



TOWN OF
BRECKENRIDGE

Town Council Regular Meeting
Tuesday, October 12, 2021, 7:00 PM
Town Hall Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE IS NOW HOLDING HYBRID MEETINGS. THIS MEETING WILL BE HELD IN PERSON AT BRECKENRIDGE TOWN HALL. ALL MEMBERS OF THE PUBLIC ARE INVITED TO ATTEND. MASKS ARE REQUIRED. IN PERSON ATTENDEES MUST NOT ACCESS THE VIRTUAL MEETING WHILE IN COUNCIL CHAMBERS.

This meeting will also be broadcast live over Zoom. Log-in information is available in the calendar section of our website: www.townofbreckenridge.com. All public comments must be delivered in person in Council Chambers during designated public comment times, by email to mayor@townofbreckenridge.com, or by mailed letter, prior to the meeting.

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - SEPTEMBER 28, 2021

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

A. CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

V. CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2021

1. *COUNCIL BILL NO. 27, SERIES 2021 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES TITLE 3 OF THE BRECKENRIDGE TOWN CODE CONCERNING TAXATION*

VI. NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2021

1. *COUNCIL BILL NO. 28, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," AND CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE SUBDIVISION STANDARDS," CONCERNING CALL UP HEARINGS*

B. RESOLUTIONS, SERIES 2021

C. OTHER

VII. PLANNING MATTERS

- A. PLANNING COMMISSION DECISIONS
- B. TOWN PROJECT HEARING: MCCAIN MASTER PLAN THIRD AMENDMENT
- C. CALL UP DENOVO HEARING - RMU ROOFTOP DECK

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

- A. CAST/MMC (MAYOR MAMULA)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MS. GIGLIELLO)
- C. BRECKENRIDGE TOURISM OFFICE (MR. KUHN)
- D. BRECKENRIDGE HERITAGE ALLIANCE (MR. KUHN)
- E. BRECKENRIDGE CREATIVE ARTS (MS. OWENS)
- F. BRECKENRIDGE EVENTS COMMITTEE (MS. SAADE)
- G. CHILD CARE ADVISORY COMMITTEE (MS. OWENS)
- H. WORKFORCE HOUSING COMMITTEE (MR. CARLETON)
- I. SOCIAL EQUITY ADVISORY COMMISSION (MS. SAADE, MR. CARLETON, MS. GIGLIELLO)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

- A. SCHEDULED MEETINGS FOR OCTOBER AND NOVEMBER

XII. ADJOURNMENT

I) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of September 28, 2021 to order at 7:00pm. The following members answered roll call: Ms. Saade, Ms. Gigliello, Mr. Carleton, Ms. Owens, Mr. Kuhn, Mr. Bergeron, Ms. Owens and Mayor Mamula.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES – SEPTEMBER 14 AND SEPTEMBER 17, 2021

With no changes or corrections to the meeting minutes of September 14 and September 17, 2021 Mayor Mamula declared they would stand approved as presented.

III) APPROVAL OF AGENDA

Mr. Holman stated there were no changes to the agenda.

IV) COMMUNICATIONS TO COUNCIL

A) CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Citizen's Comment. Meeting attendees were encouraged to email their comments in advance of the meeting to the Mayor.

Mr. Ron Shelton stated he is here to speak about the alleyway between Ski Hill Road and Watson Avenue, which is dangerous for pedestrians from the Gondola to Ski Hill Road and to downtown. He further stated the pedestrian path is small.

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

V) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2021 - PUBLIC HEARINGS

1) COUNCIL BILL NO. 26, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING ACCOMMODATION UNIT LICENSES; PLACING A LIMIT ON THE NUMBER OF ACCOMMODATION UNIT LICENSES; AND MAKING MISCELLANEOUS AMENDMENTS RELATED THERETO

Mayor Mamula read the title into the minutes. Mayor Mamula said this is civil discourse, and we encourage you to be polite when you provide comments. He further stated there is a three-minute time limit per person, and Council has made amendments that take into account family transfers, real estate contracts on or before September 28, construction transfers and others exemptions as detailed in the memo. Mr. Brian Waldes stated this ordinance will effectively set a cap for Short Term Rentals in the Town of Breckenridge. Mr. Waldes explained the difference between exempt and non-exempt properties, and referred Council to the memo in the packet for more detailed information. He also stated changes to this ordinance from first reading include a clarification about having a front desk on site, among other things. Mr. Waldes stated after the special meeting on the 17th, additional exemptions were included that include buildings currently under construction, real estate contracts on or before September 28, and others as noted in the memo.

Mr. Carleton asked about the rules and regulations for the wait list, and Mr. Waldes stated those would be handled in the Admin Regulations that will be approved later.

Mayor Mamula clarified that the tourism overlay district would potentially be discussed at the second meeting in October.

Mayor Mamula opened the public hearing.

- 1) Mr. Scott Fisher spoke opposing the ordinance and stated he agrees there is a housing and overcrowding issue in Breckenridge, but disagrees with an ordinance that would favor corporate businesses over property owners. He further stated he would like current owners to be grandfathered in and would like to limit licenses on new builds.
- 2) Mr. Dave Garrett spoke opposing the ordinance and stated this is a hunt on STRs in Breckenridge, and STRs area demonized us for all of the problems. He further stated not one person has had a license revoked due to problems.
- 3) Mr. Jim Schlagel, of Summit Association of Realtors, spoke opposing the ordinance and asked Council to delay the approval of this ordinance. He further stated he wants to work together on this ordinance, and instead of a cap, the Town might consider three levels of permits limited by zoning. He also asked Council to modify the date for properties to be under contract to November 2.

- 4) Ms. Leanne Migalski spoke opposing the ordinance and asked Council to take time to find the right solution. She further stated Pacaso has arrived in Breckenridge, which are LLCs with fractional ownership, and timeshares will replace STRs. She stated the current STR owners are paying licensing fees and Pacaso will not, and the Town will have no control over them.
- 5) Ms. Mary Waldman spoke opposing the ordinance and asked Council not to rush to approve this ordinance. She further stated Town could have aggressively built more housing and doesn't have accurate data.
- 6) Mr. Adam Parker spoke opposing the ordinance and stated Town Council isn't listening, and it's not providing the answers.
- 7) Mr. James Brown spoke opposing the ordinance and stated he just bought a home here and his goal is to long-term rent, but he is against a capitalistic society.
- 8) Ms. Trudy Cohen spoke opposing the ordinance and stated this won't solve the problem of converting to LTRs. She further stated each time you approve new buildings you increase the need for new workers and second homeowners are good for Breckenridge. She stated the Town should consider apartments for workers.
- 9) Mr. Gary Stephens spoke opposing the ordinance and stated he owns a vacation home and knows of the growth and changes in the Town. He further stated tourism is the fabric of our community and STRs are providing housing that would otherwise go to hotels. He asked Council to delay the ordinance.
- 10) Mr. James Bradley spoke in favor of the ordinance and stated he supports the ordinance as written. He further stated his next door neighbor is an STR, and parking and too many people are the problem. He stated other neighbors are leaving because of noise, and some HOAs are starting to limit or prohibit STRs.
- 11) Mr. Chris O'Reilly spoke in favor of the ordinance and stated he supports the STR cap and modifications, but he also supports locals who want to rent out a room to support themselves. He stated we argued about the parking garage, and now it looks great, and it would be a welcome to let some homes sit empty. He also stated if your second home requires you to rent it, you probably can't afford it, and Town has built 1,000 units.
- 12) Ms. Abbey Browne, of Woodwinds Property Management, spoke opposing the ordinance and stated she knows Council listened and made some obvious changes, but the ordinance needs more work. She suggested waiting to pass this ordinance, doing a moratorium now, and spending the time to make this ordinance what you want.
- 13) Ms. Ashley Kubiszyn, of River Ridge Rentals, spoke opposing the ordinance and stated we know this draft has some flaws and there is chaos and hostility around the county. She asked Council to create a moratorium and take the time to rewrite this ordinance and make sure it is serving the goals.
- 14) Mr. Nathan Moorefield spoke opposing the ordinance and stated there was a pie chart that showed only 16% occupancy by long term owners, but timeshares were never intended to be residences. He further stated if you focus on non-timeshare properties, the percentage changes.
- 15) Mr. Thad Dale spoke opposing the ordinance, and stated his family bought a second home here and now uses a property management company. He stated it's intended as an STR and we would like to pass this along to our family, and the plan seems to favor big businesses.
- 16) Ms. Barbara Tabb spoke opposing the ordinance and stated she owns property in Breckenridge and this is government overreach, and the exempt resorts win. She further stated BGV has 27,000 owners and locals don't want timeshares, and the data is skewed.
- 17) Ms. Tracey Rameil spoke in favor of the ordinance and thanked Council for creating the STR cap and helping to reestablish the balance in this community.
- 18) Ms. Julia Koster, of SAVRM, spoke opposing the ordinance and asked for a delay in the ordinance. She further stated Council needs to consider feedback from the community and property rights.
- 19) Mr. Sherman Gregory spoke opposing the ordinance and stated STRs have already been part of the community. He stated Council should turn off the budget for marketing Breckenridge, and consider adding a Tourism corridor. He was in support of a moratorium.
- 20) Mr. Jeff Zallaps, of Summit Vacations, spoke opposing the ordinance and stated we shouldn't villainize 2nd homeowners, as they contribute to this community and they shouldn't be treated as non-members of the community. He further stated he has concerns for property values, and property owners face loss of value without compensation if this ordinance goes through.

- 21) Mr. Toby Babich stated life here is good, and it's always hard to make ends meet. He further stated amenities and activities are plentiful, and support systems are good, and the community is successful and we aren't in crisis. He stated he would like to develop community goals, track unintended consequences closely, and make strategic plans to move forward.
- 22) Ms. Carol Kresge, of Mountain Clover Homes, spoke opposing the ordinance and stated everyone here has one message, and some voices are not being heard. She stated this ordinance is a taking and a deed restriction, and she would like Council to put the ordinance on hold.
- 23) Mr. Mark Waldman spoke opposing the ordinance and stated Council is dividing this community. He further stated he has contributed to this community.
- 24) Mr. Duke Barlow spoke in favor of the ordinance and stated he supports the STR cap, and thanked Council for taking care of our community. He further stated Council is doing what they believe is right, even though it's hard.
- 25) Mr. Teague Holmes spoke in favor of the ordinance and stated he lived out of a van when first moved here, and our numbers of STRs are out of whack, and staffing is difficult. He also suggested Council consider what the County is doing with tiers.
- 26) Mr. Ron Shelton spoke opposing the ordinance and stated he's been friends for 40 years with some of these people and he is dismayed by this conversation, and Council has fallen victim to the "close the gate" idea. He stated he stands up for personal property rights and this is a government overreach.
- 27) Mr. Scott Toepfer spoke in support of the ordinance and stated he is glad that Council is trying to do something to stop the madness out there. He stated trash and parking and overcrowding are problems and a cap is a good place to start.
- 28) Mr. Bill Avirett spoke opposing the ordinance and stated he lived here 50 years ago, and the character of the town has changed. He stated that while the Town's control has been good overall, but renting his home allows him to come back to Breckenridge. He stated STRs in residential areas should be limited, and the Four O'Clock area was designed for tourists.
- 29) Mr. Devon O'Neil spoke in favor of the ordinance and stated this issue is about a place, and all stakeholders have their positions and asked what's best for the long-term future of this place. He further stated that without struggle there's not progress, and a lot of landlords long-term units for the good of the community, but that's not sustainable. He stated we should do what is best for Breckenridge and I believe you are doing that.
- 30) Ms. Libby Jocelyn spoke opposing the ordinance and stated she is not clear what the purpose of this ordinance is, and wants to know what areas have changed. She further stated a lot of long term rentals cause problems and she would like to see the data including how much staff time is enforcing this. She stated she doesn't believe there should be a distinction between exempt and non-exempt.
- 31) Mr. Josh Barilar spoke in favor of the ordinance and stated he supports the vote to set the cap, and Breckenridge will be fine for the future.
- 32) Mr. Jim Kasic spoke opposing the ordinance and stated he reads these documents all the time and he would be embarrassed to sign it. He further stated the American dream is home ownership, and many rent out a house to break even.
- 33) Mr. Tim Paynter, of River Mountain Lodge, spoke opposing the ordinance and stated he would like to live here and rent his property. He stated people are confused about this ordinance and this isn't a solution. He stated we need an inter-county solution to this problem.
- 34) Ms. Heidi Hurst spoke opposing the ordinance and thanked the Council for changes to the ordinance, and stated more needs to be done about the Tourism corridor. She stated employee housing is an issue that needs to be addressed, and dorm type housing or apartments could help. She asked Council to get this ordinance right before passing it.
- 35) Mr. JT Mueller spoke opposing the ordinance and stated this is hurting locals and hurting small businesses. He further stated this is decreasing the value of your property and this ordinance places a deed restriction on properties. He suggested Council take the time to gather the data and move forward, incentivize LTRs and build more workforce housing.
- 36) Mr. Stan Dodson spoke opposing the ordinance and asked Council to take time to research the Tourism corridor. He thanked Council for their efforts and stated he is proud of Council's efforts on deed restricted housing.
- 37) Mr. Andrew Biggin spoke opposing the ordinance and stated he appreciates what Council is trying to do, and we need to reduce crowding issues, but he doesn't think Council has enough data to achieve the goals. He further stated that if you extract

timeshares from the housing base, maybe we are closer to the percentages we want. He urged Council to pause.

- 38) Mr. Mike Vohs spoke opposing the ordinance and thanked Council for trying to address the problems. He stated he is a second-home owner who lives here part time so he can't rent long-term. He stated the Town's full time jobs don't pay enough to let people live here and this ordinance won't solve the problem.
- 39) Ms. Cindy Grim spoke opposing the ordinance and stated she lives here part time and rents out her property to long-term renters. She stated that she agrees we have a problem, and people can't afford to live here when they are being paid what they are. She stated the only buyers will be those who can afford to not rent, and she suggested dorm housing for seasonal workers.
- 40) Mr. Ken Bell spoke opposing the ordinance and stated municipalities are doing the wrong thing. He stated incentives are the solution, and mandates are the problem. He also stated attrition may take a decade.
- 41) Mr. Alex Kreider spoke opposing the ordinance and stated this won't solve the problem for noise, parking and trash. He stated enforcement is the way to address the problems and this is legislating deed restrictions without compensation. He stated these rules are tailored to favor certain properties and attrition won't happen.
- 42) Ms. Elle Willson spoke opposing the ordinance and stated this is a disaster, and there is lots of hatred in this community.
- 43) Ms. Kati Patino spoke opposing the ordinance and stated there is a lot of division in this community. She urged Council to take a pause and listen to the community. She further stated she works in STRs.

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

Mr. Carleton stated he appreciated all of the public comments. He stated many recognize the division you all spoke about, and he has seen this division in his business, and it's because of the difference between haves and have nots. He stated let's challenge each other to be better in Breckenridge and challenge ourselves with tone. He stated this will continue to evolve and we need to stop the loss of long-term units to STRs. He stated we could do a moratorium, but many said a moratorium was the worst thing we could do. Mr. Carleton stated he believes it's the best for Breckenridge and let's keep working on it; the development codes have evolved over time and this will also.

Mr. Kuhn thanked everyone for their time and stated he knows there's a lot of passion in our community and we'll continue to work on it.

Ms. Erin Gigliello stated we respect all of you and this decision is not without thought. She stated this is a need for balance, we need STRs in the community and this is one tool in the toolbox. She stated we plan to address monitoring and we have participated in buy-downs and other things. She stated this is an evolving process.

Ms. Carol Saade stated there's still work to be done but she supports the ordinance. She stated this is the first step in restoring balance and harmony.

Ms. Owens stated this is one part of a big process, and this is one step. She stated we will keep looking at exempt vs. non-exempt, and we will look more Pacaso, and we will continue to study employee housing data for this community. She stated she agrees that the fee will be an important part of this process, and we need to keep a healthy eco-system of licenses in the community.

Mr. Bergeron stated he wanted a moratorium in April, but people were not happy about it so we decided not to do it then. He stated property values won't go down and the appreciation of the property won't be a problem. He also stated the tourism corridor is something we have been considering, and we have been studying this for a very long time. He also stated that if you don't think this town is in a bad place you haven't been paying attention.

Mayor Mamula stated he works for the love of this community and he is not in the pockets of big box businesses. He stated the parking structure was not built to bring more people to Town, it was built to help the traffic problems in Town. He also stated fees on licenses have to relate directly to what they are funding and we thought the most fair thing would be to go through the process and take public comment as we have done.

Mr. Bergeron moved to approve COUNCIL BILL NO. 26, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING ACCOMMODATION UNIT LICENSES; PLACING A LIMIT ON THE NUMBER OF ACCOMMODATION UNIT LICENSES; AND MAKING MISCELLANEOUS AMENDMENTS RELATED THERETO. Ms. Gigliello seconded the motion.

The motion passed 7-0.

VI) NEW BUSINESS

A) FIRST READING OF COUNCIL BILLS, SERIES 2021

1) COUNCIL BILL NO. 27, SERIES 2021 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES TITLE 3 OF THE BRECKENRIDGE TOWN CODE CONCERNING TAXATION

Mayor Mamula read the title into the minutes. Mr. Waldes stated this ordinance functions as a housekeeping ordinance for Town Code regarding our taxation sections. Mr. Berry stated for the record this ordinance doesn't change the lift ticket tax ordinance.

Mayor Mamula opened the public hearing.

There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 27, SERIES 2021 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES TITLE 3 OF THE BRECKENRIDGE TOWN CODE CONCERNING TAXATION. Ms. Saade seconded the motion.

The motion passed 7-0.

B) RESOLUTIONS, SERIES 2021

1) RESOLUTION NO. 25, SERIES 2021 - A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH THE FAMILY & INTERCULTURAL RESOURCE CENTER, A COLORADO NON-PROFIT CORPORATION

Mayor Mamula read the title into the minutes. Mr. Holman stated this resolution would approve an agreement with FIRC for the purpose of leasing a space in the non-profit campus the Town is developing. He further stated a formal lease with FIRC is coming.

Mayor Mamula opened the public hearing.

There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 25, SERIES 2021 - A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH THE FAMILY & INTERCULTURAL RESOURCE CENTER, A COLORADO NON-PROFIT CORPORATION. Mr. Carleton seconded the motion.

The motion passed 7-0.

2) RESOLUTION NO. 26, SERIES 2021 - A RESOLUTION AUTHORIZING THE SUBMISSION OF A STATE TRAILS PROGRAM GRANT APPLICATION

Mayor Mamula read the title into the minutes. Mr. Scott Reid stated this resolution would approve the submission of a grant application for a state trails program.

Mayor Mamula opened the public hearing.

There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 26, SERIES 2021 - A RESOLUTION AUTHORIZING THE SUBMISSION OF A STATE TRAILS PROGRAM GRANT APPLICATION. Ms. Owens seconded the motion.

The motion passed 7-0.

3) OTHER

VII) PLANNING MATTERS

A) PLANNING COMMISSION DECISIONS

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

VIII) REPORT OF TOWN MANAGER AND STAFF

Reports of the Town Manager and staff were covered as part of the afternoon work session.

IX) REPORT OF MAYOR AND COUNCIL MEMBERS

Reports of Mayor and Council Members were covered as part of the afternoon work session.

- A. CAST/MMC
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE
- C. BRECKENRIDGE TOURISM OFFICE
- D. BRECKENRIDGE HERITAGE ALLIANCE
- E. BRECKENRIDGE CREATIVE ARTS
- F. BRECKENRIDGE EVENTS COMMITTEE
- G. CHILD CARE ADVISORY COMMITTEE
- H. WORKFORCE HOUSING COMMITTEE
- I. SOCIAL EQUITY ADVISORY COMMISSION

X) OTHER MATTERS

Mr. Bergeron apologized for his letting his emotions come out during the meeting.

XI) SCHEDULED MEETINGS

- A) SCHEDULED MEETINGS FOR SEPTEMBER, OCTOBER AND NOVEMBER

XII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 9:08pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor



Memo

To: Mayor and Town Council Members
From: Town Attorney
Date: October 6, 2021 (for October 12th meeting)
Subject: Council Bill No. 27 (Updated Town Tax Code Ordinance)

The second reading of the ordinance adopting the new Town Tax Code is scheduled for your meeting on October 12th.

Since first reading, a number of essentially non-substantive changes were made to the ordinance. This primarily involved moving certain sections around in the ordinance to make the ordinance work better, updating cross-references in the ordinance, and similar changes.

Marking all of the changes results in a version of the ordinance that is extremely difficult to read, so I didn't mark the ordinance for second reading as I normally do.

I do not believe that are any material changes to the ordinance that need to be highlighted for you as you consider the ordinance on second reading.

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

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

2
3 COUNCIL BILL NO. 27

4
5 Series 2021

6
7 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES TITLE 3 OF THE
8 BRECKENRIDGE TOWN CODE CONCERNING TAXATION

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

12
13 Section 1. The Town Council finds, determines, and declares as follows:

14
15 A. The Town of Breckenridge is a home rule municipal corporation organized existing
16 under Article XX of the Colorado Constitution.

17 B. The electors of the Town adopted the Breckenridge Town Charter on April 1, 1980

18 C. Section 12.1 of the Breckenridge Town Charter provides that the Town Council of the
19 Town may, by ordinance, levy and collect excise taxes for municipal purposes.

20 D. The Town Council has heretofore enacted various municipal excise taxes, each of
21 which is currently codified in Title 3 of the Breckenridge Town Code.

22 E. In 1992 the electors of the state approved Article X, §20 of the Colorado Constitution,
23 commonly known as the “TABOR Amendment.”

24 F. The Town is a “district” as defined in TABOR.

25 G. Section 7(b) of TABOR establishes a formula for the calculation of a local district’s
26 (such as the Town’s) allowed annual fiscal year spending.

27 H. Section 7(d) of TABOR provides that local electors may approve a “voter-approved
28 revenue change” to the local district’s allowed annual fiscal year spending.

29 I. By Ordinance No. 28, Series 1995, the Town Council of the Town of Breckenridge
30 referred to the electors of the Town the following ballot question:

31 SHALL THE TOWN OF BRECKENRIDGE BE AUTHORIZED, COMMENCING
32 IN 1994 AND CONTINUING ANNUALLY THEREAFTER, TO COLLECT AND
33 RETAIN WHATEVER AMOUNTS ARE RAISED ANNUALLY FROM ALL
34 SOURCES, WITHOUT LIMITATION, AND THE AUTHORITY TO EXPEND
35 SUCH REVENUES FOR THE PURPOSES OF PROVIDING FOR THE HEALTH,
36 SAFETY AND WELFARE OF THE PEOPLE OF THE TOWN OF

1 BRECKENRIDGE, AS A VOTER-APPROVED REVENUE CHANGE AND
2 EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY,
3 PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO
4 CONSTITUTION (ALSO KNOWN AS “TABOR” AND ‘AMENDMENT ONE’);
5 PROVIDED THAT NO TOWN TAX RATE OR MILL LEVY SHALL BE
6 INCREASED AND NO NEW TAX SHALL BE CREATED WITHOUT FURTHER
7 VOTER APPROVAL?
8

9 J. At a special municipal election held on November 7, 1995 the electors of the Town
10 approved the ballot question set forth in Section I, above.

11 K. In 2009 the Colorado Supreme Court issued its opinion in the case of Mesa County
12 Bd. of Comm’rs v State, 203 P.3d 519 (Colo. 2009). In its opinion the Supreme Court held that
13 when a municipality subject to TABOR has approved a broadly worded measure such as the
14 Town did in 1995, the municipality may thereafter amend its tax ordinance(s) without a new
15 election because, in the language of the Court’s opinion, “such a requirements would create
16 unnecessary redundancy.”

17 L. Pursuant to the Colorado Supreme Court’s holding in the case mentioned in Section
18 K, the adoption of this ordinance does not result in a “tax policy change” requiring approval of
19 the Town’s electors under TABOR.

20 M. The adoption of the ordinance does not create a new tax or tax rate.

21 Section 2. Title 3 of the Breckenridge Town Code is repealed and readopted with changes
22 so as to read as follows:
23

24 **CHAPTER 1**
25 **GENERAL PROVISIONS**
26

27 SECTION:

- 28
29 3-1-1: APPLICABILITY
30 3-1-2: COMMON DEFINITIONS
31 3-1-3: STATUTE OF LIMITATIONS
32 3-1-4: INTEREST RATE ON DELINQUENT TAXES
33 3-1-5: DIRECTOR MAY WAIVE PENALTY
34 3-1-5: SUBPOENAS
35 3-1-7: JUDGE COMPELS ATTENDANCE
36 3-1-8: DEPOSITIONS
37 3-1-9: OTHER REMEDIES
38 3-1-10: STATUS OF UNPAID TAX IN BANKRUPTCY
39 3-1-11: VIOLATIONS; PENALTIES
40 3-1-12: RULES AND REGULATIONS
41

1 3-1-1: APPLICABILITY: This Chapter applies to all taxes due to the Town pursuant the tax
2 ordinance codified in this Title, except as otherwise specifically provided. If there is a conflict
3 between a provision in this Chapter and a specific provision in another Chapter of this Title, the
4 specific provision shall control.

5
6 3-1-2: COMMON DEFINITIONS:
7

8 A. When used in this Title the following words shall have the following meanings
9 unless the context requires otherwise:

10 “Code” means the Breckenridge Town Code, as amended from time to time.
11

12 “Finance Department” means the Finance Department of the Town.
13

14 “Finance Director or Director” means the Finance Director of the Town of Breckenridge, or such
15 other person designated by the municipality. “Finance Director” or “Director” shall also include
16 such person’s designee acting pursuant to Section 1-7-2 of this Code.
17

18 “Person” means any individual, firm, partnership, joint venture, corporation, limited liability
19 company, estate, trust, receiver, trustee, assignee, lessee, any person acting in a fiduciary or
20 representative capacity, whether appointed by court or otherwise, or any group or combination
21 acting as a unit.
22

23 “Tax” means any tax due to the Town under any tax ordinance contained in this Title.
24

25 “Town” means the Town of Breckenridge, Colorado.
26

27 B. Wherever applicable, the pronouns in this Title designating the masculine, feminine,
28 or neuter genders apply equally to all genders.

29 C. Wherever applicable in this Title, the singular includes the plural, and the plural
30 includes the singular.

31 D. Unless otherwise indicated, all references in this Title to a “section” or to “sections”
32 mean the referenced section or sections of this Title.

33 3-1-3: STATUTE OF LIMITATIONS:
34

35 A. No tax, interest, or penalties shall be assessed, nor shall any notice of lien be filed, or
36 distraint warrant issued, or suit for collection be instituted, nor any action to collect the same be
37 commenced, more than three (3) years after the date on which the tax was or is payable. A lien
38 shall not continue after such period, except on taxes assessed before the expiration of the period
39 for which a notice of a tax lien has been filed prior to the expiration of such period.

40 B. In the case of a false or fraudulent return with intent to evade tax, the tax together

1 with interest and penalties thereon may be assessed, or proceedings for the collection of such
2 taxes, may be begun at any time without regard to the statute of limitations. Prior to the
3 expiration of the period of limitation, the taxpayer and the Finance Director may agree in writing
4 to an extension thereof, and the period so agreed on may be extended by subsequent agreements
5 in writing.

6 C. When a taxpayer fails or refuses to file a return the tax may be assessed and collected
7 without regard to the statute of limitations.

8 3-1-4: INTEREST RATE ON DELINQUENT TAXES:
9

10 Unless otherwise provided, when interest is required or permitted to be charged under this Title
11 the annual rate of interest shall be that rate of interest established by the state commissioner of
12 banking pursuant to Section 39-21-110.5, C.R.S.
13

14 3-1-5: DIRECTOR MAY WAIVE PENALTY:
15

16 The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed
17 as provided in this Title, and interest imposed in excess of one (1) percent each month or fraction
18 thereof of the tax deficiency, from the date the tax is due until the date paid, shall be for the
19 purposes of this section deemed a penalty.
20

21 3-1-6: SUBPOENAS:
22

23 A. The Finance Director may issue a subpoena to compel a person to attend and give testimony
24 or to produce books and records, work papers, photographs or such other information that may
25 be deemed necessary for the purpose of determining the amount of tax due from any person.
26

27 B. All subpoenas issued under the terms of this Title may be served by any person of full age.
28 The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before
29 the district court, such fees to be paid when the witness is excused from further attendance.
30 When the witness is subpoenaed at the instance of the Finance Director, such fees shall be paid
31 in the same manner as other expenses under the terms of this Title, and when a witness is
32 subpoenaed at the instance of any party to any such proceeding, the Finance Director may
33 require that the cost of service of the subpoena and the fee of the witness be borne by the party at
34 whose instance the witness is summoned. In such case, the Finance Director, in the Finance
35 Director's discretion, may require a deposit to cover the cost of such service and witness fees. A
36 subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a
37 court of record.
38

39 3-1-7: JUDGE COMPELS ATTENDANCE:
40

41 Any judge of the district court of the fifth judicial district of the state, upon the application of the
42 Finance Director, may compel the attendance of witnesses, the production of books, papers,
43 records or memoranda, and the giving of testimony before the Finance Director or any duly

1 authorized deputies, by an attachment for contempt or otherwise, in the same manner as
2 production of evidence may be compelled before the court.

3
4 **3-1-8: DEPOSITIONS:**

5
6 The Finance Director or any party in an investigation or hearing before the Finance Director may
7 cause the deposition of witnesses residing within or without the state to be taken in the manner
8 prescribed by law for like depositions in civil action in courts of this state and to that end compel
9 the attendance of witnesses and the production of books, papers, records or memoranda.

10
11 **3-1-9: OTHER REMEDIES:**

12
13 No provision of this Title shall preclude the Town from utilizing any other lawful penalties or
14 other remedies applicable to the collection of taxes.

15
16 **3-1-10: STATUS OF UNPAID TAX IN BANKRUPTCY:**

17
18 In the event that any taxpayer subject to this Title shall be in bankruptcy or debtorship, all taxes,
19 penalties, and interest imposed by this Title, which accrued prior to the filing of the bankruptcy,
20 shall remain a prior and preferred claim and lien against all goods, furniture and fixtures, tools
21 and equipment used by the taxpayer in conducting the business. Similarly, all taxes, penalties,
22 and interest imposed by this Title which accrue after the filing of the bankruptcy shall remain a
23 prior and preferred claim and lien against all goods, furniture and fixtures, tools and equipment
24 used by the taxpayer in conducting its business, during the course of the bankruptcy, except as
25 otherwise provided by preemptive federal law. To the extent any of the Finance Director's
26 authority to pursue collection of taxes, penalty, or interest imposed by this Title is stayed or
27 otherwise impacted by preemptive federal law, the Finance Director is authorized to use
28 procedural and substantive federal remedies to facilitate collection of the tax, penalty, or interest.

29
30 **3-1-11: VIOLATIONS; PENALTIES:** It is unlawful and a misdemeanor offense for any person
31 to violate any provision of this Title. Any person convicted of having violated any provision of
32 this Title shall be punished as provided in Section 1-4-1 of this Code. This Section does not
33 apply to violations of Chapter 2.

34
35 **3-1-12: RULES AND REGULATIONS:**

36
37 The Finance Director shall have the authority from time to time to adopt, amend, alter, and
38 repeal administrative rules and regulation, including, but not limited to forms and other
39 documents, as may be necessary for the proper administration of this Title. Such regulations shall
40 be adopted in accordance with the procedures established by Title 1, Chapter 18 of this Code.

41
42 **CHAPTER 2**
43 **SALES TAX**
44

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10

11 3-2-1: LEGISLATIVE INTENT:

12

13 A. It is the intent of this Chapter that every person in the Town who purchases at retail or
 14 leases any “tangible personal property” or purchases a taxable service as defined by this Chapter
 15 is exercising a taxable privilege. All sales, leases, and purchases of “tangible personal property”
 16 as defined in this Chapter are taxable unless specifically exempted in this Chapter. The sales tax
 17 imposed on tangible personal property by this Chapter applies to each transfer of ownership,
 18 possession, and control of such property and may occur more than once during the life of the
 19 property.

20 B. No obligation to collect the sales tax required by this Chapter may be applied
 21 retroactively. Responsibilities, duties and liabilities described in this Chapter with respect to a
 22 marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when
 23 they became licensed to collect the Town’s sales tax, or when they became legally obligated to
 24 collect the Town’s sales tax under this Chapter.

25 3-2-2: DEFINITIONS:

26

27 A. When not clearly indicated otherwise by the context, the following words and
 28 phrases, as used in this Chapter, shall have the following meanings:

29 AUCTION: Any sale where tangible personal property is sold by an auctioneer who is either the
 30 agent for the owner of such property or is in fact the owner thereof.

31

32 AUTOMOTIVE VEHICLE: Any vehicle or device in, upon, or by which any person or property
 33 is or may be transported or drawn upon a public highway, or any device used or designed for
 34 aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles,
 35 trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by
 36 human power or used exclusively upon stationary rails or tracks.

37 BUSINESS: All activities engaged in or caused to be engaged in with the object of gain, benefit,
 38 or advantage, direct or indirect.

39

40 CARRIER ACCESS SERVICES: The services furnished by a local exchange company to its
 41 customers who provide telecommunications services which allow them to provide such
 42 telecommunications services.

1
2 CHARITABLE ORGANIZATION: Any entity which:

- 3 1. Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal
4 Revenue Code, and
- 5 2. Is an organization which exclusively, and in a manner consistent with existing laws
6 and for the benefit of an indefinite number of persons or animals, freely and
7 voluntarily ministers to the physical, mental, or spiritual needs of persons or animals,
8 and thereby lessens the burden of government.

9
10 COIN OPERATED DEVICE: Any device operated by coins or currency or any substitute
11 therefor.

12
13 COLLECTION COSTS: Shall include, but is not limited to, all costs of audit, assessment, bank
14 fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs,
15 prosecution and attorney fees.

16
17 COMMERCIAL PACKAGING MATERIALS: Containers, labels, and/or cases, that become
18 part of the finished product to the purchaser, used by or sold to a person engaged in
19 manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling
20 for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging
21 Materials does not include Commercial Shipping Materials.

22
23 COMMUNITY ORGANIZATION: A nonprofit entity organized and operated exclusively for
24 the promotion of social welfare, primarily engaged in promoting the common good and general
25 welfare of the community, so long as:

- 26 1. No part of the net earnings of which inures to the benefit of any private shareholder or
27 individual;
- 28 2. No substantial part of the activities of which is carrying on propaganda, or otherwise
29 attempting to influence legislation; and
- 30 3. Which does not participate in, or intervene in (including the publishing or distributing
31 of statements), any political campaign on behalf of any candidate for public office.

32
33
34 CONSTRUCTION MATERIALS: Tangible personal property which, when combined with other
35 tangible personal property, loses its identity to become an integral and inseparable part of a
36 structure or project including public and private improvements. Construction materials include,
37 but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material,
38 cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating
39 and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam,
40 millwork, mortar, oil, paint, piping, pipe valves and pipe fittings plaster, plumbing fixtures,
41 putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting,
42 steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping,
43 wall paper, weather stripping, wire netting and screen, water mains and meters, and wood

1 preserver. The above materials, when used for forms, or other items which do not remain as an
2 integral or inseparable part of completed structure or project are not construction materials.

3
4 **CONSUMER:** Any individual person or person engaged in business in the Town who uses,
5 stores, distributes or otherwise consumes in the Town tangible personal property or taxable
6 services purchased from sources inside or outside the Town.

7
8 **COVER CHARGE:** A charge paid to a club or similar entertainment establishment which may,
9 or may not, entitle the patron paying such charge to receive tangible personal property, such as
10 food and/or beverages.

11
12 **DATA PROCESSING EQUIPMENT:** Any equipment or system of equipment used in the
13 storage, manipulation, management, display, reception or transmission of information including,
14 but not limited to, computers, software program, hardware or firmware.

15
16 **DIGITAL PRODUCT:** A modern version of a traditional product including, but not limited to:

- 17
18 1. “Digital images” which means works that include, but are not limited to, the
19 following that are generally recognized in the ordinary and usual sense as
20 “photographs,” “logos,” “cartoons,” or “drawings.”
21 2. “Digital audio-visual works” which means a series of related images which, when
22 shown in succession, impart an impression of motion, together with accompanying
23 sounds, if any,
24 3. “Digital audio works” which means works that result from the fixation of a series of
25 musical, spoken, or other sounds, including ringtones. For purposes of the definition
26 of “digital audio works”, “ringtones: digitized sound files that are downloaded onto a
27 device and that may be used to alert the customer with respect to a communication,
28 and
29 4. “Digital books” which means works that are generally recognized in the ordinary and
30 usual sense as “books”.

31
32 **ECONOMIC NEXUS:** The connection between the Town and a person not having a physical
33 nexus in the State of Colorado, which connection is established when the person or marketplace
34 facilitator makes retail sales into the Town, and:

- 35
36 1. In the previous calendar year, the person, which includes a marketplace facilitator,
37 has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-
38 102(3)(c), as amended; or
39 2. In the current calendar year, 90 days has passed following the month in which the
40 person, which includes a marketplace facilitator, has made retail sales into the state
41 exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

42
43 **ENGAGED IN BUSINESS IN THE TOWN:** Performing or providing services or selling,
44 leasing, renting, delivering or installing tangible personal property, products, or services for

1 storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is
2 not limited to, any one of the following activities by a person:

- 3
- 4 1. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom,
5 warehouse, or other place of business within the Town;
- 6 2. Sends one or more employees, agents or commissioned sales persons into the Town
7 to solicit business or to install, assemble, repair, service, or assist in the use of its
8 products, or for demonstration or other reasons;
- 9 3. Maintains one or more employees, agents or commissioned sales persons on duty at a
10 location within the Town;
- 11 4. Owns, leases, rents or otherwise exercises control over real or personal property
12 within the Town; or
- 13 5. Makes more than one delivery into the Town within a twelve month period if a
14 retailer in the state of Colorado; or
- 15 6. Makes retail sales sufficient to meet the definitional requirements of economic nexus
16 as set forth in Section 3-2-2.
- 17

18 FINANCE DEPARTMENT: The Finance Department of the Town.

19
20 FINANCE DIRECTOR OR DIRECTOR: Has the meaning provided in Section 3-1-2.

21
22 GARAGE SALES: Sales of tangible personal property, except automotive vehicles, occurring at
23 the residence of the seller, where the property to be sold was originally purchased for use by
24 members of the household where such sale is being conducted. The term includes, but is not
25 limited to, yard sales, estate sales, and block sales.

26
27 GROSS SALES: The total amount received in money, credit, property or other consideration
28 valued in money for all sales, leases, or rentals of tangible personal property or services.

29
30 INTERNET ACCESS SERVICES: Services that provide or enable computer access by multiple
31 users to the Internet, but shall not include that portion of packaged or bundled services providing
32 phone or television cable services when the package or bundle includes the sale of internet
33 access services.

34
35 LICENSE: A Town of Breckenridge sales tax license.

36
37 LODGING SERVICES: The provision or facilitation of provision of any rooms or
38 accommodations by any person, partnership, association, corporation, estate, representative
39 capacity or any other combination of individuals by whatever name known to a person who, for
40 consideration including barter, trade or timesharing uses, possesses or has the right to use or
41 possess any room or other accommodation, including but not limited to a hotel, inn, bed and
42 breakfast, apartment, single family residence, lodging house, condominium, motor hotel,
43 guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any
44 portion of a dwelling unit or other area which accommodates a guest, or similar establishment,

1 for a period of less than thirty (30) consecutive days under any rental agreement, sharing or trade
2 agreement, concession, permit, right of access, license to use, or other agreement.

3
4 **MANUFACTURING:** The operation or performance as a business of an integrated series of
5 operations which places a product, article, substance, commodity, or other tangible personal
6 property in a form, composition or character different from that in which it was acquired whether
7 for sale or for use by a manufacturer. The change in form, composition or character must result
8 in a different product having a distinctive name, character or use from the raw or prepared
9 materials.

10
11 **MANUFACTURED HOME:** Any preconstructed building unit or combination of preconstructed
12 building units, without motive power, where such unit or units are manufactured in a factory or
13 at a location other than the residential site of the completed home, which is designed and
14 commonly used for occupancy by persons for residential purposes, in either temporary or
15 permanent locations, and which unit or units are not licensed as a vehicle.

16
17 **MARKETPLACE:** A physical or electronic forum, including, but not limited to, a store, a booth,
18 an internet website, a catalog, or a dedicated sales software application, where tangible personal
19 property, taxable products, or taxable services are offered for sale.

20
21 **MARKETPLACE FACILITATOR:** A person who:

- 22
- 23 1. Contracts with a marketplace seller or multichannel seller to facilitate for
24 consideration, regardless of whether or not the consideration is deducted as fees from
25 the transaction, the sale of the marketplace seller's tangible personal property,
26 products, or services through the person's marketplace;
 - 27 2. Engages directly or indirectly, through one or more affiliated persons, in transmitting
28 or otherwise communicating the offer or acceptance between a purchaser and the
29 marketplace seller or multichannel seller; and
 - 30 3. Either directly or indirectly, through agreements or arrangements with third parties,
31 collects payment from the purchaser on behalf of the seller.

32
33 "Marketplace Facilitator" does not include a person that exclusively provides internet advertising
34 services or lists products for sale, and that does not otherwise meet this definition.

35 **MARKETPLACE SELLER:** A person, regardless of whether or not the person is engaged in
36 business in the Town, which has an agreement with a marketplace facilitator and offers for sale
37 tangible personal property, products, or services through a marketplace owned, operated, or
38 controlled by a marketplace facilitator.

39
40 **MOTOR FUEL:** Gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol
41 and any liquid prepared, advertised, offered for sale, sold for use or used or commercially usable
42 in internal combustion engines for the generation of power for the propulsion of motor vehicles
43 upon the public highways. The term does not include fuel used for the propulsion or drawing of
44 aircraft or railroad cars or railroad locomotives.

1
2 **MULTICHANNEL SELLER:** A retailer that offers for sale tangible personal property,
3 commodities, or services through a marketplace owned, operated, or controlled by a marketplace
4 facilitator, and through other means.

5
6 **NEWSPAPER:** A publication, printed on newsprint, intended for general circulation, and
7 published regularly at short intervals, containing information and editorials on current events and
8 news of general interest. The term newspaper does not include: magazines, trade publications or
9 journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs,
10 reprints, newspaper clipping and mailing services or listings, publications that include an
11 updating or revision service, or books or pocket editions of books.

12
13 **ONLINE GARAGE SALES:** Sales of tangible personal property, except automotive vehicles,
14 occurring online, where the property to be sold was originally purchased for use by the seller or
15 members of the seller’s household.

16
17 **PERSON:** Has the meaning provided in Section 3-1-2.

18
19 **PHOTOVOLTAIC SYSTEM:** A power system designed to supply usable solar power by means
20 of photovoltaics, a method of converting solar energy into direct current electricity using
21 semiconducting materials that create voltage or electric current in a material upon exposure to
22 light. It consists of an arrangement of several components, including solar panels to absorb and
23 convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as
24 well as mounting, cabling and other electrical accessories to set up a working system.

25
26 **PRESCRIPTION DRUGS FOR HUMANS:** A drug which, prior to being dispensed or delivered,
27 is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as
28 amended, and to state at a minimum the symbol “Rx Only,” and is dispensed in accordance with
29 any order in writing, dated and signed by a licensed practitioner of the healing arts, or given
30 orally by a practitioner, not including drugs available over the counter, and immediately reduced
31 to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and
32 any required information of the patient for whom the medicine, drug or poison is offered and
33 directions, if any, to be placed on the label.

34
35 **PRICE OR PURCHASE PRICE:** The aggregate value measured in currency paid or delivered or
36 promised to be paid or delivered in consummation of a sale, without any discount from the price
37 on account of the cost of materials used, labor or service cost, and exclusive of any direct tax
38 imposed by the federal government or by this article, and, in the case of all retail sales involving
39 the exchange of property, also exclusive of the fair market value of the property exchanged at the
40 same time and place of the exchange, if:

- 41
42 1. Such exchanged property is to be sold thereafter in the usual course of the retailer’s
43 business, or

- 1 2. Such exchanged property is a vehicle and is exchanged for another vehicle and both
2 vehicles are subject to licensing, registration, or certification under the laws of this
3 state, including, but not limited to, vehicles operating upon public highways, off-
4 highway recreation vehicles, watercraft, and aircraft. Any money or other
5 consideration paid over and above the value of the exchanged property is subject to
6 tax.

7
8 PRICE OR PURCHASE PRICE: Includes:

- 9
- 10 1. The amount of money received or due in cash and credits.
- 11 2. Property at fair market value taken in exchange but not for resale in the usual course
12 of the retailer's business.
- 13 3. Any consideration valued in money, whereby the manufacturer or someone else
14 reimburses the retailer for part of the purchase price and other media of exchange.
- 15 4. The total price charged on credit sales including finance charges which are not
16 separately stated. An amount charged as interest on the unpaid balance of the
17 purchase price is not part of the purchase price unless the amount added to the
18 purchase price is included in the principal amount of a promissory note; except the
19 interest or carrying charge set out separately from the unpaid balance of the purchase
20 price on the face of the note is not part of the purchase price. An amount charged for
21 insurance on the property sold and separately stated is not part of the purchase price.
- 22 5. Installation, applying, remodeling or repairing the property, delivery and wheeling-in
23 charges included in the purchase price and not separately stated.
- 24 6. Transportation and other charges to effect delivery of tangible personal property to
25 the purchaser.
- 26 7. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and
27 floor stock.
- 28 8. The gross purchase price of articles sold after manufacturing or after having been
29 made to order, including the gross value of all the materials used, labor and service
30 performed and the profit thereon.

31
32 PRICE OR PURCHASE PRICE: Shall not include:

- 33
- 34 1. Any sales or use tax imposed by the State of Colorado or by any political subdivision
35 thereof.
- 36 2. The fair market value of property exchanged if such property is to be sold thereafter
37 in the retailers' usual course of business. This is not limited to exchanges in
38 Colorado. Out of state trade-in's are an allowable adjustment to the purchase price.
- 39 3. Discounts from the original price if such discount and the corresponding decrease in
40 sales tax due is actually passed on to the purchaser, and the seller is not reimbursed
41 for the discount by the manufacturer or someone else. An anticipated discount to be
42 allowed for payment on or before a given date is not an allowable adjustment to the
43 price in reporting gross sales.
- 44

1 PROSTHETIC DEVICES FOR HUMANS: Any artificial limb, part, device or appliance for
2 human use which replaces a body part or aids or replaces a bodily function; is designed,
3 manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed
4 practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed
5 auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen
6 concentrators with related accessories.
7

8 PURCHASE OR SALE: The acquisition for any consideration by any person of tangible
9 personal property, other taxable products or taxable services that are purchased, leased, rented,
10 sold, used, stored, distributed, or consumed. These terms include capital leases, installment and
11 credit sales, and property and services acquired by:
12

- 13 1. Transfer, either conditionally or absolutely, of title or possession or both to tangible
14 personal property, other taxable products, or taxable services;
- 15 2. A lease, lease-purchase agreement, rental or grant of a license, including royalty
16 agreements, to use tangible personal property, other taxable products, or taxable
17 services. The utilization of coin operated devices, except coin-operated telephones,
18 which do not vend articles of tangible personal property shall be considered short
19 term rentals of tangible personal property;
- 20 3. Performance of taxable services; or
- 21 4. Barter or exchange for other tangible personal property, other taxable products, or
22 services.
23

24 The terms “purchase” and “sale” do not include:
25

- 26 1. A division of partnership assets among the partners according to their interests in the
27 partnership;
- 28 2. The transfer of assets of shareholders in the formation or dissolution of professional
29 corporations, if no consideration including, but not limited to, the assumption of a
30 liability is paid for the transfer of assets;
- 31 3. The dissolution and the pro rata distribution of the corporation’s assets to its
32 stockholders, if no consideration including, but not limited to, the assumption of a
33 liability is paid for the transfer of assets;
- 34 4. A transfer of a partnership interest;
- 35 5. The transfer of assets to a commencing or existing partnership, if no consideration
36 including, but not limited to, the assumption of a liability is paid for the transfer of
37 assets;
- 38 6. The repossession of personal property by a chattel mortgage holder or foreclosure by
39 a lienholder;
- 40 7. The transfer of assets from a parent company to a subsidiary company or companies
41 which are owned at least eighty percent (80%) by the parent company which transfer
42 is solely in exchange for stock or securities of the subsidiary corporation;
- 43 8. The transfer of assets from a subsidiary company or companies which are owned at
44 least eighty percent (80%) by the parent company to a parent company or to another

1 subsidiary which is owned at least eighty percent (80%) by the parent company which
2 transfer is solely in exchange for stock or securities of the parent company or the
3 subsidiary which received the asset;

- 4 9. The transfer of assets between parent and closely held subsidiary companies or
5 between subsidiary companies closely held by the same parent company or between
6 companies which are owned by the same shareholders in identical percentage of stock
7 ownership amounts, computed on a share-by-share basis, when a tax imposed by this
8 article was paid by the transferor company at the time it acquired such assets, except
9 to the extent that there is an increase in the fair market value of such assets resulting
10 from the manufacturing, fabricating, or physical changing of the assets by the
11 transferor company. To such an extent any transfer referred to in this paragraph (9)
12 shall constitute a sale. For the purposes of this paragraph (9), a closely held
13 subsidiary company is one in which the parent company owns stock possessing or
14 membership interest in at least eighty percent of the total combined voting power of
15 all classes of stock entitled to vote and owns at least eighty percent of the total
16 number of shares of all other classes of stock.

17
18 **RENEWABLE ENERGY:** Any energy resource that is naturally regenerated over a short time
19 scale and derived directly from the sun (such as thermal, photochemical, and photoelectric),
20 indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in
21 biomass), or from other natural movements and mechanisms of the environment (such as
22 geothermal and tidal energy). Renewable energy does not include energy resources derived from
23 fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

24
25 **RETAIL SALES:** All sales except wholesale sales.

26
27 **RETAILER:** Any person selling, leasing, renting, or granting a license to use tangible personal
28 property or services at retail. The terms “retailer” shall include, but is not limited to, any:

- 29
30 1. Auctioneer;
31 2. Salesperson, representative, peddler or canvasser, who makes sales as a direct or
32 indirect agent of or obtains such property or services sold from a dealer, distributor,
33 supervisor or employer;
34 3. Charitable organization or governmental entity which makes sales of tangible
35 personal property to the public, notwithstanding the fact that the merchandise sold
36 may have been acquired by gift or donation or that the proceeds are to be used for
37 charitable or governmental purposes;
38 4. Retailer-contractor, when acting in the capacity of a retailer;
39 5. Marketplace facilitator, marketplace seller, or multichannel seller.

40
41 **RETAILER-CONTRACTOR:** A contractor who is also a retailer of building supplies,
42 construction materials, or other tangible personal property, and purchases, manufactures, or
43 fabricates such property for resale (which may include installation), repair work, time and
44 materials jobs, and/or lump sum contracts.

1
2 RETURN: Any form prescribed by the Town/town administration for computing and reporting a
3 total tax liability.

4
5 SALES TAX: The tax that is or should be collected and remitted by a retailer on sales taxed
6 under this Chapter.

7
8 SCHOOL: A public or nonpublic school for students in kindergarten through 12th grade or any
9 portion thereof.

10
11 SOFTWARE PROGRAM: A sequence of instructions that can be measured, interpreted and
12 executed by an electronic device (e.g. a computer, tablets, smart phones). Software program
13 includes:

- 14
15 1. Custom software program, which is a software program prepared to the special order
16 or specifications of a single customer;
17 2. Pre-written software program, which is a software program prepared for sale or
18 license to multiple users, and not to the special order or specifications of a single
19 customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf
20 (“COTS”),” “mass produced” or “standardized;”
21 3. Modified software, which means pre-written software that is altered or enhanced by
22 someone other than the purchaser to create a program for a particular user; and
23 4. The generic term “software,” “software application,” as well as “updates,”
24 “upgrades,” “patches,” “user exits,” and any items which add or extend functionality
25 to existing software programs.

26
27 SOFTWARE AS A SERVICE: Software that is rented, leased or subscribed to from a provider
28 and used at the consumer’s location, including but not limited to applications, systems or
29 programs.

30
31 SOFTWARE LICENSE FEE: A fee charged for the right to use, or maintain a copy of, software,
32 regardless of the form of the software.

33
34 SOFTWARE MAINTENANCE AGREEMENT: An agreement, typically with a software
35 provider, that may include:

- 36
37 1. Provisions to maintain the right to use the software;
38 2. Provisions for software upgrades including code updates, version updates, code fix
39 modifications, enhancements, and added or new functional capabilities loaded into
40 existing software, or
41 3. Technical support.

42
43 SOLAR THERMAL SYSTEMS: A system whose primary purpose is to use energy from the sun
44 to produce heat or cold for:

1
2 1. Heating or cooling a residential or commercial building;
3 2. Heating or cooling water; or
4 3. Any industrial, commercial, or manufacturing process.
5
6 TANGIBLE PERSONAL PROPERTY: Personal property that can be one or more of the
7 following: seen, weighed, measured, felt or touched, stored, transported, or exchanged, or that is
8 in any other manner perceptible to the senses.
9
10 TAX: The use tax due from a consumer or the sales tax due from a retailer or the sum of both
11 due from a retailer who also consumes.
12
13 TAX DEFICIENCY OR DEFICIENCY: Any amount of tax, penalty, interest, or other fee that is
14 not reported and/or not paid on or before the date that any return or payment of the tax is
15 required under the terms of this Chapter.
16
17 TAXABLE SALES: Gross sales less any exemptions and deductions specified in this Chapter.
18
19 TAXABLE SERVICES: Services subject to tax pursuant to this Chapter.
20
21 TAXPAYER: Any person obligated to collect and/or pay tax under the terms of this Chapter.
22
23 TELECOMMUNICATIONS SERVICE: The transmission of any two-way interactive electronic
24 or electromagnetic communications including but not limited to voice, image, data and any other
25 information, by the use of any means but not limited to wire, cable, fiber optical cable,
26 microwave, radio wave, Voice over Internet Protocol (VoIP), internet access, remote access to
27 computers and electronic storage equipment, or any combinations of such media, including any
28 form of mobile two-way communication.
29
30 TELEVISION AND ENTERTAINMENT SERVICES: Audio or visual content that can be
31 transmitted electronically by any means, for which a charge is imposed.
32
33 THERAPEUTIC DEVICE: Devices, appliances, or related accessories that correct or treat a
34 human physical disability or surgically created abnormality.
35
36 TOTAL TAX LIABILITY: The total of all tax, penalties and/or interest owed by a taxpayer and
37 shall include sales tax collected in excess of such tax computed on total sales.
38
39 TOWN: Has the meaning provided in Section 3-1-2.
40 .
41 WHOLESALE SALES: A sale by wholesalers to retailers, jobbers, dealers, or other wholesalers
42 for resale and does not include a sale by wholesalers to users or consumers not for resale; the
43 latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this
44 Chapter. Sales by wholesalers to non-licensed retailers are not wholesale sales.

1
2 WHOLESALER: Any person doing an organized wholesale or jobbing business and selling to
3 licensed retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for
4 storage, use, consumption, or distribution.

5
6 B. Wherever applicable, the pronouns in this Chapter designating the masculine or
7 neuter apply equally to the feminine, neuter, and masculine genders.

8 C. Wherever applicable in this Chapter, the singular includes the plural, and the plural
9 includes the singular.

10 3-2-3: TAXABLE TRANSACTIONS AND ITEMS: There is hereby levied and shall be
11 collected and paid a tax in the amount stated in section 3-2-5 of this Chapter, as follows:
12

13 A. On the purchase price paid or charged upon all sales, purchases, rentals and leases of
14 any duration of tangible personal property at retail, whether or not such property has been
15 included in a previous taxable transaction.

16 B. All sales are consummated at the place of business of the retailer unless the property
17 sold is delivered by the retailer, his agent, a common carrier, or by mail. In the event of such
18 delivery, the sale is consummated at the place of delivery.

19 C. In the case of retail sales involving the exchange of property, on the purchase price
20 paid or charged, including the fair market value of the property exchanged at the time and place
21 of the exchange, excluding, however, from the consideration or purchase price the fair market
22 value of the exchanged property, provided such exchanged property is to be sold thereafter in the
23 usual course of the retailer's business.

24 D. Upon telecommunication services, including all international, interstate and intrastate
25 telecommunication services originating from or received on telecommunication equipment in the
26 Town, if the charge for the service is billed to an apparatus, telephone or account in the Town,
27 except that for mobile telecommunication services liability shall be imposed only when the
28 users' place of primary use is within the Town. For the purposes of this subsection, "place of
29 primary use" means, as defined in C.R.S. 29-1-1002, as amended.

30 E. Upon carrier access services sold by local telephone exchange companies to providers
31 of telecommunication services for use in providing such services, whether furnished by public or
32 private corporations or enterprises for all interstate telecommunication services originating from
33 or received on telecommunication equipment in the Town if the charge for the service is billed to
34 a person in the Town, or billed to an affiliate or division of such person in the Town on behalf of
35 a person in the Town.

36 F. Upon gas and electric service, whether furnished by Municipal, public or private
37 corporations or enterprises, and upon gas and electricity furnished and sold for domestic and
38 commercial consumption and not for resale and upon steam when consumed or used by the

1 purchaser and not resold in original form whether furnished or sold by Municipal, public or
2 private corporations or enterprises, if the charge is billed to a person in Town.

3 G. Upon the entire amount charged to any person or persons for lodging services.

4 H. Upon the amount paid for all meals and beverages furnished in any restaurant, eating
5 house, hotel, drugstore, club, resort, hospital, or other such place at which meals or food are
6 regularly sold.

7 I. Upon cover charges, if tangible personal property, such as food and/or beverages, is
8 received as consideration for the amount paid.

9 J. Upon all sales of food.

10 K. Upon the sale, lease or transfer of a software program.

11 L. Upon television and entertainment services sold, purchased, leased, rented, furnished
12 or used, including any equipment rentals furnished as a part of the price or separately stated, if
13 the charge is billed to a person in the Town.

14 M. Upon prewritten (canned) software that is sold, licensed for use, subscribed to, leased
15 or rented when delivered electronically or by any other method. Software is deemed to be used
16 within the Town if one of the following is true:

- 17 1. The end user of the software is engaged in business in the Town or resides in the
18 Town while using or accessing the software; or
19 2. The server or other computer equipment upon which the software, electronic files or
20 electronic data reside or are maintained is located within the Town.

21
22 N. Upon software maintenance agreements when:

- 23 1. The agreement is mandatory to maintain the right to use the associated software; or
24 2. The agreement includes software upgrades and the cost for upgrading is not
25 separately calculated and stated from other aspects; or
26 3. The agreement includes technical support and the cost associated with technical
27 support is not separately stated or calculated.

28
29 O. Upon software as a service, data processing equipment, software program, and
30 internet services subscriptions.

31 P. Upon all software license fees.

32 Q. Upon sales of tangible personal property by a retailer-contractor, when acting as a
33 retailer, shall be subject to sales tax on the total sales price.

34 R. Upon the retail sale of medical marijuana and marijuana infused products pursuant to

1 the Colorado Medical Marijuana Code, article 11 of title 44, Colorado Revised Statutes.

2 S. Upon the sale of retail marijuana or marijuana products pursuant to the Colorado
3 Retail Marijuana Code, article 12 of title 44, Colorado Revised Statutes.

4 T. Upon the sale of all digital products

5 3-2-4: ITEMS EXEMPT FROM TAX:

6

7 There shall be exempt from taxation under the provisions of this Chapter the following:

8

9 A. All sales to the United States government, to the State, its departments and
10 institutions, and the political subdivisions thereof in their governmental capacities only when
11 billed to and paid for by the governmental entity.

12 B. All sales made to “charitable organizations” as defined in section 3-2-2 of this
13 Chapter, in the conduct of their charitable functions only when billed to and paid for by the
14 charitable organization.

15 C. All sales which the Town is prohibited from taxing under the Constitution or laws of
16 the United States or the State.

17 D. Food for domestic home consumption, as defined in 7 USC section 2012(g) as
18 amended, for purposes of the Federal food stamp program as defined in 7 USC section 2012(h),
19 as amended, purchased with food stamps pursuant to the federal food stamp program; or food
20 purchased with WIC vouchers or checks pursuant to the federal special supplemental program
21 for women, infants and children.

22 E. Cover charges, if the amount paid is strictly for admission to the vendor’s place of
23 business and tangible personal property, such as food and/or beverages, is not received as
24 consideration for the amount paid.

25 F. All sales of cigarettes.

26 G. All sales made to schools, other than schools held or conducted for private or
27 corporate profit.

28 H. All sales of motor fuel upon which there has accrued or has been paid the motor fuel
29 tax prescribed by parts one and two of article 26 of title 39, Colorado Revised Statutes.

30 I. When utilized for the purpose of constructing tangible personal property for resale, or
31 for improving real property, sales to and purchases of tangible personal property by a person
32 engaged in the business of manufacturing, compounding for sale, profit or use, any article,
33 substance, commodity, which tangible personal property enters into the processing of or becomes
34 an ingredient or component part of the product or service which is manufactured, compounded or
35 furnished and the container, label or the furnished shipping cases thereof, shall be deemed to be

1 wholesale sales and shall be exempt from taxation under this Chapter.

2 J. Sales of “commercial packaging materials” as defined in section 3-2-2 of this
3 Chapter.

4 K. When utilized for the purpose of constructing tangible personal property for resale, or
5 for improving real property, sales and purchases of electricity, coal, fuel, oil, gas or coke for use
6 in processing, manufacturing, mining, refining, irrigation, building construction, telegraph,
7 telephone and radio communication, street and railroad transportation services and all industrial
8 uses, as well as the newsprint and printer’s ink for use by publishers of newspapers and
9 commercial printers, shall be deemed to be wholesale sales and shall be exempt from taxation
10 under this Chapter.

11 L. All sales and purchases of automotive vehicles which are required to be registered
12 under the Colorado motor vehicle laws whether new or used under the following conditions:

- 13 1. The purchaser is not a resident of the Town, and
- 14 2. The vehicle or mobile home is to be registered under an address outside of the Town
15 and will be primarily housed, located or occupied at such address or other place
16 outside the Town.

17
18 M. Sales of tangible personal property shall be exempted from the operation of this
19 section if both of the following conditions exist:

- 20 1. The sales are to those who are residents or doing business outside the Town, and
- 21 2. The articles purchased are to be delivered to the purchaser outside the Town by
22 common carrier or by the conveyance of the seller or by mail.

23
24 N. Drugs, medical devices: All sales of “medical supplies,” including: insulin in all its
25 forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of
26 insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting
27 devices, including hypodermic syringes and needles; prosthetic devices for humans; therapeutic
28 devices; wheelchairs and hospital beds; prescription drugs for humans or materials when
29 furnished by a doctor as part of professional services provided to a patient; and corrective
30 eyeglasses, contact lenses, or hearing aids. Medical marijuana is not a medical supply.

31 O. Fifty percent (50%) of the purchase price of: 1) manufactured homes, and of 2) other
32 buildings or structures including conventional buildings shall be exempt from taxes under the
33 provisions of this Chapter; except that the entire purchase price in any subsequent sale of
34 manufactured homes or other buildings severed from real estate after such housing or severed
35 building has once been subject to the payment of sales or use tax under the provisions of this
36 Chapter shall be exempt from taxes under the provisions of this Chapter.

37 P. The transfer of tangible personal property without consideration (other than the
38 purchase, sale or promotion of the transferor’s product) to an out of state vendee for use outside

1 of this state in selling products normally sold at wholesale by the transferor.

2 Q. The sale of tangible personal property for testing, modification, inspection, or similar
3 type of activities in this state if the ultimate use of such property in manufacturing or similar type
4 of activities occurs outside of this state and if the test, modification, or inspection period does not
5 exceed ninety (90) days.

6 R. Any sale of any article to a retailer or vendor of food, meals, or beverages, which
7 article is to be furnished to a consumer or user for use with articles of tangible personal property
8 purchased at retail, if a separate charge is not made for the article to the consumer or user, if such
9 article becomes the property of the consumer or user, together with the foods, meals or beverages
10 purchased, and if a tax is paid on the retail sale as required by subsection 3-2-3H of this Chapter.

11 S. Any sale of any container or bag to a retailer or vendor of food, meals, or beverages,
12 which container or bag is to be furnished to a consumer or user for the purpose of packaging or
13 bagging articles of tangible personal property purchased at retail, if a separate charge is not made
14 for the container or bag to the consumer or user, together with the food, meals or beverages
15 purchased, and if a tax is paid on the retail sales as required in section 3-2-3 of this Chapter.

16 T. All transactions specified in subsection 3-2-3C of this Chapter in which the fair
17 market value of the exchanged property is excluded from the consideration or purchase price
18 because such exchanged property is covered by subsection 3-2-3A or C of this Chapter, and in
19 which, because there is no additional consideration involved in the transaction, there is no
20 purchase price within the meaning of section 3-2-2 of this Chapter.

21 U. All sales of construction materials to contractors and subcontractors for use in the
22 building, erection, alteration, or repair of structures, highways, roads, streets, and other public
23 works owned and used by:

- 24 1. The United States government, the state, its departments and institutions, the political
25 subdivisions thereof in their governmental capacities only;
26 2. Charitable organizations, as defined in section 3-2-2 of this Chapter, in the conduct of
27 their regular charitable functions and activities; or
28 3. Schools, other than schools held or conducted for private or corporate profit.
29

30 V. All sales of newspapers as defined in section 3-2-2 of this Chapter.

31 W. All sales of customized software where the design or writing of a computer program
32 is for a specific application of an individual user.

33 X. All sales, storage, use, or leasing of photovoltaic systems or solar thermal systems
34 (and its components) and in the production of alternating current electricity from a renewable
35 energy source. The exemption shall not include any components beyond the point of generator
36 step-up transformers located at the production site, labor, energy storage devices, or remote
37 monitoring systems.

1 Y. All occasional sales by a charitable organization under the following conditions:

- 2 1. The sale of tangible personal property or concessions by the charitable organization
3 takes place no more than ninety (90) days, whether consecutive or not, during any one
4 calendar year; and
- 5 2. The funds raised by the charitable organization through these sales are retained by
6 the organization to be used in the course of the organization's charitable service.
7

8 Z. All sales of tangible personal property by a school, other than schools held or
9 conducted for private or corporate profit, under the condition that the funds raised by the school
10 are retained by the organization to be used in the course of the school's service.

11 AA. All sales of tangible personal property, except automotive vehicles, at online
12 garage sales (no limit on days), garage sales; provided that such sales are conducted no more
13 than three (3) times a year, each sale is limited to a maximum of three (3) days in duration, that
14 the sale occurs at the residence of the seller and that the property to be sold was originally
15 purchased for use by members of the household where such sale is being conducted.

16 BB. All transactions specified in section 29-4-227(1), Colorado Revised Statutes when
17 utilized for the purpose of a project providing housing within the means of persons of low
18 income.

19 CC. "Telecommunications service" under the following conditions:

- 20 1. Separately stated software that constitutes computer processing applications used to
21 act on the information to be transmitted;
- 22 2. Carrier access service, interstate or international WATTS/800 service and interstate
23 or international private communication services shall be exempt from taxation; or
- 24 3. Telecommunication services sold for resale to other persons for the purpose of
25 providing telecommunication services to the final end user.
26

27 3-2-5: SCHEDULE OF TAX:
28

29 There is hereby imposed a tax upon all sales of commodities and services specified in section
30 3-2-3 of this Chapter and not exempt therefrom as specified in section 3-2-4 of this Chapter at
31 the rate of two and one-half percent (2 1/2%) on the amount of the sale which shall be rounded
32 off to the nearest penny; provided, however, that sales under the amount of twenty five cents
33 (\$0.25) shall not be taxable.
34

35 3-2-6: SALES TAX, NONAPPLICABILITY:
36

37 For transactions consummated on or after January 1, 1986, the Breckenridge sales tax shall not
38 apply to the sale of construction and building materials, as the term is used in section 29-2-109,
39 Colorado Revised Statutes, if such materials are picked up by the purchaser and if the purchaser

1 of such materials presents to the retailer a building permit or other documentation acceptable to
2 the Town evidencing that a local use tax has been paid or is required to be paid.

3
4 **3-2-7: RETAILER RESPONSIBLE FOR PAYMENT OF TAX:**

5
6 A. Every retailer or vendor engaged in “business” and selling at retail as defined in this
7 Chapter shall be liable and responsible for the payment of an amount equivalent to two and one-
8 half percent (2 1/2%) of all sales made by him of commodities or services as specified in section
9 3-2-3 of this Chapter, and shall file a return each month with the finance director on or before the
10 twentieth day of each month for the preceding month and remit an amount equivalent to said two
11 and one-half percent (2 1/2%) of such sales to the finance director.

12 B. Every retailer or vendor conducting a business in which the transaction between the
13 vendor and the consumer consists of the supply of tangible personal property and services in
14 connection with the maintenance or servicing of same, shall be required to pay the tax levied
15 under this Chapter on the full contract price, unless application is made to the finance director for
16 permission to use a percentage basis of reporting the tangible personal property sold and the
17 services supplied under such contract. The finance director is hereby authorized to determine the
18 percentage based on the ratio of the tangible personal property included in the consideration as it
19 bears to the total of the consideration paid under said combination contract or sale which shall be
20 subject to the tax levied pursuant to the provisions of this Chapter. This section shall not be
21 construed to include terms upon which the tax is imposed on the full purchase price as defined
22 herein.

23 C. Commencing with the sales tax return for the January 2017 tax period, there shall be
24 added to each paper return filed with the finance director, and there shall be assessed and paid by
25 the taxpayer filing such return, a paper filing fee in the amount of five dollars (\$5.00) per return.
26 A “paper return” is a town sales tax return that is not filed through the Town’s designated online
27 tax filing system. The paper return filing fee shall be due and payable to the Town at the time the
28 paper return is filed with the finance director. Beginning with the Town’s 2018 fiscal year, the
29 amount of the paper return filing fee described in this section shall be fixed by the Town council
30 as part of its annual budget process. If, for any reason, the amount of such fee is not fixed by the
31 Town council as part of its annual budget process, the fee for the preceding year shall continue in
32 full force and effect until changed by the Town council. There shall be no paper return filing fee
33 charged if the taxpayer elects to file the subject return with the finance director through the
34 Town’s designated online tax filing system. The finance director may waive the paper return
35 filing fee for good cause.

36 **3-2-7-1: MARKETPLACE FACILITATORS:**

37
38 A. A marketplace facilitator engaged in business in the Town is required to collect and
39 remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for
40 marketplace sellers or multichannel sellers to customers in the Town, whether or not the
41 marketplace seller for whom sales are facilitated would have been required to collect sales tax
42 had the sale not been facilitated by the marketplace facilitator.

1 B. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of
2 a retailer under 3-2-2. Marketplace facilitators shall be liable for the taxes collected from
3 marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties,
4 and interest from the marketplace facilitator that is responsible for collecting on behalf of
5 marketplace sellers or multichannel sellers.

6 C. The liabilities, obligations, and rights set forth under this section are in addition to
7 any duties and responsibilities of the marketplace facilitator has under this Chapter if it also
8 offers for sale tangible personal property, products, or services through other means.

9 D. A marketplace seller, with respect to sales of tangible personal property, products, or
10 services made in or through a marketplace facilitator's marketplace, does not have the liabilities,
11 obligations, or rights of a retailer under this Chapter if the marketplace seller can show that such
12 sale was facilitated by a marketplace facilitator:

- 13 1. With whom the marketplace seller has a contract that explicitly provides that the
14 marketplace facilitator will collect and remit sales tax on all sales subject to tax under
15 this Chapter; or
- 16 2. From whom the marketplace seller requested and received in good faith a certification
17 that the marketplace facilitator is registered to collect sales tax and will collect sales
18 tax on all sales subject to tax under this Chapter made in or through the marketplace
19 facilitator's marketplace.
20

21 E. If a marketplace seller makes a sale that is not facilitated by a licensed marketplace
22 facilitator in a marketplace, the marketplace seller is subject to all of the same licensing,
23 collection, remittance, filing and recordkeeping requirements as any other retailer.

24 F. With respect to any sale, the Town shall solely audit the marketplace facilitator for
25 sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The
26 Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers
27 for sales facilitated by a marketplace facilitator.

28 3-2-8: ACQUISITION, INCEPTION OR CESSATION OF BUSINESS:
29

30 A. Acquisition Of An Existing Business:

- 31 1. Seller's Responsibilities: Any person engaged in business in the Town who sells such
32 business shall file a final return. The reporting period for such return shall end on the
33 date of the transfer of ownership of the business.
- 34 2. Purchaser's Responsibilities:
35
36 (a) Any person who purchases an existing business shall be responsible for
37 determining the total tax liability of that business and shall withhold from the
38 initial purchase payment an amount sufficient to cover any such tax liability.

1 (b) Any amount so withheld shall be paid to the Town within ten (10) days of the
2 date of the sale of the business on forms prescribed by the finance director.

3 (c) Any purchaser who fails to withhold such tax due or fails to pay to the Town the
4 amount so withheld within the ten (10) day period allowed, shall, as well as the
5 seller, be held liable for any unpaid tax due.

6 B. Inception Of Business; Initial Tax: Any person who purchases or establishes a
7 business inside the Town shall file an initial tax return.

- 8 1. Existing businesses: Sales tax shall be due on tangible personal property, except
9 inventory held for lease, rental or resale, which is acquired with the purchase, transfer
10 of ownership, or any other form of acquisition of a business. The tax shall be based
11 on the price of such property as recorded in the bill of sale or agreement and
12 constituting a part of the total transaction at the time of the sale or transfer, provided
13 the valuation is as great or greater than the fair market value of such property. If the
14 fair market value of the property is greater than the price recorded in the bill of sale or
15 agreement, then the fair market value of the property shall be the basis for calculating
16 the amount of tax due. Such tax shall be reported on a sale of assets tax return.
- 17 2. New businesses: Sales tax shall be paid on the price of all tangible personal property,
18 except inventory held for lease, rental or resale, which is purchased inside the Town.
19 Such tax shall be reported on the seller's sales tax return.
- 20 3. Exceptions: In the case of businesses where the tangible personal property purchased
21 is or shall be affixed to a building or premises and intended to be utilized in that
22 fashion (i.e., automated or self-serve car wash equipment, laundromat washers and
23 dryers, bowling lanes, and such properties), the business owner shall deduct this
24 equipment on the sale of assets tax return and collect and remit sales tax on each
25 transaction where the equipment is utilized by the customer or patron.

26
27 C. Cessation Of Business: Every person engaged in business in the Town who quits
28 doing business in the Town shall file a final return. The reporting period for such return shall end
29 on the last day of business in the Town.

30 3-2-9: RETAILER TO COLLECT TAX:

31
32 Retailers shall add the tax imposed to the sale price or charge, showing such tax as a separate and
33 distinct item, and when added, such tax shall constitute a part of such price or charge and shall be
34 a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the
35 same manner as other debts; provided, however, that the retailer shall be entitled, as collection
36 agent of the Town, to apply and credit the amount of this collection against the two and one-half
37 percent (21/2%) rate to be paid by him under the provisions of section 3-2-5 of this Chapter
38 remitting any excess collected over said two and one-half percent (21/2%) to the finance director
39 in the retailer's next monthly sales tax returns.

40
41 3-2-10: TAX ON CREDIT SALES, ETC.:

1
2 Whenever tangible personal property is sold which is taxable hereunder, under a conditional
3 sales contract whereby the seller retains title as security for all or part of the purchase price, or
4 whenever the seller takes a chattel mortgage on such tangible personal property to secure all or
5 part of the purchase price, the total tax based on the total selling price shall become immediately
6 due and payable. The tax shall be charged, or collected and remitted by the vendor. No refund or
7 credit shall be allowed to either party of the transaction in case of repossession.
8

9 3-2-11: SALES TAX, CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO
10 ANOTHER MUNICIPALITY:

11
12 For transactions consummated on or after June 1, 1997, the Town's sales tax shall not apply to
13 the sale of tangible personal property at retail or the furnishing of services if the transaction was
14 previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another
15 statutory or home rule municipality equal to or in excess of two and one-half percent (2 1/2%). A
16 credit shall be granted against the Town's sales tax with respect to such transaction equal in
17 amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to
18 the previous statutory or home rule municipality. The amount of the credit shall not exceed two
19 and one-half percent (2 1/2%).
20

21 3-2-12: CLAIMS FOR RECOVERY:

22
23 The intent of this section is to streamline and standardize procedures related to situations where
24 tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the
25 responsibilities of the taxpayer or vendor to correctly pay, collect, and remit sales and use taxes
26 to the Town.
27

28 A. As used herein, "claim for recovery" or "claim" means a claim for reimbursement of
29 sales and use taxes paid to the wrong taxing jurisdiction. (Ord. 31, Series 2013)

30 B. When it is determined by the finance director of the Town that sales tax owed to the
31 Town has been reported and paid to another municipality, the Town shall promptly notify the
32 vendor that taxes are being improperly collected and remitted, and that as of the date of the
33 notice, the vendor must cease improper tax collections and remittances. (Ord. 4, Series 2017)

34 C. The Town may make a written claim for recovery directly to the municipality that
35 received tax and/or penalty and interest owed to the Town, or, in the alternative, may institute
36 procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim
37 for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a
38 properly executed release of claim from the taxpayer and/or vendor releasing its claim to the
39 taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the
40 municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt.
41 The municipality to which the Town submits a claim for recovery may, for good cause, request
42 an extension of time to investigate the claim, and approval of such extension by the Town shall
43 not be unreasonably withheld.

1 D. Within ninety (90) days after receipt of a claim for recovery, the Town shall verify to
2 its satisfaction whether or not all or a portion of the tax claimed was improperly received, and
3 shall notify the municipality submitting the claim in writing that the claim is either approved or
4 denied in whole or in part, including the reasons for the decision. If the claim is approved in
5 whole or in part, the Town shall remit the undisputed amount to the municipality submitting the
6 claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a
7 vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery
8 may only be made for good cause.

9 E. The Town may deny a claim on the grounds that it has previously paid a claim for
10 recovery arising out of an audit of the same taxpayer.

11 F. The period subject to a claim for recovery shall be limited to the thirty six (36) month
12 period prior to the date the municipality that was wrongly paid the tax receives the claim for
13 recovery.

14 3-2-13: EXEMPTION; BURDEN OF PROOF:

15 The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting
16 or paying the tax upon goods sold or purchased, paying the same to the finance director or from
17 making such returns, shall be on the vendor, retailer, consumer, or purchaser under such
18 reasonable requirements of proof as the finance director may prescribe.

19
20 3-2-14: EXCESS COLLECTIONS:

21
22 If any vendor shall during any reporting period collect as a tax any amount in excess of two and
23 one-half percent (2 1/2%) of his total taxable sales, he shall remit to the finance director the full
24 net amount of the tax herein imposed, and also such excess. The retention by the retailer or
25 vendor of any excess tax collections or the intentional failure to remit punctually to the finance
26 director the full amount required to be remitted by the provisions of this Chapter is hereby
27 declared to be a violation of this Chapter.

28
29 3-2-15: UNLAWFUL TO ASSUME OR ABSORB TAX:

30
31 A. It shall be unlawful, except as provided below, for any retailer to advertise or hold out
32 or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof
33 imposed by this Chapter shall be assumed or absorbed by the retailer, or that it will not be added
34 to the selling price of the property sold, or if added, that it or any part thereof shall be refunded.
35 Any person violating any provision of this section shall be subject to the penalties herein
36 provided in this Chapter.

37 B. Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous
38 or spirituous liquors by the drink from including in his sales price any tax levied under this
39 Chapter.

40 C. Sales tax may be included in the price of tangible personal property sold through

1 vending machines or the price of utilizing such automatic sale devices as a rental of equipment.

2 D. No retailer selling malt, vinous or spirituous liquors by the drink or sales through a
3 vending machine shall advertise or hold out to the public in any manner, directly or indirectly,
4 that the tax levied by this Chapter is not considered as an element in the sales price to the
5 consumer.

6 3-2-16: SPECIAL ACCOUNTING BASIS FOR REMITTANCE OF TAX:
7

8 If the accounting methods employed by the vendor or licensed consumer in the transaction of his
9 business, or other conditions, are such that returns made on the calendar month basis will impose
10 unnecessary hardship, the finance director may, upon request of the vendor or licensed
11 consumer, accept returns at such intervals as will, in his opinion, better suit the convenience of
12 the taxpayer and will not jeopardize the collection of the tax. If any taxpayer who has been
13 granted permission to file reports and pay tax on other than a monthly basis shall become
14 delinquent, then authorization for such alternative method of reporting may be revoked by the
15 finance director or his authorized agent, and immediately following notice of revocation, the
16 taxpayer will be required to file reports and pay tax, interest and penalties on a monthly basis for
17 all unreported or unpaid tax in the same manner required by law under conditions that would
18 prevail if he has never been granted the alternate method of reporting and paying the tax.
19

20 3-2-17: DUTY TO KEEP BOOKS AND RECORDS:
21

22 A. Every person engaged in business in the Town shall keep and preserve for a period of
23 at least three (3) years adequate records of all sales and purchases made by him, and such other
24 books and records as may be necessary to determine the amount of tax he is liable to collect or
25 pay. These records must include the normal books of account maintained by the ordinarily
26 prudent business person engaged in such business, together with all bills, receipts, invoices, cash
27 register tapes, or other documents of original entry supporting the entries in the books of
28 accounts together with all schedules or working papers used in connection with the preparation
29 of tax returns.

30 B. Every person who uses construction equipment inside the Town shall keep and
31 preserve for at least three (3) years after the final certificate of occupancy or certificate of
32 completion for such project is issued, records of the time each piece of construction equipment
33 was located inside the Town and any sales tax paid on such construction equipment and related
34 materials.

35 3-2-18: INVESTIGATION OF BOOKS:
36

37 For the purpose of ascertaining the correctness of a return, or for the purpose of determining the
38 amount of tax due from any person, the finance director, or his duly authorized agent, may hold
39 investigations and hearings concerning any matters covered by this Chapter and may examine
40 any relevant books, journals, ledgers, business bank account records, work papers of the taxpayer

1 or accountant, records or memorandum of any such person and may require the attendance and
2 testimony of such person.

3
4 3-2-19: COORDINATED AUDIT:

5
6 A. Any taxpayer licensed in this town pursuant to section 3-2-22 of this Chapter, and
7 holding a similar sales tax license in at least four (4) other Colorado municipalities that
8 administer their own sales tax collection, may request a coordinated audit as provided herein.

9 B. Within fourteen (14) days of receipt of notice of an intended audit by any
10 municipality that administers its own sales tax collection, the taxpayer may provide to the
11 finance director, by certified mail, return receipt requested, a written request for a coordinated
12 audit indicating the municipality from which the notice of intended audit was received and the
13 name of the official who issued such notice. Such request shall include a list of those Colorado
14 municipalities utilizing local collection of their sales tax in which the taxpayer holds a current
15 sales tax license and a declaration that the taxpayer will sign a waiver of any passage of time
16 based limitation upon this town's right to recover tax owed by the vendor for the audit period.

17 C. Except as provided in subsection G of this section, any taxpayer that submits a
18 complete request for a coordinated audit may be audited by this town during the twelve (12)
19 months after such request is submitted only through a coordinated audit involving all
20 municipalities electing to participate in such an audit.

21 D. If this town desires to participate in the audit of a taxpayer that submits a complete
22 request for a coordinated audit pursuant to subsection C of this section, the finance director shall
23 so notify the finance director of the municipality whose notice of audit prompted the taxpayer's
24 request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The
25 finance director shall then cooperate with other participating municipalities in the development
26 of arrangements for the coordinated audit, including arrangement of the time during which the
27 coordinated audit will be conducted, the period of time to be covered by the audit, and a
28 coordinated notice to the taxpayer of those records most likely to be required for completion of
29 the coordinated audit.

30 E. If the taxpayer's request for a coordinated audit was in response to a notice of audit
31 issued by this town, this town's finance director shall facilitate arrangements between this town
32 and other municipalities participating in the coordinated audit unless and until an official from
33 some other participating municipality agrees to assume this responsibility. The finance director
34 shall cooperate with other participating municipalities to, whenever practicable, minimize the
35 number of auditors that will be present on the taxpayer's premises to conduct the coordinated
36 audit on behalf of the participating municipalities. Information obtained by or on behalf of those
37 municipalities participating in the coordinated audit may be shared only among such
38 participating municipalities.

39 F. If the taxpayer's request for a coordinated audit was in response to a notice of audit
40 issued by this town, this town's finance director shall, once arrangements for the coordinated

1 audit between the Town and other participating municipalities are completed, provide written
2 notice to the taxpayer of which municipalities will be participating, the period to be audited and
3 the records most likely to be required by participating municipalities for completion of the
4 coordinated audit. The finance director shall also propose a schedule for the coordinated audit.

5 G. The coordinated audit procedure set forth in this section shall not apply:

- 6 1. When the proposed audit is a jeopardy audit,
- 7 2. To audits for which a notice of audit was given prior to the effective date of this
8 section, or
- 9 3. When a taxpayer fails to provide a timely and complete request for a coordinated
10 audit as provided in subsection B of this section.

11
12 3-2-20: STATUTE OF LIMITATIONS:
13

14 A. No sales tax, interest or penalties shall be assessed, nor shall any notice of lien be
15 filed, or distraint warrant issued, or suit for collection be instituted, nor any action to collect the
16 same be commenced, more than three (3) years after the date on which the tax was or is payable.
17 A lien shall not continue after such period, except on taxes assessed before the expiration of the
18 period for which a notice of a tax lien has been filed prior to the expiration of such period.

19 B. In the case of a false or fraudulent return with intent to evade tax, the tax together
20 with interest and penalties thereon may be assessed, or proceedings for the collection of such
21 taxes may be begun at any time without regard to the statute of limitations. Prior to the expiration
22 of the period of limitation, the taxpayer and the finance director may agree in writing to an
23 extension thereof, and the period so agreed on may be extended by subsequent agreements in
24 writing.

25 C. When a taxpayer fails or refuses to file a return the sales tax may be assessed and
26 collected without regard to the statute of limitations.

27 D. The period of limitation provided herein shall not run against the Town for an audit
28 period if written notice is given to the taxpayer prior to the expiration of the statute of limitations
29 that the latter's records will be audited pursuant to this Chapter. "Audit period" is the thirty six
30 (36) month reporting period preceding the date of the notice of audit.

31 3-2-21: SUBPOENAS:
32

33 The finance director may issue a subpoena to compel a person to attend and give testimony or to
34 produce books and records, work papers, photographs or such other information that may be
35 deemed necessary for the purpose of determining the amount of tax due from any person.
36

37 3-2-22: LICENSES FOR RETAIL SELLERS; EXEMPTION:
38

39 A. It shall be unlawful for any person to engage in the business of selling at retail on or

1 after July 1, 1984, without having first obtained a Breckenridge sales tax license.

2 B. Any retailer having only an economic nexus with the Town and that has not
3 established a physical presence in the Town shall be exempt from the provisions Section A of
4 this Section; provided, however, such retailer shall furnish in writing to the finance director any
5 change to the name and address or contact information of the retailer or any other material
6 change to the information submitted on an application for a license with 30 calendar days of such
7 change.

8 3-2-23: SALES TAX LICENSES; APPLICATION AND CONTENT:
9

10 Breckenridge sales tax licenses shall be granted only upon application stating the name and
11 address of the person desiring such license, the name of such business and the character thereof,
12 the location, including the street number of such business and such other facts as may be
13 required by the finance director. Any person doing business as a wholesaler shall obtain a
14 retailer's license if any sales are made at retail as defined herein. In case business is transacted at
15 two (2) or more separate places by one person, a separate license for each place of business shall
16 be required. The license shall be posted in a conspicuous place in the place of business for which
17 it is used. No license shall be transferable.
18

19 3-2-24: DENIAL OF LICENSE:
20

21 A. An application for the initial issuance or renewal of a Breckenridge sales tax license
22 shall be denied by the finance director if:

- 23 1. The business for which the license is sought is an unlawful business;
24 2. The applicant is not qualified to engage in such business under applicable federal,
25 state or local law; or
26 3. The applicant or, in the event of an applicant which is other than a natural person, if
27 any principal of the applicant, owes to the Town any unpaid and delinquent tax of any
28 kind. As used in this subsection A3, the term "principal" means: a) as to a
29 corporation, any officer, director, or shareholder owning fifty percent (50%) or more
30 of the issued and outstanding capital stock of the corporation, b) as to any general
31 partnership, any partner, c) as to any limited partnership, any general partner, and d)
32 as to any limited liability company, any manager or member owning more than fifty
33 percent (50%) interest in the entity. The term "delinquent" means the nonpayment of
34 any tax obligation owed to the Town within sixty (60) days of the date such
35 obligation is due.
36

37 B. Before denying an application the finance director shall cause a hearing to be held
38 using the general procedures provided for the revocation of a license in section 3-2-26 of this
39 Chapter. In the event an application is denied, the finance director shall deliver to the applicant a
40 written order of denial stating the reason for denial.

41 3-2-25: SALE AT RETAIL WITHOUT LICENSE:

1
2 Any person engaging in the business of selling at retail in the Town, without having secured a
3 license therefor, except as specifically provided herein, shall be guilty of a violation of this
4 Chapter.

5
6 **3-2-26: REVOCATION OF LICENSE:**

7 The finance director may, on a reasonable notice and after full hearing, revoke the license of any
8 person found by the finance director to have violated any provisions of this Chapter.

9
10 **3-2-27: APPEAL:**

11
12 Any finding and order of the finance director revoking the license of any person shall be subject
13 to review by the district court of the district where the business of the licensee is conducted, upon
14 application of the aggrieved party. The procedure for review shall be as nearly as possible the
15 same as now provided for review of findings by writ of certiorari in accordance with rule
16 106(a)(4) of the Colorado rules of civil procedures.

17
18 **3-2-28: WHEN LICENSE NOT REQUIRED:**

19 No license shall be required of any person engaged exclusively in the business of selling
20 commodities which are exempt from taxation under this Chapter.

21
22 **3-2-29: MAP OR LOCATION GUIDE OF TOWN BOUNDARIES:**

23
24 The finance department shall make available to any requesting vendor a map or location guide
25 showing the boundaries of the Town. The requesting vendor may rely on such map or location
26 guide and any update thereof available to such vendor in determining whether to collect a sales
27 tax. No penalty shall be imposed or action or deficiency maintained against a vendor who in
28 good faith complies with the most recent map or location guide available to such vendor.

29
30 **3-2-30: COLLECTION AND REFUND OF DISPUTED TAX:**

31
32 Should a dispute arise between the purchaser and seller as to whether or not any sale or
33 commodity or service is exempt from taxation hereunder, nevertheless, the seller shall collect
34 and the purchaser shall pay such tax, and the seller thereupon issues to the purchaser a receipt or
35 certificate, on forms prescribed by the finance director, showing the names of the seller and
36 purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the
37 claim of the exemption. The purchaser may thereafter apply to the finance director to determine
38 the question of exemption, subject to review by the courts, as herein provided.

39
40 **3-2-31: REFUNDS:**

41
42 A. A refund shall be made, or credit allowed, for the sales tax so paid under dispute by
43 any purchaser or user who claims an exemption pursuant to section 3-2-4 of this Chapter. Such
44 refund shall be made by the finance director after compliance with the following conditions

1 precedent: Applications for refund must be made within sixty (60) days after the purchase of the
2 goods or services whereon an exemption is claimed and must be supported by the affidavit of the
3 purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the
4 seller and shall be made upon such forms as shall be prescribed therefor.

5 B. Upon receipt of such application, the finance director shall examine the same with
6 due speed and shall give notice to the applicant in writing of his decision thereon. Aggrieved
7 applicants, within thirty (30) calendar days after such decision is mailed to them, may petition
8 the finance director for a hearing on the claim in the manner provided in section 3-2-41 of this
9 Chapter and may either appeal to the district court in the manner provided in section 3-2-42 of
10 this Chapter or to the department of revenue in the manner provided in section 3-2-43 of this
11 Chapter. The right of any person to a refund under this Chapter shall not be assignable, and
12 except as provided in subsection C of this section, such application for refund must be made by
13 the same person who purchased the goods or services and paid the tax thereon as shown in the
14 invoice of the sale thereof.

15 C. A refund shall be made or a credit allowed by the finance director to any person
16 entitled to an exemption where such person establishes that: 1) a tax was paid by another person,
17 the purchaser, on a purchase made on behalf of the person entitled to an exemption; 2) a refund
18 has not been granted to such purchaser; and 3) the person entitled to the exemption paid or
19 reimbursed such purchaser for such tax. The burden of proving that sales, services, and
20 commodities on which tax refunds are claimed are exempt from taxation under this Chapter or
21 were not at retail shall be on the person making such claim under such reasonable requirements
22 of proof as set forth in the rules and regulations prescribed therefor. No such refund shall be
23 made or credit allowed in an amount greater than the tax paid less the expense allowance on such
24 purchase retained by the vendor pursuant to section 3-2-9 of this Chapter.

25 D. Such application for refund under subsection C of this section shall be made on forms
26 furnished by the finance department. Upon receipt of such application and proof of the matters
27 contained therein, the finance director shall give notice to the applicant by order in writing of his
28 decision thereon. Aggrieved applicants within thirty (30) calendar days after such decision is
29 mailed to them, may petition the finance director for a hearing on the claim in the manner
30 provided in section 3-2-41 of this Chapter and may either appeal to the district court in the
31 manner provided in section 3-2-42 of this Chapter or to the department of revenue in the manner
32 provided in section 3-2-43 of this Chapter. Any applicant for a refund under the provisions of
33 this subsection, or any other person, who makes any false statement in connection with an
34 application for a refund of any taxes is guilty of a violation of this Chapter and shall be punished
35 in the manner provided by state law.

36 E. Claims for tax monies paid in error or by mistake shall be made within three (3) years
37 after the date of purchase of the goods or services for which the refund is claimed and shall be
38 processed for refund in accordance with the rules and regulations prescribed therefor under
39 subsection D of this section, except that the proceeds of any such claim for a refund shall first be
40 applied by the finance department to any tax deficiencies or liabilities existing against the
41 claimant before allowance for such claim by the finance department, and further except that if

1 such excess payment of tax monies in any period is discovered as a result of an audit by the
2 finance department, and deficiencies are discovered and assessed against the taxpayer as a result
3 of such audit, then such excess monies shall be first applied against any deficiencies outstanding
4 to the date of the assessment but shall not be applied to any future tax liabilities.

5 F. If any person is convicted under the provisions of this section, such conviction shall
6 be prima facie evidence that all refunds received by such person during the current year were
7 obtained unlawfully, and the finance director is empowered to bring appropriate action for
8 recovery of such refunds. A brief summary statement of the above described penalties shall be
9 printed on each form application of a refund.

10 G. The right of any person to obtain a refund pursuant to this Chapter shall not be
11 assignable.

12 3-2-32: RECOVERY OF TAXES, PENALTY AND INTEREST:
13

14 A. All sums of money paid by the purchaser to the retailer as taxes imposed by this
15 Chapter shall be and remain public money, the property of the Town, in the hands of such
16 retailer, and shall hold the same in trust for the sole use and benefit of the Town until paid to the
17 finance director, and for failure to so pay to the finance director, such retailer shall be punished
18 as provided herein.

19 B. 1. If any person neglects or refuses to make a return in payment of the sales tax or to
20 pay any sales tax as required by this Chapter, then the finance director shall make an estimate,
21 based upon such information as may be available, of the amount of taxes due for the period for
22 which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen
23 dollars (\$15.00) for such failure or ten percent (10%) thereof, whichever is greater, and interest
24 on such delinquent taxes at the rate imposed under section 3-2-38 of this Chapter, plus one-half
25 percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the
26 aggregate.

27 2. Promptly thereafter, the finance director shall give to the delinquent taxpayer written
28 notice of such estimated taxes, penalty, and interest, which notice shall be sent by first class mail
29 directed to the last address of such person on file with the finance department. Such estimate
30 shall thereupon become a notice of deficiency. Within thirty (30) calendar days after the notice
31 of deficiency is mailed, the taxpayer may petition the finance director for a hearing in the manner
32 provided in section 3-2-41 of this Chapter and either may appeal to the district court as provided
33 in section 3-2-42 of this Chapter or to the department of revenue as provided in section 3-2-43 of
34 this Chapter.
35

36 C. 1. If any taxes, penalty, or interest imposed by this Chapter and shown due by returns
37 filed by the taxpayer or as shown by assessments duly made as provided in this section are not
38 paid within five (5) days after the same are due, then the finance director may issue a notice,
39 setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of
40 the accrual thereof, and that the Town claims a first and prior lien therefor on the real and

1 personal property of the taxpayer, including, without limitation, the goods, inventory (stock in
2 trade) and business fixtures of such taxpayer.

3 2. Said notice shall be on forms furnished by the finance department and shall be verified by
4 the finance director or any duly qualified agent of the finance director whose duties are the
5 collection of such tax, and may be filed in the office of the county clerk and recorder in which
6 the taxpayer owns real or tangible personal property, and the filing of such notice shall create a
7 lien on such property in that county and constitute notice thereof. After said notice has been
8 filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice
9 shall have been filed or not, the finance director may issue a warrant directed to any duly
10 authorized revenue collector, or to the sheriff of the county, commanding him to levy upon,
11 seize, and sell sufficient of the real and personal property of the tax debtor found within his
12 county to satisfy the amount due together with interest, penalties, and collection costs, as may be
13 provided by law. Any such sales shall be made free and clear of all liens and encumbrances.
14

15 D. Such revenue collector or the sheriff shall forthwith levy upon sufficient of the
16 property of the taxpayer or any property used by such taxpayer in conducting his retail business,
17 and said property so levied upon shall be sold in all respects with like effect and in the same
18 manner as prescribed by law with respect to executions against property upon judgment of a
19 court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such
20 fee in executing such warrants as are allowed by law for similar services.

21 E. Any lien for taxes as shown on the records of the county clerks and recorders as
22 provided in this section, upon payment of all taxes, penalties, and interest covered thereby shall
23 be released by the finance director in the same manner as mortgages and judgments are released.

24 F. The finance director may also treat any such taxes, penalties, and interest due and
25 unpaid as a debt due to the Town from the vendor. The return of the taxpayer of the assessment
26 made by the finance director, as provided in this Chapter, shall be prima facie proof of the
27 amount due. Such debt may be collected by civil action brought against the vendor in a court of
28 competent jurisdiction, and in such action the Town shall be entitled to recover from the vendor,
29 in addition to the tax, penalties and interest, its reasonable attorney fees incurred in the
30 prosecution of such action.

31 G. In any action affecting the title to real estate or the ownership or rights to possession
32 of personal property, the Town may be made a party defendant for the purpose of obtaining an
33 adjudication or determination of its lien upon the property involved therein. In any such action,
34 the service of summons upon the finance director or any person in charge of the office of the
35 finance director shall be sufficient service and shall be binding upon the Town.

36 H. The finance director is authorized to waive, for good cause shown, any penalty
37 assessed as provided in this Chapter, and any interest imposed in excess of the rate determined
38 pursuant to subsection B of this section shall be deemed a penalty.

1 3-2-33: FAILURE TO COLLECT AND PAY OVER TAX, ATTEMPTING TO EVADE OR
2 DEFEAT TAX:

3
4 A. It shall be unlawful for any person required to collect, truthfully account for, and pay
5 over to the Town any tax imposed by this Chapter to intentionally or knowingly fail to collect
6 such tax, or to intentionally or knowingly fail to truthfully account for and pay over such tax to
7 the Town, or to intentionally or knowingly attempt to evade or defeat any such tax or the
8 payment thereof.

9 B. If a corporation has failed to collect or pay over collected sales tax to the Town as
10 required by this Chapter, a rebuttable presumption shall arise that the president, vice president,
11 secretary and treasurer of the corporation are the persons required to collect, truthfully account
12 for and pay over the tax on behalf of the corporation. Such presumption may be rebutted by
13 evidence demonstrating that another person or persons were responsible for the collection and
14 payment of the tax on behalf of the corporation.

15 C. If a partnership has failed to collect or pay over collected sales tax to the Town as
16 required by this Chapter, a rebuttable presumption shall arise that all partners of a general
17 partnership, or the general partner(s) of a limited partnership, are the persons required to collect,
18 truthfully account for and pay over the tax on behalf of the partnership. Such presumption may
19 be rebutted by evidence demonstrating that another person or persons were responsible for the
20 collection and payment of the tax on behalf of the partnership.

21 D. If a limited liability company has failed to collect or pay over collected sales tax to
22 the Town as required by this Chapter, a rebuttable presumption shall arise that all managers of
23 the limited liability or, if none, all members of the limited liability company, are the persons
24 required to collect, truthfully account for and pay over the tax on behalf of the limited liability
25 company. Such presumption may be rebutted by evidence demonstrating that another person or
26 persons were responsible for the collection and payment of the tax on behalf of the limited
27 liability company.

28 3-2-34: IMPOSITION OF CIVIL PENALTY ON RESPONSIBLE PARTIES:
29

30 A. Any party responsible for the collection and payment of the tax imposed by this
31 Chapter on behalf of a corporation or partnership who willfully fails to collect such tax, or
32 truthfully account for and pay over such tax to the Town, or who willfully attempts in any
33 manner to evade or defeat such tax or the payment thereof, shall, in addition to the other
34 penalties provided by law, be liable for the payment of a civil penalty equal to the total amount
35 of tax evaded, or not collected, or not accounted for and paid over. Such civil penalty shall
36 include all penalties and interest due to the Town under this Chapter, together with the Town's
37 reasonable attorney fees incurred in collecting such civil penalty. The civil penalty provided for
38 in this subsection shall apply only to the collection, accounting for, and payment over of taxes
39 imposed on a person other than the vendor who is required to collect, account for and pay over
40 such taxes pursuant to this Chapter. An action to collect the civil penalty provided for in this
41 subsection may be brought in the district court and shall be governed by the Colorado rules of

1 civil procedure.

2 B. If a corporation has failed to collect, account for or pay over collected sales tax to the
3 Town as required by this Chapter, a rebuttable presumption shall arise that the president, vice
4 president, secretary and treasurer of the corporation are the persons responsible for the collection
5 and payment of the tax on behalf of the corporation. Such presumption may be rebutted by
6 evidence demonstrating that another person or persons were responsible for the collection and
7 payment of the tax on behalf of the corporation.

8 C. If a partnership has failed to collect, account for or pay over collected sales tax to the
9 Town as required by this Chapter, a rebuttable presumption shall arise that all partners of a
10 general partnership, or the general partner(s) of a limited partnership, are the persons responsible
11 for the collection and payment of the tax on behalf of the partnership. Such presumption may be
12 rebutted by evidence demonstrating that another person or persons were responsible for the
13 collection and payment of the tax on behalf of the partnership.

14 D. If a limited liability company has failed to collect, account for or pay over collected
15 sales tax to the Town as required by this Chapter, a rebuttable presumption shall arise that all
16 managers of the limited liability company or, if none, all members of the limited liability
17 company, are the persons responsible for the collection and payment of the tax on behalf of the
18 limited liability company. Such presumption may be rebutted by evidence demonstrating that
19 another person or persons were responsible for the collection and payment of the tax on behalf of
20 the limited liability company.

21 3-2-35: AUTHORITY OF FINANCE DIRECTOR TO REQUIRE IMMEDIATE PAYMENT
22 OF TAX:

23
24 Notwithstanding the provisions of section 3-2-7 of this Chapter with respect to the time for the
25 payment of sales tax due to the Town, whenever it appears from the records of the finance
26 department or otherwise that sales tax due to the Town has not been paid, or has not been paid in
27 a timely fashion, the finance director, after notice and hearing, shall have the authority to require
28 the payment to the Town of the tax due under this Chapter on a daily or weekly basis, as the
29 finance director shall determine to be required to adequately assure that the tax due under this
30 Chapter will be paid to the Town. The finance director shall give the vendor at least ten (10)
31 days' notice of the time and place of such hearing. Notice shall be mailed to the vendor at the
32 address shown on the Town sales tax license. The finance director shall further have the
33 authority to require payment of such tax on a daily or weekly basis into a separate account
34 maintained by the vendor solely for payment of sales tax and accessible only to parties approved
35 by the finance director. Failure to comply with any order of the finance director lawfully entered
36 pursuant to this section shall be sufficient grounds for the revocation of the vendor's sales tax
37 license as provided in section 3-2-26 of this Chapter.

38
39 3-2-36: TAX LIEN; EXEMPTION FROM LIEN:

40
41 A. 1. Except as provided in subsection A2 of this section, the sales tax imposed pursuant

1 to section 3-2-5 of this Chapter shall be a first and prior lien upon the real and personal property
2 of or used by the taxpayer, including, without limitation, the goods, inventory (stock in trade)
3 and business fixtures of such taxpayer, and shall take precedence over the other liens,
4 encumbrances, security interest and claims of whatsoever kind or nature.

5 2. Any retailer or person in possession shall provide a copy of any lease pertaining
6 to the assets and property described in subsection A1 of this section to the finance director within
7 ten (10) days after seizure by the Town of such assets and property. The finance director shall
8 verify that such lease is bona fide and notify the owner that such lease has been received by the
9 finance director. The finance director shall use his or her best efforts to notify the owner of the
10 real or personal property which might be subject to the lien created in subsection A1 of this
11 section. The real or personal property of an owner who has made a bona fide lease to a retailer
12 shall be exempt from the lien created in subsection A1 of this section: a) if such property can
13 reasonably be identified from the lease description, or b) if the lessee is given the option to
14 purchase in such lease and has not exercised such option to become the owner of the property
15 leased. This exemption shall become effective from the date of the execution of the lease. Such
16 exemption shall also apply if the lease is recorded with the clerk and recorder of Summit County.
17 Motor vehicles which are properly registered in this state, showing the lessor as owner thereof,
18 shall be exempt from the lien created in subsection A1 of this section; except that such lien shall
19 apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed
20 fair market value, or similar interest which is or may be credited to the lessee. Where the lessor
21 and lessee are blood relatives or relatives by law or have twenty five percent (25%) or more
22 common ownership, a lease between such lessee and such lessor shall not be considered as bona
23 fide for the purpose of this subsection A2.
24

25 3. Any retailer who sells out his business or stock of goods, or quits business, shall
26 be required to make out the return as provided in this Chapter within ten (10) days after the date
27 he sold his business or stock of goods, or quit business, and his successor in business shall be
28 required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid
29 until such time as the former owner produces a receipt from the finance director showing that the
30 taxes have been paid or a certificate that no taxes are due.
31

32 4. If the purchaser of a business or stock of goods fails to withhold the purchase
33 money as provided in subsection A3 of this section, and the taxes are due and unpaid after the
34 ten (10) day period allowed, he, as well as the vendor, shall be personally liable for the payment
35 of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or
36 business fixtures of or used by any retailer under lease, title retaining contract, or other contract
37 arrangement, by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for
38 any delinquent sales taxes owned by such retailer and shall be liable for the payment of all
39 delinquent sales taxes of such prior owner, not, however, exceeding the value of property so
40 taken or acquired.
41

42 B. Whenever the business or property of any taxpayer subject to this Chapter shall be
43 placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under
44 distraint for property taxes, all taxes, penalties, and interest imposed by this Chapter and for

1 which said retailer is in any way liable under the terms of this Chapter shall be a prior and
2 preferred claim against all the property of said taxpayer. No sheriff, receiver, assignee, or other
3 officer shall sell the property of any person subject to this Chapter under process or order of any
4 court without first ascertaining from the finance director the amount of any taxes due and
5 payable under this Chapter, and if there are any such taxes due, owing, or unpaid, it is the duty of
6 such officer to first pay the amount of said taxes out of the proceeds of said sale before making
7 payment of any monies to any judgment creditor or other claims of whatsoever kind or nature.
8 For the purposes of this subsection B, “taxpayer” includes “retailer”.

9 3-2-37: NEGLIGENT OR INTENTIONAL TAX DEFICIENCY:
10

11 If any part of the deficiency in payment of the sales tax is due to negligence or intentional
12 disregard of authorized rules and regulations of the Town with knowledge thereof, but without
13 intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency,
14 and interest in such case shall be collected at the rate imposed under section 3-2-38 of this
15 Chapter, in addition to the interest provided by section 3-2-39 of this Chapter on the amount of
16 such deficiency from the time the return was due, from the person required to file the return,
17 which interest and addition shall become due and payable ten (10) days after written notice and
18 demand to such person by the finance director. If any part of the deficiency is due to fraud with
19 the intent to evade the tax, then there shall be added one hundred percent (100%) of the total
20 amount of the deficiency, and in such case, the whole amount of the tax unpaid, including the
21 additions shall become due and payable ten (10) days after written notice and demand by the
22 finance director, and an additional three percent (3%) per month on said amount shall be added
23 from the date that the return was due until paid.
24

25 3-2-38: INTEREST RATE ON DELINQUENT TAXES:
26

27 When interest is required or permitted to be charged under subsection 3-2-32B, section 3-2-37 or
28 subsection 3-2-39A of this Chapter, the annual rate of interest shall be that rate of interest
29 established by the state commissioner of banking pursuant to section 39-21-110.5, Colorado
30 Revised Statutes.
31

32 3-2-39: INTEREST ON UNDERPAYMENT, OVERPAYMENT, NONPAYMENT OR
33 EXTENSIONS OF TIME FOR PAYMENT OF TAX:
34

35 A. If any amount of sales tax is not paid on or before the last date prescribed for
36 payment, then interest on such amount at the rate imposed under section 3-2-38 of this Chapter
37 shall be paid for the period from such last date to the date paid. The last date prescribed for
38 payment shall be determined without regard to any extension of time for payment and shall be
39 determined without any regard to any notice and demand for payment issued, by reason of
40 jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in
41 which the last date for payment shall be deemed to be the date that the liability for the tax arises,
42 and in no event shall such date be later than the date that notice and demand for the tax is made
43 by the finance director.

1 B. Interest prescribed under this section and subsection 3-2-32B and section 3-2-37 of
2 this Chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in
3 the same manner as the tax to which such interest is applicable.

4 C. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall
5 be imposed under this section on the portion of the tax so satisfied for any period during which,
6 if the credit has not been made, interest would have been allowed with respect to such
7 overpayment.

8 D. Interest prescribed under this section and subsection 3-2-32B and section 3-2-37 of
9 this Chapter on any sales tax may be assessed and collected at any time during the period within
10 which the tax to which such interest relates may be assessed and collected.

11 3-2-40: OTHER REMEDIES:

12
13 No provision of this Chapter shall preclude the Town from utilizing any other lawful penalties or
14 other remedies applicable to the collection of sales taxes.

15
16 3-2-41: HEARINGS BY FINANCE DIRECTOR:

17
18 A. If any person contests the finance director's deficiency notice or denial of a claim for
19 refund, then he may apply to the finance director by petition in writing within thirty (30)
20 calendar days after such deficiency notice is mailed to him for a hearing and a correction of the
21 amount of the tax so assessed, in which petition he shall set forth the reasons why such hearing
22 should be granted and the amount by which such tax should be reduced. The finance director
23 shall notify the petitioner in writing of the time and place fixed by him for such hearing. After
24 such hearing, the finance director shall make such order in the matter as is just and lawful and
25 shall furnish a copy of such order to the petitioner.

26 B. Every decision of the finance director shall be in writing, and notice thereof shall be
27 mailed to the petitioner within ten (10) days, and all such decisions shall become final upon the
28 expiration of thirty (30) days after notice of such decision shall have been mailed to the
29 petitioner, unless proceedings are begun within such time for review thereof as provided in
30 section 3-2-42 or 3-2-43 of this Chapter.

31 3-2-42: REVIEW BY DISTRICT COURT:

32
33 A. If any person contests the Finance Director's final decision on a deficiency notice or
34 claim for refund, he may proceed to have same reviewed by the district court. The procedure of
35 review shall be in accordance with rule 106(a)(4) of the Colorado rules of civil procedure.

36 B. Within fifteen (15) days after filing a notice of appeal as provided in this section, the
37 taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest,
38 and other charges stated in the final decision by the finance director that are contested on appeal.
39 The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or

1 deposit in or a certificate of deposit issued by a state or national bank or by a state or federal
2 savings and loan association, in accordance with the provisions of section 11-35-101(1),
3 Colorado Revised Statutes, equal to twice the amount of the taxes, interest and other charges
4 stated in the final decision by the finance director. The taxpayer may, at his option, deposit the
5 disputed amount with the finance director in lieu of posting a surety bond. If such amount is so
6 deposited, no further interest shall accrue on the deficiency contested during the pendency of the
7 action. At the conclusion of the action, after appeal to the supreme court or the court of appeals
8 of the state or after the time for such appeal has expired, the funds deposited shall be, at the
9 direction of the district court, either retained by the finance director and applied against the
10 deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed
11 pursuant to section 3-2-38 of this Chapter. No claim for refund of amounts deposited with the
12 finance director need be made by the taxpayer in order for such amounts to be repaid in
13 accordance with the direction of the district court.

14 3-2-43: ALTERNATIVE REVIEW BY DEPARTMENT OF REVENUE:
15

16 In lieu of the procedure provided for in section 3-2-42 of this Chapter, the taxpayer may elect a
17 hearing on the finance director's final decision on a deficiency notice or claim for refund
18 pursuant to procedure set forth in this section.
19

20 A. As used in this section, "state hearing" means a hearing before the executive director
21 of the department of revenue or a delegate thereof as provided in section 29-2-106.1(3),
22 Colorado Revised Statutes.

23 B. When the finance director asserts that sales taxes are due in an amount greater than
24 the amount paid by a taxpayer, then the finance director shall mail a deficiency notice to the
25 taxpayer by certified mail. The deficiency notice shall state the additional sales taxes due. The
26 deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has
27 the right to elect a state hearing on the deficiency pursuant to section 29-2-106.1(3), Colorado
28 Revised Statutes. The taxpayer shall also have the right to elect a state hearing on the finance
29 director's denial of such taxpayer's claim for a refund of sales tax paid.

30 C. The taxpayer shall request the state hearing within thirty (30) days after the
31 taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he
32 has not exhausted local remedies, or if he fails to request such hearing within the time period
33 provided for in this subsection C. For purposes of this subsection C, "exhaustion of local
34 remedies" means:

35 1. The taxpayer has timely requested in writing a hearing before the finance director,
36 and the finance director has held such hearing and issued a final decision thereon.
37 Such hearing shall be informal, and no transcript, rules of evidence or filing of briefs
38 shall be required, but the taxpayer may elect to submit a brief, in which case the
39 finance director may submit a brief. The finance director shall hold such hearing and
40 issue the final decision thereon within ninety (90) days after the finance director's
41 receipt of the taxpayer's written request therefor, except that the Town may extend

1 such period if the delay in holding the hearing or issuing the decision thereon was
2 occasioned by the taxpayer, but, in any such event, the finance director shall hold
3 such hearing and issue the decision thereon within one hundred eighty (180) days of
4 the taxpayer's request in writing therefor; or

- 5 2. The taxpayer has timely requested in writing a hearing before the finance director,
6 and the finance director has failed to hold such hearing or has failed to issue a final
7 decision thereon within the time periods prescribed in subsection C1 of this section.
8

9 D. If a taxpayer has exhausted his local remedies as provided in subsection C of this
10 section, then the taxpayer may request a state hearing on such deficiency notice or claim for
11 refund, and such request shall be made, and such hearing shall be conducted in the same manner
12 as set forth in section 29-2-106.1(3) through (7), inclusive, Colorado Revised Statutes.

13 E. If the deficiency notice or claim for refund involves only the finance director, then in
14 lieu of requesting a state hearing, the taxpayer may appeal such deficiency or denial of a claim
15 for refund to the district court as provided in section 29-2-106.1(8), Colorado Revised Statutes, if
16 the taxpayer complies with the procedures set forth in subsection C of this section.

17 F. No provision of this section shall prohibit the taxpayer from pursuing judicial review
18 of a final decision of the finance director as otherwise provided in section 3-2-42 of this Chapter.

19 3-2-44: AMENDMENTS:
20

21 The Town council may amend, alter or change any provision of this Chapter, except as to the
22 two and one-half percent (21/2%) rate of tax herein imposed, by ordinance duly adopted in
23 accordance with the Town charter. Such amendment, alteration or change need not be submitted
24 to the electors of the Town for their approval unless required by article X, section 20 of the
25 Colorado constitution.
26

27 3-2-45: NOTICE OF SALES AND USE TAX ORDINANCE AMENDMENT:
28

29 A. In order to initiate a central register of sales and use tax ordinances for municipalities
30 that administer local sales tax collection, the finance director shall file with the Colorado
31 municipal league prior to the effective date of this section a copy of the Town sales tax ordinance
32 reflecting all provisions in effect on the effective date of this section.

33 B. In order to keep current the central register of sales and use tax ordinances for
34 municipalities that administer local sales tax collection, the finance director shall file with the
35 Colorado municipal league prior to the effective date of any amendment a copy of each sales tax
36 ordinance amendment enacted by the Town.

37 Failure of the Town to file such ordinance or ordinance amendment pursuant to this section shall
38 not invalidate any provision of the sales and use tax ordinance or any amendment thereto.
39

40 3-2-46: UNLAWFUL ACTS:

1
2 It is unlawful and a misdemeanor offense for a retailer or vendor:

3
4 A. To fail to collect and remit tax to the Town in accordance with the schedule set forth
5 in this Chapter, or in any manner to evade the collection and payment of the tax imposed by this
6 Chapter;

7 B. To knowingly and willfully swear to or verify any false tax return or other statement
8 filed with the finance director as required by this Chapter;

9 C. To retain any excess tax collections made under this Chapter;

10 D. To fail to have in full force and effect at the time of a sale a valid Breckenridge sales
11 tax license issued pursuant to this Chapter; and

12 E. To violate any other provision of this Chapter that is applicable to retailers or
13 vendors.

14 **CHAPTER 3**
15 **REAL ESTATE TRANSFER TAX**

16
17 SECTION:

- 18
19 3-3-1: TITLE
20 3-3-2: IMPOSITION OF TAX
21 3-3-3: PERSONS LIABLE FOR TAX
22 3-3-4: DEFINITIONS
23 3-3-5: AMOUNT OF TAX
24 3-3-6: EXEMPTIONS
25 3-3-7: TRANSFER BETWEEN CO-OWNERS
26 3-3-8: APPLICATION FOR EXEMPTION
27 3-3-9: LANDS AFFECTED
28 3-3-10: ENFORCEMENT
29 3-3-11: DUE DATES, DELINQUENCIES, PENALTIES, INTEREST, EVASION
30 3-3-12: LIEN
31 3-3-13: REVIEW
32 3-3-14: DEFERRAL OF PAYMENT OF TAX

33
34 3-3-1: TITLE: This Chapter shall be known and may be cited as the BRECKENRIDGE REAL
35 ESTATE TRANSFER TAX ORDINANCE.

36
37 3-3-2: IMPOSITION OF TAX:

38
39 There is hereby imposed a tax on all transfers, whether by deeds, instruments, writings, leases, or
40 any other documents or otherwise, by which lands, tenements or other interests in real property

1 located in the Town are sold, granted, let, assigned, transferred, exchanged or otherwise
2 conveyed to or vested in a purchaser, or purchasers thereof, or any other person or persons,
3 except as may be specifically exempted by Section 3-3-6 of this Chapter. Said tax shall be due
4 and payable at the time of transfer and contemporaneously therewith as hereinafter specified.
5

6 **3-3-3: PERSONS LIABLE FOR TAX:**
7

8 Each purchaser and any other person or persons to whom a transfer is made, which transfer is
9 subject to the tax imposed under Section 3-3-2 of this Chapter, shall be jointly and severally
10 liable for payment of the tax. The purchaser or person to whom a transfer is made shall remit the
11 tax to the Town.
12

13 **3-3-4: DEFINITIONS:**
14

15 In addition to the definitions in Chapter 1 of this Title, when used in this Chapter the following
16 words shall have the following meanings unless the context requires otherwise:
17

18 **CONSIDERATION:** The gross consideration paid for the real property affected by the “transfer”
19 and shall include actual cash paid, the money equivalent of real and personal property delivered
20 or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed, in
21 return for the transfer of ownership or interests in real property, and shall include the amount of
22 any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure
23 the purchase price, or any part thereof, or remaining unpaid on the property at the time of
24 transfer. The term does not include as an addition to gross consideration the amount of any
25 outstanding lien or encumbrance in favor of the United States, the state of Colorado, or of a
26 municipal or quasi-government corporation or district for taxes, special benefits or
27 improvements. In the event the transaction or transfer is by lease agreement not specifically
28 exempted in Section 3-3-6 of this Chapter, the consideration shall be deemed to be the
29 capitalized value of the average annual rental unit of the lease, computed as follows: the average
30 annual rental over the entire term of the lease, including any renewal term, plus the actual
31 consideration, other than rent, paid or to be paid shall be computed and the average annual rental
32 shall be ten percent (10%) of the capitalized value. The payment of ad valorem real property
33 taxes, insurance and the assumption of maintenance obligations shall not be included in the
34 annual rent capitalization computation; however, capital improvements required to be made shall
35 be part of the actual consideration. When the average annual rental cannot be determined, or at
36 the election of the Town manager, the tax shall be based upon the appraised total value of the
37 property covered by the lease as determined by an independent appraisal obtained by the Town
38 manager and paid for by the purchaser, or the capitalized value of the consideration in terms of
39 the present worth of the stream of consideration under the lease and any other economic
40 considerations to reflect the capitalized value of the transferred or leased property.
41

42 **DEED IN LIEU OF FORECLOSURE:** A conveyance by a property owner to a secured party of
43 property which is the subject of a mortgage, deed of trust or other security instrument in

1 consideration of the cancellation of all or part of the indebtedness secured by such security
2 instrument.

3
4 PERSON: Any individual, corporation, business trust, estate, trust, partnership, association or
5 any other legal entity.

6
7 REAL ESTATE TRANSFER TAX: The tax imposed by this Chapter on the transfer of real
8 property.

9
10 REAL PROPERTY: Real property, as defined by and under the laws of the state of Colorado.

11
12 TAXABLE LEASE: Any lease of real property within a term or initial term and all renewal
13 terms which aggregate in length of twenty nine (29) years or more; provided lessee has
14 possession or the right to possession on payment of rents. "Taxable lease" also means any lease
15 of real property for less than twenty nine (29) years of term or initial term and all renewal terms
16 aggregated if lessee has a clause which would permit lessee at its discretion to extend the lease
17 beyond twenty nine (29) years or if lessee has an option to purchase some or all of the real
18 property leased. If lessee has a lease with such an option to purchase which option may be
19 exercised only within three (3) years after the date the lease and option is entered into, then the
20 land transfer tax shall not be due and payable unless and until the exercise and consummation of
21 such option. If any other lease with such an option to purchase is entered into, the real estate
22 transfer tax shall be due and payable at the time of such transfer as transfer is defined herein.

23
24 TRANSFER: Includes, whether or not the same is in writing or is recorded: a) any sale, grant,
25 assignment, transfer, exchange or conveyance of any ownership or Title to real property situated
26 in the Town; b) the sale, leasing, letting, conveyance, assignment or transfer of a possessory
27 interest in real property, subject to the exemptions provided in this Chapter. (

28
29 3-3-5: AMOUNT OF TAX:

30
31 A. Where there is a taxable transfer between co-owners, the real estate transfer tax shall
32 be determined in accordance with Section 3-3-7 of this Chapter.

33 B. As to all other taxable transfers, the real estate transfer tax payable shall be one
34 percent (1%) of the consideration.

35 C. The proceeds of the real estate transfer tax collected pursuant to this Chapter shall be
36 deposited in the general fund or any special fund or funds of the Town as the Town council shall
37 determine from time to time.

38 3-3-6: EXEMPTIONS:

39
40 The real estate transfer tax imposed by this Chapter shall not apply to:

41
42 A. Any transfer where there is no consideration or when the consideration is five

1 hundred dollars (\$500.00) or less.

2 B. Any transfer wherein the United States or any agency or instrumentality thereof, the
3 state, any county, city and county, municipality, district or other political subdivision of this state
4 is the grantee.

5 C. A gift of real property, where there is no consideration other than love and affection
6 or charitable donation.

7 D. Any transfer between the same parties creating or terminating a joint tenancy in real
8 property; however, if additional consideration or value is paid in connection with such creation
9 or termination, the tax shall apply and be based upon such additional consideration.

10 E. The transfer of title or change of interest in real property by reason of death, pursuant
11 to a will, the law of descent and distribution, or otherwise.

12 F. Transfers made pursuant to reorganization, merger or consolidation of corporations,
13 or by a subsidiary to a parent corporation for no consideration other than cancellation or
14 surrender of the subsidiary's stock, or transfers made to a corporation, partnership, limited
15 partnership, joint venture, business trust or other association or organization if that association or
16 organization is owned by the persons by whom such transfer was made, if such owners have the
17 same relative interests in said association or organization as they had in the real property
18 immediately prior to said transfer and there is no consideration other than their respective
19 interests in the new association or organization.

20 G. Transfer to make effective any plan confirmed or ordered by a court of competent
21 jurisdiction under the bankruptcy code or in an equity receivership proceeding.

22 H. Any transfer made and delivered without consideration for the purpose of confirming,
23 correcting, modifying or supplementing a transfer previously recorded; making minor boundary
24 adjustments; removing clouds of Titles; or granting rights of way, easements or licenses.

25 I. Any decree or order of a court of record quieting, determining or vesting Title,
26 including a final order awarding Title pursuant to a condemnation proceeding.

27 J. Any transfer between spouses or former spouses made pursuant to a separation
28 agreement, decree of legal separation or dissolution of marriage.

29 K. Any transfer of cemetery lots.

30 L. Any lease of real property (or assignment or transfer of any interest in any such lease)
31 provided the terms and conditions of such lease do not constitute a taxable lease of the property.

32 M. Any mineral transfer or royalty transfer.

33 N. Transfer to secure a debt or other obligation, or releases of real property which is

1 security for a debt or other obligation.

2 O. Any transfer by deed in lieu of foreclosure; provided, that:

- 3 1. Such transfer shall be exempt only if the grantee in such deed is the person holding
4 the obligation or instrument which is being canceled, in whole or in part, in exchange
5 for the transfer; and
- 6 2. Such transfer shall be exempt only to the extent of the amount of the obligation which
7 is being canceled, in whole or in part, in exchange for the transfer.

8
9 P. Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in
10 connection with an execution sale; foreclosure sale by the public trustee under a power of sale;
11 court decree foreclosing a mortgage, deed of trust or other security instrument; or court decree of
12 lien foreclosure; provided, that:

- 13 1. Such transfer shall be exempt only if the grantee is the person holding the obligation
14 or instrument upon which the proceeding is based; and
- 15 2. Such transfer shall be exempt only to the extent of the obligation to be satisfied at the
16 execution or foreclosure sale and any obligations to prior lienholders paid from the
17 sale.

18
19 Q. Any executory contract for the sale of real property of less than three (3) years'
20 duration under which the vendee is entitled to or does take possession thereof without acquiring
21 Title thereto or any assignment or cancellation of any such contract, provided that the tax
22 imposed by this Chapter shall be paid when the vendee acquires Title to the property.

23 R. Any transfer that is made pursuant to a valid and legally enforceable contract for the
24 sale entered into between the seller and purchaser prior to the date of adoption of this Chapter,
25 pursuant to which transaction the deed or instrument of conveyance is executed and recorded on
26 or before January 1, 1981.

27 S. Any transfer that is made pursuant to a valid and legally enforceable presale contract:

- 28 1. Entered into between a seller and purchaser prior to the date of adoption of this
29 Chapter;
- 30 2. Pursuant to which transaction the deed or instrument of conveyance is executed and
31 recorded on or before January 1, 1981. A "presale contract" is defined as a valid and
32 legally enforceable contract for the sale of real property which has been signed prior
33 to the commencement of construction of improvements thereon, to be closed
34 following completion of the improvements and pursuant to which contract seller is
35 obliged to construct the improvements to the property after the contract is signed and
36 prior to the closing date of the contract.

37
38 T. Any sale or conveyance of real property or improvements for the purpose of
39 constructing, or providing low or moderate priced housing units for sale or lease to low or

1 moderate income persons; provided, that the parties to the transaction shall apply to the Town
2 manager for the exemption prior to its being allowed, and the parties shall agree to appropriately
3 restrict the future use of the property to low and moderate priced housing units by recorded
4 agreement, deed, restrictions, covenants, declaration or similar instrument as may be required by
5 the Town council.

6 3-3-7: TRANSFER BETWEEN CO-OWNERS:
7

8 A. A nonexempt transfer from one or more co-owners to another co-owner or co-owners
9 is taxable in accordance with this Section. The real estate transfer tax payable with respect to
10 such transfer shall be one percent (1%) of the gross consideration for the transfer paid to the
11 grantor by the grantee. Notwithstanding the definition of “consideration” contained in Section 3-
12 3-4 of this Chapter, for the purpose of this Section “gross consideration” shall mean and include:

- 13
- 14 1. Actual cash paid, the money equivalent of real and personal property delivered or
15 conveyed in exchange for the transfer, or contracted to be paid or delivered or
16 conveyed in return for the transfer; plus
 - 17 2. The amount of any lien, mortgage, contract, indebtedness or other encumbrance or
18 debt given to secure the purchase price, or any part thereof; plus
 - 19 3. The grantor’s proportionate share of the unpaid balance of any debt which is owed
20 against the property at the time of the transfer and not satisfied in connection with
21 such transfer. For purposes of this subsection the “grantor’s proportionate share of
22 any unpaid debt which is owed against the property at the time of the transfer” shall
23 be determined by multiplying the grantor’s fractional or percentage ownership
24 interest in the property prior to the transfer, times the unpaid balance of such debt
25 existing as of the time of the transfer.
26

27 B. The term “gross consideration” does not include as an addition thereto the amount of
28 any outstanding lien or encumbrance in favor of the United States, the state, or of a municipal or
29 quasi-government corporation or district for taxes, special benefits or improvements.

30 C. The real estate transfer tax on any transfer between co-owners by lease agreement
31 shall be determined in accordance with the definition of “consideration” contained in Section 3-
32 3-4 of this Chapter.

33 3-3-8: APPLICATION FOR EXEMPTION:
34

35 A. In the event of any transfer claimed to be exempt from the real estate transfer tax
36 herein imposed, the grantor or purchaser shall apply for and obtain from the Town manager a
37 certificate of exemption, which may be affixed to the deed or instrument of transfer. The burden
38 of proving any exemptions shall in all cases be upon the one claiming it. Provided further, that
39 the exemption provided in Section 3-3-6 of this Chapter shall be allowed only with a certificate
40 of exemption issued by the Town manager prior to the date that the transfer tax is payable to the
41 Town. The certificate of exemption shall be in substantially the following form:

1 APPLICATION FOR EXEMPTION FROM REAL ESTATE TRANSFER TAX

2
3 The undersigned, as purchaser pursuant to a deed or other instrument of transfer from to dated ,
4 hereby applies for exemption from the payment of the real estate transfer tax, imposed by Title 3,
5 Chapter 3 of the Town Code. The basis for such exemption is as follows:

6
7 (State briefly grounds for exemption, including applicable Section and subsection of Title 3,
8 Chapter 3 of the Town Code)

9
10 I hereby certify this _____ day of _____, 20____ under penalty of perjury that the
11 foregoing statements are true and correct.

12
13 _____
14 Purchaser

15
16 Certificate of Exemption

17
18 I hereby certify this _____ day of _____, 20____ that the above described transfer
19 of real property is exempt from the payment of real estate transfer tax under Title 3, Chapter 3 of
20 the Town Code.

21 _____
22 Town Manager

23
24 B. Any person whose claim of exemption duly applied for under the provisions of this
25 Section is denied by the Town manager may immediately appeal to the Town council for a
26 determination of such exemption and such appeal shall be considered by the Town council
27 within thirty (30) days of receipt of the same. In the event of a determination by the Town
28 council favorable to the appellant, any amount previously deposited, or so much thereof as may
29 be allowed by the Town manager, shall be promptly refunded to the person paying or depositing
30 the same. If a decision is not made by the Town council within thirty (30) days of the receipt of
31 the appeal, the decision will be deemed favorable to the appellant, unless appellant has obtained
32 a continuance of the matter, in which case the Town council shall make its decision within six
33 (6) months after receipt of the appeal.

34 C. In case of an application for an exemption which is not granted before the transfer
35 takes place, the tax shall be paid as required by this Chapter. Thereafter, if the exemption shall be
36 allowed, upon application to the Town manager, the person who has paid said tax shall be
37 entitled to a refund thereof, or so much of said tax as shall qualify for refunding pursuant to the
38 exemption granted.

39 3-3-9: LANDS AFFECTED:

40
41 When a transfer subject to this Chapter includes real property located within the Town and real
42 property located elsewhere, the tax imposed under authority of this Chapter shall be computed

1 only with respect to real property located within the Town, and the tax shall be assessed based on
2 that part of the consideration fairly attributable to such real property located within the Town.

3
4 3-3-10: ENFORCEMENT:
5

6 A. The Town manager is charged with the enforcement of the provisions of this Chapter
7 and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and
8 regulations pertaining thereto.

9 B. At the time of any transfer upon which a tax is imposed or which is claimed to be
10 exempt under this Chapter, there shall be made a report to the Town manager on forms
11 prescribed by him, setting forth the true, complete and actual consideration for the transfer, the
12 name of the parties thereto, the location of the real property transferred, the basis of the claimed
13 exemption, and such other information as he may require.

14
15 C. For the purpose of collection of the taxes imposed by this Chapter, all banks, Title
16 companies, escrow companies, building and loan institutions, attorneys, real estate agencies, or
17 other closing agents or agencies, permitted as such to do business under the laws of the state of
18 Colorado may collect the real estate transfer tax (holding said funds in trust for the Town) and
19 remit the same to the Town for and on behalf of the purchaser, forthwith. Said funds shall not be
20 commingled with other funds of the collector.

21 D. The Town manager is hereby authorized to negotiate and enter into an
22 intergovernmental contract with appropriate officers of Summit County for the collection of this
23 tax, including the payment of a fee to the county officers for said collection.

24 3-3-11: DUE DATES, DELINQUENCIES, PENALTIES, INTEREST, EVASION:
25

26 A. The tax imposed under this Chapter is due and payable at the time of the transfer, and
27 is delinquent if it remains unpaid for thirty (30) days thereafter. In the event that the tax is not
28 paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of
29 tax due shall accrue.

30 In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only
31 accrue as to the portion which is delinquent. Interest shall accrue at the rate of one and one-half
32 percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from
33 the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall
34 become part of the tax.
35

36 B. Any person liable for a real estate transfer tax upon a transfer who shall cause the
37 deed, instrument of conveyance or document evidencing said transfer to be filed of record in the
38 office of the Summit County clerk and recorder or attempt to so record the document until and
39 unless the real estate transfer tax and all penalties and interest thereon have been paid in full,
40 shall be in violation of this Chapter.

1 C. Notwithstanding the provisions of Section 3-3-6 of this Chapter, if an artifice or
2 device is employed in connection with the transfer of real property, which term “artifice or
3 device” means a transaction or transactions a substantial purpose of which was to evade the
4 provisions of this Chapter and the imposition of the tax hereunder, then such transfer will
5 nevertheless be subject to the real estate transfer tax. “Artifice or device” includes, but is not
6 limited to: 1) a transfer to a corporation, partnership, limited partnership, joint venture, business
7 trust, or other association or organization followed within three (3) years by an assignment of the
8 controlling interest in such association or organization, or 2) such a transfer plus the intent to
9 ultimately assign the controlling interest in such association or organization.

10 3-3-12: LIEN:
11

12 A. The tax imposed by this Chapter, and any penalty and interest due thereon, if not paid
13 when due, and all costs of collection of said tax, penalty and interest, shall constitute a perpetual
14 lien on the real property transferred in the amount applicable to each lot or parcel of real property
15 transferred and shall have priority over all other liens except general tax liens and special
16 improvement district assessment liens. Except as aforesaid, the lien for said tax shall be and until
17 paid shall remain a first and prior lien superior to all other liens upon said property and shall take
18 precedence on such property over other liens or claims of whatsoever kind or nature. Said lien
19 shall continue until the amount thereof is paid or until its discharge of record by foreclosure or
20 otherwise.

21 B. The recording of this Chapter in the office of the clerk and recorder of the county of
22 Summit, state of Colorado, shall constitute notice to all persons interested in the transfer of real
23 property of the existence of and the lien imposed by the real estate transfer tax.

24 C. If the tax is unpaid and delinquent, the Town manager shall give written notification
25 to the purchaser or person to whom the transfer is made at the address shown on any deed of
26 instrument evidencing the transfer, or his last known address, of said delinquency. Said
27 notification shall be mailed certified or registered mail, postage prepaid, return receipt requested,
28 and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within
29 thirty (30) days of the effective date of the notification, the Town manager shall commence
30 foreclosure of the lien for said tax in the same manner as the foreclosure of a mortgage in
31 accordance with Colorado law.

32 D. The amount of the tax, penalty and interest imposed under the provisions of this
33 Chapter shall be deemed a debt to the Town. Any person owing money to the Town under the
34 provisions of this Chapter shall be liable to an action brought in the name of the Town for the
35 recovery of such amount.

36 E. Every person convicted of a violation of any provision of this Chapter shall be
37 punished as provided in Section 1-4-1 of this Code.

38 F. Any lien filed by the Town pursuant to this Chapter shall, upon the payment of all
39 taxes, penalties and interest covered thereby, be released by the Director in the same manner as

1 mortgages or judgments are released.

2 G. Any remedies provided for herein shall be cumulative and not exclusive and shall be
3 in addition to any other remedies provided by law.

4 3-3-13: REVIEW:

5
6 The Town manager shall prepare a report of the receipts from the real estate transfer tax,
7 expenditures made in the preceding fiscal year, funds into which the proceeds have been
8 deposited, the disposition of those funds, and the projected revenue and expenditures for the next
9 fiscal year.

10
11 3-3-14: DEFERRAL OF PAYMENT OF TAX:

12
13 A. The Town council may defer payment of the tax imposed by this Chapter if:

- 14 1. A written request for the deferral of the tax is submitted to the Town council and
15 approved by it prior to the recording of the deed(s) or other instrument(s) giving rise
16 to the tax;
17 2. The amount of the tax due is two hundred fifty thousand dollars (\$250,000.00) or
18 more; and
19 3. The Town council determines that the Town will receive a substantial tangible
20 benefit, other than the tax itself, from the transaction giving rise to the tax.

21
22 B. Upon determining that all of the conditions set forth in subsection A of this Section
23 have been satisfied, the Town council may defer payment of the tax imposed by this Chapter for
24 a period not to exceed five (5) years upon such terms and conditions as it may determine to be in
25 the best interest of the Town; provided, however, that interest on the deferred tax shall be paid at
26 a rate as determined by the Town council.

27 C. Notwithstanding the deferral of the tax imposed by this Chapter, the lien created by
28 Section 3-3-11 of this Chapter shall continue as a first and prior lien upon the property (except
29 for the lien of the general property taxes and special assessment liens) until the tax is fully paid.

30 **CHAPTER 4**
31 **UTILITIES TAXES**

32
33 SECTION:

34
35 3-4-1: TELEPHONE UTILITY COMPANIES TAX

36
37 3-4-1: TELEPHONE UTILITY COMPANIES TAX:

38
39 A. The tax herein provided is upon occupations and businesses on the performance of
40 local functions and is not a tax upon those functions relating to interstate commerce. It is

1 expressly understood that none of the terms of this Section be construed to mean that any
2 telephone utility company is issued a franchise by the Town.

3 B. There is hereby levied on and against each telephone utility company operating
4 within the Town a tax on the occupation and business of maintaining a telephone exchange and
5 lines connected therewith in the Town and of supplying local exchange telephone service to the
6 inhabitants of the Town. The amount of the tax levied hereby shall be:

- 7 1. For the time period from June 1976 through December 1978, the sum of twelve
8 thousand eight hundred thirty eight dollars eleven cents (\$12,838.11); and
- 9 2. For the calendar year 1979, the sum of six thousand five hundred dollars (\$6,500.00);
10 and
- 11 3. For each subsequent calendar year, commencing January 1980, six dollars seventy
12 five cents (\$6.75) per telephone account for which local exchange telephone service
13 is provided within the corporate limits of the Town, and on the anniversary of the date
14 on which the tax begins to accrue as provided in subsection C of this Section.

15 C. The taxes levied by this Section shall be due and payable as follows:

- 16 1. Those taxes levied by subsection B1 of this Section for the period from June 1976
17 through December 1978 shall be paid from sums heretofore paid to the Town under
18 protest by the telephone utility company.
- 19 2. Those taxes levied by subsection B2 of this Section, from the calendar year 1979
20 shall be due and payable in four (4) equal quarterly installments to be paid on the last
21 business days of the months of March, June, September and December.
- 22 3. Those taxes levied by subsection B3 of this Section, for all subsequent calendar years
23 commencing January 1980, shall be due and payable in four (4) equal quarterly
24 installments to be paid on the last business days of the months of March, June,
25 September and December.

26
27 D. Within thirty (30) days after the date on which the tax begins to accrue, as provided in
28 subsection C of this Section, each telephone utility company subject to this Section shall file with
29 the Town clerk, in such form as the clerk may require, a statement showing the total telephone
30 accounts for which local exchange telephone service was provided within the corporate limits of
31 the Town on said date. Such statement shall be filed within thirty (30) days after each
32 anniversary of the date on which the tax begins to accrue, showing such accounts on the
33 anniversary date.

34 E. If any telephone utility company subject to the provisions of this Section shall fail to
35 pay the taxes as herein provided, the full amount thereof shall be due and collected from such
36 company, and the same together with an addition of ten percent (10%) of the amount of taxes
37 due shall be and hereby is declared to be a debt due and owing from such company to the Town.
38 The Town attorney, upon direction of the Town council, shall commence and prosecute to final
39 judgment and determination in any court of competent jurisdiction an action at law to collect the
40 said debt.

1 F. The Town, its officers, agents or representatives shall have the right at all reasonable
2 hours and times to examine the books and records of the telephone utility companies which are
3 subject to the provisions of this Section and to make copies of the entries or contents thereof.

4 G. The tax herein provided shall be in lieu of all other occupation taxes or taxes on the
5 privilege of doing business in the Town on any telephone utility company subject to the
6 provisions of this Section, and in addition shall be in lieu of any free service furnished the Town
7 by any said telephone utility.

8 H. All offenses committed and all liabilities incurred prior to the effective date of this
9 Section shall be treated as though all prior applicable ordinances and amendments thereto were
10 in full force and effect for the purpose of sustaining any proper suit, action or prosecution with
11 respect to such offenses and liabilities.

12
13 I. If any officer, agent or manager of a telephone utility company which is subject to the
14 provisions of this Section shall fail, neglect, refuse to make or file the annual statement of
15 accounts provided in subsection D of this Section, the said officer, agent, manager or person
16 shall, on conviction thereof, be punished by a fine not less than twenty five dollars (\$25.00) nor
17 more than three hundred dollars (\$300.00); provided, that each day after said statement shall
18 become delinquent during which the said officer, agent, manager or person shall so fail, neglect
19 or refuse to make and file such statement shall be considered a separate and distinct offense.

20 CHAPTER 5
21 PUBLIC ACCOMMODATION TAX

22
23 SECTION:

- 24
25 3-5-1: TITLE
26 3-5-2: LEGISLATIVE INTENT
27 3-5-3: DEFINITIONS
28 3-5-4: IMPOSITION OF TAX
29 3-5-5: EXEMPTIONS
30 3-5-6: COLLECTION OF TAX
31 3-5-7: VENDOR RESPONSIBLE FOR PAYMENT OF TAX
32 3-5-8: DUTY TO KEEP BOOKS AND RECORDS
33 3-5-9: CONSOLIDATION OF RETURNS
34 3-5-10: TRUST STATUS OF TAX IN POSSESSION OF VENDOR
35 3-5-11: COLLECTION AND REFUND OF DISPUTED TAX
36 3-5-12: REFUND PROCEDURE
37 3-5-13: EXAMINATION OF RETURNS; REFUNDS; CREDITS; AND
38 DEFICIENCIES
39 3-5-14: INTEREST ON LATE PAYMENTS; PENALTY
40 3-5-15: PENALTIES FOR DEFICIENCY CAUSED BY FRAUD
41 3-5-16: INVESTIGATION OF VENDOR'S BOOKS

- 1 3-5-17: AUDIT; ESTIMATED OF TAXES; PENALTY; INTEREST; NOTICE;
- 2 ASSESSMENT
- 3 3-5-18: REVIEW BY FINANCE DIRECTOR
- 4 3-5-19: REVIEW OF FINANCE DIRECTOR’S FINAL ORDER OR DECISION
- 5 3-5-20: TAX LIEN
- 6 3-5-21: SALE UPON DISTRAINT
- 7 3-5-22: RELEASE OF LIEN
- 8 3-5-23: MANAGER MAY WAIVER PENALTY
- 9 3-5-24: LICENSE AND TAX IN ADDITION TO ALL OTHER TAXES
- 10 3-5-25: VIOLATIONS; EVASION OF COLLECTION OR PAYMENT OF TAX

11
12 3-5-1: TITLE:

13
14 This Chapter shall be known as and referred to as the REVISED BRECKENRIDGE PUBLIC
15 ACCOMMODATION TAX.

16
17 3-5-2: LEGISLATIVE INTENT:

18
19 A. It is hereby declared to be the legislative intent of the Town Council that, for the
20 purposes of this Chapter, every person who purchases in the Town any lodging is exercising a
21 taxable privilege.

22 B. It is hereby declared to be the legislative intent of the Town Council that, for the
23 purposes of this Chapter, every vendor who shall make a sale of lodging to a purchaser in the
24 Town shall collect the tax imposed by this Chapter to the total purchase price charged for such
25 lodging furnished at any one (1) time by or to every customer or buyer, in the manner set forth in
26 this Chapter. It is the legislative intent of the Town Council that the term “vendor” as used in this
27 Chapter shall include, without limitation, online travel companies to the maximum extent
28 permitted by law.

29 C. No obligation to collect the public accommodation tax required by this Chapter may
30 be applied retroactively. Responsibilities, duties and liabilities described in this Chapter with
31 respect to a marketplace facilitator, marketplace seller, or multichannel seller begin upon the
32 earlier of when they became licensed to collect the Town’s public accommodation tax, or when
33 they became legally obligated to collect the Town’s public accommodation tax under this
34 Chapter.

35 3-5-3: DEFINITIONS:

36
37 In addition to the definitions in Chapter 1 of this Title, when used in this Chapter the following
38 words shall have the following meanings unless the context requires otherwise:

39
40 “Gross taxable sales” means the total amount received in money, credits, property or other
41 consideration valued in money from sales and purchases of lodging that is subject to the tax
42 imposed in this Chapter.

1
2 “Lodging” means rooms or accommodations for overnight use furnished by any person or the
3 representative of any person to any person who for consideration uses, possesses, occupies or has
4 the right to use, possess or occupy any such room or accommodation in a hotel, condominium
5 hotel, apartment hotel, condominium, lodging house, motel, motor hotel, guest house, guest
6 ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park or hotel,
7 under any concession, permit, lease, contract, license to use or other similar arrangement.
8

9 “Marketplace” means a physical or electronic forum, including, but not limited to, a store, a
10 booth, an internet website, a catalog, or a dedicated sales software application, where the remote
11 sale of lodging within the Town is offered.
12

13 “Marketplace Facilitator” means:

14 (A) A person who:

15 (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration,
16 regardless of whether or not the consideration is deducted as fees from the transaction, the
17 remote sale of lodging within the Town through the person’s marketplace;

18 (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or
19 otherwise communicating the offer or acceptance between a purchaser and the marketplace seller
20 or multichannel seller; and

21 (3) Either directly or indirectly, through agreements or arrangements with third parties, collects
22 payment from the purchaser on behalf of the seller.

23 (B) “Marketplace Facilitator” does not include a person that exclusively provides internet
24 advertising that does not otherwise meet this definition.
25

26 “Marketplace Seller” means a person, regardless of whether or not the person is engaged in
27 business in the Town, which has an agreement with a marketplace facilitator and offers the
28 remote sale of lodging within the Town through a marketplace owned, operated, or controlled by
29 a marketplace facilitator.
30

31 “Multichannel Seller” means a vendor that offers for the remote sale of lodging within the Town
32 through a marketplace owned, operated, or controlled by a marketplace facilitator, and through
33 other means.
34

35 “Purchase or sale” means the acquisition or furnishing for consideration by any person of
36 lodging within the Town.
37

38 “Purchaser” means any person exercising the taxable privilege of purchasing lodging.
39

40 “Tax” means either the tax payable by the purchaser or the aggregate amount of taxes due from a
41 vendor during the period for which the vendor is required to report collections under this
42 Chapter.
43

1 “Vendor” means a person making sales of or furnishing lodging to a purchaser in the Town, and
2 includes, but is not limited to, a marketplace facilitator, a marketplace seller, or a multichannel
3 seller.

4
5 3-5-3: IMPOSITION OF TAX:
6

7 There is hereby levied and shall be collected and paid a tax by every person exercising the
8 taxable privilege of purchasing lodging as in this Chapter defined an excise tax of three and four-
9 tenths percent (3.4%) on the purchase price paid or charged for such lodging.

10
11 3-5-4: EXEMPTIONS:
12

13 There shall be exempt from this Chapter the following:
14

15 A. All lodging as defined in this Chapter furnished to any person who resides
16 continuously for a period of thirty (30) consecutive days or more in rooms or accommodations or
17 has the right to so reside pursuant to any written concession, permit, contract, license to use or
18 other written arrangement;

19 B. All sales to the United States government; to the State of Colorado, its departments or
20 institutions, and the political subdivisions thereof, in their governmental capacities only; and all
21 sales to the Town and any department thereof;

22 C. All sales to charitable organizations that are:

- 23 1. Billed directly to the charitable organization;
24 2. Paid directly from funds of the charitable organization; and
25 3. Used exclusively for the charitable organization’s organizational or operational
26 purposes.
27

28 3-5-5: COLLECTION OF TAX:
29

30 A. Every vendor making sales to a purchaser in the Town, which are taxable under the
31 provisions of this Chapter, at the time of making such sales is required to collect the tax imposed
32 by Section 3-5-3 from the purchaser.

33 B. The tax to be collected as provided by Section A of this Section shall be stated and
34 charged separately from the sale price and shown separately from the sale price on any record
35 thereof at the time when the sale is made or at the time when evidence of the sale is made or at
36 the time when evidence of the sale is issued or employed by the vendor; provided, that when
37 added such tax shall constitute a part of such purchase price or charge and shall be a debt from
38 the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other
39 debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on account of the
40 Town, and the vendor shall be liable for the collection thereof and on account of the Town.

1 C. Taxes paid on the amount of gross sales which are represented by accounts which are
2 found to be worthless and are actually and properly charged off as bad debts for the purpose of
3 the income tax imposed by the laws of the state may be credited upon a subsequent payment of
4 the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax
5 shall be paid upon the amount so collected.

6 D. With respect to sales of lodging within the Town made by marketplace sellers in or
7 through a marketplace facilitator's marketplace, a marketplace facilitator has all the liabilities,
8 obligations, and rights under this Chapter.

9 3-5-6: VENDOR RESPONSIBLE FOR PAYMENT OF TAX:
10

11 A. Amount. Every vendor shall add the tax imposed by Section 3-5-3 to the purchase
12 price or charge for lodging, and the vendor shall be liable and responsible to the Town for the
13 payment on a monthly basis of an amount equivalent to such tax on all gross taxable sales, and
14 also liable and responsible to the Town for any collection in excess of that equivalent amount.
15 Every vendor shall on its return round each calculation, as directed on such form as the Finance
16 Director may require, to the nearest whole dollar and remit the rounded amount. In rounding
17 under this section, any amount of forty-nine cents (\$0.49) or less shall be rounded down, and any
18 amount of fifty cents (\$0.50) or higher shall be rounded up.

19 B. Returns. Every vendor shall on or before the twentieth day of each month make a
20 return to the Finance Director for the preceding calendar month and remit to the Finance Director
21 simultaneously therewith the total amount due the Town as provided by subsection (a). Returns
22 of the vendor, or the Vendor's duly authorized agent, shall contain such information and be made
23 in such a manner and upon such forms as the Finance Director may prescribe, and the Finance
24 Director may, by regulation duly adopted, extend the time up to one (1) year for making returns
25 and paying the tax due.

26 C. 1. A marketplace facilitator engaged in business in the Town is required to collect
27 and remit accommodation tax on all taxable sales of lodging within the Town made by the
28 marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to
29 customers in the Town, whether or not the marketplace seller for whom sales are facilitated
30 would have been required to collect accommodation tax had the sale not been facilitated by the
31 marketplace facilitator.

32 2. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor
33 under as defined in Section 3-4-3. Marketplace facilitators shall be liable for the accommodation
34 taxes collected from marketplace sellers or multichannel sellers. The Town may recover any
35 unpaid accommodation taxes, penalties, and interest from the marketplace facilitator that is
36 responsible for collecting on behalf of marketplace sellers or multichannel sellers.
37

38 3. The liabilities, obligations, and rights set forth under this section are in addition to any duties
39 and responsibilities of the marketplace facilitator has under this Chapter if it also offers lodging
40 within the Town for sale through other means.

1
2 4. A marketplace seller, with respect to sale of lodging within the Town made in or through a
3 marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a
4 vendor under this section if the marketplace seller can show that such sale was facilitated by a
5 marketplace facilitator:
6

7 (a) With whom the marketplace seller has a contract that explicitly provides that the
8 marketplace facilitator will collect and remit accommodation tax on all sales of
9 lodging within the Town subject to tax under this Chapter; or

10 (b) From whom the marketplace seller requested and received in good faith a
11 certification that the marketplace facilitator is registered to collect
12 accommodation tax and will collect accommodation tax on all sales of lodging
13 within the Town subject to tax under this Chapter made in or through the
14 marketplace facilitator's marketplace.

15 5. If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator
16 in a marketplace, the marketplace seller is subject to all of the same licensing, collection,
17 remittance, filing and recordkeeping requirements as any other vendor.
18

19 6. With respect to any sale of lodging within the Town, the Town shall solely audit the
20 marketplace facilitator for sales of lodging within the Town made by marketplace sellers or
21 multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise
22 assess tax against marketplace sellers or multichannel sellers for sales facilitated by a
23 marketplace facilitator.
24

25 3-5-7: DUTY TO KEEP BOOKS AND RECORDS 26

27 It shall be the duty of every vendor hereunder to keep and preserve suitable records of all sales
28 made by the vendor and such other books or accounts as may be necessary to determine the
29 amount of the tax for the collection or payment of which such vendor is liable under this
30 Chapter. It shall be the duty of every vendor to keep and preserve for a period of three (3) years
31 following the due date of the return or the payment of the tax all such books, invoices and other
32 records necessary to determine the tax and the same shall be open for examination by the
33 Finance Director. Upon demand by the Finance Director the vendor shall make the books,
34 invoices, accounts or other records it maintains available at the office of the Finance Director or
35 some other place designated by the Finance Director for examination, inspection and audit by the
36 Finance Director. The Finance Director, in the Finance Director's discretion, may make, permit
37 or cause to be made the examination, inspection or audit of books, invoices, accounts and other
38 records so kept or maintained by the vendor. When the vendor shall have entered into a binding
39 agreement with the Town to reimburse it for all costs and expenses incurred by the Town in
40 order to have such examination, inspection or audit at a place other than the place designated by
41 the Finance Director, then such examination, inspection or audit shall be made where such
42 records are kept or maintained by the vendor or as otherwise designated in the agreement.
43

1 3-5-8: CONSOLIDATION OF RETURNS:
2

3 A vendor doing business in two (2) or more places or locations, whether in or without the Town,
4 and collecting taxes under this Chapter may file one (1) return covering all such places or
5 locations, when accompanied by a supplemental report showing the gross and net taxable sales
6 and taxes collected thereon for each such place or location.
7

8 3-5-10: TRUST STATUS OF TAX IN POSSESSION OF VENDOR:
9

10 All sums of money paid by the purchaser to the vendor as taxes imposed by this Chapter shall be
11 and remain public money, the property of the Town, in the hands of such vendor, and the vendor
12 shall hold the same in trust for the sole use and benefit of the Town until paid to the Finance
13 Director as herein provided, and for failure so to pay to the Finance Director, such vendor shall
14 be punished for a violation hereof.
15

16 3-5-11: COLLECTION AND REFUND OF DISPUTED TAX:
17

18 Should a dispute arise between the purchaser and vendor as to whether or not the sale of lodging
19 is exempt from taxation under this Chapter, nevertheless, the vendor shall collect and the
20 purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser a receipt or
21 certificate, on forms prescribed by the Finance Director, showing the names of the purchaser and
22 vendor, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The
23 purchaser thereafter may apply to the Finance Director for a refund of such taxes, and it shall be
24 the duty of the Finance Director to determine the question of exemption, subject to review by the
25 courts.
26

27 3-5-12: REFUND PROCEDURE:
28

29 A. Generally. A refund shall be made or credit allowed for the tax paid under dispute by
30 any purchaser who has an exemption as provided in this Chapter. Interest shall be paid on
31 refunds, but not credits, for overpayments. Interest shall accrue from the time the overpayment is
32 made. The rate of interest shall be fixed, and shall be the average monthly rate earned by the
33 Town on the general fund for the calendar year immediately preceding the year in which the
34 refund is made. Such refund shall be made by the Finance Director after compliance with the
35 conditions of this Chapter.

36 B. Application. Applications for a refund must be made within sixty (60) days after the
37 purchase of the lodging on which the exemption is claimed and must be supported by the
38 affidavit of the vendor accompanied by the original paid invoice or sales receipt and a certificate
39 issued by the vendor, and be made upon such forms as shall be prescribed and furnished by the
40 Finance Director, which forms shall contain such information as the Finance Director shall
41 prescribe.

42 C. Decisions. Upon receipt of such application, the Finance Director shall examine the
43 same with all due speed and shall give notice to the applicant by an order in writing of the

1 decision thereon.

2 D. Refunds not assignable. The right of any person to a refund under this Chapter shall
3 not be assignable, and application for refund must be made by the same person who purchased
4 the lodging and paid the tax thereon as shown in the invoice of the sale thereof.

5 E. Penalty for violating refund provisions. Any applicant for refund under the provisions
6 hereinabove, or any other person, who shall make any false statement in connection with an
7 application for a refund of any tax shall be deemed guilty of a violation of this Chapter.

8 F. Violations of refund provisions to be used as evidence of fraudulent intent. If any
9 person be convicted under the provisions of subsection (f), such conviction shall be prima facie
10 evidence that all refunds received by such person during the current year were obtained
11 unlawfully, and the Finance Director is hereby empowered and directed to bring appropriate
12 action for recovery of such refund. A brief summary of the above mentioned penalties shall be
13 printed on each form application for refund.

14 G. Burden of proof. The burden of proof that sales of lodging on which tax refunds are
15 claimed are exempt from taxation under this Chapter shall be on the one making such claim and
16 such proof shall be by a preponderance of evidence.

17 3-5-13: EXAMINATION OF RETURNS; REFUNDS; CREDITS; AND DEFICIENCIES.

18

19 As soon as practicable after the return is filed, the Finance Director shall examine it and:

20

21 A. If it then appears that the correct amount of tax to be remitted is greater or less than
22 that shown in the return, the tax shall be recomputed;

23 B. If the amount paid exceeds that which is due, the excess shall be refunded with
24 interest pursuant to [insert interest section number], or credited, against any subsequent
25 remittance from the same person, provided, however, that a claim for refund or credit is made
26 within three (3) years of the date the return is filed or, if the three-year period for assessment of
27 tax has been extended as provide in this Title, then a claim for refund or credit may be made
28 within such extended period;

29 C. If the amount paid is less than the amount due, the difference, together with interest
30 thereon at the rate of one (1) percent per month from the time the return was due, shall be paid
31 by the taxpayer within thirty (30) days after written notice and demand to the taxpayer from the
32 Finance Director.

33 3-5-14: INTEREST ON LATE PAYMENTS; PENALTY.

34

35 A. In any case in which a taxpayer fails to file a return or pay over the tax within the
36 time required by this Chapter, but without the intent to defraud, there shall be added as a penalty
37 fifteen (15) percent of the total amount of the deficiency, but not less than twenty-five dollars
38 (\$25.00), and interest in such cases shall be collected at the rate of one (1) percent each month,

1 or fraction thereof, on the amount due on the deficiency from the time the return was due to the
2 date the tax is paid, which interest and addition shall become due and payable within thirty (30)
3 days after the written notice and demand by the Finance Director, and such interest shall be
4 assessed, collected and paid in the same manner as the tax itself.

5 B. Payments of part but less than all of a deficiency, including interest, or interest and
6 penalty, shall be first applied to penalty, if any, secondly to accrued interest and, lastly, to the tax
7 itself.

8 3-5-15: PENALTIES FOR DEFICIENCY CAUSED BY FRAUD:
9

10 If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be
11 added fifty (50) percent of the total amount of the deficiency, and in such case the whole amount
12 of the tax unpaid, including the additions, shall become due and payable thirty (30) days after
13 written notice and demand by the Finance Director, and an additional one (1) percent per month
14 on such amounts shall be added from the date the return was due until paid.
15

16 3-5-16: INVESTIGATION OF VENDOR'S BOOKS.
17

18 For the purpose of ascertaining the correctness of a return or for the purpose of determining the
19 amount of tax due from any person, the Finance Director may hold investigations and hearings
20 concerning any matters covered by this Chapter and may examine any relevant books, papers,
21 records or memoranda of any such person and may require the attendance of such person, or any
22 officer or employee of such person, or of any person having knowledge of such sales, and may
23 take testimony and require proof for their information. The Finance Director shall have power to
24 administer oaths to such persons.
25

26 3-5-17: AUDIT; ESTIMATE OF TAXES, PENALTY, AND INTEREST; NOTICE;
27 ASSESSMENT.
28

29 A. The Finance Director is authorized to examine, inspect and audit the books, invoices,
30 accounts and other records kept or maintained by the taxpayer for the collection of the taxes
31 imposed by this Chapter. If the Finance Director determines that any taxpayer neglects or refuses
32 to make a timely return in payment of the taxes or to pay or to correctly account for any taxes as
33 required by this Chapter, the Finance Director shall make an estimate, based upon such
34 information as may be available, with or without employing investigative powers vested in the
35 Finance Director by this Chapter, of the amount of the taxes due for the period or periods for
36 which the taxpayer is delinquent; and upon the basis of such estimated amount, compute and
37 assess in addition thereto a penalty equal to fifteen (15) percent thereof, together with the interest
38 on such delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the
39 date when due until the date paid.

40 B. Promptly thereafter the Finance Director shall notify the delinquent taxpayer in
41 writing and demand payment thereof of such estimated taxes, penalty and interest.

1 C. Such estimated amounts shall thereupon become an assessment, and such assessment
2 shall be final and due and payable from the taxpayer to the Town thirty (30) days from the date
3 of the notice and demand; provided, however, that within said thirty-day period the delinquent
4 taxpayer may petition the Finance Director in writing for review of the assessment as provided in
5 the applicable provisions of this Title. The filing of a petition shall not toll the accrual of interest
6 on the amount of taxes due.

7 3-5-18: REVIEW BY FINANCE DIRECTOR:
8

9 A. Petitions. Petitions submitted to the Finance Director shall be in writing and shall
10 contain a statement of facts and reasons for and the amount of the requested changes in the
11 assessment or decision to deny or reduce a refund claim, and shall otherwise comply with the
12 applicable rules promulgated by the Finance Director relating to petitions and hearings.

13 B. Time limit for filing petitions. Petitions shall be submitted to the Finance Director
14 within thirty (30) days from the date of the assessment or decision to deny or reduce a refund
15 claim. If a petition is not submitted within this time, the assessment or decision is final and no
16 further review is available.

17 C. Notice of hearing. The Finance Director shall notify the taxpayer in writing of the
18 time and place within the Town fixed for hearing.

19 D. Hearings. A hearing, if any, shall be conducted in accordance with applicable rules
20 promulgated by the Finance Director relating to petitions and hearings.

21 E. Finance Director may appoint designee. A hearing, if any, shall be before the Finance
22 Director or its designee, who is authorized to administer oaths, to take testimony, to hear
23 arguments, and to issue all necessary and appropriate orders and decisions.

24 F. Burden of proof. The burden of proof that sales of lodging upon which refunds of
25 taxes are claimed, or for which modifications or cancellations of assessments are sought, are
26 exempt from or not subject to taxation under this Chapter shall be on the taxpayer and such proof
27 shall be by a preponderance of evidence.

28 G. Final order or decision. The final order or decision of the Finance Director or its
29 designee shall be in writing and notice thereof shall be mailed to the taxpayer forthwith.

30 3-5-19: REVIEW OF FINANCE DIRECTOR'S FINAL ORDER OR DECISION.
31

32 A. Should the taxpayer be aggrieved by a final order or decision of the Finance Director,
33 the taxpayer may proceed to have same reviewed under Colorado Rules of Civil Procedure
34 106(a)(4) by the district court for the fifth judicial district of the state. The petition or complaint
35 for review must be filed within thirty (30) days from the date of the final order or decision. Any
36 party, including the Town, may appeal the final order or decision of the Finance Director and,
37 also, the decision of the district court (or such other tribunal having jurisdiction), using all
38 judicial, appellate, and extraordinary proceedings available.

1 B. Before filing a petition or complaint for review under Colorado Rules of Civil
2 Procedure 106(a)(4), the taxpayer shall file with the Finance Director a bond in twice the amount
3 of the taxes, interest and other charges audited and stated in the final order or decision of the
4 Finance Director, with surety as is provided in other cases of appeal, or may deposit lawful
5 money of the United States in the same manner as herein provided.

6 3-5-20: TAX LIEN.
7

8 A. The tax imposed by this Chapter, together with the interest and penalties herein
9 provided and the costs of collection which may be incurred, shall be and, until paid, remain a
10 first and prior lien superior to all other liens upon the goods, merchandise, furniture and fixtures,
11 tools and equipment of any taxpayer, or used by any taxpayer in conducting his business under
12 lease, title retaining contract or other contract arrangement, within the Town and shall take
13 precedence on all such property over other liens or claims of whatsoever kind or nature and may
14 be foreclosed by seizing under distraint warrant and selling so much of said goods, merchandise,
15 furniture and fixtures, tools and equipment as may be necessary to discharge said lien.

16 B. The real or personal property of an owner who has made a bona fide lease to a
17 taxpayer shall be exempt from the lien created in this section (1) if such property can reasonably
18 be identified from the lease description and (2) if the lessee is given no right to become the
19 owner of the property leased. This exemption shall be effective from the date of the execution of
20 the lease until its termination if the lease is filed or recorded, within ten (10) days after the
21 execution of the lease, with either the executive director of the state department of revenue or the
22 clerk and recorder of the Town. Where the lessor and lessee are blood relatives, relatives by law,
23 or have twenty-five (25) percent or more common ownership, a lease between them shall not be
24 considered bona fide for the purpose of this section.

25 C. Any taxpayer who is in possession of property under the terms of a lease, which
26 property is exempt from lien as provided in this section, may be required by the manager to make
27 return of and pay over taxes collected at more frequent intervals than monthly, or may be
28 required to furnish security for the proper payment of taxes whenever the collection of taxes
29 appears to be in jeopardy.

30 3-5-21: SALE UPON DISTRAINT:
31

32 A. Causes. The Finance Director may issue a warrant directed to the Summit County
33 Sheriff, sometimes in this section referred to collectively as "agent," commanding the agent to
34 distraint, seize and sell the goods, merchandise, furniture and fixtures, tools and equipment of, or
35 used by, the taxpayer, except such personal property as is exempted from execution and sale by
36 any statute of the United States, for the payment of the tax due together with penalties and
37 interest accrued thereon and cost of execution, including thirty dollars (\$30.00) for every warrant
38 issued under this section, upon the happening of any one (1) of the following:

- 39 1. When any deficiency in tax is not paid within thirty (30) days from the Finance
40 Director's final decision thereon and no petition for review from such determination

1 has been filed with the district court for the fifth judicial district within the period of
2 time allowed by law for such review;

- 3 2. When any amount of tax, penalty or interest is not paid within thirty (30) days from
4 the mailing or personal service of demand for payment thereof and no protest thereof
5 has been filed with the Finance Director within said period; or
- 6 3. Immediately upon making of a jeopardy assessment or of the issuance of a demand
7 for payment, as provided in this section.

8
9 B. Notices. The agent charged with the collection shall make or cause to be made an
10 account of the property distrained, a copy of which, signed by the agent making such distraint,
11 shall be served, by leaving it with the owner or possessor of the property or with some member
12 of such person's family over the age of eighteen (18) years, or at the person's usual place of
13 abode or, if the person is a business entity within the Town, with any officer, manager,
14 accountant, bookkeeper, general agent, registered agent, or agent for process, together with a
15 copy of said warrant stating the sum demanded. In lieu of the foregoing provisions of this
16 subsection for serving said account and warrant, if the owner or possessor cannot be readily
17 located, or has no dwelling or place of business within the Town, the account and warrant may
18 be served by mailing by certified mail to the last known address of the owner or possessor. Said
19 agent shall cause to be published a notice of the time and place of sale, together with a
20 description of the property to be sold, in some newspaper of general circulation within the Town
21 and the agent shall cause such notice to be publicly posted at the location of the property and
22 place of sale, at the Denver courthouse, and in at least two (2) other places within the Town. The
23 taxpayer and those having possession of, or of public record a security interest in, the property
24 shall be notified of the time and place of sale either in person or by certified mail, or, if that is
25 impractical, by first class mail. The time fixed for the sale shall not be less than ten (10) days nor
26 more than sixty (60) days from the date of such notification, and notification by mail shall be
27 presumed upon mailing.

28 C. Management of sale. Said sale may be adjourned from time to time by said agent if he
29 deems it advisable but not for a time to exceed in all ninety (90) days from the date first fixed for
30 the sale. When any property is advertised for sale under distraint as aforesaid, the agent making
31 the seizure shall proceed to sell such property at public auction, offering the same at not less than
32 a fair minimum price, including the expenses of making the seizure, storing the property and of
33 advertising the sale, and if the amount bid for the property at the sale is not equal to the fair
34 minimum price so fixed, the agent conducting the sale may declare the same to be purchased by
35 him for the Town. The property so purchased may be sold by the agent under such terms as the
36 Finance Director may approve or declared to be surplus property subject to disposition by the
37 Finance Director of general services. In any case of distraint for the payment of taxes, the
38 property so distrained shall be restored to the owner or possessor if, prior to the sale, the amount
39 due is paid together with the fees and other charges, or the property may be so redeemed before
40 sale by any person having a legal or equitable interest in the property.

41 D. Certificate of title; return of surplus. In all cases of sale, the agent making the sale
42 shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie
43 evidence of the right of the agent to make such sale and conclusive evidence of the regularity of

1 the proceedings in making the sale and shall transfer to the purchaser all right, title and interest in
2 and to the property sold. Any surplus remaining above the taxes, interest, penalties, costs and
3 expenses of making the seizure and of advertising the sale shall be returned upon demand made
4 within one (1) year from the sale to the owner. Surplus remaining at the end of one (1) year from
5 the sale shall be deposited to the general fund.

6 E. Filing of notice of lien. Any agent to whom warrant has been issued may serve a
7 notice of lien in such form as the Finance Director may prescribe with the person in possession
8 of any personal property or rights to property, without regard to its use in the business of the
9 taxpayer, belonging to the taxpayer or file said notice with the secretary of state and the clerk and
10 recorder, and the service or filing of such notice shall operate to perfect a lien upon such personal
11 property or rights to property from the date of such service or filing. The Finance Director may
12 release said lien as to any part or all of the property or rights to property covered by any such lien
13 upon such terms as he may deem proper.

14 F. Recurring distraint. If any taxpayer liable for the payment of any tax pursuant to this
15 Chapter repeatedly fails, neglects, or refuses to pay said tax within the time required by this
16 Chapter and the Finance Director has been required to issue distraint warrants to enforce the
17 collection of the tax due from such taxpayer, the Finance Director is authorized to assess and
18 collect the amount of the taxes due, together with all interest and penalties thereon provided by
19 law, and also an additional penalty of one hundred dollars (\$100.00) each for the second and
20 following distraint warrant regarding the taxpayer that is issued by the Finance Director pursuant
21 to this Chapter.

22 G. When collection in jeopardy. If the Finance Director finds that collection of the tax
23 will be jeopardized by delay, in his discretion, he may declare the taxable period immediately
24 terminated, determine the tax, and issue notice and demand for payment thereof; and having
25 done so, the tax shall be due and payable forthwith, and the Finance Director may proceed
26 immediately to collect such tax by distraint, levy and sale or as otherwise provided in this
27 section. Collection by seizure and sale may be stayed if the taxpayer gives such security for
28 payment as shall be satisfactory to the Finance Director. The taxpayer or other person entitled to
29 notice under this Title may request a hearing in writing before the Finance Director regarding the
30 jeopardy determination and the amount of the assessment. A request for hearing must be made
31 within seven (7) days after the notice and demand for payment or distraint warrant is issued. The
32 hearing shall be held within fifteen (15) days of the request. The hearing shall be informal and
33 need not comply with the requirements of the applicable provisions of this Title, nor with the
34 applicable rules and regulations promulgated by the Finance Director relating to hearings. The
35 burden of proof shall be on the taxpayer or other person requesting the hearing, and such proof
36 shall be by a preponderance of evidence. The Finance Director shall enter his decision within
37 thirty (30) days after the hearing and shall furnish a copy to the taxpayer or other person
38 requesting the hearing. If the taxpayer is aggrieved by the decision of the Finance Director, the
39 taxpayer may seek review pursuant to the applicable provisions of this Title. A request for
40 hearing under this section shall not stay collection proceedings unless such request is
41 accompanied by a bond or other security as shall be satisfactory to the Finance Director.

1 3-5-22: RELEASE OF LIEN:
2

3 Any lien for taxes as shown on the records of the county clerks and recorders as herein provided
4 in this Chapter shall, upon the payment of all taxes, penalties and interest covered thereby, be
5 released by the manager of finance in the same manner as mortgages or judgments are released.
6

7 3-5-23: MANAGER MAY WAIVE PENALTY:
8

9 The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed
10 as in this Chapter provided, and interest imposed in excess of one (1) percent each month or
11 fraction thereof of the tax deficiency, from the date the tax is due until the date paid.
12

13 3-5-24: LICENSE AND TAX IN ADDITION TO ALL OTHER TAXES:
14

15 The tax imposed by this Chapter shall be in addition to all other taxes imposed by law, except as
16 otherwise provided in this Chapter.
17

18 3-5-25: VIOLATIONS; EVASION OF COLLECTION OR PAYMENT OF TAX:
19

20 It shall be a violation of this Chapter for any vendor to refuse to make any return provided to be
21 made in this Chapter, or to make any false or fraudulent return, or any false statement in any
22 return, or to fail or refuse to make payment to the Finance Director of any taxes collected or due
23 the Town, or in any manner to evade the collection and payment of the tax, or any part thereof,
24 imposed by this Chapter, or for any person or purchaser to fail or refuse to pay such tax or evade
25 the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax
26 imposed by this Chapter. Any corporation making a false return or a return containing a false
27 statement shall be guilty of a violation of this Chapter. Any person convicted of a violation of
28 any provision of this Chapter shall be punished as provided in Section 1-4-1 of this Code.
29

30 **CHAPTER 6**
31 **OPEN SPACE FUND**
32

33 3-6-1: DEFINITIONS

34 3-6-2: OPEN SPACE FUND ESTABLISHED

35 3-6-3: OPEN SPACE PLAN
36

37 3-6-1: DEFINITIONS:
38

39 As used in this Chapter, the following words shall have the following meanings:
40

41 “Designated Revenues” means a sum equal to one-half (1/2) of one percent (1%) of the revenues
42 received by the Town from the collection of the Town’s sales tax.
43

1 “Fund” means the Town of Breckenridge open space fund established by Section 3-6-2 of this
2 Chapter.

3
4 “Open Space Plan” means a plan adopted from time to time by the Town council providing for
5 the acquisition, improvement and maintenance of public open space for the use and benefit of the
6 citizens of and visitors to the Town of Breckenridge.

7
8 3-6-2: OPEN SPACE FUND ESTABLISHED:

9
10 There is hereby established a special fund of the Town to be known as the Town of Breckenridge
11 open space fund. Immediately upon receipt or collection thereof, the designated revenues shall
12 be credited to said fund and used solely for the purpose of funding the Town’s “open space plan”
13 as described in Section 3-6-3 of this Chapter. Monies credited to such fund shall not be available
14 to be pledged or expended, by interfund transfer or otherwise, for any general purposes of the
15 Town.

16
17 3-6-3: OPEN SPACE PLAN:

18
19 The Town council shall adopt by ordinance an open space plan. Such plan may be amended or
20 revised from time to time by the council.

21
22 **CHAPTER 7**
23 **PUBLIC BENEFITS FUND**

24
25 3-7-1: DEFINITIONS

26 3-7-2: ESTABLISHED

27
28 3-7-1: DEFINITIONS:

29
30 As used in this Chapter, the following words shall have the following meanings:

31
32 “Fund” means the Town of Breckenridge public benefits fund established by Section 3-7-2 of
33 this Chapter.

34
35 “Public Benefits Revenues” means monies which are specifically designated in an annexation
36 agreement, development agreement or other document as “public benefit revenues” (or by some
37 other similar designation). Public benefit revenues, when required by the Town, are for the
38 purpose of providing special public benefits to the residents of the Town in connection with such
39 annexation, or development agreement or other document. Public benefit revenues do not include
40 annexation surcharges as described in an annexation agreement.

41
42 3-7-2: ESTABLISHED:

1 There is hereby established a special fund of the Town to be known as the Town of Breckenridge
2 public benefits fund. Immediately upon receipt or collection of public benefits revenues, such
3 revenues shall be credited to the fund. The monies in the fund may be used for any lawful
4 purpose as determined from time to time by the Town council.

5
6 **CHAPTER 8**
7 **MARKETING FUND**
8

9 3-8-1: DEFINITIONS

10 3-8-2: FUNDING AND EXPENDITURES

11
12 3-8-1: DEFINITIONS:

13
14 As used in this Chapter the following words shall have the following meanings:

15
16 “Designated Revenues means

17
18 A. All revenues collected by the Town as a result of the elimination of the Town’s sales
19 tax vendor’s fee as provided for in ordinance 26, series 1992;

20 B. All revenues collected by the Town as a result of the implementation and collection
21 of the additional four-tenths of a percent (0.4%) accommodation tax as provided for in ordinance
22 27, series 1992;

23 C. All revenues collected by the Town as a result of the Town of Breckenridge “business
24 and occupational license and tax ordinance”; and

25 D. All revenues collected by the Town from the one percent (1%) increase in the tax rate
26 of the Town’s accommodation tax approved by the electors on November 2, 2010,

27 together with such additional funds, if any, that may be designated from time to time by the
28 Town council for inclusion in the marketing fund.

29
30 “Marketing Fund” means the Town of Breckenridge marketing fund described in Section 3-8-2
31 of this Chapter.

32
33 “Marketing Plan” means a plan adopted from time to time by the Town council for the
34 marketing, advertising and promotion of the Town and its environs as a year round resort, as well
35 as for the marketing, advertising and promotion of activities and events which are beneficial to
36 the economic vitality of the community. The marketing plan may include public relations
37 activities, promotional activities, direct advertising, and financial support for certain events and
38 activities recommended by the plan.

39
40 3-8-2: FUNDING AND EXPENDITURES:
41

1 On and after January 1, 2011, immediately upon receipt or collection thereof by the Town the
2 designated funds shall be credited to the marketing fund that was previously established by the
3 Town. The monies in the marketing fund shall be expended by the Town council only to
4 implement the marketing plan. The amounts expended from the marketing fund
5

6 **CHAPTER 9**
7 **MARIJUANA EXCISE TAX**
8

9 SECTION:
10

- 11 3-9-1: DEFINITIONS
 - 12 3-9-2: TAX IMPOSED
 - 13 3-9-3: COLLECTION AND ENFORCEMENT PROCEDURES
 - 14 3-9-4: USE OF COLLECTED TAX REVENUES
 - 15 3-9-5: RULES AND REGULATIONS
- 16

17 3-9-1: DEFINITIONS:
18

19 A. The definitions contained in the Colorado Medical Marijuana Code, the Colorado
20 Retail Marijuana Code, the State administrative regulations adopted pursuant to such statutes,
21 and the Town’s medical marijuana and retail marijuana licensing ordinances, each as amended
22 from time to time, are incorporated into this Chapter by reference.

23 B. As used in this Chapter the following words shall have the following meanings:

24 “Colorado Medical Marijuana Code” means Article 11 of Title 44, C.R.S., as amended from time
25 to time.
26

27 “Colorado Retail Marijuana Code” means Article 12 of Title 44, C.R.S., as amended from time
28 to time.
29

30 “Designated Revenues” means all of the revenues received by the Town from the collection of
31 the Town’s Marijuana Excise Tax imposed by Section 3-9-2 of this Chapter.
32

33 “Lawful Sale Of Marijuana” includes all sales within the Town of: 1) medical marijuana and
34 medical marijuana infused products by persons licensed pursuant to the Colorado Medical
35 Marijuana Code and applicable Town ordinances; 2) retail marijuana and retail marijuana
36 products by persons licensed pursuant to the Colorado Retail Marijuana Code and applicable
37 Town ordinances; and 3) medical marijuana, medical marijuana infused products, retail
38 marijuana, and retail marijuana products by persons concurrently licensed pursuant to the
39 Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, and applicable Town
40 ordinances.
41

42 “Medical Marijuana” has the meaning provided in Section 44-11-104, C.R.S., which is part of
43 the Colorado Medical Marijuana Code.

1
2 :Medical Marijuana Infused Product” has the meaning provided in Section 44-11-104, C.R.S.,
3 which is part of the Colorado Medical Marijuana Code.

4
5 “Retail Marijuana” has the meaning provided in Section 44-12-103, C.R.S., which is part of the
6 Colorado Retail Marijuana Code.

7
8 “Retail Marijuana Product” has the meaning provided in Section 44-12-103, C.R.S., which is
9 part of the Colorado Retail Marijuana Code.

10
11 3-9-2: TAX IMPOSED:

12
13 A tax is levied and shall be collected upon the lawful sale of marijuana within the Town at the
14 rate of five percent (5.0%) of the price paid by the purchaser thereof rounded off to the nearest
15 penny. The tax shall be collected by the licensed person and paid to the Town. The tax imposed
16 by this Section is in addition to, and not in lieu of, the Sales Tax owed to the Town in connection
17 with the sale of medical marijuana and retail marijuana.

18
19 3-9-3: COLLECTION AND ENFORCEMENT PROCEDURES:

20
21 Except for those provisions that by their terms cannot apply, the procedures for the collection
22 and enforcement of the Town’s sales tax as provided in Chapter 2 of this Title shall apply to the
23 collection and enforcement of the marijuana excise tax imposed by this Chapter.

24
25 3-9-4: USE OF COLLECTED TAX REVENUES:

26
27 The designated revenues shall be used to pay or reimburse the Town for direct and indirect costs
28 incurred for: a) adequate training, enforcement, and administration of the Town’s medical and
29 retail marijuana regulations not otherwise covered by the fees collected by the Town under the
30 Colorado medical marijuana code, the Colorado retail marijuana code, and the Town’s
31 ordinances, b) monies expended by the Town in connection with drug or drug and alcohol
32 prevention programs and facilities (including, but not limited to, expenditures for the local
33 detoxification center), and for c) other general purposes of the Town

34
35 **CHAPTER 10**
36 **LIFT TICKET TAX**

37
38 3-10-1: PURPOSE; AGREEMENTS AUTHORIZED

39 3-10-2: DEFINITIONS

40 3-10-3: IMPOSITION OF TAX

41 3-10-4: TAX REVENUES TO BE DEPOSITED INTO PARKING AND
42 TRANSPORTATION FUND

43 3-10-5: EXEMPTIONS; BURDEN OF PROOF

44 3-10-6: PAYMENT OF TAX TO SKI AREA OPERATOR

- 1 3-10-7: COLLECTION OF TAX BY SKI AREA OPERATOR
- 2 3-10-8: REMITTANCE OF COLLECTED TAX
- 3 3-10-9: PRESERVATION OF RETURNS AND OTHER RECORDS; CONFIDENTIALITY
- 4 3-10-10: RECORDS AND ACCOUNTS TO BE KEPT
- 5 3-10-11: AUDIT, INVESTIGATION, COLLECTION, AND ENFORCEMENT
- 6 PROCEDURES
- 7 3-10-12: TAX IN ADDITION TO ALL OTHER TAXES
- 8 3-10-13: ADMINISTRATION BY FINANCE DIRECTOR; RULES AND REGULATIONS
- 9 3-10-14: AMENDMENTS

10
11 3-10-1: PURPOSE; AGREEMENTS AUTHORIZED:

12
13 A. The purpose of this Chapter is to impose an excise tax of four and one-half percent
14 (4.5%) on the price paid for each single and multiday ski lift ticket purchased either within the
15 Town or elsewhere only for use at a ski area which has one or more ski lifts located in whole or
16 in part within the Town during the annual period between November 1 and April 30. Admission
17 to such a ski area pursuant to such a single or multiday ski lift ticket is a taxable privilege. It is
18 the further purpose of this Chapter to require a ski area operator to collect such lift ticket tax for
19 the Town, all as provided in this Chapter.

20 B. The Town is authorized to enter into one or more agreements with any ski area
21 operator related to the ski area operator's collection of such lift ticket tax for the Town.

22 3-10-2: DEFINITIONS:

23
24 A. The following words and phrases, when used in this Chapter, shall have the following
25 meanings:

26 DESIGNATED REVENUES means all revenues collected by the Town pursuant to this Chapter.

27
28 FINANCE DIRECTOR: The director of finance and information technology of the Town, or
29 such person's designee.

30
31 LIFT TICKET: A right to use a ski lift at a ski area.

32
33 LOCAL SKI AREA: A ski area which has one or more ski lifts located in whole or in part within
34 the Town.

35
36 PARKING AND TRANSPORTATION FUND: The Town of Breckenridge parking and
37 transportation fund described in Section 3-11-2 of this Title.

38
39 RECORDS: Any books, accounts, papers, memoranda, or other records of a ski area operator for
40 a local ski area, regardless of their form or format, that is or may be relevant to determining the
41 amount of the tax due from such ski area operator.

42

1 SEASON PASS: All lift ticket products that provide access to a local ski area for the majority of
2 the ski season.

3
4 SKI AREA: The area accessed by ski lifts designated and under the control of a single ski area
5 operator.

6
7 SKI AREA OPERATOR: Any business entity having operational responsibility from time to
8 time for a local ski area.

9
10 TAX: The tax payable to the Town pursuant to this Chapter.

11
12 TAXABLE LIFT TICKET: A lift ticket purchased for use only at a local ski area and only
13 during the annual period between November 1 and the following April 30.

14
15 B. Terms not defined in this Chapter shall be given their common meaning.

16 3-10-3: IMPOSITION OF TAX:

17
18 A. On and after one minute after twelve o'clock (12:01) A.M., July 1, 2016, there is
19 levied and there shall be paid by each purchaser of a taxable lift ticket an excise tax as described
20 in this Chapter. Such tax is due and shall be paid for the exercise of a taxable privilege.

21 B. The amount of the tax hereby levied is four and one-half percent (4.5%) of the actual
22 purchase price of each taxable lift ticket, whether purchased within the Town or elsewhere;
23 provided that a tax derived from calculations resulting in a fraction of a cent being a part of the
24 tax shall be increased or rounded to the next whole cent.

25 3-10-4: TAX REVENUES TO BE DEPOSITED INTO PARKING AND TRANSPORTATION
26 FUND:

27
28 Immediately upon receipt or collection, the designated revenues shall be credited to the parking
29 and transportation fund and used as provided in Section 3-11-3 of this Title.

30
31 3-10-5: EXEMPTIONS; BURDEN OF PROOF:

32
33 A. The tax imposed by this Chapter does not apply to:

- 34 1. Season passes;
- 35 2. Any lift ticket not specifically sold to provide the right of entry solely to a local ski
36 area (including, by way of example, any lift ticket which provides the right of entry to
37 one or more ski areas located outside of the Town as well as a local ski area);
- 38 3. Any passes or lift tickets sold for summer activities; or
- 39 4. Any other items or activities besides those lift tickets intended for ski lift use solely at
40 a local ski area between November 1 and April 30.

41

1 B. The burden of proving that any transaction is not subject to the tax implemented by
2 this Chapter shall be upon the person making such assertion.

3 3-10-6: PAYMENT OF TAX TO SKI AREA OPERATOR:
4

5 The tax imposed by this Chapter shall be paid by the purchaser of the taxable lift ticket to the ski
6 area operator that sold the taxable lift ticket.
7

8 3-10-7: COLLECTION OF TAX BY SKI AREA OPERATOR:
9

10 A. The tax imposed by this Chapter shall be collected from the purchaser of the taxable
11 lift ticket by the ski area operator that sold the taxable lift ticket. In collecting the tax the ski area
12 operator acts as a collection agent for the Town. Each ski area operator shall be liable and
13 responsible for the collection of the tax as provided in this Chapter.

14 B. The tax imposed by this Chapter shall be added to the purchase price, charge, or other
15 consideration paid for the taxable privilege of admission to a local ski area arising from the
16 purchase of a taxable lift ticket.

17 C. A credit shall be allowed against the amount due to the Town under this Chapter for
18 any tax that would be due for an unused single day taxable lift ticket, or any unused portion of a
19 multiday taxable lift ticket, the purchase price of which has been refunded by the ski area
20 operator to the purchaser of the taxable lift ticket.

21 D. Nothing in this Chapter shall be read as limiting in any way or at any time a ski area
22 operator's sole and absolute discretion to alter the terms, conditions, or price of any lift ticket, to
23 create a new type of lift ticket, or to add or remove access to one or more ski areas located
24 outside of the Town without regard to any resulting change to the applicability of the tax to such
25 a lift ticket; provided, however, that any such ski area operator shall remain responsible for the
26 collection and remittance of the tax on any and all taxable lift tickets.

27 3-10-8: REMITTANCE OF COLLECTED TAX:
28

29 A. Each ski area operator shall file a return each month with the Finance Director on or
30 before the twentieth day of each month for the preceding month and remit to the Finance
31 Director all tax collected by such ski area operator during the preceding month.

32 B. The Finance Director may, upon request of the ski area operator or other taxpayer,
33 accept returns at such intervals as will, in the opinion of the Finance Director, better suit the
34 convenience of the ski area operator or other taxpayer and will not jeopardize the collection of
35 the tax, including an annual tax return. If any ski area operator or other taxpayer who has been
36 granted permission to file reports and pay tax on other than a monthly basis shall become
37 delinquent, then authorization for such alternative method of reporting may be revoked by the
38 Finance Director or his or her authorized agent, and immediately following notice of revocation,
39 the ski area operator or other taxpayer will be required to file reports and pay tax, interest, and

1 penalties on a monthly basis for all unreported or unpaid tax in the same manner required by law
2 under conditions that would prevail as if the ski area operator or other taxpayer had never been
3 granted the alternate method of reporting and paying the tax.

4 C. The tax return and tax remitted to the Finance Director shall be made in such manner
5 and upon such forms as the Finance Director may prescribe.

6 3-10-9: PRESERVATION OF RETURNS AND OTHER RECORDS; CONFIDENTIALITY:
7

8 A. Returns filed pursuant to this Chapter shall be preserved for a period of three (3)
9 years from the date of filing with the Finance Director, after which time the Finance Director
10 may order them destroyed.

11 B. Chapter 7 of this Title, concerning confidentiality of tax returns and information,
12 applies to tax returns and information provided to the Town pursuant to this Chapter; provided,
13 however, that the designated revenues credited to the parking and transportation fund described
14 in Section 3-11-2 of this Title shall not be confidential information and may be disclosed to the
15 public.

16 3-10-10: RECORDS AND ACCOUNTS TO BE KEPT:
17

18 Each ski area operator shall keep and preserve suitable records of all sales of taxable lift tickets
19 sold, and such other books or accounts as may be necessary to determine the amount of tax for
20 the collection or remittance of which the ski area operator is liable and responsible hereunder. It
21 is the duty of each ski area operator to keep and preserve all such books, invoices, and other
22 records for a period of three (3) years following the date the taxes were due to the Town. Such
23 items shall be open for investigation by the Finance Director. When a ski area operator fails or
24 refuses to file a return the tax may be assessed by the Finance Director and collected without
25 regard to the statute of limitations.

26
27 3-10-11: AUDIT, INVESTIGATION, COLLECTION, AND ENFORCEMENT
28 PROCEDURES:
29

30 Except for those provisions that by their terms cannot apply, the procedures for audit,
31 investigation, and enforcement of the Town's sales tax as provided in Chapter 1 of this Title
32 shall apply to the audit, investigation, and enforcement of the tax imposed by this Chapter.
33

34 3-10-12: TAX IN ADDITION TO ALL OTHER TAXES:
35

36 The tax imposed by this Chapter shall be in addition to all other taxes imposed by law.
37

38 3-10-13: ADMINISTRATION BY FINANCE DIRECTOR; RULES AND REGULATIONS:
39

40 The administration of all provisions of this Chapter is vested in and shall be exercised by the
41 Finance Director, who shall prescribe forms and formulate and promulgate reasonable rules and

1 regulations in conformity with this Chapter for the making of returns, the ascertainment,
2 assessment, and collection of taxes imposed, and the proper administration and enforcement
3 thereof.

4

5 3-10-14: AMENDMENTS:

6

7 This Chapter may be altered, amended, or repealed from time to time in the manner provided by
8 law.

9

1
2 **CHAPTER 11**
3 **PARKING AND TRANSPORTATION FUND**
4

- 5 3-11-1: DEFINITIONS
6 3-11-2: FUND ESTABLISHED
7 3-11-3: USE OF DESIGNATED REVENUES
8 3-11-4: AMENDMENTS
9

10 3-11-1: DEFINITIONS:

11
12 As used in this Chapter the following words shall have the following meanings:
13

14 DESIGNATED REVENUES: All revenues collected by the Town from the lift ticket tax
15 adopted by Chapter 10 of this Title.
16

17 3-11-2: FUND ESTABLISHED:

18
19 There is hereby established a special fund of the Town to be known as the Town of Breckenridge
20 parking and transportation fund. Immediately upon receipt or collection, the designated revenues
21 shall be credited to the parking and transportation fund. The monies in the parking and
22 transportation fund shall be expended by the Town council only for those purposes authorized in
23 Section 3-11-3 of this Chapter. The amounts expended from the parking and transportation fund
24 shall be determined from time to time by the Town council.
25

26 3-11-3: USE OF DESIGNATED REVENUES:

27
28 The designated revenues shall be used only by the Town to pay or reimburse the Town for:
29

30 A. The direct and indirect costs of operating the Town's transit system, including,
31 without limitation, labor, rolling stock, and other costs associated therewith;

32 B. The direct and indirect costs of providing public parking within the Town, including,
33 without limitation, land acquisition costs, construction, and maintenance; and

34 C. Other direct and indirect costs incurred by the Town in enhancing the movement of
35 persons and vehicles within the Town, including, without limitation, the cost of constructing and
36 maintaining crosswalks and roundabouts.

37 3-11-4: AMENDMENTS:

38
39 This Chapter may be altered, amended, or repealed from time to time in the manner provided by
40 law.
41
42

CHAPTER 12
CONFIDENTIALITY OF TAX RETURNS

- 3-12-1: CONFIDENTIALITY REQUIRED
- 3-12-2: EXCEPTION; TAXPAYER
- 3-12-3: EXCEPTION; STATISTICS
- 3-12-4: EXCEPTION; TOWN ATTORNEY, TOWN EMPLOYEES AND ENFORCEMENT PERSONNEL
- 3-12-5: WAIVER OF CONFIDENTIALITY

3-12-1: CONFIDENTIALITY REQUIRED:

Except in accordance with judicial order or as otherwise provided by law, no Town officer, employee, or agent of the Town shall divulge or make known in any way any information obtained from any investigation conducted by the Town or its agents or disclosed in any document, report, or return filed in connection with any of the taxes covered by this Title. The Town officers or employees charged with the custody of such documents, reports, investigations, and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Town in an action or proceeding under the provisions of any such taxing ordinances to which the Town is a party or on behalf of any party to any action or proceeding under the provisions of such taxing ordinances when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.

3-12-2: EXCEPTION; TAXPAYER:

Nothing in Section 3-12-1 of this Chapter shall be construed to prohibit the delivery to a person or such person's duly authorized representative of a copy of any return or report filed in connection with such person's tax. Such copies may be certified by the Town clerk, and when so certified shall be evidence equally with and in like manner as the originals and may be received by any court as evidence of the contents of the originals.

3-12-3: EXCEPTION; STATISTICS:

Nothing in Section 3-12-1 of this Chapter shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or tax returns and the items thereof.

3-12-4: EXCEPTION; TOWN ATTORNEY, TOWN EMPLOYEES AND ENFORCEMENT PERSONNEL:

- A. Nothing in Section 3-12-1 of this Chapter shall be construed to prohibit the inspection

1 of tax returns and related information by the Town attorney, other legal representatives, the
2 Finance Director, other employees of the Town with a need to know such information in
3 connection with the performance of their duties, or law enforcement personnel of the Town.

4 B. Notwithstanding the provisions of this Section, the Finance Director may furnish to
5 the taxing officials of the state of Colorado, its political subdivisions, any other state, or political
6 subdivision, or the United States, any information contained in tax returns and related documents
7 filed pursuant to this Title or in the report of an audit or investigation made with respect to a
8 return, if the recipient jurisdiction agrees with the Director to grant similar privileges to the
9 Town and if such information is to be used by the jurisdiction only for tax purposes.

10 3-12-5: WAIVER OF CONFIDENTIALITY:

11
12 The person who filed a tax report or return with the Town may waive the confidentiality
13 provided by Section 3-12-1 of this Chapter and authorize the disclosure or use of such tax report
14 or return for any purpose. Such waiver shall be in writing and shall be signed by the person who
15 filed the tax report or return.

16
17 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
18 various secondary codes adopted by reference therein, shall continue in full force and effect.

19
20 Section 4. If any one or more of the provisions of this ordinance, or any application
21 hereof, shall be finally declared by a court of competent jurisdiction to be invalid, illegal or
22 unenforceable in any respect, then such provision shall be stricken from this ordinance;
23 the portion of this ordinance that was stricken shall be replaced with the version of the ordinance
24 in effect immediately prior to the adoption of this ordinance; and the validity, legality, and
25 enforceability of the remaining provisions of this ordinance shall not in any way be affected or
26 impaired thereby. If the entirety of this ordinance, or any application hereof, shall be finally
27 declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any
28 reason, then Title 3 of the Breckenridge Town Code as it existed immediately prior to the
29 adoption of this ordinance shall automatically be restored in full.

30
31 Section 5. The Town Council hereby finds, determines and declares that it has the power
32 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
33 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

34
35 Section 6. This ordinance shall be published as provided by Section 5.9 of the
36 Breckenridge Town Charter and shall become effective on _____, 2021.

37
38 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
39 PUBLISHED IN FULL this ____ day of _____, 2021. A Public Hearing shall be held at the
40 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
41 _____, 2021, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
42 Town.

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

400-15\Title 3 Ordinance (10-06-21)(Second Reading)

MEMO

TO: Town Council

FROM: Town Attorney

RE: Updated Call Up Ordinance

DATE: October 5, 2021 (for October 12th meeting)

One of the things I wanted to get done before I retire is to revise the call up provisions of both the Town's Development Code and Subdivision Ordinance.

Enclosed with this memo is an ordinance that will amend and update the procedures for conduction call up hearings under both ordinances.

The current versions of the call up provisions of both ordinances are attached to the end of the ordinance.

Perhaps the most significant changes to the current call up rules made by the attached ordinance are:

1. The ordinance will give the Town Council more flexibility in scheduling a call up hearing. The current Development Code requires that a call up hearing on a Class A or Class B development permit be held at the Council's next meeting following the vote to call up the Planning Commission decision on such application, unless the applicant consents to another hearing date. The revised Development Code rule provides that the call up hearing can be any date fixed by the Town Council so long as the hearing is held within 120 days from the Council's vote to call up the Planning Commission decision. A similar provision is included in the Subdivision Ordinance.
2. New provisions are included in both the Development Code and the Subdivision Ordinance dealing with when and under what circumstances a scheduled call up hearing can be continued (i.e., postponed) to a later date. Note that before a Town Council call up hearing actually begins the Mayor or the Director can grant a continuance. Allowing for the Mayor or the Director to continue a hearing will avoid the uncertainty that can arise when a request to continue a hearing is made but not ruled upon until the hearing actually commences. It will also eliminate the need to show a call up hearing on the Council's nighttime agenda if it is anticipated that the hearing is to be continued to another date. Similar changes are made in the provisions of the ordinance dealing with call up hearings by the Planning Commission.

Please review the entirety of the new call up rules, particularly the changes in the rules for a call up hearing on a development permit application (Section 5 on pages 2-7 of the

ordinance), and the changes in the rules for a call up hearing on a subdivision permit application (Section 8 on pages 8-11 of the ordinance).

I look forward to discussing this ordinance with you next Tuesday.

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

2
3 Additions To The Current Breckenridge Town Code Are
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2021

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,”
12 AND CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE
13 “BRECKENRIDGE SUBDIVISION STANDARDS,” CONCERNING CALL UP HEARINGS

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

17
18 Section 1. Section 9-1-18-1E6 is amended to read as follows:

19
20 6. Notice And Council Call Up: The Director shall notify the Council of all
21 Planning Commission decisions on Class A applications at the Council’s next
22 regular meeting after the decision. At that meeting, the Council may, by an
23 affirmative vote of the members present call up any decision of the Planning
24 Commission for their own review ~~under section 9-1-18-5 of this Chapter.~~ The
25 **Town Council’s call up hearing shall be held in accordance with Section 9-1-**
26 **18-5A of this Chapter.** In lieu of calling up a Planning Commission decision, the
27 Council may, with the consent of the applicant, modify or eliminate any condition
28 of approval imposed on the application by the Planning Commission, or add any
29 condition of approval. All Planning Commission decisions on Class A
30 applications shall stand as presented unless called up or modified by the Town
31 Council.

32
33 Section 2. Section 9-1-18-2(E)(6) is amended to read as follows:

34
35 6. Notice And Council Call Up: The Director shall notify the Council of all
36 Planning Commission decisions on Class A applications at the Council’s next
37 regular meeting after the decision. At that meeting, the Council may, by an
38 affirmative vote of the members present call up any decision of the Planning
39 Commission for their own review ~~under section 9-1-18-5 of this Chapter.~~ **The**
40 **Town Council’s call up hearing shall be held in accordance with Section 9-1-**
41 **18-5A of this Chapter.** In lieu of calling up a Planning Commission decision, the
42 Council may, with the consent of the applicant, modify or eliminate any condition
43 of approval imposed on the application by the Planning Commission, or add any
44 condition of approval. All Planning Commission decisions on Class B
45 applications shall stand as presented unless called up or modified by the Town
46 Council.

1
2 Section 3. Section 9-1-18-3C3 of the Breckenridge Town Code is amended to read as
3 follows:

4
5 3. The Director shall forward his or her decision to the Planning Commission at
6 its next regularly scheduled meeting. At that meeting the Planning Commission
7 may, by an affirmative vote of the members present, call up any decision of the
8 Director for its own review. If called up, ~~the Planning Commission shall review~~
9 ~~the application at the same meeting at which it was called up, unless the applicant~~
10 ~~consents to another hearing date.~~ **the Planning Commission's call up hearing**
11 **shall be held in compliance with Section 9-1-18-5B of this Chapter.** In lieu
12 of calling up a Director's decision, the Planning Commission may, with the
13 consent of the applicant, modify or eliminate any condition of approval imposed
14 on the application by the Director or add any condition of approval.
15

16 Section 4. Section 9-1-18-3C4 of the Breckenridge Town Code is amended to read as
17 follows:

18
19 4. The Director shall then forward the decision to the Town Council at its next
20 regularly scheduled meeting following the decision having been presented to the
21 Planning Commission if the Director's decision was not called up by the Planning
22 Commission, or the Planning Commission's decision on the application if the
23 Director's decision was called up, whichever is applicable. At that meeting, the
24 Town Council may, by an affirmative vote of the members present, call up any
25 decision for its own review. **The Town Council's call up hearing shall be held**
26 **in accordance with Section 9-1-18-5A of this Chapter.** In lieu of calling up the
27 Director's decision or the Planning Commission's decision, the Council may, with
28 the consent of the applicant, modify or eliminate any condition of approval
29 imposed on the application by the Planning Commission or add any condition of
30 approval. If the decision forwarded to the Town Council is not called up or
31 modified, it shall stand as presented.

32 ~~— a. If called up, the Town Council shall review the application at its next~~
33 ~~regularly scheduled meeting, unless the applicant consents to another hearing~~
34 ~~date. The Town Council after review shall grant or deny the application using the~~
35 ~~standards set forth in subsection C2 of this section, with or without conditions.~~
36 ~~— b.~~
37

38 Section 5. Section 9-1-18-5 of the Breckenridge Town Code is amended to read as
39 follows:

40 9-1-18-5: CALL UP PROCESS:

41 A. **Town Council Call Up:**

- 42
43
44 1. **A call up may be requested by the applicant, a member of the public, the**
45 **Director, or a member of the Town Council.**

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2. If the Town Council calls up a final Planning Commission decision on a Class A, Class B, or a Class C development permit application the procedure for the Town Council's call up hearing shall be as follows.
 3. The Town Council shall fix a date and time for a call up hearing on a Class A or B development permit application which date shall not be later than one hundred twenty (120) days from the date of the call up unless the applicant consents to a later hearing date. Notice of the Town Council's call up hearing on a Class A or Class B development permit application shall be given in the same manner as for a final hearing on the same class of development permit application held before the Planning Commission.
 4. The Town Council shall fix a date and time for a call up hearing on a Class C development permit application which date shall not be later than forty five (45) days from the date of the call up unless the applicant consents to a later hearing date. The call up hearing shall be listed on the Town Council's agenda at the meeting at which the hearing will be held. Written notice of the time and place of a call up hearing on a Class C development permit application shall be mailed by the Director to the applicant by regular mail, postage prepaid, not less than seven (7) days before the date the hearing is to be held. No further notice is required to be given of a call up hearing on a Class C development permit application.
 5. The scheduled date of a Town Council call up hearing may be continued for good cause as described in this subsection:
 - (a) For purposes of this section, "good cause" may include, but is not limited to:
 - (i) the unavailability of the applicant, the applicant's attorney, the applicant's architect, or other key person necessary to the proper presentation of the applicant's application before the Town Council;
 - (ii) a showing that more time is necessary to obtain relevant information or analysis related to the applicant's application;
 - (iii) a showing that more time is legitimately necessary to allow adequate preparation for the hearing. "Good cause" normally shall not include the failure of an attorney or a party to prepare for the hearing.
 - (b) A motion for a continuance by an applicant must be timely made.
 - (c) Before a call up hearing is convened the Mayor or the Director may continue a call up hearing. Once a hearing is convened, only the Town Council may continue a call up hearing.
 - (d) The Director shall notify the applicant if a continuance of the call up hearing is granted outside of a meeting of the Town Council.

- 1 6. All Town Council call up hearings shall be conducted as de novo public
2 hearings.
3
- 4 7. At a call up hearing the applicant may appear with or without counsel. If the
5 applicant retains counsel, it shall be at the applicant's cost.
6
- 7 8. At a call up hearing the applicant shall have the right to present such
8 evidence as may be relevant, and to cross examine all witnesses.
9
- 10 9. The strict rules of evidence shall not apply to a call up hearing.
11
- 12 10. The burden of proof in a call up hearing shall be on the applicant.
13
- 14 11. An audiotaped record of the call up hearing shall be made. The Town shall
15 retain the original audiotape for not less than one year. A copy of an
16 audiotaped record of a call up hearing shall be made available by the Town
17 to the applicant upon written request and payment of a fee determined by
18 the Town Clerk to be sufficient to reimburse the Town for the cost of
19 providing such copy. The Town shall not be obligated to provide a transcript
20 of a call up hearing unless required by law, and any party desiring such
21 transcript shall obtain and pay the cost thereof. A court reporter may be
22 employed by any party, at the expense of such party, to prepare a verbatim
23 written record of the call up hearing.
24
- 25 12. The Department of Community Development is not a party to a call up
26 hearing. Therefore, it is not a violation of the rule against ex parte contacts
27 for the applicant or any member of the Town Council to talk to a member of
28 the Department of Community Development concerning the application
29 prior to a call up hearing.
30
- 31 13. In its decision on a development permit application that has been called up
32 the Town Council shall have the right to approve the application with or
33 without conditions, or deny it because it does not comply with the
34 requirements of this Chapter.
35
- 36 14. The Town Council shall have thirty (30) days from the date of the call up
37 hearing to make a final decision on a Class C development permit
38 application, and sixty (60) days from the date of the call up hearing to make a
39 final decision on Class A or Class B development permit application.
40
- 41 15. It is not a ground for disqualification that a Town Council member read or
42 reviewed the minutes of the Planning Commission with respect to the
43 application that is the subject of the call up hearing unless the applicant can
44 prove by a preponderance of the evidence that such member cannot fairly
45 hear and decide the application.

1
2 **16. The Town Attorney shall not be involved in the presentation of any evidence**
3 **at the call up hearing and shall remain available to advise the Town Council**
4 **with respect to all matters pertaining to the call up hearing.**
5

6 **17. The Town Council's final decision on an application that has been called up**
7 **shall be in writing, and the time for an appeal of the Town Council's decision**
8 **shall not begin to run until the Town Council has issued its written decision**
9 **on the matter.**
10

11 **18. The record of a call up hearing held before the Town Council shall consist of:**
12 **(i) the relevant pages concerning the application from the Town Council's**
13 **agenda packet for the meeting at which the call up hearing was held; (ii) all**
14 **documents admitted into evidence by the Town Council; (iii) all documents**
15 **offered into evidence at the hearing, but not admitted, if any; (iv) copies of**
16 **the applicable provisions of the Development Code, and other applicable**
17 **Town ordinances; (v) a transcript of the public hearing; and (vi) such other**
18 **documents as may properly be included in the record.**
19

20 **19. The Town Council's decision on a development permit application that has**
21 **been called up shall be the final decision of the Town on such matter, and**
22 **may be appealed to the district court pursuant to Rule 106(a)(4) of the**
23 **Colorado Rules of Civil Procedure. The applicant's failure to timely appeal**
24 **the decision shall be a waiver of the applicant's right to contest the denial or**
25 **conditional approval of the application.**
26

27 **20. The procedures described in this Section 9-1-18-5A shall control over the**
28 **hearing procedures set forth in Chapter 19 of Title 1 of this Code.**
29

30 **B. Planning Commission Call Up: If a decision made by the Director on a Class C**
31 **development permit application is called up by the Planning Commission, the**
32 **Commission shall then act on the application as follows:**

33 **1. Hearing, Notice And Decision: If the applicant is present and ready to**
34 **proceed the Planning Commission may conduct the call up hearing at the**
35 **same meeting at which the application was called up. If the applicant is not**
36 **present or is not ready to proceed at the meeting at which the application was**
37 **called up the Planning Commission shall fix a date and time for the call up**
38 **hearing which date shall not be later than forty five (45) days from the date**
39 **of the call up unless the applicant consents to a later hearing date. If the call**
40 **up hearing is to be held at any meeting other than the meeting at which the**
41 **application was called up, written notice of the time and place of the call up**
42 **hearing shall be mailed by the Director to the applicant by regular mail,**
43 **postage prepaid, not less than seven (7) days before the date the hearing is to**
44 **be held. Additionally, the call up hearing shall be listed on the Planning**

1 Commission’s agenda for such meeting. Otherwise, no notice of the call up
2 hearing is required.

3
4 2. At the call up hearing the Planning Commission shall approve the
5 application with or without conditions, or deny it because it does not comply
6 with the requirements of this Chapter.

7
8 3. The scheduled date of a Planning Commission call up hearing may be
9 continued for good cause as described in this subsection:

10
11 (a) For purposes of this section, “good cause” may include, but is not limited
12 to:

13
14 (i) the unavailability of the applicant, the applicant’s attorney, the
15 applicant’s architect, or other key person necessary to the proper
16 presentation of the applicant’s application before the Planning
17 Commission; (ii) a showing that more time is necessary to obtain relevant
18 information or analysis related to the applicant’s application; or (iii) a
19 showing that more time is legitimately necessary to allow adequate
20 preparation for the hearing. “Good cause” normally shall not include the
21 failure of an attorney or a party to prepare for the hearing.

22
23 (b) A motion for a continuance by an applicant must be timely made.

24
25 (c) Before a call up hearing is convened the Chair of the Planning
26 Commission or the Director may continue a call up hearing. Once a
27 hearing is convened, only the Planning Commission may continue a call
28 up hearing.

29
30 (d) The Director shall notify the applicant if a continuance of the call up
31 hearing is granted outside of a meeting of the Planning Commission.

32
33 4. Except as otherwise provided in this Section 9-1-18-5B, a call up hearing by
34 the Planning Commission shall be conducted in accordance with the
35 requirements of this Chapter and the normal rules and procedures of the
36 Planning Commission.

37
38 5. All Planning Commission call up hearings shall be conducted as de novo
39 public hearings.

40
41 6. At a call up hearing the applicant may appear with or without counsel. If the
42 applicant retains counsel, it shall be at the applicant’s cost.

43
44 7. At a call up hearing the applicant shall have the right to present such
45 evidence as may be relevant, and to cross examine all witnesses.
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8. The strict rules of evidence shall not apply to a call up hearing.
 9. The burden of proof in a call up hearing shall be on the applicant.
 10. An audiotaped record of the call up hearing shall be made. The Town shall retain the original audiotape for not less than one year. A copy of an audiotaped record of a call up hearing shall be made available by the Town to the applicant upon written request and payment of a fee determined by the Town Clerk to be sufficient to reimburse the Town for the cost of providing such copy. The Town shall not be obligated to provide a transcript of a call up hearing unless required by law, and any party desiring such transcript shall obtain and pay the cost thereof. A court reporter may be employed by any party, at the expense of such party, to prepare a verbatim written record of the call up hearing.
 11. The Department of Community Development is not a party to a call up hearing. Therefore, it is not a violation of the rule against ex parte contacts for the applicant or any member of the Planning Commission to talk to a member of the Department of Community Development concerning the application prior to a call up hearing.
 12. The Town Attorney shall not be involved in the presentation of any evidence at the call up hearing and shall remain available to advise the Planning Commission with respect to all matters pertaining to the call up hearing.
 13. The record of a call up hearing held before the Planning Commission shall consist of: (i) the relevant pages concerning the application from the Planning Commission's agenda packet for the meeting at which the call up hearing was held; (ii) all documents admitted into evidence by the Planning Commission; (iii) all documents offered into evidence at the hearing, but not admitted, if any; (iv) copies of the applicable provisions of the Development Code, and other applicable Town ordinances; (v) a transcript of the public hearing; and (vi) such other documents as may properly be included in the record.
 14. The Planning Commission's decision on an application that has been called up may itself be called up by the Town Council in the manner provided in this Chapter.
 15. The procedures described in this Section 9-1-18-5B shall control over the hearing procedures set forth in Chapter 19 of Title 1 of this Code.

43 Section 6. Section 9-2-3-1D3f of the Breckenridge Town Code is amended to read as
44 follows:
45

1 f. Notice And Council Call Up: The Director shall notify the Council of all
2 Planning Commission decisions on Class A subdivision applications at the
3 Council's next regular meeting after the decision. At that meeting, the Council
4 may, by an affirmative vote of a majority of the members present, call up any
5 decision of the Planning Commission for their own review under authority
6 granted in section 9-2-3-4 of this Chapter. **The Town Council's call up hearing**
7 **shall be held in accordance with Section 9-2-3-4 of this Chapter.** In lieu
8 of calling up a Planning Commission decision, the Council may, with the consent
9 of the applicant, modify or eliminate any condition of approval imposed on the
10 application by the Planning Commission or add any condition of approval. All
11 Planning Commission decisions on Class A subdivision applications shall stand as
12 made unless called up or modified by the Town Council.
13

14 Section 7. Section 9-2-3-2D3f of the Breckenridge Town Code is amended to read as
15 follows:
16

17 f. Notice And Council Call Up: The Director shall notify the Council of all
18 Planning Commission decisions on Class B subdivision applications at the
19 Council's next regular meeting after the decision. At that meeting, the Council
20 may, by an affirmative vote of a majority of the members present, call up any
21 decision of the Planning Commission for their own review under authority
22 granted in section 9-2-3-4 of this Chapter. **The Town Council's call up hearing**
23 **shall be held in accordance with Section 9-2-3-4 of this Chapter.** In lieu
24 of calling up a Planning Commission decision, the Council may, with the consent
25 of the applicant, modify or eliminate any condition of approval imposed on the
26 application by the Planning Commission or add any condition of approval. All
27 Planning Commission decisions on Class B subdivision applications shall stand as
28 made unless called up or modified by the Town Council.
29

30 Section 8. Section 9-2-3-4 of the Breckenridge Town Code is amended to read as
31 follows:
32

33 9-2-3-4: CALL UP PROCESS:
34

35 **A. Town Council Call Up: If the Town Council calls up a Planning Commission**
36 **decision on a Class A or Class B subdivision permit application, the procedure**
37 **for the Town Council's call up hearing shall be as follows:**

- 38 1. **A call up may be requested by the applicant, a member of the public, the**
39 **Director, or a member of the Town Council.**
- 40
41 2. **The Town Council shall fix a date and time for a call up hearing on a Class A**
42 **or B subdivision permit application which date shall not be later than one**
43 **hundred twenty (120) days from the date of the call up unless the applicant**
44 **consents to a later hearing date.. Notice of the Town Council's call up**
45 **hearing on a Class A or Class B subdivision permit application shall be given**

1 in the same manner as for a final hearing on the same class of subdivision
2 permit application held before the Planning Commission.

3
4 3. The scheduled date of a Town Council call up hearing may be continued for
5 good cause as described in this subsection:

6
7 (a) For purposes of this section, “good cause” may include, but is not limited
8 to: (a) the unavailability of the applicant, the applicant’s attorney, the
9 applicant’s architect, or other key person necessary to the proper
10 presentation of the applicant’s application before the Town Council; (b) a
11 showing that more time is necessary to obtain relevant information or
12 analysis related to the applicant’s application; or (c) a showing that more
13 time is legitimately necessary to allow adequate preparation for the
14 hearing. “Good cause” normally shall not include the failure of an
15 attorney or a party to prepare for the hearing.

16 (b) A motion for a continuance by an applicant must be timely made.

17 (c) Before a call up hearing is convened the Mayor or the Director may
18 continue a call up hearing. Once a hearing is convened, only the Town
19 Council may continue a hearing.

20 (d) The Director shall notify the applicant if a continuance of the call up
21 hearing granted outside of a meeting of the Town Council.

22
23 4. All Town Council call up hearings shall be conducted as de novo public
24 hearings.

25
26 5. At a call up hearing the applicant may appear with or without counsel. If the
27 applicant retains counsel, it shall be at the applicant’s cost.

28
29 6. At a call up hearing the applicant shall have the right to present such
30 evidence as may be relevant, and to cross examine all witnesses.

31
32 7. The strict rules of evidence shall not apply to a call up hearing.

33
34 8. The burden of proof in a call up hearing on a subdivision permit application
35 shall be on the applicant.

36
37 9. An audiotaped record of the call up hearing shall be made. The Town shall
38 retain the original audiotape for not less than one year. A copy of an
39 audiotaped record of a call up hearing shall be made available by the Town
40 to the applicant upon written request and payment of a fee determined by
41 the Town Clerk to be sufficient to reimburse the Town for the cost of
42 providing such copy. The Town shall not be obligated to provide a transcript
43
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1 of a call up hearing unless required by law, and any party desiring such
2 transcript shall obtain and pay the cost thereof. A court reporter may be
3 employed by any party, at the expense of such party, to prepare a verbatim
4 written record of the call up hearing.
5

6 **10. The Department of Community Development is not a party to a call up**
7 **hearing. Therefore, it is not a violation of the rule against ex parte contacts**
8 **for the applicant or any member of the Town Council to talk to a member of**
9 **the Department of Community Development prior to a call up hearing.**
10

11 **11. In its decision on a subdivision application that has been called up the Town**
12 **Council shall have the right to approve the application with or without**
13 **conditions, or deny it because it does not comply with the requirements of**
14 **this Chapter.**
15

16 **12. The Town Council shall have sixty (60) days from the date of the call up**
17 **hearing to make a final decision on Class A or Class B subdivision permit**
18 **application.**
19

20 **13. It is not a ground for disqualification that a Town Council member read or**
21 **reviewed the minutes of the Planning Commission with respect to the**
22 **application that is the subject of the call up hearing unless the applicant can**
23 **prove by a preponderance of the evidence that such member cannot fairly**
24 **hear and decide the application.**
25

26 **14. The Town Attorney shall not be involved in the presentation of any evidence**
27 **in at the call up hearing and shall remain available to advise the Town**
28 **Council with respect to all matters pertaining to the call up hearing.**
29

30 **15. The Town Council's final decision on an application that has been called up**
31 **shall be in writing, and time for an appeal of the Town Council's decision**
32 **shall not begin to run until the Town Council has issued its written decision**
33 **on the matter.**
34

35 **16. The record of a call up hearing held before the Town Council shall consist of:**
36 **(i) the relevant pages concerning the application from the Town Council's**
37 **agenda packet for the meeting at which the call up hearing was held; (ii) all**
38 **documents admitted into evidence by the Council; (iii) all documents offered**
39 **into evidence at the hearing, but not admitted, if any; (iv) copies of the**
40 **applicable provisions of the Development Code, and other applicable Town**
41 **ordinances; (v) a transcript of the public hearing; and (vi) such other**
42 **documents as may properly be included in the record.**
43

44 **17. The Town Council's decision on an application that has been called up shall**
45 **be the final decision of the Town on such matter, and may be appealed to the**

1 district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil
2 Procedure. The applicant's failure to timely appeal the decision shall be a
3 waiver of the applicant's right to contest the denial or conditional approval
4 of the application.
5

6 **18. The procedures described in this Section 9-2-3-4 shall control over the**
7 **hearing procedures set forth in Chapter 19 of Title 1 of this Code.**
8

9 Section 9. Except as specifically amended hereby, the Breckenridge Town Code, and the
10 various secondary codes adopted by reference therein, shall continue in full force and effect.
11

12 Section 10. The Town Council hereby finds, determines and declares that this ordinance
13 is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
14 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
15 thereof.
16

17 Section 11. The Town Council hereby finds, determines and declares that it has the
18 power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling
19 Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning
20 municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers);
21 (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
22 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
23 contained in the Breckenridge Town Charter.
24

25 Section 12. This ordinance shall be published and become effective as provided by
26 Section 5.9 of the Breckenridge Town Charter.
27

28 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
29 PUBLISHED IN FULL this ____ day of _____, 2021. A Public Hearing shall be held at the
30 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
31 _____, 2021, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
32 Town.
33

34 TOWN OF BRECKENRIDGE, a Colorado
35 municipal corporation
36

37
38 By: _____
39 Eric S. Mamula, Mayor
40

41 ATTEST:
42

43 _____
44 Helen Cospolich, CMC,
45 Town Clerk
46

47 500-432\Call Up Ordinance (10-05-21)(First Reading)

1 **9-1-18-5: CALL UP PROCESS:**

2
3 ~~—A. Town Council Action: If a planning commission decision or affirmation by the planning~~
4 ~~commission of a staff decision on any class A, B or C application is then called up by the town~~
5 ~~council, the council shall then act on the application as follows:~~

6 ~~—1. Hearing, Notice And Decision:~~

7 ~~—a. Class C applications shall be heard at the council's next regularly scheduled meeting~~
8 ~~following the vote to call up the application, unless the applicant consents to another hearing~~
9 ~~date. No notice is required.~~

10 ~~—b. Class A and B applications shall be heard at a public hearing conducted at the council's~~
11 ~~next regularly scheduled meeting following the vote to call up the application, unless the~~
12 ~~applicant consents to another hearing date. Notice is required in the same manner as for final~~
13 ~~hearings held before the planning commission 1.~~

14 ~~—c. All hearings conducted under this section shall be conducted as de novo hearings.~~

15 ~~—d. The council shall have the right to approve an application as proposed, approve it with~~
16 ~~conditions, deny it or continue the hearing for good cause.~~

17 ~~—e. The council shall have forty five (45) days from the date of the call up to make a final~~
18 ~~decision on class C applications, and sixty (60) days from the date of the call up to make a final~~
19 ~~decision on class A or class B applications.~~

20 ~~—f. It is not a ground for disqualification that a town council member read or reviewed the~~
21 ~~minutes of the planning commission with respect to the application that is the subject of the call~~
22 ~~up hearing. (Ord. 22, Series 2016)~~

23 ~~—B. Planning Commission Action: If a decision made by the director on a class C application is~~
24 ~~called up by the planning commission, the commission shall then act on the application as~~
25 ~~follows:~~

26 ~~—1. Hearing, Notice And Decision: If the application is called up, the planning commission~~
27 ~~may review it at the meeting in which it is called up, or may continue the application for up to~~
28 ~~twenty one (21) days. The planning commission, after review, may grant or deny the application~~
29 ~~as they deem appropriate, with or without conditions. No additional notice shall be required.~~
30 ~~(Ord. 19, Series 1988)~~

1 9-2-3-4: CALL UP PROCESS:
2 —A. Town Council Action: If a planning commission decision is called up by the town council,
3 the council shall act on the application as provided in subsection B of this section.
4 —B. Hearing Notice And Decision:
5 —1. All subdivision applications shall be heard within thirty (30) days of the vote to call up
6 the application at a public hearing conducted by the council, unless the applicant consents to
7 another hearing date. Notice of the public hearing shall be required in the same manner as for
8 final hearings held before the planning commission for the class of subdivision proposed.
9 —2. All hearings conducted under this section shall be conducted as de novo hearings.
10 —3. The council shall have the right to approve an application as proposed, approve it with
11 conditions, deny it or continue the hearing for good cause.
12 —4. The council shall have sixty (60) days from the date of the call up to make a final
13 decision on class A or class B subdivision applications.
14 —5. It is not a ground for disqualification that a town council member read or reviewed the
15 minutes of the planning commission with respect to the application that is the subject of the call
16 up hearing. (Ord. 22, Series 2016)
17
18



Memo

To: Breckenridge Town Council Members
From: Mark Truckey, Director of Community Development
Date: October 6, 2021
Subject: Planning Commission Decisions of the October 5, 2021 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, October 5, 2021:

CLASS A APPLICATIONS: None.

CLASS B APPLICATIONS: None.

CLASS C APPLICATIONS:

1. Hotel Breckenridge Outdoor Heated Area and Public Trail Easement, 655 Columbine Rd., PL-2021-0431: A proposal to heat 2,275 sq. ft. of an existing exterior concrete courtyard, and to dedicate a public trail easement. *Approved.*

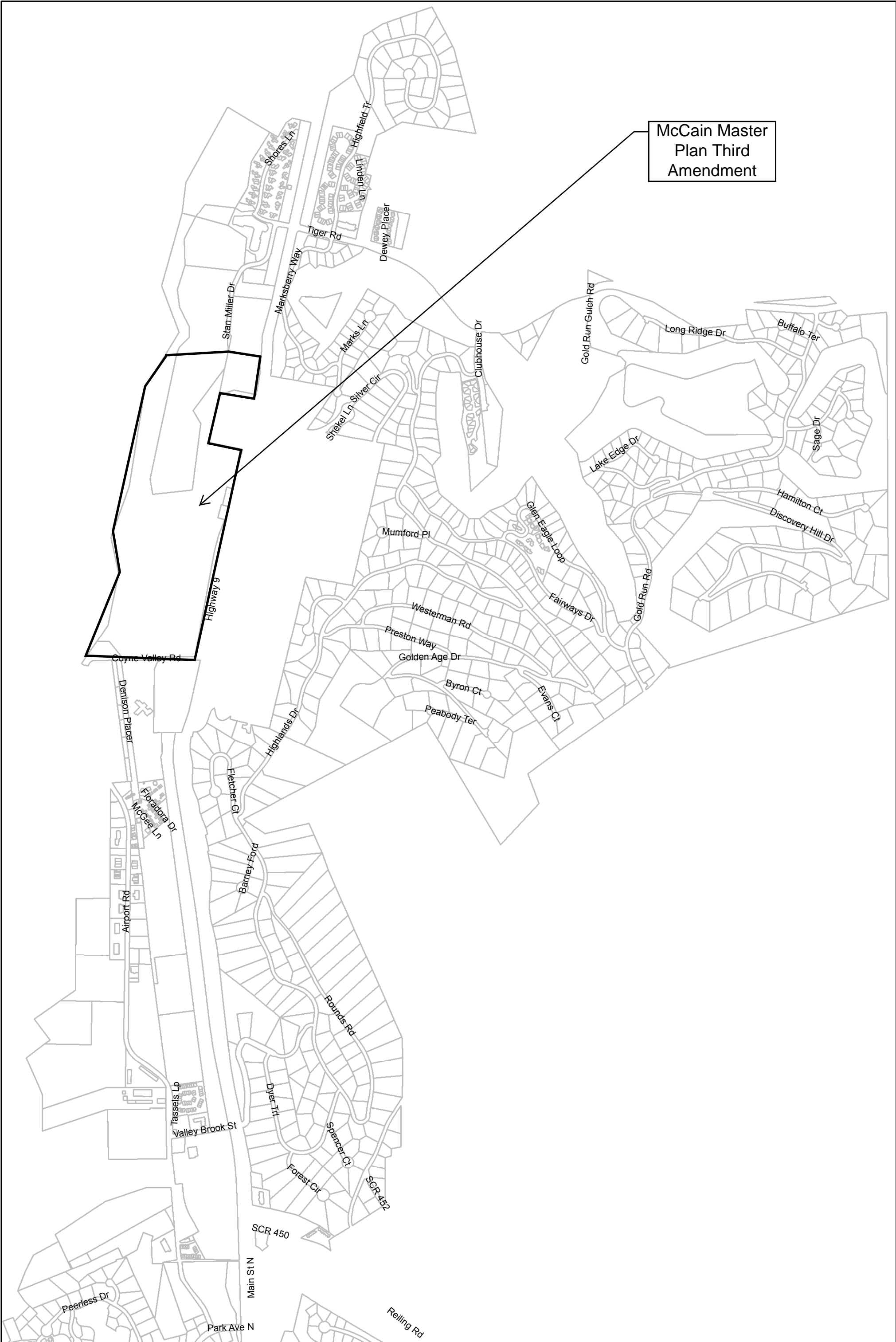
2. Gold Creek Condos (Odd Lot) Exterior Remodel, 326 N. Main Street, PL-2021-0287: A proposal to perform a major exterior remodel including new siding and trim; replacement of wood planters with concrete curb in the parking lot; new stairways, railings, and decking; new exterior lighting fixtures; addition of stairway flight for maintenance access to the roof; new siding for dumpster enclosure to match the building; and parking barriers on the west side. *Approved with added condition.*

TOWN PROJECT HEARINGS:

1. McCain Master Plan Third Amendment, 12965, 13215, 13217, 13221, 13250 Colorado State Hwy 9, PL-2021-0438: A proposal to amend the McCain Master Plan in order to accommodate a new housing development planned for Tract 14, just south of the Alta Verde Workforce Housing Development on Tract 3, and a non-profit/institutional campus on Tract 6. Other modifications include a reduction in the amount of open space and additional public works storage, snow storage, and solar uses. *Approval recommended.*

OTHER: None.

McCain Master Plan Third Amendment





Hotel Breckenridge Outdoor
Heated Area and Public Trail
Easement, 655 Columbine Rd.

Gold Creek Condos
Exterior Remodel, 326
N. Main Street

Amerine House Demolition
and Construction of Ploss
Single Family Residence, 224
S. Ridge Street

Breckenridge South

PLANNING COMMISSION MEETING

The meeting was called to order at 5:34 p.m. by Vice-Chair Delahoz.

ROLL CALL

Mike Giller	Jay Beckerman-absent	Mark Leas
Tanya Delahoz	Steve Gerard	Allen Frechter -absent

APPROVAL OF MINUTES

With the following changes, the September 21, 2021 Planning Commission Minutes were approved.

Part of Mr. Leas comment on page 2 was cut short. Should add to the comment that “there is the possibility of short term rentals and should ask Town Council’s clarification for exemption of town houses and duplexes.”

APPROVAL OF AGENDA

With no changes, the October 5, 2021 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- None

CONSENT CALENDAR:

1. Hotel Breckenridge Outdoor Heated Area and Public Trail Easement (CL), 655 Columbine Rd., PL-2021-0431
2. Gold Creek Condos (Odd Lot) Exterior Remodel (SS), 326 N. Main Street, PL-2021-0287

Mr. Giller made a motion to call up the Gold Creek Condos (Odd Lot) Exterior Remodel (SS), 326 N. Main Street, PL-2021-0287 project, seconded by Mr. Gerard. The motion passed 4 to 0 and the project was called up.

Suitability of the siding and material composition is questioned. Samples were provided of proposed Diamond Kote siding to the Commissioners. Mr. Giller believes negative points should possibly be awarded for the composite engineered wood siding material which he believes cannot be considered a “natural” material.

Commissioner Questions / Comments:

Mr. Giller: Would the town and the code consider an OSB (oriented strand board) plywood siding as a natural material?

Mr. Kulick: That discussion has not occurred with staff.

Mr. Truckey: It is up to the planning commissioner interpretation as to whether that would meet “natural materials” under the code. It would be new precedent.

Mr. Giller: We could create a condition that the material would be cement fiber siding (such as hardi board) that would meet policy 5R.

Mr. Kulick: A condition could be added that siding be switched on plans to a cement board siding. Mr. Giller then read a proposed condition #8.

Mr. Gerard: How will the HOA be paying for the improvements?

Sonny Neely, Applicant:

I am unsure how the HOA will be financing the project, whether it’s a special assessment or not. Cementitious material has a lack of supply and delivery at this time. It will be difficult to obtain cementitious material before the second quarter of 2022. The existing planned material is available now. The planned material is considered the superior product.

- Mr. Leas: I would consider the cementitious material to be superior product but am not familiar with the product's durability in the western climate.
- Mr. Neely: The proposed Diamond Kote material has a 30-year guarantee and a durable coating. Cement products can break apart once a crack occurs in the exterior coating. I believe that the proposed material is by far superior.
- Mr. Giller: Would you be favorable to switching as a condition of approval to fiber cement siding material?
- Mr. Neely: We can switch to fiber cement but the supply is limited right now. The project wouldn't be able to move forward until spring.
- Mr. Truckey: It is also possible to take negative points on the project for the siding and offset with positive points. However, the site is tight and potential for positive points is limited.
- Mr. Neely: There is no room for landscaping or other potential points to offset the negative points on this very tight lot.

Commissioner Questions / Comments:

- Mr. Giller: I do not believe the proposed siding is a natural material. I am agreeable to adding the condition to use fiber cement siding.
- Mr. Gerard: Agree with Mr. Giller. Applicant must make a decision to accept negative points or switch to hardy board as a condition of approval.
- Mr. Leas: Agree with Mr. Giller and Mr. Gerard.
- Ms. Delahoz: Agree with previous comments.

Mr. Giller made a motion to add a condition of approval to require fiber cement board siding as opposed planned material, seconded by Mr. Gerard. The motion passed 4-0. Mr. Giller made a motion to approve the project with the additional condition, seconded by Mr. Gerard. The motion passed 4-0.

The Hotel Breckenridge Outdoor Heated Area and Public Trail Easement project was approved as presented.

PRELIMINARY HEARINGS:

Disclosure- Mr. Giller lives one block from the property and had a conversation with a neighbor regarding the project when he visited the site earlier today. There were no concerns with regard to Mr. Giller's impartiality from other commissioners.

1. Amerine House Demolition and Construction of Ploss Single Family Residence (CL), 224 S. Ridge Street, PL-2021-0381

Mr. LaChance presented a proposal to demolish the existing Amerine House and construct a new two-story, 3,194 sq. ft. single-family residence with 4 bedrooms, 3.5 bathrooms, a 1-car garage, a 1-car carport, and 2 additional exterior parking spaces. The following specific questions were asked of the Commission:

1. Does the Commission support the proposed 6 ft. retaining walls without the assignment of negative points under Policy 7/R Site and Environmental Design?
2. Does the Commission agree that the demolition of the existing structure meets Priority Design Standard #20 because demolition would not cause a reduction to its already Non-Contributing rating?
3. Does the Commission find the location of the proposed Cottonwood trees complies with Design Standard 172, or should they be specified closer to the street to comply with Design Standard 172 and to avoid negative points?
4. Does the Commission agree the proposed building height complies with Priority Design Standard 81, Priority Design Standard 163, and Design Standard 83?
5. Does the Commission find the proposed 7.5 inch dimension of the primary siding material is consistent with Priority Design Standards 90 and 165, or should it be reduced to 4.5 inch to comply

with these Standards?

6. Does the Commission find the proposed bracketry on the front porch and front façade meets Standards 91, 92, 93, and 170?
7. Does the Commission agree with the preliminary point analysis?

Commissioner Questions to Staff:

- Mr. Giller: Questions on the west elevation windows - there would be more compliance with guidelines if there was vertical separation between the center window? Is there precedent for the large group of windows that cover most of the first story of the front facade? (Mr. LaChance: There are several examples of a group of windows on the first story of the primary façade within the Character Area, so staff is OK with the group of windows proposed.)
- Mr. Gerard: This is a difficult lot. How is it decided how much fill is too much on a site? (Mr. LaChance: The Code says the objective is to avoid a “benched” site. This plans propose 15 ft. of fill between alley and street side. Staff is acknowledging that the applicant is not proposing to fill to obtain all of the first floor at one grade, only to reduce the slope from the alley enough to have the garage and carport off the alley.) (Mr. Kulick: The site is short in depth. If you have to park on-site and off the alley- it is not possible to grade down to allow for parking. Staff is looking at obtaining all parking on site and meet grade at alley.)
- Mr. Gerard: The only other fill site in precedents was the Paull Residence. Can you speak to that site? (Mr. Kulick: That site is in the Highlands where it is easier to obtain necessary grade with less fill because of greater space.)
- Mr. Gerard: Has it been determined whether the original barn on site is still there and on the interior of the existing home? (Mr. LaChance: Lets have the architect speak to that.)
- Ms. Delahoz: Considering the existing structure has a deck that does not meet setbacks- does that mean the proposed structure should still receive negative points for not meeting setbacks? (Yes. Once the existing structure is demolished, the new house must comply with the setback recommendations or receive negative points.)

Andy Stabile, Allen-Guerra Architects:

Thank you to Chapin and Chris for working with us on this project. Our intent was to keep the non-contributing historic barn, but after inspection, the historic fabric of the exterior of the barn is not salvageable.

Suzanne Allen-Sabo, Allen-Guerra Architects:

There are not side-walls left of the historic barn. The existing structure is wrapped around the historic barn. Investigation of siding removal was completed and determined that the end elements of the existing structure are not historic material.

Mr. Stabile: There is a clause of the code that allows retaining walls over 4 ft. if the walls limit site disturbance. This allows for room to landscape and screen the property instead of two smaller walls that would not allow for landscaping. Happy to move proposed Cottonwood trees closer to the street. The applicant would like to save a mature tree close to the proposed residence; if it is not possible to save this tree it will be replaced. Bracketry on proposed structure is a standard detail within this character area of the Town. This bracketry adds architectural detail and is a modest elaboration of the structural materials. The code does recommend 4.5 inch siding reveal. We began with mimicking siding on another historic structure and believe adding 7.5 inch siding reveals add architectural detail. Happy to move west center window vertically higher to add space between the lower and upper window. We agree with the staff’s point analysis.

Commissioner Questions to Applicant:

- Mr. Giller: Would like to revisit the question about benching. There is a steep bench in the rear proposed. There is an arbitrary bench in what looks like a way to have more density that

doesn't count toward mass below grade. The aboveground density and mass really should not be based upon the site grading. Would you speak to why the laundry room and powder room are at below grade? (Mr. Stabile: We are trying to create appropriate grade for the carport, and there would need to be accessible locations for the meter locations and we think that is best on the south side of the structure. The fill allows for 3 ft. of walkway area on the south side for access to the meter location.)

Mr. Giller: Would it be possible and safer to eliminate the fill and put the meter at grade, instead of having a 6 or 8 ft. drop? (Ms. Allen-Sabo: We could consider that.)

Mr. Gerard: Maybe you would not have to do all that benching and fill and burying of first floor under garage at the south elevation if you only filled what you need for the driveway. What material is being considered for the grading? (Mr. Stabile: We would prefer to use siloam stone if it will fit but could consider an engineered concrete wall with stone facing if there is not enough room.) Mr. Gerard: Is there a chance to preserve the existing barn materials for reuse on site? (Mr. Stabile: We would like to reuse some of the materials on the interior of the proposed residence if possible.)

Mr. Leas: I have no concerns with the amount of fill, grading, or setbacks that are proposed.

Ms. Delahoz: No additional questions.

Public Comments:

Bart Miller, 208 E. Adams: The architects did a nice job with this project. I represent other neighbors, Scott Long and Kirk Berry. All of us believe the current structure does not have any historic value and we do not have any concerns with demolition. I don't believe that the existing structure materials should be required to be reused. Neighbors are excited to see the project take place and have the following recommendations and points:

1. We would like to see the parking limited to four (4) not five (5) spaces.
2. Height of the property is assumed to be similar to an adjacent property which is okay. We do not want our views obstructed.
3. The amount of fill and benching is not a concern to neighbors.
4. We would like to see natural materials used in the retaining walls.

Mr. LaChance: There is an error in the written staff report, there are only 4 parking spaces proposed, not 5.

Commissioner Comments:

Mr. Giller:

1. No. Strongly disagree with arbitrary benching at south side, which artificially pushes above grade density to below grade.
2. Yes. Existing structure is a non-contributing resource and demolition is okay.
3. No. Cottonwood trees should be aligned with others on Ridge Street.
4. Yes. Height complies.
5. No. Siding of 7.5 inches is too wide. Some variation is okay, but 4.5 inches is what is accepted in the district.
6. Yes. Brackets are very ornamental
7. No. Project warrants negative points for the benching at the south side and retaining walls.

Mr. Gerard:

Nice looking project and will be a great infill project that we want to succeed.

1. No. Retaining walls create artificial below-ground density. Disagree with point analysis because of the retaining walls and unknowns of materials for the retaining walls.
2. Yes. Demolition is fine. Appreciate the old materials and some people in town would like to see those materials reused. I think the architect will do a good job of reusing these materials on the inside.
3. No. Cottonwood trees should align with others on the street.

4. Yes. Building height is acceptable.
 5. No. The thinner 4.5 inch siding should be used as the property is in the district.
 6. No. Bracketing is a bit much. The interior brace seems too complicated. Some is fine, but what is proposed is too much.
 7. No. My concern with the point analysis is the retaining walls.
- Mr. Leas:
1. Yes. Support retaining walls.
 2. Yes. Demolition OK.
 3. No. Cottonwoods should move.
 4. Yes. Building height is within what is allowed.
 5. No. Suggestion of the 4.5 inch will fit the smaller proposed residence better than wider siding which is more suitable for a larger building.
 6. Yes. No issue with bracketry.
 7. Yes. Agree with preliminary staff point analysis.
- Ms. Delahoz:
- This is a pretty project. This will be a nice project on this prominent corner.
1. Yes. No issue with fill.
 2. Yes. Demo is okay.
 3. No. Move cottonwoods closer to road.
 4. Yes. Building height is good- it complies.
 5. No. Smaller narrower siding will comply better with standards.
 6. No. Ornamentation above west windows looks too busy. Brackets on posts is okay. Reducing brackets near door and separating center window would better comply with historical guidelines.
 7. Yes. Agree with preliminary point analysis.

TOWN PROJECTS:

1. McCain Master Plan Third Amendment (CL), 12965, 13215, 13217, 13221, and 13250 Colorado State Hwy 9, PL-2021-0438

Mr. LaChance presented a proposal to amend the McCain Master Plan in order to accommodate a new housing development planned for Tract 14, just south of the Alta Verde Workforce Housing Development on Tract 3, and a non-profit / institutional campus on Tract 6. Other modifications include a reduction in the amount of open space and additional public works storage, snow storage, and solar uses.

Commissioner questions:

- Mr. Gerard: No questions.
- Mr. Leas: Tract 6 has an odd shape. Is that because of the former pond? The odd shape can be problematic regarding setbacks when developments are proposed. (Mr. LaChance: The Master Plan is also proposed to authorize building footprint lots, so this would avoid the setback issues at time of Development Permit application review.) (Mr. Truckey: Yes, the odd shape is because of the pond. We did not bring in structural fill to allow buildings to be located on that.)
- Mr. Giller: Institutional and non-profit plans for the master plan amendment is an acknowledgment of relationship between non-profits and the Town? (Mr. Truckey: Yes, the Town was approached by FIRC proposing a location at this site. The Council is looking at having three 7,500 sq. ft. pad sites, 2 stories, 15,000 sq. ft. Town Council has also considered this location for other non-profit uses, such as potential childcare facilities, considering all the housing planned in this area.) That has merit. Kudos to the Town.
- Ms. Delahoz: Does childcare fall under Community Facilities or Institutional Use? (It would be Institutional because it is a non-profit use. It is disappointing that there is not an area allocated for a grocery store or gas station. There is so much congestion in downtown proper. Having the services up north would remove some of that. It makes sense because

we are building all of this housing on the north side of Town. No questions.

Public Comment:

Alan Roberson, 13203 Hwy 9: I can answer why there cannot be a gas tank at this location. The pond that was filled, fills every year. There is ground water at this location to would not allow for a gas tank installation. The existing Land Use Guidelines currently states one unit per 20 acres, which would equal 3.6 units. How is the proposed plan more dense?

Mr. LaChance: The land use guidelines do say residential at one unit per 20 acres. Under code, additional density of up to 20 units per acre may be allowed if density is transferred to this site through transfer of development rights specifically for affordable housing.

Mr. Roberson: These amendments keep adding up that eliminate open space. What is the percentage of open space at this time for this plan? Open space is being lost in this area.

Mr. LaChance: 70.3 acres of open space are proposed, which is approximately 54 percent of the Master Plan area.

Mr. Roberson: Whittling down the open space. Who owns the housing properties?

Mr. Truckey: There will be a long-term land lease with Gorman and the Town will retain ownership.

Mr. Roberson: Someone other than the Town will make money on this project?

Mr. Truckey: The developer will make some money on the project, but this is a public/private partnership that will provide affordable deed restricted housing units.

Mr. Roberson: I have lived here for the amount of time this has happened and open space continues to be removed and whittled away.

Mr. Kulick: Regarding the open-space comment, when the McCain property was purchased it was purchased with 1/3 open space funds and 2/3 general funds with the idea of preserving 1/3 of the property as open space.

Mr. Truckey: The current Council wants to see the open space protected and the Open Space Fund will be contributing to acquire the 15 acres at the south of the site as open space. The open space area along Hwy 9 also has no proposed development and we will maintain a 150-foot setback from the highway with no structures.

Mr. Giller: I appreciate the public commenter's thoughts on open space.

Public Comment:

Suzanne Allen-Sabo, Allen-Guerra Architects, Frisco, CO: I am working with FIRC on their project at this location and they are very excited about this project.

Commissioner Comments:

Mr. Leas: Chapin was going to speak on the gas station and supporting uses. (Mr. LaChance: Ms. Delahoz, your comment was suggesting the grocery store, gas station, or supporting use somewhere within the Master Planned area, not on a specific tract, correct?)

Ms. Delahoz: Not on the pond. Since we are talking about land uses, it makes sense to add the potential of adding a gas station/grocery store use on Tract 2 in my opinion because of the added development on other tracts. Close to highway, does not interrupt wildlife habitat in the river corridor, not near river bed, etc. Makes sense to allow this use on Tract 2 so we do not have to back track later on when we realize the need because of the housing. (Mr. Truckey: Previous Town Councils had decided not to proceed with that. Your comment on needed supporting commercial uses is well-taken. We can add that comment to our report for Town Council if other commissioners agree, because it would reduce vehicle trips into Town and we are about to have a larger bed base on this side of the Town.)

Mr. Gerard: It may appear we are chipping away at this property, but that was the plan originally. There are open space investments in this plan, and they are trying to keep more than the minimum required. Bike path going through the open space is a fantastic investment. I get asked a lot

of questions as a Commissioner about when we are getting a new grocery store. Everybody wants it but nobody knows where it should be located or who will operate it. My voice would be that we should be thinking about locating a grocery store and childcare facility at this location since we are putting 500 units of housing there. But I don't think it needs to be planned right now with this amendment. There is a specific purpose to this master plan amendment to authorize workforce housing and a location for FIRC. The Master Plan can be further amended at a later time. I support the plan and project at this point.

Mr. Leas: I too support the project. There are great things going on with the river corridor and bike path realignment. The planning commission purpose is to look forward to future community needs. We don't need to nail down the need for a grocery store location now with this Master Plan amendment, but this is a need the Town Council should be aware of. Eventually remodeling the only existing grocery store will create chaos and the Town needs to look forward to what issues that might create.

Mr. Giller: I agree with fellow commissioners.

Ms. Delahoz: I agree with fellow commissioners. We need to look forward. If we are adding all this housing on this site it makes sense to consider the need for supporting services like a grocery store. This supports Town goals of walkability, reducing vehicle trips and promoting sustainability. I approve the proposed amendment that is before us today.

Mr. Gerard made a motion to recommend approval of the McCain Master Plan Third Amendment to the Town Council, seconded by Mr. Giller. The motion passed 4 to 0.

Ms. Puester: I want to note for the audience that there will be another hearing on the McCain Master Plan next Tuesday, October 12 at the Town Council meeting.

WORK SESSIONS:

1. Land Use Districts Related to Short Term Rentals (STRs)

Mr. Truckey presented an overview of the recent Town Council ordinance placing a cap on future short-term rental licenses in the Town, and the request from Council for Planning Commission input regarding the geographic areas where some additional short-term rental licensing could be authorized in relation to the Land Use District (LUD) guidelines. The Commission was asked for feedback.

Commissioner Questions / Comments:

Ms. Delahoz: Tonight's discussion concerns only the LUD zones not feelings on STRs or exemptions. I would also like to note that I make an income from real estate.

Mr. Giller: I would like to disclose that I own an STR that is a modest part of my income but can remain impartial during discussion.

No Commissioners voiced concern about the impartiality of Mr. Giller or Ms. Delahoz.

Mr. Truckey: We will not discuss merits of Council decisions. Based on public comments- there are areas in Town that were always considered to be the bed-base for the ski area and the Council may wish to consider those areas differently than residential areas that had not served that purpose in the past. There are a few LUDs that have uses related to lodging or bed base. If the Council makes exceptions, they may allow some additional short term rental licenses in these focused LUDs and the Town Council is looking for input from Planning Commission. The spreadsheet has bolded LUDs identified which will need your input on whether they should be considered as traditional bed-base and areas of lodging. The LUD 6 recommendation is to carve out the Ranahan area. This is an area that was constructed with the purpose of STRs.

Mr. Leas: Would the Ranahan area not be exempt because they have a front desk?

- Mr. Truckey: The exemption may not be used to determine who gets more STR licenses in the future, not sure on what the end result at Council will be. It may be based on location.
- Ms. Delahoz: We are not just a ski-resort community. We have year-round uses. We have to plan for allowances that feed into the different uses that we have marketed the Town that occur all year like golf and nordic.
- Mr. Truckey: Staff believes that there are areas that are more suited to residential and were not intended for STRs.
- Mr. Gerard: The Council has the right idea at limiting the STRs in specific areas. The Council should consider the Salida method. If you apply the Salida method for example, only 3.5% of the Highlands could have an STR license. There should be considerations for limiting STRs by block or street as well as by area. I recommend the Town Council look at carving out areas like the Ranahan and then applying the Salida method.
- Mr. Leas: Can you enlighten me on the Salida method?
- Mr. Gerard: The zoning for the Town of Salida outlines how many STRs are allowed in each zone district by percentage and block.
- Mr. Truckey: We would like your general feedback on recommended LUDs regarding their wording and if there are outliers.
- Ms. Delahoz: It is important that streets and subdivisions not be separated when a neighborhood is in two different LUDs which happens pretty often. We do not want to pit neighbor against neighbor in essentially the same location. Specifically, in LUD 6 which includes Highlands and Braddock Hill. Should be all treated the same.
- Mr. Gerard: In LUD 10, they are building homes specifically for STR in this district.
- Ms. Delahoz: Agree.
- Mr. Leas: Agree.
- Mr. Giller: Agree.
- Ms. Delahoz: LUD 19 should be a no but carve out Main Street Station and Tannhauser.
- Mr. Truckey: Main Street Station should be carved out but staff questions if you want to allow additional STRs on Main Street where residential is only allowed on second floor.
- Mr. Giller: I do not see an upside to including all of Main Street because it might disrupt the important character of Main Street. But with the caveat of excluding Main Street Station I think most of Main Street should be left out.
- Mr. Leas: I agree with Mr. Giller.
- Mr. Giller: 25 should be a yes because of Breck Mtn Village.
- Ms. Delahoz: 25 should be a yes because of Breck Mtn Village; 28 as a yes north of Boreas Pass Rd.
- Mr. Giller: 28 as a no for me.

Public Comment:

David Garret, 140 Windwood Circle: You talked about Main Street on first level and second level is residential? If you removed residential from the second floor would you allow commercial on the second level? We would like to see no one injured by legislation that would prevent STR rights to transfer with property rights. Peak 8 and 9; the Ranahan is surprising to allow for STR when it is not near the ski area. I agree with Tanya's comment that Breckenridge is a year-round community. Before mountain biking summer was dead, now with timeshares the town is busy on a year-round basis. I appreciate that you are looking at these areas, but there should be more consideration for the many uses in different areas of the Town of Breckenridge.

Public comment was closed. Commissioners were asked to weigh in on LUDs that need discussion.

- Mr. Leas: LUD 10 was annexed and developed with intention of the properties being developed for STR. Agree that streets and neighborhoods should not be carved up and separated. LUD 20, does it include North Gondola lot?

- Mr. Truckey: 20 includes Gondola lot.
Mr. Giller: Agree on LUD 10.
Mr. Gerard: Agree on LUD 10.
Ms. Delahoz: Agree on LUD 10.
Mr. Leas: The Commission should consider the development from BGV which would allow for STRs at the townhomes proposed and potentially homeowners on Woods Drive as well so they are not excluded but on the same street. LUD 20 I am a yes. Timber Trail in LUD 40 should be a yes because LUD 10 has similar uses.
- Mr. Giller: Agree on LUDs 20 and 40.
Mr. Gerard: Agree on LUDs 20 and 40.
Ms. Delahoz: Agree on LUDs 20 and 40.
Mr. Gerard: Concerned with residential areas of Highlands, with the exception of carving out Ranahan in number 6-other areas should be a no; 1 should be a no; 38 should be a no.
- Mr. Giller: Agree.
Ms. Delahoz: Parts of subdivisions and streets should not be divided.
Mr. Truckey: We would pull in all parts of subdivisions that are separated by LUDs to avoid being unequitable to neighbors on different sides of a street.
- Mr. Giller: 19- Main Street and 11-North Main, and 28- because Main Street is so fundamental to Breckenridge as previously discussed I believe all these should be a no. Through attrition, eventually the east side of town may have fewer or no STRs. There are still opportunities in LUD 10 for local residential. All of 10 may not be acceptable for STRs.
- Mr. Truckey: There could be consideration for a percentage of STRs in each district based on unit counts.
Mr. Giller: A simpler way to communicate this with the public may be to say west of Park Avenue STRs are allowed and east of Park they are limited. There is need for refinement.
- Mr. Leas: If the objective is to promote long-term rentals, some subdivisions in LUD 10 are suitable to that, such as Grandview and Gold Camp. It does not make sense to use STR caps to promote long-term rentals in areas like Shock Hill. No opinion on 28, not familiar with that one.
- Ms. Delahoz: Carve out Tannhauser, otherwise Main Street is a no. Also carve out Main Ridge condominiums (18.2). Other Commissioners agree.
- Mr. Leas: Is the Council looking at those who have multiple STRs? Could be more fair to everyone to have one shot versus one person having multiple?
- Mr. Truckey: Not sure if that has been considered.

OTHER MATTERS:

1. Town Council Summary

A school district presentation on LUD and housing for the school district. Housing is not at the top of the school district as a priority. Council and School District agreed to work together on the issue.

Update on housing- the Town is moving forward with programs “Landing Locals” and “Lease to Locals” and are focused on converting STRs to long-term rentals through cash incentives. “Save the Season” is the focus and is an immediate focus for the next six months.

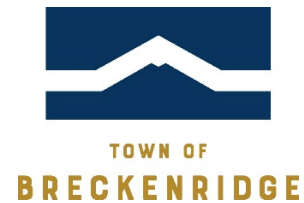
Provisions for STR cap discussed include: Allowing for existing building permits to pull a short-term license; Clarification that a security guard and front desk staff on exempted properties cannot be the same person; Allow for STR transfer in cases of divorce, death, execution of wills etc.; Allow six months of STR transfer after property sale to accommodate bookings that have already been made.

Mr. Gerard: Thanked Mr. Truckey and Housing Division for showcasing Breckenridge’s affordable housing projects to a group of planners from across Colorado last week.

ADJOURNMENT:

The meeting was adjourned at 8:38 pm.

Tanya Delahoz, Vice-Chair



Memo

To: Town Council
From: Chapin LaChance, AICP – Planner II
Date: October 6, 2021 for meeting of October 12, 2021
Subject: McCain Master Plan Third Amendment Town Project Hearing: Planning Commission Recommendation for Approval

The McCain Master Plan is proposed to be amended in order to accommodate a new housing development planned for Tract 14, just south of the Alta Verde Workforce Housing Development on Tract 3, and a non-profit / institutional campus on Tract 6. Without this amendment, any Development Permit application for these uses would be inconsistent with the existing Master Plan and thus subject to a potential recommendation of denial by the Planning Commission and Town Council. Other modifications include a reduction in the amount of open space and additional public works storage, snow storage, and solar uses.

The Town Council reviewed changes for the third amendment at Work Sessions on June 22 and July 27, 2021. The Planning Commission reviewed the proposed changes at a Work Session on September 7, 2021 and at a Town Project Hearing on October 5, 2021. Although the Planning Commission did not find it necessary with this Master Plan Amendment, one of the Commissioners strongly suggested that the Council consider an additional future amendment to authorize supporting services such as a grocery store or gas station within the Master Plan Area. The Commissioner stated this type of use on the north end of Town would support the large of amount of housing being constructed in the area, and support sustainability through walkability and reduce vehicle trips into Town.

The Planning Commission's online packet from the Town Project Hearing is available here: <https://www.townofbreckenridge.com/home/showpublisheddocument/20654>.

The Planning Commission recommends the Town Council approve the McCain Master Plan Third Amendment Town Project, PL-2021-0438 with the attached findings.

Staff will be available at the meeting to answer any questions.

Planning Commission Report to the Town Council

- Subject:** McCain Master Plan Third Amendment (Town Project; PL-2021-0438)
- Proposal:** The McCain Master Plan is proposed to be amended in order to accommodate a new housing development planned for Tract 14, just south of the Alta Verde Workforce Housing Development on Tract 3, and a non-profit / institutional campus on Tract 6. Other modifications include a reduction in the amount of open space and additional public works storage, snow storage, and solar uses.
- Project Manager:** Chapin LaChance, AICP - Planner II
- Date:** October 6, 2021 (for meeting of October 12, 2021)
- Applicant/Owner:** Town of Breckenridge
- Address:** 12965, 13215, 13217, 13221, 13250 Colorado State Highway 9
- Legal Description:** McCain Subdivision, Tracts A-1, B, C-1, D, and Lot 1
The existing and proposed Master Planned area does not include Tract E of the McCain Subdivision.
- Site Area:** 128.764 acres
- Land Use District:** LUD 43: Existing Residential and Service Commercial; Recreational, Open Space, and Governmental Land Uses; Mining. Residential: 1 unit per 20 acres (unless workforce housing)

LUD 4: Limited; 1 unit per 10 acres, serves as the scenic corridor at the entrance of Town (approximately 11-12 acres of the property along Highway 9)
- Site Conditions:** The property was dredge-mined in the early 1900's, and has been impacted by historic mining activities that included extensive dredging along the Blue River. Most of the dredged rock piles have been removed leaving significant portions of the site barren. Alpine Rock processing operations occupied the northwestern portion of the property for years but are no longer in operation. Currently, the Blue River bisects this property from south to north along the westerly edge of the mined area. A major restoration and realignment of the river was completed by the Town in 2017. Portions of the property to the east of the current river has been used by the Town to store and stockpile materials, mainly fill and topsoil. An existing 2.7 acre solar garden is located on the central portion of the property. Summit County's recycling drop-off center is located at the very southwest portion of the property. The Town recently constructed a water treatment plant on the property on 3.7 acres directly northwest of the Hwy 9/Fairview roundabout. There are portions at the eastern property border with mature trees along the bike path and CDOT right of way as well as historic dredge piles on the southwest corner.

Adjacent Uses: North: Braddock Miller residential subdivision, Ranahan Resort, Breckenridge Building Center commercial retail site, Breckenridge Central Market (under construction)
East: Highway 9, Silver Shekel Subdivision, Highlands at Breckenridge
South: Coyne Valley Road, Continental Court, Colorado Mountain College
West: Red Tail Ranch Subdivision, Blue River

Item History

Original Master Plan: The property was annexed and incorporated into Land Use Districts 4 and 43 in 2003. In 2013, the McCain Master Plan was adopted by the Town Council through the Town Project process. The Plan provided general guidance regarding the types of uses that would be allowed within the 128 acre McCain site. The McCain Master Plan identified two tracts for the property. A number of governmental uses were allowed on the larger 90 acre tract and the smaller 38 acre tract was limited to open space and trail uses. McCain was seen as the future location for a number of governmental uses that are currently located closer to the Town core, many on Block 11 (e.g., snow storage). As the plan for Block 11 continues to be built out, affordable housing units will continue to displace these uses. In addition, a second water treatment plant has recently been completed and solar gardens have been installed on McCain.

2015 Amendment: In 2015, the Town Council identified additional uses for the property (affordable housing and service commercial), which were approved with the 2015 Master Plan Amendment. Subsequently, the second water treatment plant was constructed and a river restoration project was completed.

2018 Amendment: In early 2018, the Town initiated conversations with the Summit School District regarding the McCain and Block 11 sites. The school district agreed to a land exchange, which resulted in a second amendment to the Master Plan. The Town has an existing agreement with the ski area to provide 500 skier parking spaces on Block 11. When the 2015 Master Plan was adopted, the intent was to have this overflow parking moved to the southern end of the McCain property, adjacent to Coyne Valley Road. As Block 11 develops property develops, the overflow parking area will be reduced in size. The main purpose of the land swap with the School District was to use the School District owned parcel on Block 11 to maintain the 500 skier parking spaces required by the existing agreement. The School District lot on Block 11 is encumbered by several easements that make building any future school expansion very difficult, rendering that lot ideal for a surface parking use. Due to the land swap, the overflow parking was removed from the McCain Master Plan because it was no longer needed.

2019 McCain Subdivision plat: The 10.1 acre School District Tract has since been platted as Tract B of the McCain Subdivision, with a 50 ft. Access Easement connecting the tract to Stan Miller Dr., in the location of the access road shown on the Master Plan. The remainder of the parcel was split into the 42.7 acre Tract C along the western portion of the McCain property, the 69.1 acre Tract A along the eastern portion of the property, the 5.3 acre Tract D (Water Treatment Plant), and the 0.2 acre Tract E directly south of Tract D, opposite Stan Miller Drive.

Alta Verde Workforce Housing: In October 2020, the Alta Verde Workforce Housing Town Project (PL-2020-0540) was approved on the northeast corner of the McCain property on Tract 3 of the Master Plan.

2021 McCain Subdivision plat: This plat created the 4.969 acre Lot 1 for the Alta Verde housing development.

McCain Master Plan Third Amendment: The Town Council recently decided to pursue additional housing and a non-profit campus on the north side of the McCain property, necessitating a third amendment to the Master Plan to reflect those uses. Before a Development Permit application can be prepared for a new housing project and non-profit campus, the McCain Master Plan must be modified so that the appropriate uses are authorized in the Master Plan, as it is the guiding land use document for the property. The Town Council reviewed changes for the third amendment at Work Sessions on June 22 and July 27, 2021. The Planning Commission reviewed the proposed changes at a Work Session on September 7, 2021 and at a Town Project Hearing on October 5, 2021.

September 7, 2021 Planning Commission Work Session

At the Work Session, the Planning Commission had the following feedback:

- Tract 6: Add “Community Facilities” to the Tract Uses column.
- Tract 7: Consider adding teacher or employee housing to the Tract Uses column.
- Tract 12A & 12B: Add Governmental Uses to the Tract Uses column.
- Add discussion under Policy 28/A Utilities regarding utilities being reviewed at site specific plan review.
- Consider adding future services such as gas station or grocery store as an allowed use to support and benefit other uses.

October 5, 2021 Planning Commission Town Project Public Hearing

At the Town Project Hearing, the Planning Commission had the following comments:

- Although it is not necessary with this Master Plan Amendment, some of the Planning Commission strongly suggested that the Council consider an additional future amendment to authorize supporting services such as a grocery store or gas station within the Master Plan Area. The Commission stated this type of use on the north end of Town would support the large of amount of housing being constructed in the area, and support sustainability through walkability and reduce vehicle trips into Town.

Proposed Changes from the 2018 Master Plan:

Tract	Acreage	Density	Proposed Tract Uses	Changes from 2018
1	3.7	0 SFEs (Governmental Uses are exempt from density requirements.)	Water treatment plant and uses accessory to the plant (e.g., settling pond)	None.
2	7.5 (to be confirmed)	1:25 FAR Any permanent structures built shall require a density transfer	Public works storage, snow storage, service commercial uses (e.g., landscaping business, contractors yard, other similar uses that are not retail)	Use expanded to include Public Works storage and snow storage.
3*	4.3	See Below*	Residential deed restricted affordable employee housing of an approved mix of housing	Size increased from 4.0 acres to 4.3 acres. Number of units increased from 56-80 to 60-86.

			types (single family, duplexes, and multi-family units) with a maximum density of 20 UPA.	
4A	2.7	0 SFEs (Governmental Uses are exempt from density requirements.)	Solar panel garden and uses accessory to the solar garden (e.g., fencing, electric inverter)	Tract 4 became Tract 4A.
4B	0.8	0 SFEs	Future Solar	Tract 5A became Tract 4B. Use changed from Open Space / Buffer to Future Solar.
5	3.1	0 SFEs	Bike Path, Open Space, Buffer for Blue River	Tract 5B became Tract 5.
6	3.5	0 SFEs (Community Facilities And Institutional Uses are exempt from density requirements.)	Non-profit/Institutional	Changed from 10 acres of snow storage use to 3.5 acres of non-profit/institutional use.
7	10.1	0 SFEs (Governmental Uses are exempt from density requirements.)	Future School Site for Summit School District	Increased in size by 0.1 acres.
8	15	<u>Open Space</u> : 0 SFEs	<u>Open Space</u> : Open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)	Reduced in size from 19.9 acres to 15 acres. Encompassed former 2.0 acre Tract 12 (trailhead / river access / park).
9	1.6	0 SFEs (Governmental Uses are exempt from density requirements.)	Existing Recycling Center	None.
10A	3.8	0 SFEs	Open Space	None.
10B	34.9	0 SFEs	300' River Corridor, wildlife habitat west of the Blue River, open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)	None.
11A	11.2 acres	0 SFEs	150' Highway 9 Setback, landscape buffers, open space and trails and uses	Tract name changed from Tract 11 to Tract 11A.

			accessory to open space (e.g., bike repair station, picnic shelter)	Reduced in size from 12.3 acres to 11.2 acres.
11B	0.8 acres	0 SFEs	150' Highway 9 Setback, landscape buffers, open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)	Tract name changed from Tract 11 to Tract 11B, and acreage labeled.
12	N/A	N/A	N/A	Removed.
12A	3	0 SFEs (Governmental uses are exempt from density requirements.)	Government uses, including Public Works storage / snow storage / parking	Added.
12B	3.8	0 SFEs (Governmental uses are exempt from density requirements.)	Government uses, including Public Works storage / snow storage / parking	Added.
13	8.7	0 SFEs	Road Right-of-Way	Road has been realigned to introduce additional curves for traffic calming. Acreage increased from 8.5 to 8.7 acres.
14	8.6	See Below**	Residential deed restricted affordable employee housing of an approved mix of housing types (single family, duplexes, and multi-family units) with a maximum density of 20 UPA.	Size increased from 3.8 acres to 8.6 acres, and use changed from Public Works storage to Housing.
15	1.5	0 SFEs	Open Space/Park/Parking	Added.

* 3.71 SFEs for the purpose of affordable housing have been previously allocated to the site for either Tract 3 or Tract 8. In addition, additional density (up to a maximum of 20 UPA) to accommodate affordable housing may be transferred to this tract and is not subject to the point deductions in the Town Land Use Guidelines Density Policy 3/R.

** Additional density (up to a maximum of 20 UPA) to accommodate affordable housing may be transferred to this tract and is not subject to the point deductions in the Town Land Use Guidelines Density Policy 3/R.

The attached map outlines a number of “tracts” within the McCain Master Plan, with designated land uses for each of the tracts. Four (4) of the 14 tracts on the proposed Master Plan amendment remain the same as shown on the previous 2018 Master Plan. An explanation of the primary changes that have been made to the remaining tracts is provided below.

Tract 2: 7.5 acres (to be confirmed) of Public Works Storage/Snow Storage/Service Commercial. This area was previously designated exclusively for service commercial uses (e.g., landscaping businesses, contractor's yards). There are currently two private service commercial tenants at the location, 2V's Landscaping and Summit Roll-Offs, that both lease land from the Town. Adding Public Works Storage to Tract 2 compensates for its loss on Tract 14, which is now designated for Housing. The Tract size increased with the proposed amendments, and needs to be updated on the plan. This will be done prior to the Town Council meeting.

Tract 4B (formerly 5A): 0.8 acres of Future Solar. This narrow strip along the future McCain Road was designated in the previous master plan for Open Space/Buffer to the adjacent solar garden. Sustainability Manager Jessie Burley has recommended this solar designation, as there is the potential to add solar in this location as a means of getting the new housing on Tract 14 to net zero energy use. Acquiring solar from another location (e.g., solar gardens in other counties) to achieve net zero on Tract 14 is a much more convoluted path to claiming net zero on the housing site, as the Town does not technically own the renewable energy credits in the solar gardens we will be subscribing to. The Town's commitment to renewable energy is also demonstrated by having solar panels front and center in public view.

Tract 6: 3.5 acres of Non-Profit/Institutional. This tract was previously designated as Snow Storage and was reduced from 10 acres. The Town Council intends to provide this area for a non-profit campus, to accommodate community services like the Family and Intercultural Resource Center (FIRC). "Community Facilities" was not added to the Tract Uses column as requested by a Planning Commissioner at the Work Session, because the Commission finds both Community Facility and Non-Profit uses are included in the Development Code definition of Institutional Use: "*A nonprofit or quasi public use, such as a church, library, public or private school, hospital including associated medical office facilities, or government owned or operated structure or land used for public purpose, along with customary accessory uses.*"

Tract 7: 10.1 acres School: This Tract increased in size by 0.1 acres but is otherwise not proposed to be modified. A Planning Commissioner at the Planning Commission Work Session suggested a consideration for teacher or employee housing to be included as an allowed use. Because the property is owned by the School District, the School District would need to submit a formal request for this revision, which the School District has not requested. This Tract remains the same.

Tract 8: 15 acres of Open Space. This large tract on the southern portion of the McCain site was reduced in size from 19.9 acres to 15 acres, in order to accommodate the new Tracts 12A and 12B, the uses for which are described below. Tract 8 encompassed the previous 2.0 acre Tract 12 Trailhead/River Access/Park.

Tract 11A and 11B: 11.2 acres and 0.8 acres, respectively, of 150' Minimum Scenic Corridor: There are three (3) non-contiguous areas on the Master Plan that form Tract 11.

Tract 12A (3 acres) and Tract 12B (3.8 acres): Governmental uses, including Public Works Storage/Snow Storage/Trailhead Parking. These are new tracts that are separated by the addition of a wide curve in the proposed McCain access road. Engineering staff has recommended this curve as a means of traffic calming on the roadway. Between Tracts 2, 12A and 12B, this amendment provides up to 14.3 acres of area for snow storage and storage of stockpiled materials for Public Works, less the area that is leased for service commercial on Tract 2. Public Works is comfortable that this will provide an adequate area to accommodate these needs in the future, considering there still may be some other locations (Stillson Patch Placer) that serve this purpose as well. The trailhead parking in the summer will allow dual uses of the tract and free up the previous Tract 12, which was adjacent to the river, as open space. Governmental uses and trailhead parking have been added as an allowed uses. These tracts are intended to provide trailhead parking

to replace the trailhead parking that was previously proposed adjacent to the river in the area of the proposed Tract 8.

Tract 14: 8.6 acres Housing. This tract encompasses areas that were previously designated for Snow Storage and Public Works Storage. The housing is specified to be residential deed restricted affordable employee housing of an approved mix of housing types (single family, duplexes, and multi-family units) with a maximum density of 20 UPA, similar to Tract 3.

Tract 15: 1.5 acres Open Space/Park/Parking. This is a new tract that includes the existing pond area, which has been filled. Most of that pond area will not be available to support buildings, but potentially could be used for parking and as an open space/landscaped entrance to the non-profit campus on Tract 6 and the adjacent housing on Tract 14. Parking was added as an acceptable use.

Other: The Land Use Chart on the upper right hand corner of the Master Plan page was removed because it was redundant with the more detailed Master Plan notes page.

Planning Commission Review

The Planning Commission has reviewed this application for compliance with all applicable Policies of the Development Code. Those policies not applicable with the review of the Town Project Hearing for the Master Plan Amendment will be analyzed with the separate Development Permits for each of the developable parcels at a future date.

Land Use Guidelines (2/A & 2/R): LUD 43 applies to the majority of the property. The uses allowed in this district are: *“Existing Residential and Service Commercial; Recreational, Open Space, and Governmental Land Uses; Mining. Residential: 1 unit per 20 acres (unless workforce housing).”* Land Use District (LUD) 4 applies to a relatively small area of the property along Highway 9. There is a 150’ setback required from the Highway 9 right-of-way. The primary functions of Land Use District 4 are to provide a scenic corridor at the entrance of Town and to prevent strip development. All of the uses proposed with this Master Plan amendment are consistent with the uses identified in the underlying Land Use Districts.

Density (3/A & 3R): Additional density will be needed for the housing development on Tract 14, and that density will need to be transferred to the property. There will also be density associated with the non-profit campus on Tract 6, but Tract 6 is designated for non-profit/institutional uses, and Community Facilities and Institutional Uses are exempt from the requirement to transfer density to the site per section F. of the Policy 3/A. There are not any additional density allocations or modifications proposed with this amendment. 3.71 SFEs have been previously allocated to the site for the purpose of affordable housing on Tract 3. Additional density to accommodate affordable housing may be transferred to the Master Plan area and is not subject to the point deductions of the Relative Policy. The existing service commercial uses on site do not include any structures and thus, require no density at this time. In the future, should any service commercial uses require density, it will be required to be transferred to the site. The 1:25 FAR density limit is proposed to remain for Tract 2, which allows for service commercial uses. All other uses proposed on the site are government related (e.g., school, water treatment plant, recycling facility). Per the policies of the Joint Upper Blue Master Plan, governmental uses are exempt from density requirements. The Planning Commission does not have any concerns regarding density.

Site and Environmental Design (7/R): All of the proposed developed uses on the site are to occur on the portions previously disturbed by dredging and mining activities. The completed river restoration plan introduced a new river channel that contains the 100 year flood plain, which had previously spilled out over

the property, and is now capable of supporting year round flows. All development is restricted to an area east of the new river alignment, with the exception of the existing recycling center. The former man made pond at the northeast portion of the site has been filled. The pond did not qualify as a wetlands area and was fed by groundwater that is likely connected to river flows.

Internal Circulation (16/A) and External Circulation (17/A): Internal circulation continues to be provided by one main internal right-of-way that connects Stan Miller Dr. from the north with Coyne Valley Rd. to the south, serving as a collector to secondary local roads that access the individual Tracts. With this proposed amendment, the road has been realigned to introduce additional curves for traffic calming. Other circulation remains the same, including the 25' Bike Path Corridor and associated underpasses. The Planning Commission is supportive of the proposed circulation through the site.

Open Space (21/R): Since open space funds contributed to approximately one-third (1/3) of the cost of purchasing this property, at least one-third (1/3) of the land area is intended to remain as open space. The proposed plan specifies 70.3 acres of open space including the Blue River corridor and the 150' setback area (Tract 11) from Highway 9. This is a reduction from 78.5 acres with the previous plan, and equals approximately 54% of the property as open space.

Social Community (24/R): This Master Plan Modification is planned to fulfill numerous community needs identified by the Town Council including provision of affordable housing, open space along the river corridor, a water treatment facility, the County recycling facility, and a school site. Positive points may be awarded under this policy at a site plan level as future projects are submitted.

Utilities (28/A): New development is required to place all utilities underground. This requirement will be reviewed at the time of the individual Development Permit applications for the site specific development plans.

Subdivision (35/A) & Subdivision Standard 9-2-4-5: Lot Dimensions, Improvements And Configuration: This Standard requires Disturbance Envelopes for all lots at the time of Subdivision, but makes an exception for building footprint lots if they are specifically authorized in an approved master plan. This amendment proposes to authorize building footprint lots, so that the Town maintains control over the land surrounding the non-profit buildings.

Point Analysis (Section: 9-1-17-3): The Planning Commission finds that the proposed Amendment passes all Absolute Policies in the Development Code, and does not find any reason positive or negative points are warranted under the Relative Policies. Individual points analyses will be undertaken as site specific developments are proposed on the property in the future.

The primary reason the Master Plan is proposed to be amended is to allow for the new housing development planned on Tract 14, just south of the Alta Verde workforce housing development, and the non-profit campus on Tract 6. Without this amendment, any Development Permit application for these uses would be inconsistent with the existing Master Plan and thus subject to a potential recommendation of denial by the Planning Commission and Town Council.

Planning Commission Recommendation

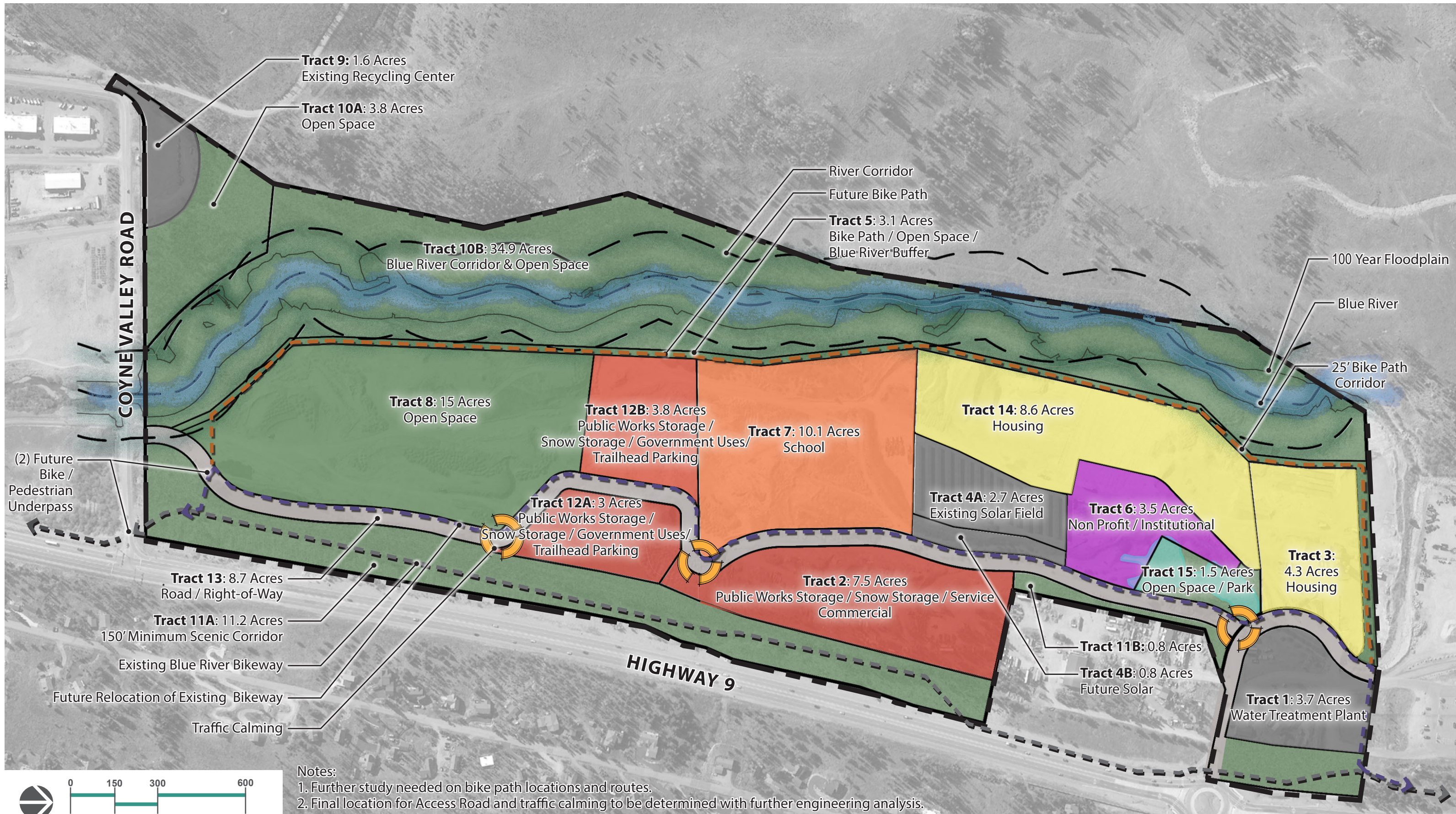
The Planning Commission recommends the Town Council approve the McCain Master Plan Third Amendment Town Project, PL-2021-0438 with the attached findings.

TOWN OF BRECKENRIDGE

**McCain Master Plan, Third Amendment, Town Project Hearing
McCain Subdivision, Tracts A-1, B, C-1, D, and Lot 1
12965, 13215, 13217, 13221, 13250 Colorado State Highway 9
PL-2021-0438**

FINDINGS

1. This project is a “Town Project” as defined in Section 9-4-1 of the Breckenridge Town Code because it involves the planning and design of a public project.
2. The process for the review and approval of a Town Project as described in Section 9-14-4 of the Breckenridge Town Code was followed in connection with the approval of this Town Project.
3. The Planning Commission reviewed and considered this Town Project on **October 5, 2021**. In connection with its review of this Town Project, the Planning Commission scheduled and held a public hearing on **October 5, 2021**, notice of which was published on the Town’s website for at least five (5) days prior to the hearing as required by Section 9-14-4(2) of the Breckenridge Town Code. In addition to posting on the Town’s website, notice of the Planning Commission’s public hearing on the proposed Town Project was given in the same manner as is required for a final hearing on a Class A Development Permit application pursuant to Chapter 1 of the Development Code. At the conclusion of its public hearing, the Planning Commission recommended approval of this Town Project to the Town Council.
4. The Town Council’s final decision with respect to this Town Project was made at the regular meeting of the Town Council that was held on **October 12, 2021**. This Town Project was listed on the Town Council’s agenda for the **October 12, 2021** agenda that was posted in advance of the meeting on the Town’s website. Before making its final decision with respect to this Town Project, the Town Council accepted and considered any public comment that was offered.
5. Before approving this Town Project the Town Council received from the Director of the Department of Community Development, and gave due consideration to, a point analysis for the Town Project in the same manner as a point analysis is prepared for a final hearing on a Class A Development Permit application under the Town’s Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code).
6. The Town Council finds and determines that the Town Project is necessary or advisable for the public good, and that the Town Project shall be undertaken by the Town.



2018 ~~2021~~ McCain Master Plan Third Amendment

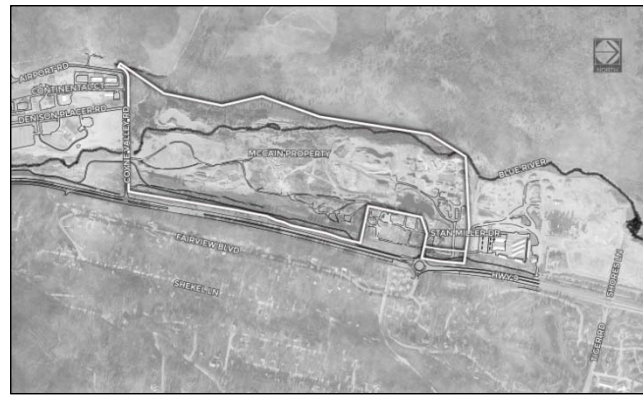
McCain Master Plan Notes

~~Approved by Town Council on November 13, 2018~~

Density and Uses:

Tract	Area	Density	Tract Uses
1	3.7	0 SFEs (Governmental Uses are exempt from density requirements.)	Water treatment plant and uses accessory to the plant (e.g., settling pond)
2	7.5 (to be confirmed)	1:25 FAR Any permanent structures built shall require a density transfer.	Public Works storage, snow storage, service commercial uses (e.g., landscaping business, contractors yard, other similar uses that are not retail)
3*	4.0 3	See Below*	Residential deed restricted affordable employee housing of an approved mix of housing types (single family, duplexes, and multi-family units) with a maximum density of 20 UPA.
4 A	2.7	0 SFEs (Governmental Uses are exempt from density requirements.)	Solar panel garden and uses accessory to the solar garden (e.g., fencing, electric inverter)
5A 4B	0.8	0 SFEs	Open Space Future Solar
5B 5	3.1	0 SFEs	Bike Path, Open Space, Buffer for Blue River
6	10.0 3.5	0 SFEs (Governmental Community Facilities And Institutional Uses are exempt from density requirements.)	Snow Storage Non-profit/Institutional
7	10.0 10.1	0 SFEs (Governmental Uses are exempt from density requirements.)	Future School Site for Summit School District
8	19.9 15	0 SFEs	Open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)
9	1.6	0 SFEs (Governmental Uses are exempt from density requirements.)	Recycling Center
10A	3.8	0 SFEs	Open Space
10B	34.9	0 SFEs	300' River Corridor, wildlife habitat west of the Blue River, open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)
11 A	12.3 11.2	0 SFEs	150' Highway 9 Setback, landscape buffers, open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)
11B	0.8	0 SFEs	150' Highway 9 Setback, landscape buffers, open space and trails and uses accessory to open space (e.g., bike repair station, picnic shelter)
12	2.0	0 SFEs	Trailhead, River Access, Park, and uses accessory to open space (e.g., bike repair station, picnic shelter)
12A	3.0	0 SFEs (Governmental Uses are exempt from density requirements.)	Governmental uses, including Public Works storage / snow storage / trailhead parking
12B	3.8	0 SFEs (Governmental Uses are exempt from density requirements.)	Governmental uses, including Public Works storage / snow storage / trailhead parking
13	8.5 7	0 SFEs	Road Right-of-Way
14	3.8 8.6	0 SFEs (Governmental Uses are exempt from density requirements.) See Below**	Public Works Storage Residential deed restricted affordable employee housing of an approved mix of housing types (single family, duplexes, and multi-family units) with a maximum density of 20 UPA.
15	1.5	0 SFEs	Open Space / Park/ Parking

* 3.71 SFEs for the purpose of affordable housing have been previously allocated to the site for Tract 3. In addition, additional density (up to a maximum of 20 UPA) to accommodate affordable housing may be transferred to this tract and is not subject to the point deductions in the Town Land Use Guidelines Density Policy 3/R.



Building Footprint Lots: Building footprint lots are authorized by this Master Plan.

Setbacks:

No buildings shall be located within a 150 foot setback from the east property boundary bordering the Highway 9 right-of-way. Internal setbacks shall be per the Development Code.

Building Height:

Tall buildings can impact the views of the property from Colorado Highway 9 and therefore building height restrictions are proposed beyond the above-described 150 foot setback area from Highway 9:

Where buildings are proposed within 200 feet of the Highway 9 right-of-way, building heights in excess of two (2) stories are prohibited. For buildings beyond 200 feet of the Highway 9 right-of-way, building heights in excess of two (2) stories are discouraged.

Existing mining operation facilities are exempt from height requirements.

Architecture:

1. This Master Plan is not within the Breckenridge Conservation District boundary and does not seek to replicate Breckenridge's historic architecture. Architecture should be sensitive to the McCain property's scenic function. Due to high visibility of the property, architectural design is of great importance and should incorporate low profile designs and non-contrasting colors.
2. The color of exterior structure materials must generally be subdued. Earth tones are encouraged although accent colors which are used judiciously and with restraint may be permitted.
3. Architectural detail and design will meet all applicable Town Codes.

Landscaping:

All plantings shall comply with the Town of Breckenridge's Development Code. Existing trees along the Blue River and along sections of the recreation path/CDOT right of way will be preserved to the greatest effort possible.

Landscaping along the eastern property boundary adjacent to the Highway 9 right of way should be enhanced as reasonably possible to assist in providing an effective buffer from Highway 9 to the site. Landscaping is also encouraged to be provided in areas where landscaping is shown on the illustrative McCain Open Space Plan.

** Additional density (up to a maximum of 20 UPA) to accommodate affordable housing may be transferred to this tract and is not subject to the point deductions in the Town Land Use Guidelines Density Policy 3/R.

Town Council Staff Report

Subject: Rocky Mountain Underground Roof Top Deck and Bar
(Class B Major; De Novo PL-2021-0132)

Date: October 6, 2021 (for the October 12, 2021 meeting)

Project Manager: Chris Kulick, AICP; Senior Planner

Applicant: Mike Waesche, Rocky Mountain Underground

Owner: DRCM Mining LLC

Proposal: The applicant proposes to add a deck and bar area to a portion of the flat roof of this non-historic structure. The deck area is designed to have an 88 person occupancy and will be setback 24’ from the front façade of the building. The proposal also features solid 3’ tall guard rails, an exterior staircase, exterior lift and associated fire wall on the rear of the building. The interior space and uses will remain unchanged with the exception of a new stairway providing access to the roof area.

Address: 112 S. Main Street

Legal Description: Parcel B of Lot 15, Bartlett and Shock Subdivision

Land Use District: 19, Commercial; 1:1 FAR

Historic District: 6. Core Commercial

Site Conditions: The property features an existing non-historic, two-story commercial building that has 4,267 sq. ft. of density and mass. The property has 4 off-street parking spaces in the rear that are accessed from the Ridge Street Alley. The building is surrounded by commercial properties on the north, south and west sides. It borders the Exchange Parking Lot to the east.

Adjacent Uses: North: Retail/Commercial
East: Public Parking
South: Retail/Commercial
West: Retail/Commercial

Density & Mass: Existing: 4,267 sq. ft. (restaurant/ bar & retail)
Proposed (Unchanged): 4,267 sq. ft. (restaurant/ bar & retail)*
*All proposed improvements are exterior or within the existing floor area and do not count against density or mass.

Height: Recommended: 25.0 ft.; 30 ft. (max)
Existing & Proposed (Top of Front Cornice): 27.0 ft.
Proposed (Top of new Parapet): 26.6 ft.

Parking: Total parking spaces required: 12.88 spaces

Existing parking on-site in rear off of alley:	4 spaces
Existing parking purchased in district:	8.88 spaces
Total spaces to be associated with property:	12.88 spaces
Proposed parking on-site, in rear, off of the alley:	2 spaces
Proposed additional spaces to be purchased in District:	2 space
Existing parking previously purchased in district:	8.88 spaces*
*7 spaces were purchased as a requirement of the original Development Permit issued in 1981. 1.88 spaces were purchased by the current owners in 2021.	

Setbacks: Commercial developments are allowed to be built to the property line in Land Use 19.

Front:	4 ft. (Unchanged)
Sides:	0 ft. & 0 ft. (Unchanged)
Rear:	24.3 ft.

Changes since the August 3, 2021 Planning Commission Final Hearing

The following changes are proposed to the plans since the Planning Commission approval on August 3, 2021.

Building and Form:

- The exterior stairs have been redesigned as a straight run to eliminate the need for second firewall along the southern property line.
- The fire wall has been tapered in height to correspond with the rise and run of the exterior stairs.

Item History

This 4,267 sq. ft. non-historic commercial building was approved by the Planning Commission on May 6, 1980. In 1982, the building was completed and has had minimal alterations over the years. More recently the property was purchased by the current owners and shortly thereafter Rocky Mountain Underground (RMU) obtained a building permit and began work on interior renovations to the second level of the building for a joint bar/ restaurant and retail business. Through the permitting process, the property is now current with all water and sewer plant investment fees and parking requirements.

The Planning Commission reviewed the Rocky Mountain Underground Roof Top Deck and Bar on May 18, 2021 as a Preliminary Hearing. At the Hearing, staff received direction on several policies. A Final Hearing for the project was held on August 3, 2021. At the Hearing the Commission voted to approve the project 4-0 with a passing point analysis of zero (0) points. A week later, the Town Council voted 7-0 to call up the Planning Commission’s approval for a De Novo Hearing scheduled for September 14, 2021. Prior to the Hearing date, the applicant requested to continue the hearing and waived their right to receive a decision within 60 days of the original Planning Commission decision on August 3, 2021. The Town Council granted the applicant’s request and continued the hearing to the October 12, 2021 Town Council meeting. Staff has sent out public notice and posted the property for the hearing.

Staff Comments

The Social Community (24/A):

B. Historic And Conservation District: Within the conservation district, which area contains the historic district (see special areas map) substantial compliance with both the Design Standards contained in the "Handbook of Design Standards" and all specific individual standards for the transition or character area within which the project is located is required to promote the educational, cultural, economic and general welfare of the community through the protection, enhancement and use of the district structures, sites and objects significant to its history, architectural and cultural values.

Since this policy addresses the design criteria found in the Handbook of Design Standards for the Historic and Conservation Districts along with the individual Character Areas, discussion of all historic details will be reviewed here.

Architectural Compatibility: Roof top decks are not particularly common in the Conservation District, with only four noted commercial examples existing today. Roof top decks are also not specifically addressed in the Handbook of Design Standards and only a few Design Standards loosely relate to this type of proposal. The form and shape section of the #6 Core Commercial Character Area of the Handbook of Design Standards, and its associated Design Standards, listed below seems to be the most relevant code section to review a roof-top deck proposal.

"Form and Shape

Policy:

New buildings should reinforce the perception of the historic forms and shapes of the area. In terms of building form, the Main Street Commercial Character Area is characterized by simple rectangular shapes which present a rectangular building profile to the street. Sloped gable roofs hidden from the street by flat parapets and false fronts are also integral design elements along Main Street.

Design Standards:

Priority Design Standard 211. Use building forms similar to those found historically in the area.

- *Use simple building forms, especially rectangular ones oriented with the narrow side parallel to the street.*
- *Keep components of individual building elements in scale with those found historically.*

Priority Design Standard 212. Use simple roof forms similar to those of historic buildings in the area.

- *Gable roof forms with false fronts are preferred."*

The existing non-historic building features a rectangular shape, storefront windows and false front cornice that are preferred features in the Main Street Commercial Character Area. The building also has an existing flat roof behind a cornice that the applicants would like to utilize for their deck. Understanding that minimizing the appearance of the deck from Main Street is preferred, the proposed deck area is setback 24' from the front of the building and 11' from the front of the building to the north and 12' from the front of the building to the south to reduce the visibility of patrons from Main Street. The proposal also features required guard rails that are designed to look like parapets which are common for flat roofed commercial buildings.

Past Precedent

1. Hilliard House, PL-2017-0297, 110 S. Ridge St. (This project is located in the South End Residential Area) A roof top deck was approved above a portion of the connector. The deck was mostly screened

from Ridge Street by the second story of the Hilliard House. The Commission did not believe the deck affected the historic context of the building.

2. Euro Restaurant, PL-2013-0104, 500 S. Main Street. (This project is located in the South Main Transition Area) The design was setback 5' from the front façade. The roof top seating is visible from Main Street and from the parking lot in the rear of the building. The Commission did not believe this would have a negative effect on the architecture of the building or the Conservation District.
3. Fatty's Restaurant, PC#2006194, 106 South Ridge Street: (This project is located in the South End Residential Area) The Commission was not concerned with the expansion of the rooftop deck which would bring it closer to the street.
4. Horseshoe II Deck Expansion (Now Modis), No PC#, 115 S. Main St: (This project is located in the Core Commercial Character Area) The Commission was most concerned about the visibility of umbrellas and sound from outdoor speakers. Overall the Commission found that with the deck setback 13' from the front parapet, visibility of the umbrellas was not a major issue.

The limited precedent covers a wide span of years but all projects listed were reviewed against the Handbook of Design Standards for the Historic and Conservation Districts which was adopted in 1992. Priority Design Standards 211 and 212 are unchanged from the Handbook's original adoption. Based on the design of the proposal, which sets the deck space back from the front of the building and the front of its adjacent neighbors and features a parapet design that conceals the deck space, the Commission and staff found the proposed design complied with the Handbook of Design Standards based on past precedent.

The development also features a new exterior staircase that is located at the rear of the building. The staircase is required by building code for access to and from the deck and is only one level due to the rise in grade towards the rear of the property. The staircase will be constructed with dark colored metal supports, treads and railings, and is only visible from the rear of the property along the alley.

Although not required, throughout the Planning process, the applicants have met with the Town's Building Division in an effort to ensure their design will also conform to the requirements of the Building Code. Based on those discussions, the applicants have designed the proposal to include additional means of egress beyond the exterior stairs. The design includes a weatherized stairway and an associated operable, freestanding box skylight that provides access from the interior second level to the roof deck. Since the proposed skylight is less than 42" tall and is not visible from anywhere but the confines of the deck, the Commission and staff were comfortable with this design. The design also proposes to extend the existing exterior lift to the roof top to provide accessibility that conforms to the Americans with Disabilities Act (ADA). The Commission and staff were comfortable with this extension, as there is already an existing exterior lift on the property that provides access to the second level and exterior lifts are common throughout Town, including within the Historic District.

Also during the discussions with the building division, it was noted that structures or means of egress within 10' of the property line needs fire separation. In response to this issue, the applicants propose a 24' wide fire wall along the north property line, at the rear of the building to protect the exterior lift and stairway. The wall is 15' – 9" high at its tallest point adjacent to the building, and then tapers down, mirroring the adjacent stairs. Since the lot is only 26' wide, it is impossible to build an exterior stair and install an exterior lift without providing a fire rated wall. The proposed fire wall will feature cementitious, lap siding in the same dimension and painted to match the existing building's wood lap siding.

The Commission and staff agreed that items were allowed in the past that address building safety, such as non-standard window styles, window wells and accessibility ramps, even though they are not explicitly

addressed under the Handbook of Design Standards. Since the proposed fire wall is not visible from anywhere other than the alley, is aligned with the north wall of the building and will be sided and painted to match the existing building, the Commission and staff found it a satisfactory way of meeting the building code requirement and added a special Finding to state this rationale.

In summary, the Commission and staff determined the deck's design conformed to the Handbook of Design Standards based on past precedent.

Building Materials: The deck's perimeter guard rails will extend up 24" from the existing walls and are designed to look like a continuation of the siding of the building to form a parapet, similar to the design of the Modis (formerly Horseshoe II) roof top deck across the street (photos attached). The existing parapet is 18" above the proposed floor, together with the 24" extension will achieve the required 42" to meet code. The design will be built with wood lap siding to match the existing dimensions and color of the building. The design also features a floating decking system that is not visible from anywhere other than being within the deck area itself. Finally, the design also features a black powder coated metal staircase that provides ingress and egress to the deck area.

The Commission and staff found the proposed materials abide with the Handbook of Design Standards, particularly Priority Design Standard 225 which encourages the use of painted lap siding on primary buildings. Further, they believed that the dark colored staircase proposed will be the least obtrusive color.

Due to Building Code requirements, a fire wall has been added to rear of the building along the northern property line. Because the wall is required to be non-combustible, the applicants propose to face the wall with painted fiber cement lap siding in the same dimension and color as the existing wood lap siding on the building. Within the Conservation District, fiber cement siding is allowed if it is painted since it looks very similar to painted wood, which is the desired character of primary structures inside the Conservation District.

Design Standard:

Priority Design Standard 90. Use materials that appear to be the same as those used historically.

- *New materials that appear to be the same in scale, texture and finish as those used historically may be considered.*
- *Imitation materials that do not successfully repeat these historic material characteristics are inappropriate.*

Past Precedent

1. Legacy Place Mixed Use, PC#2006010, 324 North Main Street. (This project is located in the North Main Street Residential Area) Painted fiber cement lap siding was the primary material used on both buildings. No points were awarded because of being located in the conservation district.
2. Dosse Court Development, PC#2002029, 322, Buildings B. and C. North Main Street. (This project is located in the North Main Street Residential Area) Painted fiber cement lap siding was the primary material used on both buildings. No points were awarded because of being located in the conservation district.
3. Longbranch Condominium Remodel, PC#2006197, 107 North Harris Street. (This project is located in the North End Residential Transition Area) Painted fiber cement siding was used as the

exclusive siding material for the building. No points were awarded because of being located in the conservation district.

The Commission and staff found the proposed fiber cement siding abides with the Handbook of Design Standards, including Priority Design Standard 90 which encourages the use of new materials that appear to be the same in scale, texture and finish as those used historically and has established precedent for allowing painted cementitious lap siding. Further, staff and the Commission believe the use of cementitious lap siding is a good way to bring a sympathetic look to a portion of the project that is required to be fire rated.

Land Use (Policies 2/A & 2/R): The land use will remain unchanged from the existing commercial use that features Retail and Major Retail Food and Beverage outlets. The deck will be an expansion of the Retail Food and Beverage use.

Within the deck area is a proposed bar. Exterior bars are not common in Breckenridge but have been permitted in the past at Whiskey Star, 229 S. Main St., the Brown Hotel, 206 N. Ridge St., RMU 114 S. Main St., and several outlets at the base areas of the ski resort. Exterior food and beverage sales are exempted from the requirement for merchandise to be confined to fully enclosed buildings. Staff has confirmed this exemption applies to exterior bars with the Town Attorney.

9-7-6: EXEMPTIONS:

The following outdoor displays of merchandise shall be exempt from the provisions of this chapter:

- A. *Dining: Outdoor dining (when in compliance with the town's development code).*

Staff and the Commission had no concerns with the proposed use.

Building Height (Policies 6/A & 6/R): The tallest portion of the new proposal is the southwest corner of the new guardrail/ parapet which as depicted on the plans, the guardrail/ parapet is also 6” lower than the existing cornice. The Commission and staff had no concerns.

Density (Policies 3/A & 3/R) and Mass (Policies 4/A & 4/R): There is no proposed change to the existing density or mass related to the property. Since all proposed improvements are exterior or within the existing floor area and do not count against density or mass.

Parking (Policies 18/A & 18/R): The property currently has four (4) onsite parking spaces that are setback 5’ from the alley and 4’ from the side property lines. In addition, the original developers were required to purchase 7 spaces as a condition of approval for the original Development Permit. The applicants recently paid into the Parking District for an additional 1.88 spaces to satisfy the current parking requirements for the property. Required parking for commercial properties is based on gross floor area of the building. Since this proposal does not propose any new gross floor area, no new parking is required.

The proposed staircase, which extends 24’ out from the back of the building, will encroach 13’ into the existing western parking spaces, which at their closest point are 9’ from the building. This encroachment will result in the loss of two existing onsite parking spaces and necessitate the owners to pay into the District for two additional spaces. Staff and the Commission had no concerns with the proposed parking. A condition of approval that requires two additional parking spaces to be purchased from the Parking District to offset the spaces lost to the new staircase encroachment prior to receiving a Certificate of Occupancy is included in the Findings and Conditions.

The existing onsite parking is unpaved. Per the code, applications within the Conservation District of a Class B Minor designation or greater require paving any existing parking.

Per the Code: 9-3-9: *Design Standards for Off Street Parking Facilities:*

M. Paving:

1. *Off Street Parking Spaces: All off street parking spaces shall be paved.*
2. *Driveways: All driveways shall be paved; provided, however, that any unpaved driveway which exists at the time of the adoption of this subsection M shall be paved as a condition of the issuance of a development permit for future development of the subject property in accordance with the following schedule: a) within the Conservation District, whenever a Class B minor development permit or higher is issued; and b) outside the Conservation District, whenever a Class D major development permit or higher is issued. (Ord. 9, Series 2015)*

Since this is a Class B Major application, a condition of approval is added that requires the existing gravel parking area to be paved prior to receiving a Certificate of Occupancy.

Placement of Structures (Policies 9/A & 9/R): The staircase is proposed at 14' from the southern property line, 6' from the north property line and 24'-4" from the rear property line. The proposed guardrail extensions are an extension of the current sidewalls that are built to the property lines on the north and south sides. In Land Use District 19, commercial structures are allowed to be built up to the property line. Staff has no concerns.

Open Space (Policies 21A & 21R): The design does not propose any open space, nor is any required for properties within the Core Commercial Area of the Historic and Conservation District. The Commission and staff did not have any concerns.

3 x (-2/+2) A. *Private Open Space:*

(2) Commercial Areas: It is encouraged that all commercial (nonresidential) developments or the commercial portions of multiuse developments contain at least fifteen percent (15%) of their gross square footage of land area in natural, improved or functional open space. Streets and driveways, parking lots, sidewalks, decks, planter boxes, rooftop gardens, or small landscaping strips shall not count as open space. Where possible, open space shall be placed adjacent to rights-of-way and other public areas.

Exception for Character Area 6 in the Conservation District: Properties within Character Area 6 (Core Commercial) as identified in the Handbook of Design Standards for the Historic and Conservation Districts, are allowed to be built up to the property line to match the historic development pattern and thus leave little area for provision of open space. As such, commercial properties in Character Area 6 shall not be assessed negative points for failing to provide at least fifteen percent (15%) open space. (Ord. 1, Series 2019) (Emphasis Added)

Exterior Loudspeakers (Policy 42A): A general concern with any food and beverage outside seating area is the potential to generate additional noise. Policy 42 addresses exterior speakers in deck or patio areas of restaurants and liquor license establishments in an effort to minimize noise generation from outdoor seating areas. The applicants are not proposing any exterior speakers with the current application. Understanding there may be a desire to utilize exterior loudspeakers in the future, a condition is added that requires a separate Class D Minor approval prior to the installation or use of any exterior loudspeakers on the property. Additionally, the conduct of the business will be subject to the requirements of the Town's noise ordinance (Title 5, Chapter 8 of the Municipal Code) which is enforced by the Police Department.

POLICY 42 (ABSOLUTE) EXTERIOR LOUDSPEAKERS:

Exterior loudspeakers may only be allowed in seating areas associated with the deck or patio area of a restaurant or liquor licensed establishment, and are not allowed on front porches or entrances. Exterior loudspeakers shall be located on a site so as to minimize the visibility of such speakers, and shall be affixed in such a manner as to reduce noise intrusion on adjacent properties and to adhere to the requirements of the Town's noise ordinance (title 5, chapter 8 of this Code). Exterior loudspeakers shall not be used for the purpose of attracting attention to the restaurant or liquor licensed establishment where they are located. (Ord. 1, Series 2019) (Emphasis Added)

Exterior Lighting (Section: 9-12): The applicant has submitted exterior lighting information for the project. The property is within Lighting Zone 1 and the applicants are proposing seasonal bistro style lighting. Bistro lighting is permitted in outdoor dining/bar areas exclusively in Lighting Zone 1. Additionally, fully shielded permanent and downcast light fixtures are also proposed. All proposed exterior lighting will be no greater than 7' above the upper level deck or 18' above finished grade in compliance with Code. The Commission and staff did not have any concerns.

Water Plant Investment Fees: As mentioned above, the property is current with all required Plant Investment Fees. Since all the proposed improvements are entirely outdoors, no additional Plant Investment Fees are required.

Social Community (24/A) C. Employee Generation and Mitigation: *“The purpose of this Section C is to ensure that new development or changes in the intensity of use provide a reasonable amount of employee housing to mitigate the impact on available employee housing caused by such development.”*

On February 23, 2021, the Town Council amended this policy to not require employee housing mitigation for outside dining areas. In making this decision, the Council thought mitigation for outdoor dining should be removed until the Town has collected accurate information on employees generated by outdoor dining areas by completing an updated employee generation study for the Upper Blue Basin.

Point Analysis (Section: 9-1-17-3): The Commission and staff conducted a formal point analysis and found all the Absolute Policies of the Development Code and Priority Design Standards of the Handbook of Design Standards to be met, and no reason to assign positive or negative points to this project under any Relative policies.

Staff Recommendation

The Planning Department recommends approval of the Rocky Mountain Underground Roof Top Deck and Bar, PL-2021-0132, located on Parcel B of Lot 15, Bartlett and Shock Subdivision, 112 South Main Street with the attached point analysis indicating the design meets all Absolute Policies and has a total score of zero (0) points under all Relative Policies and the written Formal Decision Document prepared by the Town Attorney which includes the Findings and Conditions.

De Novo Hearing Impact Analysis				
Project:	Rocky Mountain Under Ground Roof Top Deck and Bar	Positive Points	0	
PC#	PL-2021-0132			
Date:	10/12/2021	Negative Points	0	
Staff:	Chris Kulick, AICP, Senior Planner			
		Total Allocation:	0	
Items left blank are either not applicable or have no comment				
Sect.	Policy	Range	Points	Comments
1/A	Codes, Correlative Documents & Plat Notes	Complies		
2/A	Land Use Guidelines	Complies		
2/R	Land Use Guidelines - Uses	4x(-3/+2)		The proposed commercial food and beverage use complies with the recommended land uses for District 19.
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)		
2/R	Land Use Guidelines - Nuisances	3x(-2/0)		
3/A	Density/Intensity	Complies		No new Density is proposed.
3/R	Density/ Intensity Guidelines	5x (-2>-20)		
4/R	Mass	5x (-2>-20)		No new Mass is proposed.
5/A	Architectural Compatibility	Complies		
5/R	Architectural Compatibility - Aesthetics	3x(-2/+2)		
5/R	Architectural Compatibility H.D. / Above Ground Density 12 UPA	(-3>-18)		
5/R	Architectural Compatibility H.D. / Above Ground Density 10 UPA	(-3>-6)		
6/A	Building Height	Complies		
6/R	Relative Building Height - General Provisions	1X(-2,+2)		
	For all structures except Single Family and Duplex Units outside the Historic District			
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		The existing cornice is the tallest point at 27', the tallest point of the new parapet is 26' - 6"
6/R	Building Height Outside H.D. / Stories	(-5>-20)		
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
	For all Single Family and Duplex Units outside the Conservation District			
6/R	Density in roof structure	1x(+1/-1)		
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)		
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)		
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)		
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)		
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)		
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)		
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)		
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)		
7/R	Site and Environmental Design / Wetlands	2X(0/+2)		
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)		
8/A	Ridgeline and Hillside Development	Complies		
9/A	Placement of Structures	Complies		All relative and absolute setbacks are met.
9/R	Placement of Structures - Public Safety	2x(-2/+2)		
9/R	Placement of Structures - Adverse Effects	3x(-2/0)		
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)		
9/R	Placement of Structures - Setbacks	3x(0/-3)		
12/A	Signs	Complies		
13/A	Snow Removal/Storage	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)		
14/A	Storage	Complies		
14/R	Storage	2x(-2/0)		
15/A	Refuse	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)		
15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)		
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)		
16/A	Internal Circulation	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)		
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)		
17/A	External Circulation	Complies		

18/A	Parking	Complies	<p>The property currently has four (4) onsite parking spaces that are setback 5' from the alley and 4' from the side property lines. In addition, the original developers were required to purchase 7 spaces as a condition of approval for the original Development Permit. The applicants recently paid into the Parking District for an additional 1.88 spaces to satisfy the current parking requirements for the property. Required parking for commercial properties is based on gross floor area of the building. Since this proposal is entirely exterior and does not propose any new gross floor area, no new parking is required.</p> <p>The proposed staircase, which extends 17' – 6" out from the back of the building, will encroach 5'-6" into the existing western parking spaces, which at their closest point are 12' from the building. This encroachment will result in the loss of two existing onsite parking spaces and necessitate the owners to pay into the District for two additional spaces. Staff has no concerns with the proposed parking and has added a condition of approval, requiring two additional parking space to be purchased from the Parking District to offset the spaces lost to the new staircase encroachment prior to receiving a Certificate of Occupancy.</p>
18/R	Parking - General Requirements	1x(-2/+2)	
18/R	Parking-Public View/Usage	2x(-2/+2)	
18/R	Parking - Joint Parking Facilities	1x(+1)	
18/R	Parking - Common Driveways	1x(+1)	
18/R	Parking - Downtown Service Area	2x(-2/+2)	
19/A	Loading	Complies	
20/R	Recreation Facilities	3x(-2/+2)	
21/R	Open Space - Private Open Space	3x(-2/+2)	Properties within Character Area 6 (Core Commercial) as identified in the Handbook of Design Standards for the Historic and Conservation Districts, are allowed to be built up to the property line to match the historic development pattern and thus leave little area for provision of open space.
21/R	Open Space - Public Open Space	3x(0/+2)	
22/A	Landscaping	N/A	
22/R	Landscaping	2x(-1/+3)	
24/A	Social Community	Complies	Complies with Priority Design Standards: 90, 211, 212 and 225
24/R	Social Community - Employee Housing	1x(-10/+10)	
24/R	Social Community - Community Need	3x(0/+2)	
24/R	Social Community - Social Services	4x(-2/+2)	
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)	
24/R	Social Community - Historic Preservation	3x(0/+5)	
24/R	Social Community - Historic Preservation/Restoration - Benefit	+1/3/6/9/12	
25/R	Transit	4x(-2/+2)	

26/A	Infrastructure	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)		
27/A	Drainage	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)		
28/A	Utilities - Power lines	Complies		
29/A	Construction Activities	Complies		
30/A	Air Quality	Complies		
30/R	Air Quality - wood-burning appliance in restaurant/bar	-2		
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)		
31/A	Water Quality	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)		
32/A	Water Conservation	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)		
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)		
	HERS index for Residential Buildings			
33/R	Obtaining a HERS index	+1		
33/R	HERS rating = 61-80	+2		
33/R	HERS rating = 41-60	+3		
33/R	HERS rating = 19-40	+4		
33/R	HERS rating = 1-20	+5		
33/R	HERS rating = 0	+6		
	Commercial Buildings - % energy saved beyond the IECC minimum standards			
33/R	Savings of 10%-19%	+1		
33/R	Savings of 20%-29%	+3		
33/R	Savings of 30%-39%	+4		
33/R	Savings of 40%-49%	+5		
33/R	Savings of 50%-59%	+6		
33/R	Savings of 60%-69%	+7		
33/R	Savings of 70%-79%	+8		
33/R	Savings of 80% +	+9		
33/R	Heated driveway, sidewalk, plaza, etc.	1X(-3/0)		
33/R	Outdoor commercial or common space residential gas fireplace (per fireplace)	1X(-1/0)		No outside gas fireplaces proposed.
33/R	Large Outdoor Water Feature	1X(-1/0)		
	Other Design Feature	1X(-2/+2)		
34/A	Hazardous Conditions	Complies		
34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)		
35/A	Subdivision	Complies		
36/A	Temporary Structures	Complies		
37/A	Special Areas	Complies		
37/R	Community Entrance	4x(-2/0)		
37/R	Individual Sites	3x(-2/+2)		
37/R	Blue River	2x(0/+2)		
37/R	Cucumber Gulch/Setbacks	2x(0/+2)		
37/R	Cucumber Gulch/Impervious Surfaces	1x(0/-2)		
38/A	Home Occupation	Complies		
39/A	Master Plan	Complies		
40/A	Chalet House	Complies		
41/A	Satellite Earth Station Antennas	Complies		
42/A	Exterior Loudspeakers	Complies		No exterior loudspeakers are proposed. 9. Prior to the use or installation of any exterior loudspeakers, the loudspeakers must be reviewed as a separate Class D Minor permit and comply with Policy 42 of the Development Code.
43/A	Public Art	Complies		
43/R	Public Art	1x(0/+1)		
44/A	Radio Broadcasts	Complies		
45/A	Special Commercial Events	Complies		
12-Sep	Exterior Lighting	Complies		Bistro lighting is permitted in outdoor dining/bar areas exclusively in Lighting Zone 1. Additionally permanent light fixtures with a fully shielded and downcast design are also proposed. All proposed exterior lighting will be no greater than 7' above the upper level deck or 18' above finished grade.
47/A	Fences, Gates And Gateway Entrance Monuments	Complies		
48/A	Voluntary Defensible Space	Complies		
49/A	Vendor Carts	Complies		

A TOPOGRAPHIC MAP OF A PORTION OF
PARCEL B, LOT 15
BARTLETT & SHOCK ADDITION
TO THE TOWN OF BRECKENRIDGE

SUMMIT COUNTY, COLORADO

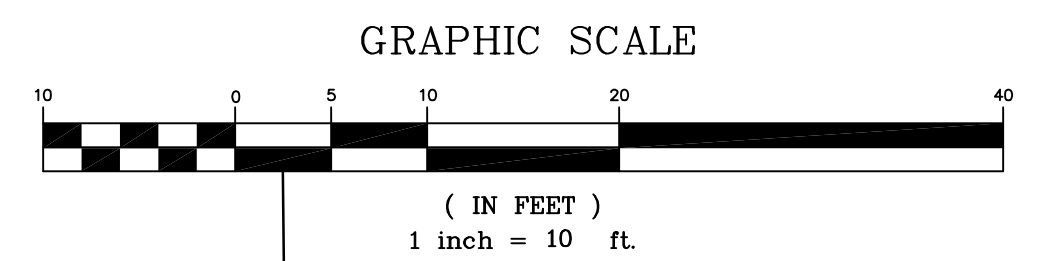
LINCOLN WEST
 MALL
 LOTS 17 - 20

ALLEY
 (20' R-O-W)

LOT 21

LOT 24

DATE OF FIELD SURVEY: 07/07/2021
 CONTOUR INTERVAL=2 FEET

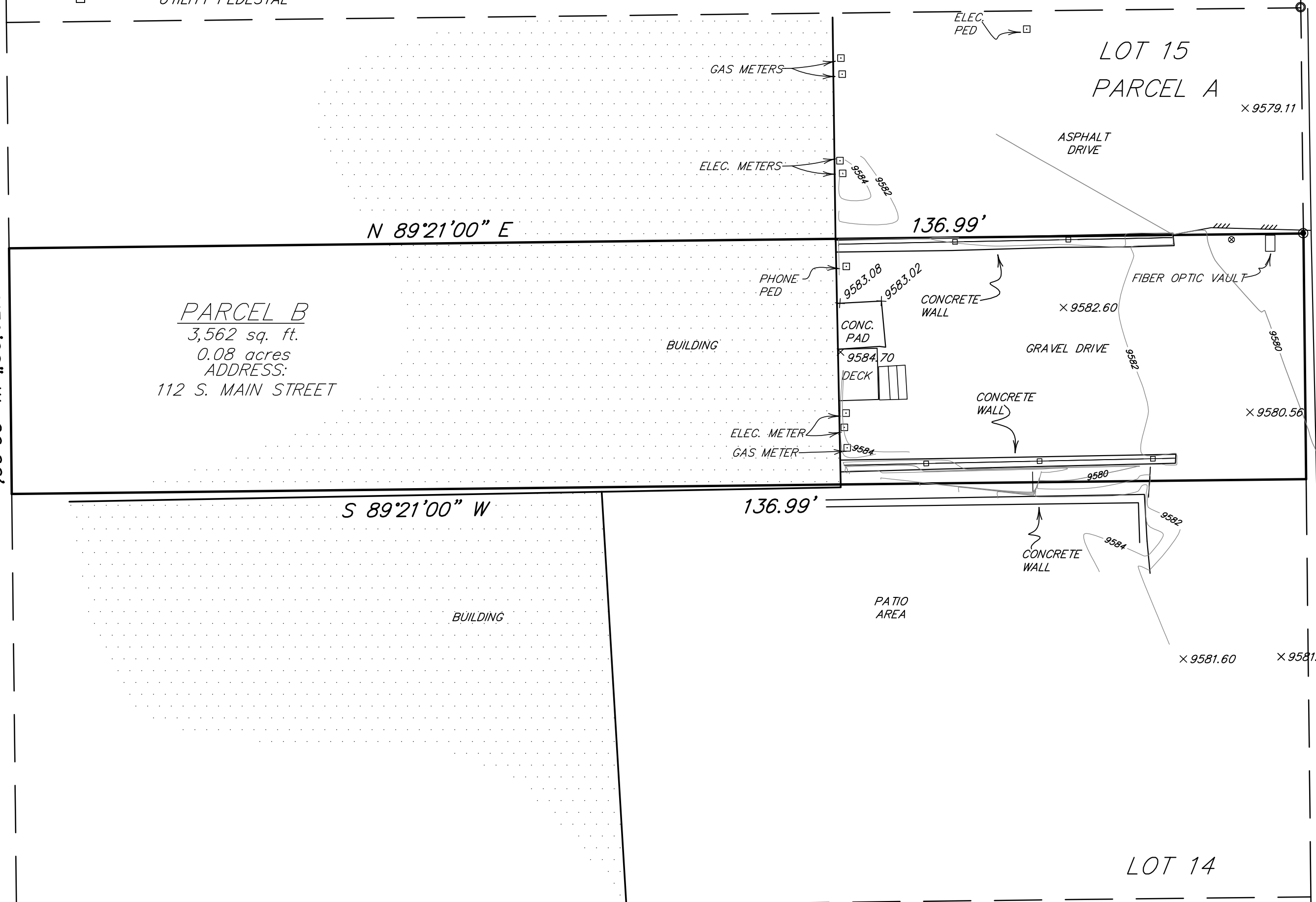


LEGEND

- FOUND REBAR & ALUMINUM CAP (PLS 37047)
- FOUND REBAR & BRONZE CAP (PLS 37047)
- CP Δ RANDOM SURVEY CONTROL POINT
- x 9581.03 SPOT ELEVATION
- WATER VALVE
- CURB STOP (WATER SERVICE)
- UTILITY PEDESTAL

MAIN STREET
 (68' R-O-W)

N 00°39'00" W 26.00'



PARCEL B
 3,562 sq. ft.
 0.08 acres
 ADDRESS:
 112 S. MAIN STREET

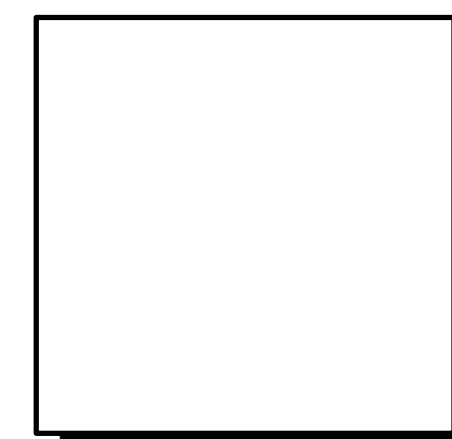
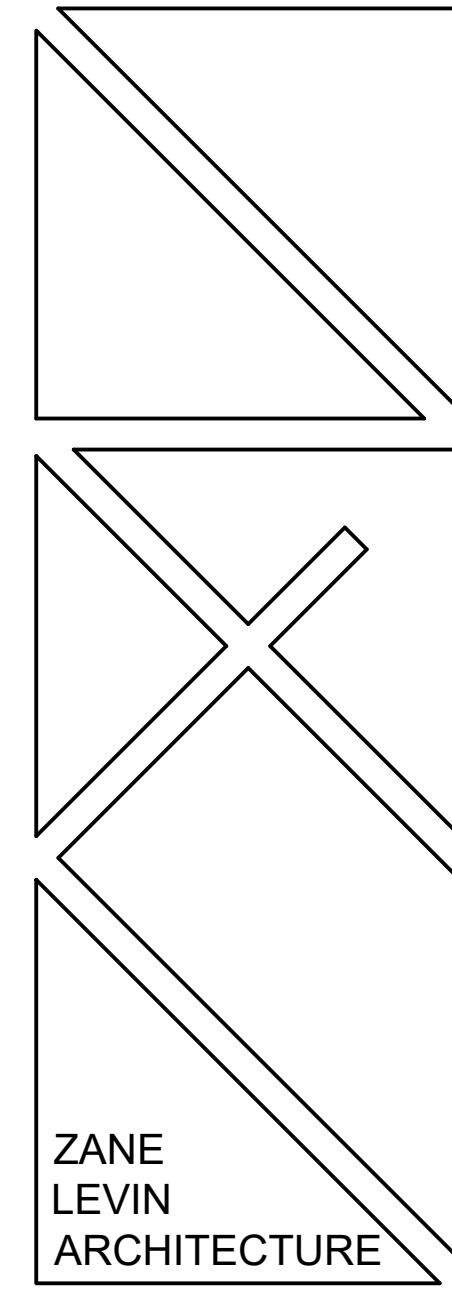
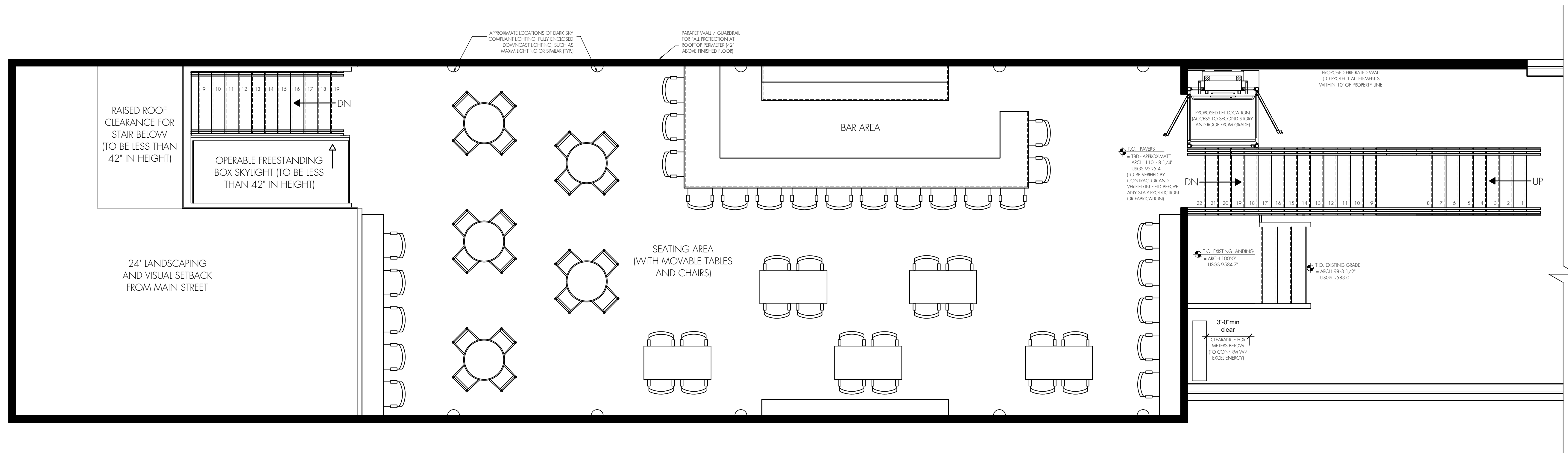
LOT 15
 PARCEL A

BLOCK 12
 ABBETT ADDITION



Drawn JK/ESH	Dwg 22393TP	Project 22393
Checked RRJ	Date 07/09/2021	Sheet 1 of 1
RANGE WEST ENGINEERS & SURVEYORS INC.		
P.O. Box 589 Silverthorne, CO 80498 970-468-6281		

NOTE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT; IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.



RMU ROOFTOP
 112 S MAIN STREET, BRECKENRIDGE, CO 80424
 PARCEL B BARTLETT & SHOCK SUB OF L 15

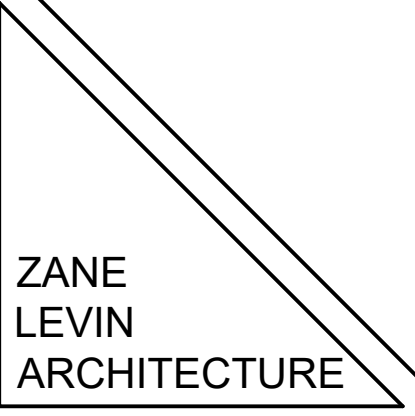
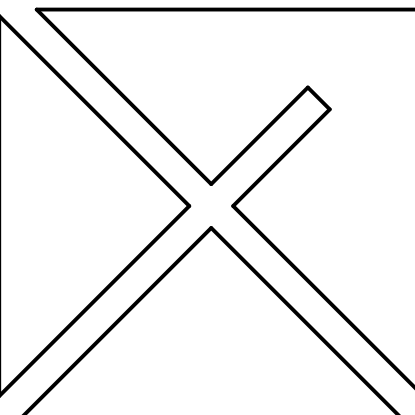
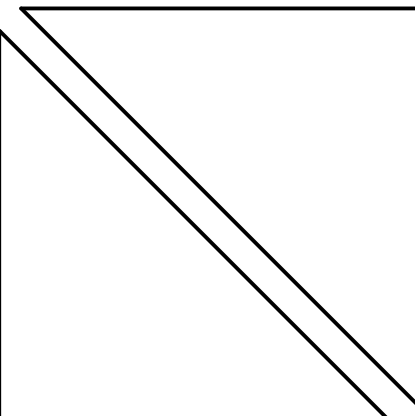
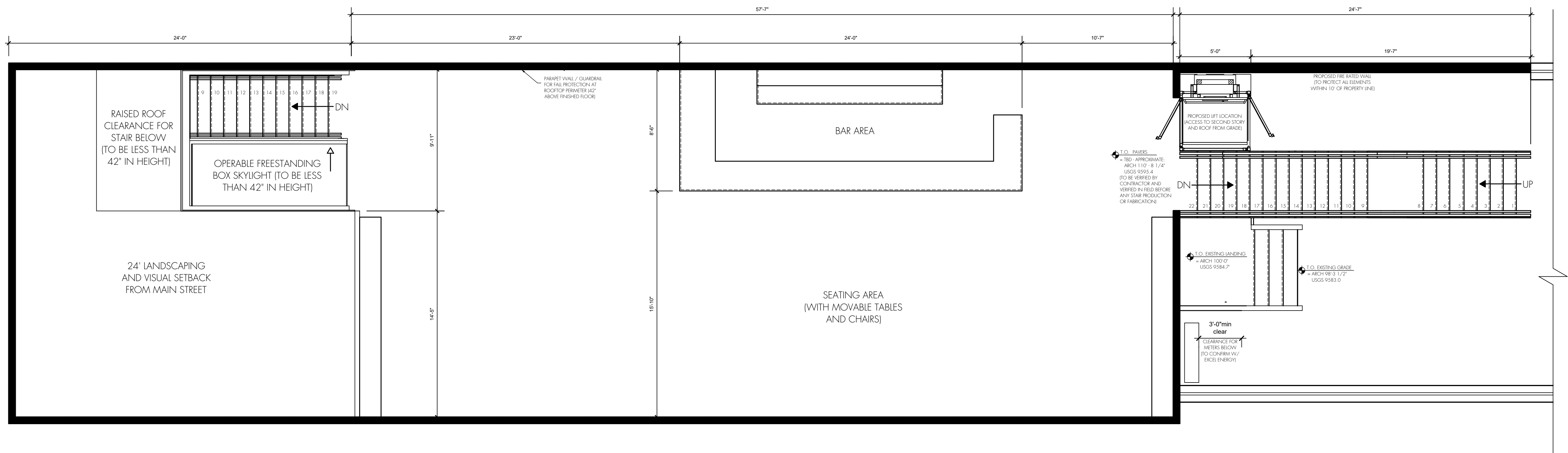
ISSUE:
 PROP. ROOF UPDATE - 9/28/21
 NOT FOR CONSTRUCTION

DATE: 09/28/21
 JOB: RMU ROOF
 DRAWN BY: ZL
 CHECKED BY: ZL

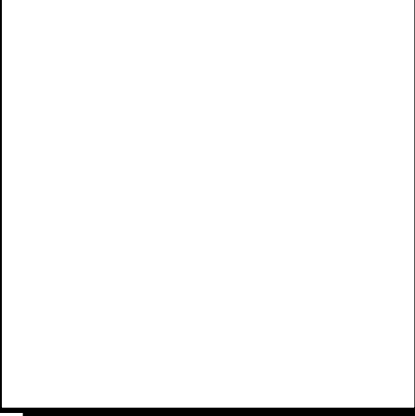
SHEET INFORMATION:
A1.1

PROPOSED ROOF PLAN





ZANE LEVIN ARCHITECTURE



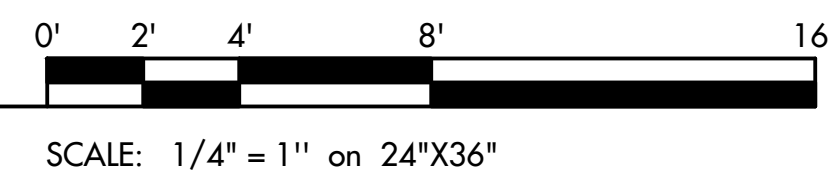
RMU ROOFTOP
 112 S MAIN STREET, BRECKENRIDGE, CO 80424
 PARCEL B BARTLETT & SHOCK SUB OF L 15

ISSUE:
 PROP. ROOF UPDATE - 9/28/21
 NOT FOR CONSTRUCTION

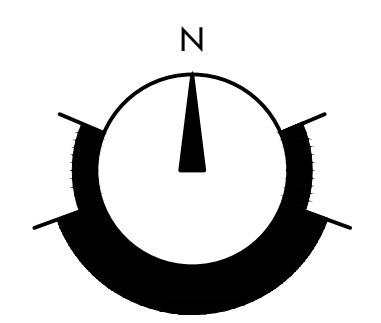
DATE: 09/28/21
 JOB: RMU ROOF
 DRAWN BY: ZL
 CHECKED BY: ZL

SHEET INFORMATION:
A1.2

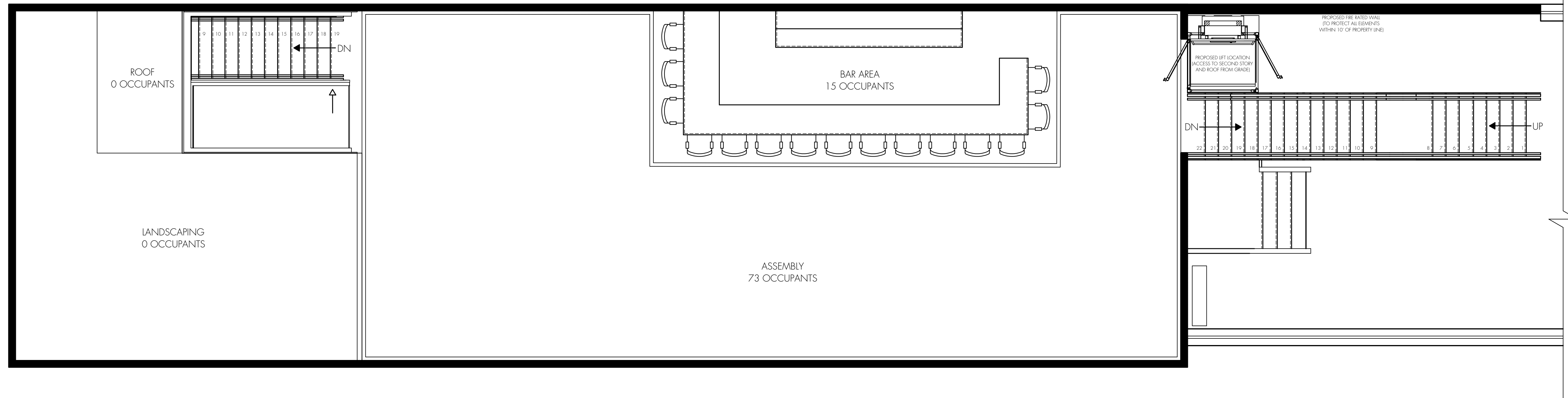
DIMENSIONED ROOF PLAN



SCALE: 1/4" = 1" on 24"X36"

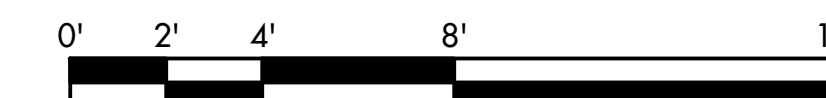


SUMMER / WINTER SUN ANGLES

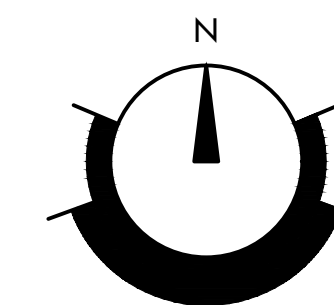


USE OF SPACE	SQFT	LOAD FACTOR	OCCUPANTS
ASSEMBLY	1095	15	73
BAR	N/A	N/A	15
TOTAL			88

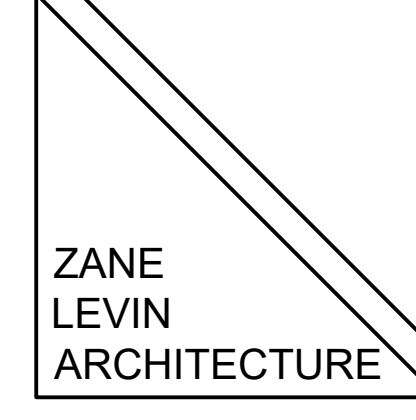
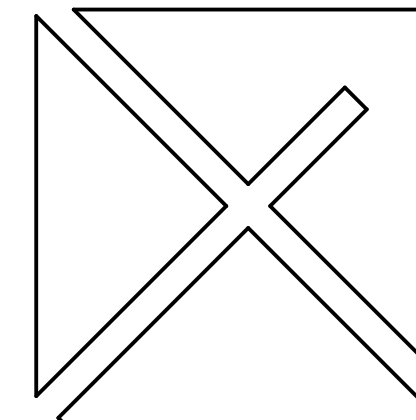
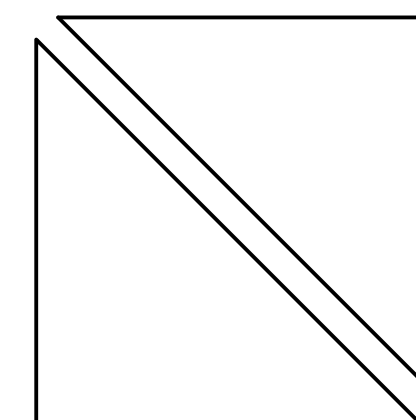
ROOF OCCUPANCY PLAN



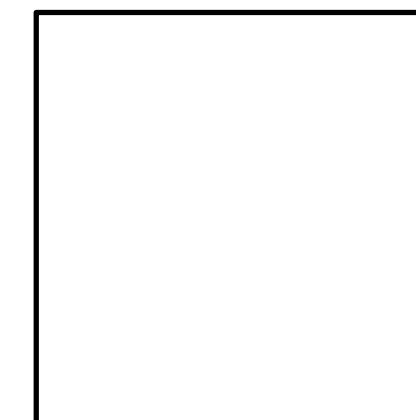
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SUMMER / WINTER
SUN ANGLES



ZANE
LEVIN
ARCHITECTURE



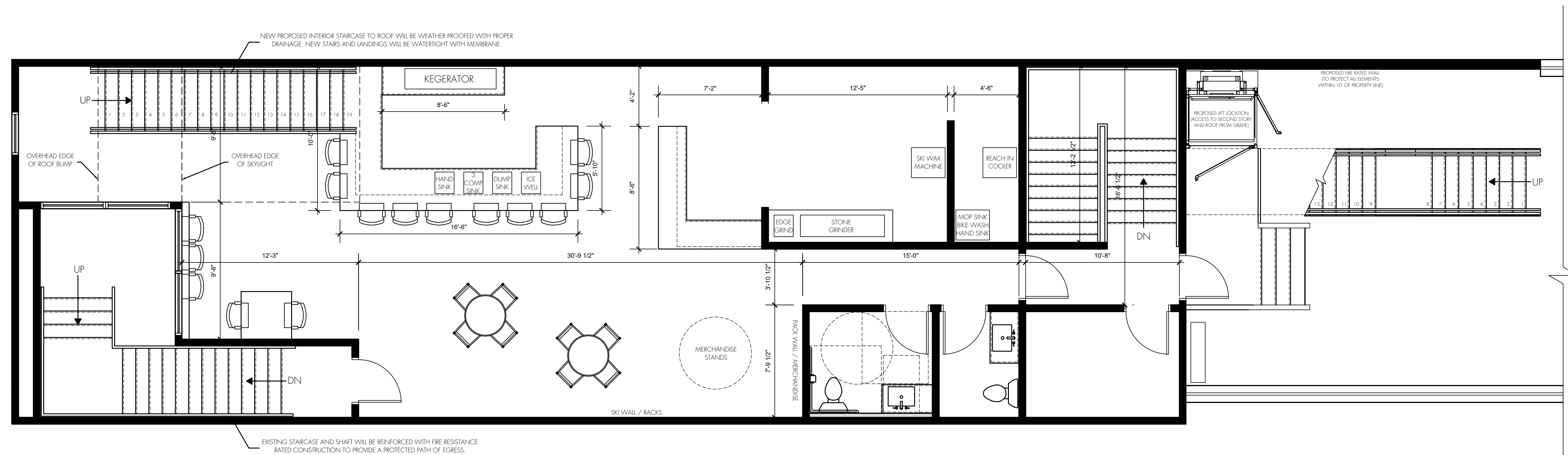
RMU ROOFTOP
112 S MAIN STREET, BRECKENRIDGE, CO 80424
PARCEL B BARTLETT & SHOCK SUB OF L 15

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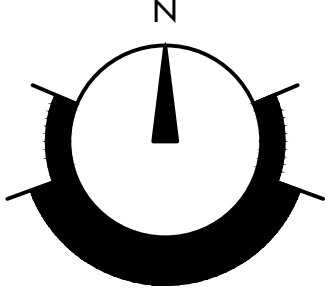
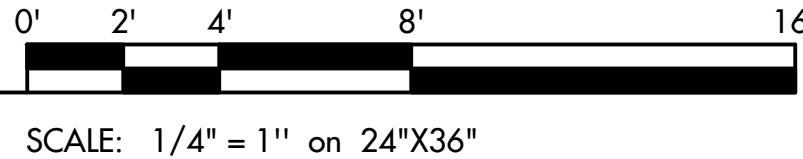
DATE: 09/28/21
JOB RMU ROOF
DRAWN BY: ZL
CHECKED BY: ZL

SHEET INFORMATION:

A1.3



SECOND FLOOR PLAN
(WITH PROPOSED STAIRS)



SUMMER / WINTER
SUN ANGLES

ZANE
LEVIN
ARCHITECTURE

RMU ROOFTOP

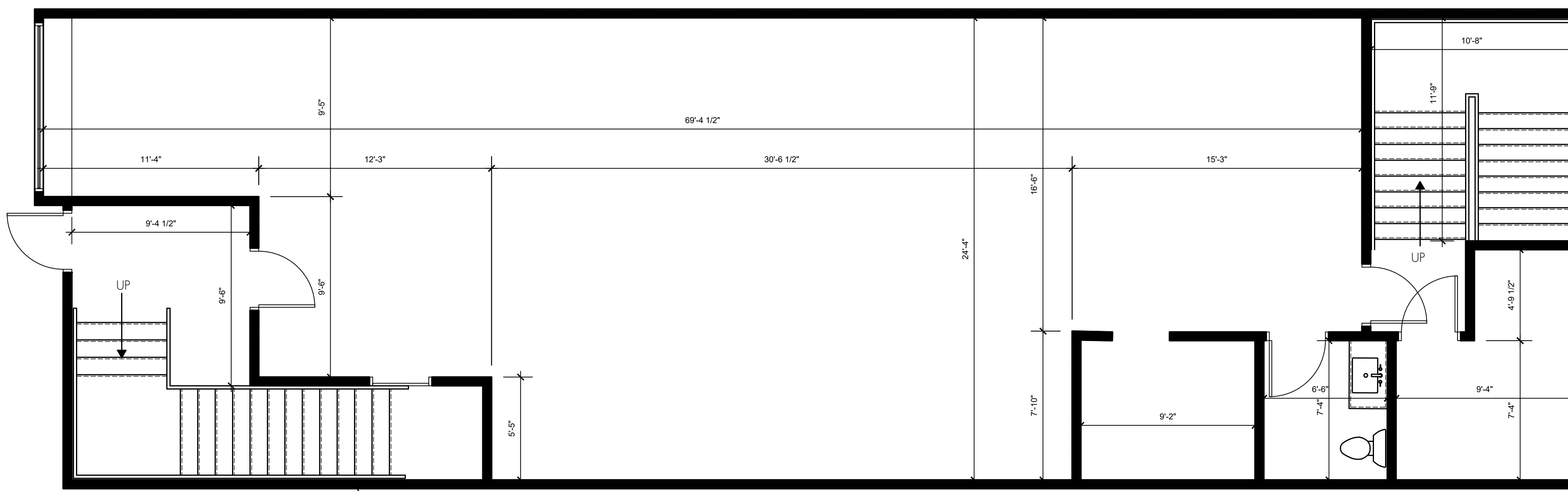
112 S MAIN STREET, BRECKENRIDGE, CO 80424
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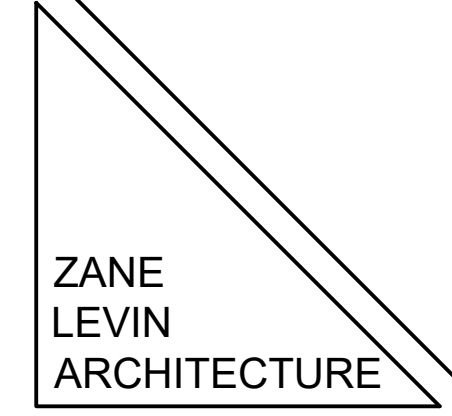
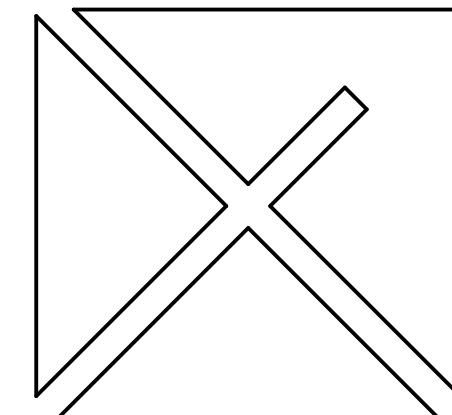
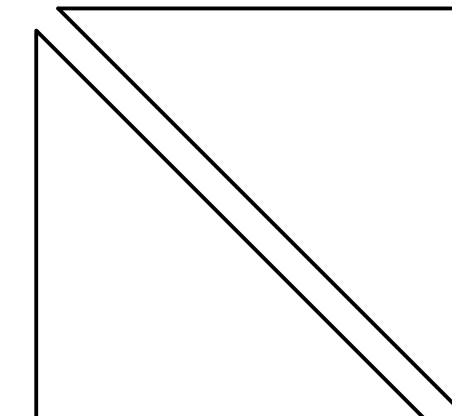
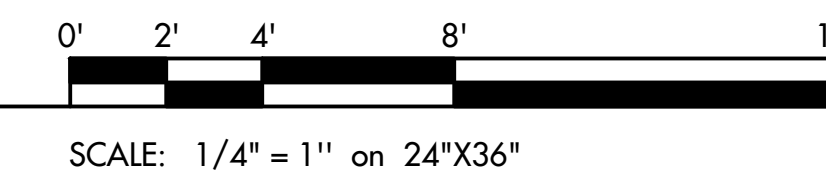
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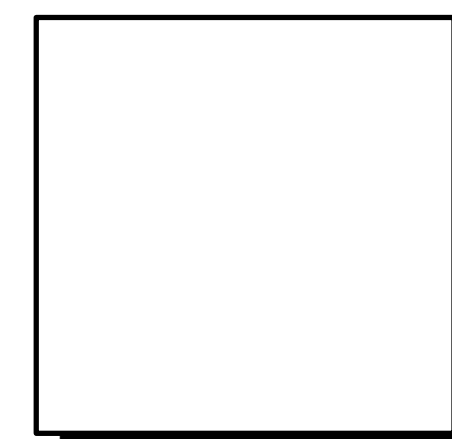


EXISTING STAIRCASE AND SHAFT WILL BE REINFORCED WITH FIRE RESISTANCE RATED CONSTRUCTION TO PROVIDE A PROTECTED PATH OF EGRESS.

EXISTING FIRST FLOOR PLAN



ZANE
LEVIN
ARCHITECTURE

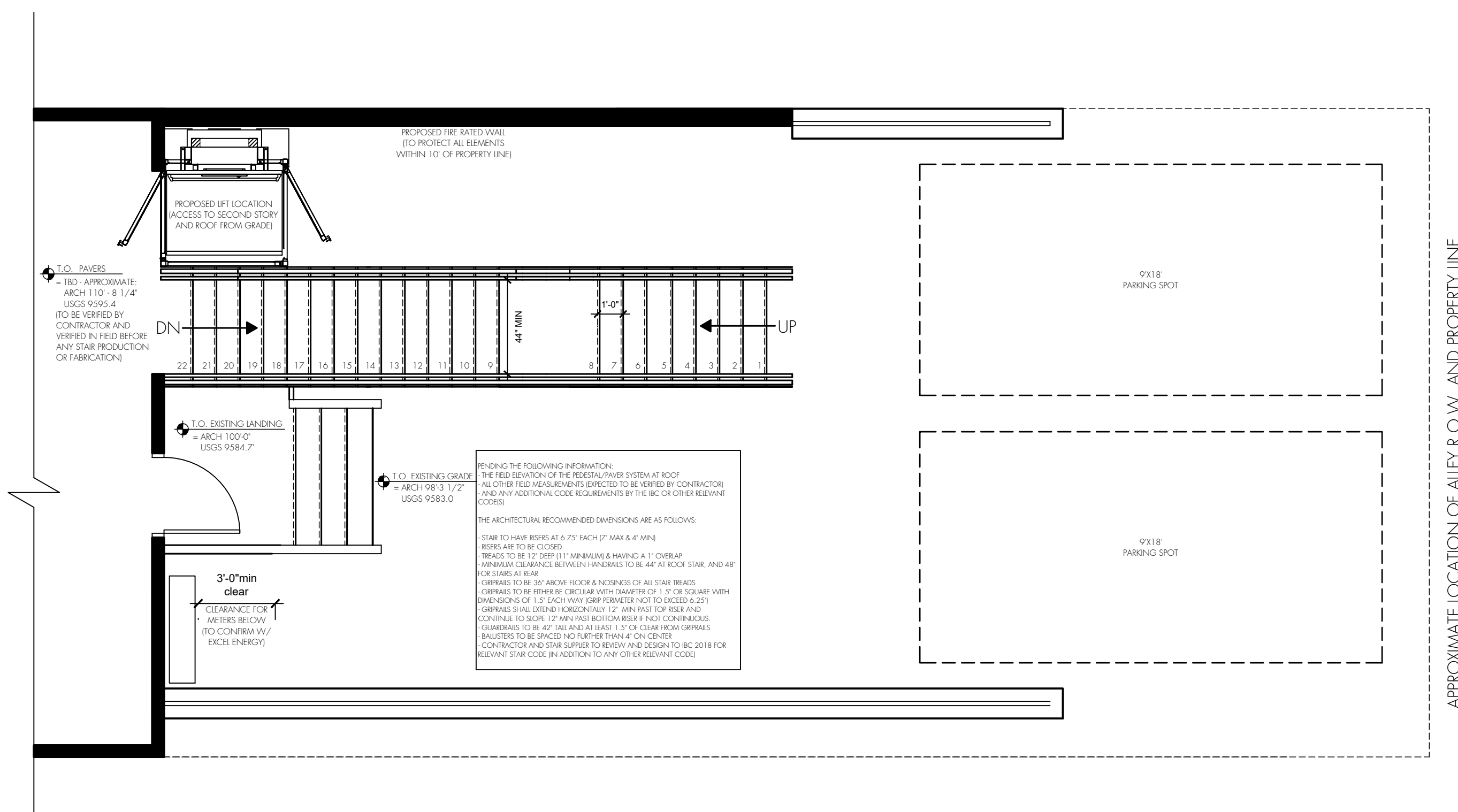


RMU ROOFTOP
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PARCEL B BARTLETT & SHOCK SUB OF L 15

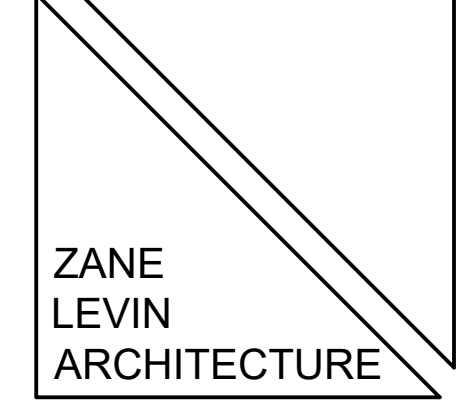
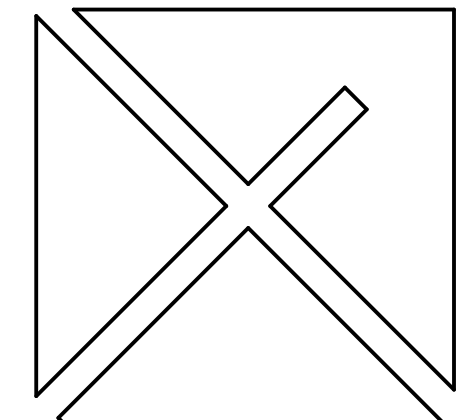
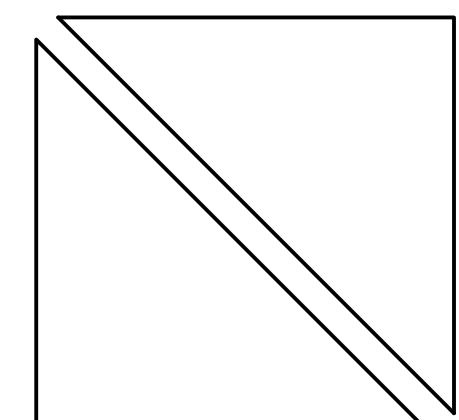
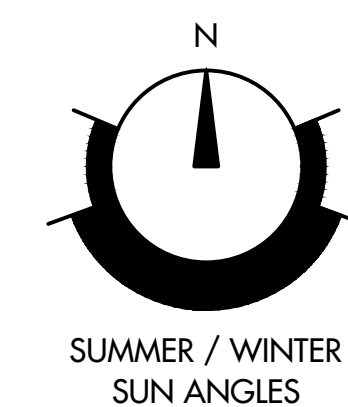
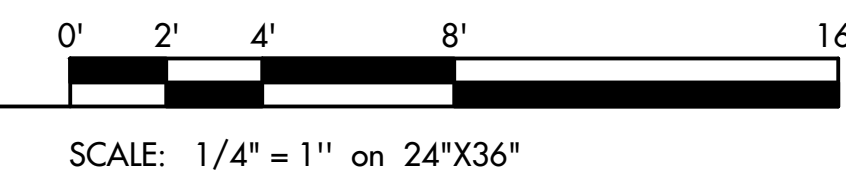
ISSUE:
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9/28/21
NOT FOR
CONSTRUCTION

DATE: 09/28/21
JOB RMU ROOF
DRAWN BY: ZL
CHECKED BY: ZL

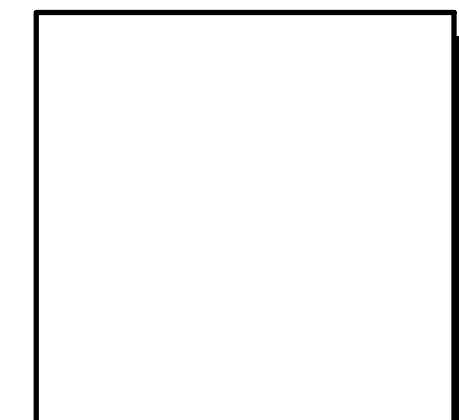
SHEET INFORMATION:
A1.5



REAR STAIR AND PARKING PLAN



ZANE LEVIN ARCHITECTURE



RMU ROOFTOP

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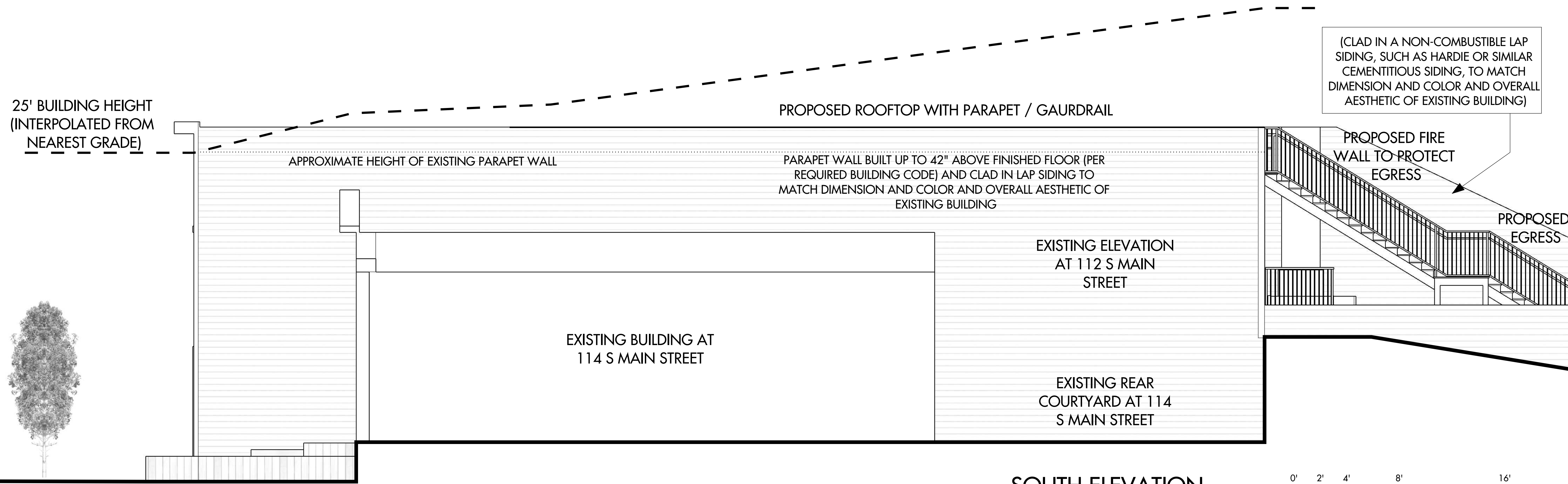
SHEET INFORMATION:
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WEST ELEVATION FROM MAIN STREET

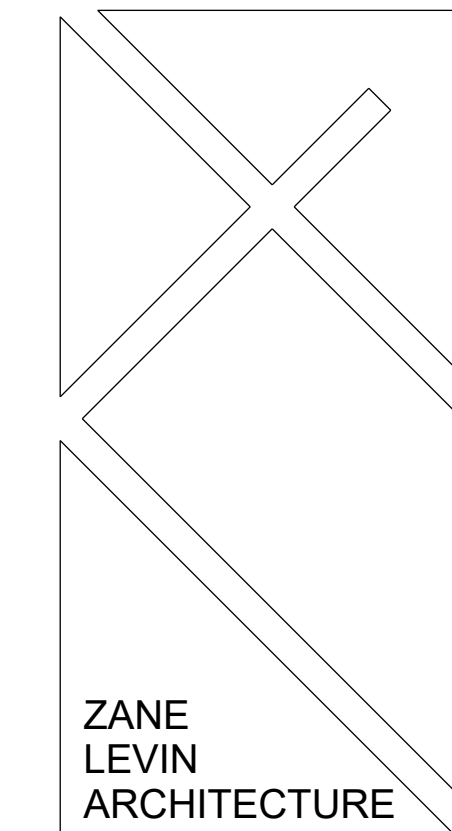
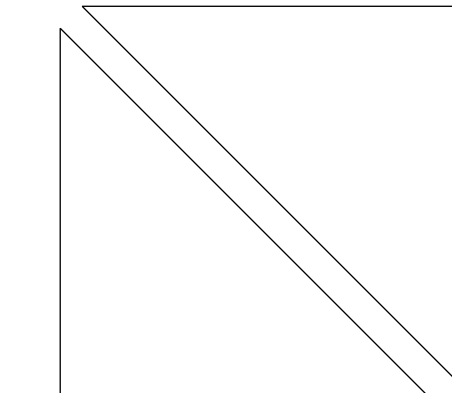
0' 2' 4' 8' 16'
SCALE: 1/4" = 1'

25' BUILDING HEIGHT
(INTERPOLATED FROM
NEAREST GRADE)

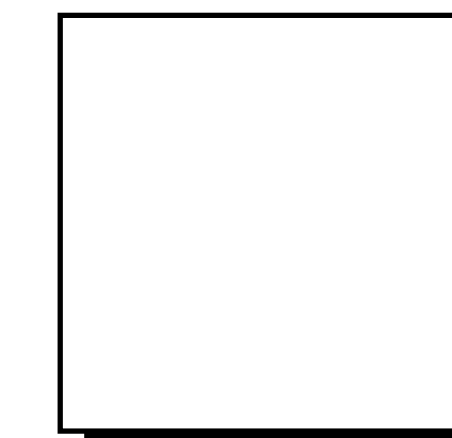


SOUTH ELEVATION

0' 2' 4' 8' 16'
SCALE: 1/4" = 1'



ZANE
LEVIN
ARCHITECTURE



RMU ROOFTOP

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PARCEL B BARTLETT & SHOCK SUB OF L 15

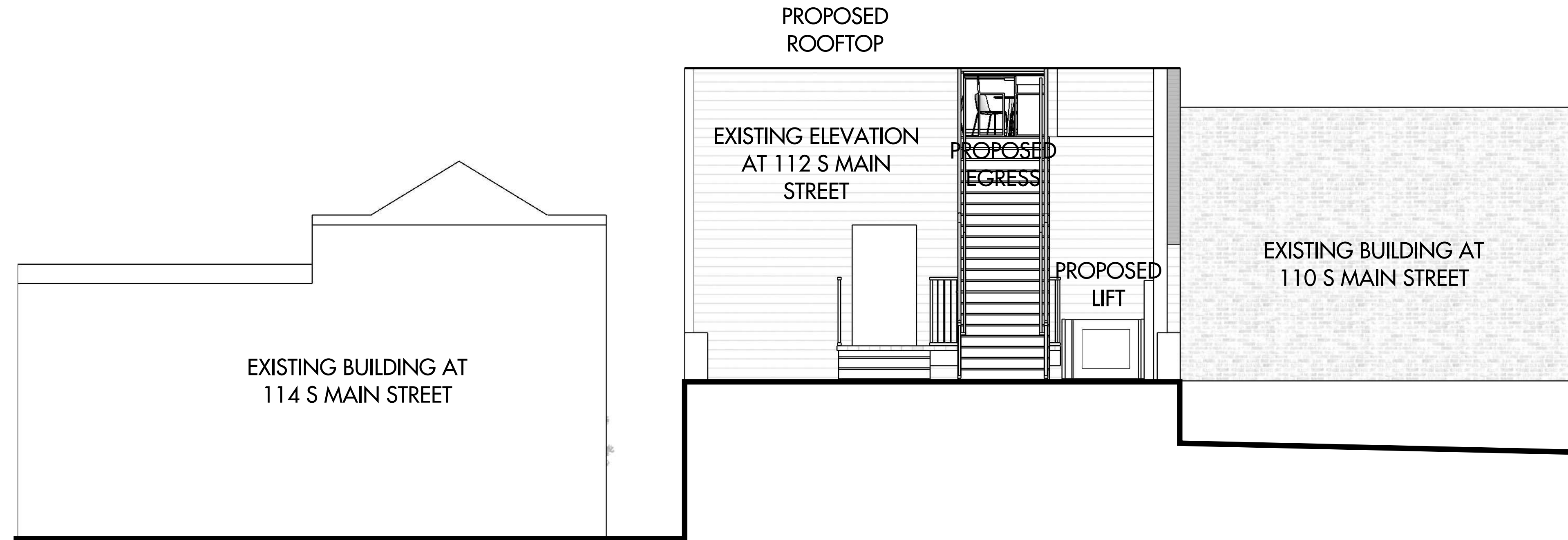
ISSUE:
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DRAWN BY: ZL
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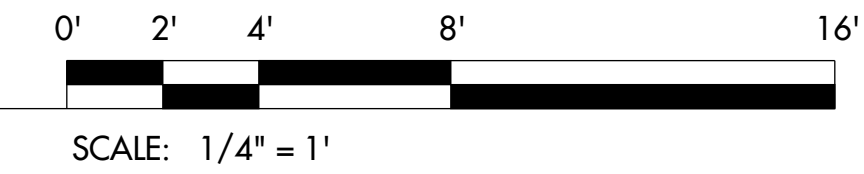
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A2.1

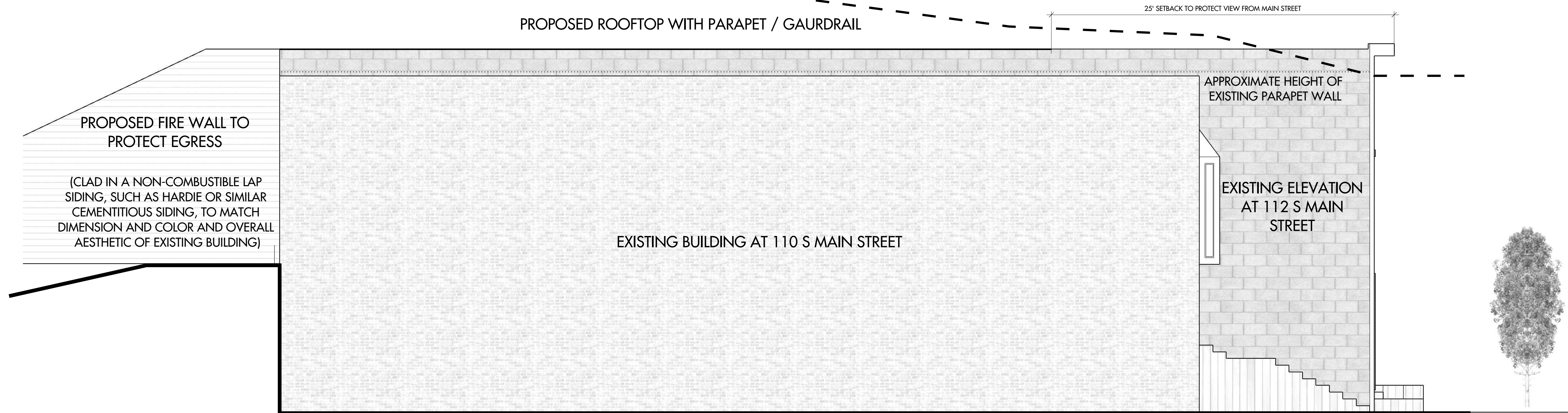
25' BUILDING HEIGHT
(INTERPOLATED FROM
NEAREST GRADE)



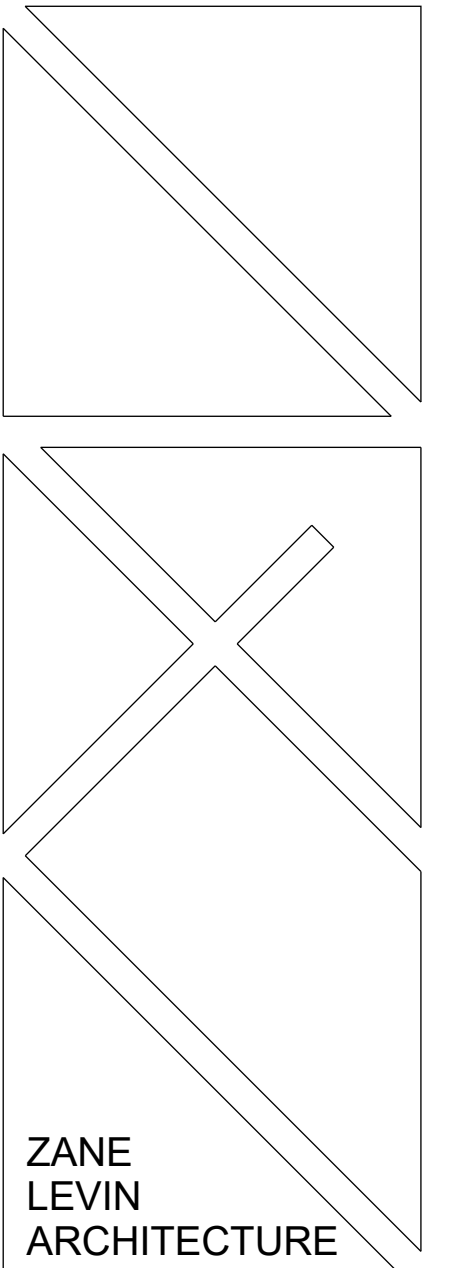
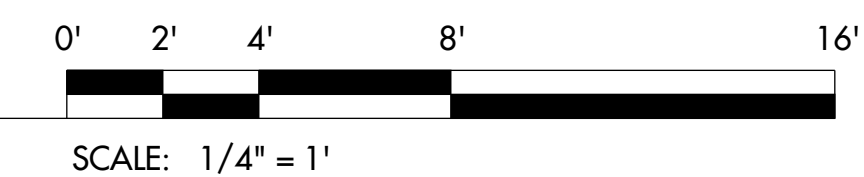
EAST ELEVATION FROM ALLEY



25' BUILDING HEIGHT
(INTERPOLATED FROM
NEAREST GRADE)



NORTH ELEVATION



ZANE
LEVIN
ARCHITECTURE

RMU ROOFTOP

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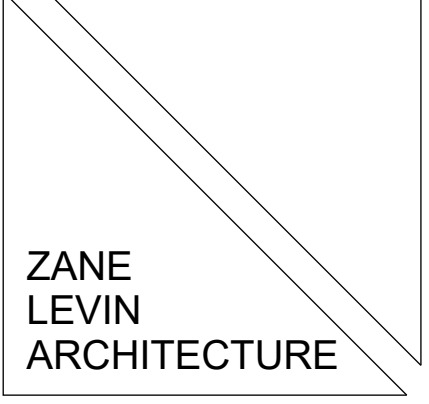
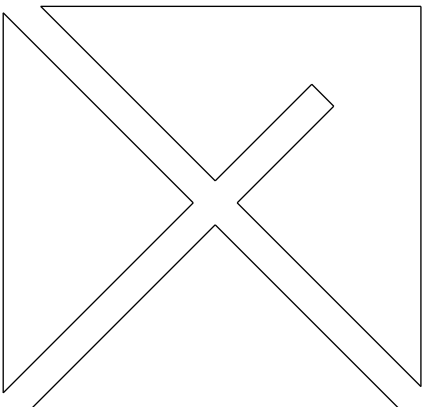
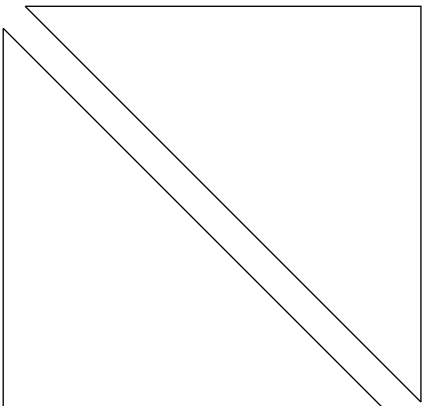
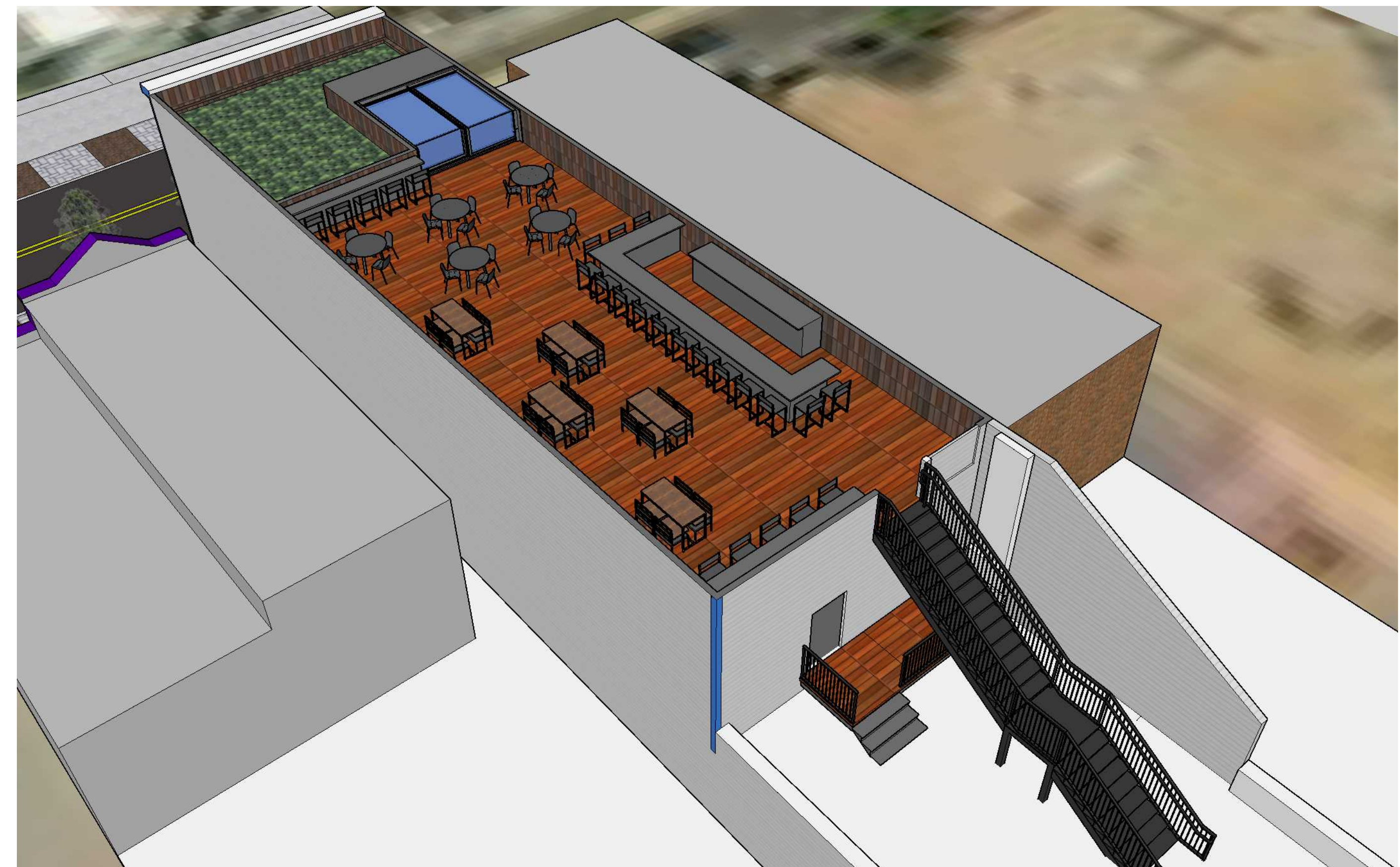
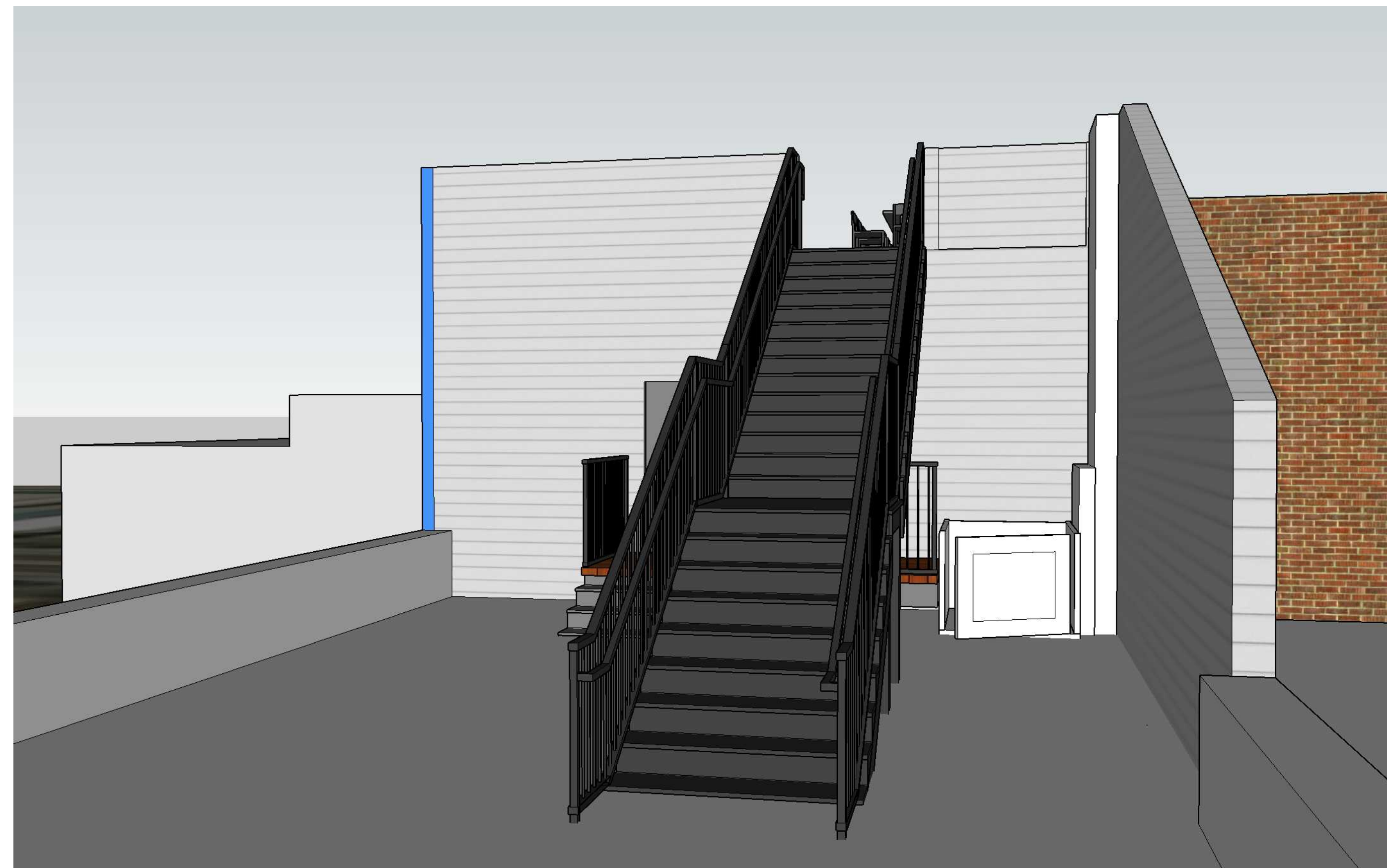
JOB: RMU

DRAWN BY: ZL

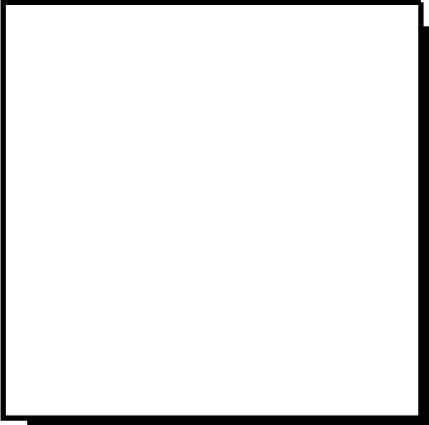
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SHEET INFORMATION:

A2.2



ZANE
LEVIN
ARCHITECTURE



RMU ROOFTOP
112 S MAIN STREET, BRECKENRIDGE, CO 80424
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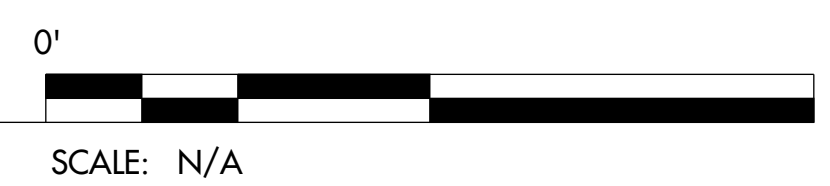
ISSUE:
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7/29/21
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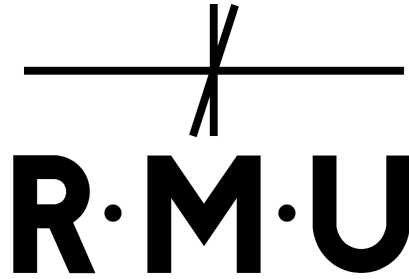
DATE: 7/29/2021
JOB: RMU
DRAWN BY: ZL
CHECKED BY: ZL

SHEET INFORMATION:

A2.3

PERSPECTIVES





RMU Rooftop Patio @ 112 S. Main St.

Materials and Color Proposal

A - Perimeter Border: The perimeter will extend up 42" and is meant to look like a continuation of the siding of the building. It will be built with wood lap siding in the same dimension as the building and match the existing color of the building which is white.



B - Decking Material: RMU is proposing to use the Bison Pedestal Decking system. This is a floating deck system.



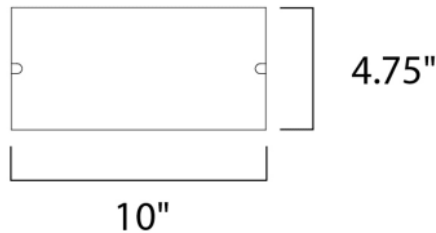
C - Staircase: The staircase will be made out of metal per the engineers request that it be non-combustible. This will be located in the back alley. See example of materials below.

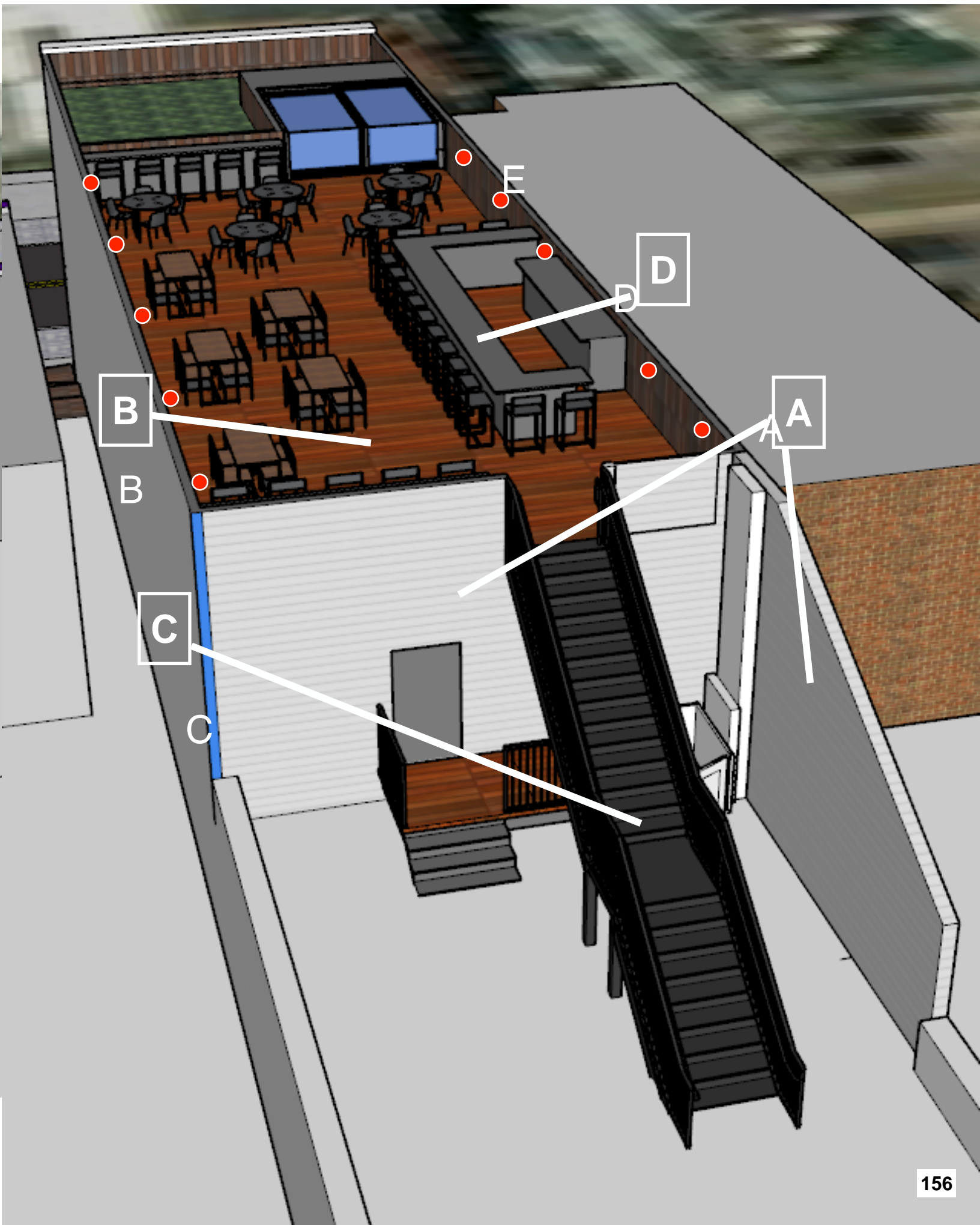


D - Furniture: Everything behind the perimeter border will not be visible from Main St. or the back alley. All furniture will be temporary and moveable.



Lighting: We are proposing bistro style lighting for ambiance May 1st - October 31st. The lights will not exceed 7ft above the deck per "9-12-11 Lighting Standards". We have no intention of keeping the patio open during the winter season. For walkways and stairs we will use LED fully shielded, downcast and semi opaque. See examples below. On page 13 of the plans you can see the above materials called out as well as red dots which indicate where the Maxim light fixtures will be located.







Right Hand Exit

Left Hand Exit

Name: Free Standing Skybox

Type: Electrically operated sliding skylight

Description:

The Free Standing Skybox is a thermally efficient opening product designed to allow access from a stairwell to a roof terrace or similar. The product is available in either left or right hand opening formats - the moving section (door) is made of two glass panes mounted into a frame that slides over the fixed panes giving a large aperture ideal for placement at the top of a staircase of almost any configuration.

A variety of optional extras including a rain sensor, thermostat, remote control and home automation system connectivity are available. Proximity detection (safety sensors that immediately stop the product moving when an infrared light beam is broken) is included on every product as standard. A solenoid security bolt is also fitted as standard ensuring that the product remains secure in all situations.

This product is robust and long-lasting, boasting excellent thermal performance, air tightness and reliable operation.

Intended Use: Sliding skylight to be used for regular access, to provide natural daylight, day-to-day ventilation and weather resistance.

External Weathered Curb Dimensions:	Min Span:	52"	Max Span:	137"
	Min Width:	60"	Max Width:	157"
	Min Height:	34"	Max Height:	59"
	Min Area:	21.0 ft ²	Max Area:	90.4 ft ²
	Min Curb Pitch:	0" : 12" (0°)	Max Curb Pitch:	0" : 12" (0°)

Note that the minimum and maximum span, width and height are dependent on various factors, your technical sales advisor will be happy to advise on these. Further information on curb requirements and product dimensions can be found on our website or by contacting your technical sales advisor.

Glazing: A wide variety of glazing specifications are available for this product. Your technical sales advisor will be happy to answer any questions regarding specific glass specifications or glazing performance requirements. Otherwise, quotes include suitable and cost effective glazing proposals.

Standard Colors: Qualicoat approved RAL 7015 slate grey outer, RAL 9010 pure white inner.

Control, Power and Drive: The product is operated using a supplied wall mounted switch connected to a control box mounted inside the product framework via a flying lead.

Also supplied is an externally housed Power Supply Unit requiring connection to the main power supply. It is recommended that the PSU is housed somewhere accessible.

The unit is driven by two leadscrew mechanisms that are synchronized using motor encoder feedback and, in the event of power failure, can be manually overridden.

Performance and Weathertightness:

The product comprises thermally broken aluminum sections consisting of polyamide thermal breaks and closed cell PIR insulation thermally isolating the inner and outer frame sections. Structural integrity is assured through the use of finite element analysis (FEA) and testing.

U-factors are calculated for each product and will be supplied in our quote. Further information and specific performance details can be obtained from your technical sales advisor.

The product is sealed to the upstand using silicone and fixed in place with structural fixings which are concealed by a clip-on cover leaving a sleek external finish. Sealing between the base frame and the door frame is achieved using a combination of silicone bubble seals and PU seals with PE sliding surfaces.

The product has been thoroughly tested and has achieved the following classification results:
Size: 3500 mm (137-3/4") span x 2400 mm (94-1/2") width x 1500 mm (59") height Pitch: 0° (0" : 12")

Test	Standard	Declared Value
Air permeability	ASTM E283	±300 Pa (6.27 psf)
Watertightness	ASTM E331	300 Pa (6.27 psf)
	AMMA 501.1	600 Pa (12.53 psf)
Wind resistance	ASTM E330	+2400 Pa (+50.13 psf), -1200 Pa (-25.06 psf) Serviceability +3200 Pa (+66.83 psf), -1250 Pa (-26.11 psf) Safety

Security:

When closed, the door of the product is locked in place with a solenoid bolt. The framework is designed such that the door cannot be lifted from its tracks.

Optional Extras:

The following optional extras are available for this standard product at additional cost:

Easy Clean Coating:	A coating applied to the external face of the glass that facilitates water run-off. Helps the glass stay cleaner for longer and makes cleaning easier.
Special Color(s):	This product has separate inner and outer colors as standard. Each can be swapped for a special color.
Remote Control:	Allows the product to be opened and closed from a short range.
Rain Sensor:	Automatically closes the product when moisture is detected.
Rain Sensor Isolator:	An internally mounted wall switch that allows the rain sensor to be turned off so that it does not automatically close the product when moisture is detected.
Thermostat:	Automatically operates the product to regulate the temperature within the building.
Keypad or Key Switch:	Offers secure access either via an externally mounted four-digit numerical pass code keypad or a key switch.
Battery Backup:	Allows full operation of the product for a limited period in the event of a power failure.
Home Automation:	Allows the product to be operated by contact closure of a third-party home automation system.
Curb Top Trim:	Cover designed to mask the top of curbs which may be visible through glass when viewed from above. Includes detail to recess standard drywall.

A suite of sales drawings is available.

Custom options may be available upon request but may incur additional design fees – contact your technical sales advisor for more information.

GLAZINGVISION



www.glazingvision.com



833-SKYDOOR (833-759-3667)



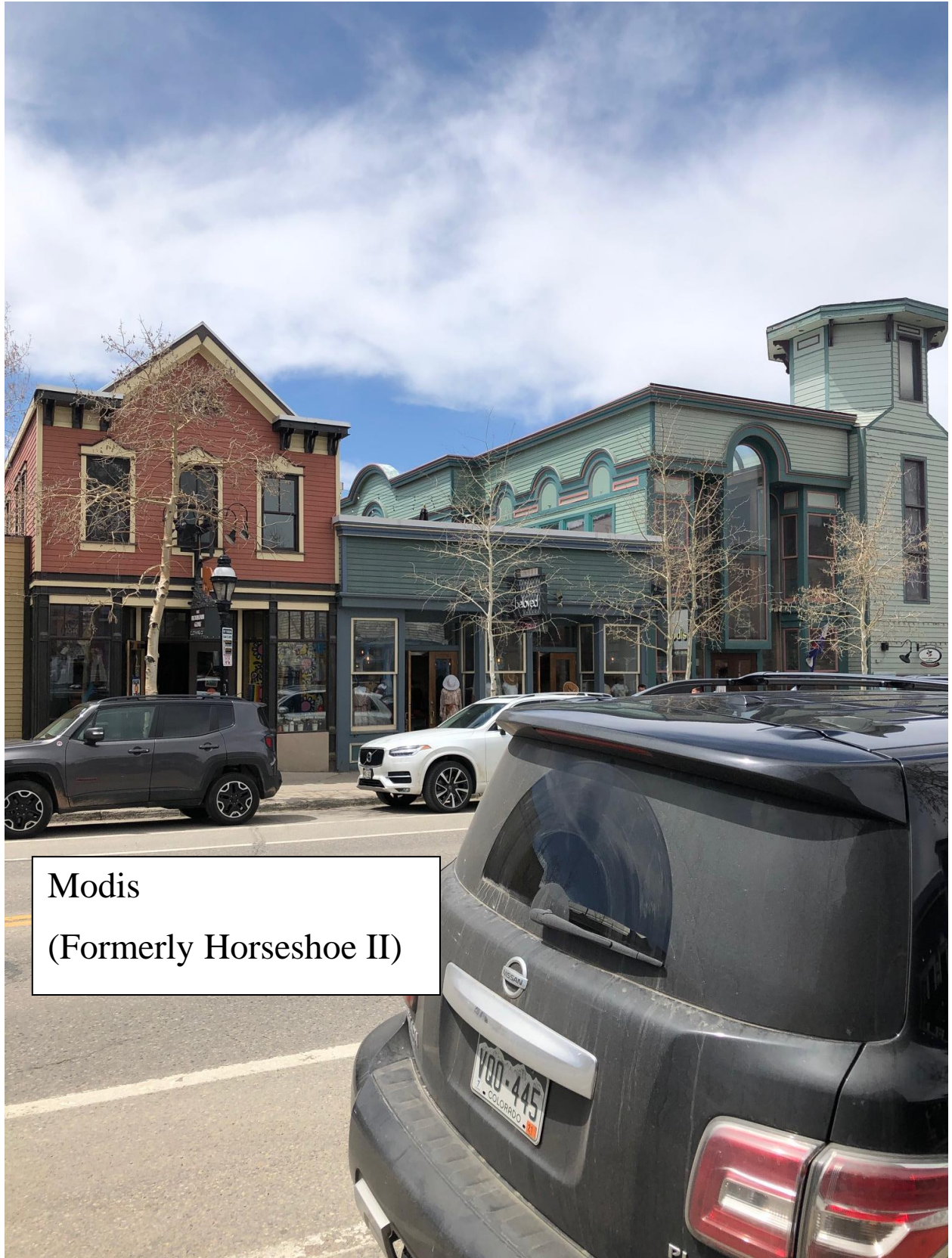
sales@glazingvision.com



Fatty's



Hilliard House



Modis
(Formerly Horseshoe II)



South Ridge Seafood
(Formerly Euro
Restaurant)



Proposed RMU Location

RMU Support Petition

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RMU Support Petition

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RMU Support Petition

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* RMU Rooftop Patio! * Please Sign!

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IGN TO HELP US GET OUR ROOFTOP BAR APPROVED

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September 29th, 2021

To: Breckenridge Town Council

From: Mia Yue

Subject: RMU Roof Top Deck located at 112 S. Main Street

Dear Town Council-

Thank you for taking the time to read this letter. I am writing in support of the rooftop patio currently in the Breckenridge city planning approval stages submitted by RMU (Rocky Mountain Underground).

RMU is not only a bar and a manufacturer of outdoor equipment, it is a gathering place for the community and a thriving business. For over 8 years, RMU has been providing jobs in the community and bringing people together. Since 2009 RMU has raised over \$340,000 in charity donations and continues to do so monthly, with increasing focus on positive community impact.

The first time that the Breckenridge City Council was presented with the Planning Commission's approval of RMU's application for a rooftop patio, was August 10th, 2021. All questions asked by the Council were addressed and were in compliance with the code put forth by the city.

The expansion of RMU's current space would create even more opportunity to provide jobs, support the local economy and fundraise, just to mention a few positive outcomes. I greatly appreciate your time and consideration with regards the RMU rooftop patio.

September 29, 2021

To: Breckenridge Town Council
From: Paul and Camille Bonta
Subj: RMU Roof Top Deck, 112 S. Main Street.

We are writing in strong support of the application submitted by Rocky Mountain Underground (RMU) to add a deck and bar area to the roof of the building located at 112 S. Main Street.

In 2015, we became full-time residents of Breckenridge, residing at 395 Baldy Road. Our three children attend Summit Middle and High Schools.

RMU, an employee-owned company, is recognized internationally as a Breckenridge-based ski company, but it is more than that. RMU's locations at 112 and 114 S. Main Street are gathering places for members of our community and a destination for visitors. During the early weeks of the COVID-19 pandemic, RMU found ways to support members of our community who found themselves without work, including local musicians. RMU hosts fundraisers and community events, including mountain bike rides throughout the summer.

The sense of community is what makes Breckenridge special. RMU contributes to this community's mountain culture and has become part of the town's fabric. RMU's growth and expansion deserves the support of each member of this Council, including through the immediate approval of its application to add a deck and bar area to its 112 S. Main Street location.

On August 10, 2021, this Council was presented with an overview of the Planning Commission's 4-0 approval of RMU's application for a roof top deck and bar. During that discussion, RMU representatives thoroughly answered questions from the Council about the deck's design, including the rear metal exterior staircase, lift and fire wall. RMU representatives were also confronted with questions about noise generation and restrooms. While these may be topics of interest, they are not issues upon which this application can or should be denied or approval delayed.

RMU has given back to this community time and again. RMU's growth, prosperity and international recognition should be appreciated and supported, including by members of this Council through their approval of RMU's roof top deck and bar application.

Thank you for allowing us to share our views and to request your support.

Dear Chris Krulick,

This is a short letter of support regarding RMU in Breckenridge and their proposal for a rooftop patio.

RMU employs many locals not only in Breck but in Whistler, BC and now Truckee, CA. They are an integral part of the community connecting and promoting positive morale throughout the town by sponsoring events, athletes, and fundraisers. In addition, they have begun to pioneer a green initiative promoting positive change within the company and the community. These guys are a wonderful group of people with zest for the outdoors, skiing, and mountain biking.

Sincerely Ted Low
RMU Friend
ted@whistlerbc.net

Planning Commission Meeting
August 3, 2021

Dear Planning Commission Members:

The undersigned residents living in the Historic District strongly object to the proposed RMU roof top deck based on the profound negative impact that it will likely impose on our neighborhood.

The noise that will be broadcasted throughout our neighborhood as a result of ~~4~~⁸⁸ people occupying a roof top bar with live or amplified music 25 feet above grade will inundate our neighborhood resulting in "significant and continuous noise."

We ask that you deny the Permit Application to protect and preserve the quality of life for nearby residents who live in and contribute to our community.

Additionally, the use of the roof for an exterior bar and entertainment venue creates accessibility issues for people with physical disabilities and, therefore, such rooftop use appears to violate the Development Code and Building Code.

Please consider the following points as part of your decision making process:

From the Town of Breckenridge Development Code:

19-1-18-1(E) Within the historic district, the town may make the following decisions in addition to the decisions allowed above:

c. The town may deny the application based upon a finding that approval of the development permit will have a significant, negative impact upon the historic character of the site, building or community as a whole. (Ord. 22, Series 2016)

9-1-19-2R: Policy 2 (Relative) Land Use Guidelines:

3 X (-2/0) C. Nuisances: Uses that create a nuisance or hazard to others in the community, including, but not limited to, significant or continuous noise, vibration, odors, radio or electronic interference, or heat shall be discouraged.

From the 2018 International Building Code:

Chapter 11
Accessibility:

Chapter 11 contains provisions that set forth requirements for accessibility of buildings and their associated sites and facilities for people with physical disabilities. The fundamental philosophy of the code on the subject of accessibility is that everything is required to be accessible.

1104.4 Multistory buildings and facilities.

At least one accessible route shall connect each accessible story, mezzanine and occupied roofs in multilevel buildings and facilities.

1108.2.9 Dining and drinking areas.

In dining and drinking areas, all interior and exterior floor areas shall be accessible and be on an accessible route.

Other questions and concerns:

Will there be live music, amplified music or outdoor speakers?

Will there be limitations on the hours of operation?

How can the Town's Noise Ordinance be complied with considering a maximum of 70 decibels is allowed from 7:01 AM to 10:59 PM Normal conversation is quantified to be 60 - 65 decibels.

Who is responsible for monitoring the decibel levels from the roof top deck with up to 47 occupants?

Thank you for your consideration.

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Additional comments regarding the skylights proposed over the interior egress stair

IBC Section 1003.6 means of egress continuity. “The path of travel along a means of egress shall not be interrupted by a building element other than a means of egress component as specified in this chapter.”

The proposed skylight is not permitted as an element of the required egress path of travel.

Additionally, sliding doors and security grills are not permitted for the proposed use. (IBC 101.1.4.5) Temporary covers and or barriers are not permitted to obstruct the means of egress.

A code compliant door and landing is the only allowable egress component permitted by Chapter 10 IBC for an A occupancy as proposed.

A code compliant stair and landing will require a roof top stair structure as it is infeasible to consider an open stair from the roof to the lower level.

It seems unrealistic for Council to approve a DRB when a significant exterior element will need to be added to the building and that element may breach a mandatory height limit?

RMU Roof Top Deck (revised) Proposal, Building Code Comments

The applicants have proposed a sliding skylight as the access to the required secondary means of egress.

Means of egress doors are required to be a minimum 80” opening height with a min clear opening width of 32”.

A min 44” landing is required at both sides of the means of egress door and at the top of the means of egress stair. (The required stair and door landings can overlap i.e., one 44-inch landing is required.)

A means of egress door is required to be side hinged swing type door opening in the direction of travel from the occupied space, toward the means of egress stair.

A means of egress door for an occupancy load of 50+ is required to have panic hardware (on the occupied space side).

The min ceiling height of the required landing is 7'6"

The min ceiling clearance over the stair is 6' 8"

The required second means of egress needs to meet all the above. A sliding skylight does not meet the requirements of a means of egress. A compliant means of egress door and landing will include an enclosed roof top addition that will be at a min 7' 6" plus roof structure above the roof deck level.

The proposed interior path of egress via the proposed exit access stair from the roof deck, passes through the second and first stories before the exit access at the first-floor level. IBC Sect 1006.3.1 does not permit unprotected paths of egress travel to pass through more than one adjacent story. **A protected exit stair from the occupied roof deck that does not require exit access through more than one adjacent story will likely include a new exterior exit discharge door from the stair at the first-floor level of the building, most likely on the street elevation.**

The proposed exterior exit stair is required to be at a min of 10 feet set back from both the north and south adjacent lot lines or fire rated wall protection needs to be provided. The required setback/fire rated wall protection includes all landings and the lower flight of the proposed exterior exit stairway. **A rated wall the same as the one proposed on the north lot line, will also be required on the south lot line as the setback to the southern lot line is less than 10 feet.**

Additional potential issues outside of Planning Commission purview

Per the architect's notes on Plan A1.6 the min width of the exterior exit stairway is 48" between handrails, not 44" as dimensioned on the plan. This width is required as that stair will need to be an accessible means of egress.

The proposed wheelchair platform lift will be required to have a code compliant backup power source.

It likely the proposed increase in the occupancy load of the restaurant/bar will trigger a Fire District requirement for a fire sprinkler system throughout the building. This will most likely require a new increased sized water service line and tap.

The existing roof and supporting construction, if built to meet code, would support a snow load of 90 psf plus the dead load of the roof construction material (typically 10-15 psf). The proposed assembly occupancy would increase the required minimum structural live load of the roof to 100 psf, plus the existing roof construction dead load and an additional load capacity for the floating floor system.

It seems reasonable to enquire if the applicants have engaged an engineer to confirm the existing structure as built will support the additional loads.

Per the plans the building has two existing unprotected stairs from the first to second floor. Unprotected means they are not enclosed within a fire rated shaft. The existing unprotected stairs meet code

Submitted by Tim
Casey

because they only serve or atmospherically communicate between two stories. The new interior exit access stair is also proposed to be unprotected. The proposed additional story (the roof deck) and the new unprotected stair means that the building as proposed would have 3 stories atmospherically connected by unprotected stairs. **Section 1019 IBC does not permit the interior unprotected exit access stair configuration as proposed.**

October 1, 2021

To: the Breckenridge Town Council

Re: Rocky Mountain Underground (RMU) Call up

Dear members of the Town Council:

Thank you for calling up the RMU development application. As you know, the subject property is on the 100 Block of South Main St., and as such lies in the heart of the Town's valued Historic District. For a lot of people, the Historic District is central to the Town's identity and as such it sets us apart from many of our peer competitor resort communities (such as Keystone, Copper Mountain, Vail, Whistler, and Snowmass).

The State Historic Preservation Office (aka SHiPO) has downgraded a number of our recent developments in the Historic District from "contributing to the integrity of the District", to a "non-contributing" status. The recurring reason for the downgrades was that most of them involved additions to historic structures that overwhelmed the scale of the surviving historic buildings that they added onto, and thereby unacceptably altered the historic context for the surviving historic structures.

Key to the successful administration of historic districts is maintaining the context for the surviving historic structures. That is why the density and mass limitations within the Historic District don't allow for large buildings any more (such as the Lincoln West mall and the Town Square mall). They would simply overwhelm the nearby smaller surviving historic structures, and degrade the context for those historic structures in the District.

Vision Plan

The following passages are taken from the Town's adopted Vision Plan.

1. Community Character

The Town of Breckenridge is a cohesive and diverse community... Where residents and visitors experience an historic mountain town with characteristic charm...Historic development patterns along the valley floor and the gridded street layout flanking Hwy. 9 result in a small-town character not evident in many mountain resort communities...Discussion: A primary concern of participants is the preservation and enhancement of both the character and image of the Town of Breckenridge....Existing residents expressed alarm at the rate in which the character-defining elements have been overshadowed by new development.

Action Step B: Explore, review and revise policies that ensure that new development, redevelopment, and infill development does not adversely affect the context or erode the character of the Town of Breckenridge.

10. The Built Environment

Participants in the visioning process expressed two key concerns about the built environment: first, that it respect the historic context of Breckenridge and second, that it be compatible with the natural setting.

From the Council and Community Goals statement

Goal 2 - Hometown Feel and Authentic Character

Elevate and fiercely protect Breckenridge's authentic character and brand

These expressions of community values reinforce the importance of maintaining the context for the historic buildings that give the Town its unique identity. The introduction of this, the first rooftop deck on the highest part of a building is inconsistent with the desires of the community as expressed in our Vision Plan and in the Council and Community Goals statement.

Historic District Design Standards, And The Use Of Precedents

Priority Policy 90 and Policy 91 from the Building Materials section of the Handbook of Design Standards specifically implement a part of that important "context" principle by addressing how the exterior modifications should appear.

A Priority Policy is one that must be implemented. The consequence of not implementing a Priority Policy is an automatic denial of the entire application. Priority Policies then act as do Absolute Policies in the Development Code. Priority Policy 90 reads in part:

P90. Use materials that appear to be the same as those used historically. New materials that appear to be the same in scale, texture and finish as those used historically may be considered.

What this application proposes for the roof on the subject building, is not the typical roof configuration found in the Historic District, which would consist of roofing materials designed to protect the building from the elements, but rather would incorporate bar furniture, shade umbrellas, propane "mushroom" heaters and bistro lighting. Not only are these finishes and furnishings not "materials that appear to be the same as those used historically", as Priority Policy 90 requires, but they will be visible from multiple angles from off site locations.

Precedents

There is no policy in the Development Code that addresses outdoor dining spaces, and therefore the regulation of applications for outdoor seating is by way of a loose combination of precedents, and by way of omission in Development Code policies for standard Code requirements such as parking and the payment of water PIF's (in this case, if approved, the proponent would be avoiding approximately \$150,000 for these two fees alone). Therefore, these uses are approved by way of precedents. I would argue that there is no effective precedent for a dining space on the highest element of a building within the Historic District, and

therefore the Town Council is at liberty to differ with the Planning Commission and find that the placement of a lounge on the highest element of a building in the Historic District is out of compliance with Priority Policy 90.

What sets this application apart from precedents for other decks in the Historic District is that , as stated earlier, this one will be on the highest element of the building. All the other 2nd story decks in the District are side porches which lie adjacent to higher building elements on their host structures. I believe the Planning Commission erred when it found that this application was not significantly different from the side porch or deck precedents.

Additionally, those side deck precedents represent ancillary uses to significantly larger interior uses and provide seating or occupancy that is a fraction of the interior occupancy. The RMU proposal provides for an occupancy of 88 on the proposed deck and only 24 in the associated interior area of the building, which results in a deck occupancy of over 3 ½ times the interior occupancy. The deck in the RMU proposal is not an ancillary use representing a fraction of the interior occupancy, it is the primary occupancy and use and, as such, does not come close to falling under the limited precedents for a deck in the Historic District.

Policy 91 in the “Architectural Details’ section of the Handbook of Design Standards reads in part:

Design Standard: 91. Use building components that are similar in size and shape to those found historically along the street. These include windows, doors and porches.

91 is yet another policy that the application fails to meet. Historic buildings found along Main St. typically had gabled roofs with false fronts, and if they had porches, they were front porches. Bar furniture is not a building component that is similar in size and shape to anything found historically along the street, let alone on the highest element of a building. There is no precedent for it, and no policy that would otherwise allow for this proposal.

Visibility

The application calls for a 24 foot setback for the lounge from the front wall plane of the host building (Main St. side). While this is an attempt to make the deck furniture unnoticeable from the street side of the building, it will not entirely screen it from a viewpoint on the sidewalk on the opposite side of Main Street. Additionally, while the view from the street is generally thought of as the more important view to consider in historic preservation circles, it is not the only view angle that is relevant. From the rear, (uphill side) of the building, not only will the rooftop furnishings, finishes and lights be visible, but so will all the new building elements necessary to accommodate ADA accessibility and egress from the proposed out of character rooftop patio. These building elements include an exterior stair tower, an ADA lift, and two freestanding perpendicular fire walls extending out from the rear of the building to protect the stair tower egress path.

In conclusion,

If this application is approved, it will set a new precedent in the Historic District, and as such, can then be used to justify future similar requests to do the same. This and all subsequent similar applications on flat roofed buildings in the Historic District would alter the context of the Historic District for the surviving historic structures which is in direct contradiction to the Development Code, and to the desired direction expressed in your own Council Goals and Vision Plan.

There is nothing about this application and the precedents for side porches and other outside dining areas that compares to this rooftop deck on the highest element of a building providing for an occupancy of over 3 ½ times the interior occupancy from a precedent value. Therefore, none of those precedents compel you to approve this project. Because this is a “denovo” hearing, you alone are the judges of whether any of those precedents are relevant to this proposal.

There is nothing that prevents Council from ~~additional legal jeopardy for you that arises as a result of your~~ coming to a different conclusion on this application than the Planning Commission so long as you state Code based reasons for your decision. We have provided those Code based reasons for you (Priority Policy 90 and Policy 91). Therefore, I urge members of the Town Council to call up the point analysis for this application by making a motion to change the scoring on Priority Policy 24 from “complies”, to “non-complies”, and change the scoring on Relative Policy 24 to “non-complies”, resulting in new negative points for failure to comply with Policy 91. A successful motion to change the scoring on either of these policies would result in a denial of ~~have the effect of denying~~ this out of character application and avoid further degradation of the Historic District.

Thank you for your consideration.
Respectfully,

Peter Grosshuesch, AICP

Chris Kulick

Subject: RMU roof top gathering space

From: Karen Dougherty <kbremias@gmail.com>

Sent: Thursday, September 30, 2021 7:19 AM

To: Chris Kulick <chrisk@townofbreckenridge.com>; mayor <mayor@townofbreckenridge.com>

Subject: RMU roof top gathering space

[EXTERNAL MESSAGE]

To: Breckenridge Town Council

From: Karen Dougherty

Re: RMU Roof Top Deck

I am writing in support of RMU adding a roof top deck and bar to their existing building on Main Street.

As we all know, we have a very short summer season where guests can enjoy eating, drinking and socializing on a restaurant's outdoor deck, patio or other. Limiting this opportunity for a restaurant to offer this option to customers does not make sense to me. There are lots of businesses on Main and in the downtown area that have outdoor seating, why is RMU's roof top deck any different?

If you have not been to the roof top deck at Uptown on Main in Frisco, you should before it closes for the season. It is lovely- the bird's view, the relaxed atmosphere, various seating options, etc. I believe that a similar venue in downtown Breckenridge would be a great addition. I personally would love to do the RMU ladies' ride on Tuesday afternoons and finish with a beer on their roof top deck!

RMU has been a great addition to the Main Street dining options as well being very supportive and giving back to this community. Let's support them in their effort to be profitable and provide expanded opportunities for our locals and tourists to enjoy our town.

Sincerely,
Karen (Remias) Dougherty

Chris Kulick

Subject: RMU rooftop bar

From: Chris Glynn <crglynn18@gmail.com>

Sent: Thursday, September 30, 2021 3:26 PM

To: Chris Kulick <chrisk@townofbreckenridge.com>; mayor <mayor@townofbreckenridge.com>; Peyton Rogers <peytonr@townofbreckenridge.com>

Subject: RMU rooftop bar

[EXTERNAL MESSAGE]

Hey Chris,

I wanted to reach out in support of the rooftop bar at the RMU location. It sounds like they are within the confines of the laws and building codes in Breckenridge and it seems this should be a non issue if they pass all town codes. Please supply my letter to the appropriate place to support this project.

Chris Glynn
RMC OP Director

914 216 2150
crglynn18@gmail.com
rockymountaincamp.org

Chris Kulick

Subject: 112 S Main St

From: Steve Fisher <stevefisher21@gmail.com>
Sent: Wednesday, September 29, 2021 8:27 AM
To: mayor <mayor@townofbreckenridge.com>
Subject: 112 S Main St

Hi Eric,

I hope you're doing well!

I wanted to write to you today, regarding the happenings of 112 S Main. I understand there is some back and forth regarding the town council and the future plans of RMU's intentions with the roof top deck on this property. Having just gone through the last 9 months of drama surrounding the STR decision I know that nothing I say or do will change any minds regarding this property and their project for the roof.

What I do want to say, is that I find it extremely concerning that this particular council has taken many of these matters personally and are making personal decisions based on hypothetical problems. I don't believe they fully understand or comprehend their role as town council members. RMU, throughout its existence on Main Street has been wildly popular and certifiably "the place to be" on Main Street. However, from my knowledge they have only been compliant and respectful regarding all town regulations. They are the most "local" group around and are genuinely concerned with TOB's future, character and lifespan. These guys should be a model of success regarding what can be accomplished, given an opportunity and great ideas in this community.

I just find it very disturbing that planning department, building department etc.... Has fully approved these plans, but things are still hung up with this council. I don't see this council blocking anything Terry does with his restaurants/bars etc... Why is that?

Mike and the RMU crew have my support, they will always have my support and I believe they are excellent humans who don't deserve to be blocked over political BS.

If you or any of the council members would want to meet and discuss concerns I'm happy to be an advocate for Mike and RMU moving forward.

Steve Fisher

Broker Associate | RSPS | Ninja | Summit Realtors President elect

<http://mtnresortrealty.com>

LIV Sotheby's International Realty

sfisher@livsothebysrealty.com

C: (970) 389-9853

LIV | Sotheby's
INTERNATIONAL REALTY



Chris Kulick

Subject: RMU Rooftop Bar

From: Keri Herman <kerimherman@gmail.com>

Sent: Thursday, September 30, 2021 2:25 PM

To: Chris Kulick <chrisk@townofbreckenridge.com>; mayor <mayor@townofbreckenridge.com>; Mike Waesche <mike@rockymountainunderground.com>

Subject: RMU Rooftop Bar

[EXTERNAL MESSAGE]

Hi Chris,

I wanted to reach out regarding the proposed rooftop bar at RMU. As a Breckenridge resident since 2003, it is so impressive to see a local company grow so successfully. RMU sets an incredible example of how to support and give back to the community while providing a fun place to gather and for music and activities.

Through fundraising events, community outreach or environmental impact; RMU is a company that drives this little mountain town to be better.

RMU is so much more than a bar. It's a place for the community to gather. It is a company built by locals from the ground up inspired by their love of skiing and enjoying the outdoors. It's such an amazing company to have in downtown Breckenridge. Anything we can do to help them grow and inspire even more people to be kind to the environment and get outdoors we should absolutely do.

I understand people are worried about the noise etc a rooftop bar might create, but I really think that the positives will greatly outweigh the negatives. Supporting local musicians and our fragile community is so important right now and RMU is leading the way. We should do what we can to support such an amazing group of humans.

Thanks so much,
Keri Herman
US Olympian 2014

Chris Kulick

Subject: Support - Royster

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

From: Ben Royster <benroyster3@gmail.com>
Sent: Friday, September 24, 2021 10:36 AM
To: mayor <mayor@townofbreckenridge.com>
Subject: Support

[EXTERNAL MESSAGE]

We fully support the roof top bar at RMU.

Ben Royster
B & CR Partners

Mobile +1 727 599 4163
sent from my iPhone



TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

Shading indicates Council required attendance – others are optional

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

October 2021

October 12th, 2021	Council Chambers	Budget Retreat	2:00pm - 7:00pm
Tuesday, October 12th, 2021	Council Chambers	First Meeting of the Month	7:00 pm
Oct. 20th - 22nd, 2021	Park City, UT	CAST Conference	All Day
Oct. 22nd - 24th, 2021	Arts District	Día de los Muertos	All Day
Tuesday, October 26th, 2021	Council Chambers	Second Meeting of the Month	3:00 pm / 7:00 pm

November 2021

Tuesday, November 9th, 2021	Council Chambers	First Meeting of the Month	7:00 pm
November 11th, 2021	South Gondola Lot	Wake Up Breck	TBD
November 12th, 2021	Peak 8	Opening Day for Breck Ski Resort	9:00am
Tuesday, November 23rd, 2021	Council Chambers	Second Meeting of the Month	3:00 pm / 7:00 pm

Other Meetings

October 12th, 2021	Board of County Commissioners Meeting Workforce Housing Committee	9:00am / 1:30pm 10:30am
October 13th, 2021	Breckenridge Heritage Alliance	Noon
October 14th, 2021	I-70 Coalition Upper Blue Sanitation District	10:00am 5:30pm
October 18th, 2021	Social Equity Advisory Commission Open Space & Trails Meeting	9:00am 5:30pm
October 19th, 2021	Board of County Commissioners Meeting Liquor & Marijuana Licensing Authority Planning Commission Meeting	9:00am 9:00am 5:30pm
October 21st, 2021	Transit Advisory Council Meeting	8:00am
October 25th, 2021	Breckenridge Creative Arts	3:00pm
October 26th, 2021	Board of County Commissioners Meeting	9:00am / 1:30pm
October 27th, 2021	Summit Stage Transit Board Meeting	8:15am
October 28th, 2021	Breckenridge Tourism Office Board Meeting Northwest CO Council of Governments RW&B Board Meeting	8:30am 10:00am 3:00pm
November 2nd, 2021	Board of County Commissioners Meeting Planning Commission Meeting	9:00am 5:30pm



TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

Shading indicates Council required attendance – others are optional

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

November 3rd, 2021	Police Advisory Committee Breckenridge Events Committee Childcare Advisory Committee	7:30am 9:00am 10:00am
November 9th, 2021	Board of County Commissioners Meeting Workforce Housing Committee	9:00am / 1:30pm 10:30am
November 10th, 2021	Breckenridge Heritage Alliance	Noon
November 11th, 2021	I-70 Coalition Upper Blue Sanitation District	9:30am 5:30pm
November 15th, 2021	Social Equity Advisory Commission Breckenridge Creative Arts	9:00am 1:00pm
November 16th, 2021	Board of County Commissioners Meeting Liquor & Marijuana Licensing Authority Planning Commission Meeting	9:00am 9:00am 5:30pm
November 17th, 2021	Summit Combined Housing Authority	9:00am
November 18th, 2021	Transit Advisory Council Meeting	8:00am
November 22nd, 2021	Open Space & Trails Meeting	5:30pm
November 23rd, 2021	Board of County Commissioners Meeting	9:00am / 1:30pm
November 24th, 2021	Summit Stage Transit Board Meeting	8:15am
November 25th, 2021	Breckenridge Tourism Office Board Meeting RW&B Board Meeting	8:30am 3:00pm
December 1st, 2021	Breckenridge Events Committee Childcare Advisory Committee	9:00am 3:00pm
December 2nd, 2021	Northwest CO Council of Governments	10:00am
December 7th, 2021	Board of County Commissioners Meeting Planning Commission Meeting	9:00am 5:30pm
TBD	Water Task Force Meeting Art Installation Meeting QQ - Quality and Quantity - Water District	8:00am 2:00pm 1:15pm