



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING
Tuesday, May 24, 2011; 7:30 p.m.
Town Hall Auditorium

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*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

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CALL TO ORDER and ROLL CALL

Mayor Warner called the May 10, 2011 Town Council Meeting to order at 7:35 p.m. The following members answered roll call: Mr. Dudick, Ms. McAtamney, Mr. Mamula, Mr. Joyce, Mr. Burke, and Mayor Warner. Mr. Bergeron was absent.

APPROVAL OF MINUTES – April 26, 2011 Regular Meeting

Mr. Burke had one correction on page 74 at the section where it talks about the Riverwalk Center, Mr. Burke would like it to say “lack of large screens” rather than “the size of the screens”. With no other changes or corrections, Mayor Warner declared the minutes were approved as corrected.

APPROVAL OF AGENDA

Town Manager Tim Gagen explained that there would be several new items under New Business/First Readings. The first item was Item #3, Council Bill No. 21 Columbia Lode Development Agreement. Item #4 was Council Bill No. 22 Xcel Enclave Placement in Land Use District 13. Item #5 was Council Bill No. 23, 112 Beavers Drive Enclave Placement in Land Use District 10. Another item under Resolutions was the public hearing for Joint Upper Blue Master Plan which Council didn't actually have anything to approve during the meeting. Mr. Gagen recommended that they just refer to it as the public hearing for the Joint Upper Blue Master Plan with no other action required. During the work session, the council discussed that they would continue the Planning Commission Liaison ordinance to a later date; however, Mr. Gagen mentioned that council could still open the public hearing if they chose to do so. The Council then had a short discussion and came to the decision that they would go ahead and vote for the ordinance tonight even though Mr. Bergeron was absent. The final item was that there probably wouldn't be a report for the Water Task Force under Report of Mayor and Council Members from Mr. Mamula, but they did add it to the agenda. The Public Works department also sent their apologies that they couldn't attend tonight's meeting for the proclamation due to the winter storm warning.

COMMUNICATIONS TO COUNCIL

- A. Citizen's Comments - (Non-Agenda Items ONLY; 3 minute limit please)

There were none.

- B. Proclamation – Public Works Week

Mayor Warner read the proclamation for Public Works Week.

- C. Breckenridge Resort Chamber – Director's Report

John McMahon reported that they are working to promote the Lyle Lovett concert on June 16. Sandy Metzger is the new Special Events Director at the BRC. They are already revamping Oktoberfest. Mr. Mamula asked if there were any lodging packages for Kingdom Days and the Lyle Lovett concert. Mr. McMahon confirmed that they were promoting lodging packages for those events.

CONTINUED BUSINESS

- A. **SECOND READING OF COUNCIL BILL, SERIES 2011 – PUBLIC HEARING**

1. **Council Bill No. 19, Series 2011- AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 2 OF THE BRECKENRIDGE TOWN CODE BY ELIMINATING THE POSITION OF TOWN COUNCIL LIAISON TO THE PLANNING COMMISSION; AUTHORIZING ONE MEMBER OF THE TOWN COUNCIL TO SERVE ON THE PLANNING COMMISSION; AND PROVIDING OTHER MATTERS RELATED TO THE TOWN COUNCIL MEMBER OF THE PLANNING COMMISSION**

Town Attorney Tim Berry explained that this ordinance would repeal the current town ordinance regarding the Town Council liaison to the Planning Commission and replace it with an authorization that the council could allow one of its members to serve on the Planning Commission. The ordinance would also put back the old rules of how that representative can conduct business. There were two minor changes to the ordinance.

Mayor Warner opened the public hearing.

Lee Edwards came to ask how many other committees have a council representative on them. Mr. Gagen and Mr. Dudick stated that Breckenridge Open Space Advisory Commission (BOSAC) and Breckenridge Marketing Advisory Committee (BMAC) were the only two committees. Mr. Edwards also asked when communication started to become an issue between the council and the Planning Commission. Mayor Warner took a few minutes to give an overview of how everything was set up in the past and stated that he didn't think communication was an issue.

Mr. Edwards emphasized that there was a unique situation with having four people on current town council who have been on the commission in the past. They would essentially be losing one person in the vote. Mayor Warner clarified that a lot of time was spent during the work session discussing this issue and mentioned that Mr. Bergeron was absent. He added that there was an amount of flexibility when dealing with this ordinance.

Mr. Berry briefly stated several changes that he found while looking over the ordinance due to the recent developments. He read off all of the changes to the council. Mr. Berry requested that council refer to the changes read into the record when voting for the ordinance.

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

Mr. Dudick moved to approve Council Bill No. 19, Series 2011, with the changes read into the record by the Town Attorney. Ms. McAtamney seconded the motion. The motion passed 6-0

NEW BUSINESS

- A. **FIRST READING OF COUNCIL BILL, SERIES 2011**

1. **Council Bill No. 18, Series 2011 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY REPEALING AND READOPTING WITH CHANGES POLICY 47 (ABSOLUTE) CONCERNING FENCES, GATES AND GATEWAY ENTRANCE MONUMENTS**

Chris Neubecker of the Community Development Department explained that council initially adopted a fence/gateway policy several years ago and several updates have been made to the ordinance at the council's requests since that time. The new updates include the use of recycled materials; added a section on construction fencing; made a change to the Gateway Entrance Monument section which would reduce a property monument from two down to only one. Mayor Warner asked if there were any questions. There were none.

Mr. Dudick moved to approve Council Bill No. 18, Series 2011. Ms. McAtamney seconded the motion. The motion passed 5-1 with Mr. Burke voting in opposition.

2. **Council Bill No. 20, Series 2011 – AN ORDINANCE AMENDING THE MODEL TRAFFIC CODE FOR COLORADO, 2010 EDITION, CONCERNING THE OPERATION OF BICYCLES, PEDICABS, AND OTHER HUMAN-POWERED VEHICLES WITHIN THE TOWN OF BRECKENRIDGE**

Police Chief Rick Holman explained that the town has adopted the State Traffic Code regarding the operation of bicycles, pedicabs, and other human-powered vehicles. He is requesting an amendment to that section regarding bicycles,

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electrical bicycles, and pedicabs specifically for dealing with stop signs. People would be required to slow down and make sure that it was safe to proceed. When dealing with red lights, they would be required to stop and make sure it was safe to proceed. Mr. Holman mentioned that the Town of Dillon is moving toward adopting this type of ordinance.

Mr. Dudick moved to approve Council Bill No. 20, Series 2011. Mr. Mamula seconded the motion. The motion passed 5-1 with Mr. Burke voting in opposition.

3. **Council Bill No. 21, Series 2011 – AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH COLUMBIA LODGE PARTNERS, LLC, A COLORADO LIMITED LIABILITY COMPANY (EXTENDED VESTED PROPERTY RIGHTS - COLUMBIA LODGE MASTER PLAN)**

Mr. Berry explained that the town has received a written application for a development agreement proposal. At the request of the council, an amendment was made to the development agreement where the developer is required to demolish the building during the same time the right turn lane is constructed.

Mr. Dudick moved to approve Council Bill No. 21, Series 2011. Mr. Burke seconded the motion. The motion passed 6-0.

4. **Council Bill No. 22, Series 2011 – AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 13 (5.8468 ACRES, MORE OR LESS)**

Mr. Berry explained that the council recently annexed an enclave referred to as the Xcel property. State law requires that the property be placed into land use district 13 within 90 days.

Mr. Mamula moved to approve Council Bill No. 22, Series 2011. Mr. Joyce seconded the motion. The motion passed 6-0.

5. **Council Bill No. 23, Series 2011 – AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 10 (0.488 ACRES, MORE OR LESS)**

Mr. Berry explained that the council recently annexed an enclave referred to as the First Bank or 112 Beavers Drive property. State law requires that the property be placed into land use district ten within 90 days.

Mr. Mamula moved to approve Council Bill No. 23, Series 2011. Mr. Burke seconded the motion. The motion passed 6-0.

B. **RESOLUTIONS, SERIES 2011**

1. **A RESOLUTION ADOPTING THE “JOINT UPPER BLUE MASTER PLAN, MAY 2011”**

Mark Truckey of the Community Development Department explained that this plan has been adopted by the Town of Breckenridge, Town of Blue River, and Summit County to provide guidance for land use and related growth issues in the Upper Blue Basin. It was initially adopted in 1997. Our town code requires a public hearing, which will be completed at this meeting; however, the resolution won't be acted upon tonight. Action on the resolution will take place in June by all three entities.

Mayor Warner opened the public hearing and thanked Mr. Bergeron and Mr. Mamula for serving on the Joint Upper Blue Master Plan Committee (JUBMP).

Lee Edwards mentioned that he attended the JUBMP meeting a couple of weeks ago and had a couple of questions. He asked for council's clarification on full-time residents compared to second home owners. Mr. Edwards gave the example ratio of 30 percent full-time residents and 70 percent residents are second-home owners. He asked council to think about the impacts if that ratio was ever switched around. He emphasized the huge impact that would have on the area. Mr. Edwards suggested that instead of setting the ratio at four to one, why not make it one to one? He also asked how many water rights we have that are not stored in the Upper Blue. Mr. Gagen clarified that the town doesn't currently use any of our stored water supply for the town's water supply because we have enough water rights to take it from the river. Mr. Gagen added that the town has sufficient storage when it comes to the build out of the whole town. He also added that the town currently has more water rights than storage. Mr. Edwards asked council about identifying a corridor for a fixed-rail or people-mover of some sort. Mayor Warner mentioned that he would like to see a north/south corridor incorporated instead of having Highway 9 as the only option and that option would need to be discussed at a future meeting.

There were no other comments from the public. Mayor Warner closed the public hearing and asked for comments from council members.

Mr. Dudick mentioned that according to the plan there will be 15,000 units at build out. The one to four ratio translates into little over one percent of the build out in the community. There are 190 units which are valued between \$45,000 and \$8.5 million dollars which and makes this sunset worth between \$8.5 and \$53.5 million dollars in assets that would be wiped off the balance sheet. Mr. Dudick felt that this was the most fiscally irresponsible decision that he has ever come across in his history in business. Mr. Burke added that he agrees with Mr. Dudick's comments. Mayor Warner summarized to council that the specifics of the four to one ratio should be included in the resolution. Mr. Mamula disagreed with Mr. Dudick's opinion on this matter and thanked the staff and County for all of their work on this subject.

Mayor Warner closed the public hearing.

C. **OTHER**

1. None.

PLANNING MATTERS

A. **Planning Commission Decisions of May 3, 2010**

There were no requests for call up. Mayor Warner declared the Planning Commission Decisions were approved as presented.

B. **Town Council Representative Report (Mr. Burke)**

Mr. Burke had no report.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen reported that there will be an open house on May 23rd at 5:30 p.m. at the Senior Center in Frisco. The meeting will be a briefing on the emergency management steps that local towns are taking regarding the seasonal run-off.

REPORT OF MAYOR AND COUNCILMEMBERS

A. **CAST/MMC (Mayor Warner)** – Mr. Warner mentioned that electric assisted bicycles will become a part of the vocabulary of the town. The Americans with Disabilities Act (ADA) will require that people have the ability to use that means of travel on our recreational paths. Ms. McAtamney mentioned that our town trails already meet this ADA standard.

B. **Breckenridge Open Space Advisory Commission (Mr. Dudick)** – Mr. Dudick stated that his first meeting is on Monday and they will be talking about the new hut in Webber Gulch.

C. **Breckenridge Resort Chamber (Mr. Dudick new)** - Mr. Dudick reported that the Central Reservations summary was significantly off in March. Their budget was \$446,000 with an actual budget of \$219,000, projected loss was \$170,000 due to lack of inventory. The council had a lengthy discussion on marketing aspects of the town.

D. **Breckenridge Marketing Advisory Committee (Mr. Dudick)** – See BRC report.

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- E. **Summit Combined Housing Authority** (Mr. Joyce) – Mr. Joyce reported that the next meeting will be on May 25th.
- F. **Breckenridge Heritage Alliance** (Mr. Burke) – No report.
- G. **Sustainability** (Mr. Bergeron, Mr. Joyce, Mayor Warner) – Mr. Warner reported that the next Sustainability public meeting will take place tomorrow, May 11th from 6:30 to 8:30 p.m. at the Recreation Center.
- H. **Joint Upper Blue Master Plan Update Committee** (Mr. Bergeron, Mr. Mamula) – No report.
- I. **Water Task Force** (Mr. Mamula) – Mr. Mamula reported that there will be a meeting before the retreat on May 24th.

OTHER MATTERS

Mr. Berry provided a memo to Council about State reporting regarding gifts, honoraria, and other benefits. He also stated that Amendment 41 does not apply to the town because of our status as a home rule municipality; however, the State reporting aspect of it does apply. He suggested that council should look at the list of items that need to be reported. This list was included in memo format for the council. Council requested that the form be included in the July council packet as a reminder.

Mr. Mamula was recently walking near the south gondola dirt lot and thinks that the ski area should pave the parking lot. Mr. Gagen clarified that the ski area hasn't come back with any alternative plans for the parking lot because it was thought that the new development would occur. Mayor Warner asked Mr. Gagen to contact the ski area about the issue.

Mayor Warner took a tour of the Breckenridge Distillery located on Airport Road and mentioned that it was a really nice place. He felt that the "Service Commercial" aspect of their business is very exciting and is thankful to have this company in our community.

Mr. Gagen would like to see more use of the parking located at Block 11 and would like to continue talking about this issue. He would still like to fill up all the town parking lots first.

Ms. McAtamney was at post office a few weeks ago and someone mentioned that it was the Town of Breckenridge's fault that people weren't allowed to have mail delivery at their houses. She clarified that cluster boxes are allowed according to our town code. She further mentioned that it is possible for someone to get a free, small mailbox if you live in the Town of Breckenridge and if you are a land owner. You cannot be a tenant.

Mr. Burke let council know that All Access Limo received his Public Utilities Commission (PUC) license to operate his limousine business.

Mayor Warner asked why there wasn't a Coffee Talk scheduled for June 17. Mayor Warner would like to schedule it.

SCHEDULED MEETINGS

There were none.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 9:38 p.m.

Submitted by Jena Taylor, Administrative Specialist.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 18 (Fence Policy Amendment Ordinance)

DATE: May 13, 2011 (for May 24th meeting)

The second reading of the ordinance amending the Development Code's Fence Policy is scheduled for your meeting on May 24th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MAY 24**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Ordinance As Reviewed At Worksession on April 26, 2011 Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 18

9
10 Series 2011

11
12 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
13 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY
14 REPEALING AND READOPTING WITH CHANGES POLICY 47 (ABSOLUTE)
15 CONCERNING FENCES, GATES AND GATEWAY ENTRANCE MONUMENTS

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

19
20 Section 1. Policy 47 (Absolute)(Fences, Gates and Gateway Entrance Monuments) of
21 Section 9-1-19 of the Breckenridge Town Code is repealed and readopted with changes so as to
22 read in its entirety as follows:

23
24 47: (ABSOLUTE) FENCES, GATES AND GATEWAY ENTRANCE MONUMENTS
25 (47/A):

26
27 A. General Statement: The welfare of the Town is based to a great extent on the character
28 of the community, which includes natural terrain, open spaces, wildlife corridors and
29 wooded hillsides. The installation of fences and privacy gates in residential areas can
30 erode this character by impeding views, hindering wildlife movement and creating the
31 image of a closed, unwelcoming community. It is the intent of the Town to prohibit
32 fences in most situations in areas outside of the Conservation District in order to:
33 maintain the open, natural and wooded alpine character of the community; establish
34 mandatory requirements for the erection of allowed fences in other parts of the Town;
35 allow for fences on small lots in master planned communities; regulate the design of
36 gateway entrance monuments; and prohibit privacy gates anywhere within the Town.

37
38 B. Within the Conservation District: Fences within the Conservation District shall be
39 reviewed under the criteria of the “Handbook of Design Standards for the Historic and
40 Conservation District”. Where fences are required by law and the proposed fence design
41 does not meet the Handbook of Design Standards, the Planning Commission may
42 approve an alternate design if all of the following required criteria are met: 1.) the project
43 as a whole is in substantial compliance with the Handbook of Design Standards for the
44 Historic and Conservation Districts; 2.) the alternate fence design does not have a
45 significant negative aesthetic impact on the development and it complies as much as

1 feasible with the Handbook of Design Standards; 3.) a fence design that meets the
2 Handbook of Design Standards for the Historic and Conservation Districts could not meet
3 the design required by law.
4

5 C. Outside the Conservation District: Fences and landscape walls are prohibited outside
6 the Conservation District, except the following fences are permitted when constructed in
7 accordance with the design standards described in section D of this policy:
8

- 9 (1) pet fences;
- 10 (2) fences around children's play areas;
- 11 (3) fences around ball fields, tennis courts, swimming pools, ski lifts or other
12 outdoor recreation areas;
- 13 (4) construction fences;
- 14 (5) temporary fences used for crowd control or to limit access or egress to or from
15 a short-term special event;
- 16 (6) fencing required by law;
- 17 (7) privacy fencing to screen hot tubs;
- 18 (8) fencing around cemeteries;
- 19 (9) fences specifically authorized in a vested master plan containing specific
20 fence design standards;
- 21 (10) Town fences to delineate public trails or protect open space values;
- 22 (11) fencing at public improvement projects proposed by the town;
- 23 (12) private fences to delineate the boundary between private land and a public
24 trail or public open space, but only if authorized by a variance granted
25 pursuant to section K of this policy;
- 26 (13) fencing at parking lots to protect pedestrians and designate crosswalks;
- 27 (14) fencing at self-storage warehouses; and
- 28 (15) fences installed by utility companies around utility equipment
29

30 D. Design Standards for fences: All fencing outside the Conservation District shall
31 comply with the following design standards:
32

- 33 (1) Fences in residential areas shall be constructed of natural materials, and ~~shall~~
34 may be either a split rail, buck-and-rail, or log fence design because such
35 designs have a natural appearance, blend well into the natural terrain, and have
36 an open character. Fences of other materials or designs are prohibited.
37 (Exception: Where an applicant can demonstrate to the satisfaction of the Town
38 that an alternative material would be ~~indistinguishable from natural materials~~
39 architecturally compatible with the surrounding neighborhood, the ~~Town~~
40 Director may authorize such materials.) Fences in residential areas shall have a
41 maximum solid to void ratio of 1:3 (example: one inch of solid material for
42 every three inches of opening.) Solid privacy fences are prohibited, except for
43 short lengths of fencing used to screen hot tubs, if they comply with Section
44 D9 of this policy.
- 45 (2) PVC, vinyl and plastic fences are prohibited. Rough sawn timbers or natural
46 logs are preferred.

- 1 (3) Pet fences shall be located in a rear or side yard or where the fence is not visible
2 from a public right-of-way. Pet fences shall be located to minimize their
3 visibility to the greatest extent possible, which in most instances will require the
4 fence to be located behind or to the side of a structure. Pet fences may
5 incorporate a wire mesh material to control pets. The wire mesh may be
6 installed vertically on the fence, or may extend horizontally over the top of the
7 enclosed pet area, or both. The maximum area of a fenced pet enclosure shall be
8 400 square feet. Pet fences are limited to fifty-four (54) inches in height, and
9 shall have a maximum solid to void ratio of 1:3.
- 10 (4) Fences around children’s play areas shall be located in a rear or side yard where
11 possible, or where the fence is not visible from a public right-of-way, which in
12 most instances will require the fence to be located behind or to the side of a
13 structure. The fence may incorporate a wire mesh material to enclose the yard.
14 The maximum area of a fenced children’s play area on private property shall be
15 400 square feet. Fences around children’s play areas are limited to fifty-four
16 (54) inches in height, and shall have a maximum solid to void ratio of 1:3.
17 Fencing at state licensed child-care centers may exceed 400 square feet if
18 required by their state license.
- 19 (5) Fences around ball fields, tennis courts, or other outdoor recreation areas **shall**
20 ~~may~~ use black or dark green coated chain link fencing, steel or aluminum, or
21 wood. Uncoated or galvanized chain link fencing is prohibited. This standard
22 applies to fencing of both public and private recreation areas. Wind privacy
23 screens may be incorporated into the fence.
- 24 (6) Fences at outdoor swimming pools shall be constructed of steel or
25 aluminum tubing or wood, and may include a tempered glass windscreen.
26 Chain link fencing is prohibited. The use of acrylic glass or Plexiglas is
27 prohibited, except at access control points in an amount sufficient to prevent
28 unauthorized users from reaching inward to unlock or open gates.
- 29 (7) Fencing at ski lifts and gondolas may be used to protect pedestrians and skiers
30 from overhead lifts and mechanical equipment, or to delineate passenger
31 loading zones. Such fencing may be constructed of natural materials, such
32 as split rail wood, or steel or aluminum. Chain link and plastic or PVC fencing
33 is prohibited. Safety fencing and netting on ski runs is allowed and may be
34 constructed of plastic, high density polyethylene or similar materials.
- 35 (8) Construction fencing may be constructed of plastic, chain link, wood or other
36 material, as approved by the Town. Wind and/or privacy screens may be
37 incorporated into the construction fence. Temporary construction fencing shall
38 be removed upon completion of the project or upon issuance of a Certificate
39 of Occupancy or Certificate of Compliance, where applicable. **Construction**
40 **fencing shall be maintained in good condition by the general contractor**
41 **during its use.**
- 42 (9) Privacy fences around hot tubs and spas shall not exceed six feet (6’) in height
43 and shall not exceed fifteen feet (15’) in total length. Such fences shall be
44 architecturally compatible with the adjacent buildings. Where a fence around a
45 hot tub or spa is highly visible, landscaping may be required to soften the visual
46 impact of the fence.

- 1 (10)Fencing around cemeteries is exempt from this ordinance. The design of
2 cemetery fencing is encouraged to emulate historic fencing from local
3 cemeteries and follow the fence policy in the “Handbook of Design Standards
4 for the Historic and Conservations Districts”. Historically fences were
5 generally constructed of wrought iron, cast iron, or wood pickets, and were
6 generally about three feet (3’) tall.
- 7 (11)Fences approved by the Town to delineate public trails or protect open spaces
8 shall be constructed of natural materials, and shall be either a split rail, buck-
9 and-rail, or log fence design because such designs have a natural appearance,
10 blend well into the natural terrain, and have an open character. These fences
11 should be designed to accommodate wildlife, and may be substantially different
12 from fences on residential or commercial properties, due to the unique needs
13 and goals of public trails and open spaces.
- 14 (12) Fences in parking lots may be allowed when necessary to delineate pedestrian
15 areas from parking and circulation areas, and to designate drive aisles. The
16 design of fences in parking lots shall reflect the surrounding character of the
17 neighborhood. Within the Conservation District, fences shall reflect the
18 character of historic fences. Outside the Conservation District natural materials
19 and greater openings between rails shall be used to reflect the more open and
20 natural character of the neighborhood. In most cases, split rail fences will
21 be most appropriate.
- 22 (13)Fences at self-storage warehouses shall not exceed six (6) feet in height,
23 and shall be designed to allow visibility through the fence. Such fences shall
24 be designed with a maximum solid to void ratio of 1:3, shall be constructed of
25 steel, aluminum or wood, and may be painted. Chain link fencing is prohibited.
26 Self-storage warehouses may incorporate a gate to control access to the site,
27 notwithstanding Section H of this policy.
- 28 (14)Fencing around utility equipment shall not exceed six (6) feet tall. Such fencing
29 may be constructed of chain link, metal, or wood.
- 30 (15)Where natural materials are required by this policy, and where an applicant can
31 demonstrate to the satisfaction of the Town that an alternative material,
32 **including, but not limited to, recycled materials,** would be
33 indistinguishable from natural materials, or where other materials or designs are
34 required by law, the Town may authorize such materials or designs.

- 35
- 36 E. Site Plan; Survey: A site plan showing the location of existing structures, property
37 lines, and the location of the proposed fence may be required by the Director as part
38 of the submittal requirements for a fence. A survey from a Colorado licensed
39 surveyor may also be required by the Director to verify property lines and easements.
40
- 41 F. Architectural Specifications: Architectural elevations showing the design, material,
42 color, and size of the proposed fence may be required by the Director as part of the
43 submittal requirements for a fence.
44
- 45 G. Fences on Easements: If a fence crosses an easement, the fence shall not interfere
46 with the use of the easement.

1
2 H. Privacy gates: Privacy gates are prohibited anywhere within the Town.
3

4 I. Vested Master Plan: This policy shall not apply to any fence to be constructed upon
5 land that is subject to a vested master plan containing specific fence design standards
6 and criteria. The construction of such fence shall be governed by the applicable
7 design standards and criteria contained in the master plan.
8

9 J. Gateway Entrance Monuments: Gateway entrance monuments within the
10 Conservation District are prohibited. Outside the Conservation District, gateway
11 entrance monuments may be allowed only when they meet the following criteria:
12

13 (1) Gateway entrance monuments shall be permitted only for residential
14 subdivisions of five (5) or more lots, and for hotels and condominiums located
15 outside of the Conservation District. Such gateway entrance monuments shall
16 not exceed eight feet (8') in height, and shall not exceed twenty feet (20') in
17 length. One (1) monument is allowed to each side of the road or driveway at the
18 entrance to the subdivision, with up to two (2) monuments total at each
19 vehicular entrance to the subdivision. Entry monuments shall not be constructed
20 in the public right-of-way. Such entrance monuments shall be constructed of
21 natural materials, such as stone and/or wood, and may incorporate the
22 subdivision entrance sign, under a separate permit. **Gateway entrance**
23 **monuments shall not incorporate an arch or other structure over the road.**
24 ~~Gateway entrance monuments at hotels, condo hotels and commercial~~
25 ~~properties may incorporate an arch feature over the private road or driveway,~~
26 ~~but such arches are prohibited in other residential projects. Gateway entrance~~
27 ~~arches shall be in scale with the development, as determined by the Town.~~
28 Privacy gates shall not be incorporated into the gateway entrance monument.
29

30 (2) Gateway entrance monuments at private residences shall not exceed five feet
31 (5') in height, and shall not exceed a footprint of ten (10) square feet in ground
32 area. One (1) monument is allowed, **and may be located** on **either** each side of
33 the driveway at the entrance to the property, ~~with up to two (2) monuments total~~
34 ~~at the entrance.~~ Entry monuments shall not be constructed in the public right-of-
35 way. Such entrance monuments shall be constructed of **the same natural**
36 **materials that are installed on the private residence,** ~~such as stone and/or~~
37 ~~wood,~~ and may incorporate the residence name or street address and light
38 fixtures. Gateway entrance monuments shall not incorporate an arch or other
39 structure over the road. Privacy gates shall not be incorporated into the gateway
40 entrance monument.
41

42 K. Variance: The planning commission or town council may authorize the erection
43 of a private fence to delineate the boundary between private land and a public trail
44 or public open space by granting a variance from the limitations of this policy. A
45 variance shall be granted under this subsection only upon the written request of
46 the applicant, and a finding that the applicant has satisfactorily demonstrated that:

1 1) the fence is needed in order to reduce public confusion as to the location of the
2 boundary between the applicant's land and the public trail or public open space;
3 2) the applicant's inability to erect the fence would present a hardship; and 3) the
4 purposes of this policy will be adequately served by the granting of the variance.
5 No variance shall have the effect of nullifying the intent and purpose of this
6 policy. Section 9-1-11D of this chapter is not applicable to the granting of a
7 variance to erect a private fence to delineate the boundary between private land
8 and a public trail under this section.
9

10 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
11 various secondary codes adopted by reference therein, shall continue in full force and effect.
12

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

18 Section 4. The Town Council hereby finds, determines and declares that it has the power
19 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
20 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
21 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
22 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
23 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
24 contained in the Breckenridge Town Charter.
25

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

30 Section 6. This ordinance shall be published and become effective as provided by
31 Section 5.9 of the Breckenridge Town Charter.
32

33 INTRODUCED, READ ON FIRST READING, APPROVED AND
34 ORDERED PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be
35 held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the
36 ____ day of _____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building
37 of the Town.
38

39 TOWN OF BRECKENRIDGE, a Colorado
40 municipal corporation
41

42
43
44 By _____
45 John G. Warner, Mayor
46
47

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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 20 (New Bike Rules Ordinance)
DATE: May 13, 2011 (for May 24th meeting)

The second reading of the ordinance adopting new rules for bicycles and pedicabs approaching traffic lights and stop signs is scheduled for your meeting on May 24th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MAY 24**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 20

9
10 Series 2011

11
12 AN ORDINANCE AMENDING THE MODEL TRAFFIC CODE FOR COLORADO, 2010
13 EDITION, CONCERNING THE OPERATION OF BICYCLES, PEDICABS, AND OTHER
14 HUMAN-POWERED VEHICLES WITHIN THE TOWN OF BRECKENRIDGE

15
16 WHEREAS, Section 42-4-110(1)(b), C.R.S., authorizes local authorities to adopt by
17 reference a model traffic code embodying the rules of the road and vehicle requirements set forth
18 in Article 4 of Title 42, C.R.S., and such additional local regulations as are provided for in
19 Section 42-4-111, C.R.S.; and

20
21 WHEREAS, the Town of Breckenridge has adopted (and amended) the Model Traffic
22 Code For Colorado, 2010 edition, as the Traffic Code for the Town; and

23
24 WHEREAS, Section 42-4-111(1)(h), C.R.S., provides that nothing in Article 4 of Title
25 42, C.R.S., prevents local authorities, with respect to streets and highways under their
26 jurisdiction and within the reasonable exercise of the police power (except streets and highways
27 that are part of the state highway system), from regulating the operation of bicycles or electrical
28 assisted bicycles consistent with the provision of Article 4 of Title 42, C.R.S.; and

29
30 WHEREAS, the Town Council finds, determines, and declares that the Model Traffic
31 Code For Colorado, 2010 edition, should be amended as set forth in this ordinance.

32
33 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
34 BRECKENRIDGE, COLORADO:

35
36 Section 1. All existing letter designations for the various subsections of Section
37 7-1-2 of the Breckenridge Town Code are deleted; provided, however, that nothing in this
38 Section affects the substance of the amendments to the Town’s Model Traffic Code set
39 forth in Section 7-1-2 of the Breckenridge Town Code. Future amendments to Section
40 7-1-2 of the Breckenridge Town Code shall not include any letter designations for the any
41 subsections of Section 7-1-2.

42
43 Section 2. All existing subsections of Section 7-1-2 of the Breckenridge Town
44 Code that relate to amendments to Section 1412 of the Town’s Model Traffic Code are

1 repealed, and Section 7-1-2 of the Breckenridge Town Code is amended by the addition
2 of a new unnumbered subsection that reads in its entirety as follows:

3
4 Section 1412 of the adopted code is amended so as to read in its entirety as
5 follows:

6
7 **1412. Operation of bicycles and other human-powered vehicles**

8
9 (1) Every person riding a bicycle or electrical assisted bicycle shall have all of the
10 rights and duties applicable to the driver of any other vehicle under this article,
11 except as to special regulations in this article and except as to those provisions
12 which by their nature can have no application. Said riders shall comply with the
13 rules set forth in this section and section 221, and, when using streets and
14 highways within incorporated cities and towns, shall be subject to local
15 ordinances regulating the operation of bicycles and electrical assisted bicycles as
16 provided in section 111.

17
18 (2) [DELETED]

19
20 (3) No bicycle or electrical assisted bicycle shall be used to carry more persons at
21 one time than the number for which it is designed or equipped.

22
23 (4) No person riding upon any bicycle or electrical assisted bicycle shall attach
24 the same or himself or herself to any motor vehicle upon a roadway.

25
26 (5)(a) Any person operating a bicycle or an electrical assisted bicycle upon a
27 roadway at less than the normal speed of traffic shall ride in the right-hand lane,
28 subject to the following conditions:

29
30 (I) If the right-hand lane then available for traffic is wide enough to be safely
31 shared with overtaking vehicles, a bicyclist shall ride far enough to the right as
32 judged safe by the bicyclist to facilitate the movement of such overtaking vehicles
33 unless other conditions make it unsafe to do so.

34
35 (II) A bicyclist may use a lane other than the right-hand lane when:

36
37 (A) Preparing for a left turn at an intersection or into a private roadway or
38 driveway;

39
40 (B) Overtaking a slower vehicle; or

41
42 (C) Taking reasonably necessary precautions to avoid hazards or road conditions.

43
44 (III) Upon approaching an intersection where right turns are permitted and there is
45 a dedicated right-turn lane, a bicyclist may ride on the left-hand portion of the
46 dedicated right-turn lane even if the bicyclist does not intend to turn right.

1
2 (b) A bicyclist shall not be expected or required to:

3
4 (I) Ride over or through hazards at the edge of a roadway, including but not
5 limited to fixed or moving objects, parked or moving vehicles, bicycles,
6 pedestrians, animals, surface hazards, or narrow lanes; or

7
8 (II) Ride without a reasonable safety margin on the right-hand side of the
9 roadway.

10
11 (c) A person operating a bicycle or an electrical assisted bicycle upon a one-way
12 roadway with two or more marked traffic lanes may ride as near to the left-hand
13 curb or edge of such roadway as judged safe by the bicyclist, subject to the
14 following conditions:

15
16 (I) If the left-hand lane then available for traffic is wide enough to be safely
17 shared with overtaking vehicles, a bicyclist shall ride far enough to the left as
18 judged safe by the bicyclist to facilitate the movement of such overtaking vehicles
19 unless other conditions make it unsafe to do so.

20
21 (II) A bicyclist shall not be expected or required to:

22
23 (A) Ride over or through hazards at the edge of a roadway, including but not
24 limited to fixed or moving objects, parked or moving vehicles, bicycles,
25 pedestrians, animals, surface hazards, or narrow lanes; or

26
27 (B) Ride without a reasonable safety margin on the left-hand side of the roadway.

28
29 (6)(a) Persons riding bicycles or electrical assisted bicycles upon a roadway shall
30 not ride more than two abreast except on paths or parts of roadways set aside for
31 the exclusive use of bicycles.

32
33 (b) Persons riding bicycles or electrical assisted bicycles two abreast shall not
34 impede the normal and reasonable movement of traffic and, on a laned roadway,
35 shall ride within a single lane.

36
37 (7) A person operating a bicycle or electrical assisted bicycle shall keep at least
38 one hand on the handlebars at all times.

39
40 (8)(a) A person riding a bicycle or electrical assisted bicycle intending to turn left
41 shall follow a course described in sections 901(1), 903, and 1007 or may make a
42 left turn in the manner prescribed in paragraph (b) of this subsection (8).

43
44 (b) A person riding a bicycle or electrical assisted bicycle intending to turn left
45 shall approach the turn as closely as practicable to the right-hand curb or edge of
46 the roadway. After proceeding across the intersecting roadway to the far corner of

1 the curb or intersection of the roadway edges, the bicyclist shall stop, as much as
2 practicable, out of the way of traffic. After stopping, the bicyclist shall yield to
3 any traffic proceeding in either direction along the roadway that the bicyclist had
4 been using. After yielding and complying with any official traffic control device
5 or police officer regulating traffic on the highway along which the bicyclist
6 intends to proceed, the bicyclist may proceed in the new direction.
7

8 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection
9 (8), the transportation commission and local authorities in their respective
10 jurisdictions may cause official traffic control devices to be placed on roadways
11 and thereby require and direct that a specific course be traveled.
12

13 (9)(a) Except as otherwise provided in this subsection (9), every person riding a
14 bicycle or electrical assisted bicycle shall signal the intention to turn or stop in
15 accordance with section 903; except that a person riding a bicycle or electrical
16 assisted bicycle may signal a right turn with the right arm extended horizontally.
17

18 (b) A signal of intention to turn right or left when required shall be given
19 continuously during not less than the last one hundred feet traveled by the bicycle
20 or electrical assisted bicycle before turning and shall be given while the bicycle or
21 electrical assisted bicycle is stopped waiting to turn. A signal by hand and arm
22 need not be given continuously if the hand is needed in the control or operation of
23 the bicycle or electrical assisted bicycle.
24

25 (10)(a) A person riding a bicycle or electrical assisted bicycle upon and along a
26 sidewalk or pathway or across a roadway upon and along a crosswalk shall yield
27 the right-of-way to any pedestrian and shall give an audible signal before
28 overtaking and passing such pedestrian. A person riding a bicycle in a crosswalk
29 shall do so in a manner that is safe for pedestrians.
30

31 (b) A person shall not ride a bicycle or electrical assisted bicycle upon and along a
32 sidewalk or pathway or across a roadway upon and along a crosswalk where such
33 use of bicycles or electrical assisted bicycles is prohibited by official traffic
34 control devices or local ordinances. A person riding a bicycle or electrical assisted
35 bicycle shall dismount before entering any crosswalk where required by official
36 traffic control devices or local ordinances.
37

38 (c) A person riding or walking a bicycle or electrical assisted bicycle upon and
39 along a sidewalk or pathway or across a roadway upon and along a crosswalk
40 shall have all the rights and duties applicable to a pedestrian under the same
41 circumstances, including, but not limited to, the rights and duties granted and
42 required by section 802.
43

44 (11)(a) A person may park a bicycle or electrical assisted bicycle on a sidewalk
45 unless prohibited or restricted by an official traffic control device or local
46 ordinance.

1
2 (b) A bicycle or electrical assisted bicycle parked on a sidewalk shall not impede
3 the normal and reasonable movement of pedestrian or other traffic.
4

5 (c) A bicycle or electrical assisted bicycle may be parked on the road at any angle
6 to the curb or edge of the road at any location where parking is allowed.
7

8 (d) A bicycle or electrical assisted bicycle may be parked on the road abreast of
9 another such bicycle or bicycles near the side of the road or any location where
10 parking is allowed in such a manner as does not impede the normal and
11 reasonable movement of traffic.
12

13 (e) In all other respects, bicycles or electrical assisted bicycles parked anywhere
14 on a highway shall conform to the provisions of part 12 of this article regulating
15 the parking of vehicles.
16

17 **(12) (a) A person operating a bicycle or electrical assisted bicycle**
18 **approaching a stop sign shall slow down and, if required for safety, stop**
19 **before entering the intersection. After slowing to a reasonable speed or**
20 **stopping, the person shall yield the right-of-way to any vehicle in the**
21 **intersection or approaching on another roadway so closely as to constitute an**
22 **immediate hazard during the time the person is moving across or within the**
23 **intersection, except that a person after slowing to a reasonable speed and**
24 **yielding the right-of-way if required, may cautiously make a turn or proceed**
25 **through the intersection without stopping.**
26

27 **(b) A person operating a bicycle or electrical assisted bicycle approaching a**
28 **steady red traffic control signal shall stop before entering the intersection,**
29 **except that a person after slowing to a reasonable speed and yielding the**
30 **right of way if required, may cautiously make a right hand turn without**
31 **stopping or may cautiously make a left hand turn onto a one-way roadway**
32 **without stopping.**
33

34 **(c) The provisions of this subsection 12 shall control over any conflicting**
35 **portion of this code or any Town ordinance.**
36

37 ~~(13)~~ (a) Any person who violates any provision of this Section commits a
38 misdemeanor traffic offense; except that Section 42-2-127, C.R.S. shall not apply.
39

40 (b) Any person riding a bicycle or electrical assisted bicycle who violates any
41 provision of this Code other than this Section which is applicable to such a
42 vehicle and for which a penalty is specified shall be subject to the same specified
43 penalty as any other vehicle; except that Section 42-2-127, C.R.S. shall not apply.
44

45 ~~(14)~~ Upon request, the law enforcement agency having jurisdiction shall
46 complete a report concerning an injury or death incident that involves a bicycle or

1 electrical assisted bicycle on the roadways of the state, even if such accident does
2 not involve a motor vehicle.

3
4 (~~14~~15) Except as authorized by Section 42-4-111, C.R.S., the rider of an electrical
5 assisted bicycle shall not use the electrical motor on a bike or pedestrian path.
6

7 Section 3. The unnumbered subsection of Section 7-1-2 of the Breckenridge
8 Town Code that relates to Section 1412 of the Town's Model Traffic Code is amended by
9 the addition of a new subsection that reads in its entirety as follows, and the subsequent
10 subsections of Section 1412 of the Town's Model Traffic Code are renumbered as
11 follows:

12
13 **(12) (a) A person operating a pedicab approaching a stop sign shall slow**
14 **down and, if required for safety, stop before entering the intersection. After**
15 **slowing to a reasonable speed or stopping, the person shall yield the right-of-**
16 **way to any vehicle in the intersection or approaching on another roadway so**
17 **closely as to constitute an immediate hazard during the time the person is**
18 **moving across or within the intersection, except that a person after slowing**
19 **to a reasonable speed and yielding the right-of-way if required, may**
20 **cautiously make a turn or proceed through the intersection without stopping.**
21

22 **(b) A person operating a pedicab approaching a steady red traffic control**
23 **signal shall stop before entering the intersection, except that a person after**
24 **slowing to a reasonable speed and yielding the right of way if required, may**
25 **cautiously make a right hand turn without stopping or may cautiously make**
26 **a left hand turn onto a one-way roadway without stopping.**
27

28 **(c) The provisions of this subsection 12 shall control over any conflicting**
29 **portion of this code or any Town ordinance.**
30

31 (~~12~~13) Any person who violates any provision of this section commits a
32 misdemeanor traffic offense; except that section 42-2-127, C.R.S., shall not apply.
33

34 (~~13~~14) Upon request, the law enforcement agency having jurisdiction shall
35 complete a report concerning an injury or death incident that involves a pedicab
36 anywhere within the Town, even if such accident does not involve a motor
37 vehicle.
38

39 Section 4. Except as specifically amended hereby, the Breckenridge Town Code, and the
40 various secondary codes adopted by reference therein, shall continue in full force and effect.
41

42 Section 5. The Town Council hereby finds, determines and declares that this ordinance is
43 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
44 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
45 thereof.
46

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 21 (Columbia Lode Extended Vested Property Rights
Development Agreement)

DATE: May 13, 2011 (for May 24th meeting)

The second reading of the ordinance approving the Extended Vested Property Rights Development Agreement for the Columbia Lode property is scheduled for your meeting on May 24th. There are no changes proposed to either the ordinance or the Development Agreement itself from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – MAY 24***

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

4
5 COUNCIL BILL NO. 21

6
7 Series 2011

8
9 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
10 COLUMBIA LODGE PARTNERS, LLC, a Colorado limited liability company
11 (Extended Vested Property Rights - Columbia Lodge 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. Pursuant to the Development Permit No. 2010017 (the “Development Permit”),
20 the Town has approved a Master Plan for: (i) portions of the Columbia Lodge, M.S. 2515, and the
21 Louisa Lodge, M.S. 2516, in Section 31, Township 6 South, Range 77 West of the 6th Principal
22 Meridian, and (ii) Lot 1, Corkscrew Subdivision Filing No. 1, all in the Town of Breckenridge,
23 Summit County, Colorado (the “Master Plan”).

24
25 B. Pursuant to the Breckenridge Town Code the vested property rights period for the
26 Development Permit is three years. As used in this Agreement, the term “vested property rights
27 period” shall have the meaning, purpose and effect afforded such term in the Breckenridge Town
28 Code.

29
30 C. The Breckenridge Town Code, including Section 9-1-17-11:E of the Development
31 Code, authorizes the vested property rights for a phased development to be as provided for in a
32 development permit and Section 9-1-17-11:K of the Development Code authorizes the Town
33 Council to enter into a development agreement to provide for a vested property rights period of
34 more than three years when warranted in light of all relevant circumstances including, but not
35 limited to, the size and phasing of the development, economic cycles and market conditions.

36
37 D. Columbia Lodge Partners, LLC, a Colorado limited liability company
38 (“Developer”) has submitted a completed application and all required fees and submittals for a
39 development agreement to provide extended vested property rights for the Master Plan. The
40 Town Council has received the completed application and fees; had a preliminary discussion of
41 the application and this Agreement; determined that it should commence proceedings for the
42 approval of this Agreement without referring the application to the Planning Commission; and,
43 in accordance with the procedures set forth in Subsection 9-9-10:C of the Breckenridge Town
44 Code, has approved this Agreement by non-emergency ordinance.

1 E. A Development Agreement between the Town and the Developer providing for
2 the requested extension of the vested property rights has been prepared, a copy of which is
3 marked **Exhibit “A”**, attached hereto and incorporated herein by reference (“Development
4 Agreement”).

5
6 F. The commitments to the Town to enable the Town to obtain supplemental
7 benefits that could not be obtained by the Town through existing regulations, standards or
8 policies, as encouraged in Section 9-9-4 of the Breckenridge Town Code, are provided for in the
9 Development Agreement.

10
11 G. The Town Council has reviewed the Development Agreement.

12
13 H. The extension of the vested property rights for the Development Permit as
14 provided for in the Development Agreement is warranted in light of all relevant circumstances.

15
16 I. The procedures to be used to review and approve a Development Agreement are
17 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
18 Chapter have been met in connection with the approval of the Development Agreement and this
19 ordinance.

20
21 Section 2. Approval of Development Agreement. The Development Agreement between
22 the Town and Developer (**Exhibit “A”** to this ordinance) is approved, and the Town Manager is
23 authorized, empowered and directed to execute such Agreement for and on behalf of the Town of
24 Breckenridge.

25
26 Section 3. Notice of Approval. The Development Agreement shall contain a notice in the
27 form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in
28 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be
29 published by the Town Clerk one time in a newspaper of general circulation in the Town within
30 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of
31 Section 24-68-103, C.R.S.

32
33 Section 4. Police Power Finding. The Town Council hereby finds, determines and
34 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,
35 promote the prosperity, and improve the order, comfort and convenience of the Town of
36 Breckenridge and the inhabitants thereof.

37
38 Section 5. Authority. The Town Council hereby finds, determines and declares that it has
39 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities
40 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
41 Charter.

42
43 Section 6. Effective Date. This ordinance shall be published and become effective as
44 provided by Section 5.9 of the Breckenridge Town Charter.

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
4 _____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
5 Town.

6
7 TOWN OF BRECKENRIDGE

8
9
10 By _____
11 John G. Warner, Mayor

12
13 ATTEST:

14
15
16
17 _____
18 Mary Jean Loufek, CMC, Town Clerk

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

DEVELOPMENT AGREEMENT
FOR
EXTENDED VESTING
OF
DEVELOPMENT PERMIT #2010017

This Development Agreement for Extended Vesting of Development Permit #2010017 (“Agreement”) is made as of the ____ day of May, 2011 between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado, (the “Town”) and COLUMBIA LODGE PARTNERS, LLC, a Colorado limited liability company, (the “Developer”).

Recitals

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

B. Pursuant to Development Permit #2010017 (“Permit”), the Town has approved the “Columbia Lodge Master Plan” as a site specific development plan for the Property.

C. Pursuant to Section 9-1-17-11 and Policy 39 of Section 9-1-19 of the Breckenridge Development Code, the vested property rights period for the Permit is three (3) years and the Permit will expire on March 21, 2014. As used in this Agreement, the term “vested property rights period” shall have the meaning, purpose and effect afforded such term in the Breckenridge Development Code, including, but not limited to, Section 9-1-17-11 and Policy 39 of Section 9-1-19.

D. Paragraph K of Section 9-1-17-11 of the Breckenridge Development Code authorizes the Town Council to enter into an agreement with a land owner to provide for a vested property rights period of more than three (3) years.

E. As the commitments encouraged to be made in connection with an application for a development agreement in accordance with Section 9-1-4 of the Breckenridge Town Code, developer proposes to construct: the improvements for the right turn lane which is provided for in the Columbia Lodge Master Plan and for which right of way will be dedicated by Developer to the Town in accordance with Development Permit #2011005 for the subdivision of the Property; and to demolish the existing structures on the Property within the same time limits as the right turn lane improvements are to be made.

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 acknowledges and agrees that it has determined that circumstances warrant an extension of the vested property rights period for the Permit because current market conditions and anticipated economic cycles indicate that the single family and duplex units should and are planned to be constructed only as there is demand for such units and that a total of ten (10) years is reasonable for such construction to take place.

2. The Town acknowledges and agrees that the Permit constitutes a site specific development plan and that it is hereby designated as a site specific development plan.

3. Pursuant to its authority under paragraph K of Section 9-1-17-11 of the Breckenridge Development Code, the Town Council, on behalf of the Town, agrees that the vested property rights period for the Permit shall be extended to March 21, 2021.

4. As commitments to the Town to enter into this Agreement, Developer, at its cost, agrees to the following:

(a) subject to the issuance by the Town of such permits as may be required, to make every reasonable effort to complete construction of the right turn lane and all improvements associated therewith on or before October 31, 2011 and no later than October 31, 2012; and

(b) subject to the issuance by the Town of such permits as may be required, to demolish the existing structures on the Property at approximately the same time as the right turn lane is constructed and within the same time limits as provided for the completion of construction of the right turn lane.

For all proposed improvements, the Developer shall provide designs acceptable to the Town. Work will not begin until these plans have been approved by the Town.

5. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein or in the Permit, 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.

6. 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.

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

8. 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.

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

10. Actual development of the Property 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.

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

12. 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.

13. 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.

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

15. 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.

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

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

18. 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.

19. 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
Columbia Lode Partners, LLC
P.O. Box 2065
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to:

Stephen C. West, Esq.
West Brown Huntley & Hunter, 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.

20. 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.

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

[Separate Signature Pages Follow]

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 _____, 2011 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

COLUMBIA LODE PARTNERS, LLC,
a Colorado limited liability company

By: _____
Jon A. Brownson, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
2011 by Jon A. Brownson, Manager of Columbia Lode Partners, LLC, a Colorado limited
liability company.

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 6th 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 6th 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 6th 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.

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 22 (Xcel Enclave Zoning Ordinance)

DATE: May 13, 2011 (for May 24th meeting)

The second reading of the ordinance placing the recently annexed Xcel Energy enclave property into Land Use District 13 is scheduled for your meeting on May 24th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MAY 24**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 22

6
7 Series 2011

8
9 AN ORDINANCE PLACING RECENTLY ANNEXED
10 PROPERTY IN LAND USE DISTRICT 13
11 (5.8468 ACRES, MORE OR LESS)

12
13 WHEREAS, the Town has heretofore annexed to the Town the hereafter described parcel
14 of land; and

15
16 WHEREAS, the Town is required by Section 31-12-115(2), C.R.S., to zone all newly
17 annexed areas within ninety (90) days of annexation; and

18
19 WHEREAS, the Town's Planning Commission has recommended that the recently
20 annexed parcel be placed within Land Use District 13; and

21
22 WHEREAS, the Town's Annexation Plan adopted pursuant to Section 31-12-105(1)(e),
23 C.R.S., indicates that the property should be placed in Land Use District 13.

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

27
28 Section 1. The following described real property, to wit:

29
30 A parcel of land lying wholly within the Blue River Placer. M.S. 816. The Blue
31 River Lode No. 1, M.S. 816, and the Blue River Lode No. 2, M.S. 816, Section
32 31, Township 6 South, Range 77 West of the 6th Principal Meridian, situate in the
33 County of Summit, State of Colorado and more particularly described as follows:

34
35 Beginning at Corner No. 1 of said Blue River Placer, common with Corner No. 1
36 of the French Gulch Placer, M.S. 2589, and Corner No. 1 of the Stillson Patch
37 Placer, M.S. 1466, and running S. 15°01'00" W. 14.56 feet to the center line of a
38 60 foot public street, known as Wellington Road, which point is, in fact, the True
39 Point of Beginning; thence S. 15°01'00" W. 752.44 feet to corner No. 12 of said
40 Blue River Placer; thence N. 75°18'29" W. 208.43 feet along line 12-11 of said
41 Blue River Placer; thence N. 00°59'22" W. 632.88 feet to the center line of public
42 street; thence S. 85°37'59" E. 96.93 feet along said center line; thence
43 Northeasterly 198.12 feet along the arc of a 589.88 feet radius curve to the left
44 whose long chord bears N. 84°44'43" E. 197.19 feet along said center line; thence
45 N. 75°07'25" E. 118.47 feet along said center line to the True Point of Beginning.

1
2 Contains: 4.6151 acres, more or less.
3

4 Together with a parcel of land as recorded at Reception No. 174333 in the office
5 of the Clerk and Recorder for Summit County, Colorado. Said parcel lying
6 wholly within the Stillson Patch Placer, U.S.M.S. No. 1466, and being more
7 particularly described as follows:
8

9 Beginning at Corner No. 1 of said Stillson Patch Placer, said corner being the true
10 point of beginning.
11

12 Thence: S15°01'00"W, along the 1-2 line of said Stillson Patch Placer, a distance
13 of 14.56 feet.
14

15 Thence: Continuing S15°01'00"W, along said 1-2 line, a distance of 752.44' to
16 Corner No. 2 of said Stillson Patch Placer, also being Corner No. 12 of the Blue
17 River Placer, U.S.M.S. 816.
18

19 Thence: S75°18'29"E a distance of 70.00 feet.
20

21 Thence: N15°01'00"E, parallel to the easterly line of said Public Service
22 Company parcel a distance of 765.99' to a point on the 1-16 line of said Stillson
23 Patch Placer.
24

25 Thence: N74°29'00"W along said 1-16 line a distance of 70.00 feet to the point of
26 beginning.
27

28 Contains: 1.2317 acres, more or less.
29

30 is hereby placed in Breckenridge Land Use District 13.
31

32 Section 2. The Town staff is hereby directed to change the Town's Land Use District
33 Map to indicate that the abovedescribed property has been annexed and placed within Land Use
34 District 13.
35

36 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
37 PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the
38 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
39 _____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
40 Town.
41

42 TOWN OF BRECKENRIDGE, a Colorado
43 municipal corporation
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By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 23 (FirstBank/Contino Enclave Zoning Ordinance)

DATE: May 13, 2011 (for May 24th meeting)

The second reading of the ordinance placing the recently annexed FirstBank (Contino) enclave property into Land Use District 10 is scheduled for your meeting on May 24th. 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/FIRST READING – MAY 24*

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

4
5 COUNCIL BILL NO. 23

6
7 Series 2011

8
9 AN ORDINANCE PLACING RECENTLY ANNEXED
10 PROPERTY IN LAND USE DISTRICT 10
11 (0.488 ACRES, MORE OR LESS)
12

13 WHEREAS, the Town has heretofore annexed to the Town the hereafter described parcel
14 of land; and
15

16 WHEREAS, the Town is required by Section 31-12-115(2), C.R.S., to zone all newly
17 annexed areas within ninety (90) days of annexation; and
18

19 WHEREAS, the Town's Planning Commission has recommended that the recently
20 annexed parcel be placed within Land Use District 10; and
21

22 WHEREAS, the Town's Annexation Plan adopted pursuant to Section 31-12-105(1)(e),
23 C.R.S., indicates that the property should be placed in Land Use District 10.
24

25 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
26 BRECKENRIDGE, COLORADO:
27

28 Section 1. The following described real property, to wit:
29

30 A tract of land located in Section 36, Township 6 South Range 78 West of the 6th
31 Principle Meridian, County of Summit, State of Colorado, being more particularly
32 described as follows:
33

34 A portion of the Sawmill Patch Placer, United States Mineral Survey 2533, beginning at
35 corner no. 4 of said survey No. 2533;

36 Thence North 6 degrees 42 minutes 00 seconds East 500 feet;

37 Thence North 84 degrees 58 minutes 00 seconds West a distance of 759.6 feet to the
38 point of beginning of the tract hereby described and designated as corner No. 1 of said
39 tract;

40 Thence South 5 degrees 00 minutes 00 seconds West 100 feet to corner No. 2;

41 Thence North 84 degrees 58 minutes 00 seconds West 200 feet to corner No. 3;

42 Thence North 5 degrees 00 minutes 00 seconds East 100 feet to corner No. 4;

43 Thence South 84 degrees 58 minutes 00 seconds East 200 feet to corner No. 1, the Point
44 of Beginning, County of Summit, State of Colorado
45

1 Containing 20,000 square feet or 0.459 acres, more or less.

2
3 Also

4
5 A portion of the Sawmill Patch Placer United States Mineral Survey No. 2533 located in
6 Section 36, Township 6 South, Range 78 West of the 6th Principle Meridian, County of
7 Summit, State of Colorado being more particularly described as follows:

8
9 Commencing at corner 4 of the Sawmill Patch Placer;
10 Thence North 6 degrees 42 minutes 00 seconds East 500.00 feet along the 4-3 corner line
11 of the Sawmill Patch Placer;
12 Thence North 84 degrees 58 minutes 00 seconds West 759.6 feet to the Northeast corner
13 of that tract of land described in that deed recorded under Reception No. 91956 in the
14 Summit County Records and being the point of beginning;
15 Thence continuing North 84 degrees 58 minutes 00 seconds West 200.00 feet along the
16 northerly line of said tract described under Reception No. 91956 to the northwest corner
17 of said tract described under Reception No. 91956;
18 Thence South 05 degrees 00 minutes 00 seconds West along the westerly line of said
19 tract described under Reception No. 91956 to the southwest corner of said tract described
20 under Reception No. 91956;
21 Thence North 84 degrees 58 minutes 00 seconds west 3.46 feet to a point on the easterly
22 line of Tract D as depicted on the Amended Plat of the Pines at Four O'Clock according
23 to the Plat filed March 1, 1995 under Reception No. 487101;
24 Thence North 05 degrees 01 minutes 59 seconds east along the easterly line of said Tract
25 D to the Northeast corner of said Tract D, said corner being also a point on the southerly
26 line of Tract C of Park Forest Estates as depicted on the Amended Perimeter Plat of Park
27 Forest Estates filed December 19, 1994 under Reception No. 482695 in the Summit
28 County Records;
29 Thence South 85 degrees 01 minutes 26 seconds West 8.91 feet along the southerly line
30 of said Tract C to the southeast corner of said Tract C, common with the southwest
31 corner of that tract of land described in Deed filed January 6, 1981 under Reception No.
32 217948 in the Summit County Records;
33 Thence continuing South 85 degrees 01 minutes 26 seconds West, 194.49 feet along the
34 southerly line of said tract recorded under Reception No. 217948 in the Summit County
35 Records;
36 Thence South 5 degrees 00 minutes 00 seconds west 4.51 feet to the point of beginning,
37 County of Summit, State of Colorado

38
39 Containing 1241 square feet or 0.029 acre, more or less.

40
41 is hereby placed in Breckenridge Land Use District 10.

42
43 Section 2. The Town staff is hereby directed to change the Town's Land Use District
44 Map to indicate that the abovedescribed property has been annexed and placed within Land Use
45 District 10.

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this ____ day of _____, 2011. A Public Hearing shall be held at the
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
4 _____, 2011, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
5 Town.

6
7 TOWN OF BRECKENRIDGE, a Colorado
8 municipal corporation
9

10
11
12 By _____
13 John G. Warner, Mayor
14

15 ATTEST:

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19 _____
20 Mary Jean Loufek, CMC,
21 Town Clerk
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Memorandum

To: Town Council
From: Jennifer Cram, AICP
Date: May 15, 2011
Subject: Intergovernmental Agreement with Red White and Blue Fire Protection District

Attached to this memo is an Intergovernmental Agreement (IGA) and Resolution to update the details of the Red White and Blue Fire Protection District (RWB) administering the Town's Voluntary Defensible Space Ordinance.

To refresh and educate newer Council members the Voluntary Defensible Space Ordinance was adopted in August of 2009 to allow property owners that wish to create Defensible Space the opportunity to do so. It was made clear that creating Defensible Space did not mean clear cutting, but the case by case evaluation of the best way to reduce fuels around a structure while maintaining site buffers. Specimen trees can be preserved and all required landscaping can be preserved provided it is drip irrigated. The RWB staff has been educated on the Town's goals for the implementation of the Ordinance.

The RWB has been performing site inspections, recommending appropriate tree removal and documenting the completion of Voluntary Defensible Space since the Ordinance was approved. The updates to the Resolution and Intergovernmental Agreement merely clarifies reporting and some special instructions for working within the Conservation District. Per the Intergovernmental Agreement the RWB will continue to assist property owners with the creation of Defensible Space per the standards outlined in the Ordinance.

Staff will be available during the worksession to answer any questions regarding the IGA or Resolution.

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

3
4 Section 1. The proposed Intergovernmental Agreement with the Red, White & Blue Fire
5 Protection District concerning the administration of the Town’s “Voluntary Defensible Space
6 Ordinance” (Exhibit “A” hereto) is approved, and the Town Manager is hereby authorized,
7 empowered and directed to execute such Agreement for and on behalf of the Town of
8 Breckenridge.

9
10 Section 2. This resolution shall become effective upon its adoption.

11
12 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2011.

13
14 TOWN OF BRECKENRIDGE

15
16
17
18 By _____
19 John G. Warner, Mayor

20
21 ATTEST:

22
23
24
25 _____
26 Mary Jean Loufek,
27 CMC, Town Clerk

28
29 APPROVED IN FORM

30
31
32
33 _____
34 Town Attorney Date

1 INTERGOVERNMENTAL AGREEMENT
2 (Administration of Voluntary Defensible Space Ordinance)
3

4 This Intergovernmental Agreement ("**Agreement**") is dated _____,
5 2011 ("**Effective Date**") and is between the TOWN OF BRECKENRIDGE, a Colorado
6 municipal corporation ("**Town**") and the RED, WHITE & BLUE FIRE PROTECTION
7 DISTRICT, a Colorado special district ("**District**"). The Town and the District are sometimes
8 referred to individually as a "**Party**", or together as the "**Parties.**"
9

10 WHEREAS, the Town is a home rule municipal corporation organized and existing under
11 Article XX of the Colorado Constitution; and
12

13 WHEREAS, the District is a special district and quasi-municipal corporation organized
14 and existing under the laws of the State of Colorado; and
15

16 WHEREAS, the Town has established a voluntary program allowing property owners to
17 create defensible space around their buildings and structures within the Town; and
18

19 WHEREAS, the District has experience and expertise in the creation of defensible space
20 around buildings and structures; and
21

22 WHEREAS, Subsection J of Policy 48 (Absolute) of the Town of Breckenridge
23 Development Code (Section 9-1-19 of the Breckenridge Town Code), entitled "Voluntary
24 Defensible Space", provides that the District may assist the Town's Director of the Department
25 of Community Development in administering Policy 48 (Absolute) if authorized by an
26 intergovernmental agreement; and
27

28 WHEREAS, the Town desires to have the District assist the Town's Director of the
29 Department of Community Development in administering Policy 48 (Absolute), all as more fully
30 set forth in this Agreement.
31

32 NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained
33 herein, and intending to be legally bound, the Parties agree as follows:
34

- 35 1. Authority. This Agreement is entered into pursuant to the authority granted by Article
36 XIV, Section 18(2)(a) of the Colorado Constitution, and Part 2 of Article 1 of Title 29,
37 C.R.S.
- 38 2. Definitions. As used in this Agreement, the following terms have the following
39 meanings, unless the context clearly requires otherwise:

Act: The Colorado Governmental Immunity Act,
Part 1 of Article 10 of Title 24, C.R.S., as
amended throughout the Term of this
Agreement.

INTERGOVERNMENTAL AGREEMENT

Director: The Director of the Department of Community Development of the Town of Breckenridge, or such person's designee.

Voluntary Defensible Space Ordinance: The Town's program for allowing the voluntary creation of defensible space around buildings and structures as described in Policy 48 (Absolute) of the Town of Breckenridge Development Code (Section 9-1-19 of the Breckenridge Town Code), as amended from time to time throughout the Term of this Agreement.

Term: Both the initial term and all renewal terms of this Agreement as described in Section 3.

Will or Will Not: Terms indicating a mandatory obligation to act or to refrain from acting, respectively, as described in this Agreement.

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3. Term.

3.1 The initial Term of this Agreement commences as of the Effective Date of this Agreement and ends, subject to earlier termination as hereafter, on December 31, 2011.

3.2 On January 1, 2012, and on each subsequent January 1st, this Agreement will automatically renew for successive terms of one year each until such time as either the Town or the District gives written notice of termination in accordance with the next sentence of this Subsection. Either Party may terminate this Agreement, without cause and without liability for breach, by giving the other Party written notice of termination prior to October 1st any year. Such notice must be given in the manner provided for in Section 8. Upon the giving of timely notice of termination, this Agreement will terminate (and will not be renewed) on December 31st following the giving of the notice of termination.

4. Administration of Town's Voluntary Defensible Space Ordinance.

4.1 The District will assist the Town in the administration of the Voluntary Defensible Space Ordinance. All services performed by the District will be in accordance with the terms, conditions, and restrictions of the Voluntary Defensible Space Ordinance, and any administrative rules and regulations adopted from time to time by the Director in accordance with Subsection 7 of the Voluntary Defensible Space Ordinance.

INTERGOVERNMENTAL AGREEMENT

- 1 4.2 The specific duties and responsibilities to be performed by the District will be
2 established from time to time by the Director and the District.
- 3 4.3 All District personnel involved in the enforcement and administration of the
4 Voluntary Defensible Space Ordinance will be trained by the Director to make
5 sure that when creating defensible space they are aware of the Town's goals of: (i)
6 preserving buffers, specimen trees, and required landscape materials, and (ii)
7 reducing fire fuels.
- 8 4.4 The District may issue permits for the creation of voluntary defensible space
9 under the Voluntary Defensible Space Ordinance. The process that the District
10 will follow when issuing such permit will include, without limitation, the
11 following: (i) the application for the permit will be requested by the owner of the
12 property where the voluntary defensible space is proposed to be created; (ii) the
13 application will be reviewed by the District against the requirements of the
14 Voluntary Space Ordinance and this Agreement; (iii) the requested permit will not
15 be issued if the application fails to comply with the requirements of either the
16 Voluntary Space Ordinance or this Agreement; (iv) the permit will clearly
17 indicate the number(s) and species of tree(s) authorized to be removed by the
18 permit; and (v) there will be attached to the permit a map or sketch showing the
19 location of the tree(s) authorized to be removed. No permit may be issued by the
20 District under the Voluntary Defensible Space Ordinance or this Agreement for
21 any property located within the Town's "Conservation District" without first
22 contacting a representative of the Town's Department of Community
23 Development, and discussing the application with such representative. District
24 will not issue any permit under the Voluntary Defensible Space Ordinance or this
25 Agreement over the objection of the Town's Department of Community
26 Development. The District will promptly provide the Director with copies of all
27 permits issued by the District pursuant to this Section 4.4. The application review
28 process, and the content of the permit, may be changed from time to time by the
29 Town and the District without the necessity of formally amending this
30 Agreement.
- 31 4.5 The District may charge such reasonable fee for its services as may be approved
32 by the Director; provided, however, that such fee will not exceed the direct and
33 indirect costs incurred by the District in administering the Voluntary Defensible
34 Space Ordinance.
- 35 4.6 Not later than January 1st of each year during the Term of this Agreement the
36 District will provide a written report to the Town describing the work done and
37 services provided by the District under this Agreement during the past calendar
38 year. If requested by the Town, the District will provide appropriate personnel to
39 attend a meeting of the Town Council to review and discuss the annual report.

INTERGOVERNMENTAL AGREEMENT

1 5. Governmental Immunity. The Parties are each relying on, and do not waive or intend to
2 waive by any provision of this Agreement, the monetary limitations (presently \$150,000
3 per person and \$600,000 per occurrence) or any other limitation, right, immunity, defense
4 or protection otherwise available to Town and the District, and their officers,
5 representatives, agents and employees.

6 6. Mutual Indemnification.

7 6.1 Indemnification By Town. To the extent permitted by law, the Town will
8 indemnify and defend the District, its officers, employees, insurers, and self-
9 insurance pool against all liability, claims, and demands, on account of injury,
10 loss, or damage, including, without limitation, claims arising from bodily injury,
11 personal injury, sickness, disease, death, property loss or damage, or any other
12 loss of any kind whatsoever, arising out of or in any manner connected with this
13 Agreement, to the extent that such injury, loss, or damage is caused by:

- 14 (a) the negligence or intentional wrongful act of the Town, or any officer,
15 employee, representative or agent of the Town; or
- 16 (b) the Town' s breach of this Agreement,

17 except to the extent such liability, claim or demand arises through the negligence
18 or intentional wrongful act of the District, its officers, employees, or agents, or the
19 District' s breach of this Agreement. To the extent indemnification is required
20 under this Agreement, the Town agrees to investigate, handle, respond to, and to
21 provide defense for and defend against, any such liability, claims, or demands at
22 its expense, and to bear all other costs and expenses related thereto, including
23 court costs and attorney fees.

24
25 6.2 Indemnification By District. To the extent permitted by law, the District will
26 indemnify and defend the Town, its officers, employees, insurers, and self-
27 insurance pool against all liability, claims, and demands, on account of injury,
28 loss, or damage, including, without limitation, claims arising from bodily injury,
29 personal injury, sickness, disease, death, property loss or damage, or any other
30 loss of any kind whatsoever, arising out of or in any manner connected with this
31 Agreement, to the extent that such injury, loss, or damage is caused by:

- 32 (a) the negligence or intentional wrongful act of the District, or any officer,
33 employee, representative or agent of the District; or
- 34 (b) the District' s breach of this Agreement,

35 except to the extent such liability, claim or demand arises through the negligence
36 or intentional wrongful act of the Town, its officers, employees, or agents, or the
37 Town' s breach of this Agreement. To the extent indemnification is required under
38 this Agreement, the District agrees to investigate, handle, respond to, and to

1 provide defense for and defend against, any such liability, claims, or demands at
2 its expense, and to bear all other costs and expenses related thereto, including
3 court costs and attorney fees.
4

5 6.3 Indemnity Subject To Act. The obligation of a Party to indemnify and defend the
6 other Party pursuant to this Section 6 is expressly subject to any applicable
7 limitation or provision of the Act, or any other law providing similar limitations
8 or protections.

9 6.4 Indemnity For Worker’s Compensation Claims.

10 (a) The Town will indemnify and defend the District with respect to any
11 claim, damage, or loss arising out of any worker’s compensation claim of
12 any employee of the Town.

13 (b) The District will indemnify and defend the Town with respect to any
14 claim, damage, or loss arising out of any worker’s compensation claim of
15 any employee of the District.

16 6.5 Survival. The obligation of a Party to indemnify and defend the other Party
17 pursuant to this Section 6 will survive the termination of this Agreement, and will
18 continue to be enforceable thereafter until such obligations are fully performed.

19 7. Default; Resolution Of Disputes.

20 7.1 Default. A default will exist under this Agreement if any Party violates any
21 covenant, condition or obligation required to be performed hereunder. If any
22 Party fails to cure such default within 20 business days after another Party gives
23 written notice of the default to the Defaulting Party, then, at the Non-Defaulting
24 Party’s option, the Non-Defaulting Party may terminate this Agreement. In the
25 event of a default not capable of being cured within 20 business days, a
26 Defaulting Party will not be in default hereunder if it commences curing the
27 default within 20 business days after receipt of written notice of default from the
28 Non-Defaulting Party, and thereafter cures such default with due diligence and in
29 good faith. Notwithstanding any Party’s right to terminate this Agreement for an
30 uncured default, this Agreement is subject to the rights of any Party to invoke the
31 remaining provisions of this Section 7.

32 7.2 Negotiation. Either Party may give the other Party written notice of any dispute
33 arising out of or related to this Agreement that is not resolved in the normal
34 course of business. The Parties will attempt in good faith to resolve any such
35 dispute promptly by negotiations between the Parties’ Authorized
36 Representatives. Within 15 business days after receipt of said notice, Authorized
37 Representatives will meet at a mutually acceptable time and place, and thereafter
38 as often as they reasonably deem necessary, to exchange relevant information and
39 to attempt to resolve the dispute. If the matter has not been resolved within 60

1 business days of the notice of dispute, or if the Parties fail to initially meet within
2 15 business days, either Party to the dispute may initiate mediation of the
3 controversy as provided below.

4 7.3 Mediation. If the dispute has not been resolved by negotiation as provided above,
5 the Parties will endeavor to settle the dispute by mediation with a neutral third
6 Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they
7 may each appoint a neutral third Party, such third Parties to appoint a neutral third
8 Party to mediate.

9 7.4 Arbitration. Any dispute arising out of or relating to this Agreement or the
10 breach, termination or validity hereof, which has not been resolved by the
11 methods set forth above within 60 business days of the initiation of mediation,
12 will be finally settled by binding arbitration conducted expeditiously in
13 accordance with the commercial arbitration rules of the American Arbitration
14 Association (or other rules as may be agreed to by the Parties) by a sole arbitrator.
15 The place of arbitration will be Breckenridge, Colorado.

16 7.5 Provisional Remedies. The procedures specified in this Section 7 are the sole and
17 exclusive procedures for the resolution of disputes among the Parties arising out
18 of or relating to this Agreement; provided, however, that a Party may seek a
19 preliminary injunction or other provisional judicial relief if, in its judgment, such
20 action is necessary to avoid irreparable damage or to preserve the status quo.
21 Despite such action, the Parties will continue to participate in good faith in the
22 procedures specified in this Section 7.

23 7.6 Performance To Continue. Each Party is required to continue to perform its
24 obligations under this Agreement pending final resolution of any dispute arising
25 out of or relating to this Agreement.

26 7.7 Extension Of Deadlines. All deadlines specified in this Section may be extended
27 by mutual agreement.

28 7.8 Costs. Each Party will pay its own costs with respect to negotiation and
29 mediation. The prevailing Party in any arbitration or provisional judicial relief is
30 entitled to reimbursement from the other Party for all reasonable costs and
31 expenses, including attorney fees in connection with such arbitration or
32 provisional judicial relief.

33 8. Notices. All notices required or permitted under this Agreement must given by registered
34 or certified mail, return receipt requested, postage prepaid, or by hand or commercial
35 carrier delivery, or by telecopies directed as follows:

36 If intended for Town to:

37
38 Town of Breckenridge

INTERGOVERNMENTAL AGREEMENT

1 P.O. Box 168
2 150 Ski Hill Road
3 Breckenridge, Colorado 80424
4 Attn: Timothy J. Gagen, Town Manager
5 Telecopier number: (970)547-3104
6 Telephone number: (970)453-2251
7

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

10 Timothy H. Berry, Esq.
11 Town Attorney
12 Timothy H. Berry, P.C.
13 131 West 5th Street
14 P. O. Box 2
15 Leadville, Colorado 80461
16 Telephone number: (719)486-1889
17 Telecopier number: (719)486-3039
18

19 If intended for District, to:
20

21 Red, White & Blue Fire Protection District
22 P.O. Box 710
23 Breckenridge, Colorado 80424
24 Telephone number: (970)453-2474
25 Telecopier number: (970)453-1350
26

27 Any notice delivered by mail in accordance with this Section is deemed to have been
28 duly given and received on the third business day after the same is deposited in any post
29 office or postal box regularly maintained by the United States postal service. Any notice
30 delivered by telecopier in accordance with this Section is deemed to have been duly given
31 and received upon receipt if concurrently with sending by telecopier receipt is confirmed
32 orally by telephone and a copy of said notice is sent by certified mail, return receipt
33 requested, on the same day to that intended recipient. Any notice delivered by hand or
34 commercial carrier is deemed to have been duly given and received upon actual receipt.
35 Either Party, by notice given as above, may change the address to which future notices
36 may be sent. E-mail is not a valid method for the giving of notice under this Agreement.
37

38 9. Annual Appropriation.
39

40 9.1 Town Appropriation. Notwithstanding anything herein contained to the contrary,
41 the Town's obligations under this Agreement are expressly subject to an annual
42 appropriation being made by the Town Council of the Town of Breckenridge in
43 an amount sufficient to allow Town to perform its obligations under this
44 Agreement. If sufficient funds are not so appropriated, this Agreement may be
45 terminated by either Party without penalty upon notice given in the manner

1 described in Section 8. The Town's obligations under this Agreement do not
2 constitute a general obligation indebtedness or multiple year direct or indirect
3 debt or other financial obligation whatsoever within the meaning of the
4 Constitution or laws of the State of Colorado.

5 9.2 District Appropriation. Notwithstanding anything herein contained to the
6 contrary, the District's obligations under this Agreement are expressly subject to
7 an annual appropriation being made by the District's Board of Directors in an
8 amount sufficient to allow the District to perform its obligations under this
9 Agreement. If sufficient funds are not so appropriated, this Agreement may be
10 terminated by either Party without penalty upon notice given in the manner
11 described in Section 8. The District's obligations under this Agreement do not
12 constitute a general obligation indebtedness or multiple year direct or indirect
13 debt or other financial obligation whatsoever within the meaning of the
14 Constitution or laws of the State of Colorado.

15 10. Third Parties. This Agreement does not confer upon or grant to any third party any right
16 to claim damages or to bring suit, action, or other proceeding against either the Town or
17 the District because of any breach of this Agreement, or because of any of the terms,
18 covenants, agreements and conditions contained in this Agreement.

19 11. Waiver. The failure of either Party to exercise any of its rights under this Agreement is
20 not a waiver of those rights. A Party waives only those rights specified in writing and
21 signed by either Party waiving its rights.

22 12. Independent Contractor. In connection with this Agreement each of the Parties acts as an
23 independent contractor (and not an agent or employee of the other Party), without the
24 right or authority to impose tort or contractual liability upon the other Party.

25 13. Applicable Law. This Agreement is to be interpreted in all respects in accordance with
26 the laws of the State of Colorado.

27 14. Entire Agreement. This Agreement constitutes the entire agreement and understanding
28 between the Parties as to the subject matter of this Agreement, and supersedes any prior
29 agreement or understanding relating thereto.

30 15. Amendment. This Agreement may be modified or amended only by a duly authorized
31 written instrument executed by the Parties. No oral amendment or modification of this
32 Agreement is allowed.

33 16. Severability. If any of the provisions of this Agreement are declared by a final, non-
34 appealable judgment court of competent jurisdiction to be invalid, illegal or
35 unenforceable in any respect, the validity, legality and enforceability of the remaining
36 provisions of this Agreement will not in any way be affected or impaired thereby.

INTERGOVERNMENTAL AGREEMENT

- 1 17. Section Headings. Section and subsection headings are inserted for convenience only
2 and in no way limit or define the interpretation to be placed upon this Agreement.
- 3 18. Authority. The individuals executing this Agreement on behalf of each of the Parties
4 represent to the other Party that they have all requisite powers and authority to cause the
5 Party for whom they have signed to enter into this Agreement, and to bind such Party to
6 fully perform its obligations as set forth in this Agreement.
- 7 19. No Adverse Construction. Both Parties acknowledge having had the opportunity to
8 participate in the drafting of this Agreement. This Agreement is not to be construed
9 against either Party based upon authorship.
- 10 20. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties
11 and their respective successor governing boards.
- 12 21. Approval By Governing Boards or Other Authority. In accordance with Section 29-1-
13 203(1), C.R.S., this Agreement will not become effective unless and until it has been
14 approved by the governing bodies of both the Town and the District, or by such persons
15 as has the power to approve this Agreement on behalf of the Town and the District.

16 TOWN OF BRECKENRIDGE, a Colorado
17 municipal corporation

18
19
20
21 By: _____
22 John G. Warner, Mayor

23
24 ATTEST:


25
26
27
28 _____
29 Mary Jean Loufek, CMC,
30 Town Clerk

31
32 RED, WHITE & BLUE FIRE PROTECTION
33 DISTRICT

34
35 By: _____
36
37
38 Chair



MEMORANDUM

To: Mayor and Town Council
From: Tim Gagen, Town Manager 
Date: May 18, 2011
Subject: Breckenridge Nordic Center Agreement

The Council gave the go ahead to negotiate with the Dayton family regarding a public/private partnership to construct a new Nordic Center facility at the Breckenridge Nordic Center on Town land.

Over the last several months, staff has been working with the Dayton family to develop an agreement to put this partnership in place. On several occasions, the Council has seen drafts of the agreement and given direction as to its preparation. The agreement has now been put in final form for formal consideration by the Council. The Dayton family has provided a letter acknowledging their acceptance of the agreement.

The broad terms of the agreement indicates that the Town will provide land, financing and a no cost 30-year lease for the operation of the BNC in exchange for the Daytons constructing a new facility, subject to design approval by the Town. At the conclusion of the 30 years, the facility will revert to the Town with the continued opportunity for the Daytons to operate the BNC. The agreement has a variety of other terms protecting the Town and Dayton family if Nordic ceases to operate at the Center by either party. Following approval of the agreement, the Daytons plan to present plans for the new facility to the Council and Planning Commission.

The agreement is now ready for Council consideration and staff will be available to respond to questions.

BRECKENRIDGE NORDIC CENTER, LLC
1200 Ski Hill Road, Post Office Box 1776
Breckenridge, Colorado 80424

May 18, 2011

Town of Breckenridge
Tim Gagen - Town Manager
Mayor Warner & Town Council
Post Office Box 168
Breckenridge, Colorado 80424

Thank you for the tremendous effort you have made to contribute to the 30 Year - Agreement Concerning the New Breckenridge Nordic Center Facility. We gratefully accept this generous opportunity. It has far reaching effects for our community, the sport of Nordic Skiing and the Dayton family. We also appreciate Tim and Patti Casey - Mountain Marketing for years of personal and professional support in an effort to secure Nordic skiing opportunities, and an established network of trails off of Ski Hill Road. From the meager beginnings of a Nordic Center in 1969, which operated out of the Breckenridge "Retort House" the now adopted Hallelujah Hut on peak 7, to the award winning Nordic trail system in place has required a dedicated effort from those listed above, as well as, Snow Engineering and the Dillon Ranger District of the United States Forest Service.

We are prepared to sign the Agreement and related documents as written, finalize building plans and construct the New Nordic Log Lodge. We are recycling the old growth timbers from the BreckConnect gondola lift line and beetle killed Lodgepole Pines from Nordic Center trails that we have crafted into life size Lincoln Logs. We look forward to sharing this beautiful facility with the community on a year round basis, and continuing to be Guardian's of the Gulch protecting the natural beauty of the Cucumber Gulch Preserve and surrounding riparian treasures. Alongside the Town of Breckenridge, the Breckenridge Nordic Center has the highest interest and investment in the preservation of these groomed Nordic trails, natural mountain and wetland resources, and securing the safety of the wildlife living in the preserve. We pledge our ongoing support and effort to create and distribute Awareness Education of the preserve, approved trail use in and around the gulch, and uphold all town's policies/codes therein.

This ski season marked the 41st year of Breckenridge Nordic Center operations. This ski area is known as one of the Best Groomed Trail Systems in North America. In the State of Colorado and across the USA we are frequently the very first area to open in early November and the last to close in mid to late April annually. We were able to groom some trails through May 8th this season.

The existing Nordic building has been used for Nordic operations during the ski and off season months for various meetings with professional organizations, Nordic business operations including retail/rental shop sales and repair, year round trail maintenance and volunteer work crew tasks. We are suggesting that the town install a year-round gated portal to the gulch, as the best protection at the lowest possible cost. Under no circumstance would Nordic guests/participants be allowed beyond the New Nordic building envelope, parking and gated portal, unless written permission is obtained from the town.

We would also like to thank the team effort that Tim Berry and Tim Gagen put forth to create Agreement documents that we can all be proud of and operate from for the next three decades or more.

Respectfully Submitted,

Gene and Therese Dayton & Family – Operators BNC, LLC

1 **DRAFT May 18, 2011 DRAFT**

2
3 **MARKED TO SHOW SUBSTANTIVE CHANGES**
4 **FROM MARCH 25, 2011 DRAFT**
5

6
7 **AGREEMENT CONCERNING NEW BRECKENRIDGE NORDIC CENTER FACILITY**
8

9 This Agreement Concerning New Breckenridge Nordic Center Facility (the
10 “**Agreement**”) is dated _____, 2011 and is between the Town of
11 Breckenridge, a Colorado municipal corporation (the “**Town**”) and Breckenridge Nordic Center,
12 L.L.C., a Colorado limited liability company (“**BNC**”). The Town and BNC are sometimes
13 collectively referred to in this Agreement as “**the Parties**”, and individually as a “**Party**.”
14

15 **Background**
16

17 The Town owns Tract C, Christie Heights Subdivision Filing No. 2, County of Summit
18 and State of Colorado (“**Tract C**”), and various recreational trails located in the “Cucumber
19 Gulch” nature preserve area (“**Cucumber Gulch**”) near Tract C that are suitable for use as
20 Nordic ski trails under certain conditions (the “**Town Trails**”). The Town and BNC entered into
21 that Nordic License Agreement dated November 14, 2008 (the “**License Agreement**”). By the
22 License Agreement the Town granted BNC a license to use Tract C and the Town Trails. BNC
23 uses Tract C and the Town Trails (as well as other property) to operate the “Breckenridge Nordic
24 Center.” The Town has agreed to use its best efforts to assist BNC in securing the use of all of
25 the Breckenridge Nordic Center Trails, whether owned by the Town or others. The current
26 Breckenridge Nordic Center Trails as of the date of this Agreement are shown on the attached
27 **Exhibit “A”**, which is incorporated herein by reference.
28

29 As part of its operation of the Breckenridge Nordic Center, BNC currently owns and
30 operates a facility located at 1200 Ski Hill Road in the Town of Breckenridge, Summit County,
31 Colorado (the “**Existing Facility**”). The Existing Facility consists of approximately 1,800 square
32 feet (and includes a storage shed, sales office and sauna building), and is currently located on
33 Tract D, Christie Heights Subdivision Filing No. 2, County of Summit and State of Colorado
34 (“**Tract D**”). BNC does not own Tract D, but the Existing Facility is located on Tract D with the
35 permission of the owner of Tract D.
36

37 The Existing Facility is no longer adequate to support the operation of the Breckenridge
38 Nordic Center. BNC would like to abandon the Existing Facility and to construct a new, larger
39 facility and/or a separate storage building that would be located on both Tract C and Tract D
40 (collectively, the “**New Facility**”).
41

42 The Town hopes to acquire Tract D in the near future, and the Town and BNC have come
43 to an agreement pursuant to which: (i) BNC will design and construct the New Facility on Tract

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C and Tract D at its cost; (ii) the Town will design and construct certain infrastructure required for the operation of the New Facility at its cost; (iii) the Town will finance a substantial portion of the costs of BNC's construction of the New Facility upon the terms and conditions described in this Agreement; (iv) BNC will use the New Facility to continue to operate the Breckenridge Nordic Center upon the terms and conditions described in this Agreement; and (v) ~~if the Town permanently discontinues Nordic skiing in Cucumber Gulch,~~ the Town will buy the New Facility from BNC using an agreed methodology to value the New Facility, all as more fully set forth in this Agreement.

Deleted: either Party may determine to cease use of the New Facility as a Nordic skiing operation, or

Deleted: may decide to

Deleted: discontinue

Deleted: and upon the happening of either event

Agreement

Now, Therefore, the Parties agree as follows:

ARTICLE 1

SCHEDULE OF DATES AND DEADLINES

The following dates and deadlines apply to this Agreement:

Reference	Event	Date or Deadline
§2.5	BNC Approvals Deadline	December 31, 2011
§4.4(a)	BNC Preliminary Statement of Construction Costs Deadline	December 31, 2011
§4.4(b)	BNC Final Statement of Construction Costs Deadline	60 days after certificate of occupancy for New Facility
§4.5	Old Facility Removal Deadline	Within 180 days of the issuance of certificate of occupancy for New Facility
§5.2	Town Plans and Specifications Deadline	60 days after the last to occur of: (i) BNC's compliance with the BNC Approvals Deadline, and (ii) BNC's compliance with the BNC Preliminary Statement of Construction Costs Deadline
§5.3	Preliminary Town Infrastructure Bid Deadline	60 days after the last to occur of: (i)

Deleted: Prior to

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		BNC's compliance with the BNC Approvals Deadline, and (ii) BNC's compliance with the BNC Preliminary Statement of Construction Costs Deadline
§5.6(a)	Preliminary Town Statement of Infrastructure Costs Deadline	30 days after Preliminary Town Infrastructure Bid Deadline
§5.6(b)	Final Town Statement of Infrastructure Costs Deadline	60 days after certificate of completion of Town Infrastructure Improvements
§6.8	BNC Construction Escrow Deadline	January 31, 2012
§12.1	Town Resolution Approval Deadline	July 1, 2011
§12.1	Tract D Acquisition Deadline	December 31, 2011
§12.1	Town Appropriation Deadline	December 31, 2011

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The dates established in this Article 1 may be changed by mutual written agreement of the Town and BNC without the necessity of formally amending this Agreement.

ARTICLE 2

PLANNING AND APPROVAL OF NEW FACILITY

2.1 **Multiple Approvals Required.** The planning and design of the New Facility requires multiple approvals as provided in this Article 2. The planning and design of the New Facility will not be approved, and the New Facility may not be constructed, until BNC has obtained all of the approvals required by this Article 2.

2.2 **Town's Governmental Approval.** The planning and design of the New Facility requires formal approval and the issuance of a development permit from the Town in accordance with the Town's governmental land use approval process. BNC will file the required application(s) with the Town's Department of Community Development to obtain the approval of the New Facility; will pay all fees associated with such application (except as provided in Section 4.3); and will sign the development permit if and when the permit is issued by the Town acting in its governmental capacity.

2.3 **Town's Discretionary Approval.** In addition to obtaining a development permit for the New Facility from the Town (acting in its governmental capacity as described in Section

1 2.2), the planning and design of the New Facility requires the discretionary written approval of
2 the Town Council of the Town of Breckenridge (“**Town Council**”). BNC acknowledges that
3 such discretionary approval is required by the Town in order to assure that the final design of the
4 New Facility not only meets the applicable criteria and standards required by the Town’s land
5 use codes and regulations, but also meets the subjective expectations of the Town Council for the
6 location of a structure on Town-owned land in or near Cucumber Gulch. BNC understands,
7 acknowledges, and agrees that the Town Council’s discretionary approval required by this
8 Section 2.3 may be granted, withheld, or conditionally approved by the Town Council in its sole
9 and absolute discretion. However, the Town agrees that once it has given its discretionary
10 approval to BNC under this Section 2.3, such decision may not be revoked or materially changed
11 without BNC’s consent.

12 2.4 **Landowner Approval.** Finally, the planning and design of the New Facility
13 requires the written approval of the then-current owner of Tract D. As of the date of this
14 Agreement, such owner is Christie Heights Partnership, a California general partnership. BNC
15 understands, acknowledges, and agrees that the Tract D owner’s discretionary approval required
16 by this Section 2.4 may be granted, withheld, or conditionally approved by the Tract D owner in
17 its sole and absolute discretion.

18 2.5 **BNC’s Right To Withdraw From Agreement.** If all necessary approvals for the
19 design and construction of the New Facility are not obtained to BNC’s satisfaction prior to the
20 BNC Approvals Deadline, BNC has the option and election to terminate this Agreement by
21 giving written notice to Town in the manner required by Section 15.8. Upon the giving of such
22 notice this Agreement will terminate, and each Party will be released from any further obligation
23 to the other Party.

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24 **ARTICLE 3**

25 **AUTHORITY TO USE TOWN PROPERTY**

26
27 3.1 **Authority to Use Town Property.** The Town Council’s discretionary approval of
28 the planning and design of the New Facility as described in Section 2.3 will be BNC’s
29 authorization to use Tract C and Tract D for the construction and operation of the New Facility.
30 If the Town Council’s grants its discretionary approval, the License Agreement will be amended
31 to incorporate Tract D into such agreement (the “**Amended License Agreement**”). The Amended
32 License Agreement will not require the payment of any compensation to Town for the use of the
33 licensed premises that are the subject of the Amended License Agreement. The Amended
34 License Agreement will not be revocable (or terminable) by the Town for a period of thirty (30)
35 years from the date of the issuance of the certificate of occupancy for the New Facility, except
36 upon: (i) termination of this Agreement under Article 9, or (ii) termination in accordance with its
37 terms resulting from BNC’s default under the Amended License Agreement. The term of the
38 Amended License Agreement is referred to in this Agreement as the “Amended License Term.”

Deleted: its

39 **ARTICLE 4**

40 **BNC TO CONSTRUCT NEW FACILITY**

1
2 4.1 **BNC Will Construct New Facility.** When (and only when) BNC has obtained
3 the approvals required by Article 2, BNC will construct the New Facility at its sole cost. BNC
4 will construct the New Facility expeditiously and with due diligence. The New Facility may be
5 constructed in phases if approved by the Town in accordance with its discretionary approval
6 authority described in Section 2.3. BNC will not temporarily suspend construction of the New
7 Facility, or abandon construction of the New Facility, without Town’s prior written
8 authorization.

9 4.2 **Mechanics’ Liens.** BNC will not allow any mechanics’ or similar liens to be filed
10 against Tract C, Tract D, the Town Trails, or the New Facility itself, arising from any work done
11 by BNC in connection with the construction of the New Facility. BNC will indemnify and
12 defend the Town with respect to any such lien, including any attorney’s fees incurred by Town in
13 connection with any such lien. If any mechanics’ or other liens are filed against Tract C, Tract D,
14 the Town Trails, or the New Facility itself, by reason of labor performed or materials furnished
15 for the New Facility, BNC will, at its sole cost, cause the lien to be discharged of record by use
16 of the statutory bond procedure provided in Sections 38-22-131 through 133, C.R.S., within ten
17 (10) days after the lien is filed with the Clerk and Recorder of Summit County, Colorado. Town
18 may require dual signatures and mechanic lien releases from both the general contractor and any
19 subcontractor to be paid with any portion of the proceeds of a construction draw paid by the
20 Town.

21 4.3 **Town’s Waiver of Certain Fees.** In connection with the construction of the New
22 Facility the Town will waive all building permit and plan review fees normally charged by the
23 Town acting in its governmental capacity. All other fees and governmental charges normally
24 required for the construction of the New Facility will be paid by BNC.

25 4.4 **BNC’s Statement of Construction Costs.**

26 (a) Not later than the BNC Preliminary Statement of Construction Costs
27 Deadline BNC will determine the estimated costs of planning, designing, and constructing the
28 New Facility. BNC will provide the Town with a statement of such costs (the “**Preliminary**
29 **Statement of Construction Costs**”). The Preliminary Statement of Infrastructure Costs will be
30 based on the bids approved by BNC. Nothing in this Subsection 4.4 prohibits the employment of
31 a person or entity related to BNC as: (i) a subcontractor or laborer to perform actual construction
32 work in connection with the construction of the New Facility, or (ii) a supplier to provide
33 construction materials required in connection with the construction of the New Facility;
34 provided, however, the Preliminary Statement of Construction Costs may not include any
35 “general contractor’s fee” or similar supervisory or management expense paid or payable to
36 BNC or any person or entity affiliated with BNC in connection with the construction of the New
37 Facility. Unless the Town provides written objection to the Preliminary Statement of
38 Construction Costs within ten (10) days of receipt, such statement will be conclusive. If the
39 Town provides timely written objection to the Preliminary Statement of Construction Costs,
40 representatives of the Parties will meet and confer at a mutually acceptable time and location,
41 and, in good faith, agree upon the correct Preliminary Statement of Construction Costs.

1 (b) Not later than the BNC Final Statement of Construction Costs Deadline
2 BNC will determine the actual costs incurred and paid by it to plan, design, and construct the
3 New Facility. BNC will provide the Town with a statement of such costs (the “**Final Statement**
4 **of Construction Costs**”). The Final Statement of Construction Costs may not include any
5 “general contractor’s fee” or similar **supervisory or management** expense paid or payable to
6 BNC or any entity affiliated with BNC in connection with the construction of the New Facility.
7 Unless the Town provides written objection to the Final Statement of Construction Costs within
8 ten (10) days of receipt, such statement will be conclusive; will become part of this Agreement;
9 and will be used the Parties in connection with the determination of the Town’s purchase price
10 for the New Facility as described in Article 9. If the Town provides timely written objection to
11 the Statement of Construction Costs, representatives of the Parties will meet and confer at a
12 mutually acceptable time and location and, in good faith, agree upon the correct Final Statement
13 of Construction Costs. The agreed Final Statement of Construction Costs will then be conclusive;
14 will become part of this Agreement; and will be used in connection with the determination of the
15 Town’s purchase price for the New Facility as described in Article 9.

16 4.5 **Removal of Old Facility.** Prior to the Old Facility Removal Deadline, BNC will
17 either remove the Existing Facility from Tract D, or completely tear down and remove the
18 Existing Facility from Tract D, at BNC’s option.

19 **ARTICLE 5**

20 **CONSTRUCTION OF INFRASTRUCTURE BY TOWN**

21
22 5.1 **Town To Construct Infrastructure.** When (and only when) BNC has obtained
23 the approvals required by Article 2, Town will install and construct at its cost the following
24 infrastructure that the Parties have determined is necessary for the operation of the New Facility:

- 25 (a) the parking area (“**Parking Area**”), including grading, paving and striping;
- 26 (b) the installation of all required utilities, including, but not limited to, water
27 and sewer sufficient to allow for connection to the public water and sewer systems; and
- 28 (c) landscaping of the Parking Area.

29 All infrastructure improvements constructed by the Town pursuant to this Article 5 are referred
30 to in this Agreement as the “**Town’s Infrastructure Improvements.**”

31
32 5.2 **Plans For Infrastructure Improvements.** Not later than the Town Plans and
33 Specifications Deadline Town will provide BNC with proposed plans and specifications for the
34 Town’s Infrastructure Improvements (“**Plans and Specifications**”). Unless BNC provides
35 written objection to the Plans and Specifications within ten (10) days of receipt, BNC will have
36 approved the Plans and Specifications. If BNC provides timely written objection to the Plans and
37 Specifications, representatives of the Parties will meet and confer at a mutually acceptable time
38 and location and, in good faith, agree upon any necessary revisions to the Plans and
39 Specifications.

1 5.3 **Bids For Town’s Infrastructure Improvements.** Not later than the Town
2 Infrastructure Bid Deadline the Town will obtain written bids for the construction and
3 installation of the Town’s Infrastructure Improvements from qualified contractors. Copies of all
4 bids received by the Town will be provided to BNC, and BNC will have the right to review such
5 bids. Unless BNC provides written objection to the Town within ten (10) days of its receipt of
6 the bids, the Town may select the contractors to be hired to construct and install the Town’s
7 Infrastructure Improvements, and may let the appropriate contracts for the performance of such
8 work. If BNC provides timely written objection to any bid, representatives of the Parties will
9 meet and confer at a mutually acceptable time and location and, in good faith, agree upon the
10 bidders to whom the contracts for the Town’s Infrastructure Improvements will be let.

11 5.4 **Contracts For Town’s Infrastructure Improvements; Warranties.** All Town
12 Infrastructure Improvements will be made under contracts of a form normally used by the Town
13 for its public works projects, and will require a warranty (or guarantee) from the contractor of no
14 less than one (1) year. After the certificate of occupancy has been issued for the New Facility,
15 all warranties (or guarantees) under the Town’s contracts for the construction of the Town’s
16 Infrastructure Improvements will, upon BNC’s request, be assigned by the Town to BNC.

17 5.5 **Infrastructure Construction Schedule.** The construction schedule for the
18 Town’s Infrastructure Improvements will be coordinated with BNC’s construction of the New
19 Facility, and will be agreed to by the Town and BNC. The Town will construct the Town’s
20 Infrastructure Improvements expeditiously and with due diligence. Town will exercise its best
21 efforts to coordinate and expedite the construction of all Town Infrastructure Improvements in a
22 manner that will not unreasonably interfere with or unduly delay the construction of the New
23 Facility by BNC.

24 5.6 **Statement of Infrastructure Costs.**

25 (a) Not later than the Preliminary Town Statement of Infrastructure Costs
26 Deadline Town will determine the estimated costs of planning, designing, advertising, bidding,
27 installing, and constructing the Town’s Infrastructure Improvements, and will provide BNC with
28 a statement of such costs (the “**Preliminary Statement of Infrastructure Costs**”). The
29 Preliminary Statement of Infrastructure Costs will be based on the bids approved by the Parties
30 pursuant to Section 5.3. In addition, the Preliminary Statement of Infrastructure Cost will include
31 any new water or sewer plant investment fees for the New Facility. Unless BNC provides written
32 objection to the Preliminary Statement of Infrastructure Costs within ten (10) days of receipt,
33 such statement will be accepted. If BNC provides timely written objection to the Preliminary
34 Statement of Infrastructure Costs, representatives of the Parties will meet and confer at a
35 mutually acceptable time and location and, in good faith, agree upon the correct Preliminary
36 Statement of Infrastructure Costs.

37 (b) Not later than the Final Town Statement of Infrastructure Costs Deadline
38 Town will determine the actual and necessary costs incurred and paid by it to plan, design,
39 advertise, bid, install, and construct the Town’s Infrastructure Improvements. The Town will
40 provide BNC with a statement of such costs (the “**Final Statement of Infrastructure Costs**”).
41 The Final Statement of Infrastructure Costs will be based on the actual costs of constructing the

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1 Town's Infrastructure Improvements. In addition, the Final Statement of Infrastructure Cost will
2 include any new water or sewer plant investment fees for the New Facility. Unless BNC provides
3 written objection to the Town's Final Statement of Infrastructure Costs within ten (10) days of
4 receipt, such statement will be conclusive; will become part of this Agreement; and will be used
5 the Parties in connection with the determination of the Town's purchase price for the New
6 Facility as described in Article 9. If BNC provides timely written objection to the Town's Final
7 Statement of Infrastructure Costs, representatives of the Parties will meet and confer at a
8 mutually acceptable time and location and, in good faith, agree upon the correct Final Statement
9 of Infrastructure Costs. The agreed Final Statement of Infrastructure Costs will then be
10 conclusive; will become part of this Agreement; and will be used in connection with the
11 determination of the Town's purchase price for the New Facility as described in Article 9.

12 (c) BNC Option to Construct Town Infrastructure Improvements. At any
13 time prior to the Town letting contracts for the construction of the Town Infrastructure
14 Improvements, and upon written notice to Town given in the manner required by Section 15.8,
15 BNC may elect to perform all of the Town Infrastructure Improvements (including payment of
16 all required sewer and water plant investment fees) at its cost. If BNC elects to construct the
17 Town Infrastructure Improvements the cost thereof will be part of the Final Statement of
18 Construction Costs described in Section 4.4(b). Upon BNC giving notice of its election under
19 this subsection (c), the Town will be relieved from any responsibility under this Article 5.

20 ARTICLE 6

21 TOWN'S CONSTRUCTION LOAN

22
23 6.1 **“Loan Documents” Defined.** As used in this Article 6, the term **“Loan**
24 **Documents”** means this Agreement; the Loan Agreement; the Promissory Note; and the Deed of
25 Trust/Security Agreement described in this Article 6.

26 6.2 **Loan By Town.** In accordance with the terms of this Agreement, and the other
27 Loan Documents, the Town will provide BNC with a loan to be evidenced by BNC's promissory
28 note (the **“Promissory Note”**) in an original principal amount equal to seventy five percent (75%)
29 of BNC's Preliminary Statement of Construction Costs described in Section 4.4(a)(the **“Loan”**).
30 The remaining twenty five percent (25%) of the cost of planning, designing and constructing the
31 New Facility will be provided by BNC, and may include the fair market value of the logs and
32 other materials provided by BNC for the project. BNC will execute the Promissory Note when
33 requested to do so by the Town. The loaned funds will be advanced by Town to BNC on a
34 construction draw schedule that reflects the accepted bids for the construction of the New
35 Facility, and actual material costs advanced or paid by BNC, up to the date of the draw. The
36 specific details and requirements for payment of draws on the Loan will be agreed upon in the
37 Loan Agreement and Promissory Note

38 6.3 **Interest.** BNC will pay interest on the Loan at the rate of four percent (4%) per
39 annum. The default rate on the Loan, and on any advances made by the Town under the Loan
40 Documents, will be twelve percent (12%) per annum. Interest will be computed on the basis of a
41 year of 365 or 366 days, as applicable, and the actual number of days elapsed.

1 6.4 **BNC's Option to Increase Amount of Loan.** At BNC's option, the amount of
2 the Loan may be increased to seventy five percent (75%) of BNC's Final Statement of
3 Construction Costs described in Section 4.4(b). To exercise this option, BNC must give Town
4 written notice within sixty (60) days of the Parties' agreement on BNC's Final Statement of
5 Construction Costs. If BNC exercises its option, the Loan Documents will be amended to reflect
6 the change in the principal amount of the Loan, but all other terms and conditions of the Loan
7 Documents will continue to apply. If BNC fails to give timely notice of the exercise of the option
8 provided in this Section 6.4, BNC will have waived the right to increase the amount of the Loan
9 as provided in this Section 6.4.

10 6.5 **Repayment of Loan.** The Loan will be repaid by BNC to Town in consecutive
11 equal monthly installments, each installment including principal and interest, commencing on
12 ninety (90) days after the issuance of the certificate of occupancy for the New Facility; provided,
13 however, that the Promissory Note will allow BNC, at its option, to defer payment on the
14 Promissory Note during the non-winter months when BNC is not fully operational so long as the
15 total amount required to be paid to the Town each six (6) months under the Promissory Note
16 (both principal and interest) is fully paid. Monthly payments will be based on a straight thirty
17 (30) year amortization of the Loan. If not sooner paid, the entire unpaid balance of the Loan,
18 both principal and interest, will be due and payable thirty (30) years after the issuance of the
19 certificate of occupancy for the New Facility. The Loan may be prepaid, in whole or in part, at
20 any time without penalty.

21 6.6 **Collateral.** The Loan will be secured by a first deed of trust/security interest in
22 the New Facility. BNC will execute the appropriate collateral loan documents when requested to
23 do so by the Town.

24 6.7 **Set-Off.** The Town may use the right of set-off to collect the Loan.

25 6.8 **BNC Construction Escrow.** Not later than the BNC Construction Escrow
26 Deadline BNC will deposit into escrow with a title insurance company acceptable to Town the
27 sum equal to ten percent (10%) of the Preliminary Statement of Construction Costs to be used to
28 pay BNC's share of the cost of constructing, planning and designing the New Facility. BNC may
29 deduct from the amount required to be placed into escrow the reasonable value of any
30 construction materials for the New Facility that BNC has obtained and stored on the site of the
31 Existing Facility (or other location reasonably acceptable to both the Town and BNC) prior to
32 the date of the establishment of the escrow.

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33 6.9 **BNC's Warranties, and Representations.** To induce the Town to make the
34 Loan, BNC makes the following warranties and representations to the Town, and agrees that the
35 following warranties and representations will continue to be true throughout the term of this
36 Agreement:

37 (a) **Entity Existence.** BNC is a limited liability company organized and
38 existing under the laws of the State of Colorado. As of the date of this Agreement, BNC is in
39 good standing with the Colorado Secretary of State.

1 (b) **Authority.** The execution, delivery, and performance of this Agreement
2 and the obligations evidenced by the Loan Documents are within BNC's powers; have been duly
3 authorized; will not violate any provision of law, or order of court or governmental agency; and
4 will not violate any agreement to which BNC is a Party or to which BNC or to which the New
5 Facility will be is subject.

6 (c) **Loan Purpose.** The Loan is for commercial purposes. BNC will use the
7 proceeds of the Loan only to pay for the cost of planning, designing and constructing the New
8 Facility.

9 (d) **No Other Loans.** BNC owns or leases all of the personal property needed
10 to operate the business of the Breckenridge Nordic Center. BNC has good and marketable title to
11 all such property. All of BNC's property is free and clear of all liens, security interests,
12 encumbrances, and other adverse claims and interests, except for the Loan Documents. Nothing
13 in this subsection (d) prohibits BNC from leasing or purchasing on commercially reasonable
14 terms any equipment, inventory, materials or supplies required in the normal course of its
15 business.

16 (e) **Compliance With Laws.** In constructing the New Facility, and in
17 operating the business of the Breckenridge Nordic Center, BNC will not violate any law,
18 regulation, rule, order, judgment, or judicial decree that is applicable to BNC or the Breckenridge
19 Nordic Center, except for those that BNC challenges in good faith through proper proceedings
20 after providing adequate reserves to fully pay the claim should BNC lose.

21 (f) **Financial Information.** During the term of the Loan BNC will provide
22 the Town with any reasonable information about its operations, financial affairs, and condition
23 within thirty (30) days after the Town's request. The Parties agree that any information provided
24 to Town by BNC pursuant to this subsection (f) may contain BNC's "confidential commercial
25 and financial information" within the meaning of Section 24-72-204(3)(a)(IV), C.R.S. (which is
26 part of the Colorado Open Records Act) ("**BNC's Confidential Information**"). None of BNC's
27 Confidential Information will be disclosed by the Town except in accordance with this
28 subsection (f). If the Town receives a request for disclosure of any of BNC's Confidential
29 Information under the Colorado Open Records Act, the Town will resist such request, and will
30 not disclose any of BNC's Confidential Information except pursuant to a final, non-appealable
31 judgment of a court of competent jurisdiction. Further, upon receipt of a request for disclosure of
32 any of BNC's Confidential Information under the Colorado Open Records the Town will
33 promptly notify BNC of the request so that BNC may seek an appropriate protective order or
34 waive the confidentiality provisions of this subsection (f) and allow the requested disclosure of
35 BNC's Confidential Information. The Town will not oppose any action by BNC to obtain an
36 appropriate protective order or other reliable assurance that the confidentiality provisions of this
37 subsection (f) will be enforced to the fullest extent permitted by law.

38 6.10 **BNC's Covenants.** During the term of this Agreement BNC covenants and
39 agrees with the Town that it will comply with the following:

- 1 (a) **Continued Existence.** BNC will preserve and maintain its present
2 existence as a limited liability in good standing in Colorado.
- 3 (b) **Compliance with Laws.** BNC will not violate any law, regulation, rule,
4 order, judgment or decree applicable to it or the New Facility, except for those which BNC
5 challenges in good faith through proper proceedings after providing adequate reserves to fully
6 pay the claim should BNC lose.
- 7 (c) **Continued Operation of Breckenridge Nordic Center.** Until the Note is
8 fully paid BNC will continue to operate the Breckenridge Nordic Center without interruption
9 (except seasonal closures) and without cessation of operations.
- 10 (d) **Change of Business Operations.** BNC will obtain the Town's written
11 consent and any necessary changes to the Loan Documents before BNC:
- 12 (i) organizes or participates in the organization of any new business entity;
- 13 (ii) merges into or consolidates with any other business entity;
- 14 (iii) permits any other business entity to merge into BNC;
- 15 (iv) acquires all or substantially all of the assets of any other business entity; or
- 16 (v) otherwise materially changes BNC's legal structure, management,
17 ownership or financial condition.
- 18 (e) **Other Liabilities.** BNC will not incur, assume, or permit any debt
19 evidenced by notes, bonds, or similar obligations, except debt incurred in the ordinary course of
20 BNC's business. Nothing in this subsection (e) prohibits BNC from leasing or purchasing on
21 commercially reasonable terms any equipment, inventory, materials or supplies required in the
22 normal course of its business.
- 23 (f) **Notice of Material Change of Condition.** BNC will promptly notify the
24 Town of any material change in BNC's financial condition; of the occurrence of a default under
25 the terms of this Agreement; or of a default by BNC under any agreement between BNC and any
26 third party that materially and adversely affects BNC's property, operations, financial condition,
27 or business.
- 28 (g) **Dispose of No Assets.** Without the Town's prior written consent or as the
29 Loan documents permit, BNC will not sell, lease, assign, transfer, dispose of or otherwise
30 distribute all or substantially all of BNC assets to any person.
- 31 (h) **Casualty Loss.** BNC will immediately notify the Town of any material
32 casualty, loss, or depreciation to the New Facility, or to any other property owned by BNC that
33 materially affects the operation of the Breckenridge Nordic Center.

1 (i) **Alterations or Additions to New Facility.** BNC will make no structural
2 alteration or addition to the New Facility without the prior written consent of ~~Town.~~

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3 ARTICLE 7

4 MAINTENANCE OF NEW FACILITY

5
6 7.1 **Maintenance and Repair of New Facility.** During the term of this Agreement
7 BNC will, at its sole expense, perform all required maintenance and upkeep of the New Facility,
8 and make all required repairs to the New Facility. Without limiting the generality of the
9 preceding sentence, BNC will, at its expense, maintain the New Facility in compliance with all
10 applicable governmental building and technical codes. BNC will also perform and pay the cost
11 of maintaining (and repairing or replacing as necessary) the following portions of the New
12 Facility:

- 13 (i) roof;
- 14 (ii) foundation;
- 15 (iii) exterior walls;
- 16 (iv) interior structural walls (excluding finish and trim of these walls);
- 17 (v) all other structural components;
- 18 (vi) the water, sewer, plumbing system and plumbing fixtures of the New
19 Facility;
- 20 (vii) the mechanical, electrical, and heating/ventilation systems; and
- 21 (viii) the glass windows in the New Facility.

22 7.2 **Maintenance and Repair of Parking Area.** After the expiration of all applicable
23 construction warranties (or guarantees) provided by the contractors involved in the construction
24 of the Parking Area, BNC will, at BNC's sole expense, perform all required pothole filling and
25 striping in the Parking Area. Unless a warranty (or guarantee) related to the construction of the
26 Parking Area has been assigned by the Town to BNC, the Town will be responsible for the
27 enforcement of all warranties (or guaranties) provided by the contractors in connection with the
28 construction of the Parking Area.

29 7.3 **Snow Plowing.** During the term of this Agreement BNC will, at its sole expense,
30 provide all snow plowing necessary to allow the New Facility to be used by BNC in connection
31 with its operation of the Breckenridge Nordic Center.

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ARTICLE 8

USE OF NEW FACILITY

8.1 **Use of New Facility By BNC.** During the term of this Agreement BNC will only use the New Facility in connection with its operation of the Breckenridge Nordic Center. BNC will not use the New Facility for any other purpose or use without the prior written approval of the Town.

8.2 **Use of New Facility By Town.** During the summer months (that is, the months when: (i) the New Facility is not open for public Nordic skiing in connection with BNC’s normal operation of the Breckenridge Nordic Center) and (ii) BNC is not otherwise using the New Facility), the Town may use the New Facility without payment of any fee to BNC for any purpose determined to be appropriate by the Town. However, the Town will pay for the utilities used or consumed at the New Facility during such period of Town usage and any other direct costs incurred by BNC or the Town in connection with such use (not including property taxes for the New Facility, which are not a direct cost and will not be paid or reimbursed by the Town). Town will also perform any required cleaning and periodic maintenance of the New Facility. The Town will be responsible for the prompt repair of any damage to the New Facility occurring during the period of the Town’s usage, and will indemnify and defend BNC from and against any loss, damage or claim incurred by any person during any use of the New Facility by the Town. Prior to using the New Facility, the Town will provide BNC with a Certificate of Insurance demonstrating that the Town has general liability insurance coverage in an amount not less than the amount required of BNC under Article 10. BNC will be named as an additional insured under the Town’s general liability insurance policy for the period of the Town’s use of the New Facility.

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ARTICLE 9

CONVEYANCE OF NEW FACILITY TO TOWN

9.1 Cessation of Ski Operations in Cucumber Gulch.

(a) The Parties recognize that the ecological sensitivity of Cucumber Gulch may at some time require the Town to permanently prohibit Nordic skiing within Cucumber Gulch in order to protect it from adverse effects. Accordingly, commencing five (5) years after the date of the issuance of the certificate of occupancy for the New Facility the Town, in its sole and absolute discretion, may elect to permanently cease all Nordic skiing within Cucumber Gulch. To exercise such right the Town must give BNC not less than one (1) year advance written notice. Such notice must specify the effective date of the permanent cessation of Nordic skiing within Cucumber Gulch. Upon the permanent cessation of Nordic skiing within Cucumber Gulch the New Facility will be conveyed by BNC to Town, and the Town will pay BNC for the New Facility, all as more fully provided in this Article 9.

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1 | (b) The Town may not declare the permanent cessation of Nordic skiing in
2 Cucumber Gulch unless it determines that such action is necessary to address negative effects on
3 Cucumber Gulch caused by the presence of humans within Cucumber Gulch.

4 (c) At the time of entering into this Agreement the Town states that it is not
5 its present intention to exercise any of its rights under this Section 9.1 before the expiration of
6 fifteen (15) years from the date of this Agreement; however, except as specifically provided in
7 subsection (a), above, nothing restricts the Town’s right to exercise any of its rights under this
8 Section 9.1 prior to the expiration of fifteen (15) years from the date of this Agreement.

9 (d) Without ordering the permanent cessation of Nordic skiing in Cucumber
10 Gulch the Town may close any one or more specific Town Trail(s) to Nordic Skiing, either
11 temporarily or permanently, or impose restrictions on the use of any Town Trail for Nordic
12 skiing, if the Town determines in its discretion that such action is necessary to address negative
13 effects on Cucumber Gulch caused by the presence of humans within Cucumber Gulch. Such
14 action will not constitute a violation of the Amended License Agreement or this Agreement, and
15 will not require conveyance of the New Facility by BNC to the Town, or the Town’s payment to
16 BNC as required by this Article 9.

17 9.2 **“Conveyance Date” Defined.** As used in this Article 9, the term **“Conveyance**
18 **Date”** means the date that the New Facility is conveyed to the Town. The Conveyance Date will
19 be the first to occur of: (i) the permanent cessation of Nordic skiing within Cucumber Gulch; or
20 (ii) the last day of the Amended License Term.

21 9.3 **Conveyance of New Facility to Town.** On the Conveyance Date BNC will
22 convey the New Facility to Town by appropriate documentation reasonably acceptable to the
23 Town Attorney, and Town will pay BNC in the manner provided in Section 9.6. The title to the
24 New Facility conveyed to the Town will be free and clear of all liens and encumbrances, except
25 for the general property tax lien of the year of conveyance.

26 9.4 **Conveyance “AS IS”.** The New Facility will be conveyed and transferred by
27 BNC to Town, and accepted by the Town, **“AS IS”**, **“WHERE IS”** and **“WITH ALL**
28 **FAULTS.”** BNC will not be required to warrant or make any representation to the Town,
29 express or implied, relating to the MERCHANTABILITY, quality, condition, suitability or
30 FITNESS FOR ANY PURPOSE WHATSOEVER of the New Facility

31 9.5 **Environmental Matters.** At the time of conveyance to the Town the New
32 Facility will be free of all contamination, including: (i) any “hazardous water”, “underground
33 storage tanks”, “petroleum”, “regulated substance”, or “used oil” as defined by the Resource
34 Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.), as amended, or by any
35 regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the
36 Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.
37 §§9601, et seq.), as amended, or by any regulations promulgated thereunder (including, but not
38 limited to, asbestos and radon); (iii) any “petroleum” and “fuel products”, as defined by Section
39 25-15-101 et seq., C.R.S., as amended, or by any regulations promulgated thereunder; (iv) any
40 “hazardous waste” as defined by the Colorado Hazardous Waste Act, Section 25-15-101, et seq.,

Deleted: Upon the effective date of the discontinuance of the use of the New Facility for Nordic Skiing operations, or the effective date of the permanent cessation of Nordic skiing within Cucumber Gulch (whichever is applicable), the Nordic Facility will be conveyed by BNC to Town and Town will pay BNC in the manner described in Section 9.6.

1 C.R.S., or by any regulations promulgated thereunder; (v) any substance the presence of which
2 on, in or under the Property is prohibited by any law similar to those set forth above; and (vi) any
3 other substance which by law, regulation or ordinance requires special handling in its collection,
4 storage, treatment or disposal.

5 **9.6 Town's Payment to BNC For New Facility.**

Deleted: Upon the first to occur of: (i) the effective date of the discontinuance of use of the New Facility for Nordic Skiing operations or the permanent cessation of Nordic skiing within Cucumber Gulch as described in Section 9.1, or (ii) thirty (30) years from the date of the issuance of the certificate of occupancy for the New Facility, the Town will pay BNC in cash a sum that will be determined as follows:

6 (a) On the Conveyance Date the Town will pay BNC in cash a sum that has
7 been agreed as adequate compensation to BNC for the remaining value of the New Facility based
8 on an expected useful life of the New Facility of thirty (30) years. The amount to be paid by
9 Town to BNC will be determined as follows:

10 (i) Begin with the amount of BNC's Final Statement of Construction Costs as
11 described in Section 4.4(b); then

12 (ii) Subtract the amount of the Town's Final Statement of Infrastructure Costs
13 (if Town [not BNC] constructed the Town Infrastructure Improvements) as described in
14 Section 5.6(b); then

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15 (iii) Divide the amount determined in (b) by thirty (30); then

16 (iv) Multiply the amount determined in (c) by the whole number that is thirty
17 (30) minus the number of full twelve-month periods that BNC has owned the New
18 Facility prior to the date of its conveyance to the Town. There will be no apportionment
19 for any partial twelve-month period of BNC's ownership of the New Facility.

20 *Example:* For example, if the BNC Final Statement of Construction Costs is \$1,250,000; the
21 Town's Final Statement of Infrastructure Costs is \$300,000; and BNC owned the New Facility
22 for twenty (20) years, the Town's payment to BNC for the New Facility would be calculated as
23 follows:

24
$$\$1,250,000 - \$300,000 = \$950,000 \div 30 = \$31,666.67 \times 10 \text{ (years of useful life of New Facility)}$$

25 left = \$316,666.67 (amount due to BNC)

26
27 (b) BNC acknowledges that if the Conveyance Date is the end of the
28 Amended License Term, it will be required to convey the New Facility to Town without any
29 payment by Town.

30
31 (c) Upon Town's receipt of Town's payment as provided in this Section 9.6,
32 BNC may either pay the then-remaining balance of the Promissory Note, or continue to pay the
33 Promissory Note in accordance with its terms.

34 **9.7 BNC May Voluntarily Convey New Facility to Town.**

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35 (a) At any time after the date of the issuance by the Town of the certificate of
36 occupancy for the New Facility but prior to the Conveyance Date, BNC, in its discretion, may

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1 convey the New Facility to the Town. The conveyance of the New Facility to the Town pursuant
2 to this Section 9.7 is called the “Early Conveyance of the New Facility.”

~~Deleted:~~ at any time within ten (10) years following the date of the issuance by the Town of the certificate of occupancy for the New Facility. Following

3 (b) Following the Early Conveyance of the New Facility BNC will continue
4 to pay the Promissory Note in accordance with its terms.

5 (c) Following the Early Conveyance of the New Facility conveyance of the
6 New Facility BNC may, at its option, lease the New Facility and the Town Trails from the Town
7 (“Remainder Lease”). Notice of the exercise of the option must be given by BNC prior to the
8 date of Early Conveyance of the New Facility. The term of the Remainder Lease will commence
9 on the date of Early Conveyance of the New Facility and will end upon the expiration of the
10 Amended License Agreement. The terms of the Remainder Lease will be commercially
11 reasonable; provided, however, that until the Promissory Note is fully paid the BNC’s timely
12 payment of the periodic payments due to Town under the Promissory Note will be treated as the
13 periodic rent due to the Town under the Remainder Lease. If the Promissory Note is paid in full
14 before its due date, no rent will be charged to BNC by Town for the rest of the term of the
15 Remainder Lease.

~~Deleted:~~ to the Town,

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~~Deleted:~~ that is thirty (30) years after the date of the issuance by the Town

~~Deleted:~~ certificate of occupancy for the

~~Deleted:~~ lease

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~~Deleted:~~ the

16 9.8 Morning Glory Trail.

17 (a) The Parties contemplate that if the Town imposes restrictions on Nordic
18 skiing in Cucumber Gulch pursuant to this Section 9.1 it may not necessarily restrict Nordic
19 skiing on the Town Trail currently called the “Morning Glory Trail.” The location of the
20 Morning Glory Trail is shown on Exhibit “A”. Because the Morning Glory Trail provides a
21 connection between the New Facility and the Peak 7 ski area, Town acknowledges that BNC
22 may want to use the Morning Glory Trail as part of Nordic Skiing operations conducted by BNC
23 on Peak 7, even if the Town has ceased Nordic Skiing operations in Cucumber Gulch.

24 (b) If during the Amended License Term the Town permanently ceases
25 Nordic skiing in Cucumber but:

26 (i) BNC desires to continue its Nordic ski operation;

27 (ii) BNC can satisfactorily demonstrate to the Town that it can lawfully
28 operate a Nordic skiing operations outside of Cucumber Gulch; and

29 (iii) the Morning Glory Trail is not part of the area within Cucumber Gulch
30 where the Town has permanently or temporarily ceased Nordic skiing operations,

31 then BNC, at its option, may continue to use the Morning Glory Trail under the terms and
32 conditions of the Amended License Agreement until the end of the Amended License Term. To
33 exercise its option to continuing using the Morning Glory Trail as provided in this subsection (b),
34 BNC must give written notice to Town in the manner required by Section 15.8 not later than the
35 date of permanent cessation of Nordic skiing operations in Cucumber Gulch. If BNC stops using
36 the Morning Glory Trail for one (1) full winter season its right to continue using the Morning
37 Glory Trail as provided in this Section 9.8 will automatically terminate.

~~Deleted:~~ the use of the New Facility. If BNC stays

1 **9.9 Lease After End of Amended License Term.**

2 (a) If the Town has not permanently ceased Nordic skiing in Cucumber Gulch
3 when the Amended License Agreement expires, and if at such time BNC desires to remain in
4 possession of the New Facility and those Town Trails that are still open for Nordic skiing, then
5 the Town will negotiate in good faith with BNC to try to reach agreement on a new lease for the
6 use of the New Facility and those Town Trails that are still open for Nordic skiing. The rent for
7 the use of the New Facility will be a commercially reasonable rental. One factor that will be
8 considered in determining a commercial reasonable rental could be similar lease arrangements
9 for comparable Nordic skiing facilities. The factors the Town may take into consideration in
10 determining whether to enter into a new lease with BNC for the use of the New Facility and
11 those Town Trails that are still open for Nordic skiing include, but are not limited to: (i) BNC's
12 performance under this Agreement; (ii) BNC's performance under the other agreement(s) for the
13 use of Town-owned property in connection with its operation of the Breckenridge Nordic Center;
14 and (iii) BNC's desire to continue to operate a commercially viable Nordic operation that
15 includes the use of Town Trails that are still open for Nordic skiing. Nothing in this subsection
16 (a) obligates or requires the Town to enter into a new lease with BNC for the use of the New
17 Facility and those Town Trails that are still open for Nordic skiing.

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18 (b) If the Town has permanently ceased Nordic skiing in Cucumber Gulch
19 when the Amended License Agreement expires, but:

20 (i) BNC desires to continue its Nordic ski operation; and

21 (ii) BNC can satisfactorily demonstrate to the Town that it can lawfully
22 operate a Nordic skiing operations outside of Cucumber Gulch; and

23 (iii) the Morning Glory Trail is not part of the area within Cucumber Gulch
24 where the Town has permanently or temporarily ceased Nordic skiing operations

25 then the Parties will enter into good faith negotiations for a new business arrangement for the
26 continued use of the Morning Glory trail by BNC, taking into consideration all then-relevant
27 factors, including, but not limited to: (i) the anticipated environmental impact of BNC's
28 proposed use of the Morning Glory trail on Cucumber Gulch; (ii) BNC's performance under this
29 Agreement; (iii) BNC's performance under the other agreement(s) for the use of Town-owned
30 property in connection with its operation of the Breckenridge Nordic Center; and (iv) BNC's
31 desire to continue to operate a commercially viable Nordic operation that includes the use of
32 Town Trails; provided, however, that nothing in this subsection (b) obligates or requires the
33 Town to authorize BNC to use Morning Glory trail after Nordic skiing has been permanently
34 ceased in Cucumber Gulch, or restricts the ability of the Town to require the cessation of Nordic
35 skiing on Morning Glory Trail at any time.

36 9.10 **Termination of Existing Agreements On Conveyance Date.** Except as
37 provided in Section 9.7(c) with respect to the Remainder Lease, and Section 9.8 with respect to
38 the Morning Glory Trail, at the time of the conveyance of the New Facility to the Town pursuant
39 to this Article 9, all then-existing agreements between the Town and BNC related to the use of

Deleted: License Agreement

Deleted: ; New Business Arrangement For Use of Town-owned Property for the Breckenridge Nordic Center. At

1 any Town-owned property by BNC in connection with its operation of the Breckenridge Nordic
2 Center, ~~including, but not limited to the Amended License Agreement, will terminate.~~

3 9.11 **Specific Performance.** BNC's obligation to convey the New Facility to the Town
4 pursuant to this Article 9 is specifically enforceable in an appropriate judicial action brought by
5 the Town.

6 **ARTICLE 10**

7 **INDEMNITY AND INSURANCE**

8
9 10.1 **Indemnification.** BNC will indemnify and defend the Town, its officers,
10 employees, insurers, and self-insurance pool against all liability, claims, and demands, on
11 account of injury, loss, or damage, including, without limitation, claims arising from bodily
12 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
13 kind whatsoever, that arise out of or are in any manner connected with this Agreement, or that
14 arise out of BNC's ownership and use of the New Facility, except to the extent such liability,
15 claim, or demand arises through the negligence or intentional wrongful act of the Town, its
16 officers, employees, or agents, or Town's breach of this Agreement. To the extent
17 indemnification is required under this Section 10.1, BNC will investigate, handle, respond to,
18 and to provide defense for and defend against, any such liability, claims, or demands at its
19 expense, and bear all other costs and expenses related thereto, including court costs and attorney
20 fees. The provisions of this Section 10.1 will survive the termination of this Agreement.

21 10.2 **Insurance.**

22 (a) **Required Insurance.** BNC will procure and continuously maintain
23 throughout the term of this Agreement the following minimum insurance coverages:

24 (i) worker's compensation insurance to cover obligations imposed by
25 applicable laws for any employee of BNC.

26 (ii) comprehensive general liability insurance with limits of liability not less
27 than One Million Dollars (\$1,000,000) combined single limits. The policy must be
28 applicable to all premises and operations, and include coverage for bodily injury, broad
29 form property damage (including completed operations), personal injury (including
30 coverage for contractual and employee's acts), blanket contractual, products, and
31 completed operations.

32 Such coverages will be procured and maintained with forms and insurers acceptable to the Town.
33 All coverages will be continuously maintained to cover all liability, claims, demands, and other
34 obligations assumed by BNC pursuant to Section 10.1. In the case of any claims-made policy,
35 the necessary retroactive dates and extended reporting periods will be procured to maintain such
36 continuous coverages.

37 (b) **Additional Insured.** BNC's general liability insurance policy will be
38 endorsed to include the Town and the Town's officers and employees as additional insureds.
39

Deleted: will terminate. The Parties anticipate negotiating a new business arrangement for the use of Town-owned property by BNC in connection with its operation of the Breckenridge Nordic Center, taking into consideration all then-relevant factors, including, but not limited to, BNC's performance under this Agreement and BNC's performance under the other agreement(s) for the use of Town-owned property in connection with its operation of the Breckenridge Nordic Center; provided, however, that nothing in this Agreement obligates or requires either the Town or BNC to enter into any new agreement for the use of Town-owned property by BNC.

1 (c) **Non-Contributory Insurance.** Every insurance policy required to be
2 carried by BNC will be primary insurance, and any insurance carried by Town, its officers, or its
3 employees, or carried by or provided through any insurance pool of which Town is a member,
4 will be excess and not contributory insurance to that provided by BNC.

5 (d) **Deductible.** BNC is be solely responsible for any deductible losses under
6 any insurance policy required of it above.

7 (e) **Insurance Certificate.** An ACORD Form 27, or other certificate of
8 insurance acceptable to Town, will be completed by BNC's insurance agent and provided to the
9 Town as evidence that policies providing the required coverages, conditions, and minimum
10 limits are in full force and effect and will be reviewed and approved by Town prior to
11 commencement of construction of the New Facility. The certificate will identify this Agreement
12 and will provide that the coverages afforded under the policies will not be cancelled or
13 terminated until at least thirty (30) days' prior written notice has been given to the Town. The
14 completed certificate of insurance will be sent to:

15 Town Clerk
16 Town of Breckenridge
17 P.O. Box 168
18 Breckenridge, Colorado 80424
19

20 (f) **Lack of Insurance.** BNC's failure to procure or maintain policies
21 providing the required coverages, conditions, and minimum limits will constitute a material
22 breach of this Agreement. If BNC fails to procure or maintain the required insurance policies
23 Town may give BNC written notice of such breach, and if BNC fails or refuses to procure the
24 required insurance polices within ten (10) days after the giving of such notice by Town, Town
25 may, without prejudice to any other remedy available to it:

26 (i) terminate this Agreement;

27 (ii) accelerate the Promissory Note or, at its discretion;

28 (iii) procure or renew any such policy or any extended reporting period thereto,
29 and may pay any and all premiums in connection therewith, and all monies so paid by
30 Town will be repaid by BNC upon demand, together with interest at the default rate as
31 provided in Section 6.3, or

32 (iv) Town may offset the cost of the premiums against any monies due to BNC
33 from Town.

34 The rights and remedies provided for in this subsection (f) may be exercised by the Town singly
35 or in combination.
36
37

1 ARTICLE 11

2 PROPERTY TAXES

3
4 11.1 **Taxes Defined.** As used in this Article 11, the term “taxes” means all personal
5 property and real property taxes that may be levied, assessed, or imposed arising out of BNC’s
6 ownership of the New Facility, and/or its occupancy and use of Tract C, Tract D and/or the
7 Town Trails during the term of this Agreement. The term “taxes” includes, but is not limited to,
8 taxes assessed as “Improvements Only” by the Summit County, Colorado Assessor.

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9 11.2 **Possessory Interest.** Pursuant to Section 39-3-105, C.R.S., all real or personal
10 property owned by Town is exempt from taxation. However, the Parties acknowledge that
11 BNC’s occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to this
12 Agreement may be deemed to be a taxable possessory interest pursuant to Section 39-1-
13 103(17)(a), C.R.S.

14 **11.3 BNC to Pay Taxes.**

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15 (a) Any taxes lawfully assessed arising from BNC’s ownership of the New
16 Facility will be paid by BNC.

17 (b) Any taxes lawfully assessed arising from BNC’s occupancy and use of
18 Tract C, Tract D and/or the Town Trails pursuant to this Agreement will be paid by BNC, and
19 BNC will indemnify and hold Town harmless from any such taxes.

20 (c) Any taxes due arising from BNC’s ownership of the New Facility, or its
21 occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to this Agreement will
22 be paid by BNC in a timely manner. Prior to the last day for payment of such taxes without
23 penalty or interest, BNC will provide to Town a photostatic copy of the receipt(s) or cancelled
24 check(s) showing payment of the taxes. BNC may pay any taxes in installments if permitted by
25 law.

Deleted: BNC will also timely pay any taxes lawfully assessed against the New Facility.

26 11.4 **BNC’s Right to Contest Taxes.** If BNC is liable for the payment of any taxes
27 arising from BNC’s occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to
28 this Agreement, or against the New Facility, BNC will have the right, at its sole expense, to
29 contest any such taxes by the commencement and prosecution, in good faith and with due
30 diligence, of appropriate legal proceedings; provided that BNC makes timely payment of such
31 taxes if BNC loses the contest. BNC will advise Town prior to instituting any such contest and
32 will as a condition of exercising such right provide Town such reasonable assurance as it may
33 request that such contest will be in compliance with the provisions of this Article 11. The Town,
34 at BNC’s sole cost and expense, will reasonably cooperate with BNC in any such contest; may
35 join in the contest; and will execute and deliver such documents and instruments as may be
36 necessary or appropriate for prosecuting an effective contest.

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1 **ARTICLE 12**

2 **CONDITIONS PRECEDENT**

3
4 12.1 **Town’s Conditions Precedent.** The obligation of Town to perform its
5 obligations under this Agreement is subject to the satisfaction of the following conditions
6 precedent, any of which may be waived in writing by Town:

7 (i) The approval of this Agreement by a resolution duly and lawfully adopted
8 by the Town Council of the Town of Breckenridge not later than the Town Resolution
9 Approval Deadline;

10 (ii) The Town’s acquisition of title to Tract D not later than the Tract D
11 Acquisition Deadline; and

12 (iii) An appropriation being made by the Town Council of the Town of
13 Breckenridge in an amount sufficient to allow the Town to perform its financial
14 obligations under this Agreement not later than the Town Appropriation Deadline.

15 12.2 **Failure of Condition.** If the Town gives written notice to BNC of the
16 nonfulfillment of any of the conditions described in Section 12.1 this Agreement will terminate,
17 and each Party will be released from any further obligation under this Agreement.

18 **ARTICLE 13**

19 **DEFAULT; REMEDIES**

20
21 13.1 **Default; Resolution Of Disputes.**

22 (a) **Default.** A default will exist under this Agreement if any Party violates
23 any provision of this Agreement. If any Party (the “*Defaulting Party*”) fails to cure such default
24 within twenty (20) days after the other Party (the “*Non-Defaulting Party*”) gives written notice
25 of the default to the Defaulting Party or, in the event of a default not capable of being cured
26 within such twenty (20) day period, if the Defaulting Party fails to commence curing the default
27 within such twenty (20) day period and thereafter fails to cure such default with due diligence,
28 then, at the Non-Defaulting Party’s option, the Non-Defaulting Party may terminate this
29 Agreement, or exercise such other rights and remedies as may be provided by applicable law. If
30 the Non-Defaulting Party is the Town and the Loan has been made to BNC, the Town may also
31 accelerate the Note and foreclose the Deed of Trust, or exercise any other rights and remedies
32 that are available to the Town under the law. All rights and remedies may be exercised singly or
33 in combination with other allowed rights and remedies. Notwithstanding any Party’s right to
34 terminate this Agreement for an uncured default, this Agreement is subject to the rights of any
35 Party to invoke the remaining provisions of this Section.

36 (b) **Negotiation.** The Parties will attempt in good faith to resolve any dispute
37 arising out of or relating to this Agreement promptly by negotiations between persons who have
38 authority to settle the controversy (“*Executives*”). Either Party may give the other Party written

1 notice of any dispute not resolved in the normal course of business. Within five (5) days after
2 receipt of such notice, the Executives will meet at a mutually acceptable time and place, and
3 thereafter as often as they reasonably deem necessary, to exchange relevant information and to
4 attempt to resolve the dispute. If the matter has not been resolved within ten (10) days of the
5 notice of dispute, or if the Parties fail to meet within five (5) days, either Party to the dispute may
6 initiate mediation of the controversy as provided below.

7 (c) **Mediation.** If the dispute has not been resolved by negotiation as
8 provided above, the Parties will endeavor to settle the dispute by mediation with a neutral third
9 Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they may each
10 appoint a neutral third Party, such third Parties to appoint a neutral third Party to mediate. Each
11 Party will pay their own attorneys' fees incurred in connection with a mediation.

12 (d) **Judicial Action.** Any dispute arising out of or relating to this Agreement
13 or the breach, termination, or validity of this Agreement, which has not been resolved by the
14 methods set forth above within thirty (30) days of the initiation of mediation, may be finally
15 resolved by appropriate judicial action commenced in a court of competent jurisdiction. The
16 Parties agree to venue in the courts of Summit County, Colorado with respect to any dispute
17 arising out of or relating to this Agreement. Both Parties waive the right to a jury trial in action to
18 enforce, interpret or construe this Agreement.

19 (e) **Attorneys' Fees and Costs.** If any action is brought in a court of law by
20 either Party to this Agreement concerning the enforcement, interpretation, or construction of this
21 Agreement, the prevailing Party, either at trial or upon appeal, is entitled to reasonable attorneys'
22 fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of
23 such action.

24 (f) **Equitable Relief.** The Parties acknowledge that any violation of this
25 Agreement by either Party would caused immediate and irreparable damage to the other Party,
26 for which monetary relief would be inadequate or difficult to ascertain. Accordingly, the Parties
27 agree that in the event of the breach of this Agreement by either Party the Non-Defaulting Party
28 may, without limitation of any other right the Non-Defaulting Party may have, obtain from a
29 court of competent jurisdiction a temporary restraining order, preliminary injunction, permanent
30 injunction or other appropriate form of equitable relief to enforce the provisions of this
31 Agreement. Nothing in this subsection (f) authorizes a court to order specific performance of this
32 Agreement against the Town where such order is otherwise prohibited by applicable state law.

33 **ARTICLE 14**

34 **NO CONSTITUTIONAL DEBT**

35
36 14.1 **No Constitutional Debt; Annual Appropriation.** The Town's obligations under
37 this Agreement are subject to an annual appropriation being made by the Town Council in an
38 amount sufficient to allow the Town to perform its obligations under this Agreement. If
39 sufficient funds are not appropriated for the payment of sums due to BNC under this Agreement,
40 this Agreement may be terminated by either Party without penalty. The Town's obligations

1 under this Agreement do not constitute a general obligation indebtedness or multiple year direct
2 or indirect debt or other financial obligation whatsoever within the meaning of the Constitution
3 or laws of the State of Colorado.

4 **ARTICLE 15**

5 **MISCELLANEOUS PROVISIONS**

6
7 15.1 **“Will” and “Will Not” Defined.** The terms “will” and “will not” indicate a
8 mandatory obligation to act or to refrain from acting as indicated in the context of the sentence in
9 which such terms are used.

10 15.2 **Town Consent or Approval.** Except as otherwise expressly provided in this
11 Agreement, the Town will not unreasonably delay action on or unreasonably deny BNC’s
12 request for any Town consent or approval. If the Town denies any request for consent or
13 approval made by BNC, the Town will provide BNC with a written explanation for such denial,
14 and will give BNC the opportunity to meet with the Town Manager to discuss the Town’s denial
15 of the request for consent or approval.

16 15.3 **Assignment.** BNC covenants and agrees not to assign, pledge, transfer, or sublet
17 its rights in this Agreement, in whole or in part, nor grant any license or other interest hereunder,
18 without the prior written consent of the Town. Any attempt by BNC to assign or in any way
19 transfer its interest in this Agreement, in whole or in part, without such prior written consent of
20 the Town, will at the option of the Town, constitute a default under this Agreement hereunder.

21 15.4 **Agreement Binding Upon Successors.** This Agreement is binding upon and
22 extends to the successors and permitted assigns of the Parties.

23 15.5 **Force Majeure.** Neither Party is liable to the other for any failure, delay, or
24 interruption in the performance of any of the terms, covenants or conditions of this Agreement
25 due to causes beyond the control of that Party, including, without limitation, strikes, boycotts,
26 labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of
27 terrorism, acts of superior governmental authority, weather conditions, floods, riots, rebellion,
28 sabotage or any other circumstance for which such Party is not responsible or which is not in its
29 power to control.

30 15.6 **No Partnership.** Town is not a partner, associate, or joint venturer of BNC in the
31 conduct of BNC’s Business. BNC is an independent contractor without the right or authority to
32 impose tort or contractual liability upon the Town.

33 15.7 **Communications.** All communications (oral, written, telephonic and electronic)
34 between BNC and the Town related to this Agreement will be directed to the Town Manager of
35 the Town of Breckenridge, or his designee. BNC will not communicate directly with any
36 member of the Town Council of the Town of Breckenridge with respect to any matter related to
37 this Agreement.

1 15.8 **Notices.** All notices required or permitted under this Agreement must be given by
2 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
3 carrier delivery, or by telecopies, directed as follows:

4 If intended for Town to:

5
6 Town of Breckenridge
7 P.O. Box 168
8 150 Ski Hill Road
9 Breckenridge, Colorado 80424
10 Attn: Town Manager
11 Telecopier number: (970)547-3104
12 Telephone number: (970)453-2251
13

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

15
16 Timothy H. Berry, Esq.
17 Timothy H. Berry, P.C.
18 131 West 5th Street
19 P. O. Box 2
20 Leadville, Colorado 80461
21 Telecopier number: (719)486-3039
22 Telephone number: (719)486-1889
23

24 If intended for BNC, to:

25
26 Breckenridge Nordic Center, L.L.C.
27 P. O. Box 1776
28 Breckenridge, CO 80424
29 Telecopier number: (970) _____
30 Telephone number: (970) _____
31

32 Any notice delivered by mail in accordance with this Section will be deemed to have been duly
33 given and received on the third business day after the same is deposited in any post office or
34 postal box regularly maintained by the United States postal service. Any notice delivered by
35 telecopier in accordance with this Section will be deemed to have been duly given and received
36 upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone
37 and a copy of said notice is sent by certified mail, return receipt requested, on the same day to
38 the intended recipient. Any notice delivered by hand or commercial carrier will be deemed to
39 have been duly given and received upon actual receipt. Either Party, by notice given as provided
40 above, may change the address to which future notices may be sent. E-mail is not a valid method
41 of giving notice under this Agreement.
42

43 15.9 **Headings.** The article and section headings herein are for convenience in
44 reference only, and do not define or limit the scope of any provision of this Agreement.

1 15.10 **Severability.** If any covenant, condition, or provision contained in this
2 Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of any such
3 covenant, condition, or provision will in no way affect any other covenant, condition, or
4 provision herein; provided, that the invalidity of any such covenant, condition or provision does
5 not materially prejudice either Party in its respective rights and obligations contained in the valid
6 covenants, conditions, or provisions of this Agreement.

7 15.11 **Terminology.** Wherever applicable, the pronouns in this Agreement designating
8 the masculine or neuter will equally apply to the feminine, neuter and masculine genders.
9 Furthermore, wherever applicable within this Agreement, the singular will include the plural, and
10 the plural will include the singular.

11 15.12 **Third Parties.** There are no third Party beneficiaries of this Agreement.

12 15.13 **Advances By Town For BNC.** If BNC fails to do anything required to be done
13 by it under the terms of this Agreement (other than a failure to make the payments to Town
14 required by this Agreement) the Town may, at its sole option, but without any obligation to do so,
15 do or perform such act or thing on behalf of BNC, and in doing so the Town will not be deemed
16 to be a volunteer; provided, however, that before exercising its rights under this Section Town
17 will give notice to BNC as provided in Section 13.1 with respect to the giving of notice of
18 default, and will afford the BNC ~~fifteen (15)~~ days from the giving of such notice within which to
19 do or perform the act required by BNC. Upon notification to BNC of the costs incurred by the
20 Town BNC will promptly pay to Town the full amount of costs and/or expenses incurred by
21 Town, together with interest thereon at the default interest rate described in Section 6.3.

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22 15.14 **Non-Discrimination.** BNC agrees that in connection with its use of the New
23 Facility it:

24 (a) will not discriminate against any employee, applicant for employment, or
25 patron because of race, color, creed, sex, sexual orientation, marital status, national origin,
26 ancestry, age, religion or disability;

27 (b) will insure that applicants are employed and that employees are treated
28 during employment without regard to their race, color, creed, sex, sexual orientation, marital
29 status, national origin, ancestry, age, religion or disability; and

30 (c) will in all solicitations or advertisements for employees to be engaged in
31 the performance of work at the New Facility state that all qualified applicants will receive
32 consideration for employment without regard to race, color, creed, sex, sexual orientation,
33 marital status, national origin, ancestry, age, religion or disability.

34 15.15 **Governmental Immunity.** The Town is relying on, and does not waive or intend
35 to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per
36 person and \$600,000 per occurrence) or any other rights, immunities, and protections provided
37 by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to
38 time amended, or any other limitation, right, immunity or protection otherwise available to
39 Town, its officers, or its employees.

1 [AFFIX TOWN SEAL HERE]

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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

BRECKENRIDGE NORDIC CENTER, L.L.C., a
Colorado limited liability company

By _____
Therese E. D. Dayton, Manager

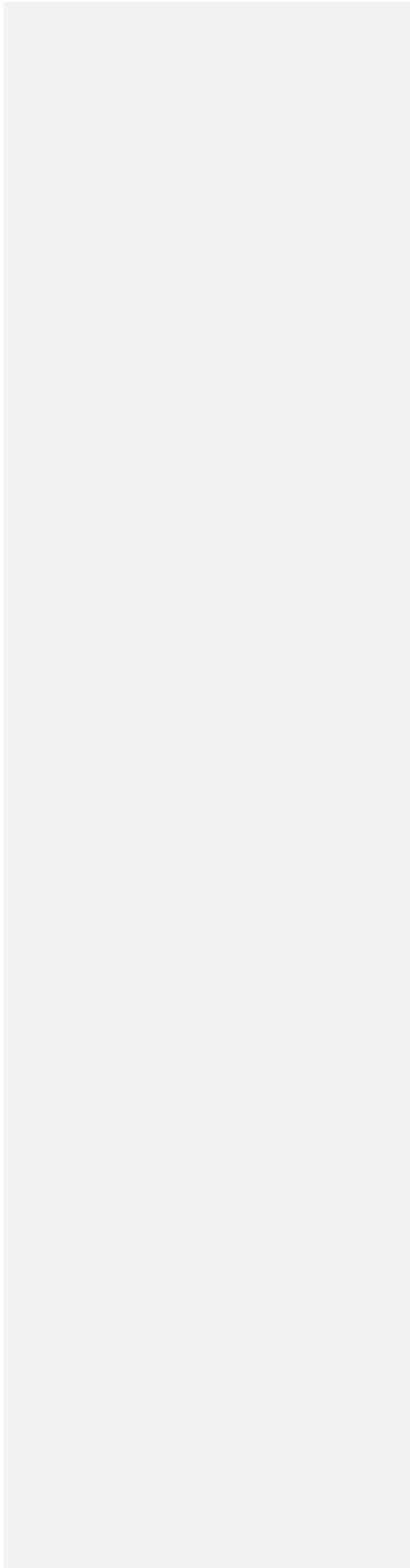
STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2011 by Timothy J. Gagen, Town Manager, and Mary Jean
Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS BNC hand and official seal.

My commission expires: _____.

Notary Public



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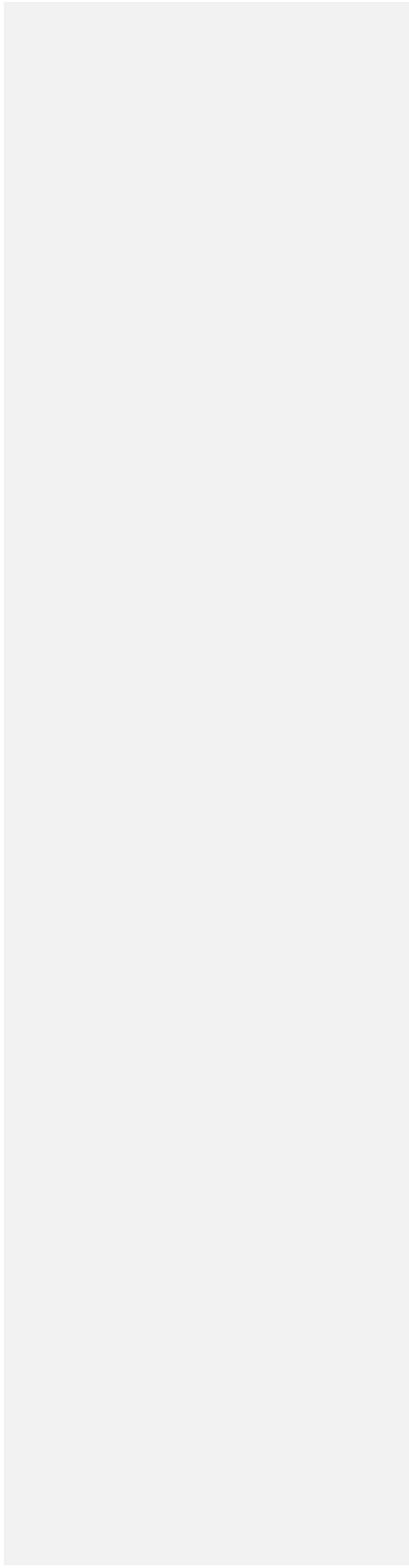
STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011 by Therese E. D. Dayton, as Manager of Breckenridge Nordic Center, L.L.C., a Colorado limited liability company.

WITNESS BNC hand and official seal.

My commission expires: _____.

Notary Public



**Exhibit “A”
To Agreement Concerning New Breckenridge Nordic Center Facility**

Depiction of Breckenridge Nordic Center Trails

[TO BE PREPARED AND INSERTED]

Exhibit “A”

1 *FOR ADOPTION – MAY 24*

2
3 A RESOLUTION

4
5 SERIES 2011

6
7 A RESOLUTION APPROVING AN AGREEMENT WITH BRECKENRIDGE NORDIC
8 CENTER, L.L.C., A COLORDAO LIMITED LIABLITY COMPANY, CONCERNING THE
9 NEW BRECKENRIDGE NORDIC CENTER FACILITY
10

11 WHEREAS, the Town of Breckenridge desires to enter into the “Agreement Concerning
12 New Breckenridge Nordic Center Facility” with Breckenridge Nordic Center, L.L.C., a Colorado
13 limited liability company, a copy of which is marked Exhibit “A”, attached hereto and
14 incorporated herein by reference (“Agreement”); and
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16 WHEREAS, the Town Council has reviewed the proposed Agreement, and finds and
17 determines that it would be in the best interests of the Town and its residents for the Town to
18 enter into the proposed Agreement; and
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20 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a
21 Resolution may be used to approve a contract.
22

23 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
24 BRECKENRIDGE, COLORADO, as follows:
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26 Section 1. The proposed ”Agreement Concerning New Breckenridge Nordic Center
27 Facility” with Breckenridge Nordic Center, L.L.C., a Colorado limited liability company
28 (Exhibit “A” hereto) is approved; and the Town Manager is authorized, empowered, and directed
29 to execute such Agreement for and on behalf of the Town of Breckenridge.
30

31 Section 2. The Town Manger is further authorized, empowered, and directed to take all
32 necessary and appropriate action to fully implement the agreement approved in Section 1 of this
33 resolution. In connection therewith, the Town Manager shall have the full power and authority to
34 do and perform all matters and things necessary to the full implementation of the approved
35 Agreement. The Town Council ratifies and confirms, in advance, all action taken by the Town
36 Manager to implement the approved agreement.
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38 Section 3. Minor changes to or amendments of the approved agreement may be made by
39 the Town Manager if the Town Attorney certifies that the proposed changes or amendments do
40 not substantially affect the consideration to be received or paid by the Town pursuant to the
41 approved agreement, or the essential elements of the approved agreement.
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43 Section 4. This resolution shall become effective upon its adoption.
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45 RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF _____,
46 2011.

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TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney date

AGREEMENT CONCERNING NEW BRECKENRIDGE NORDIC CENTER FACILITY

This Agreement Concerning New Breckenridge Nordic Center Facility (the “*Agreement*”) is dated _____, 2011 and is between the Town of Breckenridge, a Colorado municipal corporation (the “*Town*”) and Breckenridge Nordic Center, L.L.C., a Colorado limited liability company (“*BNC*”). The Town and BNC are sometimes collectively referred to in this Agreement as “*the Parties*”, and individually as a “*Party*.”

Background

The Town owns Tract C, Christie Heights Subdivision Filing No. 2, County of Summit and State of Colorado (“*Tract C*”), and various recreational trails located in the “Cucumber Gulch” nature preserve area (“*Cucumber Gulch*”) near Tract C that are suitable for use as Nordic ski trails under certain conditions (the “*Town Trails*”). The Town and BNC entered into that Nordic License Agreement dated November 14, 2008 (the “*License Agreement*”). By the License Agreement the Town granted BNC a license to use Tract C and the Town Trails. BNC uses Tract C and the Town Trails (as well as other property) to operate the “Breckenridge Nordic Center.” The Town has agreed to use its best efforts to assist BNC in securing the use of all of the Breckenridge Nordic Center Trails, whether owned by the Town or others. The current Breckenridge Nordic Center Trails as of the date of this Agreement are shown on the attached Exhibit “A”, which is incorporated herein by reference.

As part of its operation of the Breckenridge Nordic Center, BNC currently owns and operates a facility located at 1200 Ski Hill Road in the Town of Breckenridge, Summit County, Colorado (the “*Existing Facility*”). The Existing Facility consists of approximately 1,800 square feet (and includes a storage shed, sales office and sauna building), and is currently located on Tract D, Christie Heights Subdivision Filing No. 2, County of Summit and State of Colorado (“*Tract D*”). BNC does not own Tract D, but the Existing Facility is located on Tract D with the permission of the owner of Tract D.

The Existing Facility is no longer adequate to support the operation of the Breckenridge Nordic Center. BNC would like to abandon the Existing Facility and to construct a new, larger facility and/or a separate storage building that would be located on both Tract C and Tract D (collectively, the “*New Facility*”).

The Town hopes to acquire Tract D in the near future, and the Town and BNC have come to an agreement pursuant to which: (i) BNC will design and construct the New Facility on Tract C and Tract D at its cost; (ii) the Town will design and construct certain infrastructure required for the operation of the New Facility at its cost; (iii) the Town will finance a substantial portion of the costs of BNC’s construction of the New Facility upon the terms and conditions described in this Agreement; (iv) BNC will use the New Facility to continue to operate the Breckenridge Nordic Center upon the terms and conditions described in this Agreement; and (v) if the Town permanently discontinues Nordic skiing in Cucumber Gulch, the Town will buy the New Facility from BNC using an agreed methodology to value the New Facility, all as more fully set forth in this Agreement.

Agreement

Now, Therefore, the Parties agree as follows:

ARTICLE 1

SCHEDULE OF DATES AND DEADLINES

The following dates and deadlines apply to this Agreement:

Reference	Event	Date or Deadline
§2.5	BNC Approvals Deadline	December 31, 2011
§4.4(a)	BNC Preliminary Statement of Construction Costs Deadline	December 31, 2011
§4.4(b)	BNC Final Statement of Construction Costs Deadline	60 days after certificate of occupancy for New Facility
§4.5	Old Facility Removal Deadline	Within 180 days of the issuance of certificate of occupancy for New Facility
§5.2	Town Plans and Specifications Deadline	60 days after the last to occur of: (i) BNC's compliance with the BNC Approvals Deadline, and (ii) BNC's compliance with the BNC Preliminary Statement of Construction Costs Deadline
§5.3	Preliminary Town Infrastructure Bid Deadline	60 days after the last to occur of: (i) BNC's compliance with the BNC Approvals Deadline, and (ii) BNC's compliance with the BNC Preliminary Statement of Construction Costs Deadline
§5.6(a)	Preliminary Town Statement of Infrastructure	30 days after

	Costs Deadline	Preliminary Town Infrastructure Bid Deadline
§5.6(b)	Final Town Statement of Infrastructure Costs Deadline	60 days after certificate of completion of Town Infrastructure Improvements
§6.8	BNC Construction Escrow Deadline	January 31, 2012
§12.1	Town Resolution Approval Deadline	July 1, 2011
§12.1	Tract D Acquisition Deadline	December 31, 2011
§12.1	Town Appropriation Deadline	December 31, 2011

The dates established in this Article 1 may be changed by mutual written agreement of the Town and BNC without the necessity of formally amending this Agreement.

ARTICLE 2

PLANNING AND APPROVAL OF NEW FACILITY

2.1 **Multiple Approvals Required.** The planning and design of the New Facility requires multiple approvals as provided in this Article 2. The planning and design of the New Facility will not be approved, and the New Facility may not be constructed, until BNC has obtained all of the approvals required by this Article 2.

2.2 **Town’s Governmental Approval.** The planning and design of the New Facility requires formal approval and the issuance of a development permit from the Town in accordance with the Town’s governmental land use approval process. BNC will file the required application(s) with the Town’s Department of Community Development to obtain the approval of the New Facility; will pay all fees associated with such application (except as provided in Section 4.3); and will sign the development permit if and when the permit is issued by the Town acting in its governmental capacity.

2.3 **Town’s Discretionary Approval.** In addition to obtaining a development permit for the New Facility from the Town (acting in its governmental capacity as described in Section 2.2), the planning and design of the New Facility requires the discretionary written approval of the Town Council of the Town of Breckenridge (“*Town Council*”). BNC acknowledges that such discretionary approval is required by the Town in order to assure that the final design of the New Facility not only meets the applicable criteria and standards required by the Town’s land use codes and regulations, but also meets the subjective expectations of the Town Council for the location of a structure on Town-owned land in or near Cucumber Gulch. BNC understands, acknowledges, and agrees that the Town Council’s discretionary approval required by this Section 2.3 may be granted, withheld, or conditionally approved by the Town Council in its sole and absolute discretion. However, the Town agrees that once it has given its discretionary approval to BNC under this Section 2.3, such decision may not be revoked or materially changed without BNC’s consent.

2.4 **Landowner Approval.** Finally, the planning and design of the New Facility requires the written approval of the then-current owner of Tract D. As of the date of this Agreement, such owner is Christie Heights Partnership, a California general partnership. BNC understands, acknowledges, and agrees that the Tract D owner's discretionary approval required by this Section 2.4 may be granted, withheld, or conditionally approved by the Tract D owner in its sole and absolute discretion.

2.5 **BNC's Right To Withdraw From Agreement.** If all necessary approvals for the design and construction of the New Facility are not obtained to BNC's satisfaction prior to the BNC Approvals Deadline, BNC has the option and election to terminate this Agreement by giving written notice to Town in the manner required by Section 15.8. Upon the giving of such notice this Agreement will terminate, and each Party will be released from any further obligation to the other Party.

ARTICLE 3

AUTHORITY TO USE TOWN PROPERTY

3.1 **Authority to Use Town Property.** The Town Council's discretionary approval of the planning and design of the New Facility as described in Section 2.3 will be BNC's authorization to use Tract C and Tract D for the construction and operation of the New Facility. If the Town Council's grants its discretionary approval, the License Agreement will be amended to incorporate Tract D into such agreement (the "***Amended License Agreement***"). The Amended License Agreement will not require the payment of any compensation to Town for the use of the licensed premises that are the subject of the Amended License Agreement. The Amended License Agreement will not be revocable (or terminable) by the Town for a period of thirty (30) years from the date of the issuance of the certificate of occupancy for the New Facility, except upon: (i) termination of this Agreement under Article 9, or (ii) termination in accordance with its terms resulting from BNC's default under the Amended License Agreement. The term of the Amended License Agreement is referred to in this Agreement as the "***Amended License Term***."

ARTICLE 4

BNC TO CONSTRUCT NEW FACILITY

4.1 **BNC Will Construct New Facility.** When (and only when) BNC has obtained the approvals required by Article 2, BNC will construct the New Facility at its sole cost. BNC will construct the New Facility expeditiously and with due diligence. The New Facility may be constructed in phases if approved by the Town in accordance with its discretionary approval authority described in Section 2.3. BNC will not temporarily suspend construction of the New Facility, or abandon construction of the New Facility, without Town's prior written authorization.

4.2 **Mechanics' Liens.** BNC will not allow any mechanics' or similar liens to be filed against Tract C, Tract D, the Town Trails, or the New Facility itself, arising from any work done by BNC in connection with the construction of the New Facility. BNC will indemnify and defend the Town with respect to any such lien, including any attorney's fees incurred by Town in

connection with any such lien. If any mechanics' or other liens are filed against Tract C, Tract D, the Town Trails, or the New Facility itself, by reason of labor performed or materials furnished for the New Facility, BNC will, at its sole cost, cause the lien to be discharged of record by use of the statutory bond procedure provided in Sections 38-22-131 through 133, C.R.S., within ten (10) days after the lien is filed with the Clerk and Recorder of Summit County, Colorado. Town may require dual signatures and mechanic lien releases from both the general contractor and any subcontractor to be paid with any portion of the proceeds of a construction draw paid by the Town.

4.3 **Town's Waiver of Certain Fees.** In connection with the construction of the New Facility the Town will waive all building permit and plan review fees normally charged by the Town acting in its governmental capacity. All other fees and governmental charges normally required for the construction of the New Facility will be paid by BNC.

4.4 **BNC's Statement of Construction Costs.**

(a) Not later than the BNC Preliminary Statement of Construction Costs Deadline BNC will determine the estimated costs of planning, designing, and constructing the New Facility. BNC will provide the Town with a statement of such costs (the "**Preliminary Statement of Construction Costs**"). The Preliminary Statement of Infrastructure Costs will be based on the bids approved by BNC. Nothing in this Subsection 4.4 prohibits the employment of a person or entity related to BNC as: (i) a subcontractor or laborer to perform actual construction work in connection with the construction of the New Facility, or (ii) a supplier to provide construction materials required in connection with the construction of the New Facility; provided, however, the Preliminary Statement of Construction Costs may not include any "general contractor's fee" or similar supervisory or management expense paid or payable to BNC or any person or entity affiliated with BNC in connection with the construction of the New Facility. Unless the Town provides written objection to the Preliminary Statement of Construction Costs within ten (10) days of receipt, such statement will be conclusive. If the Town provides timely written objection to the Preliminary Statement of Construction Costs, representatives of the Parties will meet and confer at a mutually acceptable time and location, and, in good faith, agree upon the correct Preliminary Statement of Construction Costs.

(b) Not later than the BNC Final Statement of Construction Costs Deadline BNC will determine the actual costs incurred and paid by it to plan, design, and construct the New Facility. BNC will provide the Town with a statement of such costs (the "**Final Statement of Construction Costs**"). The Final Statement of Construction Costs may not include any "general contractor's fee" or similar supervisory or management expense paid or payable to BNC or any entity affiliated with BNC in connection with the construction of the New Facility. Unless the Town provides written objection to the Final Statement of Construction Costs within ten (10) days of receipt, such statement will be conclusive; will become part of this Agreement; and will be used the Parties in connection with the determination of the Town's purchase price for the New Facility as described in Article 9. If the Town provides timely written objection to the Statement of Construction Costs, representatives of the Parties will meet and confer at a mutually acceptable time and location and, in good faith, agree upon the correct Final Statement of Construction Costs. The agreed Final Statement of Construction Costs will then be conclusive;

will become part of this Agreement; and will be used in connection with the determination of the Town's purchase price for the New Facility as described in Article 9.

4.5 **Removal of Old Facility.** Prior to the Old Facility Removal Deadline, BNC will either remove the Existing Facility from Tract D, or completely tear down and remove the Existing Facility from Tract D, at BNC's option.

ARTICLE 5

CONSTRUCTION OF INFRASTRUCTURE BY TOWN

5.1 **Town To Construct Infrastructure.** When (and only when) BNC has obtained the approvals required by Article 2, Town will install and construct at its cost the following infrastructure that the Parties have determined is necessary for the operation of the New Facility:

- (a) the parking area ("**Parking Area**"), including grading, paving and striping;
- (b) the installation of all required utilities, including, but not limited to, water and sewer sufficient to allow for connection to the public water and sewer systems; and
- (c) landscaping of the Parking Area.

All infrastructure improvements constructed by the Town pursuant to this Article 5 are referred to in this Agreement as the "**Town's Infrastructure Improvements.**"

5.2 **Plans For Infrastructure Improvements.** Not later than the Town Plans and Specifications Deadline Town will provide BNC with proposed plans and specifications for the Town's Infrastructure Improvements ("**Plans and Specifications**"). Unless BNC provides written objection to the Plans and Specifications within ten (10) days of receipt, BNC will have approved the Plans and Specifications. If BNC provides timely written objection to the Plans and Specifications, representatives of the Parties will meet and confer at a mutually acceptable time and location and, in good faith, agree upon any necessary revisions to the Plans and Specifications.

5.3 **Bids For Town's Infrastructure Improvements.** Not later than the Town Infrastructure Bid Deadline the Town will obtain written bids for the construction and installation of the Town's Infrastructure Improvements from qualified contractors. Copies of all bids received by the Town will be provided to BNC, and BNC will have the right to review such bids. Unless BNC provides written objection to the Town within ten (10) days of its receipt of the bids, the Town may select the contractors to be hired to construct and install the Town's Infrastructure Improvements, and may let the appropriate contracts for the performance of such work. If BNC provides timely written objection to any bid, representatives of the Parties will meet and confer at a mutually acceptable time and location and, in good faith, agree upon the bidders to whom the contracts for the Town's Infrastructure Improvements will be let.

5.4 **Contracts For Town's Infrastructure Improvements; Warranties.** All Town Infrastructure Improvements will be made under contracts of a form normally used by the Town for its public works projects, and will require a warranty (or guarantee) from the contractor of no

less than one (1) year. After the certificate of occupancy has been issued for the New Facility, all warranties (or guarantees) under the Town's contracts for the construction of the Town's Infrastructure Improvements will, upon BNC's request, be assigned by the Town to BNC.

5.5 Infrastructure Construction Schedule. The construction schedule for the Town's Infrastructure Improvements will be coordinated with BNC's construction of the New Facility, and will be agreed to by the Town and BNC. The Town will construct the Town's Infrastructure Improvements expeditiously and with due diligence. Town will exercise its best efforts to coordinate and expedite the construction of all Town Infrastructure Improvements in a manner that will not unreasonably interfere with or unduly delay the construction of the New Facility by BNC.

5.6 Statement of Infrastructure Costs.

(a) Not later than the Preliminary Town Statement of Infrastructure Costs Deadline Town will determine the estimated costs of planning, designing, advertising, bidding, installing, and constructing the Town's Infrastructure Improvements, and will provide BNC with a statement of such costs (the "***Preliminary Statement of Infrastructure Costs***"). The Preliminary Statement of Infrastructure Costs will be based on the bids approved by the Parties pursuant to Section 5.3. In addition, the Preliminary Statement of Infrastructure Cost will include any new water or sewer plant investment fees for the New Facility. Unless BNC provides written objection to the Preliminary Statement of Infrastructure Costs within ten (10) days of receipt, such statement will be accepted. If BNC provides timely written objection to the Preliminary Statement of Infrastructure Costs, representatives of the Parties will meet and confer at a mutually acceptable time and location and, in good faith, agree upon the correct Preliminary Statement of Infrastructure Costs.

(b) Not later than the Final Town Statement of Infrastructure Costs Deadline Town will determine the actual and necessary costs incurred and paid by it to plan, design, advertise, bid, install, and construct the Town's Infrastructure Improvements. The Town will provide BNC with a statement of such costs (the "***Final Statement of Infrastructure Costs***"). The Final Statement of Infrastructure Costs will be based on the actual costs of constructing the Town's Infrastructure Improvements. In addition, the Final Statement of Infrastructure Cost will include any new water or sewer plant investment fees for the New Facility. Unless BNC provides written objection to the Town's Final Statement of Infrastructure Costs within ten (10) days of receipt, such statement will be conclusive; will become part of this Agreement; and will be used the Parties in connection with the determination of the Town's purchase price for the New Facility as described in Article 9. If BNC provides timely written objection to the Town's Final Statement of Infrastructure Costs, representatives of the Parties will meet and confer at a mutually acceptable time and location and, in good faith, agree upon the correct Final Statement of Infrastructure Costs. The agreed Final Statement of Infrastructure Costs will then be conclusive; will become part of this Agreement; and will be used in connection with the determination of the Town's purchase price for the New Facility as described in Article 9.

(c) **BNC Option to Construct Town Infrastructure Improvements.** At any time prior to the Town letting contracts for the construction of the Town Infrastructure Improvements, and upon written notice to Town given in the manner required by Section 15.8,

BNC may elect to perform all of the Town Infrastructure Improvements (including payment of all required sewer and water plant investment fees) at its cost. If BNC elects to construct the Town Infrastructure Improvements the cost thereof will be part of the Final Statement of Construction Costs described in Section 4.4(b). Upon BNC giving notice of its election under this subsection (c), the Town will be relieved from any responsibility under this Article 5.

ARTICLE 6

TOWN'S CONSTRUCTION LOAN

6.1 **“Loan Documents” Defined.** As used in this Article 6, the term **“Loan Documents”** means this Agreement; the Loan Agreement; the Promissory Note; and the Deed of Trust/Security Agreement described in this Article 6.

6.2 **Loan By Town.** In accordance with the terms of this Agreement, and the other Loan Documents, the Town will provide BNC with a loan to be evidenced by BNC's promissory note (the **“Promissory Note”**) in an original principal amount equal to seventy five percent (75%) of BNC's Preliminary Statement of Construction Costs described in Section 4.4(a)(the **“Loan”**). The remaining twenty five percent (25%) of the cost of planning, designing and constructing the New Facility will be provided by BNC, and may include the fair market value of the logs and other materials provided by BNC for the project. BNC will execute the Promissory Note when requested to do so by the Town. The loaned funds will be advanced by Town to BNC on a construction draw schedule that reflects the accepted bids for the construction of the New Facility, and actual material costs advanced or paid by BNC, up to the date of the draw. The specific details and requirements for payment of draws on the Loan will be agreed upon in the Loan Agreement and Promissory Note

6.3 **Interest.** BNC will pay interest on the Loan at the rate of four percent (4%) per annum. The default rate on the Loan, and on any advances made by the Town under the Loan Documents, will be twelve percent (12%) per annum. Interest will be computed on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed.

6.4 **BNC's Option to Increase Amount of Loan.** At BNC's option, the amount of the Loan may be increased to seventy five percent (75%) of BNC's Final Statement of Construction Costs described in Section 4.4(b). To exercise this option, BNC must give Town written notice within sixty (60) days of the Parties' agreement on BNC's Final Statement of Construction Costs. If BNC exercises its option, the Loan Documents will be amended to reflect the change in the principal amount of the Loan, but all other terms and conditions of the Loan Documents will continue to apply. If BNC fails to give timely notice of the exercise of the option provided in this Section 6.4, BNC will have waived the right to increase the amount of the Loan as provided in this Section 6.4.

6.5 **Repayment of Loan.** The Loan will be repaid by BNC to Town in consecutive equal monthly installments, each installment including principal and interest, commencing on ninety (90) days after the issuance of the certificate of occupancy for the New Facility; provided, however, that the Promissory Note will allow BNC, at its option, to defer payment on the Promissory Note during the non-winter months when BNC is not fully operational so long as the

total amount required to be paid to the Town each six (6) months under the Promissory Note (both principal and interest) is fully paid. Monthly payments will be based on a straight thirty (30) year amortization of the Loan. If not sooner paid, the entire unpaid balance of the Loan, both principal and interest, will be due and payable thirty (30) years after the issuance of the certificate of occupancy for the New Facility. The Loan may be prepaid, in whole or in part, at any time without penalty.

6.6 **Collateral.** The Loan will be secured by a first deed of trust/security interest in the New Facility. BNC will execute the appropriate collateral loan documents when requested to do so by the Town.

6.7 **Set-Off.** The Town may use the right of set-off to collect the Loan.

6.8 **BNC Construction Escrow.** Not later than the BNC Construction Escrow Deadline BNC will deposit into escrow with a title insurance company acceptable to Town the sum equal to ten percent (10%)_of the Preliminary Statement of Construction Costs to be used to pay BNC's share of the cost of constructing, planning and designing the New Facility. BNC may deduct from the amount required to be placed into escrow the reasonable value of any construction materials for the New Facility that BNC has obtained and stored on the site of the Existing Facility (or other location reasonably acceptable to both the Town and BNC) prior to the date of the establishment of the escrow.

6.9 **BNC's Warranties, and Representations.** To induce the Town to make the Loan, BNC makes the following warranties and representations to the Town, and agrees that the following warranties and representations will continue to be true throughout the term of this Agreement:

(a) **Entity Existence.** BNC is a limited liability company organized and existing under the laws of the State of Colorado. As of the date of this Agreement, BNC is in good standing with the Colorado Secretary of State.

(b) **Authority.** The execution, delivery, and performance of this Agreement and the obligations evidenced by the Loan Documents are within BNC's powers; have been duly authorized; will not violate any provision of law, or order of court or governmental agency; and will not violate any agreement to which BNC is a Party or to which BNC or to which the New Facility will be is subject.

(c) **Loan Purpose.** The Loan is for commercial purposes. BNC will use the proceeds of the Loan only to pay for the cost of planning, designing and constructing the New Facility.

(d) **No Other Loans.** BNC owns or leases all of the personal property needed to operate the business of the Breckenridge Nordic Center. BNC has good and marketable title to all such property. All of BNC's property is free and clear of all liens, security interests, encumbrances, and other adverse claims and interests, except for the Loan Documents. Nothing in this subsection (d) prohibits BNC from leasing or purchasing on commercially reasonable terms any equipment, inventory, materials or supplies required in the normal course of its business.

(e) **Compliance With Laws.** In constructing the New Facility, and in operating the business of the Breckenridge Nordic Center, BNC will not violate any law, regulation, rule, order, judgment, or judicial decree that is applicable to BNC or the Breckenridge Nordic Center, except for those that BNC challenges in good faith through proper proceedings after providing adequate reserves to fully pay the claim should BNC lose.

(f) **Financial Information.** During the term of the Loan BNC will provide the Town with any reasonable information about its operations, financial affairs, and condition within thirty (30) days after the Town's request. The Parties agree that any information provided to Town by BNC pursuant to this subsection (f) may contain BNC's "confidential commercial and financial information" within the meaning of Section 24-72-204(3)(a)(IV), C.R.S. (which is part of the Colorado Open Records Act) ("**BNC's Confidential Information**"). None of BNC's Confidential Information will be disclosed by the Town except in accordance with this subsection (f). If the Town receives a request for disclosure of any of BNC's Confidential Information under the Colorado Open Records Act, the Town will resist such request, and will not disclose any of BNC's Confidential Information except pursuant to a final, non-appealable judgment of a court of competent jurisdiction. Further, upon receipt of a request for disclosure of any of BNC's Confidential Information under the Colorado Open Records the Town will promptly notify BNC of the request so that BNC may seek an appropriate protective order or waive the confidentiality provisions of this subsection (f) and allow the requested disclosure of BNC's Confidential Information. The Town will not oppose any action by BNC to obtain an appropriate protective order or other reliable assurance that the confidentiality provisions of this subsection (f) will be enforced to the fullest extent permitted by law.

6.10 **BNC's Covenants.** During the term of this Agreement BNC covenants and agrees with the Town that it will comply with the following:

(a) **Continued Existence.** BNC will preserve and maintain its present existence as a limited liability in good standing in Colorado.

(b) **Compliance with Laws.** BNC will not violate any law, regulation, rule, order, judgment or decree applicable to it or the New Facility, except for those which BNC challenges in good faith through proper proceedings after providing adequate reserves to fully pay the claim should BNC lose.

(c) **Continued Operation of Breckenridge Nordic Center.** Until the Note is fully paid BNC will continue to operate the Breckenridge Nordic Center without interruption (except seasonal closures) and without cessation of operations.

(d) **Change of Business Operations.** BNC will obtain the Town's written consent and any necessary changes to the Loan Documents before BNC:

- (i) organizes or participates in the organization of any new business entity;
- (ii) merges into or consolidates with any other business entity;
- (iii) permits any other business entity to merge into BNC;

- (iv) acquires all or substantially all of the assets of any other business entity; or
- (v) otherwise materially changes BNC's legal structure, management, ownership or financial condition.

(e) **Other Liabilities.** BNC will not incur, assume, or permit any debt evidenced by notes, bonds, or similar obligations, except debt incurred in the ordinary course of BNC's business. Nothing in this subsection (e) prohibits BNC from leasing or purchasing on commercially reasonable terms any equipment, inventory, materials or supplies required in the normal course of its business.

(f) **Notice of Material Change of Condition.** BNC will promptly notify the Town of any material change in BNC's financial condition; of the occurrence of a default under the terms of this Agreement; or of a default by BNC under any agreement between BNC and any third party that materially and adversely affects BNC's property, operations, financial condition, or business.

(g) **Dispose of No Assets.** Without the Town's prior written consent or as the Loan documents permit, BNC will not sell, lease, assign, transfer, dispose of or otherwise distribute all or substantially all of BNC assets to any person.

(h) **Casualty Loss.** BNC will immediately notify the Town of any material casualty, loss, or depreciation to the New Facility, or to any other property owned by BNC that materially affects the operation of the Breckenridge Nordic Center.

(i) **Alterations or Additions to New Facility.** BNC will make no structural alteration or addition to the New Facility without the prior written consent of Town.

ARTICLE 7

MAINTENANCE OF NEW FACILITY

7.1 **Maintenance and Repair of New Facility.** During the term of this Agreement BNC will, at its sole expense, perform all required maintenance and upkeep of the New Facility, and make all required repairs to the New Facility. Without limiting the generality of the preceding sentence, BNC will, at its expense, maintain the New Facility in compliance with all applicable governmental building and technical codes. BNC will also perform and pay the cost of maintaining (and repairing or replacing as necessary) the following portions of the New Facility:

- (i) roof;
- (ii) foundation;
- (iii) exterior walls;
- (iv) interior structural walls (excluding finish and trim of these walls);

- (v) all other structural components;
- (vi) the water, sewer, plumbing system and plumbing fixtures of the New Facility;
- (vii) the mechanical, electrical, and heating/ventilation systems; and
- (viii) the glass windows in the New Facility.

7.2 **Maintenance and Repair of Parking Area.** After the expiration of all applicable construction warranties (or guarantees) provided by the contractors involved in the construction of the Parking Area, BNC will, at BNC's sole expense, perform all required pothole filling and striping in the Parking Area. Unless a warranty (or guarantee) related to the construction of the Parking Area has been assigned by the Town to BNC, the Town will be responsible for the enforcement of all warranties (or guaranties) provided by the contractors in connection with the construction of the Parking Area.

7.3 **Snow Plowing.** During the term of this Agreement BNC will, at its sole expense, provide all snow plowing necessary to allow the New Facility to be used by BNC in connection with its operation of the Breckenridge Nordic Center.

ARTICLE 8

USE OF NEW FACILITY

8.1 **Use of New Facility By BNC.** During the term of this Agreement BNC will only use the New Facility in connection with its operation of the Breckenridge Nordic Center. BNC will not use the New Facility for any other purpose or use without the prior written approval of the Town.

8.2 **Use of New Facility By Town.** During the summer months (that is, the months when: (i) the New Facility is not open for public Nordic skiing in connection with BNC's normal operation of the Breckenridge Nordic Center) and (ii) BNC is not otherwise using the New Facility), the Town may use the New Facility without payment of any fee to BNC for any purpose determined to be appropriate by the Town. However, the Town will pay for the utilities used or consumed at the New Facility during such period of Town usage and any other direct costs incurred by BNC or the Town in connection with such use (not including property taxes for the New Facility, which are not a direct cost and will not be paid or reimbursed by the Town). Town will also perform any required cleaning and periodic maintenance of the New Facility. The Town will be responsible for the prompt repair of any damage to the New Facility occurring during the period of the Town's usage, and will indemnify and defend BNC from and against any loss, damage or claim incurred by any person during any use of the New Facility by the Town. Prior to using the New Facility, the Town will provide BNC with a Certificate of Insurance demonstrating that the Town has general liability insurance coverage in an amount not less than the amount required of BNC under Article 10. BNC will be named as an additional insured under the Town's general liability insurance policy for the period of the Town's use of the New Facility.

ARTICLE 9

CONVEYANCE OF NEW FACILITY TO TOWN

9.1 Cessation of Ski Operations in Cucumber Gulch.

(a) The Parties recognize that the ecological sensitivity of Cucumber Gulch may at some time require the Town to permanently prohibit Nordic skiing within Cucumber Gulch in order to protect it from adverse effects. Accordingly, commencing five (5) years after the date of the issuance of the certificate of occupancy for the New Facility the Town, in its sole and absolute discretion, may elect to permanently cease all Nordic skiing within Cucumber Gulch. To exercise such right the Town must give BNC not less than one (1) year advance written notice. Such notice must specify the effective date of the permanent cessation of Nordic skiing within Cucumber Gulch. Upon the permanent cessation of Nordic skiing within Cucumber Gulch the New Facility will be conveyed by BNC to Town, and the Town will pay BNC for the New Facility, all as more fully provided in this Article 9.

(b) The Town may not declare the permanent cessation of Nordic skiing in Cucumber Gulch unless it determines that such action is necessary to address negative effects on Cucumber Gulch caused by the presence of humans within Cucumber Gulch.

(c) At the time of entering into this Agreement the Town states that it is not its present intention to exercise any of its rights under this Section 9.1 before the expiration of fifteen (15) years from the date of this Agreement; however, except as specifically provided in subsection (a), above, nothing restricts the Town's right to exercise any of its rights under this Section 9.1 prior to the expiration of fifteen (15) years from the date of this Agreement.

(d) Without ordering the permanent cessation of Nordic skiing in Cucumber Gulch the Town may close any one or more specific Town Trail(s) to Nordic Skiing, either temporarily or permanently, or impose restrictions on the use of any Town Trail for Nordic skiing, if the Town determines in its discretion that such action is necessary to address negative effects on Cucumber Gulch caused by the presence of humans within Cucumber Gulch. Such action will not constitute a violation of the Amended License Agreement or this Agreement, and will not require conveyance of the New Facility by BNC to the Town, or the Town's payment to BNC as required by this Article 9.

9.2 **“Conveyance Date” Defined.** As used in this Article 9, the term **“Conveyance Date”** means the date that the New Facility is conveyed to the Town. The Conveyance Date will be the first to occur of: (i) the permanent cessation of Nordic skiing within Cucumber Gulch; or (ii) the last day of the Amended License Term.

9.3 **Conveyance of New Facility to Town.** On the Conveyance Date BNC will convey the New Facility to Town by appropriate documentation reasonably acceptable to the Town Attorney, and Town will pay BNC in the manner provided in Section 9.6. The title to the New Facility conveyed to the Town will be free and clear of all liens and encumbrances, except for the general property tax lien of the year of conveyance.

9.4 **Conveyance “AS IS”.** The New Facility will be conveyed and transferred by BNC to Town, and accepted by the Town, “AS IS”, “WHERE IS” and “WITH ALL FAULTS.” BNC will not be required to warrant or make any representation to the Town, express or implied, relating to the MERCHANTABILITY, quality, condition, suitability or FITNESS FOR ANY PURPOSE WHATSOEVER of the New Facility

9.5 **Environmental Matters.** At the time of conveyance to the Town the New Facility will be free of all contamination, including: (i) any “hazardous water”, “underground storage tanks”, “petroleum”, “regulated substance”, or “used oil” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.), as amended, or by any regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601, et seq.), as amended, or by any regulations promulgated thereunder (including, but not limited to, asbestos and radon); (iii) any “petroleum” and “fuel products”, as defined by Section 25-15-101 et seq., C.R.S., as amended, or by any regulations promulgated thereunder; (iv) any “hazardous waste” as defined by the Colorado Hazardous Waste Act, Section 25-15-101, et seq., C.R.S., or by any regulations promulgated thereunder; (v) any substance the presence of which on, in or under the Property is prohibited by any law similar to those set forth above; and (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

9.6 **Town’s Payment to BNC For New Facility.**

(a) On the Conveyance Date the Town will pay BNC in cash a sum that has been agreed as adequate compensation to BNC for the remaining value of the New Facility based on an expected useful life of the New Facility of thirty (30) years. The amount to be paid by Town to BNC will be determined as follows:

(i) Begin with the amount of BNC’s Final Statement of Construction Costs as described in Section 4.4(b); then

(ii) Subtract the amount of the Town’s Final Statement of Infrastructure Costs (if Town [not BNC] constructed the Town Infrastructure Improvements) as described in Section 5.6(b); then

(iii) Divide the amount determined in (b) by thirty (30); then

(iv) Multiply the amount determined in (c) by the whole number that is thirty (30) minus the number of full twelve-month periods that BNC has owned the New Facility prior to the date of its conveyance to the Town. There will be no apportionment for any partial twelve-month period of BNC’s ownership of the New Facility.

Example: For example, if the BNC Final Statement of Construction Costs is \$1,250,000; the Town’s Final Statement of Infrastructure Costs is \$300,000; and BNC owned the New Facility for twenty (20) years, the Town’s payment to BNC for the New Facility would be calculated as follows:

$\$1,250,000 - \$300,000 = \$950,000 \div 30 = \$31,666.67 \times 10$ (years of useful life of New Facility left = $\$316,666.67$ (amount due to BNC)

(b) BNC acknowledges that if the Conveyance Date is the end of the Amended License Term, it will be required to convey the New Facility to Town without any payment by Town.

(c) Upon Town's receipt of Town's payment as provided in this Section 9.6, BNC may either pay the then-remaining balance of the Promissory Note, or continue to pay the Promissory Note in accordance with its terms.

9.7 BNC May Voluntarily Convey New Facility to Town.

(a) At any time after the date of the issuance by the Town of the certificate of occupancy for the New Facility but prior to the Conveyance Date, BNC, in its discretion, may convey the New Facility to the Town. The conveyance of the New Facility to the Town pursuant to this Section 9.7 is called the "*Early Conveyance of the New Facility.*"

(b) Following the Early Conveyance of the New Facility BNC will continue to pay the Promissory Note in accordance with its terms.

(c) Following the Early Conveyance of the New Facility conveyance of the New Facility BNC may, at its option, lease the New Facility and the Town Trails from the Town ("*Remainder Lease*"). Notice of the exercise of the option must be given by BNC prior to the date of Early Conveyance of the New Facility. The term of the Remainder Lease will commence on the date of Early Conveyance of the New Facility and will end upon the expiration of the Amended License Agreement. The terms of the Remainder Lease will be commercially reasonable; provided, however, that until the Promissory Note is fully paid the BNC's timely payment of the periodic payments due to Town under the Promissory Note will be treated as the periodic rent due to the Town under the Remainder Lease. If the Promissory Note is paid in full before its due date, no rent will be charged to BNC by Town for the rest of the term of the Remainder Lease.

9.8 Morning Glory Trail.

(a) The Parties contemplate that if the Town imposes restrictions on Nordic skiing in Cucumber Gulch pursuant to this Section 9.1 it may not necessarily restrict Nordic skiing on the Town Trail currently called the "*Morning Glory Trail.*" The location of the Morning Glory Trail is shown on **Exhibit "A"**. Because the Morning Glory Trail provides a connection between the New Facility and the Peak 7 ski area, Town acknowledges that BNC may want to use the Morning Glory Trail as part of Nordic Skiing operations conducted by BNC on Peak 7, even if the Town has ceased Nordic Skiing operations in Cucumber Gulch.

(b) If during the Amended License Term the Town permanently ceases Nordic skiing in Cucumber but:

(i) BNC desires to continue its Nordic ski operation;

(ii) BNC can satisfactorily demonstrate to the Town that it can lawfully operate a Nordic skiing operations outside of Cucumber Gulch; and

(iii) the Morning Glory Trail is not part of the area within Cucumber Gulch where the Town has permanently or temporarily ceased Nordic skiing operations,

then BNC, at its option, may continue to use the Morning Glory Trail under the terms and conditions of the Amended License Agreement until the end of the Amended License Term. To exercise its option to continuing using the Morning Glory Trail as provided in this subsection (b), BNC must give written notice to Town in the manner required by Section 15.8 not later than the date of permanent cessation of Nordic skiing operations in Cucumber Gulch. If BNC stops using the Morning Glory Trail for one (1) full winter season its right to continue using the Morning Glory Trail as provided in this Section 9.8 will automatically terminate.

9.9 Lease After End of Amended License Term.

(a) If the Town has not permanently ceased Nordic skiing in Cucumber Gulch when the Amended License Agreement expires, and if at such time BNC desires to remain in possession of the New Facility and those Town Trails that are still open for Nordic skiing, then the Town will negotiate in good faith with BNC to try to reach agreement on a new lease for the use of the New Facility and those Town Trails that are still open for Nordic skiing. The rent for the use of the New Facility will be a commercially reasonable rental. One factor that will be considered in determining a commercial reasonable rental could be similar lease arrangements for comparable Nordic skiing facilities. The factors the Town may take into consideration in determining whether to enter into a new lease with BNC for the use of the New Facility and those Town Trails that are still open for Nordic skiing include, but are not limited to: (i) BNC's performance under this Agreement; (ii) BNC's performance under the other agreement(s) for the use of Town-owned property in connection with its operation of the Breckenridge Nordic Center; and (iii) BNC's desire to continue to operate a commercially viable Nordic operation that includes the use of Town Trails that are still open for Nordic skiing. Nothing in this subsection (a) obligates or requires the Town to enter into a new lease with BNC for the use of the New Facility and those Town Trails that are still open for Nordic skiing.

(b) If the Town has permanently ceased Nordic skiing in Cucumber Gulch when the Amended License Agreement expires, but:

(i) BNC desires to continue its Nordic ski operation; and

(ii) BNC can satisfactorily demonstrate to the Town that it can lawfully operate a Nordic skiing operations outside of Cucumber Gulch; and

(iii) the Morning Glory Trail is not part of the area within Cucumber Gulch where the Town has permanently or temporarily ceased Nordic skiing operations

then the Parties will enter into good faith negotiations for a new business arrangement for the continued use of the Morning Glory trail by BNC, taking into consideration all then-relevant factors, including, but not limited to: (i) the anticipated environmental impact of BNC's proposed use of the Morning Glory trail on Cucumber Gulch; (ii) BNC's performance under this

Agreement; (iii) BNC's performance under the other agreement(s) for the use of Town-owned property in connection with its operation of the Breckenridge Nordic Center; and (iv) BNC's desire to continue to operate a commercially viable Nordic operation that includes the use of Town Trails; provided, however, that nothing in this subsection (b) obligates or requires the Town to authorize BNC to use Morning Glory trail after Nordic skiing has been permanently ceased in Cucumber Gulch, or restricts the ability of the Town to require the cessation of Nordic skiing on Morning Glory Trail at any time.

9.10 Termination of Existing Agreements On Conveyance Date. Except as provided in Section 9.7(c) with respect to the Remainder Lease, and Section 9.8 with respect to the Morning Glory Trail, at the time of the conveyance of the New Facility to the Town pursuant to this Article 9, all then-existing agreements between the Town and BNC related to the use of any Town-owned property by BNC in connection with its operation of the Breckenridge Nordic Center, including, but not limited to the Amended License Agreement, will terminate.

9.11 Specific Performance. BNC's obligation to convey the New Facility to the Town pursuant to this Article 9 is specifically enforceable in an appropriate judicial action brought by the Town.

ARTICLE 10

INDEMNITY AND INSURANCE

10.1 Indemnification. BNC will indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool 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, that arise out of or are in any manner connected with this Agreement, or that arise out of BNC's ownership and use of the New Facility, except to the extent such liability, claim, or demand arises through the negligence or intentional wrongful act of the Town, its officers, employees, or agents, or Town's breach of this Agreement. To the extent indemnification is required under this Section 10.1, BNC will investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and bear all other costs and expenses related thereto, including court costs and attorney fees. The provisions of this Section 10.1 will survive the termination of this Agreement.

10.2 Insurance.

(a) **Required Insurance.** BNC will procure and continuously maintain throughout the term of this Agreement the following minimum insurance coverages:

(i) worker's compensation insurance to cover obligations imposed by applicable laws for any employee of BNC.

(ii) comprehensive general liability insurance with limits of liability not less than One Million Dollars (\$1,000,000) combined single limits. The policy must be applicable to all premises and operations, and include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including

coverage for contractual and employee's acts), blanket contractual, products, and completed operations.

Such coverages will be procured and maintained with forms and insurers acceptable to the Town. All coverages will be continuously maintained to cover all liability, claims, demands, and other obligations assumed by BNC pursuant to Section 10.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods will be procured to maintain such continuous coverages.

(b) **Additional Insured.** BNC's general liability insurance policy will be endorsed to include the Town and the Town's officers and employees as additional insureds.

(c) **Non-Contributory Insurance.** Every insurance policy required to be carried by BNC will be primary insurance, and any insurance carried by Town, its officers, or its employees, or carried by or provided through any insurance pool of which Town is a member, will be excess and not contributory insurance to that provided by BNC.

(d) **Deductible.** BNC is be solely responsible for any deductible losses under any insurance policy required of it above.

(e) **Insurance Certificate.** An ACORD Form 27, or other certificate of insurance acceptable to Town, will be completed by BNC's insurance agent and provided to the Town as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and will be reviewed and approved by Town prior to commencement of construction of the New Facility. The certificate will identify this Agreement and will provide that the coverages afforded under the policies will not be cancelled or terminated until at least thirty (30) days' prior written notice has been given to the Town. The completed certificate of insurance will be sent to:

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

(f) **Lack of Insurance.** BNC's failure to procure or maintain policies providing the required coverages, conditions, and minimum limits will constitute a material breach of this Agreement. If BNC fails to procure or maintain the required insurance policies Town may give BNC written notice of such breach, and if BNC fails or refuses to procure the required insurance polices within ten (10) days after the giving of such notice by Town, Town may, without prejudice to any other remedy available to it:

- (i) terminate this Agreement;
- (ii) accelerate the Promissory Note or, at its discretion;
- (iii) procure or renew any such policy or any extended reporting period thereto, and may pay any and all premiums in connection therewith, and all monies so paid by

Town will be repaid by BNC upon demand, together with interest at the default rate as provided in Section 6.3, or

(iv) Town may offset the cost of the premiums against any monies due to BNC from Town.

The rights and remedies provided for in this subsection (f) may be exercised by the Town singly or in combination.

ARTICLE 11

PROPERTY TAXES

11.1 **Taxes Defined.** As used in this Article 11, the term “taxes” means all personal property and real property taxes that may be levied, assessed, or imposed arising out of BNC’s ownership of the New Facility, and/or its occupancy and use of Tract C, Tract D and/or the Town Trails during the term of this Agreement. The term “taxes” includes, but is not limited to, taxes assessed as “Improvements Only” by the Summit County, Colorado Assessor.

11.2 **Possessory Interest.** Pursuant to Section 39-3-105, C.R.S., all real or personal property owned by Town is exempt from taxation. However, the Parties acknowledge that BNC’s occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to this Agreement may be deemed to be a taxable possessory interest pursuant to Section 39-1-103(17)(a), C.R.S.

11.3 **BNC to Pay Taxes.**

(a) Any taxes lawfully assessed arising from BNC’s ownership of the New Facility will be paid by BNC.

(b) Any taxes lawfully assessed arising from BNC’s occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to this Agreement will be paid by BNC, and BNC will indemnify and hold Town harmless from any such taxes.

(c) Any taxes due arising from BNC’s ownership of the New Facility, or its occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to this Agreement will be paid by BNC in a timely manner. Prior to the last day for payment of such taxes without penalty or interest, BNC will provide to Town a photostatic copy of the receipt(s) or cancelled check(s) showing payment of the taxes. BNC may pay any taxes in installments if permitted by law.

11.4 **BNC’s Right to Contest Taxes.** If BNC is liable for the payment of any taxes arising from BNC’s occupancy and use of Tract C, Tract D and/or the Town Trails pursuant to this Agreement, or against the New Facility, BNC will have the right, at its sole expense, to contest any such taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings; provided that BNC makes timely payment of such taxes if BNC loses the contest. BNC will advise Town prior to instituting any such contest and will as a condition of exercising such right provide Town such reasonable assurance as it may

request that such contest will be in compliance with the provisions of this Article 11. The Town, at BNC's sole cost and expense, will reasonably cooperate with BNC in any such contest; may join in the contest; and will execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

ARTICLE 12

CONDITIONS PRECEDENT

12.1 **Town's Conditions Precedent.** The obligation of Town to perform its obligations under this Agreement is subject to the satisfaction of the following conditions precedent, any of which may be waived in writing by Town:

- (i) The approval of this Agreement by a resolution duly and lawfully adopted by the Town Council of the Town of Breckenridge not later than the Town Resolution Approval Deadline;
- (ii) The Town's acquisition of title to Tract D not later than the Tract D Acquisition Deadline; and
- (iii) An appropriation being made by the Town Council of the Town of Breckenridge in an amount sufficient to allow the Town to perform its financial obligations under this Agreement not later than the Town Appropriation Deadline.

12.2 **Failure of Condition.** If the Town gives written notice to BNC of the nonfulfillment of any of the conditions described in Section 12.1 this Agreement will terminate, and each Party will be released from any further obligation under this Agreement.

ARTICLE 13

DEFAULT; REMEDIES

13.1 **Default; Resolution Of Disputes.**

(a) **Default.** A default will exist under this Agreement if any Party violates any provision of this Agreement. If any Party (the "**Defaulting Party**") fails to cure such default within twenty (20) days after the other Party (the "**Non-Defaulting Party**") gives written notice of the default to the Defaulting Party or, in the event of a default not capable of being cured within such twenty (20) day period, if the Defaulting Party fails to commence curing the default within such twenty (20) day period and thereafter fails to cure such default with due diligence, then, at the Non-Defaulting Party's option, the Non-Defaulting Party may terminate this Agreement, or exercise such other rights and remedies as may be provided by applicable law. If the Non-Defaulting Party is the Town and the Loan has been made to BNC, the Town may also accelerate the Note and foreclose the Deed of Trust, or exercise any other rights and remedies that are available to the Town under the law. All rights and remedies may be exercised singly or in combination with other allowed rights and remedies. Notwithstanding any Party's right to terminate this Agreement for an uncured default, this Agreement is subject to the rights of any Party to invoke the remaining provisions of this Section.

(b) **Negotiation.** The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between persons who have authority to settle the controversy (“*Executives*”). Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within five (5) days after receipt of such notice, the Executives will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within ten (10) days of the notice of dispute, or if the Parties fail to meet within five (5) days, either Party to the dispute may initiate mediation of the controversy as provided below.

(c) **Mediation.** If the dispute has not been resolved by negotiation as provided above, the Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a neutral third Party, such third Parties to appoint a neutral third Party to mediate. Each Party will pay their own attorneys’ fees incurred in connection with a mediation.

(d) **Judicial Action.** Any dispute arising out of or relating to this Agreement or the breach, termination, or validity of this Agreement, which has not been resolved by the methods set forth above within thirty (30) days of the initiation of mediation, may be finally resolved by appropriate judicial action commenced in a court of competent jurisdiction. The Parties agree to venue in the courts of Summit County, Colorado with respect to any dispute arising out of or relating to this Agreement. Both Parties waive the right to a jury trial in action to enforce, interpret or construe this Agreement.

(e) **Attorneys’ Fees and Costs.** 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, is entitled to reasonable attorneys’ fees, as well as costs, including expert witness’ fees, incurred in the prosecution or defense of such action.

(f) **Equitable Relief.** The Parties acknowledge that any violation of this Agreement by either Party would caused immediate and irreparable damage to the other Party, for which monetary relief would be inadequate or difficult to ascertain. Accordingly, the Parties agree that in the event of the breach of this Agreement by either Party the Non-Defaulting Party may, without limitation of any other right the Non-Defaulting Party may have, obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction, permanent injunction or other appropriate form of equitable relief to enforce the provisions of this Agreement. Nothing in this subsection (f) authorizes a court to order specific performance of this Agreement against the Town where such order is otherwise prohibited by applicable state law.

ARTICLE 14

NO CONSTITUTIONAL DEBT

14.1 **No Constitutional Debt; Annual Appropriation.** The Town’s obligations under this Agreement are subject to an annual appropriation being made by the Town Council in an amount sufficient to allow the Town to perform its obligations under this Agreement. If

sufficient funds are not appropriated for the payment of sums due to BNC under this Agreement, this Agreement may be terminated by either Party without penalty. The Town's obligations under this Agreement do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 **“Will” and “Will Not” Defined.** The terms “will” and “will not” indicate a mandatory obligation to act or to refrain from acting as indicated in the context of the sentence in which such terms are used.

15.2 **Town Consent or Approval.** Except as otherwise expressly provided in this Agreement, the Town will not unreasonably delay action on or unreasonably deny BNC's request for any Town consent or approval. If the Town denies any request for consent or approval made by BNC, the Town will provide BNC with a written explanation for such denial, and will give BNC the opportunity to meet with the Town Manager to discuss the Town's denial of the request for consent or approval.

15.3 **Assignment.** BNC covenants and agrees not to assign, pledge, transfer, or sublet its rights in this Agreement, in whole or in part, nor grant any license or other interest hereunder, without the prior written consent of the Town. Any attempt by BNC to assign or in any way transfer its interest in this Agreement, in whole or in part, without such prior written consent of the Town, will at the option of the Town, constitute a default under this Agreement hereunder.

15.4 **Agreement Binding Upon Successors.** This Agreement is binding upon and extends to the successors and permitted assigns of the Parties.

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

15.6 **No Partnership.** Town is not a partner, associate, or joint venturer of BNC in the conduct of BNC's Business. BNC is an independent contractor without the right or authority to impose tort or contractual liability upon the Town.

15.7 **Communications.** All communications (oral, written, telephonic and electronic) between BNC and the Town related to this Agreement will be directed to the Town Manager of the Town of Breckenridge, or his designee. BNC will not communicate directly with any member of the Town Council of the Town of Breckenridge with respect to any matter related to this Agreement.

15.8 **Notices.** All notices required or permitted under this Agreement must 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 will 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 BNC, to:

Breckenridge Nordic Center, L.L.C.
P. O. Box 1776
Breckenridge, CO 80424
Telecopier number: (970)_____

Telephone number: (970)_____

Any notice delivered by mail in accordance with this Section will 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 will 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 will be deemed to have been duly given and received upon actual receipt. Either Party, by notice given as provided above, may change the address to which future notices may be sent. E-mail is not a valid method of giving notice under this Agreement.

15.9 **Headings.** The article and section headings herein are for convenience in reference only, and do not define or limit the scope of any provision of this Agreement.

15.10 **Severability.** If any covenant, condition, or provision contained in this Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of any such covenant, condition, or provision will in no way affect any other covenant, condition, or provision herein; provided, that the invalidity of any such covenant, condition or provision does not materially prejudice either Party in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

15.11 **Terminology.** Wherever applicable, the pronouns in this Agreement designating the masculine or neuter will equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular will include the plural, and the plural will include the singular.

15.12 **Third Parties.** There are no third Party beneficiaries of this Agreement.

15.13 **Advances By Town For BNC.** If BNC fails to do anything required to be done by it under the terms of this Agreement (other than a failure to make the payments to Town required by this Agreement) the Town may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of BNC, and in doing so the Town will not be deemed to be a volunteer; provided, however, that before exercising its rights under this Section Town will give notice to BNC as provided in Section 13.1 with respect to the giving of notice of default, and will afford the BNC fifteen (15) days from the giving of such notice within which to do or perform the act required by BNC. Upon notification to BNC of the costs incurred by the Town BNC will promptly pay to Town the full amount of costs and/or expenses incurred by Town, together with interest thereon at the default interest rate described in Section 6.3.

15.14 **Non-Discrimination.** BNC agrees that in connection with its use of the New Facility it:

(a) will not discriminate against any employee, applicant for employment, or patron because of race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, religion or disability;

(b) will insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, religion or disability; and

(c) will in all solicitations or advertisements for employees to be engaged in the performance of work at the New Facility state that all qualified applicants will receive consideration for employment without regard to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, religion or disability.

15.15 **Governmental Immunity.** The Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity or protection otherwise available to Town, its officers, or its employees.

15.16 **Additional Instruments.** Each Party will deliver or caused to be delivered upon request such additional documents and instruments as may be required to accomplish the intent of this Agreement.

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

15.18 **No Recording.** Neither this Agreement, nor a copy or memorandum of this Agreement, will be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado. The recording of this Agreement or a copy or memorandum thereof by BNC will constitute a breach of this Agreement.

15.19 **No Adverse Construction.** Both Parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement is not to be construed against either Party based upon authorship.

15.20 **“Day” Defined.** As used in this Agreement, the term “day” means a calendar day, not a business or working day.

15.21 **Survival.** All unperformed obligations and covenants of this Agreement will survive the conveyance of the New Facility to the Town, and will be fully enforceable thereafter.

15.22 **“Term” Defined.** As used in this Agreement, the phrase “term of this Agreement” or any equivalent word or phrase, means an indefinite period of time commencing upon the execution of this Agreement and continuing until all obligations and covenants of this Agreement have been fully performed as required by this Agreement. Unless sooner terminated as provided herein, this Agreement terminates when all of the obligations and covenants described in this Agreement have been fully performed.

15.23 **Time of Essence.** Time is of the essence of this Agreement.

15.24 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the New Facility, and supersedes any prior agreement or understanding relating to such subject matter.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

[AFFIX TOWN SEAL HERE]

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

BRECKENRIDGE NORDIC CENTER, L.L.C., a
Colorado limited liability company

By _____
Therese E. D. Dayton, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2011 by Timothy J. Gagen, Town Manager, and Mary Jean
Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS BNC hand and official seal.

My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 by Therese E. D. Dayton, as Manager of Breckenridge Nordic Center, L.L.C., a Colorado limited liability company.

WITNESS BNC hand and official seal.

My commission expires: _____.

Notary Public

Exhibit "A"
To Agreement Concerning New Breckenridge Nordic Center Facility

Depiction of Breckenridge Nordic Center Trails

[TO BE PREPARED AND INSERTED]

Memorandum

To: Town Council

From: Jennifer Cram, Planner III

Date: May 15, 2011

Re: Special Permit for Arts District of Breckenridge Pit Firing Workshop

In conjunction with a proposed summer workshop with guest artist Sumi von Dassow on Saturday and Sunday June 4th and 5th we would like to pit fire ceramic work within the Arts District. The pit firing is scheduled for Saturday, June 4th from approximately 10:00 am – 3:00 pm in the gravel parking lot on the corner of Washington Avenue and South Ridge Street (Barney Ford Lot). The pit is proposed to be dug by Public Works the week of June 1st. The pit measures 4' x 4' per Sumi von Dassow's specifications. Staff, Sumi von Dassow and workshop participants will be present the entire time the pit fire is burning. The fire will be completely extinguished once the ceramic work has burned to the appropriate temperature (approximately 5 hours). The ceramic work will be unearthed on Sunday, June 5th and the gravel parking lot will be returned to its previous condition. Similar pit fires have been held in the Arts District since 2004.

The current Town Code (Section 5-5-3) prohibits open burning within town limits. However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning. 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)

Fuel for the proposed pit fire will consist of wood shavings, hard wood scraps and Aspen to provide the correct temperature. Since the pit fire is proposed in the gravel parking lot, defensible space from any other fuel sources is secured.

We have already discussed this proposal with the Public Works Department and the Red, White & Blue Fire Department. 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 move to approve a special permit to allow a pit fire within the Arts District of Breckenridge as part of a scheduled workshop, on June 4, 2011, from approximately 10:00 am – 3:00 pm. All burning at the pit fire shall comply with the “Open Burning” requirements of Section 307 of the International Fire Code, 2000 Edition. In addition, the Town shall obtain an open burning permit from the Red, White & Blue Fire Department.”

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: May 4, 2011

Re: Town Council Consent Calendar from the Planning Commission Decisions of the May 3, 2011, Meeting.

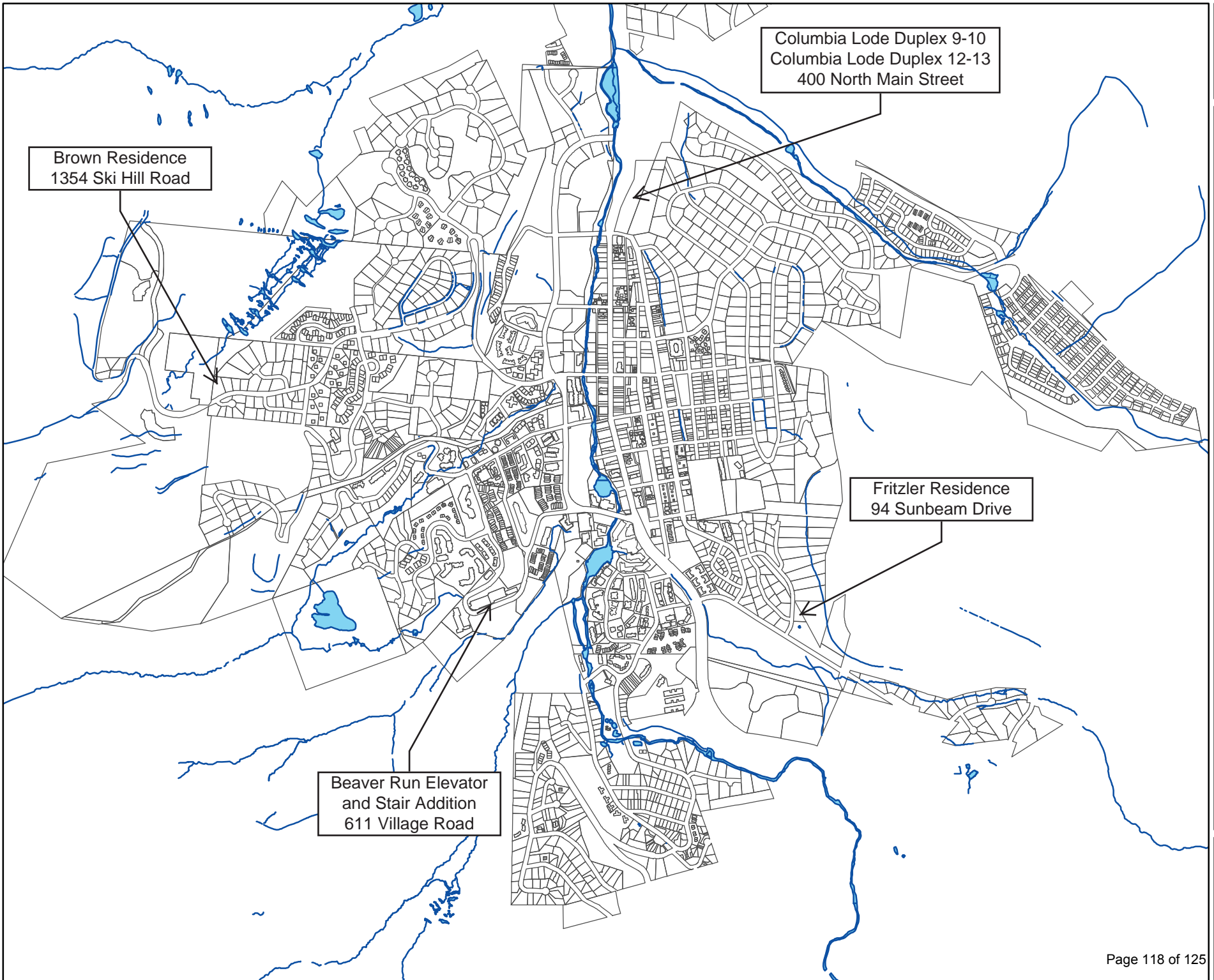
DECISIONS FROM THE PLANNING COMMISSION AGENDA OF May 3, 2011:

CLASS C APPLICATIONS:

1. Fritzler Residence, Lot 12 Sunbeam Estates (MGT) PC#2011022, 94 Sunbeam Drive.
Construct a new single family residence with 2 bedrooms, 3 bathrooms, 2,774 sq. ft. of density and 3,398 sq. ft. of mass for a F.A.R. of 1:7.30. Approved.
2. Brown Residence, Lot 4 Glenwild Subdivision (MM) PC#2011024, 1354 Ski Hill Road
Construct a new single family residence with 6 bedrooms, 6 bathrooms, 2 powder rooms, 8,386 sq. ft. of density and 9,026 sq. ft. of mass for a F.A.R. of 1:3.12. Approved.
3. Columbia Lode Duplex 9-10 (MM) PC#2011025, 400 North Main Street
Construct a new duplex, Unit 9 side to consist of 2 bedrooms, 2.5 bathrooms, 1,564 sq. ft. of density and 2,106 sq. ft. of mass and Unit 10 side to consist of 3 bedrooms, 3.5 bathrooms, 2,021 sq. ft. of density and 2,613 sq. ft. of mass. Approved.
4. Columbia Lode Duplex 12-13 (MM) PC#2011026, 400 North Main Street
Construct a new duplex, Unit 12 side to consist of 4 bedrooms, 3.5 bathrooms, 2,488 sq. ft. of density and 2,852 sq. ft. of mass and Unit 13 side to consist of 3 bedrooms, 2.5 bathrooms, 1,984 sq. ft. of density and 2,934 sq. ft. of mass. Approved.

CLASS B APPLICATIONS:

1. Beaver Run Elevator and Stair Addition (MGT) PC#2011023, 640 Village Road
Construct a new 820 square foot exterior addition to enclose new elevator and stairs on the south side of the existing Beaver Run Buildings #2 and #3. Approved



Brown Residence
1354 Ski Hill Road

Columbia Lode Duplex 9-10
Columbia Lode Duplex 12-13
400 North Main Street

Fritzler Residence
94 Sunbeam Drive

Beaver Run Elevator
and Stair Addition
611 Village Road



NOT TO SCALE

printed 4/12/2011

Breckenridge South

Town of Breckenridge and Summit County governments
assume no responsibility for the accuracy of the data, and
use of the product for any purpose is at user's sole risk.



PLANNING COMMISSION MEETING

The meeting was called to order at 7:06 p.m.

ROLL CALL

Kate Christopher Gretchen Dudney Dan Schroder
Jack Wolfe Dave Pringle
Trip Butler

There was no Town Council member present.

APPROVAL OF MINUTES

Mr. Wolfe: Regarding the local economy and Vail Resorts, second line of page 5 of the packet, please change “largest user” to “largest budget”.

With no other changes, the May 3, 2011 Planning Commission meeting minutes were approved unanimously (6-0).

Mr. Pringle mentioned that he had some contact with Town Council regarding future members of the Planning Commission.

APPROVAL OF AGENDA

Mr. Neubecker suggested moving the election of the Chair and Vice Chair to the end of the Agenda. With no other changes, the May 17, 2011 Planning Commission meeting agenda was approved unanimously (6-0).

CONSENT CALENDAR:

1. Fritzler Residence, Lot 12 Sunbeam Estates (MGT) PC#2011022; 94 Sunbeam Drive
2. Brown Residence, Lot 4 Glenwild Subdivision (MM) PC#2011024; 1354 Ski Hill Road
3. Columbia Lode Duplex 9-10 (MM) PC#2011025; 400 North Main Street
4. Columbia Lode Duplex 12-13 (MM) PC#2011026; 400 North Main Street

Ms. Christopher: On page 42, the third line up from the bottom is cut off, wanted to make sure copy was correct. (Mr. Mosher will work with Ms. Brewster to make sure it is fixed next time.)

With no requests for call up, the consent calendar was approved as presented.

WORKSESSIONS:

1. Solar Energy Mechanical Rooms (Mass / Density)

Ms. Puester presented. Staff has been approached with a potential exterior remodel at Ski Side Condos on Grandview Drive. The owner of the property would like to add energy upgrades including enclosing the open air walkways (which are internal to the buildings) to make the building more energy efficient, as well as enclose a 250 square foot area for a mechanical room for the new solar thermal panels. The property was built prior to the Land Use Guidelines adoption and is already over density and mass (a legal non-conforming use). Per the Development Code, enclosing the interior hallways and adding a new mechanical room would result in a large number of negative points (-100), rendering the project infeasible.

Staff sees two separate issues that should be discussed in relation to the Relative Policy on Mass:

1. Mass allowance for mechanical rooms for the purpose of renewable energy systems; and
2. Mass allowance for enclosing hallways and entrances for energy efficiency savings (i.e. airlocks).

This issue challenges two different goals of the Town 1) encouraging energy improvements and renewable sources of energy, and 2) maintaining community character including building massing limitations.

Staff sees a few possible code changes that could accommodate such energy efficiency upgrades:

1. Mechanical rooms of limited size could be allowed for renewable energy systems if hidden from public view. This would require some type of waiver for the mass created by these additional mechanical rooms. (In the present example, the mechanical room would be within the existing building footprint and under an existing roof. In some other situations, the design would be different.)
2. Existing common vestibules and exterior hallways under an existing roof could be enclosed without assigning additional negative points under Policy 4 (Relative) Mass. Staff believes this waiver could include buildings within the historic district, but should not apply to historic buildings.

This is a balance of two different town goals. Staff welcomed Commissioner input on whether the Commission is interested in pursuing this potential change to the code. Staff hopes to come to some type of consensus on this issue, so that they can move forward with research on the overall effect of a code change and ordinance language, if desired and return to the Planning Commission for further review. Ms. Michelle Tonti, owner of Ski Side condos which has brought this issue forward, was present.

Commissioner Questions / Comments:

Ms Dudney: Question relating to the code; relative policy if exceeding mass; if you didn't already have a project over mass that would be a negative point situation? Could you off-set with positive points? (Ms. Puester: In this case, the point multiplier is 5, and project would get negative one hundred (-100) points under current policy. Mass policy was set up as a strong goal of the code. You cannot realistically make up 100 points on an existing building.) I'm 100% behind the mechanical rooms. Enclosing a new mechanical room for new mechanical system is pretty straight forward. Worried about enclosing hallways. It's difficult if applicant was stating that electric bill will decrease by x amount; doesn't want it to say that it will save energy when after it passes, it won't. What if all the Applicant has to say is "it is for energy reasons" and they change the use to usable space down the road? (Ms. Puester: We can craft the language so that that is not permitted.) (Mr. Wolfe: Would they get positive points for implementing energy improvements?) (Ms. Puester: Code allows up to positive nine (+9) points under Energy, but that high point number would be achieved with a net zero building, not typically possible with retrofits.) (Ms. Christopher: Is the negative one hundred (-100) points from the hallway or the mechanical room?) (Mr. Neubecker: Both; once additional mass is proposed for whatever reason, the code kicks in. Discussed mass rule, and exception to the rule. Majority of the buildings within town are at their density.)

Mr. Pringle: In the decision to lower our carbon footprint, will we allow individuals to use any argument? I am not sure if I understand the benefit of carbon footprint reduction and weary about limiting density obligations for specific project; I feel all interests should be balanced and not just in the interest of one. (Mr. Grosshuesch: It comes down to question of community values. We just underwent a big community input process with Sustainable Breck. Older multi-family buildings are big energy users which we need to get a handle on. Suggests maybe enclosing general common elements under an existing roof, no new roof spaces are created so footprint isn't changed tremendously.) Is it possible to reorganize density of some of these projects? Don't want to blow off policy for today, what about 5 years from now? Can we take density out of existing areas (ex: reinstallation of walls)? Need to be careful with the way we proceed on this. People will always find solutions to their own problems; the market will come up with solutions so we don't have to throw more mass at them to make it easier.

Mr. Schroder: The primary question is "Do we leave this policy as is or does it need some work"? Would be careful but would support mechanical room that couldn't be converted to something else later. Supports specific nonconforming uses in the name of meeting our town goal of reducing carbon footprint.

Mr. Wolfe: Are we implementing for bigger/broader policy? (Mr. Grosshuesch: Carbon-footprint reduction strategy for the whole community. Town and community have implemented strategies, so to answer Mr. Wolfe's question, yes, it is for the long-run regarding energy conservation.) Distinction is between implementing a different policy vs. buying more density. This is a quick way around mass vs. density guidelines. Burden of policing on HOA, not on Town; will we really check yearly to see if the mechanical rooms are used correctly? We should understand consequences more; should go with it but maybe there should be specific requirements.

Mr. Butler: Is the solar thermal to get rid of the electric baseboard? (Ms Tonti: Yes, providing 60-70% of the heat this way will be significant impact; aesthetically will be an improvement and will have an increase on the performance of the system; lack of mechanical space will harm project.) Do you already have solar electric? (Ms. Tonti: Yes, solar PV currently on roof.) Supports staff looking into more research. Want to look at loopholes or unintended consequences.

Ms. Christopher: I do think that people in older buildings will make changes to be more energy efficient in the future. Redevelopment with Town's attempt of green changes will positively impact Town. Important to look at other sources of electricity but agree that we need to be careful. Support research on it.

Mr. Schroder opened the hearing to Public Comment:

Ms. Tonti: Regulations developed over past years work great for new construction, but we are going to see lots more redevelopment, it is a new perspective; building is ironically long-term local housing, and this will help

keep rents low. The key is shifting a look towards redevelopment on these old buildings that are not energy efficient. More redevelopment and upgrades are coming down the road with aging buildings in town and the code needs to be able to address them.

There was no more public comment and the hearing was closed.

TOWN COUNCIL REPORT:

Mr. Neubecker: Explained to the Commission why no council report exists for the evening. Council is still trying to decide future of the Council liaison. Ordinance change on this item has not yet been approved.

Mr. Wolfe: Lacking communication between Council members and Commission. (Mr. Neubecker: Advantage between two with increased communication.) Suggests Commissioners attend Council meeting or read their minutes online to look for comments you can give back to them.

Ms. Dudney: What tends to happen is that there is a miscommunication from the minutes. (Mr. Neubecker: We are not getting feedback in both directions via their minutes; having the Council liaison at the meeting the entire time will increase their knowledge in the topics we discuss, and improve communication back and forth. It's also important that decisions and comments be code based.)

COMBINED HEARINGS:

1. Beaver Run Elevator and Stair Addition (MGT) PC#2011023; 640 Village Road

Mr. Thompson presented a proposal for a new, 820 square foot exterior addition to enclose a new elevator and stairs on the south side of the existing Beaver Run Buildings #2 and #3. There is already one elevator in this part of Beaver Run; however, it is under sized and too slow for the number of guest at Beaver Run. When guests walk from the Coppertop across the pedestrian bridge over Village Road, they are presented with three flights of stairs when they reach Buildings #2 and #3. Climbing the three sets of stairs wearing ski boots and carrying ski equipment can be difficult for the guests. This project will allow them to enter into a larger and faster elevator than the existing elevator. It will also allow guests to walk up one set up stairs if they do not want to wait for the elevator. In general this will help with ease of pedestrian flow within Beaver Run. There is not enough density remaining in the approved Master Plan for this proposal; hence, the project will require a Major Master Plan Amendment and density transfer.

The elevator and stairs addition constitutes 820 square feet of mass. As of the 4th PUD Amendment at Beaver Run only 260 square feet of density is remaining. Hence, the applicant will have to transfer 560 square feet of density/mass to this property to allow this to happen. Beaver Run is a receiving site; hence the density/mass can be transferred to this property. There will be a Condition of Approval that the density transfer happens prior to receiving a Building Permit.

This proposal will improve the circulation between the Coppertop and buildings #2 and #3. The proposal will eliminate a flight of stairs and add a new larger elevator. The proposal will significantly improve the guest experience at Beaver Run. Three positive (+3) points have been assigned for improved pedestrian circulation.

Staff recommended approval of the Beaver Run Elevator, Stair Addition, and Master Plan Amendment (PC#2011023) with the presented Findings and Conditions. Mr. Kevin Schottleitner, Chief Engineer for Beaver Run Resort, was also present at the hearing.

Commissioner Questions / Comments:

Mr. Pringle: Asked about the floors the elevator will reach. (Mr. Thompson: Will help with circulation of guests not climbing all stairs. The elevator will take guests up one floor.)

Mr. Schroder: Code points are for internal circulation of guests; 560 square feet, that is an acceptable amount of addition? (Mr. Thompson: The 820 square foot addition appears sufficient for the addition of the elevator and stairs. However, applicant will have to purchase portion of TDR to allow this project to proceed.)

Mr. Butler: Elevator shaft will be located next to current elevator? (Mr. Thompson: Yes.)

Ms. Christopher: Plans to distinguish between two elevators with signage? (Mr. Schottleitner: No.)

Mr. Wolfe: Brought up the point of transferring density. Is building over density now? (Mr. Neubecker: Yes, otherwise density transferred not needed. The Master Plan has 260 square feet remaining today; hence this project will require 560 square feet of density to be transferred prior to Building Permit being pulled.) (Mr. Schottleitner: Architects missed the need for an elevator in building #2 so ripping out existing elevator would not help issue, new elevator hopes to cure the problem.)

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

Mr. Pringle made a motion to approve the point analysis for the Beaver Run Elevator and Stair Addition, PC#2011023, 640 Village Road. Mr. Wolfe seconded, and the motion was approved unanimously (6-0).

Mr. Pringle made a motion to approve the Beaver Run Elevator and Stair Addition, PC#2011023, 640 Village Road, including the presented findings and conditions. Mr. Wolfe seconded, and the motion was approved unanimously (6-0).

OTHER MATTERS:

1. Overview of Planning Documents (CN)

Mr. Neubecker presented. Breckenridge's development review system is comprised of several documents. Some documents are used more frequently by the Commission, such as the Development Code and Handbook of Design Standards. Others are referenced less frequently, yet contain important policies and guidelines for the built environment. The memo explained the variety of adopted planning documents and their place in the development review system. The documents presented included Vision Plan, Joint Upper Blue Master Plan, Comprehensive Plan, Land Use Guidelines (LUGs), Subdivision Code, Development Code, Overlay Districts, Master Plans or Planned Unit Developments (PUDs). Documents are presented with the most general, overarching documents first and most specific last.

Commissioner Questions / Comments:

Mr. Wolfe: How does sustainability plan fit into current plan? (Mr. Truckey: Wouldn't be a subset of a plan; it would be complimentary and there for advisory guidance.) Aren't you obligated to rewrite it every 10 years? (Mr. Truckey: No, There were so many general policies in the Comprehensive Plan ("comp plan") that they didn't make provisions particular. County has criteria that development must be in conformity with Upper Blue Basin Plan; the use of the comp plan is a tool for guidance to amend codes which ultimately results in the same things.) (Mr. Grosshuesch: It is an important distinction to make that Breckenridge is different with regards to their jurisdictions. Policies in comp plan and master plan go directly into development code, which get updated on a regular basis.)

Ms. Christopher: Do other jurisdictions have policies such as the ones we are discussing? (Mr. Neubecker: Sustainability plan suggests updates and policy changes related to other aspects of the community (transportation network, fleet, etc.); it reaches much further than the development code.) (Mr. Grosshuesch: It is more about the future over the development code.)

Mr. Wolfe: Elements between are inspirational. JUBMP between density reductions? (Mr. Grosshuesch: We will need to come up with ordinance.) A suggestion for when you put together staff reports, it will be helpful if you identify different relevant documents, not necessarily using only development code. (Mr. Schroder: Making the link to the policy book in report would make it easier, would be helpful.) (Mr. Neubecker: Have thought about creating one map with multiple layers to signify zoning and overlay districts. It might help applicants understand what districts they are located in and it might help the Commission too.) (Mr. Pringle: Website access to something like this that might be interactive?) (Mr. Neubecker: More likely a PDF.) (Mr. Schroder: Have community members been asking about something like this?) (Mr. Neubecker: No, related it to how "Apple" would create it. It would be nice to be easy to use, and intuitive.) (Mr. Pringle: I believe it would be a very beneficial tool for the Commission to use as well.) (Mr. Truckey: It would come down to the finances of creating something like this.) (Mr. Schroder: A tool like this would allow people to visually see it all.) (Mr. Neubecker: Interactive, internet-based, very intuitive is where the future of this could go.)

Mr. Pringle: Brought up the thought of all comments being code related; still wants Commission to understand they can use their judgments as long as code still exists. Personal comments should exist early in the process but as things get narrower it is important to have personal opinion backed by the code. (Mr. Neubecker: This concept relates to writing policies.) (Mr. Grosshuesch: It all relates to how you interpret policy.)

Mr. Schroder: We all need to be more aware of responses relating to feeling and code. (Mr. Neubecker: Breckenridge is a small town and we need to be careful with how we interact with applicants; continue to be formal and professional and that we are making decisions based on code, not who you know.) (Mr. Pringle: Casual but professional.) (Mr. Grosshuesch: What other types of training would you like to see from us? What are the areas you feel like you need more help with (with regards to understanding codes, etc.)?) (Ms. Dudney: Have a format where we have specific questions (in private or after meetings); go through the minutes to see what people have said.) (Mr. Neubecker: Call staff if you need to discuss an issue and go in greater depth.) (Mr. Grosshuesch: On historic projects, we should not deviate from what was seen historically; if there isn't a policy then we shouldn't be talking about it because it isn't code based.) (Mr.

- Wolfe: Sometimes staff writes “We would like Planning Commission to weigh in on...”; brought up design standards for historic district.) (Mr. Neubecker: If confused, ask during meeting about specific code elements.)
- Mr. Pringle: What happens if four commissioners believe option A is better? (Mr. Grosshuesch: We should be thinking in terms of legal basis; our decisions are rooted in things that are backed by code otherwise they will not hold up. I don’t want us to get into circumstances when we don’t use code based decisions; want them to say it relates to which policy.) (Mr. Neubecker: Two suggestions after listening to this: 1. Staff needs to identify which policy is trying to be met and 2. Commission needs to make comments based on policies.)
- Mr. Schroder: Staff puts it to us; we are clear with what we say. (Mr. Grosshuesch: We want you all to be trained to a proficient level so you understand and feel comfortable; doing this from all perspectives. It is a team effort to keep these conversations on track and relevant.) Empower each other to reach out to Staff for questions.
- Mr. Pringle: Looking forward to group retreat walking around Breckenridge so we can relate to the way other people see things around town. It will allow commissioners to see unintended consequences.
- Ms. Dudney: Is it appropriate to ask staff or Applicant, “What is the relevance of a particular concern to code?” (Mr. Neubecker: Yes.) We would be asking that of Staff. What is the importance of that; would that be embarrassing? (Mr. Neubecker: It’s important to ask because others might be wondering the same thing.) (Mr. Grosshuesch: You could ask for a work session if it is a big enough topic.)
- Mr. Butler: Relating back to Mr. Grosshuesch’s question about training: I would like to see all-code related scenarios.
- Mr. Pringle: As a group we need to be aware of the big-picture. Applicants do a good job about distracting us about small details (ex: number of trees) but we should be focusing on density or something else more important. Don’t want to regret approving something because we were overwhelmed with other information. (Mr. Grosshuesch: I want the most important policies to be discussed first in the staff reports, instead of order of policies in code, so we know the biggest issues of the project.) Can the Staff list the problems they want to discuss at the front of the report, instead of it just saying that the Staff is available to answer questions?
- Mr. Neubecker: Regarding the Town walk-through, does anyone have vacation plans? (Mr. Schroder: The entire week of July 17.) (Mr. Wolfe: I will not be attending next meeting, June 7.) (Ms. Dudney: August 10-22.) (Ms. Christopher: I have Monday and Tuesdays off; but can rearrange schedule if need be.)

ELECTION OF CHAIR AND VICE CHAIR: moved to end of agenda

- Mr. Schroder: Is this an interim and then re-elected in November? (Mr. Neubecker: Yes.)
- Mr. Pringle: In the past they used to adopt the chair for a year, which means everyone rotated through the chair and was ultimately a facilitator of the meeting; it worked well when we had veteran commission, might be something to think about if we want to start rotating people through. (Mr. Neubecker: There is value to the process of having someone who knows how to run a meeting; there are no term limits; some people may be more comfortable with it or have time issues; depends on how everyone feels.) (Ms. Dudney: Re-think Mr. Pringle’s idea in November, but finish this out until November, does the Chair have responsibility to keeping it code oriented, it is a leadership role?) (Mr. Neubecker: Wants to touch base with Chair prior to meetings about agenda; what code issues might come up and making sure they are comfortable with issues coming up.)
- Ms. Dudney: Opened discussion about time commitment changes relating to Town Council; I view the chair as important liaison. (Mr. Pringle: Need a chair with strong ability to lead meetings.) (Mr. Schroder: Wants Chair to make the extra effort to speak to Council; definitely a growth leadership position.)
- Ms. Christopher: Helpful when the Chair summarizes what decision Commission made (for our sake and public in attendance).

Nominations for Mr. Schroder and Mr. Wolfe stand. The Commission decided to make the vote formal.

Mr. Butler made a motion to elect Mr. Wolfe as Chair of the Planning Commission through October 31, 2011. Mr. Pringle seconded, and the motion was carried unanimously (6-0). Mr. Butler made a motion to elect Mr. Schroder as Vice-Chair of the Planning Commission through October 31, 2011. Mr. Pringle seconded, and the motion was carried unanimously (6-0).

ADJOURNMENT:

The meeting was adjourned at 9:08 pm.

Dan Schroder, Vice Chair

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: May 18, 2011
SUBJECT: Committee Reports for 5.24.2011 Council Packet

The following committee reports were submitted by Town Employees and/or the Town Manager:

Liquor Licensing Authority	MJ Loufek	May 17, 2011
<ul style="list-style-type: none">All consent calendar items were approved, including a new Art Gallery Permit for "Artist Tree" located at 1795 Airport Road.At the request of the licensee, Beaver Run Homeowners Association, Inc., the Liquor Licensing Authority granted a continuance of the Copper Top show cause hearing to Tuesday, July 19, 2011 at 9 a.m.		

Committees	Representative	Report Status
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	Verbal Report
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	MJ Loufek	Included
Wildfire Council	Matt Thompson	No Meeting/Report
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	No Meeting/Report
Police Advisory Committee	Rick Holman	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report

Note: Reports by provided by the Mayor and Council Members are listed in the council agenda.
* Minutes to some meetings are provided in the Manager's Newsletter.



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, unless otherwise noted.

MAY 2011

- Tuesday, May 24; 8:30 a.m. Mountain Thunder Lodge Town Council Retreat
- Tuesday, May 24; 7:30 p.m. Second Meeting of the Month

JUNE 2011

- Tuesday, June 14; 3:00/7:30 p.m. First Meeting of the Month
- June Coffee Talk TBD
- Friday, June 17; 4:00 p.m. Town Party
- Tuesday, June 28; 3:00/7:30 p.m. Second Meeting of the Month

JULY 2011

- Monday, July 4 Festivities
- Friday, July 8; 8:00 a.m. Coffee Talk
- Tuesday, July 12; 3:00/7:30 p.m. First Meeting of the Month
- Tuesday, July 26; 3:00/7:30 p.m. Second Meeting of the Month

OTHER MEETINGS

- 1st & 3rd Tuesday of the Month; 7:00p.m. Planning Commission; Council Chambers
- 1st Wednesday of the Month; 4:00p.m. Public Art Commission; 3rd floor Conf Room
- 2nd & 4th Tuesday of the Month; 1:30p.m. Board of County Commissioners; County
- 2nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon Breckenridge Heritage Alliance
- 2nd & 4th Tuesday of the month; 2:00 p.m. Housing/Childcare Committee
- 2nd Thursday of the Month; 5:30p.m. Sanitation District
- 3rd Monday of the Month; 5:30p.m. BOSAC; 3rd floor Conf Room
- 3rd Tuesday of the Month; 9:00 a.m. Liquor Licensing Authority; Council Chambers
- 3rd Thursday of the Month; 7:00p.m. Red White and Blue; Main Fire Station
- 4th Wednesday of the Month; 9a.m. Summit Combined Housing Authority
- 4th Wednesday of the Month; 8:30a.m. Breckenridge Resort Chamber; BRC Offices
- TBD (on web site as meetings are scheduled) Breckenridge Marketing Advisory Committee; 3rd floor Conf Room

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition