



**BRECKENRIDGE TOWN COUNCIL  
WORK SESSION**

**Tuesday, January 12, 2010**

**\*\*PLEASE NOTE THE CHANGE OF START TIME\*\***

**ESTIMATED TIMES:** *The times indicated are intended only as a guide. They are at the discretion of the Mayor, depending on the length of the discussion and are subject to change.*

<b>2:00 – 3:00 pm</b>	<b>I. <u>NON-PROFIT GRANT RECEPTION</u></b>	
<b>3:00 – 3:15 pm</b>	<b>II. <u>PLANNING COMMISSION DECISIONS</u></b>	<b>Page 2</b>
<b>3:15 – 4:00 pm</b>	<b>III. <u>LEGISLATIVE REVIEW</u> *</b>	
	• Skier Safety Act	<b>Page 98</b>
	• Offenses related to Cannabis	<b>Page 103</b>
	• General Penalty Amendment	<b>Page 107</b>
	• Vail Development Agreement	<b>Page 111</b>
	• Stan Miller Annexation Agreement Modification	<b>Page 123</b>
	• Snow Sculpture Burn Permit	<b>Page 182</b>
<b>4:00 – 4:30 pm</b>	<b>IV. <u>MANAGERS REPORT</u></b>	
	• Committee Reports	<b>Page 7</b>
	• Public Projects Update/Experimental Parking	<b>Verbal</b>
	• Housing/Childcare Update	<b>Verbal</b>
	• Financials	<b>Page 9</b>
	• NWCCOG	<b>Verbal</b>
<b>4:30 – 5:30 pm</b>	<b>V. <u>OTHER</u></b>	
	• Rec Center Business Model Hours	<b>Page 23</b>
	• Discussion on Biased Motivated Crime	<b>Page 29</b>
	• Entrada Annexation Agreement Modification	<b>Page 33</b>
<b>5:30 – 6:00 pm</b>	<b>VI. <u>PLANNING MATTERS</u></b>	
	• Old BBC Development Agreement Modification	<b>Page 57</b>
	• Sustainability Task Force Recommendations- Forest Health/Fire Wise	<b>Page 83</b>
<b>6:00 – 6:30 pm</b>	<b>VII. <u>EXECUTIVE SESSION</u></b>	
	• Property Acquisition	
<b>6:30 – 7:30 pm</b>	<b>VIII. <u>JOINT MEETING WITH SANITATION DISTRICT</u></b>	<b>Page 89</b>

**\*ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** **Page 90**

***NOTE: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held.***

***Report of Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.***

**MEMORANDUM**

**To:** Town Council

**From:** Peter Grosshuesch

**Date:** January 6, 2010

**Re:** Town Council Consent Calendar from the Planning Commission Decisions of the January 5, 2010, meeting.

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***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF January 5, 2010:***

**CLASS C APPLICATIONS:**

1. Tyndall Residence (MGT) PC#2009053; 584 Discovery Hill Drive  
Construct a new single family home with 4 bedrooms plus study, 4 bathrooms, 3,578 sq. ft. of density and 4,446 sq. ft. of mass for a F.A.R. of 1:20.00. Approved.
2. Breckenridge Park Meadows Exterior Remodel (CK) PC#2009054; 110 Sawmill Road  
Exterior remodel of condominium complex to consist of installation of new cedar lap siding with 6.5” exposure, windows, Breckenridge lighting ordinance compliant exterior light fixtures, Trex decking on upper walkways, colored concrete on lower walkways, cultured fieldstone base (less than 20% per façade), composite shingles and new paint colors. Approved.
3. Klack Cabin (MM) PC#2009055; Klack Placer  
Lift the existing cabin (currently being rehabilitated under a separate permit #09-332) and rotate the orientation 180 degrees such that the cabin entrance faces towards the west rather than the east. No other changes are proposed. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Leigh Girvin                      JB Katz                                      Michael Bertaux  
Dan Schroder                      Jim Lamb                                      Dave Pringle arrived at 7:07pm  
Rodney Allen was absent

APPROVAL OF MINUTES

With no changes, the minutes of the December 1, 2009, Planning Commission meeting were approved unanimously (5-0).

APPROVAL OF AGENDA

With no changes, the Agenda for the January 5, 2010 Planning Commission meeting was approved unanimously (5-0).

WORKSESSIONS:

1. Bradley Residence Historic Renovation and Landmarking (MM) 213 E Washington Avenue  
Mr. Mosher presented a proposal to perform an extensive exterior and interior remodel that will include a full basement beneath the historic footprint. A new small shed was also proposed at the southwest corner of the property. The existing deck that crosses the west property line would be removed. Local landmarking of the property was also requested.

Staff believed that the proposed improvements would greatly improve the “livability” of the residence. The house currently has a clear head-height of 6’-8”. 7’-0” is the current building code minimum. The crawlspace and joists have mold. Staff believed that this remodel would change the non-compliant detailing and roof forms of the house to those more compatible with the character of Breckenridge and contribute to the historic character of the neighborhood and community.

The presented plans indicated a proposed remodel that would bring the architecture of the house into compliance with the Town’s Historic Guidelines and in this Character Area. The changes would include:

1. The footprint/perimeter walls would remain the same; no additional density is to be added above ground.
2. Maintain the historic exterior walls and remaining historic openings.
3. Raise the plate height of the walls 6 to 12 inches to allow for window and door headers and to meet building code.
4. Replace the low sloping roof(s) and create a new roof with a steeper 10:12 pitch with one added dormer. (Priority Policy 161.)
5. Create a front porch. (Design Standard 162 and 169.)
6. Remove the non-compliant, non-historic windows and replace with vertically orientated double hung compliant wood windows. (Historic openings will be verified prior to final approval.)
7. Repair the historic windows as needed.
8. Create a full basement (along with the landmarking) for additional living space.
9. Build a new detached shed (outbuilding) for storage. (Design Standard 159 and 167.)
10. Reside the structure with historic compliant horizontal lap siding 4-4 1/2 exposure. (Priority Policy 165.)
11. The roof would be re-sheathed with historic compliant cut wood shingles.
12. The house would be shifted slightly on the lot squaring it up to allow for parking on-site. As a result, negative three (-3) points would be incurred for not meeting the relative side yard setback along the south property line.
13. The house would have substantial permanent electrical, plumbing, and/or mechanical system upgrades.

Staff has reviewed the landmarking proposal with the Town Historian and the Town Attorney. The house was built in 1928 in Dillon and moved to Breckenridge in the 60’s. The Town Historian would support locally landmarking the building after the remodel and adjusting the Cultural Survey to reflect the change; however, it would still not be eligible for the national registry. The Town Attorney would support the required criteria under the Landmarking Ordinance as a “significant remodel”.

Staff also suggested that the remodel would significantly “enhance(s a) sense of identity of the community” as identified under section c.1. to allow it to be locally landmarked.

The Applicants would seek to locally landmark the house with the planned remodel and renovation. The sequence of this process will be explained with the pending development application (depending on the outcome of this worksession). All historic framing, windows and most of the roof fabric will be preserved. Staff welcomed any Commissioner comments.

Janet Sutterley, Architect for the proposed renovation: Ms. Sutterley first explained the existing site plan, and the resubdivision (moving the existing lot line such that it does not bisect the existing homes) that occurred previously, and then explained the proposed site plan which included shifting the building northerly on site to allow 2 on-site parking spaces for the unit. Currently all parking is in the Town right of way. Ms. Sutterley explained the existing conditions of the building, including the low ceiling heights, lack of window headers and rotted floors. The floor elevation of the house will not change with the proposal, but head height and windows would be updated to meet code. No main level square footage would be added with this proposal. It is a very simple architectural proposal, and created to strictly meet the historic design criteria of the East Side Character Area. A small porch would be added to the east side of the house and non-historic one removed. This residence is the gateway to the residential district coming down French Street, and is a great opportunity to make improvements.

Commissioner Questions/Comments:

Ms. Girvin: Can you please explain the other house next door? How much over density is it? (Mr. Mosher: The property got divided and it was determined that the large addition was over density. The north little portion is the historic home. As part of the subdivision, all existing density was “grandfathered” and no more can be added.) It is also important to recognize that this house did come from historic Dillon, a part of our community. (Mr. Pringle: Most of the home isn’t being preserved, only a few windows.) The structure is being preserved. I don’t disagree with Mr. Pringle, but at the same time I respect the effort that has gone into the project and I think it could contribute to the historic character of the community and respect its historic roots as a house that came from Dillon. I’m okay with the landmarking and adding the basement and ask that the architecture follow the simple historic guidelines, and its original form and function. I am not a fan of heated driveways. I would be proud of a building that was a remodel, rather than razing this structure and building something new. I would rather see this restored.

Mr. Bertaux: It is a result of a couple ordinances regarding density and how it can be added to the basement. I am inclined to see it scraped and build something else there. (Mr. Mosher: This would be very difficult to accomplish as the available density would be reduced by about 1/3 and significant negative points would be incurred.) There’s not much historic there. I’d rather see it relocated somewhere else, maybe back to Dillon. It is a great effort, but we seem to be manipulating the system. I agree with what Ms. Katz said; that the house would just get bigger if it was removed and would be out of place. Where is the historic value? (Ms. Sutterley: The historic value of the building.) (Ms. Girvin: Someone actually hauled it all the way over from Dillon, and then moved it again in town and continued to preserve it. Someone cared enough.) Are wood shingles something we really want? (Mr. Mosher: Yes, historically accurate.) There are some windows for egress on the lower level and a door? (Ms. Sutterley: No doors, just windows to reduce impact.) I’d like to hear more from the town attorney and next set of findings.

Ms. Katz: I appreciate what Mr. Pringle is saying, but I think that we can improve this property and maybe it is even a dangerous property as it exists now. I agree with Mr. Mosher that if we manipulate the density or other policy areas of the code it is much more compromising than the landmarking ordinance that we are dealing with in this situation. We could end up with a much larger home on the lot.

Mr. Pringle: Exterior siding will not be saved, will it? Windows? What will be saved? (Ms. Sutterley: Windows yes, siding no, none is historic (T-111 paneling). The interior walls will be saved.) It is a building that was not built here, there is no historical significance to the town, but what are we really saving? (Mr. Mosher: The goal is for the property to better contribute to the town character and be made livable. Improve economic viability of the site. If you scrape it the density would be significantly reduced.) Can you buy some density? (Mr. Mosher: The Code does not allow any transfer into the historic district.) Can’t we find a way to get them the basement without the historic

landmarking? (Mr. Mosher: We can't add any more density to the property because it is so far over already. The best option for a passing proposal is landmarking, and it does meet the criteria.) Could they rebuild this house if there was a fire? (Mr. Mosher: No, due to the notes on the plat.) I am puzzled that we have a property that we can't improve, without compromising our standards. When our processes defeat our purposes, we need to take a look at things. I think there should be a way to accomplish a remodel or a rebuild without having to compromise the landmarking ordinance. (Mr. Mosher: When we come back we can bring draft findings of the process and how it will come together, how it meets the criteria for landmarking, etc.) I think the findings are cleaner with the historic remodel text, not the enhancement to the community.

Mr. Schroder: Are we short one year on the age of the home for historic landmarking? (Mr. Mosher: That is when it was moved from Dillon, the house was built much earlier. There is historic fabric as part of the home and we want to make the house contribute to the historic character of the town.) The guidelines don't have a problem with the fact that it got here in 1961? (Mr. Mosher: No. It was moved from Dillon, similar to the Cooney house on French Street. Several homes in Breckenridge were moved from other areas that are historic.) I hear what Mr. Pringle was saying, but I am comfortable with the description and what remains of the original, and also when it was originally built in Dillon in 1928. Parts of that home are now in Breckenridge. Is there a social historic component? (Mr. Mosher: Social is related to people, and it contributes in the fact that it is a simple form, small footprint, etc. As far as social, nothing.) I would be hopeful that the value of historic structures from anywhere in our County is important; it is the broader community. There may even be more historic fabric that we don't even know about yet this early in the process. I am in favor of moving forward.

Mr. Lamb: Are you just heating the 61 square foot snow storage area? (Ms. Sutterley: I think we could potentially locate it on site, or in a heated area, we aren't sure yet.) What is the total density on the two lots? (Mr. Mosher: I'm not sure, but they are significantly over.) If we allow density, scraping it, or other variances on this site, I am wary of the floodgate it could open to future development. We are being site specific on this site; it is a unique property from 1928 that has been moved several times. (Mr. Mosher: Mr. Berry said that this would be considered a unique situation.) I like this and think we can make a strong argument that it has a history, and this is our only option to make a house in the historic district fit in and looks pretty good. We are taking the home back to its historic look, which is a good thing. Would the roof load be 100 lbs? (Ms. Sutterley: Yes.)

Mr. Rossi: Do you think it would be helpful to have the town attorney reply to our concerns? (Mr. Mosher: Yes. We didn't do too much detail yet because this is a worksession.) It would help me and the Planning Commission to understand the findings for landmarking. (Ms. Katz: I think that the town attorney should write a letter regarding these findings.)

#### TOWN COUNCIL REPORT:

Mr. Rossi: We are taking a look at the Gondola Lots Master Plan and points analysis. We also landmarked the Theobald Building. (Mr. Pringle: There were some concerns from the community regarding the lost parking in the Sawmill Lot and moving that parking around. Is the Council going to respond to that?) That is also one of the struggles that the Council had, but the project was called up regarding the points analysis.

#### CONSENT CALENDAR:

1. Tyndall Residence (MGT) PC#2009053; 584 Discovery Hill Drive  
Mr. Bertaux: What is El Prestique? (Mr. Mosher: Asphalt shingle)
2. Breckenridge Park Meadows Exterior Remodel (CK) PC#2009054; 110 Sawmill Road
3. Klack Cabin (MM) PC#2009055; Klack Place

With one request for call up, the remainder of the consent calendar was approved as presented.

Ms. Girvin made a motion to call up the Klack Cabin, PC#2009055; Klack Placer. Ms. Katz seconded. The motion was approved unanimously (6-0).

Mr. Mosher presented a brief description of the proposal to rotate the cabin 180 degrees in place to orient the doors towards the center of the Klack instead of five feet off the east property line.

- Ms. Girvin: This is in my back yard. This needs to be looked at an overall component of the Klack, not just a cabin. In fact it is a barn, not a cabin. The Klack is a significant open space and habitat. The barn historically supported the community and likely supported a residence at 209 South Harris, a carriage house for the residence and horses. I think changing the orientation destroys the significance. What is it doing now? It needs to be interpreted as how it related to the homes on Harris Street, and how it relates to the Klack in its entirety. The Klack has been harmed by the construction in the area; there is mud, new weeds, and flooding. There is a tree next to the cabin as well, and will it be removed with the orientation change? I don't think it is necessary to flip the building. More protection to the Klack needs to be provided and natural resources need as much protection as the building. (Mr. Mosher: Interpreting its relationship to the house now is different, as the historic houses that were there are no longer, and there is only five feet to the new house. In the future, a tour coming with 14 people would likely disrupt the neighbors and trespass. The doors could be oriented so people could see them. (Ms. Larissa O'Neill, Breckenridge Heritage Alliance: It is our understanding that there could potentially be a trail that goes through the Klack Placer and the barn could be better interpreted by passers-by with the re-orientation.) Yes, in the Town's trail master plan. (Mr. Tony Harris, Contractor: The topography wasn't changed with the construction. The surge does more damage than we have done. The vegetation will be replaced. The tree that Ms. Girvin mentioned stays. The building will be repaired and placed on gravel. Come spring time, you hopefully will not even see where we were.) I have been photographing the Klack for many years and it carries a large amount of water and creates a very unique environment. All of our wildlife find the Klack very important. It is not just the cabin/barn that needs protection. The Klack needs to be improved. (Mr. Mosher: This could be done by staff in the Town.) If you are going to bring tours here, we should make it look really nice. (Mr. Mosher: I think Ms. Girvin's comments regarding restoration of any damage to the soil are very important and if we need to look at improving the Klack, a separate permit would be processed with input from Engineering and Public Works.) I think it is great that the town is restoring it, but we need to keep the context in mind and if we need to flip it to make it more accessible let's improve the area, not just the cabin.
- Mr. Lamb: We need to ensure that next spring the ditch isn't flooding, the vegetation gets restored, soil compacted and regraded to achieve some of these ideas.
- Ms. Katz: I appreciate Ms. Girvin's concerns regarding re-orienting the cabin, but I think since it is a Town project and we are only spinning it I think it will be okay. I appreciate the comments and I think we have to do this because tours will want to be at the opening to the building.
- Mr. Lamb: I think that spinning it will be an improvement in the future.
- Mr. Pringle: What is the permit type for this? What was ever written and agreed to in that? (Ms. O'Neill: Two phases: stabilization and protection of the cabin.)
- Mr. Bertaux: The cash bond provision #14, who pays that? The Town or the Heritage Alliance? I think it will be a good project.

Ms. Katz moved to approve Klack Cabin, PC#2009055, Klack Placer, with the presented findings and conditions. Mr. Bertaux seconded, and the motion was carried unanimously, (6-0).

#### OTHER MATTERS:

1. Class C Subdivisions Approved 7/1/09 through 12/31/09 (CN) (Memo Only)
  2. Class D Development Permits 1/1/09 through 12/31/09 (CN) (Memo Only)
- Summary memos on Class C Subdivisions approved during the second half of 2009 and Class D Development permits approved for the entire year 2009.

#### ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

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Jim Lamb, Vice Chair

**MEMO**

**TO:** Mayor & Town Council

**FROM:** Tim Gagen

**DATE:** January 7, 2010

**RE:** Committee Reports

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**Fire Wise task Force** **Jen Cram** **December 9, 2009**

- Firewise Best Management Practices - The Task Force agreed on the seven features for a firewise home presented in the Firewise Communities brochure. (Copies of the brochure have been included in your packets.)
- The Task Force recommends that the MPB Ordinance be updated to require annual removal of infested and dead trees. The task Force is comfortable with enforcing the ordinance on a complaint basis.
- The Task Force supports an absolute policy for Defensible Space for new construction. They are also comfortable with the guidelines as presented in the Voluntary Ordinance.

The next meeting is scheduled for Wednesday, January 13, 2010, at 4:00 pm in the Administrative Conference Room on the third floor of Town Hall.

Approved minutes from the November 11<sup>th</sup> meeting and draft minutes from the December 9<sup>th</sup> meeting have been included for your review.

**LLA** **MJ Loufek** **December 15, 2009**

The LLA had a very short meeting and all consent calendar items were approved.

Following the meeting, authority members, police department and licensing staff participated in training with Dan Gunter of the State Liquor Enforcement Division. Some of the topics covered included:

- criteria that can be considered when approving or denying a liquor license
- defining the “neighborhood”
- undue concentration of liquor licenses
- importance of weighing the facts, considering evidence, and applying the law
- the different standard of law between an administrative hearing (preponderance of evidence) vs. a criminal proceeding (beyond a reasonable doubt)
- proactive measures to take when problems do occur and show cause hearings
- definitions of “visibly intoxicated” and “good moral character”

There were many great questions and answers and it was a very informative, beneficial training session.

**Other Meetings**

CML Tim Gagen No Meeting

Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
CAST	Tim Gagen	No Meeting
I-70 Coalition	Tim Gagen	No Meeting
CAST	Tim Gagen	No Meeting
Wildfire Council	Matt Thompson	No Meeting
Summit Stage	James Phelps	No Meeting
CDOT	Tim Gagen	No Meeting
Public Art Commission	Jen Cram	No Meeting
Police Advisory Committee	Rick Holman	No Meeting



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INTEROFFICE MEMORANDUM

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**TO:** TIM GAGEN, TOWN MANAGER  
**FROM:** CLERK AND FINANCE DIVISION  
**SUBJECT:** NOVEMBER 2009 FINANCIAL VARIANCE HIGHLIGHTS MEMO  
**DATE:** 12/17/2009

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This report highlights variations between the 2009 budget and actual figures for the Town of Breckenridge for the year to date through November 30, 2009 (92% of the fiscal year).

**Revenue Updates:**

- **General Fund:** YTD Actual Revenues of \$21,243,803 fell short of budget by \$514,383 primarily due to Building Services revenue which is down \$460,000 due to lack of building/permitting activity.
- **Utility (Water) Fund:** \$572,551 below budgeted revenue (81% of budget) due to lack of building/PIF's.
- **Marketing Fund:** below budgeted revenue by \$51,435 as a result of decreased sales and accommodations tax collections.
- **Excise Fund:** Tax collections through November 30, 2009 are under budget by \$1,495,703. RETT makes up 60% of the deficiency (\$892,002). On a positive note, November RETT collections ended the month at 178% of the monthly budget, but YTD collections remain at 74% of budget. Investment income is also less than budget by \$199,548. A summary of budget vs. actual comparisons for RETT, sales and accommodation tax collections is below:

**RETT:**

	<b>Budget</b>	<b>Actual</b>	<b>Variance \$</b>	<b>Actual as a % of Budget</b>
YTD Nov 2009	\$3,394,699	\$2,502,697	\$(892,002)	74%

**Sales:**

	<b>Budget</b>	<b>Actual</b>	<b>Variance \$</b>	<b>Actual as a % of Budget</b>
YTD Nov 2009	\$9,807,218	\$9,335,010	\$(472,208)	95%

**Accommodations:**

	<b>Budget</b>	<b>Actual</b>	<b>Variance \$</b>	<b>Actual as a % of Budget</b>
YTD Nov 2009	\$1,277,991	\$1,162,762	\$(115,229)	91%

**Expenditure Update:**

- **General Fund:** cost savings due to budget savings measures implemented: \$2,685,470 under budget (87% of YTD budgeted expenditures).

The *All Funds* report shows 2009 YTD actual revenues approximately 15% lower than 2008 at 11/30 (same as prior month).

2009 YTD expenditures are approximately 20% less than the prior year (vs. 25% less at the end of October). The YTD expenditure variation changed from the prior month due to the purchase of the CMC building. The Capital fund 2009 Actual expenditures increased by approximately \$2 million as a result of this acquisition.

*Previously reported variations which are unchanged since the prior month variance analysis:*

Revenue:

- Golf Fund: revenue is \$258,846 less than budgeted due to greens fees.

Expenditures:

- Utility (Water) Fund: variance reflects large (\$2million) capital project expenditure budgeted but not completed.
- Golf Fund: unfavorable variance is due to timing. The golf fund budget accumulates over 12 months but golf course expenditures mainly take place during the golf season.
- Housing: favorable variance of \$2 million reflects appropriated but unspent fund balance.
- Garage services fund: favorable variance of \$559,259 due to lower costs for fuel, repairs and capital expenditures than expected/budgeted.

**TOWN OF BRECKENRIDGE  
ALL FUNDS  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 11 MONTHS ENDING NOVEMBER 30, 2009**

92 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2008 ACTUAL/ 2009 ACTUAL % CHANGE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL AS A % OF BUDGET	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE</b>										
1 GENERAL FUND	20,427,009	26,210,771	78%	104%	21,243,803	21,758,186	(514,383)	98%	23,385,696	91%
2 UTILITY FUND	4,048,414	5,060,764	80%	61%	2,475,847	3,048,398	(572,551)	81%	3,485,661	71%
3 CAPITAL FUND	3,237,751	3,451,444	94%	32%	1,031,139	1,091,858	(60,719)	94%	1,175,024	88%
4 MARKETING FUND	1,166,319	1,586,389	74%	106%	1,232,540	1,282,975	(50,435)	96%	1,596,976	77%
5 GOLF COURSE FUND	2,385,426	3,117,967	77%	84%	2,001,943	2,260,789	(258,846)	89%	2,272,325	88%
6 EXCISE TAX FUND	16,390,878	19,816,507	83%	84%	13,749,575	15,245,278	(1,495,703)	90%	18,431,797	75%
7 HOUSING FUND	2,943,537	3,307,977	89%	108%	3,180,608	2,954,034	226,574	108%	3,299,262	96%
8 OPEN SPACE ACQUISITION FUND	1,665,297	2,011,659	83%	86%	1,432,645	1,813,111	(380,466)	79%	1,920,498	75%
9 CONSERVATION TRUST FUND	26,059	36,191	72%	96%	24,904	21,989	2,915	113%	30,123	83%
10 GARAGE SERVICES FUND	1,992,700	2,938,578	68%	110%	2,196,935	2,141,609	55,326	103%	2,336,328	94%
11 INFORMATION TECHNOLOGY FUND	878,051	957,874	92%	102%	893,604	893,607	(3)	100%	974,844	92%
12 FACILITIES MAINTENANCE FUND	533,945	569,813	94%	40%	213,042	213,048	(6)	100%	232,416	92%
13 SPECIAL PROJECTS FUND	4,159,833	2,269,000	183%	22%	923,119	921,470	1,649	100%	1,005,240	92%
<b>TOTAL REVENUE</b>	<b>59,855,219</b>	<b>71,334,934</b>	<b>84%</b>	<b>85%</b>	<b>50,599,704</b>	<b>53,646,352</b>	<b>(3,046,648)</b>	<b>94%</b>	<b>60,146,190</b>	<b>84%</b>
<b>EXPENDITURES</b>										
1 GENERAL FUND	15,659,086	24,610,652	64%	118%	18,478,621	21,161,053	2,682,432	87%	23,504,383	79%
2 UTILITY FUND	2,540,876	3,454,913	74%	82%	2,073,689	4,772,710	2,699,021	43%	5,324,195	39%
3 CAPITAL FUND	9,200,754	9,727,977	95%	41%	3,732,223	1,077,087	(2,655,136)	347%	1,175,004	318%
4 MARKETING FUND	1,463,314	1,553,644	94%	108%	1,582,309	1,578,295	(4,014)	100%	1,777,801	89%
5 GOLF COURSE FUND	2,223,174	2,225,401	100%	101%	2,237,296	2,352,571	115,275	95%	2,454,405	91%
6 EXCISE TAX FUND	19,980,325	21,746,535	92%	86%	17,187,556	17,185,919	(1,637)	100%	18,696,808	92%
7 HOUSING FUND	2,455,757	2,902,911	85%	26%	645,736	3,117,741	2,472,005	21%	3,396,597	19%
8 OPEN SPACE ACQUISITION FUND	2,670,933	2,854,465	94%	79%	2,112,185	2,003,221	(108,964)	105%	2,079,901	102%
9 CONSERVATION TRUST FUND	41,250	45,000	92%	69%	28,417	28,413	(4)	100%	30,996	92%
10 GARAGE SERVICES FUND	2,439,384	2,042,289	119%	49%	1,206,524	1,765,783	559,259	68%	1,950,711	62%
11 INFORMATION TECHNOLOGY FUND	739,817	902,251	82%	70%	520,784	706,922	186,138	74%	774,940	67%
12 FACILITIES MAINTENANCE FUND	0	0	0%	N/A	203,193	194,073	(9,120)	105%	194,632	104%
13 SPECIAL PROJECTS FUND	4,023,238	2,055,864	196%	20%	790,893	921,470	130,577	86%	1,005,240	79%
<b>TOTAL EXPENDITURES</b>	<b>63,437,908</b>	<b>74,121,902</b>	<b>86%</b>	<b>80%</b>	<b>50,799,426</b>	<b>56,865,258</b>	<b>6,065,832</b>	<b>89%</b>	<b>62,365,613</b>	<b>81%</b>
	<b>(3,582,689)</b>	<b>(2,786,968)</b>			<b>(199,722)</b>	<b>(3,218,906)</b>	<b>3,019,184</b>		<b>(2,219,423)</b>	

**TOWN OF BRECKENRIDGE  
EXCISE TAX FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 11 MONTHS ENDING NOVEMBER 30, 2009**

92 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2008 vs. 2009 ACTUAL % VARIANCE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>REVENUE DEFAULT</b>										
SALES/ACCOM TAXES DAILIES	161	161	100%	673%	1,083	0	1,083	0%	0	0%
SALES TAX	10,509,397	12,067,380	87%	89%	9,335,010	9,807,218	(472,208)	95%	12,401,703	75%
ACCOMMODATIONS TAX	1,481,213	1,783,019	83%	79%	1,162,762	1,277,991	(115,229)	91%	1,589,664	73%
INVESTMENT INCOME	229,276	293,992	78%	21%	47,257	246,805	(199,548)	19%	246,805	19%
<b>TOTAL REVENUE DEFAULT</b>	<b>12,220,047</b>	<b>14,144,552</b>	<b>86%</b>	<b>86%</b>	<b>10,546,112</b>	<b>11,332,014</b>	<b>(785,902)</b>	<b>93%</b>	<b>14,238,172</b>	<b>74%</b>
<b>MISCELLANEOUS TAX</b>										
SALES TAX	72,487	1,223,687	6%	0%	0	0	-	0%	0	0%
CIGARETTE TAX	77,562	83,994	92%	64%	49,385	49,863	(478)	99%	54,999	90%
TELEPHONE FRANCHISE TAX	22,541	30,029	75%	96%	21,531	22,891	(1,360)	94%	30,499	71%
PUBLIC SERVICE FRANCHISE	382,062	464,908	82%	136%	520,782	340,811	179,971	153%	398,001	131%
CABLEVISION FRANCHISE TAX	100,330	135,552	74%	109%	108,862	105,000	3,862	104%	105,000	104%
REAL ESTATE TRANSFER TAX	3,515,848	3,733,785	94%	71%	2,502,697	3,394,699	(892,002)	74%	3,605,126	69%
<b>TOTAL MISCELLANEOUS TAX</b>	<b>4,170,830</b>	<b>5,671,955</b>	<b>74%</b>	<b>77%</b>	<b>3,203,257</b>	<b>3,913,264</b>	<b>(710,007)</b>	<b>82%</b>	<b>4,193,625</b>	<b>76%</b>
<b>TOTAL FUND REVENUE</b>	<b>16,390,877</b>	<b>19,816,507</b>	<b>83%</b>	<b>84%</b>	<b>13,749,369</b>	<b>15,245,278</b>	<b>(1,495,909)</b>	<b>90%</b>	<b>18,431,797</b>	<b>75%</b>
<b>EXCISE TAX DEBT SERVICE</b>										
OTHER CONTRACTED SERVICES	0	0	0%	0%	0	462	(462)	0%	504	0%
COP FEES	2,225	2,225	100%	94%	2,100	0	2,100	0%	0	0%
2005 COP'S PRINCIPAL	260,000	260,000	100%	106%	275,000	275,000	-	100%	275,000	100%
2005 COP'S INTEREST	289,788	289,788	100%	100%	291,140	291,140	-	100%	291,140	100%
<b>TOTAL EXCISE TAX DEBT SERVICE</b>	<b>552,013</b>	<b>552,013</b>	<b>100%</b>	<b>103%</b>	<b>568,240</b>	<b>566,602</b>	<b>1,638</b>	<b>100%</b>	<b>566,644</b>	<b>100%</b>
<b>TRANSFERS</b>										
TRANSFER TO GENERAL FUND	8,029,812	13,297,081	60%	154%	12,347,500	12,347,500	-	100%	13,470,000	92%
TRANSFER TO GOLF FUND	229,167	250,000	92%	0%	0	0	-	0%	0	0%
TRANSFERS TO CAPITAL FUND	2,306,333	2,516,000	92%	35%	813,083	813,087	(4)	100%	887,004	92%
TRANSFER TO MARKETING	275,000	300,000	92%	145%	398,750	398,750	-	100%	435,000	92%
TRFS TO EMPLOYEE HSG FUND	2,165,571	2,362,441	92%	99%	2,138,508	2,138,510	(2)	100%	2,332,920	92%
TRFS TO FACILITIES FUND	183,333	200,000	92%	0%	0	0	-	0%	0	0%
TRFS TO SPECIAL PROJECTS FUND	4,159,833	2,269,000	183%	22%	921,475	921,470	5	100%	1,005,240	92%
<b>TOTAL TRANSFERS</b>	<b>17,349,049</b>	<b>21,194,522</b>	<b>82%</b>	<b>96%</b>	<b>16,619,316</b>	<b>16,619,317</b>	<b>(1)</b>	<b>100%</b>	<b>18,130,164</b>	<b>92%</b>
<b>TOTAL FUND EXPENDITURES</b>	<b>17,901,062</b>	<b>21,746,535</b>	<b>82%</b>	<b>96%</b>	<b>17,187,556</b>	<b>17,185,919</b>	<b>1,637</b>	<b>100%</b>	<b>18,696,808</b>	<b>92%</b>
<b>NET REVENUE OVER EXPENDITURES</b>	<b>(1,510,185)</b>	<b>(1,930,028)</b>			<b>(3,438,187)</b>	<b>(1,940,641)</b>	<b>(1,497,546)</b>		<b>(265,011)</b>	

**TOWN OF BRECKENRIDGE  
GENERAL FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 11 MONTHS ENDING NOVEMBER 30, 2009**

92 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR				CURRENT YEAR						
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2008 ACTUAL/ 2009 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT	
<b>REVENUE</b>											
MUNICIPAL COURT PROGRAM	183,847	195,014	94%	98%	186,785	159,061	27,724	117%	172,598	108%	
ADMINISTRATIVE MGT PROGRAM	47,758	1,868	2557%	747%	6,395	29,017	(22,622)	22%	30,657	21%	
SPECIAL EVENTS/COMM PROGRAM	112,611	118,694	95%	95%	117,966	102,906	15,060	115%	107,351	110%	
TOWN CLERK ADMIN PROGRAM	26,442	27,565	96%	105%	25,262	24,711	551	102%	25,110	101%	
TRANSIT ADMIN PROGRM	0	0	0%	0%	95,000	95,000	-	100%	95,000	100%	
TRANSIT SERVICES PROGRAM	344,721	318,407	108%	71%	484,435	325,660	158,775	149%	354,811	137%	
PARKING SERVICES PROGRAM	0	403,527	0%	0%	0	0	-	0%	0	0%	
PUBLIC SAFETY ADMIN/RECORDS	113,516	121,392	94%	143%	79,201	89,880	(10,679)	88%	93,494	85%	
PUBLIC SAFETY COMMNTY SVC PROG	447,899	104,116	430%	88%	506,793	459,430	47,363	110%	485,450	104%	
PLANNING SERVICES ADMIN PROGRM	195,411	201,089	97%	121%	161,703	150,751	10,952	107%	163,555	99%	
BUILDING SERVICES ADMIN PROGRM	1,708,321	1,755,243	97%	394%	433,254	893,103	(459,849)	49%	919,902	47%	
PUBLIC WORKS ADMIN PROGRAM	514,853	505,002	102%	113%	453,705	530,664	(76,959)	85%	565,128	80%	
STREETS PROGRAM	29,250	29,250	100%	58%	50,050	27,000	23,050	185%	27,000	185%	
FACILITIES ADMIN PROGRAM	0	0	0%	0%	10,746	0	10,746	0%	0	0%	
RECREATION ADMIN PROGRAM	1,290	1,604	80%	10%	13,122	0	13,122	0%	0	0%	
RECREATION PROGRAM	232,183	339,432	68%	74%	315,572	314,620	952	100%	349,490	90%	
RECREATION OPERATIONS PROGRAM	1,351,987	1,498,901	90%	106%	1,271,481	1,241,065	30,416	102%	1,409,753	90%	
NORDIC CENTER OPERATIONS	142,615	172,591	83%	114%	124,667	142,602	(17,935)	87%	168,625	74%	
ICE RINK OPERATIONS PROGRAM	621,252	660,643	94%	114%	544,395	593,529	(49,134)	92%	672,699	81%	
PROPERTY TAX/EXCISE TRANSFER	14,350,604	19,754,244	73%	88%	16,362,983	16,579,187	(216,204)	99%	17,745,073	92%	
<b>TOTAL REVENUE</b>	<b>20,427,010</b>	<b>26,210,771</b>	<b>78%</b>	<b>96%</b>	<b>21,243,803</b>	<b>21,758,186</b>	<b>(514,383)</b>	<b>98%</b>	<b>23,385,696</b>	<b>91%</b>	

**TOWN OF BRECKENRIDGE  
GENERAL FUND  
CURRENT YEAR TO PRIOR YEAR COMPARISON  
FOR THE 11 MONTHS ENDING NOVEMBER 30, 2009**

92 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			CURRENT YEAR						
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT	2008 ACTUAL/ 2009 ACTUAL % CHANGE	YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE FAVORABLE/(UNFAVORABLE)	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
<b>EXPENDITURES</b>										
LAW & POLICY MAKING PROGRAM	132,759	139,989	95%	114%	116,152	150,856	34,704	77%	159,103	73%
MUNICIPAL COURT PROGRAM	165,728	200,967	82%	105%	158,045	207,590	49,545	76%	227,057	70%
ADVICE & LITIGATION PROGRAM	172,657	201,725	86%	41%	420,699	192,867	(227,832)	218%	222,817	189%
GENERAL SERVICES	10,884	12,699	86%	40311%	27	0	(27)	0%	0	0%
ADMINISTRATIVE MGT PROGRAM	525,425	633,920	83%	106%	495,264	562,173	66,909	88%	641,483	77%
HUMAN RESOURCES ADMIN PROGRAM	439,269	466,652	94%	118%	371,094	461,841	90,747	80%	524,798	71%
SPECIAL EVENTS/COMM PROGRAM	635,845	677,770	94%	123%	516,939	620,307	103,368	83%	692,441	75%
TOWN CLERK ADMIN PROGRAM	229,500	254,513	90%	103%	221,789	259,796	38,007	85%	294,688	75%
FINANCE ADMINISTRATION PROGRAM	249,609	252,292	99%	98%	254,941	290,113	35,172	88%	341,013	75%
ACCOUNTING PROGRAM	344,433	380,509	91%	120%	286,791	342,070	55,279	84%	378,675	76%
TRANSIT ADMIN PROGRM	180,836	199,570	91%	165%	109,363	120,155	10,792	91%	133,533	82%
TRANSIT SERVICES PROGRAM	2,200,967	2,452,354	90%	113%	1,945,980	2,195,832	249,852	89%	2,440,099	80%
PARKING SERVICES PROGRAM	146,670	115,396	127%	0%	0	0	-	0%	0	0%
PUBLIC SAFETY ADMIN/RECORDS	812,148	919,812	88%	105%	776,351	845,166	68,815	92%	918,410	85%
PUBLIC SAFETY COMMUNICATN PROG	273,054	363,929	75%	87%	313,636	335,385	21,749	94%	337,570	93%
PUBLIC SAFETY PATROL SVCS PROG	1,858,128	1,993,307	93%	112%	1,659,229	1,926,128	266,899	86%	2,124,474	78%
PUBLIC SAFETY COMMNTY SVC PROG	154,404	208,700	74%	39%	397,475	531,725	134,250	75%	582,257	68%
PLANNING SERVICES ADMIN PROGRM	1,247,393	1,338,884	93%	118%	1,052,894	1,212,944	160,050	87%	1,337,906	79%
BUILDING SERVICES ADMIN PROGRM	382,576	424,446	90%	106%	360,679	431,676	70,997	84%	474,428	76%
PUBLIC WORKS ADMIN PROGRAM	369,189	421,553	88%	107%	346,586	531,398	184,812	65%	585,220	59%
STREETS PROGRAM	1,706,725	1,977,099	86%	105%	1,625,381	1,865,497	240,116	87%	2,069,860	79%
PARKS PROGRAM	1,031,036	1,156,146	89%	107%	959,857	1,154,504	194,647	83%	1,252,464	77%
FACILITIES ADMIN PROGRAM	1,168,050	1,353,564	86%	94%	1,238,414	1,371,798	133,384	90%	1,516,938	82%
ENGINEERING ADMIN PROGRAM	450,759	504,702	89%	114%	395,627	308,621	(87,006)	128%	342,276	116%
CONTINGENCIES	128,700	135,700	95%	65%	199,250	195,999	(3,251)	102%	195,999	102%
RECREATION ADMIN PROGRAM	644,344	731,233	88%	112%	576,431	698,487	122,056	83%	772,143	75%
RECREATION PROGRAM	580,830	638,388	91%	117%	496,418	631,462	135,044	79%	692,576	72%
RECREATION OPERATIONS PROGRAM	1,854,450	2,027,934	91%	120%	1,546,414	1,865,214	318,800	83%	2,149,175	72%
NORDIC CENTER OPERATIONS	209,414	288,476	73%	88%	236,637	260,519	23,882	91%	338,739	70%
ICE RINK OPERATIONS PROGRAM	959,750	1,085,557	88%	113%	849,331	1,039,756	190,425	82%	1,207,067	70%
LONG TERM DEBT	426,746	444,028	96%	103%	414,115	418,163	4,048	99%	418,163	99%
SHORT TERM DEBT	133,783	133,783	100%	100%	133,274	133,011	(263)	100%	133,011	100%
<b>TOTAL EXPENDITURES</b>	<b>19,826,491</b>	<b>22,136,027</b>	<b>90%</b>	<b>107%</b>	<b>18,475,583</b>	<b>21,161,053</b>	<b>2,685,470</b>	<b>87%</b>	<b>23,504,383</b>	<b>79%</b>
<b>REVENUE LESS EXPENDITURES</b>	<b>600,519</b>	<b>4,074,744</b>			<b>2,768,220</b>	<b>597,133</b>	<b>2,171,087</b>		<b>(118,687)</b>	

**TOWN OF BRECKENRIDGE  
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

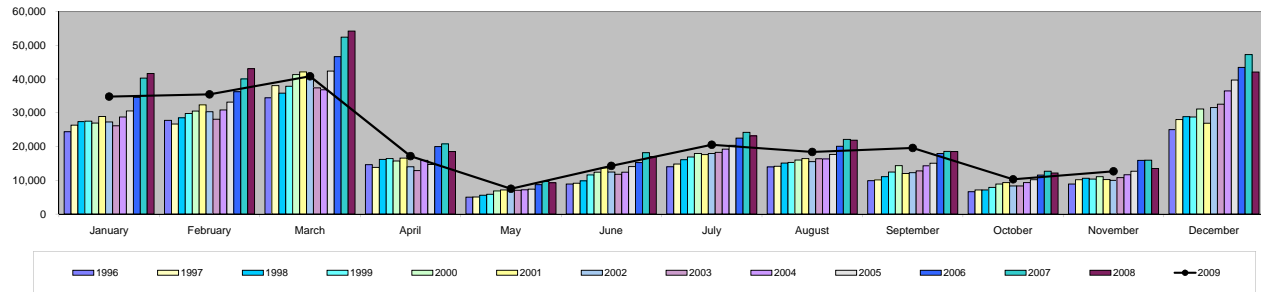
(in Thousands of Dollars)

**Total - All Categories\***

\* excluding Undefined and Utilities categories

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly 08-09	YTD 2008	YTD 2009	YTD % Change 08-09
January	24,356	26,315	27,355	27,490	26,938	28,887	27,264	26,117	28,764	30,549	34,589	40,283	41,665	34,774	-16.5%	41,665	34,774	-16.5%
February	27,767	26,667	28,510	29,777	30,510	32,350	30,295	28,093	30,808	33,171	36,236	40,034	43,052	35,441	-17.7%	84,717	70,215	-17.1%
March	34,438	38,037	35,824	37,843	41,307	42,120	40,962	37,377	36,807	42,370	46,603	52,390	54,237	40,805	-24.8%	138,954	111,020	-20.1%
April	14,619	13,809	16,196	16,407	15,702	16,565	13,982	12,868	15,894	14,635	19,963	20,758	18,483	17,158	-7.2%	157,437	128,178	-18.6%
May	4,994	5,024	5,530	5,822	6,816	7,107	6,914	7,028	7,179	7,355	8,661	9,629	9,251	7,458	-19.4%	166,688	135,636	-18.6%
June	8,856	9,093	9,826	11,561	12,400	13,676	12,426	11,774	12,395	14,043	15,209	18,166	16,988	14,236	-16.2%	183,676	149,872	-18.4%
July	13,979	14,791	16,080	16,899	17,949	17,575	17,909	18,273	19,208	20,366	22,498	24,168	23,160	20,510	-11.4%	206,836	170,382	-17.6%
August	13,940	14,145	15,077	15,253	15,994	16,389	15,508	16,362	16,326	17,625	20,071	22,125	21,845	18,372	-15.9%	228,681	188,754	-17.5%
September	9,865	10,099	11,033	12,427	14,310	12,002	12,224	12,778	14,261	15,020	17,912	18,560	18,481	19,566	5.9%	247,162	208,320	-15.7%
October	6,598	7,120	7,132	7,880	8,876	9,289	8,323	8,311	9,306	10,170	11,544	12,687	12,120	10,259	-15.4%	259,282	218,579	-15.7%
November	8,847	10,173	10,588	10,340	11,069	10,211	9,942	10,780	11,604	12,647	15,877	15,943	13,487	12,653	-6.2%	272,769	231,232	-15.2%
December	24,975	27,965	28,845	28,736	31,107	26,870	31,564	32,525	36,482	39,687	43,431	47,258	42,076	0	n/a	314,845	231,232	n/a
<b>Totals</b>	<b>193,234</b>	<b>203,238</b>	<b>211,996</b>	<b>220,435</b>	<b>232,978</b>	<b>233,041</b>	<b>227,313</b>	<b>222,286</b>	<b>239,034</b>	<b>257,638</b>	<b>292,594</b>	<b>322,001</b>	<b>314,845</b>	<b>231,232</b>				

2009 Monthly Sales Tax Activity (in thousands of dollars)



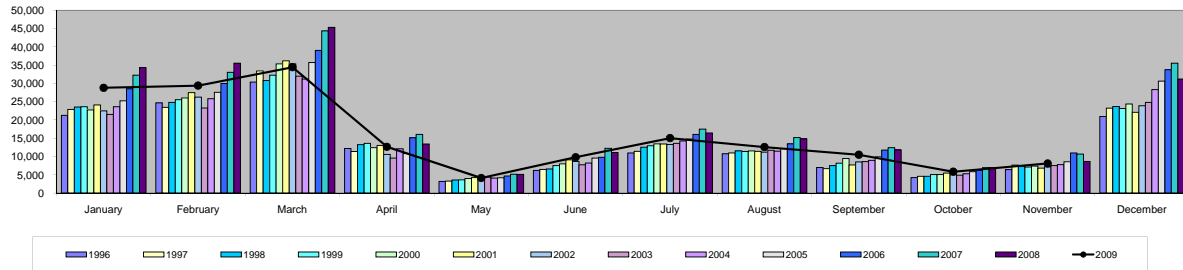
**TOWN OF BRECKENRIDGE  
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Retail-Restaurant-Lodging Summary**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly 08-09	YTD 2008	YTD 2009	YTD % Change 08-09
January	21,263	22,893	23,523	23,629	22,723	24,118	22,465	21,509	23,620	25,240	28,528	32,258	34,290	28,793	-16.0%	34,290	28,793	-16.0%
February	24,673	23,443	24,805	25,532	26,044	27,464	26,258	23,253	25,826	27,553	29,972	33,039	35,511	29,389	-17.2%	69,801	58,182	-16.6%
March	30,343	33,414	30,809	32,254	35,348	36,196	35,344	31,988	31,209	35,705	39,051	44,390	45,338	34,423	-24.1%	115,139	92,605	-19.6%
April	12,182	11,347	13,256	13,579	12,426	13,029	10,587	9,562	12,102	10,773	15,134	16,025	13,410	12,640	-5.7%	128,549	105,245	-18.1%
May	3,167	3,264	3,565	3,610	3,949	4,203	3,950	4,331	4,095	4,179	4,647	5,146	5,111	4,108	-19.6%	133,660	109,353	-18.2%
June	6,174	6,451	6,588	7,513	8,001	9,058	8,619	7,724	8,217	9,568	9,789	12,225	11,112	9,790	-11.9%	144,772	119,143	-17.7%
July	10,950	11,405	12,527	12,944	13,464	13,406	13,292	13,590	14,248	14,766	16,038	17,499	16,446	15,027	-8.6%	161,218	134,170	-16.8%
August	10,738	10,981	11,517	11,352	11,542	11,407	11,174	11,717	11,429	12,122	13,446	15,167	14,815	12,575	-15.1%	176,033	146,745	-16.6%
September	6,966	6,687	7,492	8,160	9,443	7,666	8,513	8,599	8,940	9,897	11,761	12,418	11,794	10,465	-11.3%	187,827	157,210	-16.3%
October	4,232	4,560	4,578	5,049	5,054	5,425	4,991	4,855	5,257	5,824	6,248	6,934	6,977	5,835	-16.4%	194,804	163,045	-16.3%
November	6,426	7,617	7,255	7,122	7,352	6,816	7,174	7,511	7,771	8,557	10,963	10,650	8,641	8,082	-6.5%	203,445	171,127	-15.9%
December	20,928	23,219	23,650	23,124	24,361	22,090	23,901	24,818	28,314	30,619	33,736	35,517	31,211	0	n/a	234,656	171,127	n/a
<b>Totals</b>	<b>158,042</b>	<b>165,281</b>	<b>169,565</b>	<b>173,868</b>	<b>179,707</b>	<b>180,878</b>	<b>176,268</b>	<b>169,457</b>	<b>181,028</b>	<b>194,803</b>	<b>219,313</b>	<b>241,268</b>	<b>234,656</b>	<b>171,127</b>				

**2009 Monthly Sales Tax Activity (in thousands of dollars)**





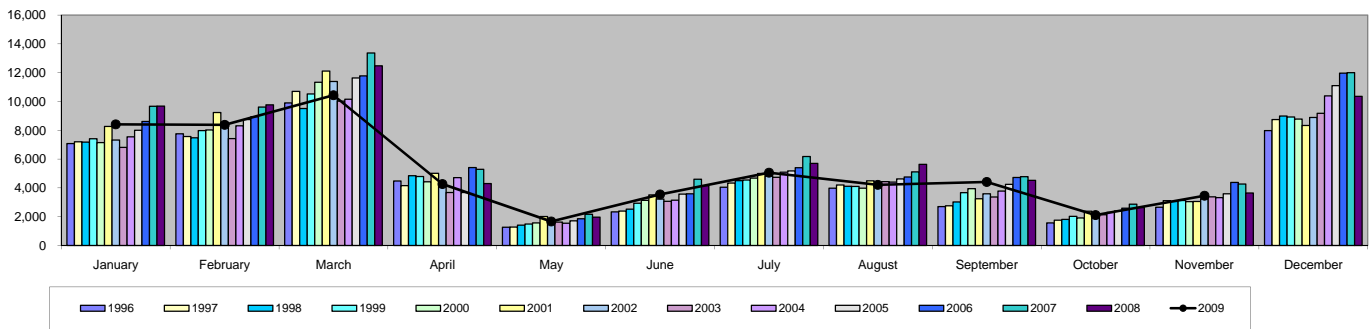
**TOWN OF BRECKENRIDGE  
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Retail Sales**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	7,079	7,205	7,173	7,411	7,149	8,271	7,320	6,807	7,545	8,001	8,607	9,665	9,684	8,407	-13.2%	9,684	8,407	-13.2%
February	7,753	7,568	7,474	7,983	8,024	9,231	8,549	7,418	8,312	8,744	8,942	9,607	9,763	8,383	-14.1%	19,447	16,790	-13.7%
March	9,902	10,702	9,507	10,525	11,337	12,116	11,390	10,028	10,162	11,632	11,774	13,373	12,479	10,435	-16.4%	31,926	27,225	-14.7%
April	4,481	4,156	4,841	4,789	4,423	5,008	4,105	3,679	4,714	3,678	5,406	5,287	4,301	4,262	-0.9%	36,227	31,487	-13.1%
May	1,263	1,272	1,408	1,492	1,569	2,014	1,583	1,626	1,549	1,708	1,858	2,165	1,965	1,667	-15.2%	38,192	33,154	-13.2%
June	2,335	2,391	2,521	2,931	3,135	3,514	3,227	3,062	3,140	3,565	3,589	4,597	4,153	3,549	-14.5%	42,345	36,703	-13.3%
July	4,040	4,336	4,499	4,543	4,678	4,998	4,838	4,732	5,087	5,174	5,403	6,176	5,700	5,052	-11.4%	48,045	41,755	-13.1%
August	3,981	4,199	4,109	4,100	3,973	4,492	4,269	4,429	4,397	4,620	4,757	5,110	5,631	4,215	-25.1%	53,676	45,970	-14.4%
September	2,698	2,753	3,021	3,671	3,944	3,242	3,587	3,370	3,781	4,249	4,726	4,783	4,527	4,413	-2.5%	58,203	50,383	-13.4%
October	1,563	1,759	1,815	2,024	1,908	2,374	2,132	2,127	2,298	2,404	2,591	2,866	2,635	2,113	-19.8%	60,838	52,496	-13.7%
November	2,650	3,108	3,060	3,124	3,041	3,057	3,249	3,378	3,326	3,586	4,376	4,267	3,645	3,459	-5.1%	64,483	55,955	-13.2%
December	7,978	8,746	8,985	8,919	8,782	8,338	8,893	9,184	10,388	11,099	11,971	12,000	10,358	0	n/a	74,841	55,955	n/a
<b>Totals</b>	<b>55,723</b>	<b>58,195</b>	<b>58,413</b>	<b>61,512</b>	<b>61,963</b>	<b>66,655</b>	<b>63,142</b>	<b>59,840</b>	<b>64,699</b>	<b>68,460</b>	<b>74,000</b>	<b>79,896</b>	<b>74,841</b>	<b>55,955</b>				

2009 Monthly Sales Tax Activity (in thousands of dollars)



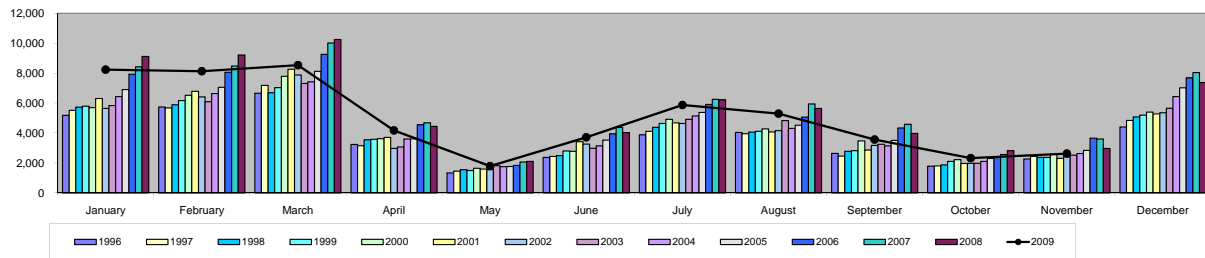
**TOWN OF BRECKENRIDGE  
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Restaurants/Bars**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	5,180	5,515	5,723	5,784	5,697	6,300	5,644	5,835	6,425	6,897	7,924	8,414	9,117	8,229	-9.7%	9,117	8,229	-9.7%
February	5,735	5,667	5,880	6,162	6,519	6,783	6,412	6,092	6,637	7,047	8,058	8,467	9,208	8,127	-11.7%	18,325	16,356	-10.7%
March	6,651	7,180	6,688	7,031	7,792	8,258	7,870	7,307	7,413	8,117	9,256	10,015	10,240	8,527	-16.7%	28,565	24,883	-12.9%
April	3,238	3,149	3,548	3,576	3,624	3,706	2,967	3,068	3,595	3,609	4,552	4,678	4,440	4,173	-6.0%	33,005	29,056	-12.0%
May	1,329	1,454	1,541	1,492	1,641	1,590	1,561	1,808	1,746	1,760	1,832	2,058	2,107	1,783	-15.4%	35,112	30,839	-12.2%
June	2,364	2,437	2,488	2,796	2,779	3,413	3,257	2,982	3,136	3,525	3,938	4,370	4,030	3,712	-7.9%	39,142	34,551	-11.7%
July	3,877	4,113	4,380	4,639	4,910	4,675	4,632	4,913	5,138	5,375	5,905	6,249	6,218	5,873	-5.5%	45,360	40,424	-10.9%
August	4,032	3,953	4,056	4,106	4,270	4,068	4,156	4,832	4,302	4,521	5,067	5,933	5,639	5,293	-6.1%	50,999	45,717	-10.4%
September	2,641	2,452	2,770	2,814	3,468	2,860	3,169	3,249	3,138	3,498	4,340	4,585	3,971	3,560	-10.4%	54,970	49,277	-10.4%
October	1,779	1,807	1,870	2,097	2,220	1,959	1,977	1,978	2,100	2,290	2,352	2,564	2,818	2,317	-17.8%	57,788	51,594	-10.7%
November	2,261	2,428	2,364	2,367	2,558	2,307	2,425	2,520	2,624	2,841	3,651	3,593	2,972	2,620	-11.8%	60,760	54,214	-10.8%
December	4,402	4,834	5,076	5,191	5,393	5,275	5,354	5,646	6,428	7,017	7,681	8,028	7,371	0	n/a	68,131	54,214	n/a
<b>Totals</b>	<b>43,489</b>	<b>44,989</b>	<b>46,384</b>	<b>48,055</b>	<b>50,871</b>	<b>51,194</b>	<b>49,424</b>	<b>50,230</b>	<b>52,682</b>	<b>56,497</b>	<b>64,556</b>	<b>68,954</b>	<b>68,131</b>	<b>54,214</b>				

2009 Monthly Sales Tax Activity (in thousands of dollars)



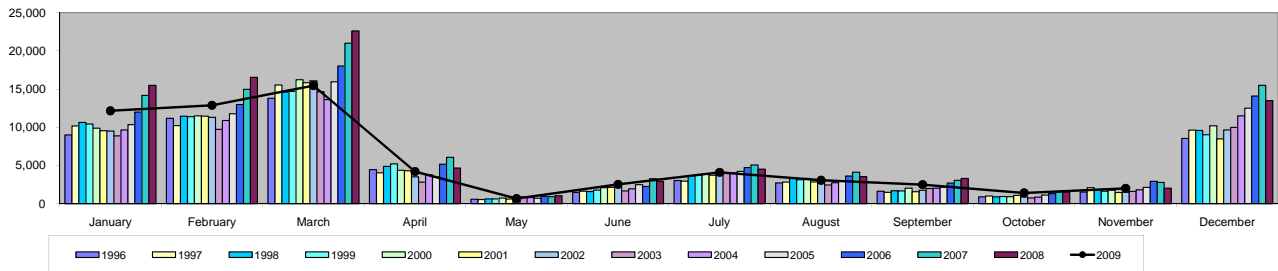
**TOWN OF BRECKENRIDGE  
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Short-Term Lodging**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	9,004	10,173	10,627	10,434	9,877	9,547	9,501	8,867	9,650	10,342	11,997	14,179	15,489	12,157	-21.5%	15,489	12,157	-21.5%
February	11,185	10,208	11,451	11,387	11,501	11,450	11,297	9,743	10,877	11,762	12,972	14,965	16,540	12,879	-22.1%	32,029	25,036	-21.8%
March	13,790	15,532	14,614	14,698	16,219	15,822	16,084	14,653	13,634	15,956	18,021	21,002	22,619	15,461	-31.6%	54,648	40,497	-25.9%
April	4,463	4,042	4,867	5,214	4,379	4,315	3,515	2,815	3,793	3,486	5,176	6,060	4,669	4,205	-9.9%	59,317	44,702	-24.6%
May	575	538	616	626	739	599	806	897	800	711	957	923	1,039	658	-36.7%	60,356	45,360	-24.8%
June	1,475	1,623	1,579	1,786	2,087	2,131	2,135	1,680	1,941	2,478	2,262	3,258	2,929	2,529	-13.7%	63,285	47,889	-24.3%
July	3,033	2,956	3,648	3,762	3,876	3,733	3,822	3,945	4,023	4,217	4,730	5,074	4,528	4,102	-9.4%	67,813	51,991	-23.3%
August	2,725	2,829	3,352	3,146	3,299	2,847	2,749	2,456	2,730	2,981	3,622	4,124	3,545	3,067	-13.5%	71,358	55,058	-22.8%
September	1,627	1,482	1,701	1,675	2,031	1,564	1,757	1,980	2,021	2,150	2,695	3,050	3,296	2,492	-24.4%	74,654	57,550	-22.9%
October	890	994	893	928	926	1,092	882	750	859	1,130	1,305	1,504	1,524	1,405	-7.8%	76,178	58,955	-22.6%
November	1,515	2,081	1,831	1,631	1,753	1,452	1,500	1,613	1,821	2,130	2,936	2,790	2,024	2,003	-1.0%	78,202	60,958	-22.1%
December	8,548	9,639	9,589	9,014	10,186	8,477	9,654	9,988	11,498	12,503	14,084	15,489	13,482	0	n/a	91,684	60,958	n/a
<b>Totals</b>	<b>58,830</b>	<b>62,097</b>	<b>64,768</b>	<b>64,301</b>	<b>66,873</b>	<b>63,029</b>	<b>63,702</b>	<b>59,387</b>	<b>63,647</b>	<b>69,846</b>	<b>80,757</b>	<b>92,418</b>	<b>91,684</b>	<b>60,958</b>				

**2009 Monthly Sales Tax Activity (in thousands of dollars)**



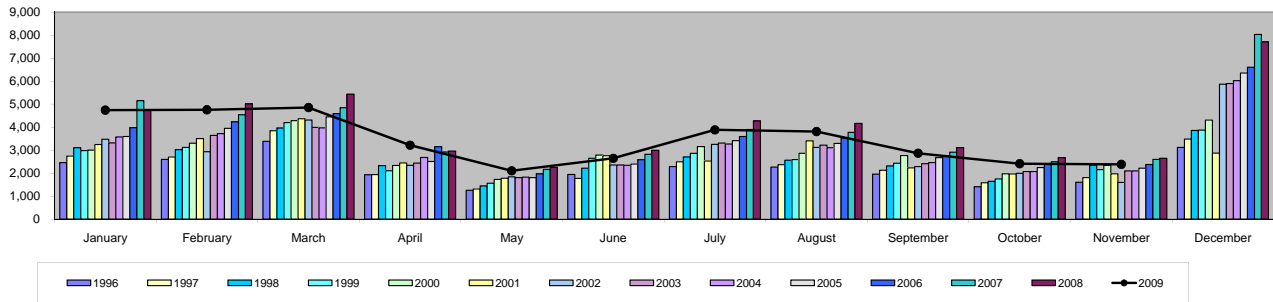
**TOWN OF BRECKENRIDGE  
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Grocery/Liquor Stores**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	2,458	2,746	3,104	2,977	2,999	3,242	3,472	3,314	3,570	3,589	3,977	5,149	4,744	4,741	-0.1%	4,744	4,741	-0.1%
February	2,595	2,702	3,020	3,119	3,296	3,501	2,931	3,643	3,714	3,949	4,233	4,536	5,009	4,755	-5.1%	9,753	9,496	-2.6%
March	3,383	3,839	3,960	4,199	4,282	4,366	4,311	3,988	3,968	4,449	4,585	4,844	5,436	4,852	-10.7%	15,189	14,348	-5.5%
April	1,928	1,937	2,325	2,105	2,330	2,441	2,336	2,437	2,682	2,503	3,149	2,920	2,959	3,213	8.6%	18,148	17,561	-3.2%
May	1,256	1,309	1,440	1,558	1,728	1,779	1,836	1,801	1,823	1,806	1,969	2,169	2,246	2,100	-6.5%	20,394	19,661	-3.6%
June	1,940	1,772	2,214	2,648	2,784	2,760	2,352	2,354	2,341	2,392	2,584	2,822	2,990	2,643	-11.6%	23,384	22,304	-4.6%
July	2,283	2,494	2,701	2,862	3,152	2,527	3,253	3,303	3,266	3,414	3,588	3,899	4,264	3,881	-9.0%	27,648	26,185	-5.3%
August	2,266	2,364	2,559	2,587	2,861	3,404	3,117	3,216	3,103	3,292	3,529	3,771	4,161	3,807	-8.5%	31,809	29,992	-5.7%
September	1,959	2,122	2,311	2,430	2,765	2,231	2,284	2,409	2,456	2,671	2,757	2,908	3,113	2,864	-8.0%	34,922	32,856	-5.9%
October	1,407	1,584	1,644	1,748	1,969	1,965	1,990	2,066	2,069	2,239	2,372	2,494	2,673	2,408	-9.9%	37,595	35,264	-6.2%
November	1,602	1,804	2,330	2,152	2,339	1,970	1,597	2,096	2,096	2,214	2,377	2,600	2,647	2,379	-10.1%	40,242	37,643	-6.5%
December	3,115	3,477	3,858	3,869	4,305	2,865	5,868	5,897	6,017	6,356	6,604	8,028	7,705	0	n/a	47,947	37,643	n/a
<b>Totals</b>	<b>26,192</b>	<b>28,150</b>	<b>31,466</b>	<b>32,254</b>	<b>34,810</b>	<b>33,051</b>	<b>35,347</b>	<b>36,524</b>	<b>37,105</b>	<b>38,874</b>	<b>41,724</b>	<b>46,140</b>	<b>47,947</b>	<b>37,643</b>				

**2009 Monthly Sales Tax Activity (in thousands of dollars)**



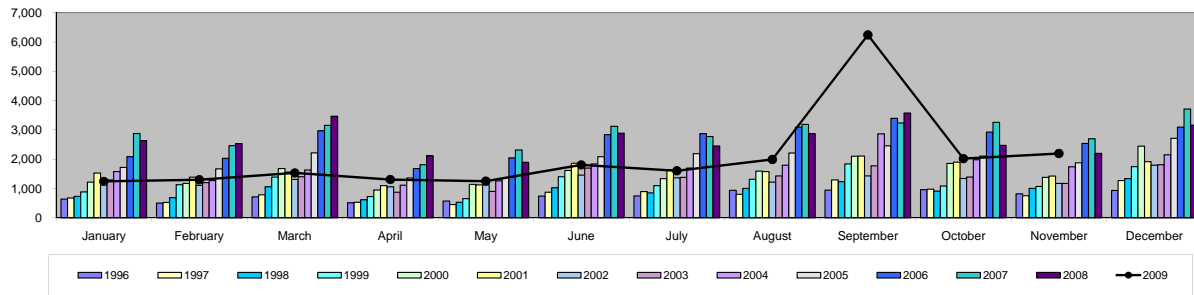
**TOWN OF BRECKENRIDGE  
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Supplies**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	635	676	728	884	1,216	1,527	1,327	1,294	1,574	1,720	2,084	2,876	2,631	1,240	-52.9%	2,631	1,240	-52.9%
February	499	522	685	1,126	1,170	1,385	1,106	1,197	1,268	1,669	2,031	2,459	2,532	1,297	-48.8%	5,163	2,537	-50.9%
March	712	784	1,055	1,390	1,677	1,558	1,307	1,401	1,630	2,216	2,967	3,156	3,463	1,530	-55.8%	8,626	4,067	-52.9%
April	509	525	615	723	946	1,095	1,059	869	1,110	1,359	1,680	1,813	2,114	1,305	-38.3%	10,740	5,372	-50.0%
May	571	451	525	654	1,139	1,125	1,128	896	1,261	1,370	2,045	2,314	1,894	1,250	-34.0%	12,634	6,622	-47.6%
June	742	870	1,024	1,400	1,615	1,858	1,455	1,696	1,837	2,083	2,836	3,119	2,886	1,803	-37.5%	15,520	8,425	-45.7%
July	746	892	852	1,093	1,333	1,642	1,364	1,380	1,694	2,186	2,872	2,770	2,450	1,602	-34.6%	17,970	10,027	-44.2%
August	936	800	1,001	1,314	1,591	1,578	1,217	1,429	1,794	2,211	3,096	3,187	2,869	1,990	-30.6%	20,839	12,017	-42.3%
September	940	1,290	1,230	1,837	2,102	2,105	1,427	1,770	2,865	2,452	3,394	3,234	3,574	6,237	74.5%	24,413	18,254	-25.2%
October	959	976	910	1,083	1,853	1,899	1,342	1,390	1,980	2,107	2,924	3,259	2,470	2,016	-18.4%	26,883	20,270	-24.6%
November	819	752	1,003	1,066	1,378	1,425	1,171	1,173	1,737	1,876	2,537	2,693	2,199	2,192	-0.3%	29,082	22,462	-22.8%
December	932	1,269	1,337	1,743	2,441	1,915	1,795	1,810	2,151	2,712	3,091	3,713	3,160	0	n/a	32,242	22,462	n/a
<b>Totals</b>	<b>9,000</b>	<b>9,807</b>	<b>10,965</b>	<b>14,313</b>	<b>18,461</b>	<b>19,112</b>	<b>15,698</b>	<b>16,305</b>	<b>20,901</b>	<b>23,961</b>	<b>31,557</b>	<b>34,593</b>	<b>32,242</b>	<b>22,462</b>				

2009 Monthly Sales Tax Activity (in thousands of dollars)



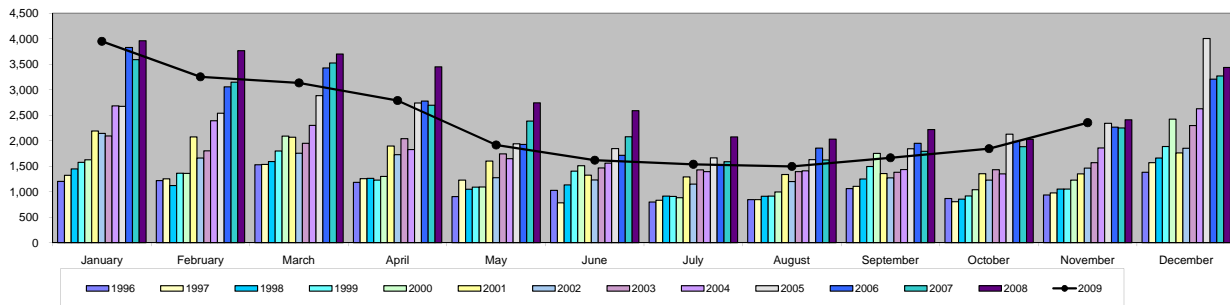
**TOWN OF BRECKENRIDGE  
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

**Utilities**

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	1,201	1,320	1,446	1,575	1,625	2,191	2,144	2,093	2,684	2,675	3,829	3,591	3,961	3,949	-0.3%	3,961	3,949	-0.3%
February	1,218	1,250	1,121	1,360	1,359	2,075	1,659	1,800	2,391	2,540	3,056	3,149	3,765	3,252	-13.6%	7,726	7,201	-6.8%
March	1,529	1,533	1,591	1,799	2,090	2,067	1,754	1,947	2,299	2,883	3,428	3,525	3,699	3,133	-15.3%	11,425	10,334	-9.5%
April	1,181	1,255	1,262	1,227	1,299	1,894	1,724	2,040	1,827	2,741	2,778	2,694	3,448	2,789	-19.1%	14,873	13,123	-11.8%
May	904	1,226	1,047	1,089	1,091	1,599	1,272	1,740	1,647	1,939	1,926	2,386	2,742	1,915	-30.2%	17,615	15,038	-14.6%
June	1,027	780	1,133	1,402	1,510	1,325	1,228	1,466	1,558	1,846	1,713	2,078	2,588	1,618	-37.5%	20,203	16,656	-17.6%
July	796	830	913	907	880	1,289	1,147	1,427	1,394	1,663	1,529	1,588	2,075	1,537	-25.9%	22,278	18,193	-18.3%
August	844	844	910	913	994	1,336	1,198	1,393	1,408	1,629	1,854	1,621	2,031	1,495	-26.4%	24,309	19,688	-19.0%
September	1,059	1,103	1,249	1,494	1,752	1,354	1,271	1,381	1,435	1,843	1,949	1,792	2,219	1,665	-25.0%	26,528	21,353	-19.5%
October	866	804	854	917	1,039	1,353	1,227	1,429	1,348	2,127	1,987	1,883	2,026	1,843	-9.0%	28,554	23,196	-18.8%
November	935	974	1,049	1,052	1,225	1,348	1,461	1,569	1,856	2,340	2,264	2,251	2,411	2,353	-2.4%	30,965	25,549	-17.5%
December	1,381	1,570	1,661	1,885	2,423	1,760	1,852	2,297	2,627	4,005	3,206	3,271	3,435	0	n/a	34,400	25,549	n/a
<b>Totals</b>	<b>12,941</b>	<b>13,489</b>	<b>14,236</b>	<b>15,620</b>	<b>17,287</b>	<b>19,591</b>	<b>17,937</b>	<b>20,582</b>	<b>22,474</b>	<b>28,231</b>	<b>29,519</b>	<b>29,829</b>	<b>34,400</b>	<b>25,549</b>				

2009 Monthly Sales Tax Activity (in thousands of dollars)





## MEMORANDUM

**TO:** Tim Gagen  
Kate Boniface  
**FROM:** Lynn Zwaagstra  
**DATE:** January 12, 2010  
**SUBJECT:** Recreation Center New Business Model - Hours

In September 2009, the Recreation Center hours were reduced as part of the Town's approved Tier III expense reductions implemented in response to the economic downturn and Council direction to look at a new sustainable business model for all Town operations. The hour reductions were part of a bigger package of reductions implemented. Negative community feedback has been received concerning some of the hour reductions and Council has asked to review the changes.

### **Recreation Center Facility Hours:**

#### **Hours prior to recent reductions:**

Summer (Mid April through Mid Oct)	Winter (Mid Oct through Mid April)
Monday through Friday 6am – 9pm	Monday through Friday 6am-10pm
Saturday 7am-9pm	Saturday 7am-10pm
Sunday 8am-9pm	Sunday 8am-10pm

Total annual operating hours – 5486

#### **Facility hours with reductions (implemented Sept 6, 2009) as part of the Town's Tier III reductions:**

Monday through Friday 6am-9pm  
Saturday 7am-6pm  
Sunday 10am-6pm

Total annual operating hours – 4888  
Annual estimated savings - \$90,000

### **Budget Comparisons (Recreation Center Only):**

2007 Recreation Center Actual Expenses - \$1,622,170  
2008 Recreation Center Actual Expenses - \$2,020,941 \*Reflects the transfer of fitness and personal training to the Rec Ctr division  
(This is a 24.58% increase over 2007 levels)  
2009 Original Recreation Center Expense Submission (Prior to Tier I) - \$2,188,632  
(This is a 34.92% increase over 2007 levels)  
2009 Approved Recreation Center Expenses (Includes Tier I) - \$2,150,000  
(This is a 32.54% increase over 2007 levels & a 1.8 % cut from the original 2009 submission)  
2009 Adjusted Recreation Center Expenses (Partial Year Implementation of Tier II & III) - \$2,086,000  
(This is a 28.59% increase over 2007 levels & a 4.7 % cut from the original 2009 submission)  
2010 Approved Recreation Center Expenses (Full Year Implementation of Tier II & III) - \$1,875,000  
(This is a 15.59% increase over 2007 levels & a 14.3% cut from the original 2009 submission)

### **What Drove the Business Practice Changes?**

- The Town's Tier I, II, and III budget reduction process was designed to reduce expenses and increase cost recovery driving numerous "business practice changes" in the overall Recreation Department including the Recreation Center. Recreation Center changes include a merit pay freeze, hiring freeze, elimination of 1 full time position, reduction of part time hours by 7,410 hours annually, elimination of the facility attendant position, restructuring of the tennis program and contracts, changing the fee structure to allow more automation, fee increases, Departmental changes that impact the Recreation Center, and a reduction in the Rec Center hours. These changes created an estimated savings of \$275,000.
- Out of the \$275,000 savings, \$90,000 can be directly attributed to the reduction in Rec Center hours. Specifically, the hour reduction allowed a greater decrease in part time staffing hours than would have been possible without a facility hour reduction. When examining a reduction in facility hours, the following criteria was used to choose which hours were reduced:
  - Impact the least amount of users and be as seamless as possible to visitors
  - Minimal impact to high participation programs (fitness classes, sports leagues, select youth programs)
  - Contiguous hours at the beginning or end of a day
  - Hours chosen had to be significant enough to make a financial difference
- The hours chosen were the "slowest" hours that were in operation as indicated by front desk check in statistics. However, this does not mean that there was no use. There are NO "no-use" hours at the Recreation Center.
- Options of closing some areas of the facility early (e.g., closing aquatics or tennis 1-2 hours prior to the close of the facility) were not selected as it did not seem financially beneficial, patrons have a strong expectation that the total facility is available to them when the facility is open, and for various safety reasons.

### **Cost Analysis to Reinstate Recreation Center Hours**

- Weekend closing time from 6pm back to 9pm year round 7 days per week = \$47,000
- Sunday opening from 10am back to 8am = \$15,600
- Winter evening closing time from 9pm to 10pm 7 days per week = \$27,400

Total money needed if all reduced hours were reinstate to previous levels = \$90,000

#### Options:

- Maintain current reductions
- Reinstate all or part of the previous facility hours and look to make reductions elsewhere
- Look to make reductions in other areas of the Recreation Department or other town operations to achieve similar \$ savings for any reductions re-instated

### **Attachments:**

Several attachments are included to give you more detail on check in data by month, averages and check in during special expanded hours over this past holiday weekends.

1. Participation Statistics Overview: A summary showing a full year statistical average for facility entries on Saturdays, Sundays, and Wednesdays. Also, a chart showing facility entries for the 2009/2010 holiday hour expansion.
2. Recreation Center Annual Monthly Facility Pass Entry Averages for 2009
3. Recreation Center Entry Reports by Day for Saturdays, Sundays and Wednesdays (detail version) for One Full Year (Sept 2008 through Sept 2009)
4. December 19, 2009 to January 3, 2010 Holiday Hour Expansion Facility Entry Numbers



**Participation Statistics Overview:**

*\*Note: The participation statistics below and in the attachments are obtained by pulling Active reports for what pass holders enter the facility on any given date or for any given hour. We do not have the ability to determine how many people are in the facility at any given time as we do not have a suitable facility design or technology system to separate and track each area independently. Thus, the presented statistics are simply a measure of how many people enter the facility during a given hour, which is closely associated with how many people are in the facility.*

Table 1: Summary of Active reports by hour by day for all pass admissions for a full year. Wednesday utilized as a weekday comparison for weekend participation numbers. Year utilized was September 2008 through August 2009 since the hour reduction went into place September 6, 2009. Numbers are the average number of facility entries per hour for a full year. See attached PDF for details.

	Average Per Hour Saturdays Full Year Average Sept 2008 through Aug 2009	Average Per Hour Saturdays Slow Season (Sept –Nov 2008 and April-Aug 2009)	Average Per Hour Saturdays Busy Season (Dec 2008-March 2009)
5:00pm	26	20	37
6:00pm	20	16	28
7:00pm	14	12	20
8:00pm	7	5	11
9:00pm	3	2	3
	Average Per Hour Sundays Full Year Average Sept 2008 through Aug 2009	Average Per Hour Sundays Slow Season (Sept –Nov 2008 and April-Aug 2009)	Average Per Hour Sundays Busy Season (Dec 2008-March 2009)
5:00pm	27	21	38
6:00pm	21	17	29
7:00pm	16	13	22
8:00pm	8	5	14
9:00pm	3	2	3
	Average Per Hour Wednesdays Full Year Average Sept 2008 through Aug 2009	Average Per Hour Wednesdays Slow Season (Sept –Nov 2008 and April-Aug 2009)	Average Per Hour Wednesdays Busy Season (Dec 2008-March 2009)
5:00pm	53	45	69
6:00pm	34	27	49
7:00pm	25	23	30
8:00pm	13	9	21
9:00pm	3	3	4

Table 2: Participation during the “holiday hour expansion” December 19, 2009, through January 3, 2010  
Total number of facility pass entries per hour. Hour change was published in the Summit Daily News, emailed to all Recreation Department customers with an email address, and posted at the facility.

	Sat Dec 19	Sun Dec 20	Sat Dec 26	Sun Dec 27	Sat Jan 2	Sun Jan 3
7:00pm	38		38		29	
8:00pm	30	15	34	24	23	18
9:00pm	34	17	33	28	28	16
	25	31	38	38	18	15
5:00pm	23	21	33	35	21	15
6:00pm	12	13	51	15	21	16
7:00pm	21	23	35	15	17	19
8:00pm	19	26	37	28	21	20
9:00pm	20	20	424	22	15	19
	29	44	40	40	31	24
5:00pm	20	24	29	32	25	32
6:00pm	7	15	7	14	13	15
7:00pm	4	6	16	7	4	7
8:00pm	0	1	0	0	2	0

# Recreation Center Annual Monthly Facility Pass Entry Averages for 2009

\*A compilation report showing how many people entered the facility for each hour for the given month. December 2008 is also shown as a comparison.

Time of Day	2008		2009 →		*Weekends went to 6pm closing																					
	December 2008 Entries This Hour	Average Per Day Entering This Hour	January Entries This Hour	Average Per Day Entering This Hour	February Entries This Hour	Average Per Day Entering This Hour	March Entries This Hour	Average Per Day Entering This Hour	April Entries This Hour	Average Per Day Entering This Hour	May Entries This Hour	Average Per Day Entering This Hour	June Entries This Hour	Average Per Day Entering This Hour	July Entries This Hour	Average Per Day Entering This Hour	August Entries This Hour	Average Per Day Entering This Hour	Sept Entries This Hour	Average Per Day Entering This Hour	October Entries This Hour	Average Per Day Entering This Hour	Nov Entries This Hour	Average Per Day Entering This Hour	Dec Entries This Hour	Average Per Day Entering This Hour
05:45AM	49	1.58	87	2.81	107	3.82	134	4.32	130	4.33	87	2.81	43	1.43	22	0.71	36	1.20	60	1.94	57	1.84	78	2.60	73	2.35
06:00AM	558	18.00	811	26.16	878	31.36	803	25.90	630	21.00	612	19.74	664	22.13	611	19.71	594	19.80	560	18.06	436	14.06	772	25.73	583	18.81
07:00AM	483	15.58	702	22.65	767	27.39	821	26.48	794	26.47	702	22.65	675	22.50	755	24.35	751	25.03	703	22.68	512	16.52	876	29.20	699	22.55
08:00AM	631	20.35	891	28.74	936	33.43	952	30.71	842	28.07	743	23.97	681	22.70	773	24.94	749	24.97	680	21.94	535	17.26	835	27.83	606	19.55
09:00AM	653	21.06	902	29.10	810	28.93	928	29.94	828	27.60	724	23.35	586	19.53	793	25.58	700	23.33	534	17.23	474	15.29	661	22.03	535	17.26
10:00AM	585	18.87	918	29.61	907	32.39	961	31.00	874	29.13	759	24.48	615	20.50	722	23.29	720	24.00	645	20.81	747	24.10	1015	33.83	796	25.68
11:00AM	715	23.06	1068	34.45	997	35.61	1180	38.06	982	32.73	862	27.81	739	24.63	849	27.39	752	25.07	714	23.03	874	28.19	1148	38.27	912	29.42
12:00PM	518	16.71	818	26.39	751	26.82	888	28.65	778	25.93	627	20.23	529	17.63	562	18.13	503	16.77	555	17.90	629	20.29	690	23.00	550	17.74
01:00PM	514	16.58	810	26.13	720	25.71	873	28.16	712	23.73	577	18.61	479	15.97	433	13.97	413	13.77	445	14.35	517	16.68	685	22.83	539	17.39
02:00PM	483	15.58	810	26.13	824	29.43	857	27.65	732	24.40	524	16.90	479	15.97	541	17.45	412	13.73	516	16.65	502	16.19	805	26.83	654	21.10
03:00PM	617	19.90	981	31.65	896	32.00	1068	34.45	832	27.73	673	21.71	556	18.53	506	16.32	487	16.23	454	14.65	523	16.87	927	30.90	742	23.94
04:00PM	833	26.87	1432	46.19	1233	44.04	1333	43.00	1058	35.27	792	25.55	658	21.93	676	21.81	559	18.63	600	19.35	729	23.52	1130	37.67	1014	32.71
05:00PM	1149	37.06	1861	60.03	1845	65.89	1939	62.55	1641	54.70	1129	36.42	930	31.00	850	27.42	754	25.13	795	25.65	945	30.48	1464	48.80	1188	38.32
06:00PM	842	27.16	1135	36.61	1162	41.50	1199	38.68	966	32.20	743	23.97	571	19.03	480	15.48	571	19.03	502	16.19	493	15.90	678	22.60	645	20.81
07:00PM	563	18.16	778	25.10	895	31.96	884	28.52	705	23.50	498	16.57	497	16.57	495	15.97	491	16.37	392	12.65	280	9.03	423	14.10	429	13.84
08:00PM	298	9.61	536	17.29	544	19.43	605	19.52	381	12.70	161	5.19	167	5.57	156	5.03	120	4.00	93	3.00	68	2.19	86	2.87	101	3.26
09:00PM	65	2.10	93	3.00	137	4.89	151	4.87	74	2.47																
<b>Total Entries:</b>	<b>9556</b>		<b>14633</b>		<b>14410</b>		<b>15576</b>		<b>12959</b>		<b>10213</b>		<b>8869</b>		<b>9224</b>		<b>8612</b>		<b>8248</b>		<b>8321</b>		<b>12273</b>		<b>10066</b>	
<b>Total Unique Members :</b>	<b>1683</b>		<b>2547</b>		<b>2621</b>		<b>2594</b>		<b>2240</b>		<b>1846</b>		<b>1635</b>		<b>1682</b>		<b>1551</b>		<b>1439</b>		<b>1577</b>		<b>2077</b>		<b>2128</b>	

Total Annual Average Pass Entries Per Hour for 2009	
05:45AM	2.51
06:00AM	21.87
07:00AM	24.04
08:00AM	25.34
09:00AM	23.26
10:00AM	26.57
11:00AM	30.39
12:00PM	21.62
01:00PM	19.78
02:00PM	21.04
03:00PM	23.75
04:00PM	30.81
05:00PM	42.20
06:00PM	25.17
07:00PM	18.64
08:00PM	8.34
09:00PM	3.81



## Recreation Center 2009/2010 Holiday Hour Expansion - Facility Entries by Hour

\*Publicized in the SDN, by direct email, and flyers

Time of Day	Sat Dec 19	Sun Dec 20	Sat Dec 26	Sun Dec 27	Sat Jan 2	Sun Jan 3	Sat Jan 9	Sun Jan 10	Average Per Day
07:00AM	38		38		29				
08:00AM	30	15	34	24	23	18			19.5
09:00AM	34	17	33	28	28	16			22.5
10:00AM	25	31	38	38	18	15			
11:00AM	23	21	33	35	21	15			
12:00PM	12	13	51	15	21	16			
01:00PM	21	23	35	15	17	19			
02:00PM	19	26	37	28	21	20			
03:00PM	20	20	42	22	15	19			
04:00PM	29	44	40	40	31	24			
05:00PM	20	24	29	32	25	32			27
06:00PM	7	15	7	14	13	15			12
07:00PM	4	6	16	7	4	7			7
08:00PM	0	1	0	0	2	0			1
<b>Total Entries:</b>	<b>286</b>	<b>257</b>	<b>437</b>	<b>298</b>	<b>268</b>	<b>217</b>			
<b>Total Unique Members :</b>	<b>261</b>	<b>239</b>	<b>374</b>	<b>268</b>	<b>258</b>	<b>207</b>			

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Draft “Bias-Motivated Municipal Offenses” Ordinance

DATE: January 4, 2010 (for January 12<sup>th</sup> meeting)

---

On December 8<sup>th</sup> you reviewed a memo from me describing a potential approach to dealing with “bias-motivated” or “hate” crimes occurring within the Town. As you will recall, the Town currently does not have an ordinance specifically dealing with this type of crime. My memo suggested incorporating into the Town Code the current misdemeanor bias-motivated crimes provisions of the Colorado statutes.

Enclosed for your review and discussion is a draft ordinance. The substantive provisions of the ordinance are taken from current state law. The only addition to the state law is the inclusion of a required fine of \$999 (the maximum fine the Town can impose) and a mandatory five day jail sentence for any person convicted of a bias-motivated municipal offense. It was my understanding from our previous discussion that Council agreed that a stiff penalty would act as a deterrent against persons committing these types of crimes within the Town, and was also necessary since the Town already has disorderly conduct and assault ordinances on the books.

Because you have not seen this ordinance before I have asked that the ordinance only be scheduled for worksession discussion next Tuesday.

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

1 ***FOR WORKSESSION ONLY – JAN. 12***

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

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2010

9  
10 AN ORDINANCE ADOPTING SECTION 6-3A-5 OF THE BRECKENRIDGE TOWN CODE  
11 CONCERNING BIAS-MOTIVATED MUNICIPAL OFFENSES

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

15  
16 Section 1. The Breckenridge Town Code is amended by the addition of a new Section 6-  
17 3A-5, to be entitled “Bias-Motivated Municipal Offenses”, which shall read in its entirety as  
18 follows:

19 6-3A-5: BIAS-MOTIVATED MUNICIPAL OFFENSES:

20  
21 A. The Town Council hereby finds and declares that it is the right of every  
22 person, regardless of race, color, ancestry, religion, national origin, physical or  
23 mental disability, or sexual orientation to be secure and protected from fear,  
24 intimidation, harassment, and physical harm caused by the activities of  
25 individuals and groups. The Town Council further finds that the advocacy of  
26 unlawful acts against persons or groups because of a person's or group's race,  
27 color, ancestry, religion, national origin, physical or mental disability, or sexual  
28 orientation for the purposes described in this section poses a threat to public order  
29 and safety and should be subject to appropriate sanctions as provided in this  
30 section.

31  
32 B. A person commits a bias-motivated municipal offense if, with the intent to  
33 intimidate or harass another person because of that person's actual or perceived  
34 race, color, religion, ancestry, national origin, physical or mental disability, or  
35 sexual orientation, he or she:

36  
37 (1) by words or conduct, knowingly places another person in fear of imminent  
38 lawless action directed at that person or that person's property and such words or  
39 conduct are likely to produce bodily injury to that person or damage to that  
40 person's property; or

41  
42 (2) knowingly causes damage to or destruction of the property of another person.

43  
44 C. The criminal penalty provided in this section for the commission of a bias-

1 motivated municipal offense is not intended to and shall not be construed as  
2 precluding the victim of such action from seeking any other remedies otherwise  
3 available under law.

4  
5 D. For purposes of this section:

6  
7 (1) “physical or mental disability” refers to a disability as used in the definition of  
8 the term “person with a disability” in Section 18-6.5-102(3), C.R.S.

9  
10 (2) “sexual orientation” means a person’s actual or perceived orientation toward  
11 heterosexuality, homosexuality, bisexuality, or transgender status.

12  
13 E. It shall be a misdemeanor offense for any person to violate this section. Any  
14 person convicted of having violated this section shall be punished as set forth in  
15 Chapter 4 of Title 1 of this Code; provided, however, that the Municipal Judge  
16 shall impose a fine of \$999 and a minimum sentence of five days imprisonment in  
17 the Summit County jail upon any person convicted of having violated this section.  
18 No portion of the mandatory five day jail sentence may be suspended.

19  
20 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the  
21 various secondary codes adopted by reference therein, shall continue in full force and effect.

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

26 Section 4. The Town Council hereby finds, determines and declares that it has the power  
27 to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police  
28 powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the authority  
29 granted to home rule municipalities by Article XX of the Colorado Constitution; and (iv) the  
30 powers contained in the Breckenridge Town Charter.

31 Section 5. This ordinance shall be published and become effective as provided by  
32 Section 5.9 of the Breckenridge Town Charter.

33 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
34 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2010. A Public Hearing shall be held at the  
35 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
36 \_\_\_\_\_, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
37 Town.  
38  
39

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek, CMC,  
Town Clerk



1 | **DRAFT January 6, 2010 DRAFT**

Deleted: October 27

Deleted: , 2009

2 |  
3 | **AMENDED AND RESTATED ANNEXATION AND DEVELOPMENT**  
4 | **AGREEMENT**  
5 | **(Entrada)**  
6 |

7 | THIS AMENDED AND RESTATED ANNEXATION AGREEMENT ("~~Amended and~~  
8 | ~~Restated Agreement~~") is dated \_\_\_\_\_, 2010 and is between the TOWN  
9 | OF BRECKENRIDGE, a Colorado municipal corporation ("~~Town~~") and ENTRADA AT  
10 | BRECKENRIDGE, INC., a Colorado Corporation ("~~Owner~~").

Deleted: Amended Agreement

Deleted: 2009

11 |  
12 | WHEREAS, Owner owns the real property defined as the "Property" in Section 1 of this  
13 | ~~Amended and Restated Agreement~~; and

Deleted: Amended Agreement

14 |  
15 | WHEREAS, by Ordinance No. 23, Series 2009, the Town annexed the Property to the  
16 | Town; and

17 |  
18 | WHEREAS, Town and Owner previously approved that "Annexation and Development  
19 | Agreement (Entrada)" in connection with the annexation of the Property to the Town; and

20 |  
21 | WHEREAS, Owner and Town desire to enter into this ~~Amended and Restated Agreement~~  
22 | to set forth the revised terms and conditions of the annexation of the Owner's property to the  
23 | Town, all as more fully set forth in this ~~Amended and Restated Agreement~~.

Deleted: Amended Agreement

Deleted: Amended Agreement

24 |  
25 | NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained  
26 | herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby  
27 | acknowledged, the parties agree as follows:

28 |  
29 | 1. **DEFINITIONS.** As used in this ~~Amended and Restated Agreement~~, unless the context  
30 | clearly requires otherwise:

Deleted: Amended Agreement

31 | "Act" means Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S.,  
32 | as from time to time amended.

33 |  
34 | "**Annexation Ordinance**" means the ordinance adopted by the Town Council of the  
35 | Town of Breckenridge pursuant to the Municipal Annexation Act of 1965 (Section 31-  
36 | 12-101, *et seq.*, C.R.S.) officially annexing the Property to the Town of Breckenridge.

37 |  
38 | "**Annexation Petition**" means the petition filed by Owner seeking annexation of the  
39 | Property to the Town.

40 |  
41 | "**Annexation Surcharge**" means a general annexation fee normally paid to the Town as  
42 | part of an annexation in lieu of the transfer of raw water to the Town by the annexing  
43 | party.

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

1 "**Applicable Town Ordinances**" means all ordinances of the Town regulating the  
2 development, subdivision and use of the Property, as in effect from time to time. Such  
3 ordinances include, but are not limited to, the Town's: (i) Development Code, (ii) Street  
4 Standards, (iii) Drainage Ordinance, (iv) Flood Prevention Ordinance, (v) Water Quality  
5 Ordinance, (vi) Subdivision Ordinance, (vii) Building, Technical and Construction  
6 Codes, (viii) ordinances concerning annexation/water surcharges, (ix) ordinances and  
7 resolutions concerning payment of fees, (x) ordinances concerning public dedications;  
8 and (xi) all other applicable Town ordinances, resolutions, regulations and policies.  
9

10 "**Commercial Tract**" means the portion of the Property to be developed by Owner as  
11 provided in Section 4.7.  
12

13 "**Development Code**" means the Town of Breckenridge "Development Code" codified as  
14 Chapter 1 of Title 9 of the Breckenridge Town Code.  
15

16 "**Effective Date**" means the date that this Amended and Restated Agreement becomes  
17 effective as provided in Section 3.1

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18  
19 "**General Plan of Development**" means the general conceptual plan for the development  
20 of the Property as shown on Exhibit "A".  
21

22 "**Initial Subdivision of the Property**" means: (i) the division of the Property into the  
23 Commercial Tract, the Mini-Storage Tract, and the Town Tract as shown on the General  
24 Plan of Development; and (ii) the division of the Commercial Tract into two lots of equal  
25 size; and (iii) the initial condominiumization of the Commercial Tract of each building  
26 located on the Commercial Tract at Owner's election.  
27

28 "**Legal Challenge**" means that either: (i) a third party commences a legal proceeding  
29 request for reconsideration pursuant to Section 31-12-116, C.R.S., or other action that  
30 directly or indirectly challenges the Annexation Ordinance; or (ii) a third party submits a  
31 petition for a referendum seeking to reverse or nullify the Annexation Ordinance.  
32

33 "**Master Plan**" means a plan for the development of the Commercial Tract and the Mini-  
34 Storage Tract approved by the Town as described in Section 4.5.  
35

36 "**Mini-Storage Tract**" means the portion of the Property to be developed by Owner as  
37 provided in Section 4.8.  
38

39 "**Owner**" means Entrada at Breckenridge, Inc., a Colorado Corporation, its successors  
40 and assigns, and all other subsequent owners of the Property.  
41

42 "**Property**" means Tracts A & B, A Subdivision Exemption Plat of Entrada at  
43 Breckenridge, as recorded May 29, 2007 under Reception No. 856500 of the records of  
44 the Clerk and Recorder of Summit County, Colorado, such two tracts consisting of 3.98  
45 acres.

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

1  
2 “**Town Tract**” means the middle lot following the Initial Subdivision of the Property  
3 (consisting of at least 1.326 acres, unless otherwise agreed to by the Town) that is to be  
4 conveyed by Owner to Town pursuant to Section 4.11.  
5

6 “**Transferable Development Right**” has the meaning provided in that  
7 “Intergovernmental Amended and Restated Agreement Between the Town of  
8 Breckenridge and the Board of County Commissioners of Summit County, Colorado  
9 Concerning Transferred Development Rights”, dated July 11, 2000, and any amendment  
10 or replacement agreement (hereinafter referred to as “TDR”).  
11

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- 12 2. **ANNEXATION.** The Property will be annexed to the Town. Annexation of the Property  
13 will be in accordance with the terms and conditions of the Annexation Petition; this  
14 Amended and Restated Agreement; the Colorado Municipal Annexation Act of 1965, as  
15 amended (Section 31-12-101, *et seq.*, C.R.S.); and the Applicable Town Ordinances.

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16 3. **EFFECTIVE DATE.**

17 3.1 **Effective Date Defined.** The Effective Date of this Amended and Restated  
18 Agreement is the date on which the last of the following conditions precedent has  
19 been satisfied:

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- 20 (a) this Amended and Restated Agreement has been signed by both the Town  
21 and the Owner;
- 22 (b) the Town has approved the Master Plan; the Initial Subdivision of the  
23 Property; and the initial site specific development plan(s) for the  
24 development of the Commercial Tract and Mini-Storage Tract all as  
25 described in Section 4, and no action of any type challenging such  
26 approvals has been filed within the time allowed by law;
- 27 (c) The Town ordinance amending the Land Use District 5 Guidelines to  
28 make mini-storage and bank uses “acceptable” service commercial uses in  
29 Land Use District 5 has become effective. Such action is necessary in  
30 order to cause the development of the Commercial Tract and the Mini-  
31 Storage Tract pursuant to this Amended and Restated Agreement to: (i)  
32 meet Policy 2/Absolute (Land Use Guidelines) of the Development Code;  
33 and (ii) justify an assessment of zero negative points under Policy  
34 2/Relative (Land Use Guidelines) of the Development Code; and
- 35 (d) The Town ordinance amending the Land Use District 5 Guidelines to  
36 eliminate required parking for the mini-storage facility on the Mini-  
37 Storage Tract (but not to eliminate required parking for any office located  
38 the Mini-Storage Tract) has become effective.

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ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

1 3.2 **No Recording Prior to Satisfaction of Conditions.** Until all of the conditions  
2 precedent set forth in Section 3.1 have been satisfied, none of the items described  
3 in Section 31-12-113(2)(a)(II)A, C.R.S., will be recorded.

4 4. **INITIAL ZONING; DEVELOPMENT OF THE PROPERTY.**

5 4.1 **Initial Land Use District Designation.** Upon annexation the Property will be  
6 placed in Land Use District 5.

7 4.2 **Density.**

8 (a) Density for the buildings proposed on the Commercial Tract and Mini-  
9 Storage Tract pursuant to Exhibit A will be calculated using the total  
10 square footage of the Property as a whole, which is 173,272 square feet,  
11 and not based on the buildings as they relate to the individual tracts and  
12 the subdivided lots on which each respective building is situated.

13 (b) Density on the Commercial Tract and the Mini-Storage Tract will not  
14 exceed a combined total of 39,280.4 square feet. No increase in density  
15 above 39,280.4 square feet is allowed without the Town's express consent.

16 (c) A maximum of 14,530.4 square feet of office/commercial density may be  
17 developed on the Commercial Tract; and a maximum of 24,750 square  
18 feet of mini-storage density may be developed on the Mini-Storage Tract.

19 (d) Owner's use of density is subject to the Town's right to review and  
20 approve such use as part of the Town's land use review process for the  
21 Commercial Tract and Mini-Storage Tract.

22 (e) Pursuant to Section D of Policy 3 (Absolute) of the Development Code,  
23 because the Property is located outside of the Town's Conservation  
24 District a maximum of ten percent (10%) of the total combined density for  
25 the Commercial Tract and the Mini-Storage Tract shall be excluded from  
26 the calculated density if such excluded density is used to construct  
27 "employee housing" as defined in the Development Code.

28 (f) The affordable housing development which the Town intends (but is not  
29 required) to construct on the Town Tract does not require any density.

30 4.3 **General Plan of Development.** The Property will be developed generally in  
31 accordance with the General Plan of Development attached hereto as Exhibit A,  
32 unless otherwise agreed to by both parties. However, both parties acknowledge  
33 that additional planning, evaluation, and design will be necessary before a final  
34 plan for improvements, roads, utilities, and other public improvements can be  
35 prepared and a subdivision plat filed. Such additional planning, evaluation, and

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1 design will be done as part of the Town's land use review process described in  
2 this Section 4.

3 4.4 **Land Use Review Process Pending Annexation.** In accordance with the  
4 authority provided by Section 31-12-116, C.R.S., the Owner's proposed  
5 subdivision of the Property and development of the Commercial Tract and the  
6 Mini-Storage Tract will be processed by the Town during the annexation process.  
7 However, as provided by law, Owner and Town acknowledge that final approval  
8 of the Initial Subdivision of the Property and the development of the Commercial  
9 Tract and Mini-Storage Tract cannot become effective prior to the date when the  
10 Annexation Ordinance is passed on final reading.

11 4.5 **Master Plan; Site Specific Development Plans.** The initial development of the  
12 Property will be subject to a Master Plan to be approved pursuant to Policy 39 of  
13 the Development Code, as well as the site specific development permits for the  
14 Initial Subdivision of the Property and the initial development of the Commercial  
15 Tract and the Mini-Storage Tract. The Master Plan will include all provisions  
16 required by law to be included in a master plan, and in addition will provide that  
17 the density for the Mini-Storage Tract may not be converted to use for any  
18 purpose other than mini-storage without the Town's discretionary (non-  
19 governmental) approval. Such restriction will survive the termination or  
20 expiration of the Master Plan and will be fully enforceable thereafter.

21 4.6 **Initial Subdivision of the Property.**

22 (a) Prior to any development the Property will initially be subdivided into  
23 three tracts of approximately equal size as generally depicted on the  
24 General Plan of Development. The Commercial Tract will simultaneously  
25 be re-subdivided into two lots of equal size, each containing one site for  
26 each of the two buildings that are to be constructed on the Commercial  
27 Tract as generally depicted on the General Plan of Development.

28 (b) The Town is responsible for processing the application for Initial  
29 Subdivision of the Property. The Town will pay all expenses incurred in  
30 connection with such process; provided, however, that Owner will pay the  
31 cost of the required survey and the subdivision plat for the Initial  
32 Subdivision of the Property. Owner will provide any reasonable assistance  
33 required in processing the Initial Subdivision of the Property.

34 4.7 **Development of Commercial Tract.**

35 (a) The Commercial Tract is the western lot abutting Highway 9 as shown on  
36 the General Plan of Development. It will consist of two buildings, the  
37 zoned uses of which are: bank, office and employee housing. The  
38 Commercial Tract will be resubdivided into two lots of equal size. One  
39 building will be located on each resubdivided lot. Subject to the purchase

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

of additional density as described in Section 4.10, Owner may develop a maximum of 7,264 gross square feet of density on lot 1 of the Commercial Tract and a maximum of 7,266.4 gross square feet of density on lot 2 of the Commercial Tract. The development of the Commercial Tract is subject to the Town's right to review and approve the proposed development as part of the Town's land use review process.

(b) As part of the Town's land use review of the proposed development of the Commercial Lot, Owner will provide, at its sole expense, a study conducted by a qualified consultant acceptable to the Town of the traffic impacts associated with its proposed development of the Commercial Lot and the Mini-Storage Lot. Owner will comply with the recommendations of the traffic study if required by the Town.

4.8 **Development of Mini-Storage Tract.**

(a) The Mini-Storage Tract is the eastern lot as shown on the General Plan of Development. It will contain three mini-storage buildings and a small office. Subject to the purchase of additional density as described in Section 4.10, Owner may develop a maximum of 25,250 gross square feet of density on the Mini-Storage Tract. The development of the Mini-Storage Tract is subject to the Town's right to review and approve the proposed development as part of the Town's land use review process.

(b) The Master Plan may include a proposal for the construction of a security fence along 3 sides of the Mini-Storage Tract, the height of which shall not exceed 8 feet. When the fence along the east property line of the Property existing as of the date of this Amended and Restated Agreement must be replaced, it will be replaced with a fence matching the Town-approved fence to be installed along the perimeter of the remainder of the Property, or such other type of fence as may be approved by the Town.

4.9 **Shared Curb Cut.** There will be a shared curb cut access for the Commercial Tract and the Town Tract along the southerly side of the Property in a location to be determined as part of the Town's formal land use review process. In connection with the shared curb cut, each party will provide appropriate easements to the other party to allow use of the shared curb cut.

4.10 **Transferable Development Rights.** Town will provide to Owner at Town expense 4,626 TDRs for Owner's use in developing the Commercial and Mini-Storage Tract. The transferable development rights will be provided by the Town when required for the proposed development. Owner shall be responsible for the purchase of any TDRs required to construct more than 39,280.4 square feet on the Commercial and Mini-storage Tracts, subject to Section 4.2(b).

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Deleted: Northern Access. Owner acknowledges that the Town wants a northern access to the Property to be provided across land owned by the Summit Ridge Homeowners' Association (the "HOA"). The parties acknowledge that a Cross Easement Agreement dated September 2, 2005 and recorded September 22, 2005 under Reception No. 801773 of the records of the Clerk and Recorder of Summit County, Colorado ("the "Cross Easement Agreement") that the Owner and the Town thought provided the desired northern access to the Property. However, the HOA has contested the validity and enforceability of the Cross Easement Agreement, and at the time of the signing of this Amended Agreement the Owner and the HOA are involved in civil litigation in the Summit County District Court concerning such the Cross Easement Agreement (Case No. 2007CV \_\_\_\_\_)(the "Access Lawsuit"). Accordingly, in order to attempt to provide the northern access to the Property desired by the Town it is agreed as follows:¶  
<#>Subject to the provisions of this Section 4.9, Owner commits to use its best efforts to attempt to obtain a valid easement from the HOA either through negotiation and settlement of the Access Lawsuit, or through diligent and good faith prosecution of the Access Lawsuit to a successful conclusion. If Owner is unsuccessful in obtaining the access easement from the HOA, the rights of the parties will be as provided in this Section.¶  
<#>Owner will engage the services of a competent attorney or attorneys to represent it in connection with all stages of the Access Lawsuit. Owner will pay all attorneys' fees and costs incurred by it in connection with the Access Lawsuit, either at trial or on appeal, and will indemnify and defend the Town from any liability, including, but not limited to, attorneys' fees and costs, related to the Access Lawsuit. ¶  
<#>Owner will provide the Town with periodic written reports as to the status of the Access Lawsuit at least every six months, or more frequently if requ... [1]

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1           **4.11 Conveyance and Development of Town Tract.**

- 2           (a)    The Owner will convey the Town Tract to the Town contemporaneously  
3               with the recording of the initial subdivision plat of the Property as  
4               described in Section 4.6 with the Summit County Clerk and Recorder’s  
5               Office. The Owner will transfer the Town Tract to the Town without  
6               payment of monetary consideration to the Owner by the Town. Such  
7               conveyance will be made by general warranty deed in a form acceptable to  
8               the Town Attorney, and, unless otherwise agreed by the Town, will be  
9               made free and clear of all liens and encumbrances, except for the lien of  
10              the general property taxes for ~~2009~~ and subsequent years.
- 11           (b)    The Town may (but is not required to) use the Town Tract for the  
12               development of affordable housing or for such other use as the Town in its  
13               discretion may determine.
- 14           (c)    The Town will provide the Owner with a copy of the Town’s proposed  
15               plan for the initial development and use of the Town Tract; provided,  
16               however, that Owner will have no right to approve the Town’s plan for the  
17               initial development and use of the Town Tract, and the Town may proceed  
18               with its plan for the initial development and use of the Town Tract without  
19               obtaining the approval or consent of Owner.

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20           **4.12 Development Review, Building, Impact, and Permitting Fees.**

- 21           (a)    The Town waives all building, development, impact and permitting fees of  
22               any type associated with:
- 23               (i)     the Master Plan as described in Section 4.5;
- 24               (ii)    Initial Subdivision of the Property as described in Section 4.6;
- 25               (iii)   the initial development of both the Commercial Tract and the  
26               Mini-Storage Tract and the construction of any buildings thereon  
27               as described in Sections 4.7 and 4.8 and depicted in Exhibit A  
28               hereof; and
- 29               (iv)   the initial condominium conversion of the Commercial Tract or  
30               each building located on the Commercial Tract individually,  
31               provided the condominium conversion is initiated within two  
32               years of the date of the issuance by the Town of the first certificate  
33               of occupancy for either of the buildings to be located on the  
34               Commercial Tract.
- 35           (b)    The waiver described in subsection (a) applies only to the development of  
36               the Commercial Tract and Mini-Storage Tracts as described in this

1 | Amended and Restated Agreement, and does not apply to any other  
2 resubdivision of the Commercial Tract or the Mini-Storage Tract, or to  
3 any subsequent development of either the Commercial Tract or the Mini-  
4 Storage Tract occurring after certificates of occupancy have been issued  
5 by the Town for both of the buildings to be located on the Commercial  
6 Tract and the three (3) buildings to be located on the M ini-Storage Tract  
7 pursuant to Exhibit A. If either :

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- 8 (i) Owner or Owner's successor in interest proposes a substantial  
9 modification to the Town- approved development permit for the  
10 initial subdivision and development of the Property; or
- 11 (ii) the vested property rights for the Town-approved development  
12 permit for the initial subdivision and development of the Property  
13 expire without the Property being subdivided and fully developed  
14 in accordance with such permit, or the vested property rights for  
15 the initial subdivision and development of the Property pursuant to  
16 the Town-approved development permit are proposed to be  
17 extended by the Owner or the Owner's successor in interest,

18 then the Town may require a modification of the waiver(s) provided for in  
19 subsection (a) of this Section.

- 20 (c) The Town will pay for all personnel and professional fees it incurs in  
21 reviewing the land use applications for:

- 22 (i) the initial Master Plan as described in Section 4.5;
- 23 (ii) the Initial Subdivision of the Property as described in Section 4.6;
- 24 (iii) the initial site specific development permits for the Commercial  
25 Tract and the Mini-Storage Tract as described in Sections 4.8 and  
26 4.8; and
- 27 (iv) the initial condominium conversion of the buildings to be located  
28 on the Commercial Tract.

29 This section is to be liberally construed so as to ensure that Owner pays no  
30 Town fees of any kind for the initial entitlement and permitting process  
31 involved in the initial development of the Commercial Tract and the Mini-  
32 Storage Tract as described in this Amended and Restated Agreement other  
33 than:

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- 34 (i) all fees associated with Owner's TDRs as described in Section  
35 4.10;
- 36 (ii) the cost of Owner's own consultants; and

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT



(iii) the cost of preparing the survey and subdivision plat required for the Initial Subdivision of the Property, and the cost of the preparation of any survey and subdivision plat required in connection with the initial condominium conversion of the Commercial Tract, or the buildings to be located on the Commercial Tract, as determined by Owner.

4.13 **Compliance with Town Ordinances.** Upon annexation of the Property to the Town, subdivision and development of the Commercial Tract and the Mini-Storage Tract will conform in all respects with the Applicable Town Ordinances.

4.14 **No Obligation to Develop.** Owner has no obligation to develop all or any portion of the Commercial Tract and Mini-Storage Tract, and will have no liability to the Town or any other party for its failure to develop all or any part of such properties. Owner and the Town contemplate that the Commercial and Mini-Storage Properties will be developed as market conditions dictate and allow.

4.15 **Certain Provision Personal Right of Owner.** The provisions of Section 4.10 (concerning TDRs to be provided by the Town) and Section 4.12 (concerning the Town's waiver of certain fees and costs) are personal to Owner, do not run with the land, and shall not be transferred to Owner's successors in interest unless accompanied by an assignment from Owner to the successor in interest.

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5. **OWNER'S RIGHT TO PREVENT ANNEXATION.**

5.1 If Owner is not satisfied with the results of the Town's land use approval for either the Commercial Tract or the Mini-Storage Tract (or both), Owner may withdraw the entire Annexation Petition up to the time of the final adoption of the Annexation Ordinance. To cause withdrawal of the Annexation Petition Owner must provide written notice of withdrawal to Town in the manner provided in Section 18.8.

5.2 Upon Town's receipt of Owner's timely notice of withdrawal of the Annexation Petition, Town will terminate all proceedings to annex the Property to the Town.

5.3 If Town does not receive written notice of withdrawal of the Annexation Petition prior to the time of the final adoption of the Annexation Ordinance, Owner will have irrevocably waived the right to withdraw the Annexation Petition.

6. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

6.1 **Extensions of Utility Services and Public Improvements.**

(a) Except as provided in Section 10 concerning the fees for connecting to the Town's public water system, Owner will pay all costs of acquiring, designing, constructing and connecting all public improvements and utility

1 services necessary to serve the Commercial Tract and the Mini-Storage  
2 Tract, which may include some of the following: parking, curbs, gutters,  
3 sanitary and drainage sewers (including, but not limited to, sewer tap  
4 fees), water, lighting, electricity, telephone, gas, and fiber optics, all in  
5 accordance with applicable Town or utility provider standards and  
6 specifications.

7 (b) Owner will dedicate to the Town and applicable utility providers, without  
8 charge, and free and clear of all liens and encumbrances, those easements  
9 and rights-of-way necessary for installation and maintenance of all utility  
10 lines and other public improvements required for the development of the  
11 Commercial Tract and the Mini-Storage Tract. Upon request Owner will  
12 also convey the Owner's utility improvements to the appropriate utility  
13 provider upon completion and acceptance of the improvements.

14 (c) Owner and the Town will work together on installing utility infrastructure  
15 to the greatest extent possible to efficiently install the utilities in the most  
16 cost effective manner.

17 6.2 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the  
18 Breckenridge Town Code, Owner may be eligible for reimbursement from future  
19 connector(s) to the public improvements and utility services described in Section  
20 6.1 which are extended by Owner to the Commercial Tract and the Mini-Storage  
21 Tract. Any claim for reimbursement will be subject to the provisions and  
22 requirements of Section 9-2-3-7 of the Breckenridge Town Code. Nothing in this  
23 Section limits the legislative authority of the Town to amend or repeal Section 9-  
24 2-3-7 after the Effective Date.

25 7. **PUBLIC DEDICATIONS.**

26 7.1 Owner will make those utility dedications described in Section 6.1.

27 7.2 Owner will dedicate to the Town an 8 foot easement along the southern-most  
28 boundary of the Property adjacent to and paralleling CR 450 along the entire  
29 length of the Property for purposes of constructing a pathway as depicted on the  
30 General Plan of Development.

31 7.3 The Town agrees that no further exactions or dedications, except as expressly  
32 stated in this Amended and Restated Agreement, shall be required as part of the  
33 development of the Commercial and Mini-storage Tracts. The Town further  
34 agrees to waive any open space requirements or any fees in lieu thereof in  
35 association with the subdivision and/or development of the Commercial and  
36 Mini-Storage Tracts.

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37 7.4 The Town is responsible for the design, construction, and maintenance of all  
38 improvements of any kind, including the costs associated therewith, to or situated

1 on dedicated land, including, but not limited to, the pathway, affordable housing  
2 or other improvements, parking lots, curbs, gutters, sanitary and drainage sewers,  
3 lighting, and utility extensions necessary to serve the Town Tract.

4 7.5 Owner agrees to convey to the Town by appropriate conveyance document  
5 acceptable in form and substance to the Town Attorney any and all rights it has in  
6 the Dowdy Well.

7 8. **ANNEXATION SURCHARGE.** No annexation surcharge is required to be paid to the  
8 Town in connection with the annexation of the Property.

9 9. **NO COST BENEFIT ANALYSIS.** The Town agrees that Entrada shall not have to  
10 complete a cost benefit analysis as part of its application for annexation to the Town.

11 10. **WATER CHARGES.** The Town waives all water tap fees (called water “Plant  
12 Investment Fees” under the Town ordinances) for the Commercial Tract and Mini-  
13 storage Tract. As required by Section 12-4-9(A) of the Breckenridge Town Code the  
14 Town finds that Owner’s development of the Property (including the conveyance of the  
15 Town Tract to the Town) will provide a substantial public benefit justifying the waiver of  
16 the Plant Investment Fees. Owner, its successors and assigns, will pay for water service  
17 delivered by the Town to the Commercial Tract and the Mini-Storage Tracts as the then-  
18 current in-Town water rates. Water users on the Commercial Tract and Mini-Storage  
19 Tract are subject to all rules, regulations and ordinances pertaining to the Town's water  
20 utility system, including all future amendments. The provisions of this Section 10 are  
21 personal to Owner, do not run with the land, and shall not be transferred to Owner’s  
22 successors in interest unless accompanied by an assignment from Owner to the successor  
23 in interest.

24 11. **VEST ED PROPERTY RIGHTS.** Upon Final Approval, Owner waives all vested  
25 property rights existing on the Property prior to its annexation to the Town. Further,  
26 nothing contained in this Amended and Restated Agreement constitutes a vested property  
27 right for the Property. Owner will be entitled to vested property rights as provided in  
28 Section 9-1-17-11 of the Breckenridge Town Code, or such other vested rights as may be  
29 provided by law.

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30 12. **REPRESENTATIONS AND WARRANTIES.**

31 12.1 **Representations and Warranties by the Town.** The Town represents and  
32 warrants to Owner as follows:

33 (a) The Town is a Colorado home-rule municipality and has the power to  
34 enter into, and has taken all actions to date required to authorize, this  
35 Amended and Restated Agreement and to carry out its obligations under  
36 this Amended and Restated Agreement;

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ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

- 1 (b) The Town knows of no litigation, proceeding, initiative, referendum,  
2 investigation or threat of any of the same contesting the powers of the  
3 Town or its officials with respect to this Amended and Restated  
4 Agreement that has not been disclosed in writing to the Owner; Deleted: Amended Agreement
  
- 5 (c) The execution and delivery of this Amended and Restated Agreement  
6 and the documents required hereunder and the consummation of the  
7 transactions contemplated by this Amended and Restated Agreement  
8 will not conflict with or contravene any law, order, rule or regulation  
9 applicable to the Town or to the Applicable Town Ordinances or any other  
10 Town ordinances; Deleted: Amended Agreement
  
- 11 (d) This Amended and Restated Agreement constitutes a valid and binding  
12 obligation of the Town, enforceable according to its terms. In accordance  
13 with Section 13, the Town will defend the validity of this Amended and  
14 Restated Agreement in the event of any litigation arising under this  
15 Amended and Restated Agreement naming the Town as a party or  
16 challeng ing the authority of the Town to enter into or perform its  
17 obligations under this Amended and Restated Agreement. Should the  
18 foregoing representation and warranty of the Town prove to be inaccurate,  
19 in whole or in part, such inaccuracy will constitute a material default or  
20 breach by the Town under this Amended and Restated Agreement. The  
21 Town recognizes that the Owner intends to commence construction and  
22 expend substantial monies in reliance upon the accuracy of the  
23 representation and warranty of the Town as set forth in this Subsection  
24 12.1(d), but Owner acknowledges that it proceeds at its own risk until such  
25 time as the Annexation Ordinance is approved. Deleted: Amended Agreement

26 **12.2 Representations and Warranties by the Owner.** The Owner represents and  
27 warrants to the Town as follows:

- 28 (a) The Owner is duly organized, validly existing corporation and in good  
29 standing under the laws of the State of Colorado; is qualified to do  
30 business in the State of Colorado; and has the legal capacity and the  
31 authority to enter into and perform its obligations under this Amended and  
32 Restated Agreement; Deleted: Amended Agreement
  
- 33 (b) The Owner knows of no litigation, proceeding or investigation, or threat of  
34 any of the same, contesting the powers of the Town, the Owner or any of  
35 its principals or officials with respect to this Amended and Restated  
36 Agreement that has not been disclosed in writing to the Town; and Deleted: Amended Agreement
  
- 37 (c) This Amended and Restated Agreement constitutes a valid and binding  
38 obligation of the  
39 Owner, enforceable according to its terms, except to the extent Deleted: Amended Agreement

1 limited by bankruptcy, insolvency and other laws of general  
2 application affecting creditors' rights.

3 **13. COOPERATION IN DEFENDING LEGAL CHALLENGES.**

4 13.1 If any legal or equitable action or other proceeding is commenced by a third party  
5 challenging the validity of the annexation of the Property, the initial zoning of  
6 the Property, the Master Plan, the Initial Subdivision of the Property, or the  
7 initial site specific development plans for the Commercial and Mini-Storage  
8 Tracts, all as described in Section 4, the Owner and the Town will cooperate in  
9 defending such action or proceeding. The Town will take the lead role in  
10 defending any such action, including, but not limited to, preparing all pleadings  
11 and other required documents, accomplishing any necessary service of  
12 process, generating necessary correspondence among the parties and paying one  
13 hundred percent (100%) of both court filing fees and the costs of any expert  
14 witnesses, depositions, interrogatories, transcripts or other similar costs. Each  
15 party will pay its own attorney fees.

16 13.2 Although it is the intent of this Section that the Town will cooperate with the  
17 Owner in defending any legal proceeding so long as the Owner determines to  
18 continue such defense, if there is a controlling decision of the Supreme Court of  
19 the United States, Tenth Circuit Court of Appeals, Supreme Court of the State of  
20 Colorado, or Colorado Court of Appeals governing one or more of the issues raised  
21 in the legal proceeding which is adverse to the Town's position, the Town will  
22 not be obligated to contest or continue the defense of such issue.

23 **14. REMEDIES.**

24 14.1 **Breach by Owner.** If the Town gives notice to the Owner that Owner is in  
25 default under this Amended and Restated Agreement and Owner does not cure  
26 that default within 30 days following written notice from the Town, the Town has  
27 the following remedies which will be cumulative:

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- 28 (a) injunctive relief;
- 29 (b) specific performance; and
- 30 (c) any other remedy available at law or in equity, except damages.

31 The Town will extend the cure period if the nature of the default is such that it  
32 cannot reasonably be remedied within 30 days, provided Owner commences the  
33 corrective action within 30 days and diligently pursues such correction thereafter.  
34 The Town may, in addition to other remedies, withhold approval of any or all  
35 building or other permits applied for by the Owner on the Commercial Tract or  
36 Mini-Storage Tract, or withhold issuance of certificates of occupancy, until the  
37 default or defaults has or have been cured.

1 | 14.2 **Breach by Town.** If Owner alleges the Town is in default under this Amended  
2 | and Restated Agreement and the Town does not cure this default within 30 days  
3 | following written notice from Owner, Owner has the following remedies which  
4 | will be cumulative:

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- 5 | (a) injunctive relief;
- 6 | (b) specific performance; and
- 7 | (c) any other remedy available at law or in equity, except damages.

8 | Any remedy available to Owner is limited by the Act. Owner will extend the cure  
9 | period if the nature of the default is such that it cannot reasonably be remedied  
10 | within 30 days, provided the Town commences corrective action within 30 days  
11 | and diligently pursues such correction thereafter.

12 | 14.3 **No Remedy For Delay.** The Town is not responsible for and the Owner has no  
13 | remedy against the Town if development of the Commercial Tract and the Mini-  
14 | Storage Tract is prevented or delayed for reasons beyond the control of the Town.

15 | 14.4 **Mediation.** If a dispute between the Town and the Owner related to the  
16 | interpretation or enforcement of this Amended and Restated Agreement occurs,  
17 | the parties will endeavor to settle the dispute by mediation with a neutral third  
18 | party before commencing litigation; provided, however, that either party may  
19 | seek a preliminary injunction or other provisional judicial relief if, in its  
20 | judgment, such action is necessary to avoid irreparable damage or to preserve the  
21 | status quo. Despite such action, the parties will continue to participate in good  
22 | faith in mediation. If the parties encounter difficulty in agreeing on a neutral third  
23 | party, they may each appoint a neutral third party, such third parties to appoint a  
24 | neutral third party to mediate. Each party will pay its own attorneys' fees incurred  
25 | in connection with a mediation.

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26 | 15. **DISCONNECTION:**

27 | 15.1 **Disconnection Governed By Statute.** Following the Effective Date Owner's  
28 | right to seek disconnection of the Commercial Tract and the Mini-Storage Tract  
29 | is limited to those circumstances described in Section 31-12-119, C.R.S.

30 | 15.2 **Dedications and Conveyances Made Before Disconnection.** In the event of  
31 | disconnection of the Property from the Town for any reason, the Town's  
32 | infrastructure and service obligations required by this Amended and Restated  
33 | Agreement will be void and of no further force and effect, but all dedications and  
34 | conveyances made under this Amended and Restated Agreement will continue in  
35 | full force and effect unless vacated in the manner provided by law.

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- 1 | 16. **GOVERNMENTAL IMMUNITY.** In entering into this Amended and Restated  
2 | Agreement the Town is relying on, and does not waive or intend to waive by any  
3 | provision of this Amended and Restated Agreement, the monetary limitations (presently  
4 | \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and  
5 | protections provided by the Act, or any other limitation, right, immunity, defense or  
6 | protection otherwise available to Town, its officers, or its employees. Deleted: Amended Agreement
- 7 | 17. **ANNUAL APPROPRIATION.** Financial obligations of the Town under this Amended  
8 | and Restated Agreement payable after the current fiscal year are contingent upon funds Deleted: Amended Agreement  
9 | for that purpose being appropriated, budgeted and otherwise made available by the Town  
10 | Council of the Town of Breckenridge, Colorado. The Town’s obligations under this  
11 | Amended and Restated Agreement do not constitute a general obligation indebtedness or Deleted: Amended Agreement  
12 | multiple year direct or indirect debt or other financial obligation whatsoever within the  
13 | meaning of the Constitution or laws of the State of Colorado.
- 14 | 18. **MISCELLANEOUS.**
- 15 | 18.1 **Recording.** This Amended and Restated Agreement will be recorded in the Deleted: Amended Agreement  
16 | Summit County Clerk and Recorder's Office in order to put prospective  
17 | purchasers of the Property or other interested parties on notice as to the terms and  
18 | conditions contained herein.
- 19 | 18.2 **Entire Amended and Restated Agreement.** This Amended and Restated  
20 | Agreement sets forth the entire understanding between the parties concerning the Deleted: Amended Agreement  
21 | annexation of the Property to the Town, and no other agreement, oral or written,  
22 | made prior to the date of this Amended and Restated Agreement which conflicts Deleted: Amended Agreement  
23 | with the terms of this Amended and Restated Agreement is valid as between the Deleted: Amended Agreement  
24 | parties.
- 25 | 18.3 **Modification.** This Amended and Restated Agreement may not be modified Deleted: Amended Agreement  
26 | except in writing executed by all parties hereto. Oral amendments to this Deleted: Amended Agreement  
27 | Amended and Restated Agreement are not permitted.
- 28 | 18.4 **Amended and Restated Agreement Runs With The Land.** Except as provided Deleted: Amended Agreement  
29 | in Sections 4.15 and 10, this Amended and Restated Agreement runs with the Deleted: 4.16  
30 | land and is binding upon the Town and the Owner, its successors and assigns, and Deleted: Amended Agreement  
31 | all persons who may hereafter acquire any interest in the Property, or any part  
32 | thereof.
- 33 | 18.5 **Assignment.** The Owner will have the right, without the consent of the Town, to  
34 | assign or transfer all or any portion of its interests, rights or obligations under this  
35 | Amended and Restated Agreement to any affiliate of the Owner or to any third Deleted: Amended Agreement  
36 | party acquiring an interest or estate in the Property, including, but not limited to,  
37 | purchasers or long-term ground lessees of individual lots, parcels or of any  
38 | improvements now or hereafter located within the Property. The express  
39 | assumption of any of the Owner’s obligations under this Amended and Deleted: Amended Agreement

1 | Restated Agreement by its assignee or transferee will relieve the Owner of  
2 | any further obligations under this Amended and Restated Agreement with  
3 | respect to the matter so assumed if such release is approved in writing by the  
4 | Town, which approval will not be unreasonably withheld or delayed. The  
5 | Owner will give the Town written notice of any such assignment or  
6 | assumption.

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7 | 18.6 **Severability.** If any provision of this Amended and Restated Agreement is found  
8 | to be invalid, illegal, or unenforceable in any respect in a final, non-appealable  
9 | decision of a court of competent jurisdiction, the validity, legality and  
10 | enforceability of the remaining provisions of this Amended and Restated  
11 | Agreement will not in any way be affected or impaired by such determination.

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12 | 18.7 **Attorney's Fees.** If any action is brought in a court of law by either party to this  
13 | Amended and Restated Agreement concerning the enforcement, interpretation or  
14 | construction of this Amended and Restated Agreement, the prevailing party,  
15 | either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as  
16 | costs, including expert witness' fees, incurred in the prosecution or defense of  
17 | such action.

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18 | 18.8 **Notices.** All notices required or permitted under this Amended and Restated  
19 | Agreement must be given by registered or certified mail, return receipt requested,  
20 | postage prepaid, or by hand or commercial carrier delivery, or by telecopies,  
21 | directed as follows:

Deleted: Amended Agreement

22 | If intended for Town to:

23 | Town of Breckenridge  
24 | P.O. Box 168  
25 | 150 Ski Hill Road  
26 | Breckenridge, Colorado 80424  
27 | Attn: Town Manager  
28 | Telecopier number: (970) 547-3104  
29 | Telephone number: (970) 453-2251

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

31 | Timothy H. Berry, Esq.  
32 | Timothy H. Berry, P.C.  
33 | 131 West 5th Street  
34 | P. O. Box 2  
35 | Leadville, Colorado 80461  
36 | Telecopier number: (719) 486-3039  
37 | Telephone number: (719) 486-1889

38 | If intended for Owner to:  
39 |  
40 |  
41 |

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT



1  
2 Kurt Ave / Kirk Mickelsen  
3 PO Box 7399, PMB 193  
4 Breckenridge, CO 80424  
5 Telecopier number: (970) 262-7580  
6 Telephone number: (970) 453-6700  
7

8 with a copy in each case (which will not constitute notice) to:  
9

10 David P. Michel, Esq.  
11 Michel & McQuain, LLC  
12 P. O. Box 409  
13 Winter Park, CO 80482  
14 Telecopier number: (970) 726-8333  
15 Telephone number: (970) 726-3023  
16

17 Any notice delivered by mail in accordance with this Section will be deemed to  
18 have been duly given and received on the third business day after the same is  
19 deposited in any post office or postal box regularly maintained by the United  
20 States postal service. Any notice delivered by telecopier in accordance with this  
21 Section will be deemed to have been duly given and received upon receipt if  
22 concurrently with sending by telecopier receipt is confirmed orally by telephone  
23 and a copy of said notice is sent by certified mail, return receipt requested, on the  
24 same day to the intended recipient. Any notice delivered by hand or commercial  
25 carrier will be deemed to have been duly given and received upon actual receipt.  
26 Either party, by notice given as provided above, may change the address to which  
27 future notices may be sent. E-mail is not a valid method for giving notice under  
28 this Amended and Restated Agreement.  
29

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30 18.9 **Waiver.** The failure of either party to exercise any of its rights under this  
31 Amended and Restated Agreement is not a waiver of those rights. A party waives  
32 only those rights specified in writing and signed by either party waiving such  
33 rights.

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34 18.10 **Applicable Law.** This Amended and Restated Agreement is to be interpreted in  
35 accordance with the laws of the State of Colorado.

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36 18.11 **Section Headings.** Section headings are inserted for convenience only and in no  
37 way limit or define the interpretation to be placed upon this Amended and  
38 Restated Agreement.

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39 18.12 **Terminology.** Wherever applicable, the pronouns in this Amended and Restated  
40 Agreement designating the masculine or neuter applies equally to the feminine,  
41 neuter and masculine genders. Furthermore, wherever applicable within this  
42 Amended and Restated Agreement, the singular includes the plural, and the plural

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ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

1 includes the singular. The term "will" indicate a mandatory obligation to be done  
2 or performed.

3 18.13 **Incorporation of Exhibits.** All exhibits referred to in this Amended and  
4 Restated Agreement are incorporated into and made a part of this Amended and  
5 Restated Agreement.

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6 18.14 **No Adverse Construction.** Both parties acknowledge having had the  
7 opportunity to participate in the drafting of this Amended and Restated  
8 Agreement. This Amended and Restated Agreement is not to be construed against  
9 either party based upon authorship.

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10 18.15 **Reimbursement of Town's Attorney's Fees.** Owner will reimburse the Town  
11 for its attorneys' fees incurred in connection with the preparation of this  
12 Amended and Restated Agreement beginning with fees incurred by the Town on  
13 October 14, 2009.

14 18.16 **Town Authority.** This Amended and Restated Agreement was approved by  
15 Resolution No. \_\_\_\_\_, Series 2010, adopted by the Town Council of the Town of  
16 Breckenridge, Colorado on \_\_\_\_\_, 2010.

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17 TOWN OF BRECKENRIDGE, a Colorado  
18 Town corporation

19  
20  
21  
22 By: \_\_\_\_\_  
23 Timothy J. Gagen, Town Manager

24  
25 ATTEST:

26  
27 \_\_\_\_\_  
28 Mary Jean Loufek CMC,  
29 Town Clerk

30  
31  
32 ENTRADA AT BRECKENRIDGE, INC.,  
33 a Colorado Corporation

34  
35  
36  
37 By: \_\_\_\_\_  
38 Kirk Mickelsen, Vice President

39  
40  
41  
ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

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

5 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
6 \_\_\_\_\_, 2010, by Timothy J. Gagen, Town Manager, and Mary Jean  
7 Loufek CMC, Town Clerk, of the Town of Breckenridge, a Colorado Town corporation.

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8  
9 WITNESS my hand and official seal.

10  
11 My commission expires: \_\_\_\_\_.

12  
13  
14  
15 \_\_\_\_\_  
16 Notary Public

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

21 The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
22 \_\_\_\_\_, 2010, by Kirk Mickelsen, as Vice President of Entrada at  
23 Breckenridge, Inc., a Colorado Corporation.

Deleted: 2009

24  
25 WITNESS my hand and official seal.

26  
27 My commission expires: \_\_\_\_\_.

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30 \_\_\_\_\_  
31 Notary Public  
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1300-42\Amended Annexation Agreement\_4 (01-05-10)

ENTRADA AMENDED ANNEXATION AND DEVELOPMENT AGREEMENT

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EXHIBIT "A"

**General Plan of Development**

Exhibit "A"

**Northern Access.** Owner acknowledges that the Town wants a northern access to the Property to be provided across land owned by the Summit Ridge Homeowners' Association (the "**HOA**"). The parties acknowledge that a Cross Easement Agreement dated September 2, 2005 and recorded September 22, 2005 under Reception No. 801773 of the records of the Clerk and Recorder of Summit County, Colorado ("the "**Cross Easement Agreement**") that the Owner and the Town thought provided the desired northern access to the Property. However, the HOA has contested the validity and enforceability of the Cross Easement Agreement, and at the time of the signing of this Amended Agreement the Owner and the HOA are involved in civil litigation in the Summit County District Court concerning such the Cross Easement Agreement (Case No. 2007CV\_\_\_\_)(the "**Access Lawsuit**"). Accordingly, in order to attempt to provide the northern access to the Property desired by the Town it is agreed as follows:

Subject to the provisions of this Section 4.9, Owner commits to use its best efforts to attempt to obtain a valid easement from the HOA either through negotiation and settlement of the Access Lawsuit, or through diligent and good faith prosecution of the Access Lawsuit to a successful conclusion. If Owner is unsuccessful in obtaining the access easement from the HOA, the rights of the parties will be as provided in this Section.

Owner will engage the services of a competent attorney or attorneys to represent it in connection with all stages of the Access Lawsuit. Owner will pay all attorneys' fees and costs incurred by it in connection with the Access Lawsuit, either at trial or on appeal, and will indemnify and defend the Town from any liability, including, but not limited to, attorneys' fees and costs, related to the Access Lawsuit.

Owner will provide the Town with periodic written reports as to the status of the Access Lawsuit at least every six months, or more frequently if requested by the Town. Owner will provide the Town with copies of any non-privileged documents requested by the Town relating to the Access Lawsuit, and with copies of any final order entered in the Access Lawsuit.

Owner will not voluntarily dismiss the Access Lawsuit without first obtaining the Town's prior written consent, which consent may be granted, withheld or conditionally approved by the Town in its sole and absolute discretion. The entry of an order dismissing the Access Lawsuit pursuant to the voluntary motion of the Owner, or by the court for Owner's failure to prosecute the Access Lawsuit or

any appeal thereof, will be treated as a “final non-appealable judgment” as described in subsection (e) of this section.

As used in this section, the term “final non-appealable judgment” means:

the last action of a court of competent jurisdiction that settles the rights of the Owner and HOA and disposes of all issues in the Access Lawsuit (except the award of costs and attorneys’ fees, if applicable, and the enforcement of the judgment) and from which no appeal is permitted or has been granted within any applicable time period; or

the voluntary dismissal of the Access Lawsuit pursuant to a negotiated settlement between the Owner and the HOA with the Town’s prior written consent.

If Owner is unsuccessful in obtaining the access from the HOA in the trial court, Owner will appeal such adverse decision to the Colorado Court of Appeals. If Owner is unsuccessful in obtaining the access from the HOA in the Colorado Court of Appeals, Owner will petition for certiorari review of the Court of Appeals decision by the Colorado Supreme Court. If certiorari review is granted by the Colorado Supreme Court, Owner will pursue such appeal to its conclusion. If certiorari review is denied by the Colorado Supreme Court, the provisions of subsection (m) of this section will apply.

If Owner obtains a favorable judgment in the Access Lawsuit at either the trial court level or in the Colorado Court of Appeals, and the HOA appeals such judgment, Owner will defend such appeal to its conclusion.

During the pendency of the Access Lawsuit Owner may build two of the three buildings to be located on the Mini-Storage Site because such construction does not require any of the TDRs to be transferred to the Mini-Storage by the Town pursuant to Section 4.11 of this Amended Agreement. However, Owner may not obtain a building permit for the third building to be located on the Mini-Storage Site without making the TDR Deposit described in subsection (i) of this section. Notwithstanding any provision of this Amended Agreement or other applicable law, during the pendency of the Access Lawsuit Town is not required to issue a building permit for the construction of the third building to be located on the Mini-Storage Site unless and until the Owner has made the TDR Deposit described in subsection (i) of this section.

At any time during the pendency of the Access Lawsuit, the Owner may elect to deposit into escrow with Land Title Guarantee of

Breckenridge, or other escrow agent acceptable to Town (the “*Escrow Agent*”), a sum equal to the then-current cost of purchasing two TDRs under the Town’s and Summit County’s Transferable Development Rights Program<sup>1</sup> (the “*TDR Deposit*”). The TDR Deposit will be held by the Escrow Agent in an interest-bearing account with instructions to deliver such funds (both principal and interest) to:

the Town upon the entry of a final nonappealable judgment of competent jurisdiction determining that the Owner is not entitled to the access easement from the HOA, or

the Owner upon the entry of a final nonappealable judgment of competent jurisdiction determining that the Owner is entitled to the access easement from the HOA.

Upon the depositing of the TDR Deposit with the Escrow Agent the Town will, upon the request of the Owner, transfer all of the TDRs required to be transferred pursuant to Section 4.11 of this Agreement and issue a building permit for the construction of the third building to be constructed on the Mini-Storage Site.

Pending the entry of a final non-appealable judgment in the Access Lawsuit Town has no obligation to transfer two of the TDRS described in Section 4.11 of this Amended Agreement unless and until Owner has deposited the TDR Deposit with the Escrow Agent pursuant to subsection (i) of this subsection.

If:

the TDR Deposit has not been made as provided in subsection (i), and

the final non-appealable judgment of a court of competent jurisdiction determines that Owner is not entitled to the access easement from the HOA,

then within ninety days of the entry of such judgment Owner will pay to Town a non-refundable sum equal to the TDR Deposit. If Owner fails to pay such sum to the Town within such ninety day period, the Town is forever relieved of any obligation to transfer any TDRs to Owner or the Commercial or Mini-Tract Sites pursuant to Section 4.11 of this Amended Agreement. In such event, Owner will execute such documentation as may be required

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<sup>1</sup> The parties acknowledge and agree that as of the date of the execution of this Amended Agreement Amended and Restated Agreement the cost of purchasing one Transferable Development Right is \$44,600.

by Town to confirm the release of the Town's obligation to transfer any TDRs pursuant to Section 4.11 of this Amended Agreement, and if Owner should fail or refuse to execute such documentation within thirty days after Town's request, Town may prepare and record with the Clerk and Recorder of Summit County, Colorado a notice reciting the applicable facts and confirming the release of the Town's obligation to transfer any TDRs pursuant to Section 4.11 of this Amended Agreement. If Town properly records the notice described in the preceding sentence, Owner releases and discharges the Town from any liability in connection with the recording of such notice. The right to withhold the transfer of any TDRs to the Owner or the Commercial or Mini-Tract Sites is the Town's exclusive remedy for the Owner's failure to timely pay the sum due to Town pursuant to this subsection (l).

Owner will reimburse the Town for its attorneys' fees incurred in connection with the preparation of this Amended Agreement beginning with fees incurred by the Town on October 14, 2009.





**To:** Town Council  
**From:** Michael Mosher, Community Development Department  
**Date:** January 6, 2010 (for January 12<sup>th</sup> meeting)  
**Re:** Columbia Lode and Louisa Lode (Old BBC Site) Development Agreement

---

The Town Council last reviewed this proposal during the worksession held on November 24th. During the discussion, further detail regarding the public benefits associated with the proposed Development Agreement was requested. As presented, the applicants still are proposing the first 3 items, and have added items 4 and 5 per Council's request, and 6 to make it clear that is part of the public commitments:

- 1) a right of way for a right turn lane on French Street, (supported by the Engineering Department);
- 2) a park or landscaped open space area at the entrance to the Conservation District ;
- 3) a rerouted Klack drainage facility separated from the development area. (supported by the Engineering Department);
- 4) extension of the sidewalk as needed to connect with the sidewalk coming south from the roundabout;
- 5) including a traffic analysis as part of the master plan process; and
- 6) eliminating the very large lot with a very large building envelope and replacing it with a much smaller lot with a much smaller disturbance envelope.

The applicants have responded to the concerns and have submitted a modified Development Agreement proposal for possible first reading this evening. Planning and Engineering staff have reviewed the proposal against the applicable codes and have no concerns.

Plans for the right turn easement and improvements are attached showing two options. Engineering staff is supportive of the option that leaves the existing light standard in place. Staff notes, the installation of the improvements for the right-turn lane are proposed to be constructed by the applicants as the required commitment for a Development Agreement to add 7 years of vesting to the master plan development permit, assuming it is approved.

Please see the attached information for detail. We welcome any comment.

LAW OFFICES  
**WEST, BROWN, HUNTLEY & THOMPSON, P.C.**

100 SOUTH RIDGE STREET, SUITE 204  
POST OFFICE BOX 588  
BRECKENRIDGE, COLORADO 80424

TELEPHONE (970) 453-2901  
FAX (970) 453-0192

STEPHEN C. WEST  
D. WAYNE BROWN  
FELICE F. HUNTLEY  
MARK D. THOMPSON

ERIN C. HUNTER  
MIRO KOVACEVIC  

---

JILL D. BLOCK  
Paralegal

December 21, 2009

**VIA HAND DELIVERY**  
**and EMAIL (mosh@townofbreckenridge.com)**

Michael Mosher  
Department of Community Development  
Town of Breckenridge  
150 Ski Hill Road  
Breckenridge, CO 80424

Re: Development Agreement to authorize the reallocation of density among the Land Use Districts covering the Old Breckenridge Building Center property and adjacent commonly owned property

Dear Mosh:

Please consider this letter as a supplement to the November 11, 2009 letter applying for a development agreement to reallocate density among the Land Use Districts covering the Old Breckenridge Building Center property. Based on comments from the Town Council on November 24, 2009 we have revised the Development Agreement as shown by the redlining on the attached version. In addition to making it clear that Lot 1, Corkscrew Subdivision will be eliminated in exchange for a new smaller, less visible single family lot with a smaller building envelope, we have added commitments to extend the sidewalk to where it currently ends south of the roundabout and to undertake an analysis of traffic conditions in the area of French Street adjacent to the property as a part of the master plan process.

We heard mixed comments about the proposed landscaped, open space area at the southwest corner of the property. In light of the mixed nature of the comments and in anticipation of changes to the proposed development that are sure to occur as the master plan makes its way through the planning process, we have not eliminated the proposed open space from the Development Agreement. We are mindful of the issue and are confident that it will be addressed in the planning process.

At the suggestion of Council, an analysis of the cost of construction of a right turn lane on French Street has been obtained and the cost is estimated at a little over \$100,000 for a lane passing to the right of the current traffic signal pole and related equipment. The cost to relocate the traffic signal pole and equipment to the right of the right turn lane was estimated to be between \$40,000 and

Michael Mosher  
Department of Community Development  
Town of Breckenridge  
December 21, 2009  
Page 2

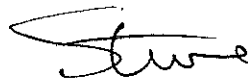
\$50,000 more. Preliminary designs and cost estimates have been reviewed with the Town Engineer and it is our understanding that the design leaving the pole and equipment in place is acceptable and that the \$100,000 estimated cost is reasonable. In addition to being the less expensive alternative, it provides better stacking for the straight and right movements and a more obvious and easier movement for drivers going right onto Main Street.

As discussed with Council, the proposed Development Agreement essentially is correcting a problem with the LUD 4 area of the Property that probably never should have been LUD 4 and is not providing any additional density or other significant concessions by the Town for the benefit of the development. Accordingly, payment of the cost for the right turn lane, which, although certainly helpful to the development, will help alleviate existing traffic congestion, is not being proposed as one of the considerations for this Development Agreement. Because of current and anticipated market conditions and the desire of the developer to build units only as sales occur, extended vesting of the master plan is going to be needed. Understanding that the Town prefers not to provide extended vesting until an acceptable plan has been approved, at this time we want to note for the record that, as consideration for 7 years of vesting in addition to the 3 years provided with a development permit for an approved master plan, the owner will construct the right turn lane, leaving the traffic signal pole and equipment in its current location. Because it will be most efficient to construct the right turn lane at the same time as the Klack drainage facilities are relocated and the road or driveway into the property is constructed, the right turn lane would be constructed at the beginning of the project. Although conditions certainly can change, the owner plans to begin construction on the site as soon as possible after the proposed master plan is approved and other required permits are obtained, which conceivably could be as soon as next summer.

We understand that a separate development agreement for extended vesting must be approved and that extended vesting is not insured until that occurs, but the owner would appreciate some verification of the Council's interest in having a right turn lane constructed by the owner in return for the additional 7 years of vesting.

I think we have covered all of the issues that were raised at the November 24, 2009 Council work session and hope that we have addressed them satisfactorily to staff and the Council.

Sincerely,



Stephen C. West

SCW/amw

cc: Timothy J. Berry, Esq. (w/enc. via email)  
Jon Brownson (w/enc. via email)  
Marc Hogan (w/enc. via email)  
Sam Kellerman (w/enc. via email)

4697.06

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

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010~~09~~ between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado (the “Town”) and B & D LIMITED PARTNERSHIP, an Illinois limited partnership authorized to do business in Colorado, (the “Developer”).

Recitals

A. Developer is the owner of the real property described in Exhibit A attached hereto (“Property”).

B. As owner of the Property, Developer has the right to propose a master plan for the phased development of the Property, to request the reallocation of density among the different Land Use Districts included within the Property, and to enter into agreements with the Town concerning such master plan for the Property and such a density reallocation.

C. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

D. Because the negative points associated with the reallocation of density from Land Use District (“LUD”) 11 to LUD 4 and the transfer of a single family equivalent (“SFE”) of density for a single family residence into LUD 1, in all likelihood, could not be offset with any positive points available for the public commitments proposed by the Developer, the reallocation of density authorized by Section 9-1-19:39.I.(2) of the Town’s Development Code does not appear to provide a feasible means for approval of a master plan by the Town’s Planning Commission and, therefore, a development agreement provides the most viable means available for such an approval.

E. As the commitments encouraged be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Developer proposes: the elimination of a 3 acre lot with a 1 acre building envelope on a hillside in LUD 4 for a proposed lot of approximately 2 acres with a disturbance envelope of approximately .25 acre, but not greater than .5 acre, on a flatter, less visible portion on the Property; the extension of a sidewalk in the Town right of way from the area immediately adjacent to the proposed development to the existing sidewalk south of the existing roundabout; to obtain and pay for a traffic study of the area of French Street adjacent to the Property as part of the master plan for the Property; the dedication of a sufficient portion of the Property to allow for a right turn lane on French Street at its intersection with Main Street; the creation of a significant landscaped open space area along Main Street at the southwest corner of the Property;

and the rerouting and undergrounding of the Town's Klack drainage facility within the Property to separate it from the development area.

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

### Agreement

1. The Town's Planning Commission is hereby authorized to review and approve, subject to compliance with all other applicable development policies of the Town, an application for a master plan for the Property providing for:

(a) one (1) SFE of density for a single family residence to be relocated from the large existing Lot 1, Corkscrew Subdivision Filing No. 1, with a large building envelope and located within LUD 4, to a smaller lot, with a smaller ~~building~~ disturbance envelope and located in the most northerly portion of the Property within LUD 1;

(b) the 48,384 square feet of density allowed to be completely above grade within the LUD 11 area of the Property to be allocated or spread between the LUD 11 area of the Property and the western portion of the LUD 4 area of the Property, not to include the steeper slopes of the LUD 4 area, all as generally depicted on the Land Use Plan labeled as SP-21L.U.P. attached hereto as Exhibit B; and

(c) in connection with such approval, for no negative points to be assigned for the location or relocation of such density into LUD's 1 or 4.

2. Developer acknowledges and agrees that any master plan authorized to be approved by paragraph 1 above: must be based on a land use plan substantially similar in terms of site design and areas of development to what is depicted on Exhibit B; must provide for the LUD 1 and LUD 4 areas of the Property shown as open space on Exhibit B to be designated as private open space in perpetuity; and must include provision for the commitments set forth in paragraph 3 below.

3. As ~~additional~~ commitments to the Town to enter into this Agreement, Developer agrees that the following will be included as a part of a master plan for the Property:

(a) elimination of the existing Lot 1, Corkscrew Subdivision, which includes 3 acres and a 1 acre building envelope on a hillside in Land Use District 4 visible from Main Street and beyond, and replacement of such Lot with an approximately 2 acre lot containing an approximately .25 acre, but not greater than .5 acre, disturbance envelope on a flatter, less visible portion on the Property;

(b) extension of a sidewalk in the Town right of way from the area immediately adjacent to the area of the Property to be developed to the end of the sidewalk south of the existing roundabout; and

(c) a traffic study of the area of French Street adjacent to the Property, to be obtained and paid for by Developer;

~~(a)~~(d) sufficient land to be designated for dedication to the Town for the right turn lane, generally in the location shown on Exhibit B, with such land to be dedicated free and clear of any liens and encumbrances and to be conveyed to the Town in a form that is acceptable to the Town Attorney;

~~(b)~~(e) an area at the southwest corner of the Property to be designated as public open space in perpetuity, generally in the location shown on Exhibit B, and to be landscaped and maintained in perpetuity by Developer or the owners association for the development, with such area to be committed as public open space by deed, easement or such other means as is acceptable to the Town Attorney; and

~~(e)~~(f) an easement and all improvements necessary for the relocation of the Klack drainage facility from its current location to a location beginning at the 72” culvert adjacent to the south end of the Property and running along with the southerly and westerly boundaries of the Property to the two (2) 48” culverts adjacent to the westerly boundary of the Property, all as generally shown on Exhibit B, to be provided and made by Developer.

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

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

4. This Agreement shall run with title to the land and be binding upon and inure to the benefit of Developer, its successors and assigns.

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

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

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

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

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

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

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

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

13. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

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

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

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

If To The Town: Timothy J. Gagen, Town Manager  
Town of Breckenridge  
P.O. Box 168  
Breckenridge, CO 80424

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

If To The Developer: Jon A. Brownson  
B & D Limited Partnership  
P.O. Box 2065  
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to: Stephen C. West, Esq.  
West, Brown, Huntley & Thompson, P.C.  
P.O. Box 588  
Breckenridge, CO 80424

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



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

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

TOWN OF BRECKENRIDGE

Attest:

\_\_\_\_\_  
 Mary Jean Loufek, CMC  
 Town Clerk

By: \_\_\_\_\_  
 Timothy J. Gagen, Town Manager

STATE OF COLORADO    )  
                                       ) ss.  
 COUNTY OF SUMMIT     )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010~~09~~ by Timothy J. Gagen as Town Manager and Mary Jean Loufek, CMC, of the Town of Breckenridge, a Colorado municipal corporation.

Witness my hand and official seal.  
 My commission expires: \_\_\_\_\_

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

B & D LIMITED PARTNERSHIP  
a Illinois limited partnership  
authorized to do business in Colorado

By: DSB Holdings, Inc.  
an Illinois corporation,  
its General Partner

By:

\_\_\_\_\_  
Jon A. Brownson, Vice President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2010~~09~~ by Jon A. Brownson, Vice President of DSB Holdings, Inc., an Illinois corporation,  
General Partner of B & D Limited Partnership, an Illinois limited partnership authorized to do  
business in Colorado.

Witness my hand and official seal.

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

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

## Exhibit A

### LEGAL DESCRIPTION

The land referred to in herein is located in the County of Summit, State of Colorado, and described as follows:

#### Parcel A:

A portion of the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range 77 West of the 6<sup>th</sup> Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 3 of said Louisa Lode and running S 19°55'00" W 436.07' more or less along lines 3-4 of said Louisa Lode to a point which point is, in fact, the true point of beginning, thence S 19°55'00" W 730.46' more or less, thence N 70°05'00" W 200.62' to a point on the easterly right of way of Colorado Highway No. 9, thence N 23°29'00" E 158.83' along said right of way, then N 25°40'00" E 238.30' more or less along said right of way, thence N 04°39'30" E 255.60' more or less along said right of way, thence East 250.66' more or less to the true point of beginning.

#### Parcel B:

A parcel of land lying within the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, lying wholly within NW-1/4, Section 31, Township 6 South, Range 77 West of the 6<sup>th</sup> Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true point of beginning, then N 70°05'00" W 171.14' to a point on the easterly right of way of Colorado State Highway No. 9, thence Northeasterly 335.00' along the arc of a 1106.00' radius curve to the right whose long chord bears N 14°48'22" E a distance of 333.72', along said right of way, thence N 23°29'00" E 4.07' along said right of way, thence S 70°05'00" E 200.62' to a point on Line 3-4 of said Louisa Lode, thence S 19°55'00" W 336.46' along said Line 3-4 to the true point of beginning.

SAVE AND EXCEPT: A parcel of land lying wholly within the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range 77 West of the 6<sup>th</sup> Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true point of beginning, thence N 70°05' W 178.87' to a point in the Easterly Right of Way of Colorado State Highway No. 9, thence Northwesterly 15.90' along the arc of a 1106.00' radius curve to the right whose long chord bears N 00°14'17" W 15.90', thence East 62.19' thence S 77°13'12" E 127.05'

to a point on the Easterly line of said Louisa Lode, thence S 19°55' W 52.12' along said Easterly line to the true point of beginning.

Parcel C:

Lot 1, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded March 22, 1994 at Reception No. 464462.

Parcel D:

Tract A, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded March 22, 1994 at Reception No. 464462.

**Exhibit B**  
**LAND USE PLAN**




**[See the Land Use Plan attached hereto]**

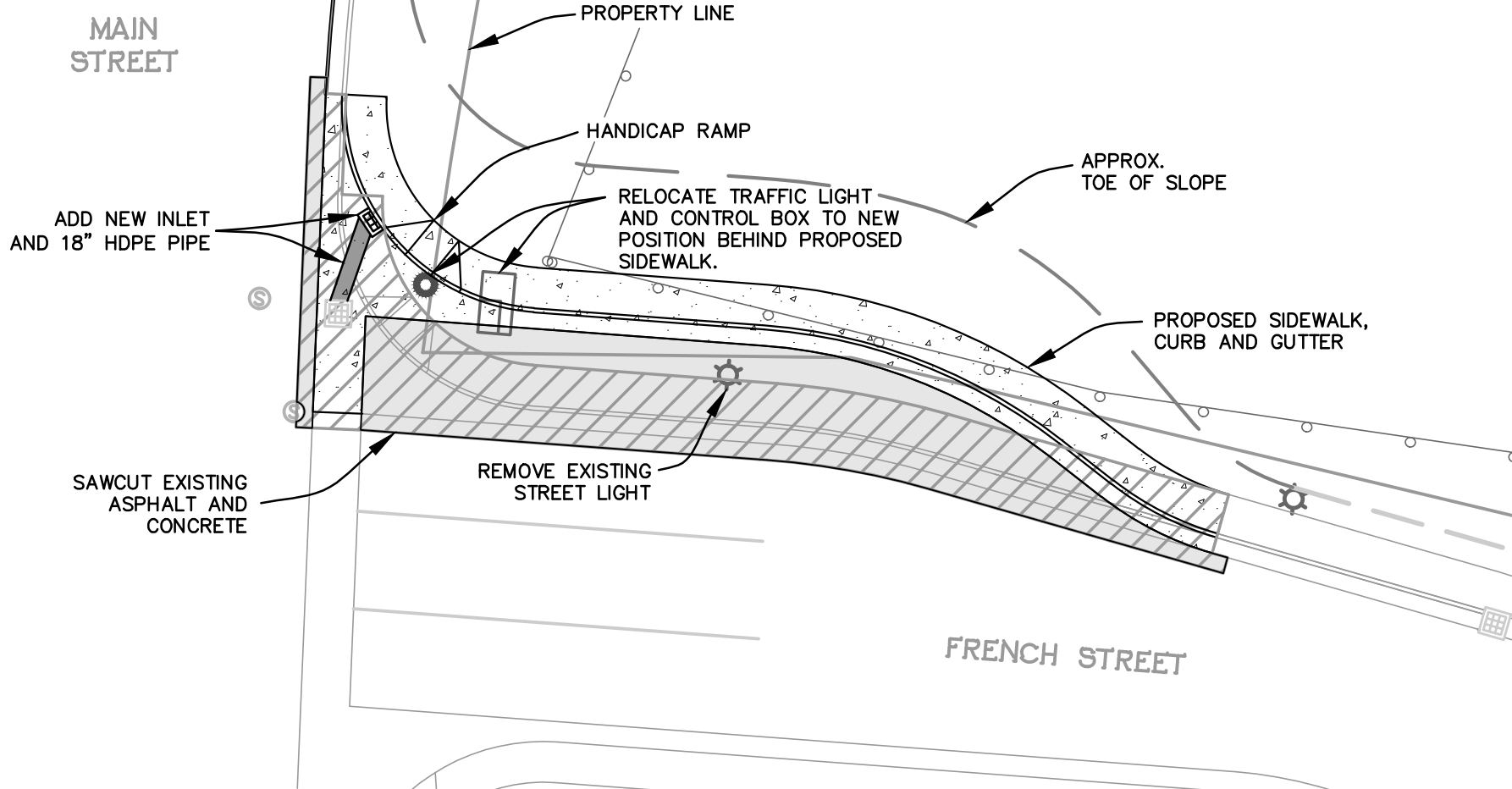
C:\Civil 3D Projects\Columbia Lode\dwg\French Street\Cl-French St right turn-option1.dwg\_12/9/2009 10:59:11 AM



SCALE: 1"=20'

### LEGEND

-  LIMITS OF DEMOLITION
-  PROPOSED CONCRETE
-  PROPOSED ASPHALT



**CURFMAN ENGINEERING, INC.**  
 CURFMAN ENGINEERING, INC.  
 489 LISA DRIVE • CLEVELAND, OH • 44137  
 PHONE: 708-994-4414 • FAX: 708-951-5412  
 www.curfman.com

**COLUMBIA LODGE  
 FRENCH STREET TO MAIN STREET  
 RIGHT TURN LANE - OPTION 1**

NO.	REVISION DESCRIPTION	DATE	BY

DATE: 12-09-2008  
 DESIGNED BY:  
 CHECKED BY:  
 JOB NO.: 23004

**SHEET  
 1**

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

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado (the “Town”) and B & D LIMITED PARTNERSHIP, an Illinois limited partnership authorized to do business in Colorado, (the “Developer”).

Recitals

A. Developer is the owner of the real property described in Exhibit A attached hereto (“Property”).

B. As owner of the Property, Developer has the right to propose a master plan for the phased development of the Property, to request the reallocation of density among the different Land Use Districts included within the Property, and to enter into agreements with the Town concerning such master plan for the Property and such a density reallocation.

C. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

D. Because the negative points associated with the reallocation of density from Land Use District (“LUD”) 11 to LUD 4 and the transfer of a single family equivalent (“SFE”) of density for a single family residence into LUD 1, in all likelihood, could not be offset with any positive points available for the public commitments proposed by the Developer, the reallocation of density authorized by Section 9-1-19:39.I.(2) of the Town’s Development Code does not appear to provide a feasible means for approval of a master plan by the Town’s Planning Commission and, therefore, a development agreement provides the most viable means available for such an approval.

E. As the commitments encouraged be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Developer proposes: the elimination of a 3 acre lot with a 1 acre building envelope on a hillside in LUD 4 for a proposed lot of approximately 2 acres with a disturbance envelope of approximately .25 acres, but not greater than .5 acre, on a flatter, less visible portion on the Property; the extension of a sidewalk in the Town right of way from the area immediately adjacent to the proposed development to the existing sidewalk south of the existing roundabout; to obtain and pay for a traffic study of the area of French Street adjacent to the Property as part of the master plan for the Property; the dedication of a sufficient portion of the Property to allow for a right turn lane on French Street at its intersection with Main Street; the creation of a significant landscaped open space area along Main Street at the southwest corner of the Property;

and the rerouting and undergrounding of the Town's Klack drainage facility within the Property to separate it from the development area.

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

### Agreement

1. The Town's Planning Commission is hereby authorized to review and approve, subject to compliance with all other applicable development policies of the Town, an application for a master plan for the Property providing for:

(a) one (1) SFE of density for a single family residence to be relocated from the large existing Lot 1, Corkscrew Subdivision Filing No. 1, with a large building envelope and located within LUD 4, to a smaller lot, with a smaller disturbance envelope and located in the most northerly portion of the Property within LUD 1;

(b) the 48,384 square feet of density allowed to be completely above grade within the LUD 11 area of the Property to be allocated or spread between the LUD 11 area of the Property and the western portion of the LUD 4 area of the Property, not to include the steeper slopes of the LUD 4 area, all as generally depicted on the Land Use Plan labeled as SP-21L.U.P. attached hereto as Exhibit B; and

(c) in connection with such approval, for no negative points to be assigned for the location or relocation of such density into LUD's 1 or 4.

2. Developer acknowledges and agrees that any master plan authorized to be approved by paragraph 1 above: must be based on a land use plan substantially similar in terms of site design and areas of development to what is depicted on Exhibit B; must provide for the LUD 1 and LUD 4 areas of the Property shown as open space on Exhibit B to be designated as private open space in perpetuity; and must include provision for the commitments set forth in paragraph 3 below.

3. As commitments to the Town to enter into this Agreement, Developer agrees that the following will be included as a part of a master plan for the Property:

(a) elimination of the existing Lot 1, Corkscrew Subdivision, which includes 3 acres and a 1 acre building envelope on a hillside in Land Use District 4 visible from Main Street and beyond, and replacement of such Lot with an approximately 2 acre lot containing an approximately .25 acre, but not greater than .5 acre, building envelope on a flatter, less visible portion on the Property;

(b) extension of a sidewalk in the Town right of way from the area



immediately adjacent to the area of the Property to be developed to the end of the sidewalk south of the existing roundabout; and

(c) a traffic study of the area of French Street adjacent to the Property, to be obtained and paid for by Developer;

(d) sufficient land to be designated for dedication to the Town for the right turn lane, generally in the location shown on Exhibit B, with such land to be dedicated free and clear of any liens and encumbrances and to be conveyed to the Town in a form that is acceptable to the Town Attorney;

(e) an area at the southwest corner of the Property to be designated as public open space in perpetuity, generally in the location shown on Exhibit B, and to be landscaped and maintained in perpetuity by Developer or the owners association for the development, with such area to be committed as public open space by deed, easement or such other means as is acceptable to the Town Attorney; and

(f) an easement and all improvements necessary for the relocation of the Klack drainage facility from its current location to a location beginning at the 72” culvert adjacent to the south end of the Property and running along with the southerly and westerly boundaries of the Property to the two (2) 48” culverts adjacent to the westerly boundary of the Property, all as generally shown on Exhibit B, to be provided and made by Developer.

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

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

4. This Agreement shall run with title to the land and be binding upon and inure to the benefit of Developer, its successors and assigns.

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

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

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

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

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

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

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

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

13. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

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

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

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

If To The Town: Timothy J. Gagen, Town Manager  
Town of Breckenridge  
P.O. Box 168  
Breckenridge, CO 80424

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

If To The Developer: Jon A. Brownson  
B & D Limited Partnership  
P.O. Box 2065  
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to: Stephen C. West, Esq.  
West, Brown, Huntley & Thompson, P.C.  
P.O. Box 588  
Breckenridge, CO 80424

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

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

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

TOWN OF BRECKENRIDGE

Attest:

\_\_\_\_\_  
Mary Jean Loufek, CMC  
Town Clerk

By:\_\_\_\_\_  
Timothy J. Gagen, Town Manager

STATE OF COLORADO    )  
   ) ss.  
COUNTY OF SUMMIT    )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by Timothy J. Gagen as Town Manager and Mary Jean Loufek, CMC, of the Town of Breckenridge, a Colorado municipal corporation.

Witness my hand and official seal.  
My commission expires:\_\_\_\_\_

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

B & D LIMITED PARTNERSHIP  
a Illinois limited partnership  
authorized to do business in Colorado

By: DSB Holdings, Inc.  
an Illinois corporation,  
its General Partner

By:

\_\_\_\_\_  
Jon A. Brownson, Vice President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010 by Jon A. Brownson, Vice President of DSB Holdings, Inc., an Illinois corporation, General Partner of B & D Limited Partnership, an Illinois limited partnership authorized to do business in Colorado.

Witness my hand and official seal.

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

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

## Exhibit A

### LEGAL DESCRIPTION

The land referred to in herein is located in the County of Summit, State of Colorado, and described as follows:

#### Parcel A:

A portion of the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range 77 West of the 6<sup>th</sup> Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 3 of said Louisa Lode and running S 19E55'00" W 436.07' more or less along lines 3-4 of said Louisa Lode to a point which point is, in fact, the true point of beginning, thence S 19E55'00" W 730.46' more or less, thence N 70E05'00" W 200.62' to a point on the easterly right of way of Colorado Highway No. 9, thence N 23E29'00" E 158.83' along said right of way, then N 25E40'00" E 238.30' more or less along said right of way, thence N 04E39'30" E 255.60' more or less along said right of way, thence East 250.66' more or less to the true point of beginning.

#### Parcel B:

A parcel of land lying within the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, lying wholly within NW-1/4, Section 31, Township 6 South, Range 77 West of the 6<sup>th</sup> Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true point of beginning, then N 70E05'00" W 171.14' to a point on the easterly right of way of Colorado State Highway No. 9, thence Northeasterly 335.00' along the arc of a 1106.00' radius curve to the right whose long chord bears N 14E48'22" E a distance of 333.72', along said right of way, thence N 23E29'00" E 4.07' along said right of way, thence S 70E05'00" E 200.62' to a point on Line 3-4 of said Louisa Lode, thence S 19E55'00" W 336.46' along said Line 3-4 to the true point of beginning.

SAVE AND EXCEPT: A parcel of land lying wholly within the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range 77 West of the 6<sup>th</sup> Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true point of beginning, thence N 70E05' W 178.87' to a point in the Easterly Right of Way of Colorado State Highway No. 9, thence Northwesterly 15.90' along the arc of a 1106.00' radius curve to the right whose long chord bears N 00E14'17" W 15.90', thence East 62.19' thence S 77E13'12" E 127.05'

to a point on the Easterly line of said Louisa Lode, thence S 19E55' W 52.12' along said Easterly line to the true point of beginning.

Parcel C:

Lot 1, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded March 22, 1994 at Reception No. 464462.

Parcel D:

Tract A, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded March 22, 1994 at Reception No. 464462.

**Exhibit B**  
**LAND USE PLAN**

**[See the Land Use Plan attached hereto]**




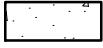

C:\Civil 3D Projects\Columbia Lode\dwg\French Street\Cl-French St right turn-option2-REV1.dwg, 12/20/2009 8:49:09 PM



SCALE: 1"=20'

MAIN STREET

LEGEND

-  LIMITS OF DEMOLITION
-  PROPOSED CONCRETE
-  PROPOSED ASPHALT

PROPERTY LINE

PROPOSED YIELD SIGN

HANDICAP RAMP

PROPOSED 5' SIDEWALK, CURB AND 2' GUTTER

APPROX. TOE OF SLOPE

PROPOSED CURB AND GUTTER

REMOVE EXISTING INLET AND REPLACE WITH TYPE 13 INLET

EXISTING TRAFFIC LIGHT AND CONTROL BOX TO REMAIN IN-PLACE.

6' SIDEWALK ON ISLAND

EXISTING STREET LIGHT TO REMAIN

SAWCUT EXISTING ASPHALT AND CONCRETE

EXISTING STREET LIGHT TO BE RELOCATED

FRENCH STREET

NO.	REVISION DESCRIPTION	DATE	BY

DATE: 12-21-2008	DESIGNED BY: [blank]
CHECKED BY: [blank]	JOB NO.: 23004

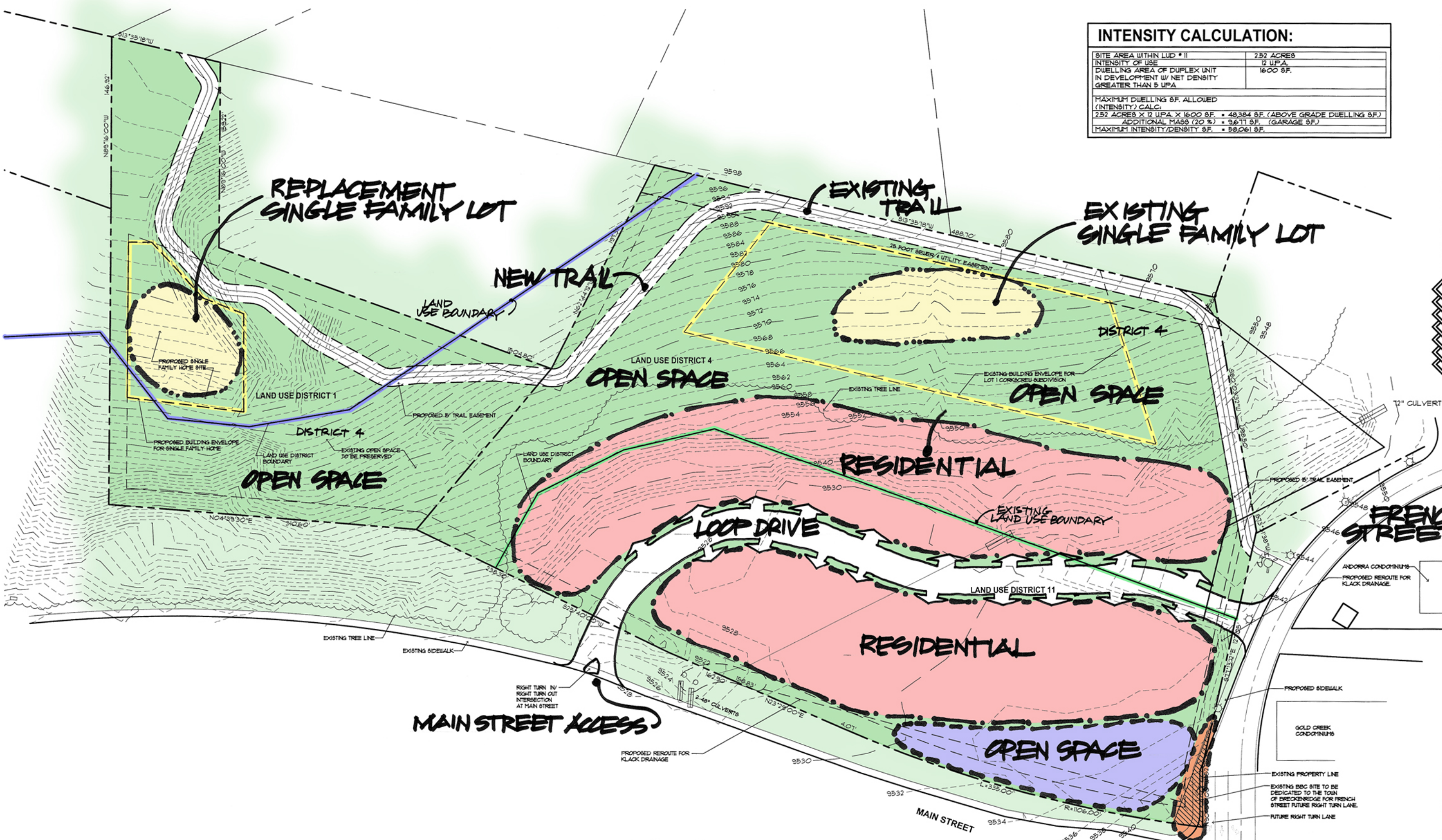
INTENSITY CALCULATION:	
SITE AREA WITHIN LUD # 11	2.52 ACRES
INTENSITY OF USE	12 UFA
DWELLING AREA OF DUPLEX UNIT IN DEVELOPMENT W/ NET DENSITY GREATER THAN 5 UFA	1600 SF.
MAXIMUM DWELLING SF. ALLOWED (INTENSITY) CALC:	
2.52 ACRES X 12 UFA X 1600 SF. = 48,384 SF. (ABOVE GRADE DWELLING SF.)	
ADDITIONAL MASS (20 %) = 9,677 SF. (GARAGE SF.)	
MAXIMUM INTENSITY/DENSITY SF. = 58,061 SF.	

REVISIONS:

JOB NO: 500100  
 DATE: 10/19/09  
 DRAWN BY: SKELLERMAN  
 CHECKED BY: M.HOGAN

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10.19.09



**EXHIBIT B  
 LAND USE PLAN**

SCALE: 1" = 40'-0"

**LAND DEDICATION  
 FOR RIGHT TURN LANE  
 (FRENCH STREET)**

**bhh Partners**  
 P.O. BOX 931, 160 EAST ADAMS  
 BRECKENRIDGE, CO 80424 (970) 453-6880

**COLUMBIA LODGE**  
 400 NORTH MAIN STREET, BRECKENRIDGE, COLORADO 80424

© 2009  
 SHEET NUMBER:  
**SP-21  
 L.U.P.**

## MEMORANDUM

**TO:** Sustainability Task Force  
**FROM:** Peter Grosshuesch, Community Development Director  
Jennifer Cram, Planner III  
**DATE:** January 06, 2010 for, January 12, 2010 TC Meeting  
**SUBJECT:** Forest Management/Watershed Protection Efforts

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### History

During the mining boom of the late 1800's, most of the lodgepole pine stands surrounding Breckenridge, were clear-cut. The generation of the replacement stand was not actively managed, and therefore came back as a dense, even aged regrowth lodgepole forest.

Twenty to thirty years ago, the US Forest Service (USFS) was actively managing timber harvests in the Upper Blue, in an effort to diversify the age and density of the lodgepole forest. When that practice ended here, it also ended in most of the rest of their jurisdiction in the state. The private sector responded by reducing capacity, and closing down most of the active sawmills and other forest products processing facilities that served the area.

The severe regional drought that occurred in 2002, left our monoculture lodgepole forests, that were nearing the end of their normal life expectancy, in a greatly compromised state to ward off a stand clearing infestations like the one which we are experiencing now. Among forestry experts, predictions for 90 to 95% mortality are common for the lodgepole stands in our area. Forest management agencies, local government, the private sector, and property owners have all mobilized in the years following the drought to develop plans to actively manage the forest in an effort to be prepared as best they can for a potential catastrophic forest fire. Staff has been working to coordinate these efforts in our community, in order to avoid duplication, fill gaps in addressing the threat, and apply for outside funding to support these efforts.

### Analysis - Where are we today?

Agencies with which we are working

Over the last several years, we have been working with the USFS, Colorado State Forest Service (CSFS), Summit County Government, and our closest partner, Red White and Blue Fire Protection District (RWB). Together we have laid the cornerstone for all of our efforts, that being the Community Wildfire Protection Plan (CWPP). That plan is based on a fuels hazard, and community asset analysis, and outlines our collective priorities for minimizing the risk from wild fire. Having a CWFP in place is a common eligibility requirement for grants from state and federal sources. The Plan was jointly developed by the member agencies of the Summit County

Wildfire Council. Those members include Breckenridge and the other municipalities in Summit County, RWB, Lake Dillon Fire District, Summit Co., CSFS, and the USFS.

### Layered Efforts

There are a number of efforts currently being pursued by varying combinations of all of the agencies mentioned above. Some are in the planning stages, others have already had significant on the ground work completed. Generally all of the efforts are consistent with the CWWP recommendations. Ranging from landscape scale, down to individual properties, those efforts include:

- The USFS Breckenridge Project creates defensible space around the Breckenridge and the Town of Blue River. The initial plan was to meander a 400 foot clear cut in a 1500 foot band that encircles the two towns. This was presented to the Council in September, with the next step being the initiation of the NEPA permitting process. Currently, specific funding has not been identified for any of the cutting units, however there is a high level of confidence within the USFS that it will materialize. As currently proposed, we will see some of our watershed protection accomplished with this plan in the Indiana Gulch area, in the form of fuels reduction and access improvements. This will likely be the biggest fuels break plan in terms of total volume of fuel load reduction, and in terms of horizontal separation between urban development and the forest.
- Watershed Protection – The watershed above Goose Pasture Tarn has been ranked as a Category 5, (area of highest concern as a threat to watersheds from wildfire) in a general study conducted by JW Associates. The lead agency on the study was the Denver Water Board, with a long list of funding participants (including the Town through our membership in the Clinton Ditch consortium). We are currently working with the USGS to develop specific drainage hazard assessments in an effort to design specific projects for NEPA permitting and outside funding. The majority of this watershed is on USFS land. We expect to see preliminary reporting from USGS in December of this year.
- Fuel Breaks Behind Subdivisions – We have planned with the RWB, to establish fuel breaks on non-federal lands that the Town and/or home owners associations control, in an effort to further buffer subdivisions from wild fires moving through the forest. The first project was implemented this year in the Highlands Park / Discovery Hill Subdivision. More are planned. The Discovery Hill Fuel Break was funded through a grant from the Colorado State Forest Service. The total grant amount was \$90,000 with a \$45,000 match requirement. The match was provided by the Red, White and Blue Fire Protection District, Town of Breckenridge and the Highlands Park Home Owners Association. Additional funding for future fuel breaks will be sought through grants from the Wildfire Council, State Forest Service and ARRA (American Recovery and Reinvestment Act) funds.
- Town Open Space Project List – The Town is in the first year of a three year plan to conduct forest management in some form on all of our open space parcels, comprising a list of thirty nine projects. To date approximately 78 acres have been cleared on Town

open space to help create fuel breaks and initiate regeneration of unhealthy lodgepole-dominated mountain pine beetle infested stands. Funding for these projects came from the Town's Open Space Fund, the CSFS through a Summit County Wild Fire Council Grant, and supportive local homeowners associations. The Town will address up to 243 additional acres on other open space properties targeted for varying levels of forest health or fire mitigation treatments during 2010 and 2011. This does not necessarily mean, however, that all of this acreage will be cleared. Treatments on this acreage will be everything from no action, to very selective thinning, to patch cuts, to clear cuts. Approximately \$150,000 has been earmarked in the Open Space Fund to treat open space parcels within Town boundaries in 2010. Other forest management efforts include a variety of treatments on the West Moonstone parcel, and an analysis and prescription for what amounts to no further action in Cucumber Gulch.

- Town Owned Properties General Fund – since the beginning of the MPB infestation, the Town has ramped up its efforts in combating the epidemic. Beginning in 2004, we spent \$20,000 on removing beetle hit trees and limited spraying on Town owned property. In 2005 we spent \$60,000, again on removing infested trees and limited spraying. In 2006 we spent \$170,000 continuing to remove infested trees and limited spraying on Town owned property. In 2007 the Town began the chipping program. \$516,656 in total was spent that year on removing infested trees and limited spraying on Town owned property. \$332,088 was spent out of the \$516,656 to pay to have cut trees chipped on private property. In 2008 the Town changed the chipping program to a \$40 per tree reimbursement for private property owners that cut trees by the recommended date. \$733,552 was spent in 2008 on the removal of infested trees and limited spraying along with the reimbursement program, of which \$576,627 was paid to private property owners that cut infested trees by the required date. In 2009 the Town has budgeted \$177,510 for open space parcels. After grant dollars are submitted for this, our share will be half or \$88,755.00. We are estimating Forest Health/Special Projects expenditures on non Open Space parcels to come to \$92,000 for 2009, when all is said and done. This includes approximately \$16,000 for spraying.

In 2009 there are no reimbursements for private property owners, and the Town has budgeted only for the removal of infested trees and limited spraying again. The 2010 Budget number is significantly less than in past. This is due to anticipation of some Grant funding. The overall number is only \$100K as proposed in the 2010 Budget. This is to include: Removal of dead and infested, spraying, etc.

Defensible Space – The Town adopted a mandatory Defensible Space Ordinance in June of 2009. A group of citizens submitted a petition for referendum, rather than put the ordinance to a vote by the people the Council decided to repeal the ordinance. A voluntary Defensible Space Ordinance was adopted shortly afterwards in August of 2009. There is currently a condition of approval placed on all new development applications that requires fuels reduction prior to receiving a certificate of occupancy. That condition of approval reads: “Applicant shall remove leaf clutter, dead branches and dead standing trees from the property, dead branches on living trees shall be trimmed to a minimum height of six (6) feet and a maximum height of ten (10) feet above the ground.” The

Town Council has also appointed a Fire Wise Task Force to look at Fire Wise issues and the future of defensible space for Breckenridge, (more on this below).

- Wild Fire Event Planning – Earlier this year, Summit County convened a half day seminar for local units of government and emergency response agencies, for the purpose of educating all of us on how to deal with a big wild fire in our area. The typical length of such an event runs from several hours to seven days. The costs of fighting a sizeable event can easily get into the millions of dollars. Much of that cost is reimbursable if reporting protocols are followed. However, it was made clear to all of us, that we should anticipate having to shoulder a fair amount of financial responsibility for such an event, and be prepared to commit other manpower and equipment resources as we have at our disposal.
- Evacuation Management – The Town Police staff presented a report on their plan for evacuating the Town areas affected by a potential wildfire. The specific strategies would be situational depending on the location and direction of the wild fire spread.
- Fire Wise Task Force – In the aftermath of the repeal of the mandatory defensible space ordinance, the Town Council appointed the Fire Wise Task Force consisting of a number of property owners, a representative from the RWB, and a Town Council member. The Task Force will meet over the next four to six months and provide recommendations to the Town Council mainly on issues directly related to home owners. Those issues include revisions to the Mountain Pine Beetle Ordinance, defensible space regulations, fire wise building materials regulations, and forest management as it affects home owners.
- Grants – Town staff has been applying for grant funding opportunities as they are announced. We received \$71,160 in 2009 from the Wildfire Council which helped fund our efforts on Town owned property. Recently, we have been notified that our application for ARRA grant funding has been denied. Staff will continue to research grant opportunities, and apply liberally for all of those we think we have a chance of receiving. Town Staff has applied for another \$50,000 grant for Town owned property from the County Wildfire Council. The announcement for that grant award will be in May of 2010. The Town will be applying for another forest health grant from the State made possible by HB1199.
- Public Education – To date we have updated the Town’s website regarding MPB, Defensible Space, open space forest health plans and Fuel Break Plans. Staff has also worked with the RWB to attend HOA meetings on a regular basis, along with newspaper and local television coverage. The Wild Fire Council also received a grant for some signage that educates the public on the effects from the MPB epidemic and how to reduce fuels. These signs will be located around the county with two signs in Breckenridge either at the Golf Course/Nordic Center or Recreation Center where they will have high public visibility.

As you can see, we have been very active in planning for forest management on all fronts. The RWB Fire District has been instrumental in helping us develop most of the elements in our planning, and has been a co-applicant on our grant applications. The layered effect of all of these plans, if brought to fruition, will hopefully give us a set of strategies that strikes a reasonable

balance of allocating scarce resources, with providing reasonable protection for the community. The scope and scale of most of these plan elements is expandable if more resources materialize.

### Town Policies Revisions

The Town is in the process of evaluating revisions to our fundamental policy direction with regard to managing forest resources. Most of that effort will be directed toward updating the Landscaping policy in the Development Code, and updating the Mountain Pine Beetle Ordinance. Other efforts consist of allocating resources, including staff work priorities, and prioritizing budget expenditures for forest management projects.

Up until recent times the general policy direction we have implemented is that of saving as many trees as possible, mostly for aesthetic reasons, with the limited exceptions being allowing the abatement of diseased or hazardous trees. With the onslaught of pine beetle infestation, and community acceptance of the severity of the epidemic, we are grappling with how to transition from keeping the forest cover in tact and fighting the epidemic, to now reducing the threat of wildfire, primarily through fuels reduction. This is a fairly radical change of policy direction and resource allocation on an issue that is a major part of our identity as a mountain resort community. The attendant public education effort and comprehensive rewrite of policies is proving at times to be tricky business.

Probably the most far reaching policy we could support is the long term one that encourages the USFS to get back into actively managing the forest in an effort to diversify the age of the stand, the species composition, and to reduce the stand density. As is the case with most agricultural crops, they need to be actively managed in order to achieve desired results.

### Action Steps and Options for Consideration

- Watershed Protection –
  - Develop fuel mitigation projects, and
  - design plans for water sedimentation facilities that would intercept debris flows, keeping them from reaching and inundating our water treatment plant at Goose Pasture Tarn.
  - Pursue USFS cooperation, NEPA permitting and grant funding for these projects.
- Support the USFS in their Breckenridge Fuel Mitigation Project.
- Support HOAs in their efforts to create fuel reduction projects and secure grant funding from the Wild Fire Council and other sources.
- Implement Code and policy changes that make private property less vulnerable to the effects of wildfire.
- Continue to plan and implement forest management actions on Town owned or managed property.
- Continue to plan for a coordinated response to wildfire events with local and regional emergency response agencies.
- Continue public education on evacuation plans in the event of a wildfire.

- Plan for the financial implications of fighting a major wild fire.
- Continue to apply for grant funding to support all of our efforts at forest management.
- Support the County and USFS in their efforts to manage the forest age, species and density.

#### Sustainability Task Force Comments

The Sustainability Task Force reviewed Staff's overview for Forest Management and Watershed Protection on November 13, 2009. The task Force recommended presenting the information in this memo to the full Council.

The Task Force was in general agreement with the proposed action steps outlined above.

- The Task Force believes that watershed protection is the most important aspect of our forest management efforts. Any way that the required NEPA process can be fast tracked to allow watershed protection efforts should be encouraged.
- With regard to Defensible Space they encouraged staff to continue tracking the voluntary efforts.
- They also wanted a bullet added and to continue public education efforts for evacuation plans in the event of a wildfire, which has been added to this memo.
- The task Force also thought that it was important to continue to support the County and USFS in implementing forest management activities.

Staff will be available during the worksession to go over any elements of the memo and answer questions.



# **Joint Town Council/Sanitation District Meeting**

**January 12, 2010**

**6:30 pm**

Breckenridge Town Hall

150 Ski Hill Rd

## **AGENDA**

- I. Farmers Korner Construction update
- II. Watershed Protection- Providing sewer service to the Town of Blue River
- III. Pump Back Update
- IV. Green Building/Renewable Energy Sources for new sanitation plant
- V. Future areas of partnership



**TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA**

**Tuesday, January 12, 2010 (Regular Meeting); 7:30 p.m.**

<b>I</b>	<b>CALL TO ORDER and ROLL CALL</b>	
<b>II</b>	<b>APPROVAL OF MINUTES – December 8, 2009</b>	<b>Page 91</b>
<b>III</b>	<b>APPROVAL OF AGENDA</b>	
<b>IV</b>	<b>COMMUNICATIONS TO COUNCIL</b>	
	A. Citizen’s Comment - (Non-Agenda Items ONLY; 3 minute limit please)	
	B. BRC Director Report	
<b>V</b>	<b>CONTINUED BUSINESS</b>	
	<b>A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS*-</b>	
	<b>1. Council Bill No. 38, Series 2009-</b> AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE OF “UNLAWFUL ACTS BY SKIERS”	<b>Page 98</b>
	<b>2. Council Bill No. 39, Series 2009-</b> AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG PARAPHERNALIA	<b>Page 103</b>
	<b>3. Council Bill No.40, Series 2009-</b> AN ORDINANCE CONCERNING THE CLASSIFICATION OF VIOLATIONS OF TOWN ORDINANCES	<b>Page 107</b>
	<b>4. Council Bill No.41, Series 2009-</b> AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH VAIL SUMMIT RESORTS, INC. (Parking Ratio – Gondola Lot Master Plan)	<b>Page 111</b>
<b>VI</b>	<b>NEW BUSINESS</b>	
	<b>A. FIRST READING OF COUNCIL BILL, SERIES 2010 –</b>	
	There are no First Readings	
	<b>B. RESOLUTIONS, SERIES 2010-</b>	
	<b>1. A RESOLUTION APPROVING AN AMENDED AND RESTATED ANNEXATION AGREEMENT WITH BRADDOCK HOLDINGS LLC, a COLORADO LIMITED LIABILITY COMPANY, AND SMI LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY</b>	<b>Page 123</b>
	<b>C. OTHER –</b>	
	<b>1. Snow Sculpture Burn Permit</b>	<b>Page 182</b>
<b>VII</b>	<b>PLANNING MATTERS</b>	
	A. Planning Commission Decisions of January 5, 2010	<b>Page 2</b>
	B. Town Council Representative Report (Mr. Rossi)	
	C. Gondola Master Plan Call Up	<b>Page 184</b>
<b>VIII</b>	<b>REPORT OF TOWN MANAGER AND STAFF*</b>	
<b>IX</b>	<b>REPORT OF MAYOR AND COUNCILMEMBERS*</b>	
	A. CAST/MMC (Mayor Warner)	
	B. Breckenridge Open Space Advisory Commission (Mr. Joyce)	
	C. BRC (Ms. McAtamney)	
	D. Summit Combined Housing Authority (Mr. Millisor)	
	E. Breckenridge Heritage Alliance (Mr. Bergeron)	
	F. Sustainability Committee (Mr. Millisor)	
<b>X</b>	<b>OTHER MATTERS</b>	
<b>XI</b>	<b>SCHEDULED MEETINGS</b>	<b>Page 218</b>
<b>XII</b>	<b>ADJOURNMENT</b>	

\*Report of Town Manager; Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item

**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, DECEMBER 8, 2009  
PAGE 1**

***CALL TO ORDER and ROLL CALL***

Mayor Warner called the December 8, 2009 Town Council Meeting to order at 7:36 p.m. The following members answered roll call: Mr. Bergeron, Mr. Joyce, Ms. McAtamney, Mr. Mamula, Mr. Millisor, Mr. Rossi, and Mayor Warner.

***APPROVAL OF MINUTES – November 24, 2009 Regular Meeting***

Mr. Bergeron commented that on page 101 of 196 “codifiers” should read “codifies.” With this one change to the regular meeting minutes of November 24, 2009, they were approved.

***APPROVAL OF AGENDA***

Council Bill No. 38, Series 2009 will not be read due to insufficient publication.

Council Bill No. 39, Series 2009 will not be read due to insufficient publication but will be heard as an Emergency Ordinance Council Bill No. 42, Series 2009

Council Bill No. 41, Series 2009 approving a development agreement with Vail Resorts was added to first readings.

***COMMUNICATIONS TO COUNCIL***

A. Citizen’s Comments - (Non-Agenda Items ONLY; 3 minute limit please) – Lisa Rivard, Amy Evans and Tom Kramer- Wanted to share fundraising goals with the Town Council. They have been presented a check from the Saddle Rock Society who has also offered to pay the utilities of the Tin Shop. They continued with some other fundraising efforts and asked that the Tin Shop be reopened.

Myra Musso- On behalf of people of the Rec Center who would like the Rec Center hours reconsidered. She has about 250 signatures on a petition. They would like to extend the hours to what they were before. She feels the shortened hours are more conceivable in the summer.

Stephanie Saddler- She is here for a few different issues. Here on behalf of the Friends of the Arts District. She is sponsoring a fundraiser. She has been approached by High School Students who the Arts District benefits. She also is here because she has a gallery at the North end of Main Street where they may be losing their parking because of future plans.

Dave Garrett- He has commercial property in town. He feels the Town will take care of some of the issues he is concerned about the North end of Main St. He hopes the plan gets called up.

B. BRC Director Report- John McMahon- He gave some clarity on some confusing issues with the Director of Sales position. He went through some of the marketing efforts. The Council received an email earlier today with some of the highlights of the marketing efforts. They are continuing to do Hot Deals and Après Ski options to drive people into Town. Doing some different things at the Welcome Center including increased video monitors which they are working on with the Town right now. Business Breakfast is tomorrow. They are focusing on Customer Service.

John handed out the survey results from the recent survey on a stable source of marketing funds. He commented on the highlights and commented that there is 88% support for establishing a more stable and sustainable marketing fund. He continued with additional details from the survey. Mayor Warner commented that he and Mr. Millisor did talk with Rob Katz about having a mechanism for raising money for marketing dollars. Rob did not have a suggestion. Mayor Warner did bring up the idea of a lift ticket tax to Rob. John suggested reconvening the Funding Committee. The Council had continued discussion about the survey results. Mr. Bergeron commented that we have to do this the right way or we will have to wait awhile until we get another chance. Wants to see it be successful. John commented that he looks

**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, DECEMBER 8, 2009  
PAGE 2**

at the 80% that say that we absolutely need a sustainable marketing fund. Mr. Millisor commented that we have more support now than they did when they tried to do this a couple years ago. He feels he would like to see more people polled. John agreed.

**CONTINUED BUSINESS**

**A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS**

**1. Council Bill No. 37, Series 2009- AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Theobald Building – North 25.66 feet of Lot 1, Bartlett and Shock Addition; also known as 101 South Main Street)**

Mr. Berry introduced this matter for first reading. This property was approved for renovation, landmarking and variance request by Council on June 28, 2009, PC #2008058. Approval of this council bill would designate this property as a landmark pursuant to the Town's Historic Preservation Ordinance. There were no changes from first reading.

Mayor Warner asked for public comment. There was none. He closed the public hearing.

Mr. Bergeron moved to approve Council Bill No. 37, Series 2009 as previously read into the record. Mr. Mamula made the second. All were in favor.

**2. Council Bill No. 38, Series 2009- AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE OF "UNLAWFUL ACTS BY SKIERS"**

Tim Berry stated this council bill is a result of a suggestion by the Town's Municipal Judge, Buck Allen. If passed this ordinance would make it a Town violation to commit any of the four acts that are classified as petty offenses under the "Colorado Skier Safety Act". The offenses include: skiing on a closed trail; skiing while impaired; failure to give information to a ski area employee investigating a collision; and skiing out of bounds. This council bill will not create a new crime; it will only allow the prosecution of the existing crime in the Town's Municipal Court. Under the Town's Charter it is required that the Ordinance be published before the Second Reading. Due to Newspaper error it was not published therefore Mr. Berry requested the Bill be continued to the first meeting in January.

Ms. McAtamney moved to postpone Council Bill No. 38, Series 2009 as previously read into the record until January 12, 2010. Mr. Rossi made the second. All were in favor.

**3. Council Bill No. 39, Series 2009- AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG PARAPHERNALIA**

Mr. Berry stated this council bill accomplishes two different things. First, it codifies in the Town's code book the vote of the people in the November 3, 2009 coordinated election with respect to the possession of Marijuana of person 21 years of age and older. It also modifies the Town Code in reference to the possession of marijuana and drug paraphernalia. Section 6-3H-1 and 6-3H-6 of the Town Code should be amended to reflect the changes approved by Question 2F. Staff supports the addition of new municipal offenses related to the open and public display, consumption or use of marijuana by any person, and the possession of more than 1 ounce of marijuana (but less than eight ounces by any person). Due to Newspaper error it was not published therefore Mr. Berry requested the Bill be continued to the first meeting in January. This Ordinance will be read as an Emergency Ordinance Council Bill No.42, Series 2009. If it does in fact pass, the second reading of this bill becomes mute and can be defeated at the next meeting.

Mr. Bergeron moved to postpone Council Bill No. 39, Series 2009 as previously read into the record until January 12, 2010. Mr. Mamula made the second. All were in favor.

**NEW BUSINESS**

**A. FIRST READING OF COUNCIL BILL, SERIES 2009-**

**1. Council Bill No. 40, Series 2009- AN ORDINANCE CONCERNING THE CLASSIFICATION OF VIOLATIONS OF TOWN ORDINANCES**

Tim Berry commented that this ordinance would amend the General Penalty Ordinance to unambiguously set forth the “default rule” that all Code violations are misdemeanors unless otherwise expressly provided. Doing so will avoid any possible argument in court about whether conduct is unlawful under Town law and, if so, what procedure is to be followed and what punishment is allowed. Tim Berry commented that he also made a few grammatical corrections to the current ordinance that seemed necessary. He also eliminated the requirement in Section 1-4-1-1 that the Municipal Judge establish a fine schedule for all infractions. In practice, Judge Allen only has a fine schedule for traffic infractions that can be paid outside of court. For other infractions (such as a Sign Code violation or a Building Code violation), the Judge requires a court appearance and sets the fine based upon the facts of the particular case. In light of this practice, the current language mandating a fine schedule for all infractions was taken out.

Mr. Bergeron moved to approve Council Bill No. 40, Series 2009 as previously read into the record. Mr. Mamula made the second. All were in favor.

**4. Council Bill No. 41, Series 2009- AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH VAIL SUMMIT RESORTS, INC.**

Tim Berry commented that this ordinance would approve the proposed development agreement with between the Town and Vail Resorts and would authorize the 1 to 1 parking for the Gondola Lot Master Plan. On the second page of the ordinance on line 37, there is a reference to dates the development agreement was discussed. It would be appropriate to add the date of December 8, 2009 to the motion.

Mr. Mamula moved to approve Council Bill No. 41, Series 2009 as previously read into the record with the addition of the date December 8, 2009 on line 37. Mr. Bergeron made the second. All were in favor.

***B. EMERGENCY ORDINANCE-***

**1. Council Bill No. 42, Series 2009- AN EMERGENCY ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG PARAPHERNALIA**

Tim Berry commented that this ordinance is identical to Council Bill 39, Series 2009 and would implement into town law the voter approved changes to the Town Code. There are two additional significant changes. The first adopts a local law prohibiting the public display, use or consumption of cannabis. The second makes it a municipal offense to possess more than 1 or less than 8 ounces of cannabis. This is being read as an emergency ordinance because it was not properly published as a second reading and Council feels it is important to get this passed and it will become effective upon adoption.

Mr. Millisor moved to approve Council Bill No. 42, Series 2009 as previously read into the record. Ms. McAtamney made the second. All were in favor.

***C. RESOLUTIONS, SERIES 2009-***

**1. A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2010**

Tim Gagen commented that the Council needs to annually approve Tim Berry’s contract. Tim’s contract is identical in substance to the contract that was approved last year; however, he removed the provision of his contract obligating the Town to reimburse him for attending a seminar sponsored by the International Municipal Lawyers Association.

Mayor Warner asked for public comment. There was none. He closed the public hearing.

Mr. Millisor moved to approve the resolution, Series 2009 as previously read into the record. Mr. Mamula made the second. All were in favor.

**2. A RESOLUTION APPROVING AN AGREEMENT FOR MUNICIPAL COURT PROSECUTION SERVICES WITH RICHMOND, SPROUSE & MURPHY, LLC**

Tim Berry commented that the Council needs to annually approve Seth Murphy's contract to provide services as the Town's Municipal Court Prosecutor. Seth's contract is identical in substance to the contract that was approved last year.

Mayor Warner asked for public comment. There was none. He closed the public hearing.

Mr. Bergeron moved to approve the resolution, Series 2009 as previously read into the record. Ms. McAtamney made the second. All were in favor.

**3. A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL AFFAIRS (Valley Brook Workforce Housing Development)**

Tim Berry commented that in April of 2009 the Town received notice that two grants from the State of Colorado had been approved for infrastructure related to the Valley Brook Workforce Housing Project. A grant in the amount of \$750,000 was authorized by the State Housing Board (This Resolution) and a grant in the amount of \$250,000 was authorized from the Energy/Mineral Impact Assistance Fund (Resolution No.3 below). We have received contracts from each division of the State (Housing and Mineral Impact) which must be executed before any of the funds can be obligated or expended. Resolutions are included in your packet to approve the contracts and authorize the Town Manager to execute the contracts on behalf of the Town.

The Town is currently working with staff from the Housing Department and the Mineral Impact Fund to update the Scope of Services and Project Performance Plan which will be attachments to the contracts. The original Scopes and Plans were based on preliminary budget and schedule from January 2009 when the grant applications were submitted. The original Scopes and Plans also described that the property would be transferred to Mercy Housing as the developer prior to any construction or expenditure of reimbursable funds. This was consistent with our Development Agreement with Mercy and our plans at the time.

We have subsequently learned that the Housing Funds (\$750,000) must be expended while the property is owned by the Town. While these funds are made available through the State of Colorado they are Federal Funds from the Community Development Block Grant program and subject to specific federal regulations established by Department of Housing and Urban Development. The State had made us aware of other federal regulations affecting how the money could be spent but the ownership issue was not raised until October of 2009. Splitting the project into an infrastructure phase by the Town and vertical construction by the developer is feasible and also provides us with the opportunity to exempt the vertical construction phase from other federal requirements. This should result in some project cost savings particularly related to the Federal Davis Bacon (prevailing wage) requirements. We have been working with State staff to modify the scope of services and the budgets to reflect these changes and when these are completed they will be attached to the contracts prior to execution by the Town Manager.

We have been advised by the State that the Town should execute the contracts as soon as possible to protect the funds from cuts that are being considered by the State.

Mayor Warner asked for public comment. There was none. He closed the public hearing.

Mr. Millisor moved to approve the resolution, Series 2009 as previously read into the record. Mr. Joyce made the second. All were in favor.

**4. A RESOLUTION APPROVING AN ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM GRANT CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL AFFAIRS(Valley Brook Parcel)**

Tim Berry commented that the resolution would approve a grant in the amount of \$250,000 authorized from the Energy/Mineral Impact Assistance Fund. Additional notes are above in Resolution No.3.

Mayor Warner asked for public comment. There was none. He closed the public hearing.

Mr. Bergeron moved to approve the resolution, Series 2009 as previously read into the record. Ms. McAtamney made the second. All were in favor.

**5. A RESOLUTION DETERMINING THAT THE TOWN OF BRECKENRIDGE WILL NOT ACT AS A REVIEWING ENTITY FOR THE STATE INCOME TAX CREDIT PROGRAM FOR QUALIFYING HISTORIC REHABILITATION PROJECTS**

Tim Berry commented that the resolution would declare that the Town chooses NOT to be the reviewing agency for tax credits that are available with regard to historic preservation projects in perpetuity. The State would remain the reviewing agency. Because the Town is a Certified Local Government (CLG), the Town may choose to be the reviewing agency for such tax credits.

Mayor Warner asked for public comment. There was none. He closed the public hearing.

Mr. Joyce moved to approve the resolution, Series 2009 as previously read into the record. Mr. Rossi made the second. All were in favor.

**D. OTHER –  
PLANNING MATTERS**

**A. Planning Commission Decisions of December 1, 2009**

Mr. Mamula moved to call up Gondola Lots Master Plan, PC#2009010, 320 North Park Avenue. Ms. McAtamney seconded the motion. Mr. Mamula commented that the majority of the master plan is how they want it but there are a few things that were cumbersome that he has concerns with. Mayor Warner commented on the sustainability of the master plan. Mr. Rossi found the positive points strange. He would rather work out issues now than later. Big thing for him is figuring out the Gold Rush lot. Ms. McAtamney commented that it is an opportunity to tighten things up. Mr. Millisor questioned the process and why they got things last minute. Chris Neubecker commented that he thought it would be helpful though normally wouldn't have even provided it. Mr. Mamula commented that they have asked to have a full review of this project. Tim Berry commented that this is not typical of a master plan and they normally would not have all this material provided to them but staff will attempt to get council as much information in advance through the remainder of the master plan process. Mr. Joyce would like to here more about the density issues. Alex Iskenderian commented that they will narrow that up.

**B. Report of Planning Commission Liaison**

Mr. Rossi had nothing to report.

**REPORT OF TOWN MANAGER AND STAFF**

**REPORT OF MAYOR AND COUNCILMEMBERS-**

- A. **CAST/MMC** (Mayor Warner) – Nothing to report.
- B. **Breckenridge Open Space Advisory Commission** (Mr. Joyce) – Nothing to report.
- C. **Breckenridge Resort Chamber** (Ms. McAtamney) – Breakfast is tomorrow. Will have an Executive Session to talk about Cen Res. The Town Council had some additional discussion on how Cen Res currently functions.
- D. **Summit Combined Housing Authority** (Mr. Millisor) – Nothing to report.
- E. **Breckenridge Heritage Alliance** (Mr. Bergeron) – Nothing to report.
- F. **Sustainability** (Mr. Millisor) - Nothing to report.
- G. **Fire Wise** (Mr. Joyce) – Nothing to report

**OTHER MATTERS**

**TOWN OF BRECKENRIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, DECEMBER 8, 2009  
PAGE 6**

Mr. Millisor questioned whether we can give the keys to the Tin Shop to the Friends of the Arts District? Mr. Gagen commented that the Council has to be comfortable with the Fair. Council agreed to give the keys to the Tin Shop with Mr. Millisor and Mr. Rossi opposing.

Mayor Warner questioned the Rec Center petition. Tim Gagen commented that they need to look at the big picture but that we will bring them other options and figures.

Mayor Warner commented on the two different issues related to marijuana out there right now. Questioned whether we could get the right information out there through the website, blogs, facebook, etc.

***SCHEDULED MEETINGS***

***ADJOURNMENT***

With no further business to discuss, the meeting was adjourned at 9:28 p.m.

Submitted by Alison Kellermann, Administrative Services Manager.

ATTEST:

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Mary Jean Loufek, CMC, Town Clerk

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John Warner, Mayor



**EXECUTIVE SESSION CERTIFICATE**

Town of Breckenridge            )  
County of Summit                )  
State of Colorado                )

John Warner, the duly elected, qualified and acting Mayor of the Town of Breckenridge, hereby certifies as follows:

As part of the Town Council meeting on Tuesday, December 8, 2009 at 4:05 p.m., Mr. Joycmoved to convene in Executive Session pursuant to Paragraph 4(a) of Section 24-6-402, C.R.S., relating to the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; and Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; and Paragraph 4(f) of Section 24-6-402, C.R.S. relating to personnel matters. Mr. Mamula made the second.

The Mayor restated the motion. The Mayor further stated that the real property that is the subject of the executive session is the Snake River Land Exchange. The conference with the Town Attorney involves a personnel matter, but maybe also includes conferences with the Town attorney concerning the other subject matter of the executive session.

A roll call vote was taken and all were in favor of the motion.

Mr. Mamula moved to adjourn the Executive Session at 4:35 p.m. Ms. McAtamney made the second. All were in favor of the motion.

This certificate shall be included after the minutes of the regular Town Council meeting of Tuesday, December 8, 2009.

\_\_\_\_\_  
John Warner, Mayor

**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 38 (Local Skier Safety Act Ordinance)  
DATE: January 4, 2010 (for January 12<sup>th</sup> meeting)

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You will recall that the second reading of the ordinance incorporating into Town law the penal provisions of the Colorado Skier Safety Act was continued from your December 8<sup>th</sup> meeting because of a problem with the newspaper publication of the ordinance after first reading. Second reading is now scheduled for your meeting on January 12<sup>th</sup>.

Enclosed is the ordinance. There are no changes proposed to ordinance from first reading.

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

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

2  
3 **NO CHANGE FROM FIRST READING**

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

7  
8 COUNCIL BILL NO. 38

9  
10 Series 2009

11  
12 AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE  
13 TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE  
14 OF “UNLAWFUL ACTS BY SKIERS”

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

18  
19 Section 1. Chapter 3H of Title 6 of the Breckenridge Town Code is amended by the  
20 addition of a new Section 6-3H-9, which shall read in its entirety as follows:

21  
22 6-3H-9: UNLAWFUL ACTS BY SKIERS:

23  
24 A. As used in this section the following words shall have the following  
25 meanings:

26  
PASSENGER  
TRAMWAY:

A device as defined in section 25-  
5-702(4), C.R.S

PERSON:

An individual.

SKI AREA:

All ski slopes or trails and all other  
places within the ski area boundary,  
marked in accordance with section 33-  
44-107(6), under the control of a ski  
area operator and administered as a  
single enterprise within the Town.

SKI AREA OPERATOR:

An “area operator” as defined in  
section 25-5-702(1), C.R.S., and  
any person, partnership,  
corporation, or other  
commercial entity having  
operational responsibility for any

ski areas, including an agency of the state or a political subdivision thereof.

SKIER:

Any person using a ski area for the purpose of skiing, which includes, without limitation, sliding downhill or jumping on snow or ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard, or any other device; or for the purpose of using any of the facilities of the ski area, including but not limited to ski slopes and trails.

SKI SLOPES OR TRAILS:

All ski slopes or trails and adjoining skiable terrain, including all their edges and features, and those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in the definition of “skier” set forth in this section. Such designation shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that such areas be used by skiers for the purpose of skiing. Nothing in this definition of the definition of “skier” set forth in this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in the definition of “skier” set forth in this section.

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B. It is unlawful and a misdemeanor offense for any skier to ski on a ski slope or trail that has been posted as “Closed” pursuant to section 33-44-107(2)(e) and (4), C.R.S.

C. It is unlawful and a misdemeanor offense for any person to move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug or while such person is under the influence of alcohol or any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug.

1 D. It is unlawful and a misdemeanor offense for any skier involved in a  
2 collision with another skier or person in which an injury results shall leave  
3 the vicinity of the collision before giving his or her name and current address  
4 to an employee of the ski area operator or a member of the ski patrol, except  
5 for the purpose of securing aid for a person injured in the collision; in which  
6 event the person so leaving the scene of the collision shall give his or her  
7 name and current address as required by this subsection (D) after securing  
8 such aid.

9  
10 E. It is unlawful and a misdemeanor offense for any person to knowingly  
11 enter upon public or private lands from an adjoining ski area when such  
12 land has been closed by its owner and so posted by the owner or by the ski  
13 area operator pursuant to section 33-44-107(6), C.R.S.

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

17  
18 Section 3. The Town Council hereby finds, determines and declares that this ordinance is  
19 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
20 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
21 thereof.

22  
23 Section 4. The Town Council hereby finds, determines and declares that it has the power  
24 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
25 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

26  
27 Section 5. This ordinance shall be published and become effective as provided by  
28 Section 5.9 of the Breckenridge Town Charter.

29  
30 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
31 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2009. A Public Hearing shall be held at the  
32 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
33 \_\_\_\_\_, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
34 Town.

35  
36 TOWN OF BRECKENRIDGE, a Colorado  
37 municipal corporation

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39  
40 By \_\_\_\_\_  
41 John G. Warner, Mayor

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ATTEST:

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Mary Jean Loufek, CMC,  
Town Clerk

**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 39 (Amending Town's Marijuana and Drug Paraphernalia Ordinances)

DATE: January 4, 2010 (for January 12<sup>th</sup> meeting)

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At your last meeting on December 8<sup>th</sup> the second reading of Council Bill No. 39 was continued to the January 12<sup>th</sup> meeting because of a problem with the newspaper publication of the ordinance following first reading. Please recall that this ordinance amends the Town Code to reflect the passage of Question 2F, and also adds to the Town Code new municipal offenses related to the public display and consumption of marijuana, and possession of more than one ounce but less than eight ounces of marijuana.

On December 8<sup>th</sup> the Council adopted a separate emergency ordinance containing the same substantive provisions as are set forth in Council Bill No. 39. This was done so that the voter-approved changes to the Town's marijuana laws would be in place by January 1, 2010 as directed by Question 2F.

Notwithstanding the adoption of the emergency ordinance the Council needs to take some final action with respect to Council Bill No. 39. If you are still comfortable with the terms of the emergency ordinance I'd suggest that you simply defeat Council Bill No. 39 at the time of second reading next Tuesday. That can be accomplished by a motion to approve Council Bill No. 39 on second reading; a second to that motion; and the failure of that motion to receive the affirmative vote of a majority of the entire Council.

Alternatively, if the Council wants to make any change to the Town's new marijuana laws (as set forth in the emergency ordinance) Council Bill No. 39 could be amended to reflect such change and then adopted on second reading. Such action would effectively amend the emergency ordinance. If the Council desires to amend Council Bill No. 39 that can be done in the same manner that amendments are normally made to an ordinance at the time of the ordinance's second reading. I have not proposed any amendment to Council Bill No. 39, but after worksession next Tuesday I can prepare any amendment to the ordinance that the Council wants to see.

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

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

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

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

7  
8 COUNCIL BILL NO. 39

9  
10 Series 2009

11  
12 AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE  
13 BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL  
14 OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG  
15 PARAPHERNALIA

16  
17 WHEREAS, at a special election held November 3, 2009 the electors of the Town of  
18 Breckenridge voted to approve the following ballot question:

19  
20 SHALL THE ELECTORS OF THE TOWN OF BRECKENRIDGE ADOPT AN  
21 AMENDMENT TO THE BRECKENRIDGE TOWN CODE, EFFECTIVE  
22 JANUARY 1, 2010, REMOVING ALL CRIMINAL PENALTIES UNDER  
23 TOWN LAW FOR THE POSSESSION OF ONE OUNCE OR LESS OF  
24 MARIJUANA AND RELATED PARAPHERNALIA BY PERSONS TWENTY  
25 ONE YEARS OF AGE OR OLDER?

26  
27 (“Question 2F”)

28  
29 ; and

30  
31 WHEREAS, the Town Council finds and determines that the Town’s ordinances  
32 concerning the possession of marijuana (cannabis) and drug paraphernalia must be amended to  
33 reflect the will of the electorate as expressed in the vote on Question 2F; and

34  
35 WHEREAS, the Town Council further finds and determines that the Town’s marijuana-  
36 related ordinances should be amended as hereafter set forth.

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

40  
41 Section 1. Section 6-3H-1 of the Breckenridge Town Code is hereby amended so as to  
42 read in its entirety as follows:

43 6-3H-1 ~~POSSESSION OF~~ OFFENSES RELATED TO CANNABIS:



- 1 A. ~~Any person who possesses, transfers, cultivates, grows, produces, processes or~~  
2 ~~manufactures or knowingly allows to be cultivated, grown, produced, processed or~~  
3 ~~manufactured on land or real property owned, occupied or controlled by him, not more~~  
4 ~~than one ounce of cannabis or cannabis concentrate or derivative is guilty of the offense~~  
5 ~~of possession of cannabis. Any person under twenty-one (21) years of age who~~  
6 ~~possesses not more than one ounce of cannabis or cannabis concentrate or derivative~~  
7 ~~is commits an infraction.~~ B. ~~The P~~penalty for violation of this section ~~A~~ shall be by fine  
8 only. Fine shall be a maximum of one hundred dollars (\$100.00) for each offense.  
9
- 10 B. Any person who openly and publicly displays, consumes, or uses not more than one  
11 ounce of cannabis commits a misdemeanor municipal offense. A person “openly and  
12 publicly displays, consumes, or uses” cannabis if he or she exhibits, burns, smokes,  
13 or otherwise ingests cannabis in any of the following places: (i) any land or area  
14 owned or controlled by the Town, such as public ways, streets, sidewalks, alleys,  
15 parking lots, playgrounds, (ii) schools and school grounds, (iii) other public  
16 buildings owned and operated by any governmental entity; (iv) places of business  
17 generally open to the general public, (v) the common areas of buildings usually open  
18 to the general public, (vi) the hallways, lobbies, balconies, decks, and other portions  
19 of residential structures not constituting rooms designed for actual residence if  
20 visible from a public street, sidewalk or alley by a person of normal visual acuity,  
21 and (vii) any other place open to public view by a person of normal visual  
22 acuity. Any person convicted of having violated this section B shall be punished, at a  
23 minimum, by a fine of not less than one hundred dollars (\$100.00) or, at a  
24 maximum, by a fine of not more than one hundred dollars (\$100.00) and by fifteen  
25 days in the county jail.
- 26
- 27 C. Any person who possesses more than one ounce of cannabis but less than eight  
28 ounces of cannabis commits a misdemeanor municipal offense. Any person  
29 convicted on having violated this section C shall be punished as provided in Chapter  
30 4 of Title 1 of this Code.
- 31
- 32 D. Transferring or dispensing not more than one ounce of marijuana from one person  
33 to another for no consideration shall be deemed to be possession, and not dispensing  
34 or sale thereof.
- 35

36 Section 2. Paragraph D of section 6-3H-6 of the Breckenridge Town Code is hereby  
37 amended so as to read in its entirety as follows:

- 38 D. A person commits possession of drug paraphernalia if he possesses drug paraphernalia  
39 and knows or reasonably should know that the drug paraphernalia could be used under  
40 circumstances in violation of the laws of the town or the state of Colorado, unless the  
41 person is twenty-one (21) years of age or older and the drug paraphernalia is  
42 reasonably associated with marijuana.
- 43

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



**MEMO**

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 40 (Amendment to Town's "General Penalty Ordinance")

DATE: January 4, 2010 (for January 12<sup>th</sup> meeting)

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The second reading of the ordinance amending the Town's "General Penalty Ordinance" is scheduled for your meeting on January 12<sup>th</sup>. You will recall that the primary purpose of this ordinance is to make it clear that all Town Code violations are classified as misdemeanors unless otherwise expressly provided in the Code.

There are no changes proposed to ordinance from first reading.

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

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

2  
3 **NO CHANGE FROM FIRST READING**

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

7  
8 COUNCIL BILL NO. 40

9  
10 Series 2009

11  
12 AN ORDINANCE CONCERNING THE CLASSIFICATION OF VIOLATIONS OF TOWN  
13 ORDINANCES

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

17  
18 Section 1. The definition of "Code Infraction" set forth in Section 1-3-2 of the  
19 Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

CODE INFRACTION:

Any violation of this code, any ordinance of the town, or any code adopted by reference, other than a traffic infraction, which is classified as an infraction in the applicable penalty section. A code infraction is a civil (noncriminal) matter. ~~Any violation of this Code which is neither a code infraction nor a traffic infraction is a misdemeanor (criminal) violation.~~

20  
21 Section 2. The definition of "Misdemeanor" set forth in Section 1-3-2 of the  
22 Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

MISDEMEANOR:

Any violation of this code, any ordinance of the town, or any code adopted by reference that is not specifically classified as an infraction. A misdemeanor is a ~~Any criminal matter violation of this code.~~ The term "misdemeanor" ~~shall~~ does not include any ~~noncriminal (civil)~~ infraction as defined in this Code.

23  
24 Section 3. Subsection A of Section 1-4-1 of the Breckenridge Town Code is amended so  
25 as to read in its entirety as follows:

1 A. It shall be is unlawful for any person to violate any ~~of the misdemeanor~~  
2 ~~provisions of the~~ ordinances of the town, this code, or any code adopted by  
3 reference, ~~or any regulation adopted pursuant to this code or town ordinance.~~  
4 Each violation is a misdemeanor offense, except those violations specifically  
5 classified as infractions in any Town ordinance, this code, or any code  
6 adopted by reference. ~~Except in cases where a different punishment is~~  
7 ~~prescribed by an ordinance of the town or this code, a~~Any person convicted of a  
8 misdemeanor violation of this code, any ordinance of the town, any code adopted  
9 by reference, or any regulation adopted pursuant to this code or town ordinance  
10 shall be punished by a fine of not more than nine hundred ninety nine dollars  
11 (\$999.00), or by imprisonment not to exceed one day less than one year, or by  
12 both such fine and imprisonment; provided, however, that no person under the age  
13 of eighteen (18) years as of the date of the offense for which he is convicted shall  
14 be subject to a jail sentence, except in the case of a conviction of a traffic offense  
15 under title 7 of this code. Any persons found to have committed a violation of  
16 an infraction shall be punished as provided in Section 1-4-1-1.  
17

18 Section 4. Section 1-4-1-1 of the Breckenridge Town Code is amended so as to read in  
19 its entirety as follows:

20 1-4-1-1: GENERAL PENALTY--INFRACTIONS: It shall be is unlawful and a  
21 violation for any person to violate any ~~of the~~ provisions of the ordinances of the  
22 Town, this Code, or any code adopted by reference, ~~or any regulations adopted~~  
23 ~~pursuant to this Code or Town ordinance which that is classified as an infraction.~~  
24 Any person found to be in violation of, or against whom a default judgment has  
25 been entered for any infraction (other than a traffic infraction) shall be fined in an  
26 amount not to exceed five hundred dollars (\$500.00), unless a greater or lesser  
27 amount is specified in any specific penalty provision. ~~The Municipal Judge shall~~  
28 ~~establish a schedule of the fines to be paid for each infraction.~~ Any person found  
29 to be in violation of, or against whom a default judgment has been entered for any  
30 traffic infraction shall be punished as provided in Section 7-1-6 of this Code. No  
31 person found to be in violation of, or against whom a default judgment has been  
32 entered for, any infraction shall be subject to imprisonment. Each day that an  
33 infraction occurs shall constitute a separate offense.  
34

35 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the  
36 various secondary codes adopted by reference therein, shall continue in full force and effect.

37 Section 6. The Town Council hereby finds, determines and declares that this ordinance is  
38 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
39 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
40 thereof.

41 Section 7. The Town Council hereby finds, determines and declares that it has the power  
42 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
43 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

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

3           INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
4 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2009. A Public Hearing shall be held at the  
5 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
6 \_\_\_\_\_, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
7 Town.

8

9   TOWN OF BRECKENRIDGE, a Colorado  
10    municipal corporation

11

12

13

14

15   By \_\_\_\_\_  
  John G. Warner, Mayor

16

17 ATTEST:

18

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22 \_\_\_\_\_  
Mary Jean Loufek, CMC,  
23 Town Clerk

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## MEMORANDUM

**TO:** Town Council

**FROM:** Chris Neubecker, Current Planning Manager  
Tim Berry, Town Attorney

**DATE:** December 24, 2009

**SUBJECT:** Development Agreement for Reduced Parking at Gondola Lot Master Plan  
(Second Reading, Council Bill 41, Series 2009)

---

On December 8, 2009 the Town Council approved on first reading a development agreement with Vail Summit Resorts, Inc. for a reduced amount of parking for the condo-hotel within the Gondola Lots Redevelopment Master Plan. The development agreement would allow parking at a ratio of 1 space per unit, rather than 1.5 spaces as currently required in the Breckenridge Off-Street Parking Regulations. The reduction was based on the mixed-use nature of the development, proximity to transit, walkability, and a traffic and parking study from Felsburg, Holt & Ullevig engineering and transportation consultants that supports the reduced parking ratio.

No changes are proposed to the development agreement from first reading. Staff will be available during the evening meeting to answer any questions.

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

2  
3 **NO CHANGE FROM FIRST READING**

4  
5 COUNCIL BILL NO. 41

6  
7 Series 2009

8  
9 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH  
10 VAIL SUMMIT RESORTS, INC.  
11 (Parking Ratio – Gondola Lot Master Plan)

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

15  
16 Section 1. Findings. The Town Council of the Town of Breckenridge finds and  
17 determines as follows:

18  
19 A. Vail Summit Resorts, Inc., a Colorado corporation (“VSR”), owns the following  
20 described real property located in the Town of Breckenridge, Summit County, Colorado:

21  
22 PARCEL A:

23  
24 LOT 1, BLOCK 3, PARKWAY CENTER, ACCORDING TO THE PLAT  
25 RECORDED JULY 26, 1985 UNDER RECEPTION NO. 300636, COUNTY OF  
26 SUMMIT, STATE OF COLORADO.

27  
28 PARCEL B:

29  
30 LOTS 1A, 3-A, 3-B AND 4, SAWMILL STATION SQUARE, FILING NO. 3,  
31 AMENDMENT NO. 2, ACCORDING TO THE PLAT THEREOF FILED  
32 JANUARY 21, 1986 AT RECEPTION NO. 311104, COUNTY OF SUMMIT,  
33 STATE OF COLORADO;

34  
35 AND

36  
37 LOTS 1-B AND 1-C, A REPLAT OF LOTS 1-B AND 1-C, SAWMILL  
38 STATION SQUARE FILING NO. 3, AMENDMENT NO. 2, AND LOT 1,  
39 SAWMILL STATION SQUARE, FILING NO. 3, ACCORDING TO THE PLAT  
40 THEREOF FILED DECEMBER 14, 1990 AT RECEPTION NO. 397221,  
41 COUNTY OF SUMMIT, STATE OF COLORADO.

42  
43 (collectively, the “Properties”).  
44



1           B.       VSR and the Town together developed a preliminary plan for the future potential  
2 development of the Properties.

3  
4           C.       Consistent with the preliminary plan selected by the Town and VSR as the best  
5 alternative for the future potential development of the Properties, VSR has applied for a master  
6 plan for the Properties pursuant to the Breckenridge Development Code.

7  
8           D.       In order for all of the components of the preliminary plan to be included on the  
9 Properties and to make development of the Properties feasible, a decrease in the off-street  
10 parking that would be required under Section 9-3-8 of the Town of Breckenridge “Off-Street  
11 Parking Ordinance” (Chapter 3 of Title 9 of the Breckenridge Town Code) for the residential  
12 units in the proposed hotel building to be developed as a condominium/hotel is required.

13  
14           E.       The preliminary plan and the proposed master plan reflect a phased development  
15 of a mixed use development containing not less than one hundred thousand (100,000) square  
16 feet, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, and, accordingly,  
17 VSR has submitted a written evaluation of the parking supply for the Properties prepared by  
18 Felsburg, Holt & Ullevig, a qualified parking consultant, dated October 2, 2009 supporting a  
19 reduction in the required parking for the residential units in the proposed hotel building to be  
20 developed as a condominium/hotel.

21  
22           F.       VSR’s commitments encouraged to be made in connection with an application for  
23 a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code is  
24 the processing of the proposed master plan in advance of VSR’s need for a master plan for the  
25 Properties and during a period when economic conditions are not favorable for development of  
26 the Properties in order to provide the Town with some certainty as to how the Properties will be  
27 developed. VSR’s agreement to proceed with the master plan at this time will enable the Town to  
28 plan and potentially improve its adjacent properties along the Blue River consistent with an  
29 approved master plan for the Properties.

30  
31           G.       VSR has submitted to the Town a completed application and all required  
32 submittals and fees for a development agreement to approve the reduced required parking for the  
33 residential units in the proposed hotel building to be developed as a condominium/hotel.

34  
35           H.       A proposed Development Agreement between the Town and VSR approving the  
36 reduced required parking for the residential units in the proposed hotel building to be developed  
37 as a condominium/hotel has been prepared, a copy of which is marked Exhibit “A”, attached  
38 hereto and incorporated herein by reference (“Development Agreement”).

39  
40           I.       On October 27, 2009 and December 8, 2009 the Town Council had a preliminary  
41 discussion of the application and the proposed Development Agreement as required by Section  
42 9-9-10(A) of the Breckenridge Town Code.

43  
44           J.       The Town Council determined that VSR’s request for a development agreement  
45 need not be referred to the Breckenridge Planning Commission for its review and  
46 recommendation.

1  
2 K. The Town Council has reviewed the Development Agreement.

3  
4 L. The approval of the Development Agreement is warranted in light of all relevant  
5 circumstances.

6  
7 M. The procedures to be used to review and approve a development agreement are  
8 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such  
9 Chapter have substantially been met in connection with the approval of the Development  
10 Agreement and the adoption of this ordinance.

11  
12 Section 2. Approval of Development Agreement. The Development Agreement between  
13 the Town and Vail Summit Resorts, Inc., a Colorado corporation (Exhibit "A" hereto) is  
14 approved, and the Town Manager is hereby authorized, empowered and directed to execute such  
15 agreement for and on behalf of the Town of Breckenridge.

16  
17 Section 3. Notice of Approval. The Development Agreement shall contain a notice in the  
18 form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in  
19 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be  
20 published by the Town Clerk one time in a newspaper of general circulation in the Town within  
21 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of  
22 Section 24-68-103, C.R.S.

23  
24 Section 4. Police Power Finding. The Town Council hereby finds, determines and  
25 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,  
26 promote the prosperity, and improve the order, comfort and convenience of the Town of  
27 Breckenridge and the inhabitants thereof.

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

33  
34 Section 6. Effective Date. This ordinance shall be published and become effective as  
35 provided by Section 5.9 of the Breckenridge Town Charter.

36  
37 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
38 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2009. A Public Hearing shall be held at the  
39 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
40 \_\_\_\_\_, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
41 Town.

TOWN OF BRECKENRIDGE

By \_\_\_\_\_  
John G. Warner, Mayor

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ATTEST:

\_\_\_\_\_  
Mary Jean Loufek, CMC, Town Clerk

1  
2 APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED  
3 PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED  
4 STATUTES, AS AMENDED  
5

6  
7 **DEVELOPMENT AGREEMENT**  
8 **FOR ONE TO ONE PARKING**  
9 **FOR CONDOMINIUM/HOTEL**  
10

11 This Development Agreement (“Agreement”) is made and entered into this \_\_\_\_\_  
12 day of \_\_\_\_\_, 2010 by and between the TOWN OF BRECKENRIDGE, a  
13 Colorado municipal corporation (“Town”) and VAIL SUMMIT RESORTS, INC., a Colorado  
14 corporation (“Developer”).

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15  
16 RECITALS  
17

18 A. Developer is the owner of the properties described in Exhibit A hereto  
19 (“Properties”).

20 B. The Developer and the Town together developed a preliminary plan for the future  
21 potential development of the Properties.

22 C. Consistent with the preliminary plan selected by the Town and Developer as the  
23 best alternative for the future potential development of the Properties, Developer has applied for  
24 a master plan for the Properties pursuant to the Breckenridge Development Code.

25 D. In order for all of the components of the preliminary plan to be included on the  
26 Properties and to make development of the Properties feasible, a decrease in the off-street  
27 parking that would be required under Section 9-3-8 of the Town of Breckenridge Off-Street  
28 Parking Ordinance for the residential units in the proposed hotel building to be developed as a  
29 condominium/hotel is required.  
30

31 E. The preliminary plan and the proposed master plan reflect a phased development  
32 of a mixed use development containing not less than one hundred thousand (100,000) square  
33 feet, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, and, accordingly,  
34 Developer has submitted a written evaluation of the parking supply for the Properties prepared  
35 by Felsburg, Holt & Ullevig, a qualified parking consultant, dated November 19, 2009  
36 supporting a reduction in the required parking for the residential units in the proposed hotel  
37 building to be developed as a condominium/hotel.  
38

Deleted: October 2

39 F. Developer’s commitments encouraged to be made in connection with an  
40 application for a development agreement in accordance with Section 9-9-4 of the Breckenridge  
41 Town Code is the processing of the proposed master plan in advance of Developer’s need for a  
42 master plan for the Properties and during a period when economic conditions are not favorable  
43 for development of the Properties in order to provide the Town with some certainty as to how the  
44 Properties will be developed. Developer’s agreement to proceed with the master plan at this time  
45 will enable the Town to plan and potentially improve its adjacent properties along the Blue River  
46 consistent with an approved master plan for the Properties.

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

7  
8 AGREEMENT

- 9  
10 1. The requirements of Section 9-3-8 of the Breckenridge Town Code for parking spaces to  
11 be provided in connection with development of the building identified in the proposed  
12 master plan as the hotel, which is planned to be developed as a condominium/hotel under  
13 the Breckenridge Town Code shall be decreased to one (1) space for each residential unit  
14 including one (1) bedroom or more, with all such spaces to be available in a pool (not  
15 assigned to particular units) and generally available on a first come, first served basis.  
16 The Planning Commission is hereby authorized to review and approve a master plan  
17 providing for parking in accordance with the foregoing, which will be less than required  
18 by Section 9.3.8:B of the Breckenridge Town Code.  
19
- 20 2. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for  
21 herein, the execution of this Agreement shall not preclude the current or future  
22 application of municipal, state or federal ordinances, laws, rules or regulations to the  
23 Properties (collectively, "laws"), including, but not limited to, building, fire, plumbing,  
24 engineering, electrical and mechanical codes, and the Town's Development Code,  
25 Subdivision Ordinance and other land use laws, as the same may be in effect from time to  
26 time throughout the term of this Agreement. Except to the extent the Town otherwise  
27 specifically agrees, any development of the Properties which is the subject of this  
28 Agreement shall be done in compliance with the then-current laws of the Town.  
29
- 30 3. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the  
31 Town to adopt or amend any Town law, including, but not limited to the Development  
32 Code, Guidelines, Master Plan and Subdivision Standards of the Town.  
33
- 34 4. This Agreement shall run with the title to the Properties and be binding upon the owners,  
35 heirs, successors and assigns, including specifically, but not limited to, such entity or  
36 entities affiliated with Developer as actually take title to any of the Properties.  
37
- 38 5. Prior to any action against the Town for breach of this Agreement, Developer shall give  
39 the Town a sixty (60) day written notice of any claim by the Developer of a breach or  
40 default by the Town, and the Town shall have the opportunity to cure such alleged default  
41 within such time period.  
42
- 43 6. The Town shall not be responsible for and the Developer shall have no remedy against  
44 the Town if development of the Properties is prevented or delayed for reasons beyond the  
45 control of the Town.  
46

- 1 7. Actual development of the Properties shall require the issuance of such other and further  
2 permits and approvals by the Town as may be required from time to time by applicable  
3 Town ordinances.  
4
- 5 8. No official or employee of the Town shall be personally responsible for any actual or  
6 alleged breach of this Agreement by the Town.  
7
- 8 9. The Developer agrees to indemnify and hold the Town, its officers, employees, insurers,  
9 and self-insurance pool, harmless from and against all liability, claims, and demands, on  
10 account of injury, loss, or damage, including without limitation claims arising from  
11 bodily injury, personal injury, sickness, disease, death, property loss or damage, or any  
12 other loss of any kind whatsoever, which arise out of or are in any manner connected  
13 with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is  
14 claimed to be caused in whole or in part by, the negligence or intentional act or omission  
15 of Developer; any subcontractor of Developer, or any officer, employee, representative,  
16 or agent of Developer or of any subcontractor of Developer, or which arise out of any  
17 worker's compensation claim of any employee of Developer, or of any employee of any  
18 subcontractor of Developer; except to the extent such liability, claim or demand arises  
19 through the negligence or intentional act or omission of Town, its officers, employees, or  
20 agents. Developer agrees to investigate, handle, respond to, and to provide defense for  
21 and defend against, any such liability, claims, or demands at the sole expense of the  
22 Developer. Developer also agrees to bear all other costs and expenses related thereto,  
23 including court costs and attorney's fees.  
24
- 25 10. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not  
26 affect or impair the validity, legality or enforceability of the remaining provisions of the  
27 Agreement.  
28
- 29 11. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,  
30 Colorado Revised Statutes, as amended, provided, however, that, because the terms of  
31 this Agreement are preliminary in nature and provide authorization for approval of a  
32 master plan consistent with the terms hereof and do not constitute a site specific  
33 development plan, the vested property right hereby created shall remain vested for a  
34 period of three (3) years.  
35
- 36 12. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of  
37 any other provision, nor shall it be deemed to constitute a continuing waiver unless  
38 expressly provided for by a written amendment to this Agreement signed by both Town  
39 and Developer; nor shall the waiver of any default under this Agreement be deemed a  
40 waiver of any subsequent default or defaults of the same type. The Town's failure to  
41 exercise any right under this Agreement shall not constitute the approval of any wrongful  
42 act by the Developer or the acceptance of any improvements.  
43
- 44 13. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign  
45 immunity under any applicable state or federal law.  
46

1 14. Personal jurisdiction and venue for any civil action commenced by either party to this  
2 Agreement shall be deemed to be proper only if such action is commenced in District  
3 Court of Summit County, Colorado. The Developer expressly waives its right to bring  
4 such action in or to remove such action to any other court, whether state or federal.  
5

6 15. Any notice required or permitted hereunder shall be in writing and shall be sufficient if  
7 personally delivered or mailed by certified mail, return receipt requested, addressed as  
8 follows:  
9

10  
11  
12  
13 If To The Town: Timothy J. Gagen, Town Manager  
14 Town of Breckenridge  
15 P.O. Box 168  
16 Breckenridge, CO 80424  
17

18 With A Copy (which  
19 shall not constitute  
20 notice to the Town) to: Timothy H. Berry, Esq.  
21 Town Attorney  
22 P.O. Box 2  
23 Leadville, CO 80461  
24

25 If To The Developer: Alex Iskenderian, Vice President  
26 Vail Resorts Development Company  
27 P.O. Box 1058 (BK22)  
28 Breckenridge, CO 80424

Deleted: a  
Deleted: Summit  
Deleted: , Inc.

29 With A Copy (which  
30 shall not constitute  
31 notice) to: Stephen C. West, Esq.  
32 West, Brown, Huntley & Thompson, P.C.  
33 P.O. Box 588  
34 Breckenridge, CO 80424  
35

36 With A Copy (which  
37 shall not constitute  
38 notice) to: Vail Resorts Management Company  
39 Attn: Legal Department  
40 Box I-88 390 Interlocken Crescent, Suite 1000  
41 Broomfield, CO 80021  
42

43 Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been  
44 given upon delivery. Notices personally delivered shall be deemed to have been given upon  
45 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the  
46 Colorado Rules of Civil Procedure for service of civil process.  
47

1 16. This Agreement constitutes the entire agreement and understanding between the parties  
2 relating to the subject matter of this Agreement and supersedes any prior agreement or  
3 understanding relating to such subject matter.  
4

5 17. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.  
6

7 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first  
8 above set forth.  
9

10 VAIL SUMMIT RESORTS, INC. TOWN OF BRECKENRIDGE  
11

12 By Vail Resorts Development Company,  
13 a Colorado corporation, it's authorized agent  
14

15  
16  
17 By: \_\_\_\_\_  
18 Alex Iskenderian, Vice President

17 By: \_\_\_\_\_  
18 Timothy J. Gagen, Town Manager

Deleted: a

19  
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22 ATTEST:  
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28 \_\_\_\_\_  
29 Town Clerk  
30

31 STATE OF COLORADO )  
32 ) ss:  
33 COUNTY OF SUMMIT )  
34

35 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
36 2010 by Timothy J. Gagen as Town Manager and Mary Jean Loufek as Town Clerk of the Town  
37 of Breckenridge.  
38

Deleted: 2009

39 Witness my hand and official seal.  
40

41 My commission expires: \_\_\_\_\_  
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45 \_\_\_\_\_  
46 Notary Public  
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STATE OF COLORADO )  
 ) ss:  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2010 by Alex Iskenderian as Vice President of Vail Resorts Development Company, a Colorado  
corporation, authorized agent of Vail Summit Resorts, Inc.

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Deleted: a

Witness my hand and official seal.

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

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

EXHIBIT A  
TO  
DEVELOPMENT AGREEMENT

Legal Description of the Properties

PARCEL A:

LOT 1, BLOCK 3, PARKWAY CENTER, ACCORDING TO THE PLAT RECORDED JULY 26, 1985 UNDER RECEPTION NO. 300636, COUNTY OF SUMMIT, STATE OF COLORADO.

PARCEL B:

LOTS 1A, 3-A, 3-B AND 4, SAWMILL STATION SQUARE, FILING NO. 3, AMENDMENT NO. 2, ACCORDING TO THE PLAT THEREOF FILED JANUARY 21, 1986 AT RECEPTION NO. 311104, COUNTY OF SUMMIT, STATE OF COLORADO;

AND

LOTS 1-B AND 1-C, A REPLAT OF LOTS 1-B AND 1-C, SAWMILL STATION SQUARE FILING NO. 3, AMENDMENT NO. 2, AND LOT 1, SAWMILL STATION SQUARE, FILING NO. 3, ACCORDING TO THE PLAT THEREOF FILED DECEMBER 14, 1990 AT RECEPTION NO. 397221, COUNTY OF SUMMIT, STATE OF COLORADO.

**MEMO**

TO: Town Council

FROM: Laurie Best  
Michael Mosher

RE: Proposed Modification to Stan Miller Annexation Agreement

DATE: January 5, 2010 (for January 12th meeting)

---

During the December 8, 2009 work session the Town Council discussed proposed modifications to the annexation agreement that was originally approved in 2008 for the Stan Miller and Braddock Holdings property located at the north end of Town.

During the work session the Council discussed the proposed modification which would increase the total number of units by seven from 155 to 162. Five of the seven units would be deed restricted for a total of 105 deed restricted units and two of the seven units would be market units for a total of 57 market units. The applicant would be responsible for obtaining TDRs for the two additional market units and the Town would be responsible for providing density for the five additional deed restricted units. The AMI targets would be modified as follows:

Income Targets	>100% AMI	>125% AMI	>150% AMI	>180% AMI
Current Agreement	52 units	30 units	15 units	3 units
Proposed Modifications	54 units	38 units	11 units	2 units

The applicant indicates that the proposed changes are intended to address market conditions and would allow the conversion of 1) eleven deed restricted townhomes and six deed restricted single family homes into twenty deed restricted duplexes and two deed restricted single family units and 2) twenty two market single family units into eighteen market duplexes and six market single family units. The applicant intends to contract with Habitat for Humanity to construct the deed restricted units. All of the new units would be contained within Tract B of Miller Subdivision which is Tract F of the Master Plan and will be the first phase of the project. During the work session on December 8<sup>th</sup> the Council asked the applicant to evaluate their market unit release rate because the release rate that was proposed did not provide enough assurance that the phasing of deed restricted units would be acceptable relative to the construction of market rate units.

**Release Rate**

The current release rate for this phase of the project in the approved agreement is one market unit released for each deed restricted unit sold. As part of the modification, the applicant had proposed twelve market units be eligible for release before a deed restricted unit is completed. In response to Council concerns, the applicant has adjusted their request. The release rate that is proposed is:

- 1) Prior to any building permit for any market rate unit, two duplex lots (four units) will be donated to Habitat for Humanity, and
- 2) Prior to the issuance of a CO for the ninth market unit, two deed restricted units must be completed (CO'd), and
- 3) Thereafter, market units will be released from the covenant at a rate of one market unit for each deed restricted unit sold within the affordable purchase price, and
- 4) All twenty two deed restricted units must be sold within affordable purchase prices before the final market unit can be released.

The intent of the release rate is to insure that deed restricted units are constructed and sold along with the market units, but the applicant has indicated that they need to generate revenue from the sale of market units in order to cover up front expenses.

#### Summary

Staff supports the modifications as proposed because it creates additional deed restricted units in a location that can accommodate the density. If Council is supportive of the modifications a resolution has been prepared and is scheduled for your consideration this evening.



**SUMMIT**

**P.O. BOX 4330 BRECKENRIDGE, CO 80424**

**HABITAT FOR HUMANITY**

**(970) 547-7117**

January 6, 2010

RE: Summit Habitat for Humanity / Braddock West

Members of the Breckenridge Town Council,

We are Habitat for Humanity – Summit County, Colorado, a 501(c)(3) non profit organization whose mission it is, is to provide decent housing for lower income individuals currently in substandard units.

What is Habitat for Humanity (HFH)? It is a non-profit 501 (c)(3) organization. Founded in 1976 by Millard and Linda Fuller, HFH has built approximately 350,000 homes in 90 countries. 61,000 of these were built in 2009. HFH does this using volunteer labor along with donations of building materials and money.

HFH is not a giveaway program. HFH builds homes in partnership with families who are in need of simple, decent and affordable housing. For HFH-Summit County, this means families who meet the following criteria.

- Legal right to be/work in the United States,
- Employment in Summit County of at least one year,
- Willingness to contribute 500 hours of work per adult to building a Habitat house. (250 hours for their own home, 250 for another),
- Financial ability to make payments on a non interest, 30 year mortgage.
- Completion of a homeowner/money management course.

Families that Habitat works with in Summit County have family incomes of 50 to 80% of the AMI. As an example, a family of four with an income between \$42,550 and \$68,080 could be eligible for Habitat's consideration. Potential homebuyers in the 50-80% group have been underserved in this economy.

Why do we need HFH to build? The primary industry in Summit County is tourism. In order to offer vacationers (and to an extent, second home owners) quality services in the areas of retail, transportation, utilities, health and public services and so forth, decent and affordable housing must be available to those who work in these areas.

Where does HFH-Summit County come in? The Summit County affiliate was originally organized in 1995 and has built three single-family homes. The first Habitat home was built on Piney Acres in Dillon in 1999 and approximately five years later two homes were built

on Locals Lane in the Gibson Heights neighborhood of Breckenridge. One of the homes on Locals Lane was built in partnership with the Summit Housing Authority.

The HFH-SC has not been active in home construction for approximately five years. This is because obtaining buildable land is prohibitively expensive. A unique opportunity is now presented to HFH-SC. Breckenridge Lands, LLC is developing affordable housing just north of Breckenridge, in Braddock West, located on the west side of Highway 9 at Tiger Road.

The developer and HFH-SC are forming a partnership which will give HFH-SC the opportunity to build 4 Habitat units at the same time they are building 8 market units. Habitat has the opportunity to sign an affordable land purchase agreement that will provide land for Habitat to use to build 6 additional units and possibly more. HFH-SC is using this "once in a lifetime" opportunity to develop a building program to expand to an average of 4 – 6 units per year in Summit County.

What is HFH-SC doing to position itself to do this?

Board of Directors has been expanded to include a part time Executive Director (Nancy Shockey) to work on developing the building program and fundraising. State Senator Dan Gibbs has also joined to Board of Directors.

HFH-SC is developing relationships with a variety of local non-profit agencies that share an interest in developing affordable housing in Summit County. We are actively working with Jennifer Kermode of the Summit County Housing Authority. There are several others that we are diligently working with.

HFH-SC is working with the affiliate in Eagle-Vail to develop partnership opportunities. This affiliate is successfully building several market units each year and has generously offered to work with us over the next year as HFH-SC rebuilds.

HFH-SC is working with HFH-Colorado (the state affiliate) to identify sources of funds that are currently in place and available. HFH-SC is starting the process of identifying and applying for grants, along with developing a fund raising program with a realistic and achievable goal of \$300,000 by groundbreaking in summer of 2010.

What kind of housing will be built? The words simple, decent, healthy and affordable are used to describe a Habitat house. The duplexes being proposed for the Braddock West subdivision will most likely have 3 bedrooms, 1-1/2 baths, a laundry room, living room, dining area and kitchen. Kitchens are equipped with a Whirlpool oven/range and refrigerator. Each unit will have a one car garage and be landscaped. Each unit will be built as energy efficient as is possible. Exterior finishes will meet the standards of the subdivision.

We at Habitat for Humanity – Summit County are excited about the opportunity to work with the Town of Breckenridge and Breckenridge Lands in the development of the Braddock West subdivision.

Nancy Shockey  
Executive Director  
Habitat for Humanity – SC

1                                    *FOR WORKSESSION/ADOPTION – JAN. 12*

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3                                    A RESOLUTION

4  
5                                    SERIES 2010

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7                                    A RESOLUTION APPROVING AN AMENDED AND RESTATED  
8                                    ANNEXATION AGREEMENT WITH BRADDOCK HOLDINGS LLC, a  
9                                    COLORADO LIMITED LIABILITY COMPANY, AND SMI LAND, LLC, A  
10                                    COLORADO LIMITED LIABILITY COMPANY  
11                                    (Miller — 40.41 acres, more or less)

12                                    WHEREAS, an Annexation Agreement dated January 22, 2008 and recorded in the  
13                                    Summit County, Colorado real estate records on April 24, 2008 at Reception No. 886222 was  
14                                    entered into among the Town, Braddock Holdings LLC (“Braddock”), and Joseph S. Miller  
15                                    (“Annexation Agreement”); and

16                                    WHEREAS, subsequent to the annexation provided for in the Annexation Agreement, the  
17                                    annexation property described in the Annexation Agreement (“Annexation Property”) was  
18                                    subdivided by the recording of a plat of the Miller Subdivision in the Summit County, Colorado  
19                                    real estate records on April 24, 2008 at Reception No. 886225 (“Miller Subdivision”); and

20                                    WHEREAS, SMI Land, LLC, a Colorado limited liability company (“SMI”), now owns  
21                                    Tracts A, D and E, Miller Subdivision, Braddock now owns Tract B, Miller Subdivision, as well  
22                                    as the 2.29 Acre Parcel, and the Town now owns Tract C, Miller Subdivision; and

23                                    WHEREAS, because of the changes in ownership and changes requested to substantive  
24                                    terms of the Annexation Agreement by Braddock, the Town, SMI, and Braddock have agreed  
25                                    that the best, clearest, and most efficient way to amend the Annexation Agreement is by entering  
26                                    into an amended and restated annexation agreement that will replace the Annexation Agreement  
27                                    in its entirety; and

28  
29                                    WHEREAS, Town, Braddock, and SMI have come to an agreement with respect to the  
30                                    terms and conditions of an amended and restated annexation agreement for the Annexation  
31                                    Property, all as more fully set forth in the "Amended and Restated Annexation Agreement", a  
32                                    copy of which is marked Exhibit “A”, attached hereto, and incorporated herein by reference; and

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34                                    WHEREAS, the Town Council has reviewed the proposed Amended and Restated  
35                                    Annexation Agreement, and finds and determines that its approval would be in the best interests  
36                                    of the Town and its citizens.

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

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41                                    Section 1. The proposed Amended and Restated Annexation Agreement between the  
42                                    Town, Braddock Holdings LLC, a Colorado limited liability company, and SMI Land, LLC, a

1 Colorado limited liability company (Exhibit "A" hereto) is approved, and the Town Manager is  
2 authorized, empowered, and directed to execute such amended agreement for and on behalf of  
3 the Town of Breckenridge.  
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5 Section 2. This resolution shall become effective upon its adoption.  
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7 RESOLUTION ADOPTED AND APPROVED THIS \_\_\_\_DAY OF \_\_\_\_\_, 2010.  
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9 TOWN OF BRECKENRIDGE, a Colorado  
10 municipal corporation  
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14 By: \_\_\_\_\_  
15 John G. Warner, Mayor  
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17 ATTEST:  
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21 \_\_\_\_\_  
22 Mary Jean Loufek, CMC,  
23 Town Clerk  
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25 APPROVED IN FORM  
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30 Town Attorney date  
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**AMENDED AND RESTATED ANNEXATION AGREEMENT**

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT ("Agreement") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010\_\_\_\_\_, ~~2008~~ and is among ~~between~~ the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town"), ~~JOSEPH S. MILLER~~ SMI LAND, LLC, a Colorado limited liability company ("~~SMI~~Miller"), and BRADDOCK HOLDINGS, LLC, a Colorado limited liability company ("Braddock"). ~~SMI Miller~~ and Braddock are collectively referred to in this Agreement as ("Owners").

WHEREAS, an Annexation Agreement dated January 22, 2008 and recorded in the Summit County, Colorado real estate records on April 24, 2008 at Reception No. 886222 was entered into among Town, Braddock and Joseph S. Miller ("Annexation Agreement"); and

WHEREAS, subsequent to the annexation provided for in the Annexation Agreement, the Annexation Property described in the Annexation Agreement was subdivided by the recording of a plat of Miller Subdivision in the Summit County, Colorado real estate records on April 24, 2008 at Reception No. 886225 ("Miller Subdivision"); and

WHEREAS, SMI now owns Tracts A, D and E, Miller Subdivision, Braddock now owns Tract B, Miller Subdivision, as well as the 2.29 Acre Parcel, and the Town now owns Tract C, Miller Subdivision; and

WHEREAS, because of the changes in ownership and changes requested to substantive terms by Braddock, the Town, SMI and Braddock have agreed that the best, clearest and most efficient way to amend the Annexation Agreement is by entering into this Agreement and by having this Agreement replace the Annexation Agreement in its entirety.

~~WHEREAS, Miller owns the real property described in Exhibit "A" ("Annexation Property"); and~~

~~WHEREAS, Braddock owns the 2.29 Acre Parcel (as hereafter defined) and is acquiring the Sale Parcel (as hereafter defined); and~~

~~WHEREAS, Miller proposes the annexation of the Annexation Property to the Town; and~~

~~WHEREAS, the Town has determined that it would be in the best interest of the public health, safety, and welfare of its citizens to impose certain terms and conditions on the Owner in connection with the annexation of the Annexation Property to the Town; and~~

~~WHEREAS, Owner and Town have come to an Agreement with respect to the terms and conditions of the annexation of the Annexation Property to the Town, all as more fully set forth hereafter.~~

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** As used in this Agreement, unless the context clearly requires otherwise:

“2.29 Acre Parcel” means that parcel of land already located within the boundaries of the Town as of the date of this Agreement as described on the attached **Exhibit “B”**.

“AMI” means Area Median Income for Summit County, Colorado published by the United States Department of Housing and Urban Development, or if no longer published, any successor index.

"Annexation Ordinance" means ~~the ordinance~~ [Ordinance No. 4, Series 2008](#) adopted by the Town Council of the Town of Breckenridge [on January 8, 2008](#) pursuant to the Municipal Annexation Act of 1965 (Section 31-12-101, et seq., C.R.S.) officially annexing the Annexation Property to the Town of Breckenridge.

"Annexation Property" means that certain real property described on the attached **Exhibit "A"**.

"Annexation Surcharge" or "Surcharge" means the fee due and payable to the Town pursuant to Section 8 of this Agreement. Such fee shall be paid to the Town as a general annexation fee and in lieu of the transfer of raw water to the Town by the ~~Owner~~[Owners](#).

"Applicable Town Ordinances" means all ordinances of the Town which regulate the development, subdivision, and use of the Master Planned Property, as in effect from time to time. Such ordinances shall include, but shall not be limited to, the Town's:

- (i) Development Code;
- (ii) Street Standards;
- (iii) Lighting Ordinance;
- (iv) Drainage Ordinance;
- (v) Flood Prevention Ordinance;
- (vi) Water Quality Ordinance;
- (vii) Subdivision Ordinance;
- (viii) Building, Technical and Construction Codes;
- (ix) ordinances concerning annexation/water surcharges;
- (x) ordinances concerning payment of fees;
- (xi) ordinances concerning public dedications; and

(xii) all other applicable Town Ordinances, Resolutions, regulations and policies.

“Braddock” means Braddock Holdings, LLC, a Colorado limited liability company, its successors and assigns, and all other subsequent owners of Braddock’s interest in the Master Planned Property.

“Development Permit” means Development Permit No. 2008006 issued ~~or to be issued~~ by the Town approving a master plan for the Master Planned Property, and any amendments thereto subsequently approved by the Town through its land use regulatory system.

“Guidelines” means the Town of Breckenridge Affordable Housing Guidelines, as amended from time to time by the Town Council following a public hearing.

“Key Employee” means an employee of a business, private organization, or governmental entity providing essential services in Summit County, Colorado as determined by the Town, including, but not limited to, (i) municipal employees; (ii) Summit School District employees; and (iii) emergency and medical personnel.

“Master Plan” means the master plan approved by the Development Permit.

“Master Planned Property” means ~~both the Annexation Property and~~ the 2.29 Acre Parcel ~~and Tracts A, B, C, D and E, Miller Subdivision.~~

~~“Miller” means Joseph S. Miller, his successors and assigns, and all other subsequent owners of Miller’s interest in the Master Planned Property.~~

“~~Owner~~Owners” means ~~SMI Miller~~ and Braddock collectively, their successors and assigns, and all other subsequent owners of the Master Planned Property, or any interest therein.

“Owner-Occupied Restricted Units” means the Restricted Units described in Section 3.8(c).

“Phase I” means the 2.29 Acre Parcel and ~~the Sale Parcel together~~ Tract B.

“Phase II” means Tracts A and E. ~~the Remainder Parcel.~~

“PIF” means the current Town Plant Investment Fee as provided for by the Ordinances or regulations of the Town at the time such charges are due and payable to the Town as provided in Section 7 of this Agreement.

~~“Remainder Parcel” means all of the Master Planned Property except for the Sale Parcel and the 2.29 Acre Parcel.~~

“Rental Restricted Units” means the Restricted Units described in Section 3.8(d).

“Restricted Units” means the 1050 residential Units approved for construction on the Master Planned Property pursuant to the Development Permit which are to be and shall remain in perpetuity subject to the Restrictive Covenants, including both the Owner-Occupied Restricted Units and the Rental Restricted Units. Unless otherwise indicated, the term “Restricted Units” includes both the Owner-Occupied Restricted Units and the Rental Restricted Units.

“Restrictive Covenants” collectively means the restrictive covenant to be executed by Braddock encumbering the ~~Tract B Master Planned Property~~ for the benefit of the Town as described in Section 3.8 of this Agreement, and the restrictive covenants to be executed by SMI Owner encumbering ~~the Remainder Parcel Tracts A and E~~ for the benefit of the Town as described in Section 3.8 of this Agreement.

~~“Sale Parcel” means the northerly portion of the Master Planned Property consisting of approximately 12 acres that owner intends to sell to Braddock.~~

“SFE” means a single family equivalent of density as defined by the Applicable Town Ordinances.

“TDR” means a transferable development right as created pursuant to the intergovernmental agreement between the Town and the Board of County Commissioners of Summit County, Colorado.

“Units” includes both the Restricted Units and the Unrestricted Units.

“Unrestricted Units” means the 575 residential Units approved for construction on the Master Planned Property pursuant to the Development Permit which are not Restricted Units.

“Upper Blue Employee” mean an employee of a business physically located in and serving the Upper Blue River Basin.

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

2. **DEVELOPMENT SUBJECT TO APPLICABLE TOWN ORDINANCES AND DEVELOPMENT PERMIT.** ~~Upon the annexation to the Town, d~~Development of the Master Planned Property shall conform in all respects with the Applicable Town Ordinances and the Development Permit. The Master Planned Property shall only be developed in accordance with this Agreement and the Development Permit. All parties acknowledge that pursuant to Section 31-12-115, C.R.S., the Development Permit did ~~shall~~ not become effective until the Annexation Ordinance was ~~has been~~ passed on final reading.

3. **PROPOSED USE OF THE MASTER PLANNED PROPERTY.**

- 3.1 **Land Use District Designation.** ~~Upon annexation t~~The Annexation Property ~~shall be~~ has been placed in Land Use District 33 and Land Use District 1. However, all of the development of the Master Planned Property will occur in Land Use District 33, and no development of the Master Planned Property shall be permitted within Land Use District 1.
- 3.2 **General Development Concept.** The general development concept for the Master Planned Property is as follows:
- (a) **Single Master Plan.** The Annexation Property and the 2.29 Acre Parcel shall be developed pursuant to a single master plan approved in accordance with Policy 39(Absolute) of the Town’s Development Code.
  - (b) **Units.** The Master Plan shall provide for development of a maximum of ~~162~~155 Units on the Master Planned Property. ~~105 One hundred~~ of the Units shall be Restricted Units, and ~~57~~5 of the Units shall be Unrestricted Units. The Restricted Units shall include not less than ~~65~~0 Owner-Occupied Restricted Units, and the remainder of the Restricted Units may be Rental Restricted Units if located on the ~~Remainder Parcel~~Tract A or Tract E in a multi-family configuration approved pursuant to the Master Plan.
  - (c) **Density.** The ~~157~~155 SFEs of density required for the development of the Master Planned Property shall be provided as follows:
    - (i) 22 SFEs already existed ed within the Town as of the date of the Annexation ~~this~~-Agreement (19 SFEs ~~to be~~ transferred to the Master Planned Property from Braddock’s adjacent “Braddock Flats” parcel and 3 SFEs that ~~currently~~ existed on the 2.29 Acre Parcel);
    - (ii) 26 SFEs exist on the Annexation Property under Summit County zoning as of the date of the Annexation ~~this~~-Agreement;
    - (iii) If required to complete the development of the ~~55~~57 Unrestricted Units, ~~97~~7 TDRs are to be purchased for the development of the Master Planned Property; and
    - (iv) 100 SFEs are to be provided by the Town pursuant to Section 3.5.
  - (d) **Phasing; Extended Vested Property Rights.** The Town acknowledges that SMI has sold Tract B ~~the Owner intends to sell the Sale Parcel~~ to Braddock, and that Braddock intends to develop Tract B ~~the Sale Parcel~~ as soon as possible. The development of Tract B ~~the Sale Parcel~~ is planned to include ~~22~~17 Restricted Units and ~~24~~22 Unrestricted Units. The Town further acknowledges that SMI ~~the Owner~~ intends to continue the current operations of Stan Miller, Inc. on Tracts A and E ~~the Remainder Parcel~~ for approximately 10 years and that development of Units on Tracts A and E

~~the Remainder Parcel~~ is not likely to occur until after those current operations cease.

The development of the Master Planned Property shall be phased over a period of approximately 18 years, and the ~~Owner~~ Owners have obtained from ~~will request of~~ the Town 18 years of extended vested property rights for the Development Permit to reflect such phasing. Phase I will be undertaken by Braddock commencing in 20~~10~~09 and is expected to be completed in five to six years. Phase II will be undertaken by SMI ~~Miller~~, and is expected to be completed by the end of 2027.

3.3 **Construction of Restricted Units.** The 10~~5~~9 Restricted Units shall be constructed in accordance with the following schedule:

- (a) 22~~17~~ of the Restricted Units shall be constructed as part of Phase I; and
- (b) the remaining 83 Restricted Units shall be constructed as part of Phase II.

3.4 **Development Density In Land Use District 33.** The Town of Breckenridge Land Use District Guidelines which were ~~are~~ in effect as of the date of ~~this~~ the Annexation Agreement provided that a 1 to 75 floor area ratio was ~~is~~ acceptable for service commercial development in Land Use District 33. However, the parties acknowledged that the Town staff had ~~has~~ recommended to the Town Council that the Land Use District Guidelines for Land Use District 33 be amended to provide that a density of approximately 4.5 units per acre is acceptable for residential development in Land Use District 33 if the new Town density to be developed consists of not less than seventy five percent (75%) affordable housing units that are encumbered with a Town-approved restrictive covenant. Such an amendment was ~~is~~ required in order for the Development Permit to be approved. The staff's recommendation ~~has not been~~ was approved ~~or~~ and acted upon by the Town as of the date of this Agreement. ~~Nothing in this Agreement shall obligate the Town to adopt the proposed amendments to the Land Use District Guidelines for Land Use District 33. If such amendments are not adopted within one year of the date of this Agreement, the Owner shall have the rights and remedies provided in Section 12 of this Agreement.~~

3.5 **Transfer of Density.** Within 60 days after the last of the contingencies in Section 12 have been satisfied, the Town shall provide the density necessary for the development of the Restricted Units by transfer or exemption, and, if by transfer, the Town and the ~~Owner~~ Owners shall enter into and record a density transfer agreement and covenant in a form acceptable to the Town Attorney.

3.6 **Purchase of TDRs.** ~~Owner~~ Owners shall pay the cost of purchasing the 97 TDRs required for the development of the Master Planned Property if required to complete the development of the 57~~55~~ Unrestricted Units, and Town shall have no liability for such cost. The timing for the purchase of the 97 TDRs for the

Master Planned Property shall be determined in connection with the approval of the Master Plan.

3.7 **Minimum Unit Sizes.** The minimum size for the ~~100-105~~ Restricted Units shall be as follows: one-bedroom Restricted Units shall be a minimum of 600 square feet in size; two-bedroom Restricted Units shall be a minimum of 900 square feet in size; and three-bedroom Restricted Units shall be a minimum of 1200 square feet in size. There shall be no minimum size for the Unrestricted Units.

3.8 **Restrictive Covenants.**

(a) **Restrictive Covenants—Filing Against Master Planned Property.**

(i) At the time of the issuance of the first building permit for the construction of improvements to ~~Tract B the Sale Parcel~~, Braddock shall execute and file the Restrictive Covenant for ~~Tract B the Sale Parcel~~ with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant for the Sale Parcel shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Section 3.8(g).

(ii) At the time of the issuance of the first building permit for the construction of improvements to ~~Tract A or Tract E, SMI the Remainder Parcel, Miller~~ shall execute and file the Restrictive Covenant for ~~Tracts A and E the Remainder Parcel~~ with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant for ~~Tracts A and E the Remainder Parcel~~ shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Section 3.8(g).

(b) **Restrictive Covenant—Approval, Priority and Required General Topics.** The forms of the Restrictive Covenants shall be subject to the approval of the Town, and neither ~~SMI Miller~~ nor Braddock shall file the Restrictive Covenants until they have been reviewed and approved by the Town. At the time of recording, the Restrictive Covenants shall be superior in priority to all liens and encumbrances against the ~~Tract B Sale Parcel~~ and ~~Tracts A and E, the Remainder Parcel~~, except for the lien of the general property taxes for the year in which a Restrictive Covenant is recorded and subsequent years. The Restrictive Covenants shall contain, without limitation, provisions regulating and limiting: (i) the ownership of each Restricted Unit; (ii) the occupancy and use of each Restricted Unit; (iii) the sale and resale of each Restricted Unit; and (iv) remedies for the breach or other violation of the Restrictive Covenant.

- (c) **Restrictive Covenants—Mandatory Provisions Re: Owner-Occupied Restricted Units.** It shall be the stated intent of the Owner-Occupied Restrictive Covenants to ensure that each Owner-Occupied Restricted Unit is the exclusive and permanent residence of the owner of such unit. Therefore, and without limiting the generality of Section 3.8(b), the Restrictive Covenants shall provide that (i) each Owner-Occupied Restricted Unit shall be owned only by a natural person, unless otherwise allowed by the terms of the Restrictive Covenant; (ii) each owner of a Owner-Occupied Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Owner-Occupied Restricted Unit earns his or her living by working in Summit County, Colorado an average of at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons located primarily in Summit County, Colorado; and (iii) at all times, an owner of a Owner-Occupied Restricted Unit shall: (a) occupy the Owner-Occupied Restricted Unit as his or her sole place of residence, unless otherwise allowed by the terms of the applicable Restrictive Covenant, (b) not engage in any business activity on or in such Owner-Occupied Restricted Unit, other than as permitted in the applicable land use regulations of the Town or by applicable Town ordinance, (c) sell or transfer the Owner-Occupied Restricted Unit only in accordance with the terms, conditions and limitations of the applicable Restrictive Covenant, (d) not sell or otherwise transfer the Owner-Occupied Restricted Unit for use in a trade or business, (e) not permit any use of occupancy of the Owner-Occupied Restricted Unit except in compliance with the terms, conditions and limitations of the applicable Restrictive Covenant, and (f) not encumber the Owner-Occupied Restricted Unit in an amount in excess of the owner’s purchase price.
- (d) **Restrictive Covenants—Mandatory Provisions Re: Rental Restricted Units.** It shall be the stated intent of the Rental Restrictive Covenants to ensure that each Rental Restricted Unit is the exclusive residence of the tenant of such unit. Therefore, and without limiting the generality of Section 3.8(b), the Restrictive Covenants shall provide that (i) each Rental Restricted Unit may be owned by any legal entity capable of taking title to such Rental Restricted Unit under Colorado law; (ii) each tenant of a Rental Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Restricted Unit earns his or her living by working in Summit County, Colorado an average of at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons located primarily in Summit County, Colorado; and (iii) each tenant of a Rental Restricted Unit shall: (a) occupy the Restricted Unit as his or her sole place of residence, unless otherwise allowed by the terms of the applicable Restrictive Covenant, and (b) not engage in any business activity on or in such Restricted Unit, other than as permitted in the applicable land use regulations of the Town or by applicable Town ordinance. At all times, an



owner of a Rental Restricted Unit shall: (i) sell or transfer the Rental Restricted Unit only in accordance with the terms, conditions and limitations of the applicable Restrictive Covenant, (ii) not sell or otherwise transfer the Rental Restricted Unit for use in a trade or business, (iii) and not permit any use of occupancy of the Rental Restricted Unit except in compliance with the terms, conditions and limitations of the applicable Restrictive Covenant.

- (e) **Restrictive Covenants—Exceptions.** The Restrictive Covenants shall provide that it shall not be a violation of the Restrictive Covenants if: (i) rooms within a Owner-Occupied Restricted Unit are rented to qualified occupants sharing the Owner-Occupied Restricted Unit with the unit owner; (ii) a Owner-Occupied Restricted Unit is rented for use and occupancy as qualifying employee housing for a maximum cumulative total of 12 months during the time of ownership by a unit owner or while the Owner-Occupied Restricted Unit is initially being marketed by the ~~Owner~~ **Owners**; (iii) a Owner-Occupied Restricted Unit is owned or occupied by a person age 65 years or older who has owned and occupied the unit and worked at paid employment in Summit County, Colorado at least 30 hours per week on an annual basis, for the previous 7 years, together with such person's spouse and minor children, if any; (iv) a Owner-Occupied Restricted Unit is owned or occupied by a person otherwise authorized to own or occupy the Owner-Occupied Restricted Unit pursuant to the applicable Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Owner-Occupied Restricted Unit such that he or she cannot work the required number of hours each week required by the applicable Restrictive Covenant, provided, however, that such person shall be permitted to own or rent the Owner-Occupied Restricted Unit for a maximum period of one year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by the Town; and (v) guests visiting a qualified occupant and paying no rent or other consideration.

- (f) **Restrictive Covenants—Sale and Resale Limitations.**

- (i) **Initial Sale Price.** The Restrictive Covenants shall contain provisions governing the sale and resale of each of the Restricted Units. Unless otherwise agreed by the Town, the Restrictive Covenants taken together shall provide that: (i) ~~5452~~ of the Restricted Units will initially be sold by the ~~Owner~~ **Owners** at a price that is equal to or less than 100% of the AMI based on the most current data as of the date of sale; provided, however, that there is no required initial sales price for any building containing Rental Restricted Units; (ii) ~~3830~~ of the Restricted Units will initially be sold by the ~~Owner~~ **Owners** at a price that is equal to or less than 125% of the AMI for Summit County, Colorado based on

the most current data as of the date of sale; (iii) ~~11~~<sup>15</sup> of the Restrictive Units will initially be sold by the ~~Owner~~Owners at a price that is equal to or less than 150% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; (iv) ~~2~~<sup>3</sup> of the Restricted Units will initially be sold by the ~~Owner~~Owners at a price that is equal to or less than 180% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; and (v) each prospective purchaser of a Restricted Unit shall meet income testing standards acceptable to the Town and consistent with the requirements of the applicable Restrictive Covenant. The affordable price calculations shall include the following: (i) a purchase price shall not exceed 30% of gross household income adjusted for household size based on average regional interest rates for a 30 year fixed-rate loan at an interest rate not to exceed 7.5 per cent (7.5%) per annum, based on the Federal Home Loan Mortgage Corporation (Freddie Mac®) index, or other index acceptable the Town; (ii) 10% down payment; (iii) \$250 monthly expenses (homeowner association dues; insurance; taxes); and (iv) a family size based on 1.5 persons per bedroom.

- (ii) **Income Testing Standards—Owner-Occupied Restricted Units.** The Town’s methodology for performing income testing for the Owner-Occupied Restricted Units shall be substantially as follows: (i) determine the size of the prospective purchaser’s household (this is based on the number of bedrooms in the particular Owner-Occupied Restricted Unit and a factor of 1.5 persons per bedroom [i.e., a two bedroom Owner-Occupied Restricted Unit equates to a three person household regardless of the actual size of the prospective purchaser’s family]); (ii) determine the AMI target for the particular Owner-Occupied Restricted Unit (either 100%, 125%, 150% or 180%); (iii) determine the prospective purchaser’s maximum allowed income using the AMI in effect at the time of sale for the applicable household size and the AMI percent calculated in item (ii); and (iv) determine the prospective purchaser’s most recent annual adjusted gross income based on the prospective purchaser’s federal income tax and pay records. A prospective purchaser shall be qualified to purchase an Owner-Occupied Restricted Unit if his or her adjusted gross income does not exceed the maximum allowed income by more than ten percent (i.e., a prospective purchaser may qualify to purchase a 100% AMI Owner-Occupied Restricted Unit if his or her income does not exceed 110% of the AMI). Income testing is required at the time of the initial sale of an Owner-Occupied Restricted Unit by the ~~Owner~~Owners, and on each subsequent resale.

- (iii) **Income Testing Standards—Rental Restricted Units.** The Town’s income testing standards for the Rental Restricted Units shall be designed and implemented so as to make the Rental Restricted Units available for rental by persons earning 100% or less of the AMI.
- (iv) **Initial Marketing Restriction—Owner-Occupied Restricted Units.** Owner-Occupied Restricted Units shall initially be marketed to Upper Blue Employees or Key Employees. If, after 60 days of actively marketing an Owner-Occupied Restricted Unit to an Upper Blue Employees and Key Employees, the ~~Owner~~Owners ~~are is~~ unable to enter into an acceptable sales contract with an Upper Blue Employee or a Key Employee, then the Owner-Occupied Restricted Unit may be sold to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee).
- (v) **Initial Marketing Restriction—Rental Restricted Units.** Rental Restricted Units shall initially be made available for rental to Upper Blue Employees and Key Employees. If, after 60 days of actively soliciting the rental of an Rental Restricted Unit by an Upper Blue Employee or a Key Employee, the ~~owner~~Owners ~~are is~~ unable to rent the Rental Restricted Unit to either an Upper Blue Employee or a Key Employee, then the Rental Restricted Unit may be rented to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee). After the initial 60 day period described above, if a Rental Restricted Unit becomes available for rental a qualified Upper Blue Employee or a qualified Key Employee shall be given preference over all other prospective tenants.
- (vi) **Resale Price Limit.** Subsequent to the initial sale of an Owner-Occupied Restricted Unit by the ~~Owner~~Owners, the total price for which such Owner-Occupied Restricted Unit may be re-sold shall be determined as follows:
- (1) The selling owner’s purchase price at the time of the acquisition of the Owner-Occupied Restricted Unit, exclusive of any real estate commission paid at the time of acquisition, shall be the Base Price Limit.
  - (2) The Base Price Limit shall be increased to reflect a cost of living adjustment. Such amount shall be the selling owner’s “Adjusted Price Limit.” The Adjusted Price Limit shall be the lesser of:

The Base Price Limit	X	.0025	X	the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Residential Unit	+	The Base Price Limit <sup>1</sup>	=	ADJUSTED PRICE LIMIT
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OR

The Base Price Limit	X	100% of AMI most recently released prior to the selling owner's sale	÷	100% of AMI in effect at the time of the selling owner's purchase of the Residential Unit <sup>2</sup>	=	ADJUSTED PRICE LIMIT
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(3) The resale price of any Owner-Occupied Residential Unit shall not exceed such Adjusted Price Limit. The Adjusted Price Limit shall not take into consideration any capital improvements made to the Owner-Occupied Restricted Unit by the selling owner, nor any real estate commission paid by the selling unit owner.

(4) Notwithstanding anything contained in the Restrictive Covenant to the contrary, the Adjusted Price Limit shall never be less than the purchase price actually paid by the selling owner for the Owner-Occupied Restricted Unit.

(5) If the owner of a Restricted Unit sells the Owner-Occupied Restricted Unit through the services of the Summit Housing Authority, a commission of not more than 2% of the Adjusted Price Limit may be paid to the Summit Housing Authority.

(vii) **Appreciation Limiting Note and Deed of Trust.** Compliance with the terms and conditions of the Restrictive Covenant shall be

<sup>1</sup> The Base Price Limit multiplied by one quarter of one percent (0.25%) multiplied by the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Owner-Occupied Restricted Unit plus the Base Price Limit.

<sup>2</sup> The Base Price Limit multiplied by a fraction the numerator of which is the 100% of AMI most recently released prior to a selling owner's sale and the denominator of which is the 100% of AMI in effect at the time of the selling owner's purchase of the Owner-Occupied Restricted Unit.

secured by an “Appreciation-limiting Promissory Note and Deed of Trust, in a form acceptable to the Town, which Note and Deed of Trust shall be executed by each and every owner of an Owner-Occupied Restricted Unit.

- (g) **Release Ratio For Unrestricted Units.** In Phase I, ~~8~~<sup>one</sup> Unrestricted Units may be released from the Restrictive Covenant upon transfer of 2 duplex lots to Habitat for Humanity for no consideration after approval of the amendment to the Master Plan proposed by Braddock to convert certain single family Unrestricted Units to duplexes and to convert the townhome Restrictive Units to duplexes. If Habitat for Humanity fails to obtain certificates of occupancy for 2 Restricted Units by the time Braddock has obtained certificates of occupancy for the 8 Unrestricted Units, Braddock will complete 2 Restricted Units before any additional Unrestricted Units will be released from the Restrictive Covenant on Tract B. After the 8 Unrestricted Units have been released from the Restrictive Covenant on Tract B and 2 Restricted Units had been issued certificates of occupancy, whether constructed by Habitat for Humanity or Braddock, 1 additional Unrestricted Unit may be released from the Restrictive Covenant for each Restricted Unit sold within the affordable purchase price range. All ~~22~~<sup>17</sup> Phase I Restricted Units shall be sold prior to the last Phase I Unrestricted Unit being sold. In Phase II, ~~1~~<sup>one</sup> Unrestricted Unit may be released from the Restrictive Covenant for each ~~3~~<sup>three</sup> Restricted Units sold within the affordable purchase price range.
- (h) **Restrictive Covenants—Final Form.** The final form of the Restrictive Covenants may include provisions which vary from the specific requirements of Sections 3.8(c), 3.8(d), 3.8(e), and 3.8(f) only if the Town Attorney approves such provisions as being fully consistent with the intent of this Agreement, and with the standard housing covenant approved for use within Summit County, Colorado. Once a Restrictive Covenant has been recorded with the Summit County Clerk and Recorder, the provisions of the Restrictive Covenant shall control over the provisions of this Section 3.8.
- (i) **Administrative Guidelines.** The Restrictive Covenants and the Guidelines shall be interpreted in accordance with the following standards:
- (1) to the extent the Guidelines are inconsistent with the Restrictive Covenants, the Restrictive Covenant shall control;
  - (2) to the extent the Restrictive Covenants are ambiguous or unclear, the Guidelines shall control; and
  - (3) if the Guidelines are less burdensome or less restrictive than the Restrictive Covenants, even if they are inconsistent

with the Restrictive Covenants, the Guidelines shall control.

4. **PUBLIC BENEFITS.** As public benefits and inducements to the Town to annex the Annexation Property, ~~Owner~~Owners and Braddock have provided or shall provide the following at no cost to the Town:
  - 4.1 **Reclamation/Restoration of the Blue River.** The portion the Blue River running along the westerly edge of the Master Planned Property has been ~~shall be~~ reclaimed and restored in accordance with the Blue River Restoration Master Plan and the Development Permit and permit for subdivision of the Master Planned Property, as approved by the Town. The river edges have been ~~will be~~ reclaimed and revegetated with natural landscaping and a soft surface trail will be created to link to planned trails at the northerly and southerly edges of the river corridor. The reclaimed/restored area, consisting of approximately 6.14 acres, has been ~~will be~~ dedicated to the Town as public open space. The timing of the reclamation and restoration of the Blue River, and the dedication of the 6.14 acres of public open space to the Town, are ~~shall be~~ established in the Master Plan.
  - 4.2 **Right of Way Dedication; Construction of Stan Miller Drive.** A new 60 foot wide right of way has been ~~shall be~~ dedicated to the Town and “Stan Miller Drive” shall be constructed by ~~Owner~~Owners within the dedicated right of way extending from the completed Tiger Road on the north to the soon-to-be completed Stan Miller Drive on the south. In addition, the full-movement curb cut off of Highway 9 to the current Stan Miller, Inc. business office will be abandoned. The timing of the dedication of the right of way and the construction of Stan Miller Drive are ~~shall be~~ established in the Master Plan.
  - 4.3 **Pocket Parks.** Four separate pocket parks will be placed on three acres of private open space with public easements for access to the Blue River. SMI ~~Owner~~ or Braddock (as applicable) shall require the homeowners’ association for the portion of the Master Planned Property where the pocket parks are located to maintain the parks, but the public shall be allowed access to the pocket parks and the river, and shall be provided not less than eight parking spaces within the pocket parks, unless a smaller number is approved as part of the Master Plan. The timing of the construction and dedication of the pocket parks shall be established in the Master Plan.
  - 4.4 **Restricted Units.** The parties acknowledge that the construction of the Restricted Units will also provide a substantial public benefit.
  - 4.5 **Form of Dedications.** All dedications required by this Section 4 have been or shall be evidenced by an appropriate general warranty deed conveying marketable fee simple absolute title to the dedicated property to the Town, free and clear of all liens and encumbrances except the lien of the general property taxes for the year of conveyance, and subsequent years. The dedicator has or shall provide the Town with a title insurance policy in an amount of \$50,000 for each dedicated

parcel. The form and substance of the deeds and title insurance policies shall be subject to the reasonable approval of the Town Attorney.

- 4.6 **Indemnification.** ~~SMI Owner~~ and Braddock shall indemnify and defend the Town from all costs and expenses, including, but not limited to, attorneys' fees and costs of litigation, arising from the work and dedications required by this Section 4.
- 4.7 **Public Benefits for Extended Vesting.** While nothing in this Agreement shall obligate the Town to provide extended vested property rights for the Development Permit, Town acknowledges that if, in its discretion, extended vested property rights for the Development Permit are granted, no public benefits other than those set forth in this Section 4 shall be required of ~~Owner~~ the Owners ~~or Braddock~~.

5. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

- 5.1 **Extensions of Utility Services and Public Improvements.** ~~Owner~~ Owners have paid or shall pay all costs for the design and construction of all public improvements and utility services necessary to serve the Master Planned Property, including, but not limited to, roads, curbs, gutters, sanitary and drainage sewers, water, street lights, electricity, telephone, gas, and cable television service, all in accordance with applicable Town or public utility company standards and specifications. ~~Owner~~ Owners have dedicated or shall dedicate to the Town and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines and other public improvements, including public streets and trails, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.
- 5.2 **Sanitation District Connection Fees.** Without limiting the generality of Section 5.1, ~~Owner~~ Owners shall pay all fees and charges required to connect the Units to the Breckenridge Sanitation District.
- 5.3 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the Breckenridge Town Code, ~~Owner~~ Owners may be eligible for reimbursement from future connector(s) to the public improvements and utility services described in Section 5.1 which are extended by ~~Owner~~ Owners to the Master Planned Property. Any claim for reimbursement shall be subject to the provisions and requirements of said Section 9-2-3-7 of the Breckenridge Town Code, as the same may be amended from time to time.
- 5.4 **Town Provision of Services.** Upon the extension of utility services and public improvements as provided for in 5.1 above and acceptance by the Town of the utility services and public improvements to be dedicated to the Town, the Town shall make available and provide all Town provided utilities and services to the Master Planned Property and Units or other improvements served by such utility services and public improvements on the normal and customary basis as such

utilities and services are provided and for the normal and customary charges for such utilities and services, except as such charges may be waived by the Town as hereinafter provided.

6. **PUBLIC DEDICATIONS.** Except as expressly provided in this Agreement, there are no public dedications required as part of the annexation of the Annexation Property to the Town. The need for road rights-of-ways, open space, and pedestrian, bicycle, and skier access and trails will be evaluated during the subdivision process and site-specific development review process, and dedications made in accordance with Town regulations at such time.

7. **WATER CHARGES**

7.1 **PIF Charges.**

- (a) Pursuant to Section 12-4-9(A)(2) of the Breckenridge Town Code, the Town hereby waives the PIF charges for each of the Restricted Units.
- (b) ~~Owner~~Owners shall pay to the Town applicable PIF charges for each of the Unrestricted Units. Such charges shall be paid for each Unrestricted Unit at or prior to the first to occur of connection of the Unrestricted Unit to the Town's water utility system, or the issuance of a building permit for such Unrestricted Unit. If, for any reason, an Unrestricted Unit is not owned by the ~~Owner~~Owners at the time of the connection, the PIF shall be paid by the then-current owner of such Unrestricted Unit.

- 7.2 **Water Rates.** Water users on the Master Planned Property (including owners of both the Restricted Units and the Unrestricted Units) shall pay the then-current rates for water service and other water charges paid by in-Town water users, subject to all decreases or increases in fees adopted in accordance with Town ordinances and regulations. Such water users are subject to all rules, regulations and ordinances pertaining to the Town's water utility system, including all future amendments.

8. **ANNEXATION SURCHARGE.**

8.1 **Surcharge Fees.**

- (a) No Annexation Surcharge shall be required to be paid with respect to any of the Restricted Units.
- (b) An Annexation Surcharge shall be paid by the ~~Owner~~Owners to the Town for ~~35~~3 of the Unrestricted Units, but not for the 22 Unrestricted Units to be constructed using the 22 SFEs of density already within the Town for which Annexation Surcharges previously were paid. The Annexation Surcharges for the ~~35~~3 Unrestricted Units shall be due and payable for each Unrestricted Unit prior to the first to occur of: (i) connection of the Unrestricted Unit to the Town's water utility system; or (ii) issuance of a



building permit for such Unrestricted Unit. The amount of the Annexation Surcharge for each Unrestricted Unit shall be equal to the then-current PIF charge per SFE at the time the Annexation Surcharge becomes due.

- (c) Upon receipt of the Annexation Surcharges, such funds may be deposited by the Town into the Town's General Fund.

9. **OTHER TOWN CHARGES:** The Town hereby waives the following fees, charges or taxes:

- A. application fees for the Development Permit;
- B. fees for future development permit applications, review of plans, building permits and any similar application or permit fees for the future improvement of any Restricted Unit; and
- C. real estate transfer taxes upon the transfer of any Restricted Unit.

Nothing contained herein shall constitute a waiver by the Town of its rights to collect all of its normal and customary fees and taxes with respect to any portion of the Master Planned Property except for the Restricted Units.

10. **VESTED PROPERTY RIGHTS.** The ~~Owner~~Owners hereby waives any and all vested property rights that may exist on the Annexation Property. Further, nothing contained herein shall be construed as to create a vested property right for the Master Planned Property.

11. **NO RIGHT OF WAY DEVOTED TO AGRICULTURAL USE.** ~~Owner~~Owners states, represents and warrants to Town that as of the date of the Annexation ~~this~~ Agreement no portion of the Annexation Property consisted of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment as defined in Section 31-12-115(6)(c), C.R.S. As such, the parties agreed that the special notice provisions of Section 31-12-115(6)(b), C.R.S., ~~were~~are not applicable to the annexation of the Annexation Property to the Town.

12. **ANNEXATION CONTINGENCIES.** Town and ~~Owner~~Owners agree that the annexation of the Annexation Property and the effectiveness of this Agreement ~~were~~are contingent upon the occurrence of all of the following events, and the annexation and this Agreement shall be effective on the date on which the last of the following events occurs:

- A. final approval by the Town of the Development Permit by the Town through its land use regulatory system;
- B. final adoption by the Town of an ordinance amending the Land Use District Guidelines for Land Use District 33 as described in Section 3.4;

- C. final adoption of an ordinance placing the Annexation Property into Land Use Districts 1 and 33;
- D. the Town and the Owners' s agreement on the terms of the Restrictive Covenant; and
- E. Town's final approval of a Development Agreement providing not less than 18 years of extended vested property rights for the Development Permit,

provided, however, that, ~~because if~~ all of the foregoing events ~~have not~~ occurred or substantially occurred on or before one year from the date of the Annexation Agreement hereof, ~~then this Agreement shall be null and void and of no further force or effect,~~ and, therefore, Owner Owners may not pursue disconnection of the Annexation Property from the Town, ~~and Town shall not object to such disconnection.~~

- 13. **PERIODIC REVIEW OF AGREEMENT.** ~~SMI Miller~~, Braddock, and Town agree that for so long as either ~~SMI Miller~~ or Braddock own any of the Master Planned Property, they will meet and confer at least each ~~5~~ five years to determine if changed conditions suggest that modifications to either this Agreement or to the Restrictive Covenants are appropriate. The parties agree to meet and confer sooner than each ~~5~~ five years if the prevailing interest rate on a 30 year fixed rate mortgage increases above 7.5 ~~per cent~~ (~~7.5%~~) per annum, or thereafter by more than ~~2~~ two percentage points at any time.

14. **MISCELLANEOUS.**

- 14.1 **Effective Date.** This Agreement ~~is contingent upon the Town approval of the annexation and~~ shall become effective as of the date and time when all parties hereto have executed it ~~the annexation itself becomes effective.~~
- 14.2 **Parties' Authority.** The Town and ~~Owner~~ Owners represent that each has the authority to enter into this Agreement according to applicable Colorado law and the Town's Home Rule Charter and Ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such party. This Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Agreement are effective.
- 14.3 **Recording.** This Agreement **SHALL BE RECORDED** in the Summit County Clerk and Recorder's Office in order to put prospective purchasers of the Annexation Property or other interested parties on notice as to the terms and conditions contained herein.
- 14.4 **Entire Agreement.** This Agreement and the exhibits hereto represent the entire understanding between the parties concerning the annexation of the Annexation Property to the Town, and no other agreement concerning the Annexation Property, oral or written, made prior to the date of this Agreement, which conflicts with the terms of this Agreement shall be valid as between the parties.

- 14.5 **Disconnection.** In the event of disconnection of the Annexation Property from the Town for any reason, the Town's infrastructure and service obligations shall be void and of no further force and effect.
- 14.6 **Modification.** This Agreement shall not be modified except in writing executed by all parties hereto.
- 14.7 **Additional Remedies.** If at any time any part hereof has been breached by the ~~Owner~~Owners, the Town may, in addition to other remedies, withhold approval of any or all building or other permits applied for by the ~~Owner~~Owners on its Annexation Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.
- 14.8 **Binding Effect.** The agreements and covenants as set forth herein shall be binding upon the Owners, their successors and assigns, and all persons who may hereafter acquire an interest in the Master Planned Property, or any part thereof.
- 14.9 **Joint And Several Liability.** If there are two or more Owners, the responsibility of the Owners shall be joint and several.
- 14.10 **Severability.** In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 14.11 **Incorporation of Exhibits.** The attached Exhibits "A" and "B" are incorporated herein by reference.
- 14.12 **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.
- 14.13 **Notices.** All notices required or permitted under this Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Town to:

Town of Breckenridge  
P.O. Box 168  
150 Ski Hill Road  
Breckenridge, Colorado 80424  
Attn: Town Manager  
Telecopier number: (970)547-3104  
Telephone number: (970)453-2251

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

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

If intended for SMIOwner, to:

SMI Land LLC ~~Joseph S. Miller~~  
P.O. Box 804 ~~615 19 1/2 Road~~  
Breckenridge, CO 80424 ~~Grand Junction, Colorado 81503~~

Telecopier number: (970) ~~453-6095~~ **[TO BE INSERTED]**  
Telephone number: (970) ~~453-6573~~ **[TO BE INSERTED]**

If intended for Braddock, to:

Braddock Holdings, LLC  
135 S. Main Street  
P. O. Box 7  
Breckenridge, CO 80424  
Telecopier number: (970)453-6502  
Telephone number: (970)453-2325

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

Stephen C. West, Esq.  
West, Brown, Huntley & Thompson, P.C.  
100 South Ridge St.  
P.O. Box 588  
Breckenridge, CO 80424  
Telecopier number: (970)453-0192  
Telephone number: (970)453-2901

Any notice delivered by mail in accordance with this Section shall be deemed to have been duly given and received on the third business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this Section shall be deemed to have been duly given and received upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to the intended recipient. Any notice delivered by hand or commercial

carrier shall be deemed to have been duly given and received upon actual receipt. Any party, by notice given as provided above, may change the address to which future notices may be sent.

- 14.14 **Waiver.** The failure of any party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving such rights.
- 14.15 **Applicable Law.** This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado, without regard to principles of conflicts of laws.
- 14.16 **Counterparts.** This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.
- 14.17 **Section Headings.** Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
- 14.18 **Amendment.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted.
- 14.19 **No Adverse Construction.** Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement shall not be construed against either party based upon authorship.

[\[SEPARATE SIGNATURE PAGES TO FOLLOW\]](#)

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By \_\_\_\_\_  
Timothy J. Gagen, Town Manager

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek CMC,  
Town Clerk

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010~~08~~, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

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

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

SMI LAND, LLC~~OWNER:~~  
a Colorado limited liability company

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By: \_\_\_\_\_  
Kermit Miller, Manager ~~Joseph S. Miller~~

~~President~~

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201008, by Kermit Miller as Manager of SMI Land, LLC, a Colorado limited liability company~~Joseph S. Miller~~.

WITNESS my hand and official seal.

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

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

BRADDOCK HOLDINGS, LLC,  
a Colorado limited liability company

By: Breckenridge Lands, Inc.,  
its Manager

By: \_\_\_\_\_  
Thomas Begley~~Kenneth M. Adams~~ \_\_\_\_\_  
President,

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010~~07~~, by Thomas Begley~~Kenneth M. Adams~~, President of Breckenridge Lands, Inc., Manager of Braddock Holdings, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.  
My commission expires: \_\_\_\_\_.

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



EXHIBIT "A"

**Legal Description of the Annexation Property**

A parcel of real property situated in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian in the Town of Breckenridge, County of Summit, State of Colorado and being more particularly described as follows:

A part of the B & L No. 1 Placer (MS 114044), a part of the Accommodation Placer (MS 19361) and a part the Braddock Placer (MS 13465) more particularly described as follows;

Beginning at corner 5 of the B & L No. 1 Placer, corner also being corner 15 of the Munroe Placer (MS 1150) and the southwesterly corner of the West Braddock Subdivision;

thence the following four (4) courses along the southerly boundary West Braddock Subdivision:

1. thence  $S75^{\circ}18'02''$ , 660.00 feet along the 5-6 line of the B & L No. 1 Placer and the 15-14 line of the Munroe Placer to corner 6 of the B & L No. 1 Placer, corner 14 line of the Munroe Placer and corner 1 of the Accommodation Placer;

2. thence  $S56^{\circ}04'10''E$ , 310.00 feet;

3. thence  $S05^{\circ}1'33''W$ , 617.00 feet;

4. thence  $S84^{\circ}28'27''E$ , 452.80 feet to a point on the westerly right of way of Colorado State Highway 9;

thence  $S12^{\circ}45'46''W$ , 202.80 feet along the westerly right of way of Colorado State Highway 9 to the northeasterly corner of the Breckenridge Building Center property;

thence the following four (4) courses along the northerly and westerly boundaries of the Breckenridge Building Center property:

1. thence  $N84^{\circ}21''W$ , 522.58 feet;

2. thence  $S05^{\circ}21'39''W$ , 528.18 feet to a point on the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer;

3. thence  $S56^{\circ}14'04''E$ , 53.84 feet along the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer to corner 9 of the B & L No. 1 Placer and corner 4 of the Accommodation Placer;

4. thence  $S11^{\circ}35'37''W$ , 233.91 feet along the 9-10 line of the B & L No. 1 Placer and the 4-5 line of the Accommodation Placer;

thence  $S87^{\circ}17'57''W$ , 875.28 feet to a point on the 2-3 line of the B & L No. 1 Placer;

thence  $N31^{\circ}46'32''E$ , 373.09 feet along the 2-3 line of the B & L No. 1 Placer to corner 3 of the B & L No. 1 Placer;

thence  $N20^{\circ}02'19''W$ , 689.13 feet along the 3-4 line of the B & L No. 1 Placer to corner 4 of the B & L No. 1 Placer;

thence N13°35'04"E, 1037.85 feet along the 4-5 line of the B & L No. 1 Placer to the point of beginning.

Described parcel contains 40.41 acres, more or less.

Perimeter of parcel = 6556.46 feet;

Perimeter of parcel contiguous with Town of Breckenridge = 4456.39 feet

Perimeter of parcel contiguous with Town of Breckenridge = 67.97%

EXHIBIT "B"

**Legal Description of 2.29 Acre Parcel**

Parcel D-2, West Braddock Subdivision, according to the plat recorded November 19, 2007 under Reception No. 874097 of the records of the Clerk and Recorder of Summit County, Colorado

## AMENDED AND RESTATED ANNEXATION AGREEMENT

THIS AMENDED AND RESTATED ANNEXATION AGREEMENT ("Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2010 and is among the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town"), SMI LAND, LLC, a Colorado limited liability company ("SMI"), and BRADDOCK HOLDINGS LLC, a Colorado limited liability company ("Braddock"). SMI and Braddock are collectively referred to in this Agreement as ("Owners").

WHEREAS, an Annexation Agreement dated January 22, 2008 and recorded in the Summit County, Colorado real estate records on April 24, 2008 at Reception No. 886222 was entered into among Town, Braddock and Joseph S. Miller ("Annexation Agreement"); and

WHEREAS, subsequent to the annexation provided for in the Annexation Agreement, the Annexation Property described in the Annexation Agreement was subdivided by the recording of a plat of Miller Subdivision in the Summit County, Colorado real estate records on April 24, 2008 at Reception No. 886225 ("Miller Subdivision"); and

WHEREAS, SMI now owns Tracts A, D and E, Miller Subdivision, Braddock now owns Tract B, Miller Subdivision, as well as the 2.29 Acre Parcel, and the Town now owns Tract C, Miller Subdivision; and

WHEREAS, because of the changes in ownership and changes requested to substantive terms by Braddock, the Town, SMI and Braddock have agreed that the best, clearest and most efficient way to amend the Annexation Agreement is by entering into this Agreement and by having this Agreement replace the Annexation Agreement in its entirety.

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** As used in this Agreement, unless the context clearly requires otherwise:

"2.29 Acre Parcel" means that parcel of land already located within the boundaries of the Town as of the date of this Agreement as described on the attached **Exhibit "B"**.

"AMI" means Area Median Income for Summit County, Colorado published by the United States Department of Housing and Urban Development, or if no longer published, any successor index.

"Annexation Ordinance" means Ordinance No. 4, Series 2008 adopted by the Town Council of the Town of Breckenridge on January 8, 2008 pursuant to the Municipal Annexation Act of 1965 (Section 31-12-101, et seq., C.R.S.) officially annexing the Annexation Property to the Town of Breckenridge.

"Annexation Property" means that certain real property described on the attached **Exhibit "A"**.

"Annexation Surcharge" or "Surcharge" means the fee due and payable to the Town pursuant to Section 8 of this Agreement. Such fee shall be paid to the Town as a general annexation fee and in lieu of the transfer of raw water to the Town by the Owners.

"Applicable Town Ordinances" means all ordinances of the Town which regulate the development, subdivision, and use of the Master Planned Property, as in effect from time to time. Such ordinances shall include, but shall not be limited to, the Town's:

- (i) Development Code;
- (ii) Street Standards;
- (iii) Lighting Ordinance;
- (iv) Drainage Ordinance;
- (v) Flood Prevention Ordinance;
- (vi) Water Quality Ordinance;
- (vii) Subdivision Ordinance;
- (viii) Building, Technical and Construction Codes;
- (ix) ordinances concerning annexation/water surcharges;
- (x) ordinances concerning payment of fees;
- (xi) ordinances concerning public dedications; and
- (xii) all other applicable Town Ordinances, Resolutions, regulations and polices.

"Braddock" means Braddock Holdings, LLC, a Colorado limited liability company, its successors and assigns, and all other subsequent owners of Braddock's interest in the Master Planned Property.

"Development Permit" means Development Permit No. 2008006 issued by the Town approving a master plan for the Master Planned Property, and any amendments thereto subsequently approved by the Town through its land use regulatory system.

"Guidelines" means the Town of Breckenridge Affordable Housing Guidelines, as amended from time to time by the Town Council following a public hearing.

"Key Employee" means an employee of a business, private organization, or governmental entity providing essential services in Summit County, Colorado as

determined by the Town, including, but not limited to, (i) municipal employees; (ii) Summit School District employees; and (iii) emergency and medical personnel.

“Master Plan” means the master plan approved by the Development Permit.

“Master Planned Property” means the 2.29 Acre Parcel and Tracts A, B, C, D and E, Miller Subdivision.

“Owners” means SMI and Braddock collectively, their successors and assigns, and all other subsequent owners of the Master Planned Property, or any interest therein.

“Owner-Occupied Restricted Units” means the Restricted Units described in Section 3.8(c).

“Phase I” means the 2.29 Acre Parcel and Tract B.

“Phase II” means Tracts A and E.

"PIF" means the current Town Plant Investment Fee as provided for by the Ordinances or regulations of the Town at the time such charges are due and payable to the Town as provided in Section 7 of this Agreement.

“Rental Restricted Units” means the Restricted Units described in Section 3.8(d).

“Restricted Units” means the 105 residential Units approved for construction on the Master Planned Property pursuant to the Development Permit which are to be and shall remain in perpetuity subject to the Restrictive Covenants, including both the Owner-Occupied Restricted Units and the Rental Restricted Units. Unless otherwise indicated, the term “Restricted Units” includes both the Owner-Occupied Restricted Units and the Rental Restricted Units.

“Restrictive Covenants” collectively means the restrictive covenant to be executed by Braddock encumbering the Tract B for the benefit of the Town as described in Section 3.8 of this Agreement, and the restrictive covenant to be executed by SMI encumbering Tracts A and E for the benefit of the Town as described in Section 3.8 of this Agreement.

“SFE” means a single family equivalent of density as defined by the Applicable Town Ordinances.

“TDR” means a transferable development right as created pursuant to the intergovernmental agreement between the Town and the Board of County Commissioners of Summit County, Colorado.

“Units” includes both the Restricted Units and the Unrestricted Units.

“Unrestricted Units” means the 57 residential Units approved for construction on the Master Planned Property pursuant to the Development Permit which are not Restricted Units.

“Upper Blue Employee” mean an employee of a business physically located in and serving the Upper Blue River Basin.

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

2. **DEVELOPMENT SUBJECT TO APPLICABLE TOWN ORDINANCES AND DEVELOPMENT PERMIT.**

Development of the Master Planned Property shall conform in all respects with the Applicable Town Ordinances and the Development Permit. The Master Planned Property shall only be developed in accordance with this Agreement and the Development Permit. All parties acknowledge that pursuant to Section 31-12-115, C.R.S., the Development Permit did not become effective until the Annexation Ordinance was passed on final reading.

3. **PROPOSED USE OF THE MASTER PLANNED PROPERTY.**

3.1 **Land Use District Designation.** The Annexation Property has been placed in Land Use District 33 and Land Use District 1. However, all of the development of the Master Planned Property will occur in Land Use District 33, and no development of the Master Planned Property shall be permitted within Land Use District 1.

3.2 **General Development Concept.** The general development concept for the Master Planned Property is as follows:

(a) **Single Master Plan.** The Annexation Property and the 2.29 Acre Parcel shall be developed pursuant to a single master plan approved in accordance with Policy 39(Absolute) of the Town’s Development Code.

(b) **Units.** The Master Plan shall provide for development of a maximum of 162 Units on the Master Planned Property. 105 of the Units shall be Restricted Units, and 57 of the Units shall be Unrestricted Units. The Restricted Units shall include not less than 65 Owner-Occupied Restricted Units, and the remainder of the Restricted Units may be Rental Restricted Units if located on the Tract A or Tract E in a multi-family configuration approved pursuant to the Master Plan.

(c) **Density.** The 157 SFEs of density required for the development of the Master Planned Property shall be provided as follows:

(i) 22 SFEs already existed within the Town as of the date of the Annexation Agreement (19 SFEs transferred to the Master Planned

Property from Braddock's adjacent "Braddock Flats" parcel and 3 SFEs that existed on the 2.29 Acre Parcel);

- (ii) 26 SFEs exist on the Annexation Property under Summit County zoning as of the date of the Annexation Agreement;
- (iii) If required to complete the development of the 57 Unrestricted Units, 9 TDRs are to be purchased for the development of the Master Planned Property; and
- (iv) 100 SFEs are to be provided by the Town pursuant to Section 3.5.

- (d) **Phasing; Extended Vested Property Rights.** The Town acknowledges that SMI has sold Tract B to Braddock, and that Braddock intends to develop Tract B as soon as possible. The development of Tract B is planned to include 22 Restricted Units and 24 Unrestricted Units. The Town further acknowledges that SMI intends to continue the current operations of Stan Miller, Inc. on Tracts A and E for approximately 10 years and that development of Units on Tracts A and E is not likely to occur until after those current operations cease.

The development of the Master Planned Property shall be phased over a period of approximately 18 years, and the Owners have obtained from the Town 18 years of extended vested property rights for the Development Permit to reflect such phasing. Phase I will be undertaken by Braddock commencing in 2010 and is expected to be completed in five to six years. Phase II will be undertaken by SMI, and is expected to be completed by the end of 2027.

- 3.3 **Construction of Restricted Units.** The 105 Restricted Units shall be constructed in accordance with the following schedule:

- (a) 22 of the Restricted Units shall be constructed as part of Phase I; and
- (b) the remaining 83 Restricted Units shall be constructed as part of Phase II.

- 3.4 **Development Density In Land Use District 33.** The Town of Breckenridge Land Use District Guidelines which were in effect as of the date of the Annexation Agreement provided that a 1 to 75 floor area ratio was acceptable for service commercial development in Land Use District 33. However, the parties acknowledged that the Town staff had recommended to the Town Council that the Land Use District Guidelines for Land Use District 33 be amended to provide that a density of approximately 4.5 units per acre is acceptable for residential development in Land Use District 33 if the new Town density to be developed consists of not less than seventy five percent (75%) affordable housing units that are encumbered with a Town-approved restrictive covenant. Such an amendment was required in order for the Development Permit to be approved. The staff's



recommendation was approved and acted upon by the Town as of the date of this Agreement.

- 3.5 **Transfer of Density.** Within 60 days after the last of the contingencies in Section 12 have been satisfied, the Town shall provide the density necessary for the development of the Restricted Units by transfer or exemption, and, if by transfer, the Town and the Owners shall enter into and record a density transfer agreement and covenant in a form acceptable to the Town Attorney.
- 3.6 **Purchase of TDRs.** Owners shall pay the cost of purchasing the 9 TDRs required for the development of the Master Planned Property if required to complete the development of the 57 Unrestricted Units, and Town shall have no liability for such cost. The timing for the purchase of the 9 TDRs for the Master Planned Property shall be determined in connection with the approval of the Master Plan.
- 3.7 **Minimum Unit Sizes.** The minimum size for the 105 Restricted Units shall be as follows: one-bedroom Restricted Units shall be a minimum of 600 square feet in size; two-bedroom Restricted Units shall be a minimum of 900 square feet in size; and three-bedroom Restricted Units shall be a minimum of 1200 square feet in size. There shall be no minimum size for the Unrestricted Units.
- 3.8 **Restrictive Covenants.**
- (a) **Restrictive Covenants—Filing Against Master Planned Property.**
- (i) At the time of the issuance of the first building permit for the construction of improvements to Tract B, Braddock shall execute and file the Restrictive Covenant for Tract B with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant for the Sale Parcel shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Section 3.8(g).
- (ii) At the time of the issuance of the first building permit for the construction of improvements to Tract A or Tract E, SMI shall execute and file the Restrictive Covenant for Tracts A and E with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant for Tracts A and E shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Section 3.8(g).
- (b) **Restrictive Covenant—Approval, Priority and Required General Topics.** The forms of the Restrictive Covenants shall be subject to the approval of the Town, and neither SMI nor Braddock shall file the Restrictive Covenants until they have been reviewed and approved by the Town. At the time of recording, the Restrictive Covenants shall be

superior in priority to all liens and encumbrances against the Tract B and Tracts A and E, except for the lien of the general property taxes for the year in which a Restrictive Covenant is recorded and subsequent years. The Restrictive Covenants shall contain, without limitation, provisions regulating and limiting: (i) the ownership of each Restricted Unit; (ii) the occupancy and use of each Restricted Unit; (iii) the sale and resale of each Restricted Unit; and (iv) remedies for the breach or other violation of the Restrictive Covenant.

- (c) **Restrictive Covenants—Mandatory Provisions Re: Owner-Occupied Restricted Units.** It shall be the stated intent of the Owner-Occupied Restrictive Covenants to ensure that each Owner-Occupied Restricted Unit is the exclusive and permanent residence of the owner of such unit. Therefore, and without limiting the generality of Section 3.8(b), the Restrictive Covenants shall provide that (i) each Owner-Occupied Restricted Unit shall be owned only by a natural person, unless otherwise allowed by the terms of the Restrictive Covenant; (ii) each owner of a Owner-Occupied Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Owner-Occupied Restricted Unit earns his or her living by working in Summit County, Colorado an average of at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons located primarily in Summit County, Colorado; and (iii) at all times, an owner of a Owner-Occupied Restricted Unit shall: (a) occupy the Owner-Occupied Restricted Unit as his or her sole place of residence, unless otherwise allowed by the terms of the applicable Restrictive Covenant, (b) not engage in any business activity on or in such Owner-Occupied Restricted Unit, other than as permitted in the applicable land use regulations of the Town or by applicable Town ordinance, (c) sell or transfer the Owner-Occupied Restricted Unit only in accordance with the terms, conditions and limitations of the applicable Restrictive Covenant, (d) not sell or otherwise transfer the Owner-Occupied Restricted Unit for use in a trade or business, (e) not permit any use of occupancy of the Owner-Occupied Restricted Unit except in compliance with the terms, conditions and limitations of the applicable Restrictive Covenant, and (f) not encumber the Owner-Occupied Restricted Unit in an amount in excess of the owner's purchase price.
- (d) **Restrictive Covenants—Mandatory Provisions Re: Rental Restricted Units.** It shall be the stated intent of the Rental Restrictive Covenants to ensure that each Rental Restricted Unit is the exclusive residence of the tenant of such unit. Therefore, and without limiting the generality of Section 3.8(b), the Restrictive Covenants shall provide that (i) each Rental Restricted Unit may be owned by any legal entity capable of taking title to such Rental Restricted Unit under Colorado law; (ii) each tenant of a Rental Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Restricted Unit earns his or

her living by working in Summit County, Colorado an average of at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons located primarily in Summit County, Colorado; and (iii) each tenant of a Rental Restricted Unit shall: (a) occupy the Restricted Unit as his or her sole place of residence, unless otherwise allowed by the terms of the applicable Restrictive Covenant, and (b) not engage in any business activity on or in such Restricted Unit, other than as permitted in the applicable land use regulations of the Town or by applicable Town ordinance. At all times, an owner of a Rental Restricted Unit shall: (i) sell or transfer the Rental Restricted Unit only in accordance with the terms, conditions and limitations of the applicable Restrictive Covenant, (ii) not sell or otherwise transfer the Rental Restricted Unit for use in a trade or business, (iii) and not permit any use of occupancy of the Rental Restricted Unit except in compliance with the terms, conditions and limitations of the applicable Restrictive Covenant.

- (e) **Restrictive Covenants—Exceptions.** The Restrictive Covenants shall provide that it shall not be a violation of the Restrictive Covenants if: (i) rooms within a Owner-Occupied Restricted Unit are rented to qualified occupants sharing the Owner-Occupied Restricted Unit with the unit owner; (ii) a Owner-Occupied Restricted Unit is rented for use and occupancy as qualifying employee housing for a maximum cumulative total of 12 months during the time of ownership by a unit owner or while the Owner-Occupied Restricted Unit is initially being marketed by the Owners; (iii) a Owner-Occupied Restricted Unit is owned or occupied by a person age 65 years or older who has owned and occupied the unit and worked at paid employment in Summit County, Colorado at least 30 hours per week on an annual basis, for the previous 7 years, together with such person's spouse and minor children, if any; (iv) a Owner-Occupied Restricted Unit is owned or occupied by a person otherwise authorized to own or occupy the Owner-Occupied Restricted Unit pursuant to the applicable Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Owner-Occupied Restricted Unit such that he or she cannot work the required number of hours each week required by the applicable Restrictive Covenant, provided, however, that such person shall be permitted to own or rent the Owner-Occupied Restricted Unit for a maximum period of one year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by the Town; and (v) guests visiting a qualified occupant and paying no rent or other consideration.
- (f) **Restrictive Covenants—Sale and Resale Limitations.**
- (i) **Initial Sale Price.** The Restrictive Covenants shall contain provisions governing the sale and resale of each of the Restricted Units. Unless otherwise agreed by the Town, the Restrictive

Covenants taken together shall provide that: (i) 54 of the Restricted Units will initially be sold by the Owners at a price that is equal to or less than 100% of the AMI based on the most current data as of the date of sale; provided, however, that there is no required initial sales price for any building containing Rental Restricted Units; (ii) 38 of the Restricted Units will initially be sold by the Owners at a price that is equal to or less than 125% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; (iii) 11 of the Restrictive Units will Initially be sold by the Owners at a price that is equal to or less than 150% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; (iv) 2 of the Restricted Units will initially be sold by the Owners at a price that is equal to or less than 180% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; and (v) each prospective purchaser of a Restricted Unit shall meet income testing standards acceptable to the Town and consistent with the requirements of the applicable Restrictive Covenant. The affordable price calculations shall include the following: (i) a purchase price shall not exceed 30% of gross household income adjusted for household size based on average regional interest rates for a 30 year fixed-rate loan at an interest rate not to exceed 7.5 per cent (7.5%) per annum, based on the Federal Home Loan Mortgage Corporation (Freddie Mac®) index, or other index acceptable the Town; (ii) 10% down payment; (iii) \$250 monthly expenses (homeowner association dues; insurance; taxes); and (iv) a family size based on 1.5 persons per bedroom.

(ii) **Income Testing Standards—Owner-Occupied Restricted Units.**

The Town’s methodology for performing income testing for the Owner-Occupied Restricted Units shall be substantially as follows: (i) determine the size of the prospective purchaser’s household (this is based on the number of bedrooms in the particular Owner-Occupied Restricted Unit and a factor of 1.5 persons per bedroom [i.e., a two bedroom Owner-Occupied Restricted Unit equates to a three person household regardless of the actual size of the prospective purchaser’s family]); (ii) determine the AMI target for the particular Owner-Occupied Restricted Unit (either 100%, 125%, 150% or 180%); (iii) determine the prospective purchaser’s maximum allowed income using the AMI in effect at the time of sale for the applicable household size and the AMI percent calculated in item (ii); and (iv) determine the prospective purchaser’s most recent annual adjusted gross income based on the prospective purchaser’s federal income tax and pay records. A prospective purchaser shall be qualified to purchase an Owner-Occupied Restricted Unit if his or her adjusted gross income does not exceed the maximum allowed income by more than ten percent (i.e., a prospective purchaser may qualify to purchase a 100% AMI

Owner-Occupied Restricted Unit if his or her income does not exceed 110% of the AMI). Income testing is required at the time of the initial sale of an Owner-Occupied Restricted Unit by the Owners, and on each subsequent resale.

- (iii) **Income Testing Standards—Rental Restricted Units.** The Town’s income testing standards for the Rental Restricted Units shall be designed and implemented so as to make the Rental Restricted Units available for rental by persons earning 100% or less of the AMI.
- (iv) **Initial Marketing Restriction—Owner-Occupied Restricted Units.** Owner-Occupied Restricted Units shall initially be marketed to Upper Blue Employees or Key Employees. If, after 60 days of actively marketing an Owner-Occupied Restricted Unit to an Upper Blue Employees and Key Employees, the Owners are unable to enter into an acceptable sales contract with an Upper Blue Employee or a Key Employee, then the Owner-Occupied Restricted Unit may be sold to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee).
- (v) **Initial Marketing Restriction—Rental Restricted Units.** Rental Restricted Units shall initially be made available for rental to Upper Blue Employees and Key Employees. If, after 60 days of actively soliciting the rental of an Rental Restricted Unit by an Upper Blue Employee or a Key Employee, the Owners are unable to rent the Rental Restricted Unit to either an Upper Blue Employee or a Key Employee, then the Rental Restricted Unit may be rented to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee). After the initial 60 day period described above, if a Rental Restricted Unit becomes available for rental a qualified Upper Blue Employee or a qualified Key Employee shall be given preference over all other prospective tenants.
- (vi) **Resale Price Limit.** Subsequent to the initial sale of an Owner-Occupied Restricted Unit by the Owners, the total price for which such Owner-Occupied Restricted Unit may be re-sold shall be determined as follows:
  - (1) The selling owner’s purchase price at the time of the acquisition of the Owner-Occupied Restricted Unit, exclusive of any real estate commission paid at the time of acquisition, shall be the Base Price Limit.

- (2) The Base Price Limit shall be increased to reflect a cost of living adjustment. Such amount shall be the selling owner’s “Adjusted Price Limit.” The Adjusted Price Limit shall be the lesser of:

The Base Price Limit	X	.0025	X	the number of whole months from the date of a Unit Owner’s purchase to the date of a Unit Owner’s sale of the Residential Unit	+	The Base Price Limit <sup>1</sup>	=	ADJUSTED PRICE LIMIT
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OR

The Base Price Limit	X	100% of AMI most recently released prior to the selling owner’s sale	÷	100% of AMI in effect at the time of the selling owner’s purchase of the Residential Unit <sup>2</sup>	=	ADJUSTED PRICE LIMIT
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- (3) The resale price of any Owner-Occupied Residential Unit shall not exceed such Adjusted Price Limit. The Adjusted Price Limit shall not take into consideration any capital improvements made to the Owner-Occupied Restricted Unit by the selling owner, nor any real estate commission paid by the selling unit owner.
- (4) Notwithstanding anything contained in the Restrictive Covenant to the contrary, the Adjusted Price Limit shall never be less than the purchase price actually paid by the selling owner for the Owner-Occupied Restricted Unit.
- (5) If the owner of a Restricted Unit sells the Owner-Occupied Restricted Unit through the services of the Summit Housing Authority, a commission of not more than 2% of the

<sup>1</sup> The Base Price Limit multiplied by one quarter of one percent (0.25%) multiplied by the number of whole months from the date of a Unit Owner’s purchase to the date of a Unit Owner’s sale of the Owner-Occupied Restricted Unit plus the Base Price Limit.

<sup>2</sup> The Base Price Limit multiplied by a fraction the numerator of which is the 100% of AMI most recently released prior to a selling owner’s sale and the denominator of which is the 100% of AMI in effect at the time of the selling owner’s purchase of the Owner-Occupied Restricted Unit.

Adjusted Price Limit may be paid to the Summit Housing Authority.

- (vii) **Appreciation Limiting Note and Deed of Trust.** Compliance with the terms and conditions of the Restrictive Covenant shall be secured by an “Appreciation-limiting Promissory Note and Deed of Trust, in a form acceptable to the Town, which Note and Deed of Trust shall be executed by each and every owner of an Owner-Occupied Restricted Unit.
  
- (g) **Release Ratio For Unrestricted Units.** In Phase I, 8 Unrestricted Units may be released from the Restrictive Covenant upon transfer of 2 duplex lots to Habitat for Humanity for no consideration after approval of the amendment to the Master Plan proposed by Braddock to convert certain single family Unrestricted Units to duplexes and to convert the townhome Restrictive Units to duplexes. If Habitat for Humanity fails to obtain certificates of occupancy for 2 Restricted Units by the time Braddock has obtained certificates of occupancy for the 8 Unrestricted Units, Braddock will complete 2 Restricted Units before any additional Unrestricted Units will be released from the Restrictive Covenant on Tract B. After the 8 Unrestricted Units have been released from the Restrictive Covenant on Tract B and 2 Restricted Units had been issued certificates of occupancy, whether constructed by Habitat for Humanity or Braddock, 1 additional Unrestricted Unit may be released from the Restrictive Covenant for each Restricted Unit sold within the affordable purchase price range. All 22 Phase I Restricted Units shall be sold prior to the last Phase I Unrestricted Unit being sold. In Phase II, 1 Unrestricted Unit may be released from the Restrictive Covenant for each 3 Restricted Units sold within the affordable purchase price range.
  
- (h) **Restrictive Covenants—Final Form.** The final form of the Restrictive Covenants may include provisions which vary from the specific requirements of Sections 3.8(c), 3.8(d), 3.8(e), and 3.8(f) only if the Town Attorney approves such provisions as being fully consistent with the intent of this Agreement, and with the standard housing covenant approved for use within Summit County, Colorado. Once a Restrictive Covenant has been recorded with the Summit County Clerk and Recorder, the provisions of the Restrictive Covenant shall control over the provisions of this Section 3.8.
  
- (i) **Administrative Guidelines.** The Restrictive Covenants and the Guidelines shall be interpreted in accordance with the following standards:
  - (1) to the extent the Guidelines are inconsistent with the Restrictive Covenants, the Restrictive Covenant shall control;

- (2) to the extent the Restrictive Covenants are ambiguous or unclear, the Guidelines shall control; and
- (3) if the Guidelines are less burdensome or less restrictive than the Restrictive Covenants, even if they are inconsistent with the Restrictive Covenants, the Guidelines shall control.

4. **PUBLIC BENEFITS.** As public benefits and inducements to the Town to annex the Annexation Property, Owners and Braddock have provided or shall provide the following at no cost to the Town:

- 4.1 **Reclamation/Restoration of the Blue River.** The portion the Blue River running along the westerly edge of the Master Planned Property has been reclaimed and restored in accordance with the Blue River Restoration Master Plan and the Development Permit and permit for subdivision of the Master Planned Property, as approved by the Town. The river edges have been reclaimed and revegetated with natural landscaping and a soft surface trail will be created to link to planned trails at the northerly and southerly edges of the river corridor. The reclaimed/restored area, consisting of approximately 6.14 acres, has been dedicated to the Town as public open space. The timing of the reclamation and restoration of the Blue River, and the dedication of the 6.14 acres of public open space to the Town, are established in the Master Plan.
- 4.2 **Right of Way Dedication; Construction of Stan Miller Drive.** A new 60 foot wide right of way has been dedicated to the Town and “Stan Miller Drive” shall be constructed by Owners within the dedicated right of way extending from the completed Tiger Road on the north to the soon-to-be completed Stan Miller Drive on the south. In addition, the full-movement curb cut off of Highway 9 to the current Stan Miller, Inc. business office will be abandoned. The timing of the dedication of the right of way and the construction of Stan Miller Drive are established in the Master Plan.
- 4.3 **Pocket Parks.** Four separate pocket parks will be placed on three acres of private open space with public easements for access to the Blue River. SMI or Braddock (as applicable) shall require the homeowners’ association for the portion of the Master Planned Property where the pocket parks are located to maintain the parks, but the public shall be allowed access to the pocket parks and the river, and shall be provided not less than eight parking spaces within the pocket parks, unless a smaller number is approved as part of the Master Plan. The timing of the construction and dedication of the pocket parks shall be established in the Master Plan.
- 4.4 **Restricted Units.** The parties acknowledge that the construction of the Restricted Units will also provide a substantial public benefit.



- 4.5 **Form of Dedications.** All dedications required by this Section 4 have been or shall be evidenced by an appropriate general warranty deed conveying marketable fee simple absolute title to the dedicated property to the Town, free and clear of all liens and encumbrances except the lien of the general property taxes for the year of conveyance, and subsequent years. The dedicator has or shall provide the Town with a title insurance policy in an amount of \$50,000 for each dedicated parcel. The form and substance of the deeds and title insurance policies shall be subject to the reasonable approval of the Town Attorney.
- 4.6 **Indemnification.** SMI and Braddock shall indemnify and defend the Town from all costs and expenses, including, but not limited to, attorneys' fees and costs of litigation, arising from the work and dedications required by this Section 4.
- 4.7 **Public Benefits for Extended Vesting.** While nothing in this Agreement shall obligate the Town to provide extended vested property rights for the Development Permit, Town acknowledges that if, in its discretion, extended vested property rights for the Development Permit are granted, no public benefits other than those set forth in this Section 4 shall be required of the Owners.

## 5. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

- 5.1 **Extensions of Utility Services and Public Improvements.** Owners have paid or shall pay all costs for the design and construction of all public improvements and utility services necessary to serve the Master Planned Property, including, but not limited to, roads, curbs, gutters, sanitary and drainage sewers, water, street lights, electricity, telephone, gas, and cable television service, all in accordance with applicable Town or public utility company standards and specifications. Owners have dedicated or shall dedicate to the Town and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines and other public improvements, including public streets and trails, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.
- 5.2 **Sanitation District Connection Fees.** Without limiting the generality of Section 5.1, Owners shall pay all fees and charges required to connect the Units to the Breckenridge Sanitation District.
- 5.3 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the Breckenridge Town Code, Owners may be eligible for reimbursement from future connector(s) to the public improvements and utility services described in Section 5.1 which are extended by Owners to the Master Planned Property. Any claim for reimbursement shall be subject to the provisions and requirements of said Section 9-2-3-7 of the Breckenridge Town Code, as the same may be amended from time to time.

5.4 **Town Provision of Services.** Upon the extension of utility services and public improvements as provided for in 5.1 above and acceptance by the Town of the utility services and public improvements to be dedicated to the Town, the Town shall make available and provide all Town provided utilities and services to the Master Planned Property and Units or other improvements served by such utility services and public improvements on the normal and customary basis as such utilities and services are provided and for the normal and customary charges for such utilities and services, except as such charges may be waived by the Town as hereinafter provided.

6. **PUBLIC DEDICATIONS.** Except as expressly provided in this Agreement, there are no public dedications required as part of the annexation of the Annexation Property to the Town. The need for road rights-of-ways, open space, and pedestrian, bicycle, and skier access and trails will be evaluated during the subdivision process and site-specific development review process, and dedications made in accordance with Town regulations at such time.

## 7. **WATER CHARGES**

### 7.1 **PIF Charges.**

- (a) Pursuant to Section 12-4-9(A)(2) of the Breckenridge Town Code, the Town hereby waives the PIF charges for each of the Restricted Units.
- (b) Owners shall pay to the Town applicable PIF charges for each of the Unrestricted Units. Such charges shall be paid for each Unrestricted Unit at or prior to the first to occur of connection of the Unrestricted Unit to the Town's water utility system, or the issuance of a building permit for such Unrestricted Unit. If, for any reason, an Unrestricted Unit is not owned by the Owners at the time of the connection, the PIF shall be paid by the then-current owner of such Unrestricted Unit.

7.2 **Water Rates.** Water users on the Master Planned Property (including owners of both the Restricted Units and the Unrestricted Units) shall pay the then-current rates for water service and other water charges paid by in-Town water users, subject to all decreases or increases in fees adopted in accordance with Town ordinances and regulations. Such water users are subject to all rules, regulations and ordinances pertaining to the Town's water utility system, including all future amendments.

## 8. **ANNEXATION SURCHARGE.**

### 8.1 **Surcharge Fees.**

- (a) No Annexation Surcharge shall be required to be paid with respect to any of the Restricted Units.

- (b) An Annexation Surcharge shall be paid by the Owners to the Town for 35 of the Unrestricted Units, but not for the 22 Unrestricted Units to be constructed using the 22 SFEs of density already within the Town for which Annexation Surcharges previously were paid. The Annexation Surcharges for the 35 Unrestricted Units shall be due and payable for each Unrestricted Unit prior to the first to occur of: (i) connection of the Unrestricted Unit to the Town's water utility system; or (ii) issuance of a building permit for such Unrestricted Unit. The amount of the Annexation Surcharge for each Unrestricted Unit shall be equal to the then-current PIF charge per SFE at the time the Annexation Surcharge becomes due.
- (c) Upon receipt of the Annexation Surcharges, such funds may be deposited by the Town into the Town's General Fund.

9. **OTHER TOWN CHARGES:** The Town hereby waives the following fees, charges or taxes:

- A. application fees for the Development Permit;
- B. fees for future development permit applications, review of plans, building permits and any similar application or permit fees for the future improvement of any Restricted Unit; and
- C. real estate transfer taxes upon the transfer of any Restricted Unit.

Nothing contained herein shall constitute a waiver by the Town of its rights to collect all of its normal and customary fees and taxes with respect to any portion of the Master Planned Property except for the Restricted Units.

- 10. **VESTED PROPERTY RIGHTS.** The Owners hereby waive any and all vested property rights that may exist on the Annexation Property. Further, nothing contained herein shall be construed as to create a vested property right for the Master Planned Property.
- 11. **NO RIGHT OF WAY DEVOTED TO AGRICULTURAL USE.** Owners state, represent and warrant to Town that as of the date of the Annexation Agreement no portion of the Annexation Property consisted of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment as defined in Section 31-12-115(6)(c), C.R.S. As such, the parties agreed that the special notice provisions of Section 31-12-115(6)(b), C.R.S., were not applicable to the annexation of the Annexation Property to the Town.
- 12. **ANNEXATION CONTINGENCIES.** Town and Owners agree that the annexation of the Annexation Property and the effectiveness of this Agreement were contingent upon the occurrence of all of the following events, and the annexation and this Agreement shall be effective on the date on which the last of the following events occurs:

- A. final approval by the Town of the Development Permit by the Town through its land use regulatory system;
- B. final adoption by the Town of an ordinance amending the Land Use District Guidelines for Land Use District 33 as described in Section 3.4;
- C. final adoption of an ordinance placing the Annexation Property into Land Use Districts 1 and 33;
- D. the Town and the Owners' agreement on the terms of the Restrictive Covenant; and
- E. Town's final approval of a Development Agreement providing not less than 18 years of extended vested property rights for the Development Permit,

provided, however, that, because all of the foregoing events occurred or substantially occurred on or before one year from the date of the Annexation Agreement and, therefore, Owners may not pursue disconnection of the Annexation Property from the Town .

13. **PERIODIC REVIEW OF AGREEMENT.** SMI, Braddock, and Town agree that for so long as either SMI or Braddock own any of the Master Planned Property, they will meet and confer at least each 5 years to determine if changed conditions suggest that modifications to either this Agreement or to the Restrictive Covenants are appropriate. The parties agree to meet and confer sooner than each 5 years if the prevailing interest rate on a 30 year fixed rate mortgage increases above 7.5 % per annum, or thereafter by more than 2 percentage points at any time.

14. **MISCELLANEOUS.**

14.1 **Effective Date.** This Agreement shall become effective as of the date and time when all parties hereto have executed it.

14.2 **Parties' Authority.** The Town and Owners represent that each has the authority to enter into this Agreement according to applicable Colorado law and the Town's Home Rule Charter and Ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such party. This Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Agreement are effective.

14.3 **Recording.** This Agreement **SHALL BE RECORDED** in the Summit County Clerk and Recorder's Office in order to put prospective purchasers of the Annexation Property or other interested parties on notice as to the terms and conditions contained herein.

14.4 **Entire Agreement.** This Agreement and the exhibits hereto represent the entire understanding between the parties concerning the annexation of the Annexation

Property to the Town, and no other agreement concerning the Annexation Property, oral or written, made prior to the date of this Agreement, which conflicts with the terms of this Agreement shall be valid as between the parties.

- 14.5 **Disconnection.** In the event of disconnection of the Annexation Property from the Town for any reason, the Town's infrastructure and service obligations shall be void and of no further force and effect.
- 14.6 **Modification.** This Agreement shall not be modified except in writing executed by all parties hereto.
- 14.7 **Additional Remedies.** If at any time any part hereof has been breached by the Owners, the Town may, in addition to other remedies, withhold approval of any or all building or other permits applied for by the Owners on its Annexation Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.
- 14.8 **Binding Effect.** The agreements and covenants as set forth herein shall be binding upon the Owners, their successors and assigns, and all persons who may hereafter acquire an interest in the Master Planned Property, or any part thereof.
- 14.9 **Joint And Several Liability.** If there are two or more Owners, the responsibility of the Owners shall be joint and several.
- 14.10 **Severability.** In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 14.11 **Incorporation of Exhibits.** The attached Exhibits "A" and "B" are incorporated herein by reference.
- 14.12 **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.
- 14.13 **Notices.** All notices required or permitted under this Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Town to:

Town of Breckenridge  
P.O. Box 168  
150 Ski Hill Road  
Breckenridge, Colorado 80424

Attn: Town Manager  
Telecopier number: (970)547-3104  
Telephone number: (970)453-2251

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

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

If intended for SMI, to:

SMI Land LLC  
P.O. Box 804  
Breckenridge, CO 80424

Telecopier number: (970) 453-6095  
Telephone number: (970) 453-6573

If intended for Braddock, to:

Braddock Holdings, LLC  
135 S. Main Street  
P. O. Box 7  
Breckenridge, CO 80424  
Telecopier number: (970)453-6502  
Telephone number: (970)453-2325

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

Stephen C. West, Esq.  
West, Brown, Huntley & Thompson, P.C.  
100 South Ridge St.  
P.O. Box 588  
Breckenridge, CO 80424  
Telecopier number: (970)453-0192  
Telephone number: (970)453-2901

Any notice delivered by mail in accordance with this Section shall be deemed to have been duly given and received on the third business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this

Section shall be deemed to have been duly given and received upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to the intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to have been duly given and received upon actual receipt. Any party, by notice given as provided above, may change the address to which future notices may be sent.

- 14.14 **Waiver.** The failure of any party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving such rights.
- 14.15 **Applicable Law.** This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado, without regard to principles of conflicts of laws.
- 14.16 **Counterparts.** This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.
- 14.17 **Section Headings.** Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
- 14.18 **Amendment.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted.
- 14.19 **No Adverse Construction.** Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement shall not be construed against either party based upon authorship.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By \_\_\_\_\_  
Timothy J. Gagen, Town Manager

ATTEST:

\_\_\_\_\_  
Mary Jean Loufek CMC,  
Town Clerk

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

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

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



SMI LAND, LLC  
a Colorado limited liability company

By: \_\_\_\_\_  
Kermit Miller, Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Kermit Miller as Manager of SMI Land, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

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

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

BRADDOCK HOLDINGS LLC,  
a Colorado limited liability company

By: Breckenridge Lands, Inc.,  
its Manager

By: \_\_\_\_\_  
Thomas Begley

President,

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Thomas Begley, President of Breckenridge Lands, Inc., Manager of Braddock Holdings LLC, a Colorado limited liability company.

WITNESS my hand and official seal.  
My commission expires: \_\_\_\_\_.

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

EXHIBIT "A"

**Legal Description of the Annexation Property**

A parcel of real property situated in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian in the Town of Breckenridge, County of Summit, State of Colorado and being more particularly described as follows:

A part of the B & L No. 1 Placer (MS 114044), a part of the Accommodation Placer (MS 19361) and a part the Braddock Placer (MS 13465) more particularly described as follows;

Beginning at corner 5 of the B & L No. 1 Placer, corner also being corner 15 of the Munroe Placer (MS 1150) and the southwesterly corner of the West Braddock Subdivision;

thence the following four (4) courses along the southerly boundary West Braddock Subdivision:

1. thence  $S75^{\circ}18'02''$ , 660.00 feet along the 5-6 line of the B & L No. 1 Placer and the 15-14 line of the Munroe Placer to corner 6 of the B & L No. 1 Placer, corner 14 line of the Munroe Placer and corner 1 of the Accommodation Placer;

2. thence  $S56^{\circ}04'10''E$ , 310.00 feet;

3. thence  $S05^{\circ}1'33''W$ , 617.00 feet;

4. thence  $S84^{\circ}28'27''E$ , 452.80 feet to a point on the westerly right of way of Colorado State Highway 9;

thence  $S12^{\circ}45'46''W$ , 202.80 feet along the westerly right of way of Colorado State Highway 9 to the northeasterly corner of the Breckenridge Building Center property;

thence the following four (4) courses along the northerly and westerly boundaries of the Breckenridge Building Center property:

1. thence  $N84^{\circ}21''W$ , 522.58 feet;

2. thence  $S05^{\circ}21'39''W$ , 528.18 feet to a point on the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer;

3. thence  $S56^{\circ}14'04''E$ , 53.84 feet along the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer to corner 9 of the B & L No. 1 Placer and corner 4 of the Accommodation Placer;

4. thence  $S11^{\circ}35'37''W$ , 233.91 feet along the 9-10 line of the B & L No. 1 Placer and the 4-5 line of the Accommodation Placer;

thence  $S87^{\circ}17'57''W$ , 875.28 feet to a point on the 2-3 line of the B & L No. 1 Placer;

thence  $N31^{\circ}46'32''E$ , 373.09 feet along the 2-3 line of the B & L No. 1 Placer to corner 3 of the B & L No. 1 Placer;

thence  $N20^{\circ}02'19''W$ , 689.13 feet along the 3-4 line of the B & L No. 1 Placer to corner 4 of the B & L No. 1 Placer;

thence N13°35'04"E, 1037.85 feet along the 4-5 line of the B & L No. 1 Placer to the point of beginning.

Described parcel contains 40.41 acres, more or less.

Perimeter of parcel = 6556.46 feet;

Perimeter of parcel contiguous with Town of Breckenridge = 4456.39 feet

Perimeter of parcel contiguous with Town of Breckenridge = 67.97%

EXHIBIT "B"

**Legal Description of 2.29 Acre Parcel**

Parcel D-2, West Braddock Subdivision, according to the plat recorded November 19, 2007 under Reception No. 874097 of the records of the Clerk and Recorder of Summit County, Colorado

# Memorandum

To: Mayor and Town Council  
From: Vanessa Agee  
Date: January 5, 2010 (*for 1/12/10 work session*)  
Re: Special Permit for International Snow Sculpture Championships Event Barrel Fire(s)

In conjunction with the 2010 International Snow Sculpture Championships, there is a request to have open fire(s) in a 55 gallon drum and/or in a “kiva” stove on Thursday, January 28, 2010 from 7pm-11:30pm and Friday, January 29, 2010 from 7pm to 1am on Saturday, January 30, 2010. Red, White and Blue would approve use of both a 55 gallon drum or a “kiva” stove. The proposed fires would be set up in the event site for International Snow Sculpture Championships which is located in the Tiger Dredge Lot in front of the Riverwalk Center at 150 West Adams.

The current Town Code (Section 5-5-3) prohibits open burning and bonfires within town limits. Specifically:

***Open Fires and Burning Prohibited:*** *Except as authorized by this chapter, it shall be unlawful for any person to conduct open burning anywhere within the town. (Ord 21, 1994).*

However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning and bonfires. Specifically, Section 5-5-5 states:

*Notwithstanding the provisions of section 5-5-3 of this chapter, the town council shall have the authority to issue a special permit for the purpose of authorizing open burning within the town. An application for such a permit shall be made in writing to the town council and shall state the date, time, location and purpose of such fire, and a description of all safety and precautionary measures planned. The town council shall act upon such request at its next regularly scheduled meeting following receipt of the completed application. The town council may grant such application if it finds that there are special and unique circumstances which justify granting the application. All open burning conducted within the town pursuant to a special permit issued pursuant to this section shall be conducted in accordance with the rules pertaining to open burning contained in the town's fire code. The town council may impose such other reasonable conditions upon a special permit as it shall determine to be necessary to adequately protect the health, safety and welfare of the town and its inhabitants. It shall be unlawful for any person to conduct any open burning within the town*

*in violation of the terms and conditions of a special permit issued pursuant to this section. (Ord. 21, Series 1994)*

There would be a maximum of two fires at one time, and the fires would be started, maintained and supervised by the requesting party, members of Team Breckenridge. The fires were responsibly tended and extinguished during the 2005, 2006, 2007, 2008 and 2009 Championships and shown to add to the ambience of the event. Many teams and spectators enjoyed this feature. Town of Breckenridge staff would also be site to monitor the fires. There would be fire extinguishers on site at each fire location, and as per Red, White and Blue Fire Department, only firewood would be used as fuel. No construction wood, cardboard or any type of trash would be used as fuel and the wood would be stacked no more than two feet high during burning. Considering the snow covered location, the fairly closed nature of these type of fire receptacles and the distance from any other fuel sources, staff believes the fires would be well contained, and would not present the threat of spreading. The fires would be completely extinguished by Team Breckenridge before leaving the event site for the night.

The applicants have already discussed this proposal with the Red, White & Blue Fire Department and a permit will be issued. A special permit from the Town Council is the only outstanding issue.

Following is a motion that the Town Council may like to use to approve the special permit:

*“I motion to approve a special permit to allow open fires during the International Snow Sculpture Championships, on Thursday, January 28, 2010 from 7pm-11:30pm and on Friday, January 29, 2010 from 7pm to 1am on Saturday, January 30, 2010. All burning shall comply with the “Open Burning” requirements of Section 307 of the International Fire Code, 2003 Edition. In addition, the applicant shall obtain a bonfire or open burning permit from the Red, White & Blue Fire Department. ”*

**Town Council Call Up Staff Report**

**PROJECT MANAGER:** Chris Neubecker, AICP

**DATE:** December 23, 2009 (For January 12, 2010 meeting)

**SUBJECT:** Gondola Lots Redevelopment Master Plan  
Class A “Call Up” Hearing; PC# 2009010

**OWNER:** Vail Summit Resorts, Inc.

**APPLICANT:** Vail Resorts Development Company (VRDC); Alex Iskenderian

**AGENT:** DTJ Design; Bill Campie

**PROPOSAL:** To master plan the north and south parking lots surrounding the town gondola terminal with a condo-hotel, townhomes, commercial uses, mixed use building, new skier service facilities, new transit facilities, and two parking structures. The proposal also includes development on portions Wellington parking lot and the East Sawmill parking lot, plus modifications to the Blue River, all of which are owned by the Town of Breckenridge. This proposal includes the transfer of 93 SFEs of density from the Gold Rush parking lot to the north and south gondola parking lots.

A reduced parking requirement of 1 space per 1 condo-hotel unit is proposed per a preliminary approval from Town Council. The final development agreement for this reduced parking ratio will be reviewed by the Town Council as a separate item, and has been made a condition of approval.

**ADDRESS:** 320 N. Park Avenue (Gondola)

**LEGAL DESCRIPTION:** Tract A, Block 3, Parkway Center  
Lot 1, Block 3, Parkway Center  
Lot 1A, Block 4, Parkway Center  
Lot 1B, Block 4, Parkway Center  
Lot 1-A, Sawmill Station Square, Filing No. 3  
Lot 1-B, Sawmill Station Square, Filing No. 3  
Lot 1-C, Sawmill Station Square, Filing No. 3  
Lot 2-A, Sawmill Station Square, Filing No. 3  
Lot 2-B, Sawmill Station Square, Filing No. 3  
Lot 3-A, Sawmill Station Square, Filing No. 3  
Lot 3-B, Sawmill Station Square, Filing No. 3  
Lot 4, Sawmill Station Square, Filing No. 3  
Lots 71-74, and Lots 87-90, Bartlett & Shock Addition

**SITE AREA:** Approximately 17.07 acres



**LAND USE DISTRICTS:** East of Blue River: Land Use District 19 (1:1 FAR / 20 UPA Residential; 2 stories)

West of Blue River: Land Use District 20 (1:3 FAR, Lodging or Commercial; 3 stories, except along the Blue River and Watson Avenue, which is 2 stories)

**HISTORIC DISTRICT:** East of Blue River: Main Street Residential / Commercial

**EXISTING CONDITIONS:** Most of the site is used for paved and unpaved guest parking for the Breckenridge Ski Resort. Part of the site includes the Breckenridge Station transit center, the BreckConnect Gondola and ticket office. East of the Blue River are the Wellington and East Sawmill parking lots. There is no significant vegetation on the site, except for willows in the river, and new landscaping around the north gondola lot. The site slopes downhill from south to north at a rate of 2-3%.

**ADJACENT USES:**  
North: Parkway Center Plaza/City Market  
South: 1<sup>st</sup> Bank, Town Hall, and Breckenridge Professional Building  
East: Blue River, Main Street and mixed use buildings  
West: Park Avenue, Mountain Thunder Lodge, and Gold Rush lot

### **ITEM HISTORY**

Planning for this site began in 2006 when VRDC hired Ecosign Mountain Resort Planners from British Columbia to develop a concept plan for this site. After developing several concept plans that were not well-liked by VRDC or the Town, a new design firm, DTJ Design from Boulder, was hired to complete this process.

DTJ Design has been involved since December 2007. In 2008, the Client Review Team, including VRDC, the Town of Breckenridge and DTJ Design, began the visioning process. DTJ Design came up with many different concept ideas for this site, which were then narrowed down to two concepts. These two concepts we called “Extend the Grid” and “Breckenridge Station” (also known as the “Grand Hotel”). Eventually, these two concepts merged into one preferred concept. At that time the public scoping process began with stakeholder meetings held throughout the spring and summer of 2008. In the spring of 2009, VRDC submitted a formal master plan application. The process was reviewed at six public meetings with the Breckenridge Planning Commission. The application was approved by the Planning Commission on December 1, 2009.

On December 8, 2009, the Town Council voted to “call-up” the application for a de-novo hearing.

### **TOWN COUNCIL CONCERNS**

During the meeting on December 8, 2009, the Town Council expressed several concerns leading to this call-up hearing. These concerns included:

- Density Allocations: The density of some uses was seen as too broad, and the Council requested that allowed density for some uses (including the condo-hotel) be narrowed.
- Parking Structure: There were concerns over the capacity of each structure, and a desire to ensure that the structures are approximately the same size, without a majority of cars in one

structure and very few cars in the other. There were other questions about the design of these structures, and how they can be made attractive and designed to blend into the site.

- **Sustainability Language:** There was a desire to strengthen the master plan notes on sustainability to clarify the commitment of VRDC and require some type of third-party certification. Removal of the existing transit center was a concern.
- **Council Goals:** There were questions raised over the Town Council goals from 2008, and if this project met those goals. The Council asked if the 2009 goals were available and met with this project.
- **Business Plan:** There were questions about the business issues, and how the Council would know that the master plan could not be implemented without the business issues being resolved.

### **PROJECT GOALS**

The visioning process for this site began as collaborative effort between Vail Resorts Development Company and the Town of Breckenridge. During that process, several key design drivers were developed to help steer the project in the right direction. These design drivers include:

- **Compatibility with Breckenridge:** Create an environment that is compatible with the values and character of the existing Town.
- **Authentic story:** Relate to the Town of Breckenridge in an authentic way, building on the existing story of this strong community.
- **Integration with the fabric of town:** Integrate with the Town fabric so that the newly developed area has a seamless transition to the existing town.
- **Balance transit/transportation issues:** Develop a balanced solution that improves the transit and transportation issues associated with the bus system, the gondola, the Riverwalk/bike path, and the pedestrian experience.
- **World class visitor/resident experience:** Establish a world class visitor/resident experience within the ski area, as well as the Town. This includes creating an outstanding community that demonstrates a high level of quality and a character that will stand the test of time.
- **Sustainability:** Develop a neighborhood that represents Vail Resorts Development Company’s and the Town’s commitment to creating sustainable places.

### **SOURCE OF DENSITY**

The density allocated to these sites comes from several sources, including the underlying Land Use Guidelines, previous master plans, previous PUDs, and previous density transfers.

	Gold Rush Lot Block 4, Parkway Center	Gondola North Lot Block 3, Parkway Center	Gondola South Lot Sawmill Station Square	TOTALS
Original/Previous Density (SFEs)	190	103	149	442
Density Transferred to Peaks 7 & 8	(50)	(30)	(50)	(130)
Density Reductions (25%)	(47)	(5)	(59)	(111)
<b>Remaining SFEs</b>	<b>93</b>	<b>68</b>	<b>40</b>	<b>201</b>

**DENSITY PROPOSAL**

<b>Master Plan Density Distribution *</b>				
Building Type	Proposed Use	Maximum Commercial SFE / Building	Maximum Residential SFE / Building	Maximum Total SFE / Building
Townhomes (All 3)	Residential	0	60	60
Skier Services	Commercial	25	0	25
Mixed Use Building	Mixed Use	15	15	30
Condo Hotel **	Mixed Use	20	150	170
Warming Hut	Commercial	3	0	3

*\*Note: This table depicts the maximum density (SFEs) per building. The total density for this property (including the density transfer from the Gold Rush Parking Lot) is 201 SFEs, which will not be exceeded unless affordable housing is added to the project. All affordable housing would be in excess of the 201 SFEs.*

*\*\*The Condo Hotel will have a minimum of 118 SFE of total density. This equal approximately 152 units.*

As proposed, the combined maximum density allocations per building exceed the total allowed density for the site. These densities indicate the most commercial and most residential density that could be built at one building site, but the entire project as a whole could not exceed 201 SFEs. A note has been added to the density chart to indicate that the condo-hotel would have a minimum density of 118 SFEs. Also, no more than 25% of the total density can be developed as commercial density, per Sheet #1 of the Master Plan (See “Master Plan Density” section.) No positive or negative points are warranted under this policy.

The Master Plan Density Distribution is based on a best guess scenario, while still giving each building room to be designed. Since the buildings are not designed and only conceptually understood, it is difficult to create a density distribution that would be any more definitive. The specific buildings will have to be designed under then-current market conditions and must have flexibility to be successful project at the time of construction. Town Council stated desire to have the master plan developed as closely as possible to the vision. There are several elements of the master plan that will control the size, mass and density of the buildings; including the master plan layout, density restrictions as listed above, height restrictions in the guidelines, and architectural character statements included in the plan.

The Applicant agrees with Town Council that the condo-hotel is a major component of the project. The Applicant has added language that will guarantee a minimum size of 118 SFE for the condo-hotel buildings. Depending on the final design of the units and the amenities, this building would have approximately 152 units at 118 SFE of density. This is the minimum size. The best guess scenario for this building is much larger placing closer to 140 SFE in this building with 162 units.

**Density Multipliers**

The allowed density per unit is based on the Development Code in effect at the time of the master plan application. The current multipliers, or allowed square feet per Single Family Equivalent (SFE), for uses proposed for this master plan are as follows:

Use	Square feet per SFE
Townhome:	1,600 sq. ft.
Condo hotel (residential):	1,200 sq. ft.
Condo hotel (Commercial):	1,000 sq. ft.
Hotel (with no kitchens of any kind in units)	1,380 sq. ft.
Mixed use building (residential):	900 sq. ft.
Mixed use building (commercial):	1,000 sq. ft.
Skier Services Building (commercial):	1,000 sq. ft., provided that areas that are built to serve the transit function of the Skier Services building will be excluded from counting toward the total 201 SFE density within this master plan. These spaces may include waiting areas, driver restrooms, restrooms for bus passengers, etc.

There will be no single family or duplex residential units permitted within this master plan. Also, no density has been assigned for the parking structures. These buildings have not been counted as density in the past, as far as Staff can tell. The current Development Code exempts “any underground portion of a building which is used to provide required or approved parking for the project” from the allocation of density in commercial projects. For multi-family projects, “Common areas such as lobbies, hallways, and amenity areas shall not be counted against the density”; such common areas include the parking below each building. The code does not clearly indicate that the parking structures count (or do not count) as density. Since the parking structure is not a commercial use, but is providing the required parking for the Breckenridge Ski Resort, Staff does not consider this density. We welcome Town Council input on this viewpoint.

As a matter of precedence, staff researched other projects that have parking structures and underground parking. These included Mountain Thunder Lodge, Main Street Station, Valdoro, Village at Breckenridge. We also looked at the Exchange Parking Structure and the Powderhorn condos. None of these projects counted the parking structures as density (including above ground portions at the Village and Powderhorn condos, as density). The staff report for the Exchange Parking Structure indicated that “the proposal does not have any associated density or mass, since the above ground portion is not enclosed and the below ground portion is used as parking.” In actuality, about half of the “below ground parking” at the Exchange Parking Structure is above grade. We have also not counted the parking structures as mass. Doing so would use up the required mass for the other buildings, and preclude this development from moving forward.

**Mass Bonus:** Policy 4 (Relative) Mass allows a bonus of additional floor area in addition to the allowed density, for provision of above ground common elements such as recreation areas, lobbies, hallways, etc. The allowed mass multiplier is based on the proposed use. Existing mass multipliers in the current Development Code are:

Townhomes:	20% of allowed density
Condominiums and Apartments:	15% of allowed density
Condo-hotels and Hotels:	25% of allowed density
Commercial:	no bonus

Deviations from the recommended mass are allowed, but negative points are allocated on an incremental scale. Staff also notes that although the density for these properties are determined by a recorded density

transfer covenant, the underlying density in Land Use District 20 was based on the Floor Area Ratio (FAR) of 1:3 for this land use district. Section (4) B of Policy 4 also states:

***B. In a land use district where density is calculated by a floor area ratio only, residential and mixed use projects shall not be allowed additional square footage for accessory uses, and the total mass of the building shall be that allowed by the floor area ratio of the specific districts. In residential and mixed use developments within land use districts 18, and 19, no additional mass shall be allowed for the project and the total allowed mass shall be equal to the allowed density. (Ord. 10, Series 1990) (Emphasis added)***

In this case, the density is not based upon a floor area ratio only. The recorded density covenant allocates density to these properties, and the density is listed in SFEs. Since the density is listed in SFEs and not an FAR, a mass multiplier will be allowed.

No mass is proposed for the parking structures. Since “allowed mass” is a function of “allowed density”, there is no mass allocated to these structures. Staff does not believe that these structures count as mass, since they are primarily not providing parking for commercial or residential uses at this site. The structures will provide parking for outdoor recreational uses off-site (uses which are not themselves density), and for public uses during the off-season. For this reason, no density or mass is allocated or needed for the parking structures.

No negative points are warranted under this policy. Individual buildings will be reviewed against this policy and points will be allocated (if any) during the development review process for individual buildings.

### **SITE PLAN AND LAND USE**

The site plan is designed around five main uses. These include parking, skier services/transit, condo-hotel, a mixed use building, and townhomes.

Two parking structures are proposed, including one at the north end of the site adjacent to Park Avenue and French Street, and another structure along Park Avenue behind 1<sup>st</sup> Bank and Town Hall. These locations were selected due to their access to Park Avenue, and also to maintain a more open and pedestrian friendly environment near the center of the site. A condo-hotel is planned near Park Avenue and Watson Avenue, across from the gondola plaza. The existing transit loading area is proposed to move from its current location south of the gondola ticket office to a location immediately west, along Park Avenue. This will help to create a more pedestrian friendly gondola plaza without buses and diesel fumes, and allows for a better connection to the Blue River. In this plan, the existing Breckenridge Station is proposed to be removed, and the transit functions of the building would be accommodated in the new skier services building.

At the north end of the site, next to the Blue River, townhomes are proposed. These would be accessed from North Depot Road, which also provides access to the north parking structure. These units would be designed with views of and access to the Blue River and pedestrian/bike path.

At the south end of the site, between the Blue River and the condo-hotel, a mixed use structure is planned. This building would likely include commercial uses on the ground floor, with residential uses on the upper floors. This new street will become one of the main pedestrian and vehicular accesses to downtown from this property. A relocation of the Blue River further east would be required.

There are also plans for a small kiosk or small building at the east end of the gondola plaza. The specific use for this building has not yet been identified, though it is tentatively identified as a “warming hut” with up to

3,000 square feet (3 SFEs) of commercial density. Other potential uses might include a café, restaurant, ice skate rentals, information center, etc. This sunny location should work well for après ski activities, such as a restaurant/bar, which could act as a good meeting point at the end of the ski day. Outdoor seating in this location could also help add activity to the plaza during summer months, and would create a great vantage point for “people watching” toward the plaza and river amenities.

At this time, staff finds no reason to assign positive or negative points under this policy.

### **BUILDING HEIGHTS**

The plan includes buildings ranging from 1 ½ stories (skier services/transit) up to 5 stories tall (a condo-hotel). The condo-hotel building will be taller than most other buildings in downtown or the adjacent historic district. But this building is also located near other tall lodge properties, including Mountain Thunder Lodge to the west and River Mountain Lodge to the south. The condo-hotel is proposed on the west side of the site, away from the historic district. Some general language in policy 6 (Relative) Building Height, addresses the potential impacts of building height:

*1 x (-2,+2) The height of a building has many impacts on the community. Building heights that exceed the Land Use Guidelines can block views, light, air, and solar radiation; they can also disrupt off site vistas, impact scenic backdrop and penetrate tree canopies that provide screening to maintain a mountain forest character. It is encouraged that the height of new buildings be controlled to minimize any negative impacts on the community.*

Land Use District 20 recommends buildings up to three (3) stories in height (38’ to the mean), and two (2) stories in height (26’ to the mean) along the Blue River and Watson Avenue. As proposed, the condo-hotel would be up to five (5) stories in height, with the fifth level of the hotel built into the roof. This does not exceed the absolute policy, but warrants twenty (-20) negative points. The parking structures would be up to three (3) stories tall on 4 levels, with some parking on the upper (roof) level. The proposed townhomes would be 2 – 3 stories. Mixed use buildings are anticipated at about two (2) stories. The transit & skier services building would be about 1 ½ stories. The building height policy encourages incorporating the upper most story of density into the building roof. Staff believes that this can be accomplished with the condo-hotel and townhomes, and as such one positive point (+1) may be warranted during the site plan review, but is not warranted at this time.

Following is a portion of the master plan language on building height for the condo-hotel:

*Heights of Buildings-This building will be up to five stories in height, not reflecting the recommendations in the General Design Criteria for Land Use District #20. However the outside face will incorporate the fifth floor into the roof, using dormers to create windows in those spaces. The additional height within this building allows the other buildings to vary between one and three stories throughout the site, creating a more organic spread of density that reflects the adjacent communities that include a variety of building heights between five and one story.*

In addition to the condo-hotel proposed at up to 5 stories, the townhomes are proposed at 3 up to stories. The Land Use Guidelines recommend buildings of up to 3 stories, “*The determination of acceptable building heights will be made during the development review process. Buildings in excess of three stories are discouraged, except along the Blue River and Watson Avenue where buildings in excess of two stories are discouraged.*” (Emphasis added)

The plan is designed to have lower buildings along the Blue River and near the historic district, with the taller buildings closer to the bed base west of Park Avenue. Portions of the townhomes are proposed at 3 stories, but these taller building elements would be facing North Depot Road, with 2 story elements facing the Blue River. Language has been added to the master plan notes for the townhomes, to indicate that portions of the buildings along the Blue River shall be 2 stories, with 3 story elements allowed only along North Depot Road.

Due to the condo-hotel proposed at up to 5 stories tall, staff recommends the allocation of twenty (-20) negative points.

### **ARCHITECTURAL CHARACTER**

The design character of the buildings will depend on each building's use and location. For example, the mixed use building and townhomes are closer to the Blue River and the historic district and will be shorter and will reflect the design character of buildings along Main Street. The condo-hotel will be the tallest building on the site, and the most visually dominant. It will be designed as an icon for this site, and its scale will not be downplayed but rather embraced and celebrated. Also, the skier services/transit building should be a unique and easily identifiable building, and can be used to make a statement without impacting the historic district.

#### **Condo-Hotel**

This building will take its design cues from other civic structures in town, such as the old Summit County Courthouse on Lincoln Avenue and the historic Colorado Mountain College (CMC) on Harris Street. The intent with this new building is to use design features that could have existed on a destination hotel in the Rocky Mountain west. While brick has generally been used only on civic structures in Breckenridge, staff supports the use of brick and stone on this large structure. We do not believe that a primarily wood sided building is appropriate on such a large building. Also, as this building is in the downtown core, it is not appropriate to use log siding or rougher exterior treatments that might be used in a more alpine setting. However, Policy 5 (Relative) Architectural Compatibility recommends brick only as an accent:

*Exterior building materials and colors should not unduly contrast with the site's background. The use of natural materials, such as logs, timbers, wood siding and stone, are strongly encouraged because they weather well and reflect the area's indigenous architecture. Brick is an acceptable building material on smaller building elements, provided an earth tone color is selected. Stucco is an acceptable building material so long as an earth tone color is selected, but its use is discouraged and negative points shall be assessed if the application exceeds twenty five percent (25%) on any elevation as measured from the bottom of the fascia board to finished grade. (Emphasis added)*

Staff finds that the use of brick or cut stone is appropriate on a building of such scale in this location. However, it should not be a primary material without allocation of negative points during the development review for individual buildings, and we have included a condition of approval to this effect. (No negative points have been assigned in the master plan for the use of brick.)

#### **Proposed Master Plan Language (Condo-hotel):**

*Architectural Character: This building plays a major role in the Master Plan and will reflect a traditional downtown western hotel character. The building will create an iconic image within the downtown and will emphasize the connection to the larger traditional buildings within Town.*

*Building Materials: Natural materials; including brick, wood siding, and stone may be used for this building.*

*Heights of Buildings-This building will be up to five stories in height, not reflecting the recommendations in the General Design Criteria for Land Use District #20. However the outside face will incorporate the fifth floor into the roof, using dormers to create windows in those spaces. The additional height within this building allows the other building to vary between one and three stories throughout the site, creating a more organic spread of density that reflects the adjacent communities that include a variety of building heights between five and one story.*

*Roofs: This building may have both gabled and hipped roof types. There may be flat roofs types that also are used for outdoor decks.*

### **Townhomes:**

The townhomes will take design clues from buildings on North Main Street. They will include materials such as brick, stone and wood siding. Colors will reflect the colors of buildings in the downtown core. Staff would like to see these buildings using traditional Breckenridge vernacular, including steeply pitched roofs and vertically oriented windows. We feel that these design features are important, as they will help this site to blend with the character of the adjacent historic district. The use of brick throughout Breckenridge has generally been limited to civic buildings (such as the Summit County Courthouse, CMC, and other municipal buildings), although there are a few exceptions (Red Ugly, and 314 Lincoln Avenue). We believe that brick should be used in only limited qualities, such as for foundations and chimneys. As these buildings are close to the Blue River, it may also be appropriate to use river rock on foundations and accents.

### Proposed Master Plan Language:

*Architectural Character: The townhome buildings will most reflect the character of the northern Main Street community. These smaller building will reflect the smaller massing and historic detailing found in much of the residential area of downtown.*

*Building Materials: Natural materials; including brick, wood siding, and stone may be used for this building. The colors used within these building materials will reflect the colors of the building in the downtown core.*

*Heights of Buildings: These buildings will be no more than three stories in height near North Depot Road, and no more than two stories in height near the Blue River as recommended by the General Design Criteria for Land Use District #20.*

### **Mixed Use Building:**

This building will most closely reflect the commercial buildings in the 100 block of South Main Street. They will be set at zero lot line (at the sidewalk edge), and will include storefront windows on the lower level (for display of merchandise) and smaller upper level windows in the residential units. The buildings will use a combination of wood siding, brick and stone. Staff also suggests design features such as recessed entries, transom windows, kick plates, cornices and sign bands. These features are important to create the commercial feeling of the street and make the sidewalks welcoming to pedestrians. These design elements have been included in the master plan notes.



Roof forms proposed include gabled, flat and false front roofs. It will also be important that the scale, mass and façade rhythm look right to create the feeling of individual buildings. Some examples of newer buildings that fit into the historic rhythm of the 100 block of South Main Street include the Struve building at 122 South Main Street, and the Rounds Building at 137 South Main Street.

Proposed Master Plan Language:

*Architectural Character: This building will be the closest in character to the South 100 block of Main Street. Historic looking storefronts with residential uses above and a zero lot line appearance. Design features of these buildings could include recessed entries, transom windows, kick plates, cornices and sign bands. Upper level windows should be smaller, residential type windows. The building sits upon the main street of the site (Depot Street) and functions much in the same way the buildings on Main Street function.*

*Building Materials: Natural materials; including brick, wood siding, and stone may be used for this building. The color and primary material may change per each tenant space to give the appearance of individual buildings. The colors used within these building materials will reflect the colors of the building in the downtown core.*

*Heights of Buildings: This building will be no more than two stories in height and as recommended by the General Design Criteria for Land Use District #20.*

*Roofs: This building may have a variety of roof types to create the Main Street image, including gabled, flat, and false front.*

**Skier Services/Transit Building:**

This building is planned to incorporate the architectural styling of a train station that could have existed in Breckenridge. It is not a replica of any building that existed historically in town, although the town's train station (with a much simpler design) was very close to this location. The building is planned to reflect the railroad heritage of the west, which may include a large sheltering roof with significant eaves and focal elements, such as a clock tower. The building will use natural materials such as brick, wood siding, and/or stone. Colors will reflect dark natural colors, such as the red brick of the old Summit County Courthouse in Breckenridge. It may have both gable and hipped roofs.

Staff believes that the proposed materials and style are appropriate for this development. We like the idea of using features traditionally used in a train station, since this building will serve as a transit center and our historic train station was very near to this location. Also, some type of tower element will help to visually identify this site as a gathering place and may serve a valuable function (for example, if a clock is installed). We also support the proposed use of brick on the building. While most historic buildings in Breckenridge (including the historic train station) did not use brick, many civic buildings did use brick. This civic type structure is unique and its function and architecture should be celebrated.

Proposed Master Plan Language:

*Architectural Character: This building will represent the iconic nature of a transit station in Breckenridge. The design will reflect the traditional train depots of the west.*

*Building Materials: Natural materials; including brick, wood siding, and stone may be used for this building. The colors used will relate to the historic Summit County Courthouse, as well as the new Condo Hotel building within the project.*

*Heights of Buildings; This building will be no more than two stories in height and as recommended by the General Design Criteria for Land Use District #20.*

*Roofs: This building may have both gabled and hipped roof types.*

## **Parking Structures**

The design of the parking structures will be some of the most challenging and important elements of this plan. These large structures will need to accommodate their primary function while fitting into the core of downtown without overwhelming the site. A variety of techniques can be used to reduce the visual mass of the buildings, and to help them look less like traditional parking structures. Changes in building materials, wall planes and the use of both solid and void spaces can help the structure fit into the urban fabric of the site. They can also help the building to maintain a human scale. However, it will also be important to identify these buildings as parking structures, so that visitors quickly find their entrances and don't reduce traffic circulation efficiency while seeking a place to park. Proper use of landscaping and earthen berms can also be effective at softening the scale and materials of large buildings.

### Proposed Master Plan Language:

*Architectural Character: Much of the architectural character for the two above ground parking structures will be related to making the mass feel smaller and using materials that create a like aesthetic to the community. The design will seek to lessen the visual impact of the parking structure and help the buildings blend into the surrounding neighborhood through the possible use of windows, faux windows, storefront, and other architectural techniques.*

*Building Materials: Natural materials; including brick and stone may be used for this building. Additionally there may be some concrete panels and metal screening used to create additional architectural interest. The colors used within these building materials will reflect the colors of the building in the downtown core.*

*Heights of Buildings: These buildings will be no more than three stories in height and as recommended by the General Design Criteria for Land Use District #20.*

Staff and the Applicant will be happy to discuss ideas on how the parking structure may be designed to minimize its visual impact and improve the aesthetics of these buildings.

## **Gondola Roof Structure**

During review and approval of the gondola itself, a roof structure was approved above the gondola terminal in town. During the construction of the gondola, it was determined that the roof structure could not be built at the same time if the gondola was to be open in time for the winter of 2006-2007 season. As a result, the roof structure was not built, but foundations were installed in anticipation of later installing the roof.

With the review of this master plan, the Applicants feel that the roof is not needed. They have concerns over the size of the structure, and feel that the roof is not appropriate within this development as planned.

As a result, a note on the Gondola Building has been included on Sheet 1 of the master plan. The note essentially states that the roof structure is not compatible with the architectural character of the adjacent buildings, and is therefore an impediment to the plan. Following is the propose language in the master plan:

*The plans for the Gondola approved under Development Permit #2004010 provided for a roof structure to be constructed over the Gondola base facilities, but that structure has not yet been constructed. The roof as designed may not be compatible with the architecture of the adjacent buildings provided for in this master plan and, in addition, may present some impediments to certain maintenance, repair, and replacement activities anticipated to be necessary. Accordingly, to avoid a waste of resources, the roof should not be constructed as provided for under Development Permit #2004010, [and] that Permit should be administratively amended to delete the roof requirement.*

While Staff believes that the gondola roof was an important design element that helped to get the gondola approved, and we feel that the roof structure could be designed into this plan and become a focal element of the site, we are not committed to this roof design. We welcome input on the gondola roof. We will provide a graphic of the roof structure as approved for the meeting.

### **AMENITIES**

The success of this project will depend partly on the amenities and physical design of the public spaces. The main public space in this plan is the expanded gondola plaza. The current plaza is curtailed by the transit staging area. The proposed plan expands the plaza and ties it into the Blue River much better, thereby making it a more pedestrian friendly area, particularly in summer when the plaza could be used for special events.

The gondola plaza itself will be one of the most important and most visited spaces within this plan. The plaza is the main loading and unloading zone for the gondola, and is designed to accommodate large crowds. The space is designed to be large enough to handle the volume of gondola riders, while remaining small enough to feel intimate on less crowded days. It will be a place for meeting in the morning, and a place to reconnect for après ski activities at the end of the day. The plaza will be formed by the transit/skier services building to the west, the gondola to the north, and the Blue River to the east.

A café with outdoor seating is planned for the skier services building, with seating facing the plaza and the morning sun. Another outdoor seating area is possible at the warming hut/café/restaurant near the river and pond. This area would be sunny in the afternoon and could also work well as a coffee shop or a restaurant/bar for après-ski activities. It would also provide great people watching in summer with the plaza, river and pond in view. The gondola plaza would be built in Phase II.

Another public amenity is the new transit staging area and transit center. The current transit staging area creates conflicts between buses, cars and pedestrians. The new location is designed to minimize these conflicts, and could also help the buses stay on schedule by providing direct access to Park Avenue, with a dedicated bus-only curb cut.

One other amenity of this plan includes a possible conference facility within the condo-hotel. Although not “public”, this approximately 12,000 – 15,000 square foot facility would provide additional venue space in the downtown core, which has been identified as a community need by the Breckenridge Resort Chamber. Since it is unknown at this time exactly how much conference space will be provided, staff recommends that these points (if any) be assigned during the site specific development review of the condo-hotel, rather than at this time. As such, no positive or negative points are currently recommended.

## **PRIVATE VEHICLE ACCESS AND CIRCULATION**

Access into the south parking structure was one of the concerns raised the public during past meetings. We have continued to work with the Applicant and 1<sup>st</sup> Bank to address this issue. At this point, there are no significant changes proposed to the location of the access. This is because we believe the proposed location to be the best option at this time. Alternatives considered included: 1. access from Watson Street; 2. relocating the access further north (across from Mountain Thunder Drive); 3. use of two access points (one into the bank and one for the structure); 4. loading the structure primarily from South Depot Road; 5. swapping the structure and hotel locations. These options were dismissed because they resulted in severe degradation of the project, too much conflict between pedestrians and vehicles, increased traffic on Main Street, and/or were not seen as realistic options for CDOT.

This access point would be improved over the current curb cut at 1<sup>st</sup> Bank with the addition of new turn lanes, curbs and an access plan through 1<sup>st</sup> Bank and Town Hall. The Applicant has been in discussions with 1<sup>st</sup> Bank concerning the access to the parking structure behind the bank. The previous plan showed two options: one access was shown to be relocated to the east side of the parking structure; the other option was to leave the access point behind the bank, and merge traffic with the parking structure. At this point, 1<sup>st</sup> Bank supports with this proposal, provided that access between the front of 1<sup>st</sup> Bank and Town Hall is preserved in the winter with removal of the planters. The Town Manager has indicated that this can be done. The revised plan also includes some additional parking for 1<sup>st</sup> Bank to the south of the parking structure. This would be on Vail Resorts property, and a separate easement between the Applicant and 1<sup>st</sup> Bank will be needed. Finally, the design into and out of the parking structure would include some curbs and turn lanes that ensure that vehicles entering or exiting the structure can not use the 1<sup>st</sup> Bank and/or Town Hall property to access Ski Hill Road. Only 1<sup>st</sup> Bank and Town Hall customers and staff could get through to the front of these buildings to access Ski Hill Road. This option was important to ensure that bank customers could head south on Park Avenue, even if the parking structure exit is congested or does not allow left turns out.

The site is well served by an existing network of public streets including Park Avenue (State Highway 9), Main Street, French Street, Watson Avenue and Ski Hill Road. These existing roads provide the majority of the private vehicle access to the site. Two new roads are also proposed, including South Depot Road, which connects to the existing Wellington Road at Main Street, and North Depot Road, which will connect into the site from French Street on the north. Good pedestrian circulation is also proposed, with improvements to the Riverwalk providing good access to downtown, and with a pedestrian bridge providing improved access to North Main Street. As a result, staff recommends the assigned of three (+3) positive points for circulation.

## **TRANSIT ACCESS**

The buses are proposed to access the site from Watson Avenue and depart from a new curb cut onto Park Avenue. A mountable curb has also been proposed to allow buses to use North Depot Road in case the egress to Park Avenue is blocked.

The current transit building (Breckenridge Station) is proposed to be removed from the site (there are no current plans to re-use the building) and the current bus loading is proposed to be rebuilt north of Watson Avenue along Park Avenue. All new transit operations would operate from the new skier services building, which would also accommodate transit uses. Staff did not originally recommend positive points for this design, since the plan simply replaces the current functions of the existing Breckenridge Station, and since no addition transit service is proposed. However, Planning Commission awarded positive four (+4) points to this design as they found that transit circulation would be improved with this new access plan, the waiting experience would be improved with the new transit station, the pedestrian experience at the plaza would be

improved with out idling buses so close, and that pedestrian conflicts would be reduced. We have left the point analysis as approved by the Commission.

During the two year visioning and master plan development, the staff and Applicant worked a great deal with the local transit operators to create an improved transit center. The improvements listed below were a result of interaction with transit providers on how to improve their transit center. The positive four (+4) points were awarded based on the following improvements to the transit center:

- The design allows for 11 bus parking stalls to be in one place and to load from the same side. This is more typical of a large transit station and allows riders to view the loading side of all of the buses from one location. Currently buses are dispersed in the turn around and on Watson Avenue. This creates a difficult situation for people waiting for the bus and trying to figure out where they should be to find their bus.
- The master plan accommodates the largest bus used in Summit County in all 12 spaces shown in the plan. Currently not all the bus parking areas are big enough to park the large county buses. The new design provides space for the different bus systems to use larger buses in the future.
- The master plan creates potential to add a 12<sup>th</sup> bus by providing a spot along Watson for a “Main Street Trolley” bus if the Town desires to add one. If this spot is not used for a “Main Street Trolley” then it can be used for future expansion or built to serve as a drop off for touring buses.
- The new design also greatly reduces the pedestrian and vehicular conflicts with buses. The transit center is moved out of the center of the pedestrian flow between the parking structure and the gondola and vehicular traffic is greatly diminished on Watson Avenue. If pedestrians are in the bus area it will not be because they are trying to navigate an icy walk to the gondola. Today, there are many instances with cars dropping off in the bus area and pedestrians cutting across the loading zones to access the gondola.
- The master plan shows a new transit building that will have an upgraded environment, creating a pleasant experience while waiting for the bus. The building could be designed with a café and small store for getting a hot coffee and a sandwich while waiting. The waiting area has the potential to be a great place to enhance the bus riding experience.
- The bus-only exit onto Park Avenue also includes a merging lane when the buses turns left, allowing the buses to have a place to stage before entering traffic. This allows the bus to only deal with one flow of traffic when exiting and then merge separately creating a much more accessible exit to Park Avenue.
- The plan also develops a roundabout at Park Avenue and French Street so that during times when buses can not make a left turn out of the transit exit they can turn right and navigate the roundabout to head south.

There is an expectation that features that receive positive points will be built and paid for by the Applicant.

### **PARKING**

Parking for all new uses will be provided under the new buildings, except the skier services building, warming hut and conference center, which is in the parking structure. Also, parking for the mixed-use building is partially on-street. Parking for day visitors to the Breckenridge Ski Resort will be in two new parking structures. The parking structures are sized to accommodate approximately 1,270 vehicles, (535 in the south structure and 735 in the north structure), which exceeds the current capacity of the two surface lots. The current surface lots each hold slightly less than 600 cars each. A note has been added to the master plan since the Town Council meeting on December 8<sup>th</sup>, to indicate the south parking structure will hold a minimum of 400 cars, but would likely hold closer to 500. This would mean that the north parking structure could hold as many as 850 cars, but would likely hold about 750.

The south parking structure is conceptually designed to have 133 cars per floor. Since the baseline is 535 cars, the limit for size is set at 400 so that there is flexibility to remove a floor if necessary due to unknown soil conditions, redesigned hotel layout, or business issues related to the financing of the structure. It is also important to note that the structure could be phased by level and not be built to its ultimate size initially.

No new surface parking lots are proposed, but some on-street parking is proposed along North and South Depot Roads, which would be privately maintained. Staff proposes that the on-street parking be allowed to count toward the provision of required parking. (The definition of an “off-street parking space or stall” is: “A parking space for a motor vehicle which is located on the property to be developed and not on or within any public property or public street, alley or right-of-way.”) These spaces are not on any public street, alley or right-of-way. Considering that the Applicant is constructing the street and will own and maintain the private streets, staff believes that these parking spaces should be considered like private parking lots. Since on street parking is not normally counted toward the parking supply, we have added a special finding to the proposed Findings and Conditions. (See finding #7)

Parking for the condo-hotel, townhomes and residential portions of the mixed use building will be below each building, per Sheet 1 of the master plan notes. The current master plan identifies the following parking requirements for each use:

Use	Parking Proposed in Plan	Parking Required by Code	Proposed location
Townhomes	2 per unit	1.5/ 1-bedroom and larger	Under building
Condo-hotel	1 per unit	1.0/ studio or 1-bedroom	Under building
		1.5/ 2-bedroom or larger	Under building
		0.5/ lock-off unit	Under building
Mixed Use Building (Residential)	1 per unit	1.5/ 1-bedroom or larger	Under building
Mixed Use Building (Commercial)	1/400 sq. ft.	1/400 sq. ft.	Parking on street
Skier Services Commercial	0	Special review by Director and Planning Commission	In Parking Structure
Conference Space in Hotel	0 extra spaces	Special review by Director and Planning Commission	In Parking Structure. Conference attendees would park under hotel or in structure.

The Off-Street Parking Regulations for the Town of Breckenridge identify the required parking spaces for all uses. Section 9-3-8 B of this code also allows Mixed Use Developments of greater than 100,000 square feet to base the parking requirements on a qualified parking study.

*“D. Mixed Use Developments: The requirements of this Section may be increased or decreased for a mixed use development containing not less than one hundred thousand (100,000) square feet. Such change shall be accomplished by a development agreement in connection with the approval or amendment of a master plan. Any request to vary the requirements of this Section shall be supported by a written analysis paid for by the applicant and prepared by a qualified parking consultant. Once approved, the development agreement and master plan shall establish the off-street parking requirement in lieu of that set forth in this Section and shall serve as one of the controlling development policies for a*

*site plan level development of the property which is the subject of the master plan as provided in subsection H of policy 39 "(Absolute) Master Plan", section 9-1-19 of this title. (Ord. 3, Series 1999)"*

A revised parking study from Felsburg, Holt & Ullevig transportation consultants is has been provided to Staff and was provided to the Town Council for the parking development agreement on December 8<sup>th</sup>. The study explains why the proposed parking plan is considered sufficient. The study makes several assumptions about the guest arrival mode split (transit usage by guests and employees) and varying peak demand times based on use. As mentioned earlier in this report, the Town Council has given preliminary approval for a reduced parking supply of one (1) parking space per one (1) condo-hotel unit, as opposed to 1.5 spaces per 1 unit as required by the code.

Staff supports the idea of shared parking among complimentary uses. We support the reduction in parking for the condo-hotel, due to the proximity of transit to this site, the proximity of downtown, and the overall walkability of the area. We believe that if any property in town is could take advantage of these assets, this is the project.

At this time, staff recommends positive four (+4) points for providing over 95% of the parking either screened in a structure or under the buildings. We also recommend positive one (+1) point for making parking available to the public (in the structure) and positive one (+1) point for shared driveway access (shared with 1<sup>st</sup> Bank and Town Hall on the south structures.)

### **BLUE RIVER CORRIDOR**

The restoration and integration of the Blue River into the site plan are key goals of this master plan. The river physically separates this site from the downtown core, but it will become a new link to downtown through an extension of the existing Riverwalk and new pedestrian bridges. By creating a bicycle and pedestrian pathway along the river, the Riverwalk to the south will be connected to the existing bike path on the north. This important link is currently missing, and this portion of the river is currently inaccessible and generally unseen by most locals and visitors.

The river will also be improved for better aquatic habitat, including fish and other riparian species. As this is a master plan and not a site specific site plan approval, many of the details of the river restoration have not been determined at this time. However, a hydraulic analysis of the river (including river width, elevation and flow/velocity) will be required before development permits can be issued for Phase II or Phase III of this plan.

Portions of the river are owned by the Town of Breckenridge, and the landscape vision for the river includes moving the river to the east near the mixed use building. Also, the land east of the Breckenridge Professional Building on Ski Hill Road is not controlled by the Town or VRDC, and as such, has not been included within this plan. Moving of the river is a business issue will need to be discussed in future meetings between the Town Council and Applicant and memorialized through future agreements.

Since there has not yet been a commitment by the Applicant to construct the river corridor improvements, we can not recommend any points at this time.

#### **Phasing of River Improvements:**

The river corridor improvements on the south side of the site would be installed along with Phase III of the project. This phase includes construction of the condo-hotel, mixed use building, and South Depot Road. River corridor improvements north of Watson Avenue would need to be completed along with the

gondola plaza improvements. These developments are shown to be part of Phase II, which also includes the north parking structure.

It is likely that the river improvements would be completed by VRDC at the time of their other improvements within Phase III. Also, for South Depot Road to be useful, it will need to connect to the Wellington Road extension, which timing has not been identified. These are business details that need to be discussed between the Town and VRDC due to land ownership. Notably, the Blue River adjacent to the mixed use building is proposed to be relocated to the east to accommodate the new building. Construction of the river improvements may be included as part of the public commitments made as part of a future development agreement for reduced parking, extended vesting, or other issues to be reviewed by the Town Council.

## **INFRASTRUCTURE**

### **Roads:**

In order to develop a large site such as this, many infrastructure improvements are usually required. In this case, much of the needed infrastructure, including most of the roads and utilities, are already in place due to the surrounding developed areas. The existing network of streets, including North Park Avenue, Watson Avenue, and French Street help to feed traffic into and out of this site. Two new roads are proposed to supplement these existing streets, and provide improved internal circulation. South Depot Road is planned to connect from Wellington Road on the east, and tie into Watson Avenue on the north. This street is proposed with on-street parking and sidewalks, to help improve the pedestrian and shopping experience and increase the supply of parking.

North Depot Road, which would connect from French Street on the north to Park Avenue on the west, would provide access to the new townhomes and the north parking structure. It would also serve as access to the gondola drop off, just north of the gondola.

Another new connection that needs to be identified in the phasing plan includes the extension of Wellington Road through locomotive park. This road is part of the anticipated circulation plan for South Depot Road, but its construction has not yet been identified in the phasing plan. It is anticipated that this road will need to be constructed for South Depot Road to operate as designed.

### **Utilities:**

There are water and sanitary sewer lines that surround the subject lots within North Park Avenue, French Street, Main Street and Watson Avenue. There is also an existing natural gas line that runs along the west edge of this property, near Park Avenue. This new development would require the extension of some of these utilities. This would include expanding the water and sewer lines along North Depot Road, and extending the water line along the Wellington Road extension, South Depot Road and Watson Avenue to the west.

Storm sewer lines would be extended along Watson Avenue, and also along the north side of the gondola, south of the townhomes, with drainage flowing to the Blue River. Storm sewers would also be extended from the courtyard of the condo-hotel to the new extension of Wellington Road and into detention ponds or other water quality feature near the river. Lastly, the plans show a storm sewer running along the south side of French Street, from the parking structure to the Blue River. These utility locations are conceptual only at this time, but they show that some new utilities will be needed, and are feasible with the current site plan.



## SUSTAINABILITY

The plan is designed to incorporate sustainable design into as many elements of the plan as possible. The Vision Plan identified “sustainability” as one of the main design drivers of this plan: “*Develop a neighborhood that represents Vail Resorts Development Company’s and the Town’s commitment to creating sustainable places.*” This master plan attempts to steer this design by indicating that nationally recognized third-party certifications will be sought with the specific certification program to be determined in the future between the Town of Breckenridge and Vail Resorts Development Company. The plan also includes new language on the recycling or reuse of materials from the existing Breckenridge Station, which is not anticipated for re-use in this plan. The new language was not included in the plan shown to the Planning Commission or during the Town Council’s initial review of the plan. The new master plan language from Sheet 1 reads as follows:

*“The Master Plan is designed to create an efficient and sustainable development. The project will explore ways to reduce the environmental and carbon impact of the development. The latest proven technology available is intended to be used to create a highly sustainable development. The development will be designed according to a nationally recognized third party certification program to be agreed upon by the Town of Breckenridge and Vail Summit Resorts, Inc. In addition the project will meet the then-current Town sustainability code.*

*The existing Transit Building will be removed. A relocation, demolition, and material management plan will be developed to identify materials to be diverted from disposal and sorted to be either salvaged for reuse or recycled. The plan will consider recycling cardboard, metal, brick, mineral fiber panel, concrete, plastic, clean wood, glass, gypsum wallboard, and insulation. Construction debris that can be processed into a recycled content commodity that has an open market value will be recycled. A specific area on or off the construction site will be designated for segregated or comingled collection of recyclable materials, and recycling efforts will be tracked for the Transit Building. Diversion or reuse of materials may include donation of materials to charitable organizations and salvage of materials on-site.”*

Staff feels that this language helps to strengthen the sustainability commitment by the Applicant and will ensure a highly sustainable development. In addition to this language in the master plan, all buildings will be subject to the “then-current” sustainability codes in effect at the time of development. The current Development Code allows positive points for energy conservation and renewable sources of energy. It is difficult at this time to assign positive points since the buildings are not yet designed, and specific sustainability features have not been identified. As a result, no positive points are recommended at this time.

## EMPLOYEE HOUSING

The current proposal includes the provision of employee housing in an amount sufficient to earn positive four (+4) points for the development. The four points was based on providing at least 6.51% of the anticipated density of the project in employee housing, plus a 10% contingency. (Since the density could be used in a variety of ways, with a variety of density multipliers, we used the Applicant’s “best guess” plan plus a contingency to determine how much density would initially be deed-restricted. If less employee housing is needed to earn these +4 points, deed restrictions can be released in the future. If more density is required, the Applicant will be required to provide additional deed restrictions in the future.) This results in 16,886 square feet of deed-restricted employee housing. We have added a condition of approval to this effect. Staff recommends positive four (+4) points.

## TOWN COUNCIL GOALS

During the work session of December 8, 2009 the Council asked about the award of positive points for Council Goals [assigned under Policy 24 (Relative) Social Community, Section B. Community Need]. This policy encourages developments that “*address specific needs of the community which are identified in the yearly goals and objectives report*”. The report, commonly known as the Council Goals, identifies many community wide goals, based on the Vision Plan adopted in 2002. Staff recommended points under this policy because many elements of the proposed master plan implement elements of these goals. These goals are listed under ten categories, which are:

- Community Character
- Economic Viability & Sustainability
- Natural Resources
- Transportation
- Housing
- Cultural Resources
- Recreational Resources
- Education, Government, Institutions
- Population
- The Built Environment

(The full Council Goals from May 2008 have been included in your packet under separate cover. These are the most recent that staff can find.)

### Economic Viability/Sustainability:

This goal discusses several aspects to economic sustainability, such as to ensure flexibility, enhance revenues, and create year round tourism. This project seeks to meet these goals through creating a condo-hotel that will create a downtown landmark and more “hot beds” closer to Main Street. The building is planned to have a large conference space that will bring visitors to Breckenridge throughout the off-seasons to help minimize the impacts of the slower seasons to the Town revenues. Per the 2008 Council Goals:

*“The Town has been an active member of the Client Review Team for the development of the properties that the town and ski area own north of town hall (currently parking lots, the base of the gondola, and a transit center). The CRT process has been completed, involving various stakeholders, and the Ski Area will not pursue the original Master Plan process for planning the properties.”*

In addition, the 2006-2007 Council Goals specifically mentioned partnering “*with the ski area in the various phases of the gondola development, the Riverwalk development, and the downtown/Main Street revitalization plan.*”

### Transportation System:

This goal seeks to ensure the best quality experience for residents and guests in regard to the transportation and pedestrian systems in the Town of Breckenridge. The master plan has been designed to address many of the transportation goals of the community. The transit center is proposed to be improved, and there are added lanes and turning movements to the streets surrounding the project to help

improve access to Parkway Center and the master plan site. There are also several improvements for pedestrians including pedestrian bridges across the Blue River to Main Street and a safer crossing to the Gold Rush parking lot. The design creates more walkable streets and improves Watson Avenue and the pedestrian experience within the project. Pedestrian conflicts with cars and buses on Watson Avenue would be reduced by creating a pedestrian dominated project centered on the Gondola. One of the specific goals mentioned in the 2008 Goals is reducing the pedestrian conflict on Park Avenue at the Gold Rush parking lot:

*“The town has met with and encouraged Vail Resorts to be a partner in solving and eliminating pedestrian-automobile conflicts on Park Avenue/Highway 9 at the Vail Goldrush Parking Lot. Solutions need to be implemented in time for the 2009 winter season. In addition, Town staff and ski resort personnel continue to monitor and tweak pedestrian crossings on South Park Avenue near the Village at Breckenridge, having come up with successful solutions and management the past couple of seasons.”*

#### Recreational Resources:

This goal defines the Town’s efforts to acquire, plan and manage open space and park areas. The master plan creates an enhanced Blue River corridor and park space within the project. The bike path is extended and several efforts are made to create a more accessible river corridor. Per the 2008 Goals:

*“The Town remains committed to acquiring and managing what we currently have in our inventory of open space and trails. Council and BOSAC continue to work together to be responsible stewards and provide the staff guidance in all aspects of open space acquisitions, planning, and management.”*

#### The Built Environment:

This goal is heavily influenced by the Town’s commitment to sustainability. As indicated throughout the visioning process and documented in the master plan, sustainability is a core value of the project. Based on input from the Council, the master plan language has been revised to create more definitive sustainability goals for the project. The Applicant is willing to commit to a nationally recognized, third-party certification program to be agreed upon between the Applicant and the Town. Additionally, the Applicant has agreed to meet the Town’s sustainable code in effect at the time of construction for the buildings in the master plan.

Staff realizes that several of these goals overlap with elements of the Development Code, and that awarding positive points under this policy may be “double-dipping” for positive points. For example, transit/transportation issues were awarded positive points by the Planning Commission. Points were also assigned for internal circulation. We have left these points in our final point analysis, but the Council may want to reconsider if points should be awarded under both policies. Due to the limitations in the Development Code (where policies do not directly correlate to the proposed development), Staff felt it was better to award points under the more generic policy of “Council Goals” for the economic and sustainability elements of the plan than to try to pigeon hole these features into other specific policies. We recommend positive three (+3) points under this policy.

## PHASING

This site will be developed over time. In order to allow this, a phasing plan has been developed. The plan anticipates the need to construct the parking structures to replace surface parking. It also allows for the skier services/transit building to be built first, in a location that does not impact guest parking. There are also a few aspects of the development that are not in the phasing plan, including improvements to North Park Avenue and construction of the round-about. The phasing plan has been included on Sheet 10 of the master plan.

### Phase I:

- Demolition or removal of the existing transit building
- Demolition of existing bus parking area
- Build new skier services/transit building
- Build bus drop off/pick up area and access point to Park Avenue

### Phase II:

- Build northern parking structure
- Build three townhome buildings
- Build North Depot Road and connect bus area to French Street
- Create gondola plaza
- Construct river improvements associated with gondola plaza

### Phase III:

- Demolish surface parking lot
- Build south parking structure
- Build condo-hotel (Building may be built in two phases over time)
- Build South Depot Road and extension of Wellington Road to South Depot Road
- Build mixed use building
- Install river improvements south of Watson Avenue.

In addition to this phasing plan, there are some studies that are needed before certain phases of development can begin. One of these issues relates to a hydraulic analysis of the Blue River, including river width, elevation and velocity (flow). This information on the new design for the river, and associated river improvements will be needed before Phase II and III begin, since grading of the river can affect adjacent development. (Phase I, construction of the skier services/transit building, has an elevation set by the existing gondola, and can not vary significantly.) As a result, staff suggests that the phasing plan be removed from the current master plan, and be considered separately, when more information is available. Some other items that have not yet been identified in the phasing plan include:

### **Staff recommends these items in Phase I:**

- Construct round-about at intersection of North French Street and North Park Avenue
- Install and stripe turn lanes on North Park Avenue

### **Staff recommends these items in Phase 2:**

- Install and stripe turn lanes on French Street
- Install pedestrian bridge across Blue River

**Staff recommends these items in Phase 3:** Construct expansion of Wellington Road through locomotive train park

We have included a condition of approval which states: *“The phasing plan shown on Sheet 10 of the Master Plan is illustrative only, and is not part of this master plan approval. Prior to the issuance of any Class A, B or C development permit for any development within the master planning area, Applicant shall submit to and obtain approval from the Town of Breckenridge a Class D development permit for a revised phasing plan, which shall include phasing for the restoration of the Blue River and construction of the round-about at Park Avenue and French Street.”* We welcome Commission input on this solution.

### **POINT ANALYSIS**

All master plans are required to be reviewed on a point analysis, and shall comply with all absolute policies, obtain a score of zero or more with respect to all relative policies, and comply with all other applicable development policies of the town in effect at the time of the master plan application. One of the issues with reviewing a master plan relates to the timing of the assignment of points. While some elements of the master plan warrant the allocation of points during the master plan review, other elements may not warrant point allocations until development permit review. The following points are recommended at this time:

Policy 6 (Building Height)	-20 points for buildings up to 5 stories
Policy 16 (Internal Circulation)	+3 points for good vehicle and pedestrian circulation
Policy 18 (Parking-View)	+4 points for providing parking underground or in a structure
Policy 18 (Parking-Joint Facilities)	+1 point for making parking available to the public
Policy 18 (Parking-Shared Access)	+1 point for shared driveway access
Policy 24 (Social Community)	+4 points for providing 6.51% of density as employee housing
Policy 24 (Social Community)	+3 points for Council Goals, including transportation enhancements, economic sustainability and environmental sustainability
Policy 25 (Transit)	+4 points for improved transit circulation, improved facilities and reduced vehicle and pedestrian conflicts

The result is a passing score of positive zero (0) points.

### **BUSINESS ISSUES**

There are several issues related to land ownership, financing of improvements, maintenance of improvements and the like, which need to be discussed and memorialized in a separate agreement. The master plan recognizes these challenges, and anticipates that such agreements will be needed before this development proceeds. Sheet 1 of the master plan includes a brief discussion of some of the business issues that are anticipated at this time. These include: relocation of property lines, operation of the transit facilities, maintenance of streets, financing of the parking structures, restoration of the Blue River, extension of the Riverwalk and extension of Wellington Road. We have included a condition of approval to indicate that no Class A, B or C development permits will be issued for development within this master plan until such business issues have been addressed.

### **STAFF RECOMMENDATION**

This is a Call-Up hearing from the December 8, 2009 meeting. While Staff believes that we have addressed the Town Council's concerns, we welcome input and questions to ensure that we have answered the questions raised at the meeting on December 8<sup>th</sup>.

Tonight's meeting was advertised by direct mailings to property owners within 300', with public notice on the property and advertised in the newspaper as required by the Development Code. If the Town Council is comfortable that all necessary issues have been addressed, and if you support the passing point analysis, then this application can be approved.

There are still several issues that have not been finalized in this application, which have been included as Conditions of Approval. The meeting to discuss business issues with the Town Council (i.e. property lines, ownership and construction of public amenities, loss of parking, and construction of the river improvements, etc.) will happen after approval of the master plan.

We look forward to your comments.

## TOWN OF BRECKENRIDGE

### Gondola Lots Master Plan

**Legal Description:** Tract A, Block 3, Parkway Center, Lot 1, Block 3, Parkway Center, Lot 1A, Block 4, Parkway Center, Lot 1B, Block 4, Parkway Center, Lot 1-A, Sawmill Station Square, Filing No. 3, Lot 1-B, Sawmill Station Square, Filing No. 3, Lot 1-C, Sawmill Station Square, Filing No. 3, Lot 2-A, Sawmill Station Square, Filing No. 3, Lot 2-B, Sawmill Station Square, Filing No. 3, Lot 3-A, Sawmill Station Square, Filing No. 3, Lot 3-B, Sawmill Station Square, Filing No. 3, Lot 4, Sawmill Station Square, Filing No. 3, Lots 71-74, and Lots 87-90, Bartlett & Shock Addition

PERMIT #2009010

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**STAFF RECOMMENDATION:** Staff recommends the Town Council approve this application with the following findings and conditions.

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### FINDINGS

1. The proposed project is in accord with the Development Code and does not propose any prohibited use.
2. The project will not have a significant adverse environmental impact or demonstrative negative aesthetic effect.
3. All feasible measures mitigating adverse environmental impacts have been included, and there are no economically feasible alternatives which would have less adverse environmental impact.
4. This approval is based on the staff report dated December 23, 2009 and findings made by the Town Council with respect to the project. Your project was approved based on the proposed design of the project and your acceptance of these terms and conditions imposed.
5. The terms of approval include any representations made by you or your representatives in any writing or plans submitted to the Town of Breckenridge, and at the hearing on the project held on January 12, 2010 as to the nature of the project. In addition to Town Council minutes, the meetings of the Council are tape recorded.
6. If the real property which is the subject of this application is subject to a severed mineral interest, the applicant has provided notice of the initial public hearing on this application to any mineral estate owner and to the Town as required by Section 24-65.5-103, C.R.S.
7. The proposed plan shows that on-street parking is proposed on North Depot Road and South Depot Road. Each of these streets is proposed to be built, owned and maintained by the applicant, Vail Resorts Development Company, or its parent company, Vail Summit Resorts, and not by the Town of Breckenridge. While on-street parking is generally not allowed to count toward the parking supply for a development, parking on private streets not maintained by the Town of Breckenridge has not been previously discussed, approved or denied. The Town Council hereby finds that the creation of a new private street, which will not be maintained by the Town of Breckenridge, and upon which parking has been provided, shall count toward the "Off Street Parking" requirements for this development.

### CONDITIONS

1. This permit does not become effective, and the project may not be commenced, unless and until the applicant accepts the preceding findings and following conditions in writing and transmits the acceptance to the Town of Breckenridge.

2. If the terms and conditions of the approval are violated, the Town, in addition to criminal and civil judicial proceedings, may, if appropriate, issue a stop order requiring the cessation of work, revoke this permit, require removal of any improvements made in reliance upon this permit with costs to constitute a lien on the property and/or restoration of the property.
3. The vested period for this master plan expires three (3) years from the date of Town Council approval, on January 12, 2013, in accordance with the vesting provisions of Policy 39 of the Development Code. In addition, if this permit is not signed and returned to the Town within thirty (30) days of the permit mailing date, the permit shall only be valid for eighteen (18) months, rather than three (3) years.
4. The terms and conditions of this permit are in compliance with the statements of the staff and applicant made on the evidentiary forms and policy analysis forms.
5. This permit contains no agreement, consideration, or promise that a certificate of occupancy or certificate of compliance will be issued by the Town. A certificate of occupancy or certificate of compliance will be issued only in accordance with the Town's planning requirements/codes and building codes.
6. This Master Plan is entered into pursuant to Policy 39 (Absolute) of the Breckenridge Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code). Uses specifically approved in this Master Plan shall supersede the Town's Land Use Guidelines and shall serve as an absolute development policy under the Development Code during the vesting period of this Master Plan. The provisions and procedures of the Development Code (including the requirement for a point analysis) shall govern any future site specific development of the property subject to this Master Plan.
7. Approval of a Master Plan is limited to the general acceptability of the land uses proposed and their interrelationships, and shall not be construed to endorse the precise location of uses or engineering feasibility.
8. Concurrently with the issuance of a Development Permit, applicant shall submit a 24"x36" mylar document of the final master plan, including all maps and text, as approved by Town Council at the call-up hearing, and reflecting any changes required. The name of the architect, and signature block signed by property owner of record or agent with power of attorney shall appear on the mylar.
9. Applicant shall record with the Summit County Clerk and Recorder a mylar document reflecting all information in the approved Master Plan. The mylar document shall be in a form and substance acceptable to the Town Attorney, and after recording shall constitute the approved Master Plan for the future development of the property.
10. Prior to the recordation of the master plan or notice of approval of a master plan, Applicant shall execute and record with the Summit County Clerk and Recorder, in a form acceptable to the Town Attorney, the Town's standard employee housing covenant for 16,886 square feet of employee housing within the project (based on the anticipated development of 235,800 square feet, plus ten percent). The covenant, or a separate document, as approved by the Town Attorney, shall provide that upon full build out of the development rights associated with the master plan, if the amount of employee housing restricted as a result of this condition exceeds 6.51 % of the actual built density of the master planned area, the Applicant shall be entitled to a release of deed-restrictions in an amount necessary to bring the restricted square footage to 6.51% of the density built within the master planning area. In addition, if 16,886 square feet is less than 6.51% of the density of the project, Applicant agrees to provide additional employee housing, to ensure that a minimum of 6.51% of the density of the built master planned project is provided as restricted employee housing.
11. Prior to issuance of a development permit for any construction within twenty-five feet (25') of any wetland areas, including, but not limited to, the southwest portion of the round-about at French Street and North Park Avenue, a wetlands delineation study will be required, and a wetlands mitigation plan may be



required if wetlands are impacted. Applicant shall obtain any required federal or state permits relating to wetland impacts, and all construction methods shall follow applicable state and federal standards.

12. The Master Plan approved by this Permit shall not become effective until a development agreement authorizing a reduction in the parking spaces required for the proposed condominium/hotel from one and one-half spaces to one space for each residential unit including one bedroom or more has been approved by the Town Council and executed by Applicant and the Town.
13. The phasing plan shown on Sheet 10 of the Master Plan is illustrative only, and is not part of this master plan approval. Prior to the issuance of any Class A, B or C development permit for any development within the master planning area, Applicant shall submit to and obtain approval from the Town of Breckenridge a Class D development permit for a revised phasing plan, which shall include phasing for the restoration of the Blue River, a hydraulic analysis for the Blue River, and construction of the round-about at Park Avenue and French Street.
14. Prior to recordation of the master plan or a notice of approval of a master plan, applicant shall record a density transfer covenant, in a form acceptable to the Town Attorney, for the transfer of 93 Single Family Equivalents (SFEs) from the Gold Rush Parking Lot (Lot 1, Block 4, Parkway Center) onto the South Gondola Lot (Sawmill Station Square, Filing No. 3).
15. Prior to recordation of the master plan, Applicant shall apply for approval from the Colorado Department of Transportation (CDOT) for such site access permit(s) to and from State Highway 9 (North Park Avenue) as may be required. After such application to CDOT has been submitted, Applicant will diligently pursue approval, and such approval must be obtained from CDOT prior to issuance of any Class A, B or C development permit by the Town for development within the master planning area. If the access plan is not approved by CDOT, revisions to the master plan may be required, which may require re-review of the master plan by the Town of Breckenridge Planning Commission and/or Town Council.
16. Prior to application for a development permit for the South Parking Structure, Applicant must provide written evidence to the Town that any consents required for the relocation of the public access easement described and provided for in the Grant of Public Access Easement recorded December 14, 1990 at Reception No. 397220 of the Summit County, Colorado records have been obtained from the beneficiaries of such public access easement.
17. Prior to issuance of a Class A, B or C site-specific development permit by the Town for any development within the master planning area, a preliminary agreement pertaining to this Master Plan shall have been approved and executed by the Town and the Applicant: (a) identifying the business issues between Applicant and the Town, such as but not limited to property line adjustments, lease rights, shared improvements, ownership, financing mechanisms, cost sharing and maintenance responsibilities, and (b) providing general terms for the resolution of each such issue. If such agreement results in the need for a change to any substantial element of the master plan, an amendment of the master plan may be required and, if the development for which a Class A, B or C site specific development permit is requested will be affected by such amendment, then the amendment will be required prior to the issuance of such Class A, B or C site-specific development permit by the Town.

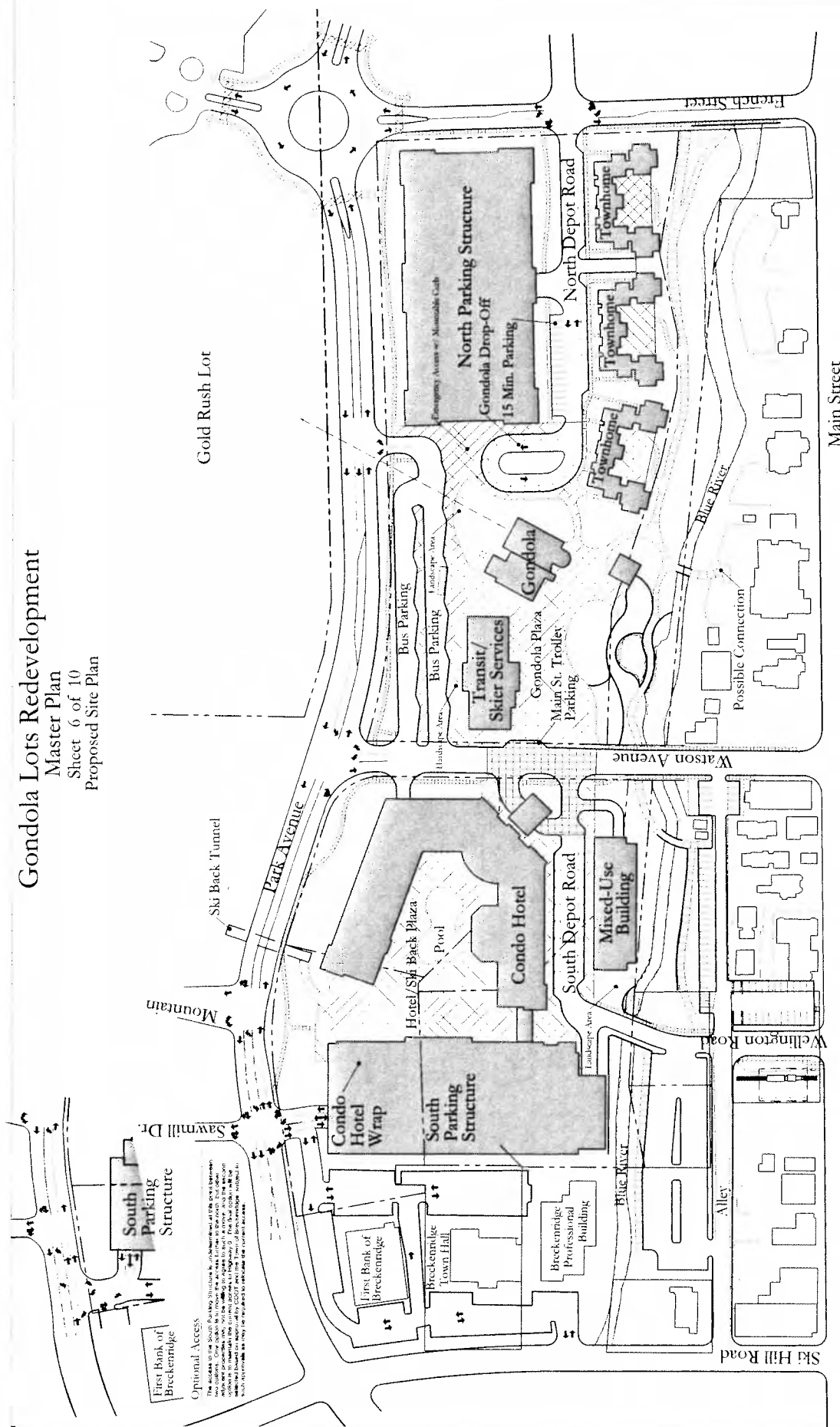
<b>Final Hearing Impact Analysis</b>				
Project:	Gondola Lots Redevelopment Master Plan	<b>Positive Points</b>	<b>+20</b>	
PC#:	2009010			
Date:	12/23/2009	<b>Negative Points</b>	<b>- 20</b>	
Staff:	Chris Neubecker			
		<b>Total Allocation:</b>	<b>0</b>	
Items left blank are either not applicable or have no comment				
<b>Sect.</b>	<b>Policy</b>	<b>Range</b>	<b>Points</b>	<b>Comments</b>
1/A	<b>Codes, Correlative Documents &amp; Plat Notes</b>	Complies		
2/A	<b>Land Use Guidelines</b>	Complies		Master Plan
2/R	Land Use Guidelines - Uses	4x(-3/+2)	0	Lodging and commercial uses recommended
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)	0	
2/R	Land Use Guidelines - Nuisances	3x(-2/0)	0	None anticipated
3/A	<b>Density/Intensity</b>	Complies		93 SFEs of density transfer from Gold Rush Lot. Project shall not exceed 201 SFEs over the entire site.
3/R	Density/ Intensity Guidelines	5x (-2>-20)	0	
4/R	Mass	5x (-2>-20)	0	Standard mass bonuses in place on April 2, 2009 are in effect.
5/A	<b>Architectural Compatibility / Historic Priority Policies</b>	Complies		
		3x(-2/+2)	N/A	Will be reviewed during development review for each building. Natural materials are recommended. Brick is proposed as a primary material on the condo-hotel and skier services building, rather than as an accent. No points have been assigned at this time. Points for use of brick and other architectural issues will be reviewed during individual development permits for each building.
5/R	Architectural Compatibility - Aesthetics			
5/R	Architectural Compatibility / Conservation District	5x(-5/0)	N/A	
5/R	Architectural Compatibility H.D. / Above Ground Density 12 UPA	(-3>-18)	N/A	
5/R	Architectural Compatibility H.D. / Above Ground Density 10 UPA	(-3>-6)	N/A	
6/A	<b>Building Height</b>	Complies		
6/R	Relative Building Height - General Provisions For all structures except Single Family and Duplex Units outside the Historic District	1X(-2,+2)		
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		
6/R	Building Height Outside H.D. / Stories	(-5>-20)	- 20	Buildings up to 5 stories (condo-hotel) proposed.
6/R	Density in roof structure	1x(+1/-1)	N/A	Specific building designs have not yet been submitted.
6/R	Broken, interesting roof forms that step down at the edges For all Single Family and Duplex Units outside the Conservation District	1x(+1/-1)	N/A	Specific building designs have not yet been submitted.
6/R	Density in roof structure	1x(+1/-1)	N/A	
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)	N/A	
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)	N/A	
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)	0	Site is vacant with no significant development constraints.
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)	0	No significant grading is proposed.
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)	0	Site is in an urban area. No significant buffering is proposed at this time. Landscaping plans will be reviewed at time of development permit, and buffering will be addressed at that time.
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)	N/A	No retaining walls are proposed at this time.
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)	0	No significant grading is required for driveways or parking areas.
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)	0	Site is in an urban area. Minimal privacy is anticipated. Privacy issues will be further reviewed during site specific development permit.
7/R	Site and Environmental Design / Wetlands	2X(0/+2)	0	No wetlands are anticipated to be impacted, other than the Blue River during restoration. Army Corps permits will be required prior to any work within the river or flood plain.
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)	N/A	There are no significant natural features on the site, other than the Blue River. The river has been incorporated into the design of the project, but points (if any) for the river restoration will be assigned during the site specific plans for the river.
8/A	<b>Ridgeline and Hillside Development</b>	Complies		
9/A	<b>Placement of Structures</b>	Complies		
9/R	Placement of Structures - Public Safety	2x(-2/+2)	N/A	Points will be assigned during the development review process for individual developments.
9/R	Placement of Structures - Adverse Effects	3x(-2/0)	N/A	Points will be assigned during the development review process for individual developments.
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)	N/A	Points will be assigned during the development review process for individual developments.
9/R	Placement of Structures - Setbacks	3x(0/-3)	N/A	Points will be assigned during the development review process for individual developments.
12/A	Signs	Complies		
13/A	<b>Snow Removal/Storage</b>	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)	N/A	Points will be assigned during the development review process for individual developments.
14/A	<b>Storage</b>	Complies		
14/R	Storage	2x(-2/0)	N/A	Points will be assigned during the development review process for individual developments.
15/A	<b>Refuse</b>	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)	N/A	Points will be assigned during the development review process for individual developments.

15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)	N/A	
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)	N/A	Points will be assigned during the development review process for individual developments.
16/A	Internal Circulation	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)	+3	Good network of pedestrian paths, bridges and sidewalks. Walkable plan helps to separate incompatible uses such as pedestrians and buses.
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)	0	None anticipated.
17/A	External Circulation	Complies		
18/A	Parking	Complies		
18/R	Parking - General Requirements	1x(-2/+2)	0	Project meets parking need, per parking study from Felsburg, Holt & Ullevig parking consultants. 1:1 parking ratio for the condo-hotel will be reviewed by Town Council under a separate development agreement.
18/R	Parking-Public View/Usage	2x(-2/+2)	+4	Parking in structures and under buildings. Minimal surface parking on new private streets.
18/R	Parking - Joint Parking Facilities	1x(+1)	+1	Parking structures will be open to public use.
18/R	Parking - Common Driveways	1x(+1)	+1	Shared access with Town Hall and 1st Bank for south parking structure.
18/R	Parking - Downtown Service Area	2x(-2/+2)	0	
19/A	Loading	Complies		
20/R	Recreation Facilities	3x(-2/+2)	N/A	None proposed within master planned area. Private recreation facilities may be included within condo-hotel, and will be reviewed at a later date.
21/R	Open Space - Private Open Space	3x(-2/+2)	N/A	
21/R	Open Space - Public Open Space	3x(0/+2)	N/A	No open space has been identified with this development. Open space requirements will be reviewed during the development review process for individual developments.
22/A	Landscaping	Complies		
22/R	Landscaping	4x(-2/+2)	N/A	No landscaping plan has been supplied with the master plan. Landscaping requirements will be reviewed during the development review process for individual developments.
24/A	Social Community	Complies		
24/R	Social Community - Employee Housing	1x(-10/+10)	+4	Employee housing equal to 6.51% of the density of the project will be provided off-site. Deed restrictions for the employee housing shall be created prior to the recordation of the master plan or master plan notice.
24/R	Social Community - Community Need	3x(0/+2)	+3	Development will address Council Goals for 2008, including transportation enhancements, economic sustainability and environmental sustainability in buildings.
24/R	Social Community - Social Services	4x(-2/+2)	N/A	None proposed.
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)	0	Conference space planned in hotel building.
24/R	Social Community - Historic Preservation	3x(0/+5)	N/A	None proposed.
24/R	Social Community - Historic Preservation/Restoration - Benefit	+3/6/9/12/15	N/A	None proposed.
25/R	Transit	4x(-2/+2)	+4	Relocation and reconstruction of transit building and bus lanes. Increase in bus bays, improved transit service and better pedestrian safety.
26/A	Infrastructure	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)	0	No significant improvements proposed.
27/A	Drainage	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)	N/A	Final drainage plan will be required prior to development permits for individual buildings.
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	N/A	None proposed at this time.
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)	N/A	None proposed at this time.
31/A	Water Quality	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)	N/A	No specific enhancements proposed at this time.
32/A	Water Conservation	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)	N/A	No specific renewable energy sources identified at this time.
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)	N/A	No specific energy conservation efforts identified at this time.
34/A	Hazardous Conditions	Complies		
34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)	0	
35/A	Subdivision	Complies		
36/A	Temporary Structures	Complies		
37/A	Special Areas	Complies		
37/R	Community Entrance	4x(-2/0)	N/A	
37/R	Individual Sites	3x(-2/+2)	N/A	
37/R	Blue River	2x(0/+2)	0	No commitment has yet been made as to which entity will construct and finance the river improvements.
37/R	Cucumber Gulch/Setbacks	2x(0/+2)	N/A	
37/R	Cucumber Gulch/Impervious Surfaces	1x(0/-2)	N/A	
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		
43/A	Public Art	Complies		
43/R	Public Art	1x(0/+1)	N/A	Some public art anticipated, but not yet identified. Applicant will need more specific plans approved by Public Art Commission.
44/A	Radio Broadcasts	Complies		
45/A	Special Commercial Events	Complies		
46/A	Exterior Lighting	Complies		
47/A	Fences, Gates And Gateway Entrance Monuments	Complies		

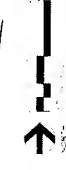
# Gondola Lots Redevelopment

## Master Plan

Sheet 6 of 10  
Proposed Site Plan



**Optional Access**  
The location of the South Parking Structure is subject to the availability of the area between the existing and proposed structures. The location of the South Parking Structure is subject to the availability of the area between the existing and proposed structures. The location of the South Parking Structure is subject to the availability of the area between the existing and proposed structures.

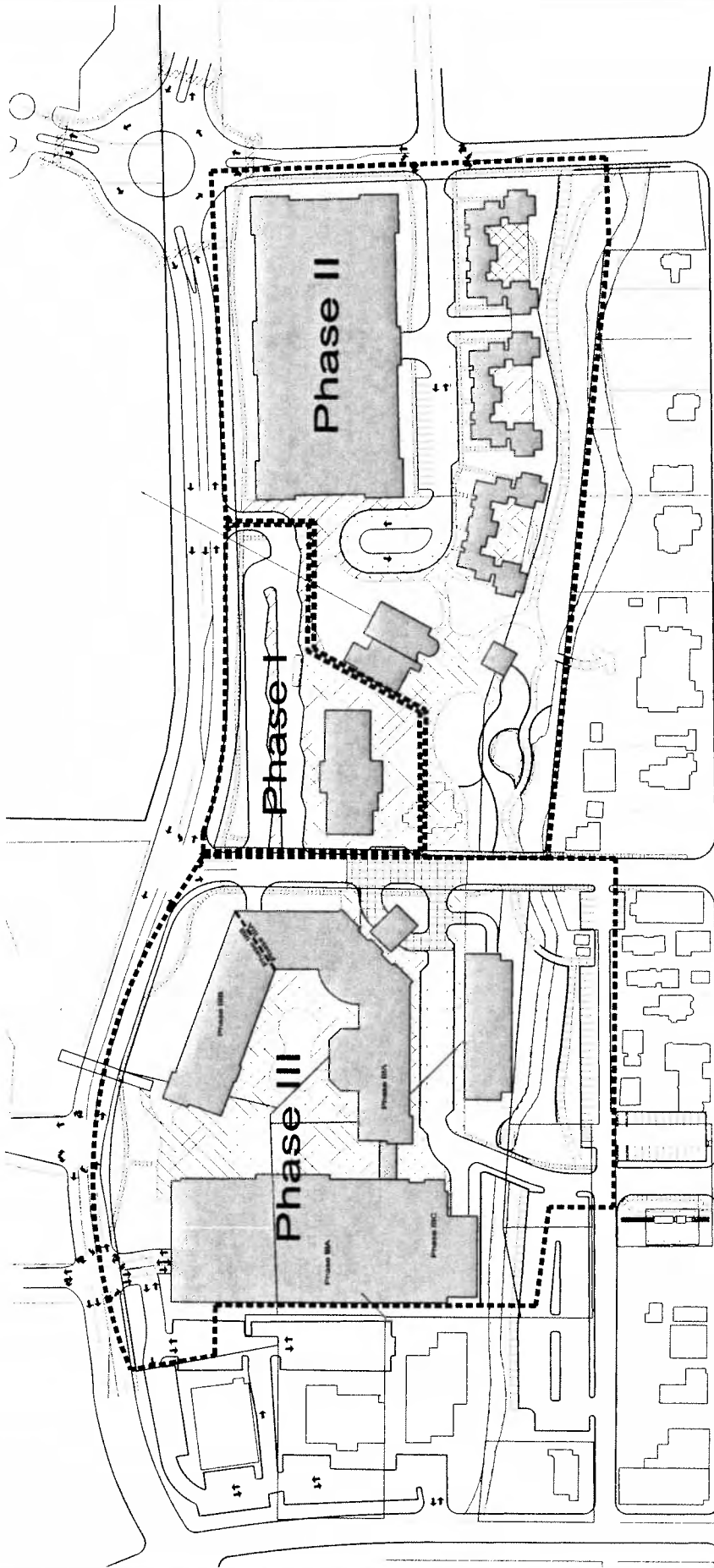


**Master Plan**  
NO. BY: DATE: REVISIONS:  
1 5.14.09 Planning and Zoning Review  
2 10.04.09 Planning and Zoning Final  
3 11.19.09 Planning and Zoning Final

**Vehicular Circulation and Turn Movements**  
This plan shows the proposed vehicular circulation and turn movements for the project. The plan shows the proposed vehicular circulation and turn movements for the project. The plan shows the proposed vehicular circulation and turn movements for the project.



Gondola Lots Redevelopment  
 Master Plan  
 Sheet 10 of 10  
 Possible Phasing Plan



Phasing Plan

Phase I to be completed by 4/3/09, Phase II to be completed by 5/14/09, and Phase III to be completed by 11/19/09. The phasing plan is subject to change based on development strategies and market influences.

Submission Date: 4-3-09  
 NO. BY DATE REVISIONS:  
 1 5.14.09 Planning and Zoning Review  
 2 10.04.09 Planning and Zoning Final  
 3 11.19.09 Planning and Zoning Final

GENERAL NOTES:

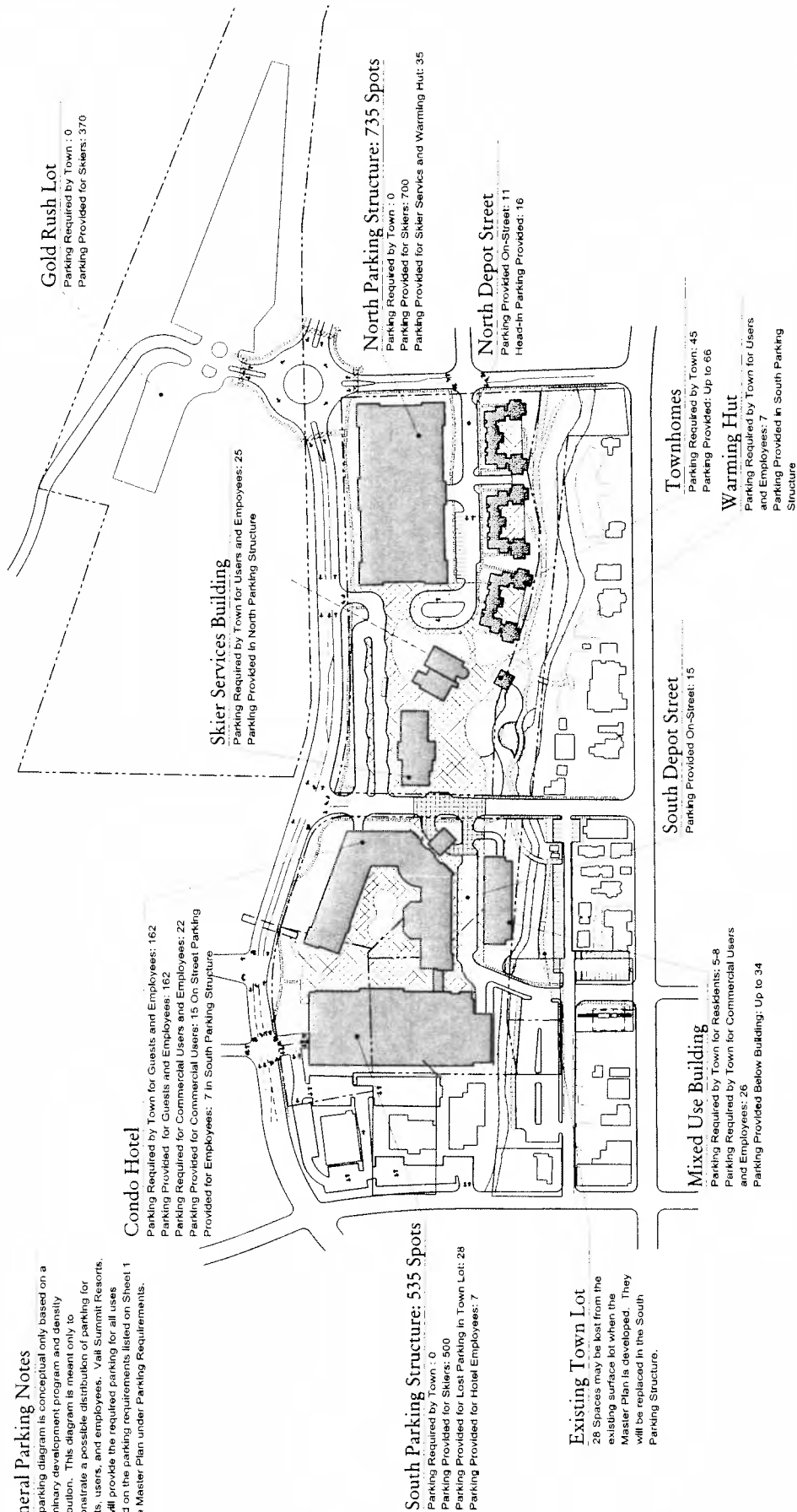
- Phase I
    - Demolish Existing Transit Building
    - Construct Existing Bus Parking Area
    - Build Side Service Transit Building
    - Build Bus Drop Off/Pick Up Area and Access Point to Park Avenue
  - Phase II
    - Build Apartment Building Structure
    - Build Apartment Carport Area and Connect the Bus Area to Transit
    - Upgrade Grand Club Plaza
    - Make improvements adjacent to designated areas
  - Phase III
    - Demolish existing parking lot
    - Build new parking structure
    - Build Grand Hotel - Building may be built in phase one two
    - Build Depot Road and extension of Vail Station to Depot Road
    - Build Mixed Use Building
    - Make improvements adjacent to designated areas
- All phasing is conceptual and subject to change based on development strategies and market influences.



# Parking Exhibit

## General Parking Notes

This parking diagram is conceptual only based on a preliminary development program and density distribution. This diagram is meant only to demonstrate a possible distribution of parking for guests, users, and employees. Vail Summit Resorts, Inc. will provide the required parking for all uses based on the parking requirements listed on Sheet 1 of the Master Plan under Parking Requirements.



11.19.09

# Memorandum

**Date:** January 6, 2010

**To:** Town Council

**From:** Engineering Department Staff

**Re:** Gondola Lot Redevelopment Master Plan

## Introduction

Engineering Staff has been working closely over many months with both VRDC and CDOT on options for traffic and Transit circulation within the proposed Gondola Lot Redevelopment Site (Site) and the SH 9 (Park Ave) corridor adjacent to the Site. These changes are discussed below.

Design items shown in the plan that will be completed prior to issuance of development permits include study of changes in river elevation and hydraulics, project phasing, and the phasing of Park Ave improvements including the proposed roundabout.

## Traffic Circulation

Staff believes the proposed changes to traffic circulation in the Site Plan prioritize a timely and efficient Transit system, effective traffic flow during peak and off-peak times on Park Ave, and minimizing pedestrian and vehicular interaction where possible.

Circulation changes within the Site include the addition of two private roads (N. Depot Rd and S. Depot Rd) and moving skier the drop-off north of the gondola to N. Depot Rd. The proposed on-street parking on the new roads and adjacent residential units make it important for these roads to be maintained by the developer. The planned skier drop-off configuration is no longer adequate for chartered bus drop-off. VRDC has communicated to Staff that private buses will be accommodated at Peak 7 or 8, but plans for such have not been submitted to Staff for review.

Changes to the Transit area include a new "Transit Only" exit and improved geometry of the bus bays and pedestrian loading areas to minimize pedestrian and bus interactions. The new bus bays will accommodate the largest bus currently used in the system, but as proposed will not accommodate articulated "double" buses under consideration by the Summit Stage. Buses will enter the 11 one-way sawtooth bays from Watson and exit onto Park Ave. According to Transit Staff, on peak days and each weekend during the winter season, traffic control personnel are needed to stop traffic along Park Ave to assist buses making left turns from Watson onto Park Ave (south-bound movement). Under the proposed Site Plan, buses can utilize the roundabout for u-turns to head south on Park Ave during these

peak traffic times, making the proposed roundabout essential to improving and maintaining an effective Transit system.

The primary access to the south parking reservoir will be relocated from Watson to Park Ave. VRDC proposes to relocate the current 1<sup>st</sup> Bank/Town Hall curb cut on Park Ave approximately 100 ft to the north for access to the South Parking structure. Moving the curb cut requires approval from CDOT and written approval from 1<sup>st</sup> Bank and the Breckenridge Professional Building Association, per the terms of a perpetual access easement. Staff recommends that the secondary exit from the structure is available for vehicles getting to Main St via S. Depot Rd.

### **Proposed Improvements to Park Avenue**

Improvements to Park Ave will also be required as part of the redevelopment of the Site. To address vehicular flow and Transit routing, four traffic management options in the Park Ave project corridor were cooperatively evaluated by Town Staff, VRDC, and CDOT. Options included (1) a traffic signal at French and Park Ave, (2) traffic signals at French/Park Ave and Watson/Park Ave, (3) traffic signals at French/Park Ave and Transit Exit, (4) a roundabout at French/Park Ave. Option 4, installation of a roundabout at French/Park intersection was agreed upon as the “preferred option” for improving traffic operations on Park Ave.

Installation of a roundabout enhances traffic flow through the French/Park intersection and accommodates possible CDOT restrictions to left-hand turns onto Park Ave from both the Transit Exit and the South Parking Garage access. Exiting vehicles can turn right and utilize the roundabout for a u-turn to head south on Park Ave. Staff believes this is the best option to ensure Transit reliable access to south-bound movements on Park Ave. If full-movement access is granted by CDOT at the Transit Exit, adding the “Bus Only” acceleration lane will also provide for easier left turns for Transit during non-peak hours. A roundabout also provides a functional benefit during off-peak times allowing a free flow traffic movement through the intersection.

While CDOT has identified Option 4 as the preferred design option on Park Ave, VRDC must complete the permitting process with CDOT for final approval of all changes and designs. Final acceptance of Park Ave improvements and approval of changes or additions of curb cuts by CDOT may impact the proposed Site Plan (see Conditions 15 and 16).

### **Impact of Pedestrians from Gold Rush Lot**

Concerns about safe pedestrian interactions at the proposed roundabout have been considered. When properly designed through roadway geometry, pedestrian medians, and signage, roundabouts require a pedestrian to cross one lane of slow moving (15-20 mph), one-way traffic at a time. This reduces the number of possible conflicts between a pedestrian and a vehicle. When crossing a signalized intersection, pedestrians are faced with possible vehicular encounters from a minimum of four directions.



The best tool for reducing pedestrian conflicts at this intersection is improved management of the Gold Rush Lot by Vail Resorts to discourage pedestrians crossing the highway. Possible improvements include parking all employees in the Gold Rush Lot, better enforcement of skiers using a shuttle to the Gondola rather than walking, and a “ski-back” directly to the Gold Rush Lot. VRDC has committed to improve its management strategies to reduce the number of skiers crossing Park Ave from the Gold Rush Lot.

### **Conditional Approval Items**

The Gondola Lots Master Plan has been submitted for approval with substantial design items listed as conditions for approval including CDOT permits, project phasing, and river improvements.

CDOT has been involved in the conceptual design of improvements, changes to curb cuts, and additional access points along Park Ave; however, no final approval or acceptance of these designs has been given by CDOT. Items including the new Transit Exit and roundabout are paramount to the Staff’s support of the traffic circulation proposed in this Master Plan.

Project phasing is addressed under conditions of the Master Plan. Condition 13 notes that the phasing plan on Sheet 10 is only illustrative and not part of the Master Plan. The revised Phasing Plan should address major infrastructure changes including the proposed roundabout, the extension of Wellington Rd to accommodate S. Depot Rd, and river relocation. The phasing plan must include both construction timelines and define a submittal schedule for river design plans and hydraulic studies.

The river realignment and design is a major element associated with the redevelopment of the Gondola Lots and has been discussed conceptually in this Master Plan. Hydraulic changes to the river due to vertical or horizontal realignments can impact the location and elevations of pedestrian crossings, the bike path, possible pedestrian underpasses on existing roads, the ability for human interaction with the river, as well as building elevations adjacent to the river. Study of the river’s hydraulics based on any proposed realignment should be completed early in the development of the site to understand any design limitations that remain unknown at this time. The final design of the river could impact this Master Plan as shown. Engineering Staff will require that a River Study be submitted for review prior to any development beyond the Transit/Skier services building. This is being addressed in the attached revision to Condition 13.



**Scheduled Meetings, Important Dates and Events**

**Shading indicates Council 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. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge.*

**JANUARY 2010**

Tuesday, January 12; 2:00/7:30pm	First Meeting of the Month
Tuesday, January 26; 3:00/7:30pm	Second Meeting of the Month
Thursday, January 28	CAST MEETING

**OTHER MEETINGS**

1 <sup>st</sup> & 3 <sup>rd</sup> Tuesday of the Month; 7:00pm	Planning Commission; Council Chambers
1 <sup>st</sup> Wednesday of the Month; 4:00pm	Public Art Commission; 3 <sup>rd</sup> floor Conf Room
2 <sup>nd</sup> & 4 <sup>th</sup> Tuesday of the Month; 1:30pm	Board of County Commissioners; County
2 <sup>nd</sup> Wednesday of the Month; 12 pm	Breckenridge Heritage Alliance
2 <sup>nd</sup> Thursday of the Month; 5:30pm	Sanitation District
3 <sup>rd</sup> Monday of the Month; 5:30pm	BOSAC; 3 <sup>rd</sup> floor Conf Room
3 <sup>rd</sup> Thursday of the Month; 7:00pm	Red White and Blue; Main Fire Station
4 <sup>th</sup> Wednesday of the Month; 9am	Summit Combined Housing Authority
Last Wednesday of the Month; 8am	Breckenridge Resort Chamber; BRC Offices

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition