sway in the wind. As noted in the Planning Commission minutes, the commissioners cannot approve the fixture due to the code restriction; however, many of the members personally aligned with the concept of the lights for the project





DATE: December 2, 2019

TO: Breckenridge Town Council

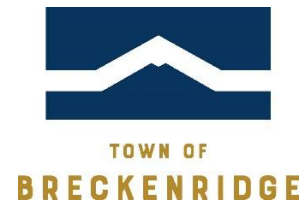
CC: Rick Holman, Shannon Haynes, James Phelps, Mark Johnston, Jennifer Pullen

FROM: Free Ride

RE: Free Ride Ridership Numbers – November 2019

Ridership is slightly down for the month of November compared to last year. Year over year increase is at 13.9%. The Free Ride has already surpassed 2018's annual ridership. The relocation of the Trolley from the Wellington neighborhood to the Ice Rink transferred a significant number of riders from the Purple route last year to the Trolley this year.

	2018		2019		Month		YTD	
	Nov Mthly	Nov YTD	Nov Mthly	Nov YTD	#'s	%	#'s	%
<b>Black</b>	4,651	49,675	4,980	70,355	329	7.1%	20,680	41.6%
<b>Brown</b>	24,386	276,269	21,027	296,063	-3,359	-13.8%	19,794	7.2%
<b>Trolley</b>	9,081	100,353	12,388	164,154	3,307	36.4%	63,801	63.6%
<b>Purple</b>	17,010	148,314	14,470	155,057	-2,540	-14.9%	6,743	4.5%
<b>Yellow</b>	40,413	397,980	39,088	427,880	-1,325	-3.3%	29,900	7.5%
<b>Shuttle Lots</b>	650	6,889	521	4,471	-129	-19.8%	-2,418	-35.1%
<b>TOTAL</b>	96,459	997,321	92,474	1,136,030	-3,985	-4.1%	138,709	13.9%



# Memo

**To:** Breckenridge Town Council Members  
**From:** Rick Holman, Town Manager  
**Date:** 12/4/2019  
**Subject:** Committee Reports

---

**Transit and Parking Advisory Committee    November 1, 2019    Shannon Haynes/Jennifer Pullen**

Current Representatives: Chris Blackwell, Dave DePeters, Bill Wishowski, Dan Corwin, Hal Vatcher, Shannon Haynes, Jen Pullen, James Phelps, John Griffith, Ethan Lawson, Cindy and Ken Schwartz (Guests from Warriors Mark West), Rae Anderson (Guest from Stonehaven), Leah Canfield (Guest from the Highlands), Terri Sweetin (Guest from Warriors Mark West HOA)

The Transit Advisory Committee met on November 21, 2019. The following was discussed:

- **Welcome and Introduction**
- **Review of Minutes for October 24th** – No questions
- **Parking Update** – Currently working on recommendations to increase parking fines. We are finding that it's less expensive to get a parking ticket than to pay for parking. Matthew is working on a recommended escalation in the parking fees structure, and it will be brought back to the committee before presenting it to Town Council. It has been found that people who are getting multiple tickets have been paying them, and that most tickets are resulting from a failure to pay. At the end of the season, occupancy numbers will be reviewed to determine if further recommendations need to be made for higher rate pricing.
- No further updates on the parking garage. There will be a meeting with the ski area in early January to review parking displacement, as the entire South Gondola lot will be unavailable. The current construction schedule (from breaking ground to completion) is May 2020 to November 2021.
- **Ridership: October Review** – So far we are looking good, as we are seeing a continued increase in ridership. Ridership for the Purple route has decreased, while it has increased by about 80% for the Trolley (most likely due to the Troll still being accessible). We will continue to monitor the Trolley route, as the Troll will be open throughout the winter. Most likely the ridership from the Purple route has transferred to the Trolley. When the numbers were pulled for the report sent with this meeting's agenda, they were at a little over a million. As of 11/20, they were sitting at 1,087,309. It's estimated that numbers will be at least 1.1 million for the year, and we are hoping that they will end up around 1.3 million which is a lofty goal.
- We are experiencing staffing issues similar to other transit agencies. The biggest issue is getting drivers to Breckenridge (many are out of state). When necessary, supervisors have been pulled to drive, and the second Trolley and Purple routes have been cut in the past. We still have one to two more seasonal spots to fill at this time. Copper Mountain is offering \$22/hour, plus housing and a bonus for their transit drivers. Housing is crucial for recruitment efforts, especially for seasonal employees. RTD, Summit Stage, and CDOT are all having similar issues in hiring CDL qualified drivers.
- Jen provided cost per rider information on operation expenses per passenger trip, which is one way to measure ridership service effectiveness. The three common ways to measure this are operation expenses per passenger trip, revenue miles, and hours. It's up to each agency to determine if these numbers are meeting their goals internally. An hour was cut off in the morning and in the evening last year for Warriors Mark, and will continue for this year. This is the fourth year that it's being run. Changes were made after two years of information on the new route. A balance of resources is necessary. Jen will try to break out more information on individual routes. One thing to point out and

note is April UWM costs, which are pretty expensive per passenger. We will be monitoring April closely with the four years of solid data we will have after this year.

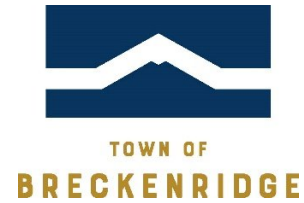
- **Transit Master Plan Update** – The Transit Master Plan was reviewed at last month’s meeting. It was also presented to Town Council on November 12<sup>th</sup>, and they have some questions and would like more information on the recommendations. TEI will provide a more comprehensive draft report to us, which will be easier to review than a list of stops and schedules. We expect to receive the draft report from TEI in the second week of December, and will review it at our December meeting. Dan stated that he thinks the A and B routes work really well, and asked the question of why we would change to a one way route. Frequency is a big want in a transit agency, and that want is one of the considered factors in this recommendation. Different routes service different primary purposes (commuter vs. tourism/recreation). James stated that we should look at this recommendation as a whole, and understand that we don’t have to make all of the recommended changes. Discussions can definitely happen on all recommendations and the overall balance of all resources. Hal stated that a deeper dive into the proposal would be helpful to understand and dissect the specifics of each recommendation.
- **Transit Service Requests** – Leah presented more information to support the request for the Highlands golf area that was initially presented at last month’s meeting. Leah stated that it sounds like our goals are similar (congestion/parking issues), and that the area is under served and has a large population base. The closest bus stop to this area is on Highway 9. Leah stated that keeping in mind that the Town has other goals, she thinks it’s worth discussing. Rae stated that this is not only a request for skiers in the area, but for locals that need transportation. James stated that these are great comments, and that it’s recognized that there is potential for ridership in the North area of Town. A park and ride option was discussed as an idea, and some of the residential areas mentioned are County areas. Perhaps the County should be involved in this as well? The Welk Resort will be opening soon, and employee housing by the second water plant will be coming online in the future that might add to any ridership numbers. This request is aligned with the goals we have for our transit system. It takes about a year to get a new transit route in place. Dan raised the question if there was an option to have the Highlands and some of the other neighborhoods to get together to augment or fund a separate service that would service any ridership. James stated that we should not get fixed on any particular location, and should be open to brainstorming with any and all information available. This request makes sense based on the feedback received. At this point it is an internal discussion that is occurring in addition to the several areas coming online, as well as the Master Transit Plan being in the works. We are trying to move the Free Ride system toward the goals of the Council and the community. Bill stated that the logic makes sense, but ridership is what makes it feasible. Leah stated that she is happy to bring this discussion back to the HOA and to get more information on who would be riding (year round, short term rentals, etc.)
- Terri presented a request for extended service year round for Upper Warriors Mark West, and provided a Power Point presentation on various points. Terri reviewed the Town’s budget reading for this year. The presentation included information on real estate transfer taxes generated from the neighborhood from 2015 to 2019. Terri stated that rental numbers are up, and that better access to Town creates more sales tax. Terri also asked to confirm that lift ticket taxes go into the annual budget, and that this should provide more transit and parking funding. Terri stated that she understands that there are metrics that need to be measured for service, and that a summer bus is needed. Terri also stated that she believes that if the service is available, the ridership will increase. This route’s ridership is recorded manually as it is a contracted service. Shannon stated that it’s important to look at the budget as a whole, and to see how it has expanded with the lift ticket tax. Budgets are presented as a specific point in time for funds that have already been allocated. Terri addressed the garage fund, and asked why a bus wasn’t purchased instead of contracting this service? Jen stated that it would have to be looked into to see if the resources and staff would be available to provide a consistent dependable service. James stated that the garage fund encompasses all fleet vehicles for the town, not just buses. Terri estimated the occupancy of the neighborhood to be about 25% year round residents, 25% second homeowners, and 50% rentals. James inquired as to what time of year this ridership would be anticipated. Terri stated that moving into July it would be rentals, and she expects there would be year round residents that would use it. Jen stated that we want to make sure that our transit system is the most effective for the community as a whole and allotting resources to areas with a higher density. If funds are available, it’s also important to examine where they would be the most effective. There are more costs associated with buying another bus, such as maintenance, drivers, and having a backup bus. Terri stated that there are no sidewalks up White Cloud Drive, and that extended service would help alleviate this safety concern. Terri also confirmed that any federal funding received is included in the budget as revenue. Terri stated that the neighborhood pays taxes for transit and parking in the Town. Dan

raised the question if it was possible to follow rental taxes to help determine a pattern in increases of short term rentals/population and the possible numbers of ridership for a particular area. James stated that looking at this in such a granular way could cause contention.

- Cindy and Ken Schwartz also presented some thoughts on Upper Warriors Mark West. Cindy thanked the Town for providing the Upper Warriors Mark West route as it is currently. Cindy also stated that school children in the area are not provided for by the Summit County School District. Parents can take them to school, but they have a hard time getting home and it would be helpful for students and parents to have an option. Ken stated that he has seen a lot of changes, and that this area has density. Ken stated that he feels like the neighborhood pays more in various taxes than other areas of Town that are getting these types of services such as the Wellington neighborhood. Ken stated that he has been very impressed with the service of the current contractor, and that he feels services should be offered in July and August. Ken stated that he would recommend a contractor instead of an additional route serviced by the existing Free Ride transit structure. Ken stated that Summit County is transitioning again, and that the neighborhood has less short term rentals, and more second home owners that are present in the community more often.
- **Miscellaneous** – The Mobility and Innovations Manager position will be re-posted this week. Dan reported issues with the Free Ride app and being able to determine when the next Purple route bus was scheduled to arrive. Ethan reported that the current schedule for the Upper Warriors Mark route posted on the website had incorrect times.
- **Recommendations from TPAC**
- **Next Meeting** – Thursday, December 19th

<b>Committees*</b>	<b>Representative</b>	<b>Report Status</b>
Summit Stage Advisory Board	Jennifer Pullen	No Meeting/Report
Police Advisory Committee	Chief Jim Baird	No Meeting/Report
CMC Advisory Committee	Rick Holman	No Meeting/Report
Recreation Advisory Committee	Scott Reid	No Meeting/Report
Breckenridge Events Committee	Shannon Haynes	No Meeting/Report
Transit and Parking Advisory Committee	Jennifer Pullen	Included
Communications	Haley Littleton	No Meeting/Report

*\*Note: Reports provided by the Mayor and Council Members are listed in the Council agenda.*



# Memo

To: Breckenridge Town Council Members  
From: Shannon Haynes, Assistant Town Manager  
Date: 12/5/2019  
Subject: Breckenridge Events Committee

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The Breckenridge Events Committee met on Wednesday, December 4<sup>th</sup>, 2019. Below you will find the minutes from that meeting. There is one item to note:

The 2020 International Snow Sculpture is proposed to consist of one sculpture, "World Peace", to be created by a number of participants from previous winning teams. With the planned closure of the South Gondola lot and the subsequent loss of parking spaces the BTO and BEC believe attempting to host a full Snow Sculpture event would create immense traffic and parking challenges. These challenges would be difficult to overcome and would likely produce negative community sentiment. The group feels that reducing the scope of the event to a single iconic sculpture with thoughtful ancillary events will provide a special place holder event in 2020. If Council is supportive of this change the planning group will move forward.

I will be available at the work session to answer questions.



Minutes  
Breckenridge Events Committee  
Dec 4th, 2019 9am-  
10am  
Town Hall, Lower Level Conference  
Room  
Right event, right time, right result

Attending: Todd Rankin, Shannon Haynes, Kelly Owens, Ken Miller, Dave Feller, Casey Willis, Majai Bailey, Chase Banachowski, Stephen Costas, Chelsea Roth, Lucy Kay

Guests: Lea Dreux, Nathan Nosari, Hal Vatcher, Mike Messeroff

1. Call to Order – Todd Rankin called the meeting to order at 9am.
  - a. Motion to approve the minutes as submitted in the agenda packet  
M/S/P
  
2. Review of Active SEPA
  - a. Lighting of Breckenridge/Race of the Santa's – 12.7.2019 (BTO)
    - Moose March, USFS conducting Moose education; handing out coupons for hot cocoa at area coffee shops
    - Public Works will be utilizing new safety entrance barriers as a test for a potential purchase
    - Hazel Miller – promptly at 6pm, 90 min show
  - b. Ullr Fest – 12.11 – 12.15.19 (BTO)
    - Dialing in logistics with PD, Public Works and Emergency Services
    - Kat Slaughter with Vert Sites will be working on sustainability; helping with post bonfire cleanup
    - First parade with registration closing 24 hours in advance – Working on a communication plan around new registration timeline. Goal to eventually move registration deadline from 24hr to 48hr in advance.
    - No ice plunge (not cold enough)
  - c. International Snow Sculpture Championships – 1.12 – 1.29.2020 (BTO)
    - 16 teams confirmed to compete
    - BTO team is creating a 30<sup>th</sup> anniversary video to celebrate the history of the event
    - App based online program guide; previously created waste with printed copies
    - Pulling together public safety group every other week to prevent recurrence of 2019 congestion issues
  - d. 2021 International Snow Sculpture Championships
    - Planning team has suggested that we don't have the full event in 2021 – parking structure, etc.
    - Rob Neyland on board with this decision; instead do a "World Peace" sculpture; bring in some winning team members to do an international sculpture; BRP or another similar location
    - Can still do other programming to commemorate the event
    - Return to normal in 2022
  
3. Upcoming Events
  - a. Events impacted by parking structure – Discussed structure timeline and plan for TOB & BSR staff to meet in January to develop parking & transit plan
  
4. General Updates and Discussions

- a. Revisit BCA proposal for elongated art installation – Ken Miller
    - BCA received clear direction from Town Council re: Choi + Shine; If short time frame (WAVE + additional week/two on either side) then BCA can install in the core of town
    - If BCA would like to keep installation up for a month or more beyond WAVE, then it would need to move to the north or south of the core of Town (south of Adams or north of BRP towards covered bridge)
    - BCA is leaning towards the shorter version (up last week of May, during WAVE, thru/to July 4<sup>th</sup>)
  - b. Follow up discussion about SEPT. 2020 timing of events – Oktoberfest, Wine Classic, Film Fest.
    - Oktoberfest – Likely to remain early in September 12<sup>th</sup>/13<sup>th</sup>; worried about staff challenges that may arise from MT2030 needs; Will plan for early, but may change with better understanding of BTO participation in MT2030
    - Wine Classic – Asked BTO for an additional \$18K to move location of event from Riverwalk (plus food that BTO already supplies); BTO said no
    - Jason (WC) is supposed to reach out to BSR and Beaver Run for possible venue / date collaboration between the Wine Classic and Breck Film Festival.
  - c. Event Poaching/Ambush Marketing – Lucy Kay
    - Shannon & Lucy will pull together a reference document for addressing poaching/ambush marketing at events. Will work with Town Attorney. Will present to BEC group upon developing an initial policy.
    - Lucy will also pull together a small group to discuss the film permit process
  - d. Diminishing Events Sentiment –Standing Item
    - Expectations Survey – currently between 500-600 responses
    - Lucy would like to develop a calendar for surveys so there aren't multiples going out at the same time
    - Specific to less events in August, there were a few complaints from businesses, not a lot of negative feedback
    - Lucy will talk to Vanessa about the issues the Town of Frisco had with people carrying confederate flags on July 4th
  - e. Event Sustainability–Standing Item
    - SEPA – a lot of conversation around policy; Departments trying to determine actual costs
    - BTO is creating an event guidebook for producers that should be available after Jan 1<sup>st</sup>; Kelly suggested the guidebook be electronic & visually pleasing
    - More rigid structure for sustainability in events; Jessie Burley is having to chase people at the last minute
    - Request to compile a report of sustainability efforts over time (last few years); BTO is working on this
5. Task Force Updates
    - Add Jessie Burley to January agenda
  6. Past Events Review
    - a. Snow Dance 2019 – Nov. 23<sup>rd</sup>, 2019 (BSR/Motive)
      - Generally successful; waiting on comprehensive after-action report
      - Terrain Park activation was successful
      - Emergency Services staff will coordinate with Chase to discuss challenges, concerns, successes
      - Command Center at the event worked well
      - Talks between BSR and Snow Dance need to start in January if similar event is to happen in 2020
  7. Review Agenda Items for next BEC Meeting Jan 8<sup>th</sup>, 2020
  8. Public Comment
    - Add Hal Vatcher & Leah Dreux to the distribution list
    - Would like to see meeting dates advertised
9. Meeting formally adjourned at 9:55 a.m.



# Memo

To: Breckenridge Town Council Members  
From: Tim Berry, Town Attorney  
Date: 12/4/2019  
Subject: Master License Agreement For Small Cells in Town Rights of Way

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The recent amendments to the Town's Wireless Communication Facilities Ordinance concerning small cells provides for the Town to use a "Master License Agreement" with small cell providers who want to place small cells in the Town's rights of way. A Master License Agreement consists of two parts – a base agreement between the Town and the small cell provider that applies to all of the provider's small cells placed in the Town rights of way, and a separate attachment to the base agreement, known as a "Site Supplement," which supplements the base agreement with respect to each of the provider's small cells that are placed in the Town's rights of way. The basic idea is that the Town and the small cell provider will agree in advance of all of the terms and conditions that will apply across the board to all of the provider's small cells that the Town allows to be placed in the rights of way, and then at the time of the approval of the placement of each individual small cell the Town and the small cell provider will sign a Site Supplement for that particular small cell. The process of using the base Master License Agreement and an individual Site Supplement for each specific small cell placement is a good way for the Town to proceed, and appears to be the common way Colorado municipalities and counties are handling the placement of small cells in their rights of way.

Enclosed with this memo is the Town's standard Master License Agreement form and the Site Supplement that I have worked with the Town staff to develop. The documents were initially drafted based on the form of Master License Agreement and Site Supplement used by Summit County. However, we found it necessary to modify the County's forms to make them work for the Town. Part of the reason for using the County forms as the starting point was that the County forms had been reviewed and approved by Verizon, and it was thought that would make it easier to reach agreement with Verizon and the other small cell providers on both the form and content of the Town's Master License Agreement and Site Supplement. Additionally, the County worked with Ken Fellman's office (who happens to also be the Town's telecommunication attorney) in drafting their forms, and I felt that also made the County forms a good general template for the Town's Master License Agreement and Site Supplement.

The enclosed Master License Agreement and Site Supplement have been reviewed and approved by the attorneys for both Verizon and AT&T. Both attorneys expressed their thanks for the Town allowing them to revise and comment on the forms before they are required to be used by the Town. Engaging with the attorneys prior to the forms being adopted for use by the Town assured us that there will be reduced problems with Verizon and AT&T going forward.

I believe the Master License Agreement and Site Supplement forms will work well for the Town, and they can certainly be revised as necessary or appropriate in the future. The final outcome of the pending litigation involving the FCC's Small Cell Order may require the Town to take another look at the Master License Agreement and Site Supplement forms. However, the final resolution of the FCC litigation is (optimistically) months away, and in the meantime the Town needs to begin using a form of Master License and Site Supplement.

It is not necessary for the Town Council to formally approve these new forms, but staff wanted to give the Council the opportunity to review, comment, and give direction on the forms before staff begins to use them.

Also enclosed is the Town's latest Small Cell Design Guidelines.

I will be happy to discuss these documents with you on Tuesday.



1           1.1 Definitions. In addition to those terms that are defined parenthetically herein, for the  
2 purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words  
3 and derivations shall have the following meanings. Wherever applicable within this Agreement,  
4 the singular includes the plural, and the plural includes the singular.

5           (a) *Code* means all of the Town’s codes, regulations, ordinances, and rules.

6           (b) *Director* means the Director of the Town’s Department of Community Development,  
7 or his or her designee acting pursuant to Section 1-7-2 of the Town Code.

8           (c) *Development Code* means the Town of Breckenridge Development Code, codified as  
9 Chapter 1 of Title 9 of the Town Code.

10          (d) *Exhibit* means a document that that is attached to this Agreement and incorporated  
11 into this Agreement by reference as described in Sections 1.2 and 20.4 of this Agreement.

12          (e) *Equipment* means the Small Cell antennas and other wireless communications  
13 equipment utilizing Small Cell technology that is more specifically identified, described, and  
14 approved by the Town as set forth in Exhibit A-1 attached to each Site Supplement (as defined  
15 below), and includes, but is not limited to, nodes, antennas, fiber optic cable, coaxial cables,  
16 wires, frequencies, technology, conduits and pipes, a pole, and associated and appurtenant  
17 equipment on the pole or on the ground deemed by Licensee necessary to operate the Wireless  
18 Site and uses intended thereto. .

19          (f) *Hazardous Substance* means any substance, chemical, or waste that is identified as  
20 hazardous or toxic in any applicable federal, state or local law or regulation, including but not  
21 limited to petroleum products and asbestos.

22          (g) *FCC* means the Federal Communications Commission.

23          (h) *Interference* means physical interference and/or radio frequency interference.

24          (i) *Laws* means all applicable statutes, constitutions, ordinances, resolutions, regulations,  
25 judicial decisions, rules, permits, approvals or other applicable requirements of the Town or  
26 other governmental entity, agency, or judicial authority having of the force and effect of law that  
27 determines the legal standing of a matter relating the Parties and/or this Agreement.

28          (j) *Network*, or collectively “*Networks*,” means one or more of the wireless  
29 communications facilities operated by Licensee to serve its wireless carrier customers.

30          (k) *Owner* means a person with a legal or equitable interest in ownership of real or  
31 personal property.

32          (l) *Permit* means a permit issued and described in accordance with Laws, which is used  
33 to regulate, monitor, and control improvement, construction, or excavation activities, or other  
34 work or activity, occurring upon or otherwise affecting the Town ROW, including ROW use,  
35 zoning/land use, building, and electrical permits.

1 (m) *Person* means any corporation, limited liability company, partnership, proprietorship,  
2 individual, or organization, governmental organization, or any natural person.

3 (n) *Physical interference* means when equipment, vegetation, or a structure causes  
4 reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sight  
5 path.

6 (o) *Pole Attachment Fee* means the Fee described in Section 4.1 of this Agreement.

7 (p) *Radio frequency interference* means the radiation or conduction of radio frequency  
8 energy (or electronic noise) produced by electrical and electronic devices at levels that interfere  
9 with the operation of nearby or adjacent equipment.

10 (q) *Right-of-Way* or *ROW* means the surface of and the space above and below the public  
11 roads, streets and alley right-of-way, and public utility easements or other public ways of any  
12 type except for trails, now or hereafter held by Town, or dedicated for use by Town, for use by  
13 the general public, or for use compatible with the operations of the Equipment.

14 (r) *Site Supplement* means a supplement to this Agreement constituting a supplemental  
15 license for the specific location of a Small Cell Facility, all as specifically described in Section 2  
16 below and as shown on Exhibit A.

17 (s) *Small Cell Facility* means a WCF that meets both of the following qualifications: (1)  
18 A wireless communication facility where each antenna is located inside an enclosure of no more  
19 than three cubic feet in volume, or, in the case of an antenna that has exposed elements, the  
20 antenna and all of its exposed elements that could fit within an imaginary enclosure of no more  
21 than three cubic feet; and (2) primary equipment enclosures are not larger than seventeen cubic  
22 feet in volume. The following associated equipment may be located outside of the primary  
23 equipment enclosure and, if so located, is not included in the calculation of equipment volume:  
24 electric meter, concealment, telecommunications demarcation box, ground-based enclosure,  
25 back-up power systems, grounding equipment, power transfer switch and cut-off switch. All  
26 associated equipment, even if located outside of the primary equipment enclosure, shall be  
27 included within the definition of Small Cell Facility.

28 (t) *Term* means the period that this Agreement is in effect as described in Section 3.1 of  
29 this Agreement.

30 (u) *Town* means the Town of Breckenridge, a Colorado municipal corporation.

31 (v) *Town Code* means the Breckenridge Town Code, as in effect from time to time  
32 throughout the Term of this Agreement.

33 (w) *Town Facilities* means those Town-owned or controlled poles and fixtures located  
34 within the ROW, including without limitation, streetlight poles and traffic poles, that are  
35 designated or approved by Town as being suitable for placement of Equipment.

36 (x) *Wireless Communications Facility* (also a "WCF") means a facility for the provision  
37 of wireless services, and includes a Small Cell Facility.

1 (y) *Wireless Site* means a location on a ROW selected for Licensee’s deployment of its  
2 Small Cell Facility.

3 1.2 Exhibits. The Exhibits to this Agreement are formally incorporated and made part of  
4 this Agreement by reference are as follows:

- 5 (a) Exhibit A: Form of Site Supplement and Exhibit A-1 to Site Supplement.
- 6 (b) Exhibit B: Attachments to Town Traffic Signal Facilities.
- 7 (c) Exhibit C: Licensee’s Insurance Requirements.

8 In the event of any conflict between this Agreement, including the Exhibits, and the Town Code  
9 as it exists on the Effective Date of this Agreement, the Town Code prevails, except as federal or  
10 state law may preempt or act to modify the Town Code at present or in the future. Future  
11 amendments to the Town Code shall also prevail in the case of any conflict with any provisions  
12 of this Agreement and any Exhibits, so long as the Town Code changes do not alter any material  
13 rights granted herein, and except as federal or state law may preempt or act to modify the Town  
14 Code.

15 2. Grant of License and Terms.

16 2.1 License. Town hereby grants to the Licensee, a non-exclusive license to use and  
17 occupy the ROW throughout Town’s territorial boundaries, as these boundaries may be adjusted  
18 from time to time due to annexations, identified in Exhibit A-1 to each Site Supplement (**Exhibit**  
19 **A**) to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace  
20 Equipment at each approved Wireless Site (“**License**”). A Site Supplement is required for  
21 Equipment installed on all Town property located in the ROW; the deployment of a Licensee  
22 pole with related Equipment in the ROW; or for Equipment installed on a pole or property  
23 owned by a third-party. Site Supplements are subject to all terms and conditions contained  
24 therein and all terms and conditions of this Agreement. The Site Supplement may also allow the  
25 installation, operation, and maintenance of ground based or pad mounted equipment cabinets  
26 and/or power pedestals needed for the operation of Equipment attached to any of the Town  
27 Facilities, together with any related conduit, cable or wiring, with the location of any such  
28 cabinet or pedestal and Equipment determined by Town in connection with the approval of any  
29 specific Site Supplement and the issuance of a Permit (if needed). The Site Supplement will also  
30 be utilized as the vehicle to permit location of any stand-alone Licensee facilities or attachment  
31 to third-party assets in the ROW. Licensee shall have access to the Town Facilities, property and  
32 poles owned by third-parties, and the Licensee’s stand-alone facilities, upon which Equipment is  
33 installed twenty four (24) hours a day, seven (7) days a week. This grant is subject to the terms,  
34 conditions, and other provisions set forth in this Agreement and all Laws and regulations of any  
35 regulatory agency having jurisdiction. Licensee shall install its Equipment consistent with  
36 applicable Laws. Prior to the granting of any Site Supplement pursuant to this Agreement,  
37 Licensee shall be a Tier 1 member of Utility Notification Center of Colorado (Colorado 811),  
38 and shall be required to locate all of its underground conduit, cable, or wiring when locates are  
39 requested.



1           2.2 Scope and Priority. Licensee’s Equipment may be attached to or replace structures in  
2 the Town with the order of priority of attachment (or replacement, as required) set forth in the  
3 Town of Breckenridge Small Cell Procedures and Design Guidelines.

4           2.3 Approval Process. Notwithstanding anything to the contrary contained herein, the  
5 Parties agree that the application and approval process for the Equipment attachments referred to  
6 in Section 2.1 shall be conducted pursuant to the Town’s ordinances in effect at the time the  
7 application is filed with the Town, including the Town’s Development Code and the Small Cell  
8 Procedures and Design Guidelines, except as federal or state law may preempt or act to modify  
9 such Guidelines at present or in the future.

10           2.4 Modifications.

11           2.4.1 Minor Modifications. Notwithstanding anything in the Agreement to the  
12 contrary, modifications to the Equipment with like-kind or similar Equipment shall be subject to  
13 permitting required under applicable Laws, but shall not be subject to written approval of the  
14 Town under the Town Code, to the extent that: (i) such modification to the attachment involves  
15 only substitution of internal components, and does not result in any change to the external  
16 appearance, dimensions, or weight of the attachment, or loading impacts on the pole as approved  
17 by Town or impact multi-modal traffic flow; or (ii) such modification involves replacement of  
18 the attachment with an attachment that is the same, or smaller in weight and dimensions as the  
19 approved attachment and does not impact multi-modal traffic flow.

20           2.4.2 Substantial Modification. Any modification which does not meet the  
21 requirements of a Minor Modification as defined in Section 2.4.1 shall be considered a  
22 Substantial Modification. For all Substantial Modifications, Licensee shall first obtain the written  
23 approval for the use and installation of the unauthorized Equipment from an authorized  
24 representative of the Town pursuant to the Town Code, pursuant to the timelines under  
25 applicable Law and required permitting, which approval shall not be unreasonably withheld,  
26 conditioned, or delayed. In addition to any other submittal requirements, Licensee shall provide  
27 “load” (structural) calculations for all Facilities upon which it intends to modify Equipment in  
28 the ROW.

29           2.5 Permitted Use of ROW. The ROW may be used by the Licensee seven (7) days a  
30 week, twenty-four (24) hours a day, only for the Wireless Sites and installation, use, and  
31 operation of Equipment, and not for any other purpose. Licensee shall, at its expense, comply  
32 with all Laws in connection with the use, installation, operation, maintenance, and replacement  
33 of Equipment in the ROW, including, without limitation, obtaining the necessary Permits, traffic  
34 control plan approvals, or street occupancy fees for any work within the ROW by the Licensee  
35 and allowable work hours under the Town Code.

36           2.6 Inventory of Wireless Sites. Throughout the Term of this Agreement Licensee shall  
37 maintain a current inventory of all Wireless Sites approved pursuant to this Agreement.  
38 Licensee shall provide to Town, at Town’s reasonable request, a copy of the inventory of  
39 Wireless Sites governed by this Agreement within sixty (60) days of such request. The inventory  
40 shall include the location of each Wireless Site, including GIS coordinates, License Site ID #,  
41 type of pole used for installation, pole Owner, and designation/type of installation for each

1 Wireless Site Equipment installation within the ROW. Concerning Wireless Sites that become  
2 inactive, the inventory shall include the same information as active installations in addition to the  
3 date the Wireless Site was deactivated and the date the Small Cell Facility was removed from the  
4 ROW. The Town will compare the inventory to its records to identify any discrepancies. Town's  
5 request for a current inventory shall be limited to no more than one time per calendar year  
6 throughout the Term.

7       2.7 Additional Installations. Licensee may install its Equipment on other poles in the  
8 ROW lawfully owned and operated by third parties. Subject to obtaining the written permission  
9 of the Owner(s) of the affected property, and obtaining any required building or electrical  
10 Permits (and paying associated Permit fees), the Town hereby authorizes and permits Licensee to  
11 enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate,  
12 and replace Equipment in or on poles or other structures lawfully owned and operated by public  
13 utility companies or other property Owners located within the ROW as may be permitted by the  
14 public utility company or property Owner, as the case may be. In such situation, a Site  
15 Supplement shall be required but a Pole Attachment Fee shall not be paid. Licensee will obtain  
16 all required Permits and approvals for installation on third party poles in the ROW pursuant to  
17 the Town Code.

18       2.8 Unauthorized Installations. Any WCF or Wireless Site owned or operated by the  
19 Licensee which WCF or Wireless Site is not authorized in accordance with Applicable Laws  
20 shall constitute a material breach of this Agreement. Upon discovery of any unauthorized WCF  
21 or unauthorized Wireless Site and upon notice by the Town, the Licensee shall immediately and  
22 without undue delay decommission or otherwise render the WCF or Wireless Site inoperable and  
23 the Licensee shall remove the unauthorized WCF or Wireless site within thirty (30) days of such  
24 notice by the Town; provided, however, upon written request of the Licensee to the Town and  
25 with the discretionary consent of the Town, the Town may stay or toll the required removal of  
26 the unauthorized and inoperable WCF or Wireless Site in order that the Licensee may apply for  
27 approval of the WCF or Wireless Site in accordance with Laws. In the event that the Licensee  
28 elects to apply for approval of the unauthorized WCF or Wireless Site in accordance with this  
29 Section 2.8, any application for approval shall be processed as if the WCF or Wireless Site was  
30 never established and there shall be no presumption or assumption that the WCF or Wireless Site  
31 is acceptable, appropriate, or necessary to the Licensee's Network due to its prior existence or  
32 prior operation. In the event that the Licensee's application for approval of an unauthorized  
33 WCF or Wireless Site is denied, the Licensee shall remove the WCF or Wireless Site within  
34 thirty (30) days of the date of the Town's denial of the application. In the event that the  
35 Licensee's application for approval of an unauthorized WCF or Wireless Site is approved,  
36 Licensee must pay all required fees for a new Wireless Site that have not otherwise been  
37 previously paid, plus interest at the rate of two percent (2%) per annum on the required fees from  
38 the date of the original installation.

39 3. Term of Agreement and Site Supplements; Cancellation; Termination; Removal or  
40 Abandonment at Expiration.

41       3.1 Term. Unless sooner terminated as herein provided, this Agreement shall be in effect  
42 for a period of fifteen (15) years from the Effective Date (the "**Term**"); however, this Agreement  
43 is subject to renewal as provided in Section 3.2. The term of each Site Supplement granted

1 pursuant to this Agreement shall be concurrent with the Term of this Agreement, and any  
2 extension thereof; provided, however that the minimum term of a Site Supplement shall be five  
3 (5) years such that if the Term of this Agreement expires before the end of any five (5) year term  
4 of a Site Supplement, this Agreement shall remain in effect only with respect to that Site  
5 Supplement through the end of the term of such Site Supplement.

6       3.2 Renewal. Unless earlier terminated by either Party pursuant to the provisions of this  
7 Agreement, the Licensee may request a renewal of this Agreement, by providing six (6) months  
8 written notice of the intent to renew prior to the expiration date of the Agreement. After  
9 providing such notice, this Agreement shall renew on the same terms and conditions as herein for  
10 one (1) successive term of five (5) years, provided that the Licensee has complied with the  
11 material terms of this Agreement. If the Town does not believe that the Licensee is entitled to  
12 renewal as requested, the Town shall provide written notification to the Licensee at least one-  
13 hundred and eighty (180) days prior to the expiration date of this Agreement, in which notice the  
14 Town shall provide support for its position. As between the Town and the Licensee, the Licensee  
15 shall at all times retain control of the WCFs, unless an alternative vertical structure, such as a  
16 street light, has been purchased by the Licensee and ownership conveyed to the Town pursuant  
17 to this Agreement. Upon expiration or non-renewal of this Agreement, within ninety (90) days  
18 of the expiration of the then-current Term, the Licensee shall remove its WCFs installed within  
19 the ROW as required by Section P of Section 9-1-19-50A “Policy 50 (Absolute) Wireless  
20 Communications Facility” of the Town Code, or alternatively, sell the same to a qualified buyer  
21 consistent with Applicable Law.

22       3.3 Licensee Cancellation. Licensee may cancel this Agreement or any Site Supplement  
23 before the date of expiration by providing the Town with ninety (90) days written notice of  
24 cancellation. Any prepaid Pole Attachment Fee shall be retained by Town. This Agreement and  
25 all Site Supplements may only be cancelled or terminated as provided in this Agreement, any  
26 Site Supplement, or as provided by law.

27       3.4 Abandonment. If Licensee abandons the use of a Town Facilities location for a  
28 period of six (6) or more consecutive months, the Equipment for such Town Facilities shall be  
29 removed at the expense of Licensee. In the event Licensee is unable or refuses to remove such  
30 Equipment when requested by Town, Town may authorize removal and Licensee shall be  
31 responsible for all costs incurred for such removal. In no event may Licensee abandon in place  
32 any of its WCFs installed in or on the ROW, unless written consent of the Town is obtained.

33       4.     Fees and Charges. Licensee shall be solely responsible for the payment of all fees and  
34 charges in connection with Licensee’s performance under this Agreement, including those set  
35 forth as follows:

36             4.1 Pole Attachment Fee.

37             4.1.1 Pole Attachment Fee. Beginning on the Commencement Date for each Site  
38 Supplement, Licensee shall pay to Town, without demand, an annual Pole Attachment Fee of  
39 \$200 for the use of each Town Facility by Licensee pursuant to such Site Supplement. Payment  
40 of the Pole Attachment Fee is required for Licensee to occupy and use space on the Town  
41 Facility described in the Site Supplement. Beginning on the first anniversary of a Site

1 Supplement Commencement Date, and continuing throughout the term of the Site Supplement,  
2 the Pole Attachment Fee shall increase by one percent (1%) per year over the Pole Attachment  
3 Fee for the immediately preceding year. If any applicable Law requires the Town to provide  
4 Licensee the right to use the Town Facilities that are subject to this Agreement at an annual rate  
5 less than the rate set forth herein, the annual Pole Attachment Fee shall be reduced to such  
6 amount on the next anniversary of the Commencement Date (or earlier if required by such Law)  
7 for all existing Site Supplements, and all new Site Supplements shall be entered into at such new  
8 rate. In such event, the Parties shall enter into an amendment to this Agreement documenting the  
9 new amount of the Pole Attachment Fee. The annual Pole Attachment Fee shall not apply to or  
10 be charged for attachments to property or pole owner by a third-party or the installation of  
11 Licensee's proprietary poles in the ROW.

12 4.1.2 Payment of Pole Attachment Fee. The Pole Attachment Fee is non-refundable  
13 and is payable to Town, without demand, ninety (90) days after the initial Commencement Date  
14 of a Site Supplement, and on or before each subsequent annual anniversary of the  
15 Commencement Date during the full term of the Site Supplement (or until such earlier time as  
16 such Site Supplement is terminated). Upon agreement of the Parties, Licensee may pay the Pole  
17 Attachment Fee by electronic funds transfer and, in such event, Town agrees to provide to  
18 Licensee bank routing information for such purpose. Town agrees to provide to Licensee a  
19 completed, current version of Internal Revenue Service Form W-9, or equivalent. Until the  
20 requested documentation has been received by Licensee, the Pole Attachment Fee shall accrue in  
21 accordance with Section 4.1, but Licensee shall have no obligation to pay the Pole Attachment  
22 Fee to the Town. Upon receipt of the requested documentation, Licensee shall pay the Pole  
23 Attachment Fee to Town.

24 4.2 Taxes. Licensee shall pay all applicable state and local taxes levied, assessed, or  
25 imposed on Licensee or on Licensee's Equipment by reason of this equipment.

26 4.3 Electric Meter. When the Equipment requires an electric meter, as determined by the  
27 utility provider, the Licensee shall install or cause to be installed, at its cost, a separate electric  
28 meter on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet as  
29 required by the electric provider for the operation of its Equipment. Licensee will request that the  
30 utility provider attempt in good faith to install power facilities which are inconspicuous as  
31 reasonably possible, and yet consistent with electric code installation requirements.

32 4.4 Payments Made. All payments due to the Town pursuant to this Agreement shall be  
33 paid to the Town at the address provided in Section 18 of this Agreement, or to such other  
34 persons or at such other places as Town may designate in writing. All payments shall be in  
35 lawful money of the United States of America.

36 5. Additional License and Permits Required by Code. To the extent not in contravention of  
37 any applicable Law, all of the Equipment shall be installed, operated, and maintained by or on  
38 behalf of Licensee in accordance with applicable provisions of the Town Code. Licensee or its  
39 designee may be required to apply for, obtain, and pay the generally applicable fees for a Permit  
40 issued by the Town for work performed within the ROW, and the ROW will be used according  
41 to the plans submitted by Licensee and approved by the Town in issuing a Permit. Execution of  
42 this Agreement or any Site Supplement does not constitute the issuance of a Permit.

1 6. Design.

2 6.1 Basic Design and Installation Requirements for Using Town Facilities. The design of  
3 the Equipment shall be described in Exhibit A-1 to each Site Supplement. All of Licensee’s  
4 construction and installation work for its Equipment on the Town Facilities or otherwise in the  
5 ROW shall be performed at Licensee’s sole cost and expense and in a good and workmanlike  
6 manner and promptly completed. When Licensee and Town have agreed on an existing Town  
7 Facility location as a suitable site for Licensee’s Equipment on a pole, but the existing Town-  
8 owned pole needs to be replaced to accommodate the Equipment, then Licensee shall pay all  
9 costs related to replacing the Town-owned pole, including but not limited to installation of the  
10 replacement pole (the “**Replacement Pole**”), transfer of the streetlight fixtures, traffic signal,  
11 and/or other items attached to the existing Town-owned pole to the Replacement Pole, and  
12 removal and salvage of the existing Town-owned pole to the Town. Payment of the pole  
13 replacement costs does not provide Licensee with any ownership interest in the Replacement  
14 Pole. Town will be deemed to own both the original Town-owned pole and the Replacement  
15 Pole. The installation or attachment of the Equipment using the Replacement Pole shall be at  
16 Licensee’s sole cost and expense.

17 6.2 Design Standards for Small Cell Facilities. Any Small Cell Facility installed in  
18 accordance with this Agreement shall comply with the Small Cell Procedures and Design  
19 Guidelines issued by Director (“**Guidelines**”), except as federal or state law may preempt or act  
20 to modify such Guidelines at present or in the future. Modifications to the requirements of the  
21 Guidelines may be granted by the Director pursuant to the “Administrative Waiver” provisions  
22 of the Guidelines. In addition to the Guidelines, the Licensee shall follow all applicable  
23 Development Code provisions related to WCF design.

24 7. Common Conditions or Requirements Applicable to Site Supplements Issued Under this  
25 Agreement.

26 7.1 Damage to Town Property. If Licensee damages or disturbs the surface or subsurface  
27 of any ROW or adjoining property, pole, streetlight fixture, traffic signal, or other improvement,  
28 in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own  
29 expense, and in a manner reasonably acceptable to Town, repair the damage or disturbance.  
30 Licensee acknowledges responsibility to separately address damage it actually causes to private  
31 property, if any, in the process of Licensee’s exercise of its rights hereunder.

32 7.2 Public Emergency. In the event of an emergency or to protect the public health or  
33 safety, prior to the Town accessing or performing any work on a Town Facility on which  
34 Licensee has installed Equipment, Town may require Licensee to deactivate such Equipment if  
35 any of Town’s employees or agents must move closer to the Equipment than the FCC  
36 recommended minimum distance. In such case, Town will contact Licensee at 800- [REDACTED] to  
37 request deactivation.

38 7.3 Pole Replacement.

39 7.3.1 Subject to Section 7.1, if a Town Facility needs replacement or repair due to  
40 damage, including a traffic accident or deterioration, Town shall perform maintenance or repair

1 as soon as reasonably possible. Town may allow Licensee to perform maintenance or  
2 replacement in Town's sole discretion. In such event, Town shall reimburse Licensee within  
3 forty-five (45) days of Licensee's receipt of an invoice. However, in the event Licensee elects in  
4 writing to have Town replace the Town Facility, Town shall perform such replacement within  
5 one hundred twenty (120) days thereafter, and Licensee shall cooperate with Town to  
6 temporarily relocate its Equipment, if necessary. Upon completion of the replacement, Town  
7 shall notify Licensee in order for Licensee to install its Equipment.

8 7.3.2 Town will contact Licensee to pick up the damaged equipment and Licensee can  
9 reinstall its equipment once the replacement pole is installed and functioning as a Town Facility.

10 7.3.3 Licensee shall have the right to temporarily use a Town Facility for its operation  
11 during the replacement period at a location reasonably acceptable to both Town and Licensee to  
12 the extent that a suitable Town Facility is available.

13 7.3.4 In the event Town is responsible for replacing the Town Facility with a  
14 Replacement Pole, Town shall only be responsible for the cost of a standard pole, and Licensee  
15 shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole,  
16 and for all costs relating to replacement and activation of Equipment on the pole and any  
17 ancillary Facilities related to Licensee's Network. For purposes of this Agreement, a "**standard**  
18 **pole**" is a pole that meets the minimum requirements to house the Town Facility without any of  
19 the Small Cell Facilities on the pole as contemplated herein. For avoidance of doubt, Town is not  
20 required to pay for any costs required to make a standard pole usable by Licensee as a Small Cell  
21 Facility, and Licensee shall pay the costs to make the pole usable for its networks.

#### 22 7.4 Removal and Relocation.

23 7.4.1 Licensee understands and acknowledges that Town may require Licensee to  
24 relocate one or more of its Equipment installations. Licensee shall, at Town's direction and upon  
25 ninety (90) days' prior written notice to Licensee, relocate such Equipment at Licensee's sole  
26 cost and expense whenever Town reasonably determines that the relocation is needed for any of  
27 the following purposes: (i) if required for the construction, modification, completion, repair,  
28 relocation, or maintenance of a Town or other public agency project; (ii) because the Equipment  
29 is interfering with or adversely affecting proper operation of Town-owned Poles, traffic signals,  
30 communications, or other Town Facilities; or (iii) Town is abandoning or removing the Town  
31 Facility. In any such case, Town shall use reasonable efforts to afford Licensee a reasonably  
32 equivalent alternate location. If Licensee shall fail to relocate any Equipment as requested by the  
33 Town in accordance with the foregoing provision, Town shall be entitled to remove or relocate  
34 the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee  
35 shall pay to the Town actual costs and expenses incurred by the Town in performing any removal  
36 work and any storage of Licensee's property after removal within thirty (30) days of the date of a  
37 written demand for this payment from the Town.

38 7.4.2 In the event of an assignment, sub-license or transfer pursuant to Section 14 of  
39 this Agreement, any such assignee or transferee shall immediately provide updated or new  
40 contact information pursuant to this provision.

1           7.4.3 In the event Licensee desires to relocate any Equipment from one Town Facility  
2 to another, Licensee shall so advise Town. Town will use reasonable efforts to accommodate  
3 Licensee by making another reasonably equivalent Town Facility available for use in accordance  
4 with and subject to the terms and conditions of this Agreement.

5           7.4.4 In the event Licensee is required to relocate any Equipment, the Licensee may  
6 place a temporary installation in the ROW (e.g., cell-on-wheels) upon prior approval by the  
7 Town and compliance with any applicable permit requirements.

8           7.5 Non-exclusiveness. Except as otherwise provided in this Agreement, the rights and  
9 privileges granted to Licensee under this Agreement, and each Site Supplement described herein,  
10 are nonexclusive; except that while Licensee's use is non-exclusive, once Licensee has placed its  
11 Equipment on Town property pursuant to this Agreement and any Site Supplement Licensee  
12 shall not be displaced without Licensee's consent from the location on which such Equipment is  
13 placed in order to place the equipment of another in the same place or location. For avoidance of  
14 doubt, the Parties understand and agree that Town permits other persons and entities to install  
15 utility facilities in the ROW. In permitting such work to be done by others, Town shall not be  
16 liable to Licensee for any damage caused by those persons or entities.

17           7.6 Non-interference. The following provisions shall apply to ensure and/or avoid  
18 interference (both physical interference and Radio Frequency Interference) resulting from  
19 Licensee's installation, operation and/or maintenance of its Equipment:

20           A. Radio Frequency Interference. Licensee shall ensure that the Equipment will not  
21 cause radio frequency interference with wireless communication facilities or devices, cable  
22 television, broadcast radio or television systems, satellite broadcast systems, or Town traffic,  
23 public safety or other communications signal equipment existing at the time of installation of the  
24 Equipment or at any time thereafter. Any interference with public safety equipment or operations  
25 shall be addressed pursuant to subsection (e), below.

26           B. Existing Uses. Licensee shall not interfere in any manner with the existing uses of  
27 Town property including ROW, and also including any sanitary sewers, water mains, storm  
28 drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures,  
29 cable television, and other telecommunications, utility, and government property, without the  
30 express written approval of the owner(s) of the affected property or properties.

31           C. Town Communications. Licensee shall not interfere in any manner with current or  
32 future Town or other governmental public safety communications.

33           D. Town Interference. Town reserves the right, but has no obligation, to maintain and  
34 operate its Town Facilities in such reasonable manner as will enable Town to fulfill its own  
35 service requirements or obligations. Town agrees that Town and/or any other tenants, licensees,  
36 or users of the ROW who currently have or in the future take possession of space within the  
37 ROW will be permitted to install only such equipment that is of the type and frequency which  
38 will not cause harmful interference which is measurable in accordance with then existing  
39 industry standards to the then existing Equipment of Licensee.

1 E. Remedies. Without limiting any other rights or remedies, if interference occurs and  
2 continues for a period in excess of thirty six (36) hours following notice to the interfering Party  
3 via telephone to Licensee’s Network Operations Center at (800) [REDACTED] or to the  
4 Director at (970) [REDACTED], the interfering Party shall require any other user to reduce  
5 power or cease operations of the interfering equipment until the interference is cured. The  
6 Parties acknowledge that there will not be an adequate remedy at Law for noncompliance with  
7 the provisions of this Section E and therefore the Parties shall have the right to equitable  
8 remedies such as, without limitation, injunctive relief and specific performance.

9 8. Damage to Licensee’s Equipment. In the event of any damage to Licensee’s Equipment,  
10 Town shall have no liability or responsibility to repair the same unless such damage arose from  
11 the negligence or willful misconduct of Town, its employees, agents, or contractors; provided  
12 however, in such case, Town’s liability shall be limited to the cost to repair or replace the same.

13 9. Title and Ownership.

14 9.1 Title to the Equipment. Title to the Equipment, exclusive of the Town Facility  
15 (original or replacement) used for support, but including ground mounted equipment, shall  
16 remain with Licensee and shall constitute Licensee’s personal property and equipment, and not  
17 fixtures or improvements attached to the land.

18 9.2 No Ownership in Town Property. Neither this Agreement, nor any Site Supplement  
19 issued pursuant to this Agreement or any Permit separately issued for installation of any  
20 Equipment, regardless of the payment of any fees and charges shall create or vest in Licensee  
21 any ownership rights, license coupled with an interest, or property rights whatsoever in any  
22 portion or elements of the Town Facilities, or any portion of the underlying ROW. Additionally,  
23 except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does  
24 not constitute or create a leasehold interest or right to the benefit of any Town property or  
25 portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to  
26 construct, retain, extend, place or maintain any poles or other facilities for the benefit of Town  
27 which are not needed for Licensee’s own service requirements.

28 9.3 “As Is” Condition. Licensee accepts the Town Facilities identified in any Site  
29 Supplement, or any Replacement Pole, in its “AS IS” condition, without representation or  
30 warranty of any kind by Town, or any Town officer, agent, or employee, and subject to all  
31 applicable Laws governing the use of the Town Facilities and the ROW for Licensee’s intended  
32 purpose.

33 10. Maintenance and Repair. Except as otherwise provided in this Agreement, Town shall  
34 maintain and keep the Town Facility containing Equipment in good condition and in accordance  
35 with Town’s standard maintenance requirements, at its sole cost and expense. Licensee shall  
36 keep the Equipment and other improvements by Licensee on the Town Facility, if any, in good  
37 repair. Licensee shall clean graffiti on Licensee’s Equipment within forty five (45) days after  
38 receipt of written notice from Town.

39 11. Hazardous Substances. Licensee agrees that Licensee, its contractors, subcontractors, and  
40 agents, will not use, generate, store, produce, transport, or dispose any Hazardous Substance on,



1 under, about or within the area of a Town Facility or the ROW in which it is located in violation  
2 of any applicable Law. Except to the extent of the negligence or intentional misconduct of Town,  
3 Licensee will pay, indemnify, defend, and hold Town harmless against and to the extent of any  
4 loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used  
5 by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage,  
6 treatment, transportation, disposal or other handling of any Hazardous Substance will be  
7 performed by persons who are properly trained, authorized, licensed, and otherwise permitted to  
8 perform those services. The Parties recognize that Licensee is only using a small portion of the  
9 ROW and that Licensee shall not be responsible for any environmental condition or issue except  
10 to the extent resulting from Licensee's specific activities and responsibilities under this  
11 Agreement. Licensee is not responsible for any Hazardous Substances present on the ROW at  
12 the Effective Date of this Agreement, nor for Hazardous Substances placed on the ROW by  
13 Town or persons other than Licensee.

14 12. Indemnity.

15 12.1 The Licensee shall indemnify, defend, and hold the Town, its employees, officers,  
16 elected officials, agents and contractors (the "**Indemnified Parties**") harmless from and against  
17 all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses  
18 arising from the installation, use, maintenance, repair or removal of the Equipment, any of its  
19 activities in the ROW, or the Licensee's breach of any provision of this Agreement and any Site  
20 Supplement. The indemnity provided for in this Section 12 shall not apply to any liability  
21 resulting from the negligence or willful misconduct of the Town or an Indemnified Party.

22 12.2 Town shall give Licensee timely written notice of the making of any claim or of  
23 the commencement of any action, suit, or other proceeding in connection with any Equipment.  
24 In the event such claim arises, Town shall tender the defense thereof to Licensee and Licensee  
25 shall consult and cooperate with the Town's legal counsel while conducting its defense. The  
26 Town shall cooperate fully therein with Licensee's legal counsel and shall be consulted on any  
27 settlements of claims prior to the execution of any settlement agreements.

28 12.3 If separate representation to fully protect the interests of both Parties is or  
29 becomes necessary, such as a conflict of interest between Town and the counsel selected by  
30 Licensee to represent Town, Licensee shall pay for all reasonable expenses incurred by Town as  
31 a result of such separate representation; provided, however, in the event separate representation  
32 becomes necessary, Town shall select its own counsel and any other experts or consultants,  
33 subject to Licensee's prior approval, which shall not be unreasonably withheld. Town's  
34 expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants'  
35 fees, and shall also include the reasonable value of any services rendered by Town's attorney or  
36 his/her assistants or any employees of Town or its agents, but shall not include outside attorneys'  
37 fees for services that are unnecessarily duplicative, or services provided by the Town to  
38 Licensee.

39 12.4 The obligations of this Section 12 shall survive the expiration, cancellation, or  
40 termination of this Agreement and shall fully enforceable thereafter, subject to any applicable  
41 statute of limitation.

1 13. Insurance Requirements.

2 13.1 Licensee's Insurance. Throughout the Term of this Agreement Licensee shall  
3 procure and maintain insurance in the amounts and form specified in attached **Exhibit C**. Within  
4 thirty (30) days of the execution of this Agreement, Licensee shall submit a Certificate of  
5 Insurance to Town, which Certificate shall show compliance with the insurance requirements set  
6 forth in this Agreement. The requirements of this Section 13.1 shall control in the event of any  
7 conflict between this Section 13.1 and any other Law.

8 13.2 Certificates. If a Certificate of Insurance is submitted as verification of coverage,  
9 Town will reasonably rely upon the Certificate as evidence of coverage but this acceptance and  
10 reliance will not waive or alter in any way the insurance requirements or obligations of this  
11 Agreement. If any of the required policies expire during the life of this Agreement, Licensee  
12 must forward renewal or replacement Certificates to Town within fifteen (15) business days after  
13 the renewal date containing all the necessary insurance provisions.

14 14. Assignment/Sublicensing.

15 14.1 This Agreement and each Site Supplement granted herein is personal to Licensee  
16 and for Licensee's use only. Subject to Section 14.3, this Agreement and the related rights and  
17 privileges may not be sold, leased, sublicensed, assigned or otherwise transferred by Licensee  
18 without the prior written consent of Town, which consent shall not be unreasonably withheld,  
19 conditioned, or delayed. Licensee will cooperate with Town to provide any documentation that  
20 Town reasonably requires to evaluate whether to grant consent to the proposed assignment or  
21 transfer. **Any Agreement which is assigned or otherwise transferred pursuant to this Section shall be**  
22 **equally subject to all the obligations and privileges of this Agreement including any amendments,**  
23 **which will remain in effect, as if the assigned Agreement was the original Agreement.** After  
24 assignment, this Agreement, including any amendments, shall be binding on the assignee to the  
25 full extent that was binding upon Licensee.

26 14.2 Any non-permitted transfer or assignment of the right to attach Equipment to a  
27 Town-owned pole shall be void and not merely voidable. Town may, in its sole discretion and in  
28 addition to all other lawful remedies available to Town under this Agreement, may collect any  
29 fees owed from Licensee all without prejudicing any other right or remedy of Town under this  
30 Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this  
31 Agreement or to the enforcement of any provisions of this Agreement against a transferee or  
32 assignee who did not receive Town's consent.

33 14.3 Notwithstanding anything to the contrary in this Section 14, without any approval  
34 or consent of Town, this Agreement and/or any Site Supplement may be sold, assigned, or  
35 transferred by Licensee to: (i) any entity in which Licensee directly or indirectly holds a  
36 majority or controlling equity or similar interest; (ii) any entity which directly or indirectly holds  
37 a majority or controlling equity or similar interest in Licensee; or (iii) any entity directly or  
38 indirectly under common control with Licensee. Licensee may also assign this Agreement and/or  
39 any Site Supplement to any entity which acquires all or substantially all of Licensee's assets in  
40 the market defined by the FCC in which the Town Facility is located by reason of a merger,  
41 acquisition, or other business reorganization without approval or consent of Town. Licensee

1 shall provide written notice to the Town within thirty (30) days of the Licensee completing a  
2 transaction with an entity that is permitted pursuant to this Section 14.3.

3 15. Default.

4 15.1 Default By Licensee.

5 15.1.1 Town shall provide Licensee with a detailed written notice of any violation of this  
6 Agreement, and a thirty (30) day period within which Licensee may: (a) demonstrate that a  
7 violation does not exist; (b) cure the alleged violation; or (c) if the nature of the alleged violation  
8 prevents correction thereof within thirty (30) days, initiate a reasonable corrective action plan to  
9 correct such alleged violation, including a projected completion date, subject to Town's written  
10 approval, which approval will not be unreasonably withheld.

11 15.1.2 If Licensee fails to disprove that a default exists or to correct the violation within  
12 thirty (30) days or, in the case of a violation which cannot be corrected in thirty (30) days if  
13 Licensee has failed to initiate a reasonable corrective action plan and to correct the violation  
14 within the specified time frame, then Town may declare in writing that Licensee is in default.

15 15.2 Default By Town.

16 15.2.1 Licensee shall provide Town with a detailed written notice of any violation of this  
17 Agreement, and a thirty (30) day period within which Town may: (a) demonstrate that a violation  
18 does not exist, (b) cure the alleged violation, or (c) if the nature of the alleged violation prevents  
19 correction thereof within thirty (30) days, initiate a reasonable corrective action plan to correct  
20 such alleged violation, including a projected completion date; provided, however, that such plan  
21 shall be subject to Licensee's written approval where Licensee's Equipment or operations will be  
22 affected by the corrective action, which approval will not be unreasonably withheld.

23 15.2.2 If Town fails to disprove a default exists or correct the violation within thirty (30)  
24 days or, in the case of a violation which cannot be corrected in thirty (30) days if Town has failed  
25 to initiate a reasonable corrective action plan and to correct the violation within the specified  
26 time frame, then Licensee may declare in writing that Town is in default.

27 15.3 Termination. In the event of a default, without limiting any right or remedy  
28 which the non-defaulting Party may have by reason of such default, the non-defaulting Party  
29 may terminate this Agreement if the default affects all Site Supplements and the Agreement as a  
30 whole, or any Site Supplement subject to the default, and/or pursue any remedy now or hereafter  
31 available to the non-defaulting Party under the Law. Further, upon a default, the non-defaulting  
32 Party may at its option (but without obligation to do so), perform the defaulting Party's duty or  
33 obligation. The costs and expenses of any such performance by the non-defaulting Party shall be  
34 due and payable by the defaulting Party upon invoice therefor. If Licensee undertakes any such  
35 performance on Town's behalf and Town does not pay Licensee the full undisputed amount  
36 within thirty (30) days of its receipt of an invoice setting forth the amount due, Licensee may  
37 offset the full undisputed amount due against all fees due and owing to Town under this  
38 Agreement until the full undisputed amount is fully reimbursed to Licensee.

1 16. Bankruptcy. The Parties expressly agree and acknowledge that it is their intent that in the  
2 event Licensee shall become a debtor in any voluntary or involuntary bankruptcy proceeding  
3 under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the “**Bankruptcy Code**”),  
4 for the purposes of proceeding under the Bankruptcy Code, this Agreement shall be treated as an  
5 unexpired lease of nonresidential real property under Section 365 of the Bankruptcy Code, 11  
6 U.S.C. § 365 (as may be amended), and, accordingly, shall be subject to the provisions of  
7 subsections (d)(3) and (d)(4) of said Section 365 with the exception that Town waives any  
8 requirement for Licensee to assume or reject this Agreement earlier than prior to confirmation of  
9 a plan. Any person or entity to which Licensee’s rights, duties and obligations under this  
10 Agreement are assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed  
11 without further act to have assumed all of the obligations of Licensee arising under this  
12 Agreement both before and after the date of such assignment. Any such assignee shall upon  
13 demand execute and deliver to Town an instrument confirming such assumption. Any monies or  
14 other considerations payable or otherwise to be delivered in connection with such assignment  
15 shall be paid to Town, shall be the exclusive property of Town, and shall not constitute property  
16 of Licensee or of the estate of Licensee within the meaning of the Bankruptcy Code. Any monies  
17 or other considerations constituting Town’s property under the preceding sentence not paid or  
18 delivered to Town shall be held in trust for the benefit of Town and be promptly paid to Town.

19 17. Surrender. Within ninety (90) days of the expiration of the term of a Site Supplement, or  
20 upon the earlier termination thereof, Licensee shall: (i) remove all Equipment that is the subject  
21 of the Site Supplement which is attached or ground mounted, at its sole expense; (ii) repair any  
22 damage to the Town Facilities or the ROW caused by such removal; and (iii) restore the Town  
23 Facilities to the condition in which they existed prior to the installation of the Equipment  
24 (whether attached or ground mounted), reasonable wear and tear and loss by casualty or other  
25 causes beyond Licensee’s control excepted.

26 18. Notices. Any notice, request, demand, statement, or consent herein required or permitted  
27 to be given by either Party to the other hereunder, shall be in writing signed by or on behalf of  
28 the Party giving the notice and addressed to the other at the address as set forth below:

29 To Licensee:

30 [TO BE INSERTED]  
31  
32

33 To Town:

34  
35 Town of Breckenridge  
36 P.O. Box 168  
37 150 Ski Hill road  
38 Breckenridge, Colorado 80424  
39 Attention: Town Manager  
40

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

42  
43 Timothy H. Berry  
44 Timothy H. Berry, P.C.

1 P.O. Box 2  
2 Leadville, Colorado 80461  
3

4 Each Party may by notice in writing change its address for the purpose of this Agreement, which  
5 address shall thereafter be used in place of the former address. Each notice, demand, request, or  
6 communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given,  
7 served, or sent for all purposes hereunder: (i) two (2) business days after it shall be mailed by  
8 United States registered or certified mail, postage prepaid and return receipt requested, in any  
9 post office or branch post office regularly maintained by the United States Postal Service, (ii)  
10 upon personal delivery, or (iii) one (1) business day after deposit with any recognized  
11 commercial air courier or express service. Any communication made by e-mail or similar  
12 method shall not constitute notice pursuant to this Agreement.  
13

14 19. Emergency Contact. Licensee shall make certain that it has a designated contact person  
15 available 24/7 in the event of an emergency requiring Town to take immediate action pursuant to  
16 this Agreement. In such event, Licensee's contact is: Network Operations Center - (800)  
17 [REDACTED]. If after two (2) attempts to make contact by Town with no response, Town shall  
18 have the right to undertake any actions that Town may deem reasonably necessary to avoid  
19 damage to property or personal injury, and Town's reasonable and documented costs for such  
20 undertaking shall be paid by Licensee.

21 20. Miscellaneous.

22 20.1 Entire Agreement. This Agreement constitutes the entire agreement and  
23 understanding between the Parties, and supersedes all negotiations, understandings, or  
24 agreements. Any amendments to this Agreement must be in writing and executed by both  
25 Parties.

26 20.2 Severability. If any provision of this Agreement is invalid or unenforceable the  
27 remainder of this Agreement, or the application of this Agreement, shall not be affected, and  
28 each remaining provision of this Agreement shall be valid and enforceable to the fullest extent  
29 permitted by law.

30 20.3 Governing Law; Venue; Waiver of Jury Trial. This Agreement shall be governed  
31 by the laws of the State of Colorado without regard to choice of law rules or federal law as  
32 applicable. Venue for any action arising out of or pertaining to this Agreement shall be proper  
33 only in the state courts of Summit County, Colorado. Both Parties waive the right to a jury trial  
34 in action to enforce, interpret or construe this Agreement.

35 20.4 Exhibits. All Exhibits referred to and attached to this Agreement are incorporated  
36 herein by reference.

37 20.5 Authority to Execute. The individuals executing this Agreement on behalf of  
38 each of the Parties represent that they have all requisite powers and authority to cause the Party  
39 for whom they have signed to enter into this Agreement and to bind such Party to fully perform  
40 its obligations as set forth in this Agreement.

1           20.6 No Waiver. A Party shall not be excused from complying with any of the terms  
2 and conditions of this Agreement by any failure of a Party upon any one or more occasions to  
3 insist upon or to seek compliance with any such terms or conditions.

4           20.7 Force Majeure. Time periods for performance under this Agreement shall be  
5 deemed extended day for day for time lost attributable to any delay resulting from any act of  
6 God, strike, civil riot, fire, flood, material or labor shortage, restriction by governmental  
7 authority, and any other cause not within the reasonable control of the party whose performance  
8 is required under the Agreement.

9           20.8 Limitation of Liability. Except for indemnification pursuant to Section 12,  
10 neither Party shall be liable to the other, or any of their respective agents, representatives,  
11 employees, for any lost revenue, lost profits, loss of technology, rights or services, incidental,  
12 punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of  
13 service, even if advised of the possibility of such damages, whether under theory of contract, tort  
14 (including negligence), strict liability or otherwise.

15           20.9 Article X, Section 20/TABOR. The Parties understand and acknowledge that  
16 Town is subject to Article X, § 20 of the Colorado Constitution (“**TABOR**”). The Parties do not  
17 intend to violate the terms and requirements of TABOR by the execution of this Agreement or  
18 any Site Supplement or ROW Use Permit. It is understood and agreed that this Agreement does  
19 not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR  
20 and, therefore, notwithstanding anything in this Agreement to the contrary, all payment  
21 obligations of Town are expressly dependent and conditioned upon the continuing availability of  
22 funds beyond the term of Town’s current fiscal period ending upon the next succeeding  
23 December 31. Financial obligations of Town payable after the current fiscal year are contingent  
24 upon funds for that purpose being appropriated, budgeted, and otherwise made available in  
25 accordance with the rules, regulations, and ordinances of Town, and other applicable Law.

26           20.10 No Waiver of Governmental Immunity. Nothing in this Agreement shall be  
27 construed to waive, limit, or otherwise modify any governmental immunity or other rights or  
28 protections that may be available by law to Town, its elected and appointed officials, employees,  
29 contractors, or agents, or any other person acting on behalf of Town and, in particular,  
30 governmental immunity afforded or available pursuant to the Colorado Governmental Immunity  
31 Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

32           20.11 Open Records Act. Licensee acknowledges that this Agreement is public record  
33 within the meaning of the Colorado Open Records Act, § 24-72-202(6), C.R.S., and accordingly  
34 may be disclosed to the public.

35           20.12 No Macro Facilities. Nothing in this Agreement shall be interpreted to authorize  
36 the installation of macro wireless communications service facilities, macro base stations, or  
37 similar high-powered cellular facilities in the ROW, nor the installation of macro wireless towers  
38 or poles intended for macro facilities, unless otherwise agreed in writing.

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

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

ATTEST:

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

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LICENSEE:

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Print Name: \_\_\_\_\_

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**EXHIBIT A**  
**Form of Site Supplement**

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**Site Supplement**

This Site Supplement (“**Supplement**”) is made and entered into effective as of \_\_\_\_\_, 20\_\_ by and between the Town of Breckenridge, a Colorado municipal corporation, with an address of P.O. Box 168, 150 Ski Hill Road, Breckenridge, Colorado 80424 (“**Town**”) and \_\_\_\_\_, with its principal offices at \_\_\_\_\_, (“**Licensee**”).

1. Supplement. This is a Site Supplement as referenced in that certain “Master License Agreement for the Use of Town Rights-of-Way and Property in Connection with the Operation of a Small Cell Wireless Network” between Town and Licensee dated \_\_\_\_\_, 2019 (“**Agreement**”). All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Description and Location.

(a) Licensee shall have the right to use the Town Facility for Equipment at the designated areas in the ROW as further described in **Exhibit A-1** attached hereto (the “**Licensed Area**”); OR

(b) Licensee shall have the right to place its own Equipment at the designated areas in the ROW as further described in **Exhibit A-1** attached hereto (the “**Licensed Area**”); OR

(c) Licensee shall have the right to place its own Equipment on street lighting poles approved for street lighting purposes by the Town that are purchased by the Licensee and ownership conveyed to the Town via bill of sale as further described in **Exhibit A-1** attached hereto (the “**Licensed Area**”); OR

(d) Licensee shall have the right to place its own Equipment on third-party owned poles that are located within the ROW as further described in **Exhibit A-1** attached hereto (the “**Licensed Area**”).

3. Equipment. The Equipment to be installed at the Licensed Area is described in **Exhibit A-1** attached hereto.

4. Term. The term of this Supplement shall be as set forth in Section 3.1 of the Agreement.



1 5. Fees. The initial annual Pole Attachment Fee for the term of this Supplement shall be \$200,  
2 as determined in accordance with the Agreement, and as adjusted by Section 4.1 of the  
3 Agreement, and applicable only to those attachments described in Section 2(a) of this  
4 Supplement. There shall be no attachment fee charge to Licensee to place Licensee’s proprietary  
5 pole in the ROW (as described in Sections 2(b) and (c) of this Supplement), or for Licensee to  
6 attach Equipment to a third party pole (as described in Section 2(d) of this Supplement).

7  
8 6. Commencement Date. The commencement date of this Supplement shall be the first day of  
9 the month following the date Licensee has commenced installation of its Equipment at the  
10 Licensed Area.

11  
12 7. Approvals/Fiber. It is understood and agreed that Licensee’s ability to use the Licensed Area  
13 is contingent upon its obtaining all of the certificates, permits, and other approvals (collectively  
14 the “**Governmental Approvals**”) that may be required by any Federal, State or Local  
15 authorities, as well as a satisfactory fiber and electrical connection which will permit Licensee  
16 use of the Licensed Area as set forth above. In the event that: (i) any of such applications for  
17 such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued  
18 to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by  
19 governmental authority; (iii) Licensee determines that such Governmental Approvals may not be  
20 obtained in a timely manner; (iv) Licensee determines that it will be unable to obtain in a  
21 satisfactory manner, or maintain any fiber or power connection; or (v) Licensee determines that  
22 the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to  
23 terminate this Supplement. Notice of Licensee’s exercise of its right to terminate shall be given  
24 to Town in writing by certified mail, return receipt requested, and shall be effective upon the  
25 mailing of such notice by Licensee, or upon such later date as designated by Licensee. All Pole  
26 Attachment Fees paid to said termination date shall be retained by Town. Upon such termination,  
27 this Supplement shall be of no further force or effect except to the extent of the representations,  
28 warranties, and indemnities made by each Party to the other hereunder which representations,  
29 warranties, and indemnities shall survive the termination of this Supplement and shall be fully  
30 enforceable thereafter, subject to any applicable statute of limitation. Otherwise, Licensee shall  
31 have no further obligations for the payment of the Pole Attachment Fee to Town.  
32 Notwithstanding the foregoing, all obligations regarding removal, restoration, repair of damage  
33 and related issues contained in the Agreement remain in full force and effect.

34  
35 8. Miscellaneous.

36  
37 [insert any additional provisions – when applicable, staff can add bill of sale language if  
38 ownership of a pole is being conveyed by Licensee to the Town and attach the bill of sale to this  
39 Site Supplement].

40  
41  
42  
43 [Signature page follows]  
44  
45

TOWN OF BRECKENRIDGE,  
a Colorado municipal corporation

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

ATTEST:

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

LICENSEE:  
\_\_\_\_\_ \

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

Print Name: \_\_\_\_\_

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

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**Exhibit A-1 To Site Supplement  
Licensee Plans, Licensed Area, and Description of Town Facilities/Equipment  
to be Installed as Approved by Town**

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**[TO BE ATTACHED]**

**EXHIBIT B**  
**Attachment to Town Traffic Signal Facilities**

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Attachments to Town Traffic Signal Facilities shall comply with the requirements of the Town's Small Cell Procedures and Design Standards.

**EXHIBIT C**  
**Licensee's Insurance Requirements**

---

1. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance on ISO Form CG 00 01 or its equivalent with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance must be maintained until construction has been completed.

F. Property Insurance. Licensee shall provide property insurance or self-insurance with limits equal to the replacement cost of its facilities under this Agreement. The property self-insurance will include a waiver of subrogation in favor of the Town.

2. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

- (1) Licensee's required commercial general liability and commercial automobile liability insurance coverage must be primary insurance with respect to Town, its officers, officials, and employees. Any insurance or self-insurance maintained by Town, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.
- (2) Licensee's required commercial general liability and commercial automobile liability insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (3) The required commercial general liability and commercial automobile liability policies must contain a severability of interest clause and, to the extent allowed by

law, the required insurance shall contain a waiver of subrogation against Town, its officers, officials, and employees, for losses arising from work performed by Licensee for Town.

- (4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for a period of one (1) year following completion and acceptance of the work. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.
- (5) If a Certificate of Insurance is submitted as verification of coverage, Town will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.
- (6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Town with thirty (30) days' prior written notice of cancellation of any required insurance that is not replaced. Such notice shall be sent directly to Town Manager, Town of Breckenridge, P.O. Box 168, Breckenridge, Colorado 80424.

B. Town as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability, include the Town, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability caused, in whole or in part, by the work performed by Licensee.

**TOWN OF BRECKENRIDGE, COLORADO**  
**SMALL CELL PROCEDURES AND DESIGN GUIDELINES**  
**(May 2019)**

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**1. Introduction**

These Small Cell Procedures and Guidelines (“**Guidelines**”) set forth and establish the procedures, standards, requirements, and design guidelines for the location of Small Cell Wireless Communication Facilities (“**Small Cell WCF**”) within Town of Breckenridge owned or controlled rights of way (“**Town ROW**”). In order to facilitate public access to a wide range of telecommunication, broadband, and wireless services and in accordance with Sections 29-27-401, et seq., Colorado Revised Statutes (C.R.S.), Sections 38-5.5-101, et seq., C.R.S., and the applicable provisions of the Telecommunications Act of 1996, including Sections 253 and 332, and as interpreted by Federal Communications Commission Order 18-133 (September 26, 2018), Small Cell WCF are authorized to be located within publicly owned or controlled rights of way, subject to the consent of the jurisdiction controlling the right of way.

In order to accommodate such Small Cell WCF and facilitate public access to wireless communication in a manner that does not create a safety concern for the traveling public; create overly congested use of the Town ROW by such facilities; or adversely affect or alter the unique aesthetic character, beauty, and historic charm of the Town, the Director of the Department of Community Development of the Town of Breckenridge (“**Town**”) hereby establishes the following design guidelines for Small Cell WCF proposed to be located in the Town ROW.

These Guidelines are intended to ensure a complete, thorough, and consistent review of proposals for the location of Small Cell WCF in the Town ROW in accordance with state, federal, and local laws, without creating barriers to the deployment of wireless communication services. These Guidelines may be revised as appropriate and in accordance with state and federal law to address technological changes in the telecommunication industry or as may be necessary in the judgement of the Director to provide for the efficient, safe, and appropriate function of the Town ROW.

These Guidelines supersede in their entirety all prior versions of the Town’s small cell guidelines.

**2. Definitions and Interpretation of Guidelines**

2.1 In addition to those terms defined parenthetically, the following definitions apply to these Guidelines:

- A. As used in these Guidelines, “**Small Cell WCF**” means and includes small cell facilities as defined in Section 29-27-402(4), C.R.S., as amended. This Section currently provides in pertinent part as follows:

(4)(a) “Small cell facility” means . . . :

- (II) A wireless service facility that meets both of the following qualifications:
  - (A) Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the



antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

(B) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, backup power systems, grounding equipment, power transfer switch, and cut-off switch.

(b) “Small cell facility” includes a micro wireless facility.

- B. “**Arts District**” means Lots 1 and 2, Art District Subdivision, Town of Breckenridge, Summit County, Colorado.
- C. “**Conservation District**” is described in the Town’s “Handbook Of Design Standards for the Historic and Conservation Districts.” The Conservation District is a geographic area within the Town which has been determined by the community to contain resources of special value to the community. To protect such special and sensitive resources special standards are required with respect to the proposed location of new Small Cell WCF within the Conservation District, all as provided in these Guidelines.
- D. “**Development Code**” means the Town of Breckenridge Development Code, codified as Chapter 1 of Title 9 of the Breckenridge Town Code, as amended from time to time.
- E. “**Director**” means the Director of the Department of Community Development of the Town, or such person’s designee acting pursuant to Section 1-7-2 of the Breckenridge Town Code.
- F. “**Facility**” means a Small Cell Facility as defined in Section A, above, and includes both that antenna and the primary equipment enclosure.
- G. “**Small Cell WCF Application**” or “**Application**” means an application to install a Small Cell WCF within the Town ROW filed with the Director pursuant to the Development Code.
- H. “**Town Engineer**” means the Town Engineer of the Town, or such person’s designee acting pursuant to Section 1-7-2 of the Breckenridge Town Code.

## 2.2 Rules of Interpretation

- A. These Guidelines are to be interpreted in accordance with the ordinances, rules, and regulations of the Town, as amended from time to time. These Guidelines do not

themselves repeal or amend Section 9-1-19-50A, “Policy 50 (Absolute) Wireless Communications Facilities,” of the Development Code.

- B. Except as expressly provided in these Guidelines to the contrary, if there is a conflict between these Guidelines and any ordinance, rule, or regulation of the Town, the ordinance, rule, or regulation shall prevail.
- C. Wherever applicable in these Guidelines, the singular shall include the plural, and the plural shall include the singular.

### **3. Small Cell WCF Application Process**

3.1 Prior to submitting a Small Cell WCF Application the applicant is encouraged to initiate and schedule a pre-submittal meeting by contacting the Town’s Department of Community Development. However, a pre-submittal meeting is not required, and will only be held if the applicant requests one. By participating in the pre-submittal meeting, the applicant agrees that the mandatory review time stated in Section 3.6, below, does not start until the application is submitted, subject to the tolling provisions of Section 3.5.

3.2 A Small Cell WCF Application is classified and will be processed as a class D-minor development permit application as described in the Development Code. All provisions of the Development Code that are applicable to class D-minor development permit applications shall apply to a Small Cell WCF Application, but if there is a conflict between these Guidelines and the Development Code, these Guidelines will control. Without limiting the generality of the preceding sentence, the time normally allowed for processing of class D-minor development permit application does not apply to the processing of a Small Cell WCF Application (see Section 3.6, below).

3.3 All Small Cell WCF Applications must be submitted in hard copy; e-mailed applications will not be accepted. “Batched” applications to install multiple Small Cell WCF may be filed to the extent permitted by applicable law.

3.4 At the time of the submission of a Small Cell WCF Application the applicant must simultaneously pay the applicable Town fees as described in Section 14 of these Guidelines. If the required fees do not accompany the Small Cell WCF Application, the application will be rejected without prejudice and returned to the applicant by the Director.

3.5 The Director will review a Small Cell WCF Application for completeness and respond to the applicant within ten (10) days of the date of submission of the application with a report identifying any items missing from the application. The mandatory review periods provided in Section 3.6, below, shall be deemed tolled pending the applicant’s complete submission of any missing item identified in the Director’s completeness report.

3.6 The Director will complete his or her review of a Small Cell WCF Application and either approve, conditionally approve, or deny the application within ninety (90) days from the date of submission of the application, or from the date of submission of the completed

application if tolled due to an incomplete submission as provided above, whichever is the later date.

#### **4. Small Cell WCF Design Standards - Generally**

4.1 The following design guidelines shall apply to all Small Cell WCF proposed to be located within the Town ROW.

4.2 In accordance with the requirements of Section H4b of Section 9-1-19-50A, “Policy 50 (Absolute) Wireless Communications Facilities,” of the Development Code, when deciding a Small Cell Application the Director shall consider whether the proposed structure will adversely affect or alter the unique aesthetic character, beauty, and historic charm of the Town. If the Small Cell Application is for a location in the Conservation District, the Director shall consider those policies described in Section H4b of Section 9-1-19-50A, “Policy 50 (Absolute) Wireless Communications Facilities,” of the Development Code.

4.3 All equipment installation associated with a Small Cell WCF shall comply with Town’s Engineering Standards, the Americans with Disabilities Act and applicable regulations, and all other local, state, or federal laws and regulations.

4.4 No Small Cell WCF may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference includes any use of the Town ROW that disrupts vehicle or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

4.5 Because the Town does not have surveyed locations of all of the Town ROW, as part of a Small Cell Application it is the responsibility of the applicant to locate the Town ROW to the satisfaction of the Town Engineer.

#### **5. Pole Location**

5.1 Pole Location Requirements:

A. Poles shall be placed on site in accordance with the Director’s approval, which approval will take into consideration and be based upon the following hierarchy of preference for placement and deployment:

**(1) Outside of the Conservation District:**

(a) Within Town’s ROW:

- (i) Located on an existing traffic signal.
- (ii) Located on a new pole that replaces an existing light pole, utility pole, or other vertical infrastructure in the same location.
- (iii) Located at street intersections.
- (iv) Located adjacent to commercial driveways.

- (v) Located on a new pole as to not obstruct facades of existing structures or other significant property features.
- (vi) Located on common property lines, as extended into the right of way.
- (vii) Located as to not obstruct significant view corridors.

(b) Outside of Town ROW:

- (i) Located on an existing traffic signal;
- (ii) Located on Town property.
- (iii) Located on other publicly owned property and facilities;
- (iv) Located on public and private utility installations.
- (v) Located on non-publicly owned community facilities (such as places of worship, community centers, etc.).
- (vi) Located at other locations if the preferred locations in (b)(i)-(v) cannot be made to work.

**(2) Inside of the Conservation District:**

(a) Within Town's ROW:

- (i) Located on existing traffic signal;
- (ii) Located at street intersections;
- (iii) Located on an existing light pole, utility pole, or other vertical infrastructure in the same location.
- (iv) Located on a new pole that replaces an existing light pole, utility pole, traffic signal, or other vertical infrastructure in the same location.

(b) Outside of Town ROW:

- (i) Located on an existing traffic signal;
- (ii) Located on Town property.
- (iii) Located on other publicly owned property and facilities.
- (iv) Located on public and private utility installations.
- (v) Located on non-publicly owned community facilities (such as places of worship, community centers, etc.).
- (vi) Located at other locations if the preferred locations in (b)(i)-(v) cannot be made to work.

(c) No poles or facilities may be located on any historic structure or on any Town-owned structure located within the Arts District.

(d) All poles within the Conservation District must be located at street intersections. No pole may be located mid-block within the Conservation District.

- (3) An applicant may apply for a waiver from the strict application of the above hierarchy of placement locations as provided in Section 12, below.
  - (4) Pole must be a minimum of 5' from low pressure gas line, or 15' from high pressure gas line.
- B. Whether located within or outside of the Conservation District poles and facilities shall:
- (1) Not obstruct intersection sight distance or pedestrian visibility per AASHTO design guidelines.
  - (2) Not obstruct, impede, or hinder pedestrian, vehicular, or bicycle traffic, parking, or snow plowing operations within the Town ROW.
  - (3) Not encroach into pedestrian ways such as sidewalks, trails, or transit shelters/stops. A minimum clearance of 6' horizontally and 8' vertically shall be maintained in pedestrian ways.
  - (4) Not be located so as to obstruct facades of existing structures or other significant property features.
  - (5) Not be located along the frontage of a historic structure.
  - (6) Not be located in a manner that obstructs access to adjacent property.
  - (7) Not be located so as to obstruct significant view corridors.
  - (8) Avoid planned roadway improvements/development/bike path.
  - (9) Avoid drainage constraints (swale, roadside drainage, drainage easement).
  - (10) Avoid utility conflicts (storm sewer, water, fiber, and other utilities).
  - (11) Be aligned with existing street trees, utility/street light poles.
- C. New freestanding poles that will replace an existing pole shall be placed in the same location as the pole to be replaced, unless otherwise ordered by the Town Engineer.
- D. Freestanding poles fitted with an integrated street light shall be placed in the location approved by the Town Engineer.
- E. Except as provided in Sections C and D, above freestanding poles (that are not traffic signal pole replacements or fitted with integrated street lights) shall be separated from other freestanding small cell poles by a minimum of 500 feet; provided, however, as provided above, within the Conservation District poles there

is no minimum pole separation, but a pole may be located only at street intersections (i.e., no pole shall be located mid-block).

- F. In accordance with the provision of Section 12, below, pole location variances of up to 50' may be authorized with justification based on meeting other technical requirements (sight triangles, trees, traffic operations, need to place on common property lines, or where requirements described herein are demonstrated to be an effective prohibition of the ability to provide wireless service).
- G. All poles placed within Town ROW shall be conveyed to and shall become the property of the Town, unless otherwise ordered by the Town Engineer.

## **6. Street Lights**

6.1 If the Town Engineer determines that there is a public safety need for a street light at the particular location, the Small Cell WCF shall be mounted on a new freestanding pole with an integrated streetlight, which pole and streetlight shall be owned and operated by the Town on the Town's electrical circuit. Required street light fixtures and luminaires are described on the attached Exhibit "A". New freestanding poles with integrated lights shall be poles that allow for collocation. Lighted locations shall only be at street intersections or commercial/multi-family access drives, unless another location is approved by the Town Engineer.

6.2 If the Town Engineer determines that there is a no public safety need for street light at the particular location, the Small Cell WCF shall be mounted on a freestanding pole without an integrated streetlight. Such pole shall be owned by the applicant who originally installed the pole, or such entity's successor. New freestanding poles without integrated lights shall be poles that allow for collocation.

## **7. Specific Design Standards Applicable to the Type of Attachment or Location of Attachment**

7.1 Attachment to or Replacement of Existing Light Pole, Utility Pole, Traffic Signal, or Other Vertical Infrastructure:

- A. Owner of vertical infrastructure must approve use and placement of the Small Cell WCF.
- B. Maximum total pole height (including antenna) shall be as short as possible in order for the Small Cell WCF to operate properly, but in no event taller than:
  - (a) 40' in non-residential areas.
  - (b) 30' in residential areas and in the Town's Conservation District.
- C. Maximum antenna enclosure of 3.0 cubic feet.
- D. A single pole mount may have up to two antenna/equipment enclosures.

- E. If mounted above the existing pole, antenna must be concealed within a shroud (“**cantenna**”), with a tapered transition from antenna shroud to pole.
- F. If replacing existing pole or if existing pole accommodates internal wiring, all wiring shall be internal to the pole.
- G. Application submittal materials shall include appropriate professional engineer-stamped plans and specifications showing such detail of the Small Cell WCF and its location as is reasonably required by the Director to evaluate the impacts of the proposed Small Cell WCF to structure it is to be attached to, including, but not limited to, the structural and loading capacity of the structure to which it is to be attached.

**7.2 Freestanding Small Cell Pole (With or Without Integrated Street Light):**

A. Pole design and manufacture:

- (1) If no other vertical infrastructure is present in area: round, straight, galvanized steel, painted with black with a matte finish with a two coat system with inorganic zinc-rich primer (shop coat) and high-build urethane top coat. The shop coat shall have a dry film thickness of 3.0 mils. The top coat shall have a thickness of 3.0 mils. The Town Engineer may approve an alternative coating system.
- (2) If other vertical infrastructure is present in area: design must be compatible with nearby poles (similar color, style, and appearance).
- (3) Pole shall be designed to accommodate a minimum of two small cell antennas in order to promote collocation. Collocated antennas shall not be located on top of each other so as to increase the overall height of the pole unless location on top of each other is required in order for both antennas to operate properly.
- (4) Equipment cabinet shall be painted black with a matte finish.
- (5) Equipment cabinet shall be integrated in base of pole and shall be round, unless otherwise authorized by the Town Engineer.
- (6) Equipment cabinet shall be fluted, unless otherwise authorized by the Town Engineer.
- (7) Antennas must be concealed within a cantenna, with a tapered transition from antenna shroud to pole.
- (8) Antenna/shroud shall be the minimum height required to allow the Small Cell WCF to operate properly, but no more than 8'0" in height.
- (9) Maximum antenna enclosure shall be three (3) cubic feet.

(10) Breakaway supports should be used unless Clear Zone Analysis<sup>1</sup> indicates otherwise. Mass of breakaway support should not exceed 1,000 lbs.

- B. Owner of vertical infrastructure must approve use.
- C. Maximum total pole height (including all collocated antennas) shall be as short as possible in order for the Small Cell WCF to operate properly, but in no event taller than:
  - (a) 40' in non-residential areas.
  - (b) 30' in residential areas and in the Town's Conservation District.

In accordance with the provision of Section 12, below, height variances may be authorized with justification based on meeting other technical requirements; provided, however, in no event shall the total pole height, including all collocated antennas, exceed 50'.

- D. Maximum equipment cabinet height: 6'0".
- E. Application submittal materials shall include appropriate professional engineer-stamped plans and specifications showing such detail of the Small Cell WCF and its location as is reasonably required by the Director to evaluate the impacts of the proposed Small Cell WCF to structure it is to be attached to, including, but not limited to, the structural and loading capacity of the structure to which it is to be attached.

### **7.3 Strand-Mounted Small Cell:**

- A. Owner of vertical infrastructure must approve use.
- B. Equipment attached to vertical infrastructure must be less than 3 cubic feet in volume.
- C. Equipment attached to strands must be less than 3 cubic feet in volume.
- D. A single strand mount may have up to two antenna/equipment enclosures.
- E. Equipment shall not obstruct sight distance per AASHTO design guidelines or minimum vertical clearances in roadways.

## **8. Undergrounding of Equipment**

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<sup>1</sup> Clear Zone Parameters – see AASHTO Roadside Design Guide for recommended clearances based on speed, traffic volume, and roadside conditions.



8.1 Equipment associated with a Small Cell WCF that is not integrated in the pole, such as cabinets or boxes, must be located underground when determined by the Town Engineer to be necessary for traffic safety purposes, or where the Director determines that the above ground presence of the box or cabinet will not be aesthetically consistent with the community or neighborhood in which the Small Cell WCF is proposed to be located.

**9. Costs of Installation, Operation and Maintenance of Pole and Small Cell WCF.**

**9.1 Cost of Installing and Operating Small Cell WCF.**

- A. The owner of a Small Cell WCF shall pay all costs incurred in installing and operating its Small Cell WCF, including, but not limited to, the cost of obtaining any required fiber and the cost of the electricity required to operate its Small Cell WCF. Such owner shall install a separate meter to measure its electrical usage.

**9.2 Maintenance of Poles**

- A. Town shall maintain all poles it owns, including, but not limited to, all poles with integrated street lights attached. Town shall pay the cost of the electricity required to illuminate its street lights.
- B. All poles not owned by the Town shall be maintained by the owner of the Small Cell WCF that originally installed the pole, or such owner's successor. Such owner shall install a separate meter to measure its electrical usage, and shall pay the cost of the electricity required to operate its Small Cell WCF.

**9.3 Maintenance of Small Cell WCF.**

- A. All Small Cell WCF antennas and equipment placed within the Town ROW shall be maintained by the owner of the Small Cell WCF.

**10. Attachment to Town-owned Pole**

10.1 For any Small Cell WCF proposed to be located on any Town-owned pole within the Town ROW, the application submittal materials shall include appropriate engineering plans and specifications showing such detail of the Small Cell WCF and its location as is reasonably required by the Director to evaluate the impacts of the proposed Small Cell WCF to the Town ROW and the Town pole.

10.2 Without limiting the generality of the preceding Section 10.1, the engineering plans and specifications shall specifically include appropriate professional engineer-stamped certification(s) that:

- A. The proposed Small Cell WCF's operation will not interfere with the proper function of the particular Town pole upon which it is proposed for attachment; and

- B. The structural and loading capacity of the Town-owned pole will support the small cell facility proposed to be attached.

## **11. License Agreement and Site Supplement**

11.1 If a class D-minor application is approved, the applicant shall enter into a Master License Agreement (MLA) with the Town. The Master License Agreement will require a Site Supplement to evidence the Town's approval of an individual Small Cell WCF location and attachment within the Town ROW covered by the MLA. Unless otherwise provided in the MLA, the Town will issue an approved Site Supplement for attachment to a third-party owned pole that the Town has previously authorized within the Town ROW provided: (i) the applicant supplies the Town with a letter or other written authorization from the owner of the third-party pole; and (ii) the Small Cell WCF does not involve any ground-based equipment or otherwise increase the footprint of the third-party pole.

11.2 Site Supplements under an MLA or for attachment to a third-party owned pole shall be processed as part of a class D-minor application to install a Small Cell WCF within the Town ROW at the approved location.

11.3 The Town's approved form for a Master License Agreement and Site Supplement will be available from the Department of Community Development.

## **12. Administrative Waiver**

12.1 Any of the above design guidelines may be waived by the Director upon written application that demonstrates the following waiver criteria:

- A. The design standard prohibits or has the effect of prohibiting the provision of wireless service through the Small Cell WCF at the particular location because the particular standard will not allow the technology to function at that location; and
- B. There is no existing nearby alternate pole for collocation or attachment that will provide the technological functionality and which otherwise meets the design standard sought to be waived; and
- C. The proposal for varying from the design standard represents a reasonable and best approximation of the particular standard sought to be waived; and
- D. The proposed alternative does not and will not constitute or create any public safety, health, or welfare concern.

12.2 If any particular design standard is approved for waiver, the Small Cell WCF proposed shall nevertheless meet all other applicable design guidelines not approved for waiver.

12.3 If a waiver request is denied for failure to meet any of the criteria specified above and there is no alternative for installation of the Small Cell WCF at the particular location in a

manner that meets the applicable design guidelines, then such application for the Small Cell WCF for such specific location shall be denied.

### **13. Installation to Conform to Town Approvals**

13.1 The manner of attachment, construction, and operation of an approved Small Cell WCF shall at all times comply with:

- A. All of the terms and conditions of the development permit that approved the Small Cell WCF;
- B. All of the approved plans and specifications; and
- C. All of the terms and conditions of the MLA and any applicable Site Supplement.

### **14. Fees**

14.1 The fee for an application to install up to five (5) Small Cell WCF shall be \$500.00. An additional fee of \$100.00 shall be paid for each additional Small Cell WCF included with such application.

14.2 The fee for an application to install a new pole in the street in connection with the installation of a Small Cell WCF shall be \$1,000.00.

14.3 The annual fee to be paid to the Town in connection with the location of a Small Cell WCF in the Town right of way, as described in a Master License Agreement (and Site Supplement(s)) shall be \$270.00.

14.4 The fees described in Sections 14.1 through 14.3, above, covers all permits required by the Town with respect to an application to install a Small Cell WCF in the Town ROW. Such fees are no more than the amount reasonably necessary to recoup the Town's costs.

14.5 The fees described in this Section 14 supersede all other fees normally required by the Town in connection with a class D-minor development permit application, as well as all fees required for other Town permits required for the installation of a Small Cell WCF in Town ROW as described in Section 15.

### **15. Other Required Permits.**

15.1 For Small Cell WCF approved for location in Town ROW, the following additional Town permits are required in addition to a class D-minor development permit:

- A. Building/electrical permit(s). Such permits are issued by the Town's Building Department.
- B. Right of Way/Street Cut Permit. Such permit is issued by the Town Engineer.

All additional Town permits will be issued within the time period described in Section 3.6.

15.2 An application for a Small Cell WCF development permit must be accompanied by applications and all required submittal materials for those additional Town permits described in Section 15.1. The applicant's Small Cell WCF Application will not be processed by the Director unless complete applications for those additional Town permits described in Section 15.1 are submitted to the Town along with the development code permit application. The mandatory review periods provided in Section 3.6, above, shall be deemed tolled pending the applicant's submission of the required complete applications for those additional Town permits described in Section 15.1.

Dated: May 22, 2019.

Published on the Town of Breckenridge website on May 23, 2019.

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Peter Grosshuesch, Director  
Department of Community Development  
Town of Breckenridge, Colorado

Exhibit “A”

Poles and Luminaires

**Inside the Conservation District**

All poles in the Conservation District that the Town Engineer determines needs a street light shall use the following lighting standards:

A Newport 1000 Luminaire that is 37-40 watts, a color temp of 3000k, full cut, 7 pin and dimmable. Lights at intersections shall be mounted at 12’ with a Penn Globe wall mount #601 bracket. Lights not at intersections shall be mounted at 9’ with a Penn Globe wall mount #601 bracket.

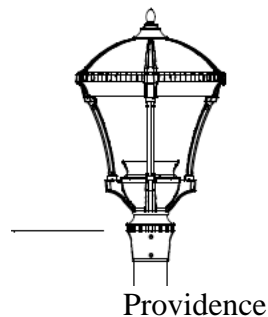
**Outside the Conservation District**

Poles outside of the Conservation District that the Town Engineer determines needs a street light shall use one of the following lighting standards:

A Newport 1000 Luminaire that is 37-40 watts, a color temp of 3000k, full cut, 7 pin and dimmable. Lights at intersections shall be mounted at 12’ with a Penn Globe wall mount #601 bracket. Lights not at intersections shall be mounted at 9’ with a Penn Globe wall mount #601 bracket.

Providence PROV-LK Luminaire that is 48 watts, a color temp of 3000K, full cut off, 7 pin and dimmable. Lights at intersections shall be mounted at 12’ with a Penn Globe wall mount #601 bracket. Lights not at intersections shall be mounted at 9’ with a Penn Globe wall mount #601 bracket.

For all locations, both inside and outside of the Conservation District, the Town Engineer will determine which of the two standards is required by evaluating existing lights types in the area and choosing the style that is most prevalent.



The Town Engineer may require the use of a luminaire different from the Providence and the Newport if required to maintain the aesthetic appearance of the area.



# Memo

To: Breckenridge Town Council Members  
From: Tara Olson, Deputy Town Clerk  
Date: 12/3/2019  
Subject: Liquor & Marijuana Licensing Authority Appointments

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

Current members include:

- J.B. Katz, Chair
- Dave Blank, Vice Chair
- Leigh Girvin
- Tim Faust
- Hal Vatcher

The Authority members' terms are four years. Terms are staggered and expire at the end of December in alternating, odd-numbered years. The two members whose terms expire this year are Dave Blank and Leigh Girvin. Dave Blank is term limited.

These volunteer Authority positions were advertised in the Summit Daily News, the Summit County Journal, on the Town of Breckenridge website and on the Town of Breckenridge social media platforms.

Two letters of interest were received from:

- Leigh Girvin (Incumbent)
- Taryn Power

Copies of their letters are attached for your review.

**Two (2) seats need to be appointed at this time.** Appointment may be made by motion and a sample motion follows.

**Sample Motion:**

"I move that we appoint Leigh Girvin and Taryn Power to four-year terms on the Breckenridge Liquor & Marijuana Licensing Authority."

Nov 19, 2019

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To: Helen C. + Tara O.

Helen, Tara + Town of Breckenridge:

I am interested in continuing  
my service on the Breckenridge  
Liquor & Marijuana Licensing  
Authority.

Please consider this my  
application.

Spigh G.

PO Box 7462  
13 Meadow Lark Green  
Breckenridge  
970.389.6163

# TARYN POWER

PO Box 9896 Breckenridge, Colorado 80424 | 970-389-4979 | tarynpower@mac.com

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To the Mayor and Town Council:

I am writing this letter to express interest in the open positions on the Liquor & Marijuana Licensing Authority for the Town of Breckenridge.

I meet the basic requirements of being a full-time resident of the Town of Breckenridge and have availability to attend the monthly meetings. As the former secretary of the LMLA, I have a unique knowledge of liquor and marijuana laws for the State of Colorado that I believe will be an asset to the Authority. In addition, I have experience navigating liquor and marijuana violations and hearings that will allow me to hit the ground running when a violation occurs.

I am available to meet if you would like to discuss my interest and qualifications in further detail.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Taryn Power". The signature is written in black ink and is positioned above the printed name.

Taryn Power