



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, April 10, 2012; 3:00 PM
Town Hall Auditorium

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

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3:00 - 3:15 p.m.	I <u>PLANNING COMMISSION DECISIONS</u>	2
	II <u>LEGISLATIVE REVIEW - NONE</u>	
3:15 - 3:45 p.m.	III <u>MANAGERS REPORT</u>	
	Public Projects Update	14
	Housing/Childcare Update - None	
	Committee Reports - None	
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	Retreat Discussion - Verbal	
3:45 - 5:30 p.m.	IV <u>OTHER</u>	
	Committee Appointments	31
	Rodeo on Town Property	32
	Ski Area Discussion Update - Verbal	
	Agreement with County for Recycle Center/Public Works Yard	36
	Breckenridge Nordic Center Agreement	67
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	V <u>PLANNING MATTERS - NONE</u>	
5:30 - 7:00 p.m.	VI <u>EXECUTIVE SESSION</u>	

Note: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held. Report of the Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: April 4, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the April 3, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF April 3, 2012:

CLASS C APPLICATIONS:

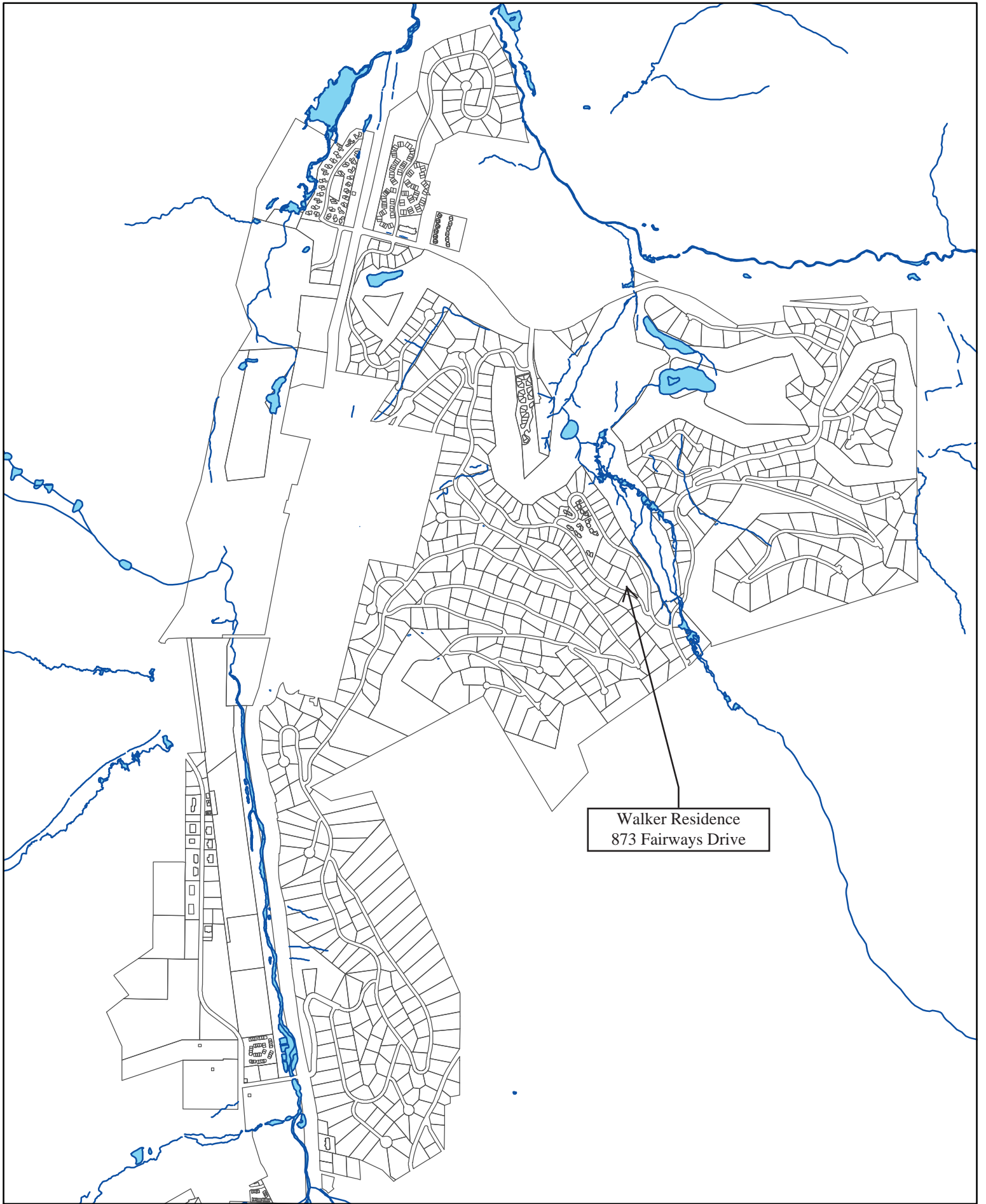
1. Stowell Residence (MGT) PC#2012017, 114 North Ridge Street
Construct a new, single family residence with 4 bedrooms, 5 bathrooms, a studio / one bathroom accessory apartment, 8,168 sq. ft. of density and 5,113 sq. ft. of mass for a F.A.R. of 1:1.61. Approved.
2. Walker Residence (MGT) PC#2012018, 873 Fairways Drive
Construct a new, single family residence with 3 bedrooms, 2.5 bathrooms, 2,367 sq. ft. of density and 2,987 sq. ft. of mass for a F.A.R. of 1:15.30. Approved.

CLASS B APPLICATIONS:

1. Valette Residence (MGT) PC#2012010, 301 South French Street
Construct a new, single family residence with 4 bedrooms, 3 bathrooms, a 1 bedroom / 1 bathroom employee housing unit, 1,936 sq. ft. of density and 1,510 sq. ft. of mass for a F.A.R. of 1:1.42. Approved.

CLASS A APPLICATIONS:

1. Breckenridge Nordic Center Lodge (MGT) PC#2011050, 954 Ski Hill Rd
Construct a new Nordic Center Lodge with 9,979 sq. ft. of density, 6,184 sq. ft. of mass and two employee housing units for a F.A.R. of 1:7.70, a detached, 668 sq. ft. ski school building, and a 53 space parking lot with 3 ADA compliant spaces. Approved.
2. Wellington Neighborhood 2, Filing 5 (MM) PC#2012019
A re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Preliminary Plat to create 12 single family lots. Approved.



Walker Residence
873 Fairways Drive



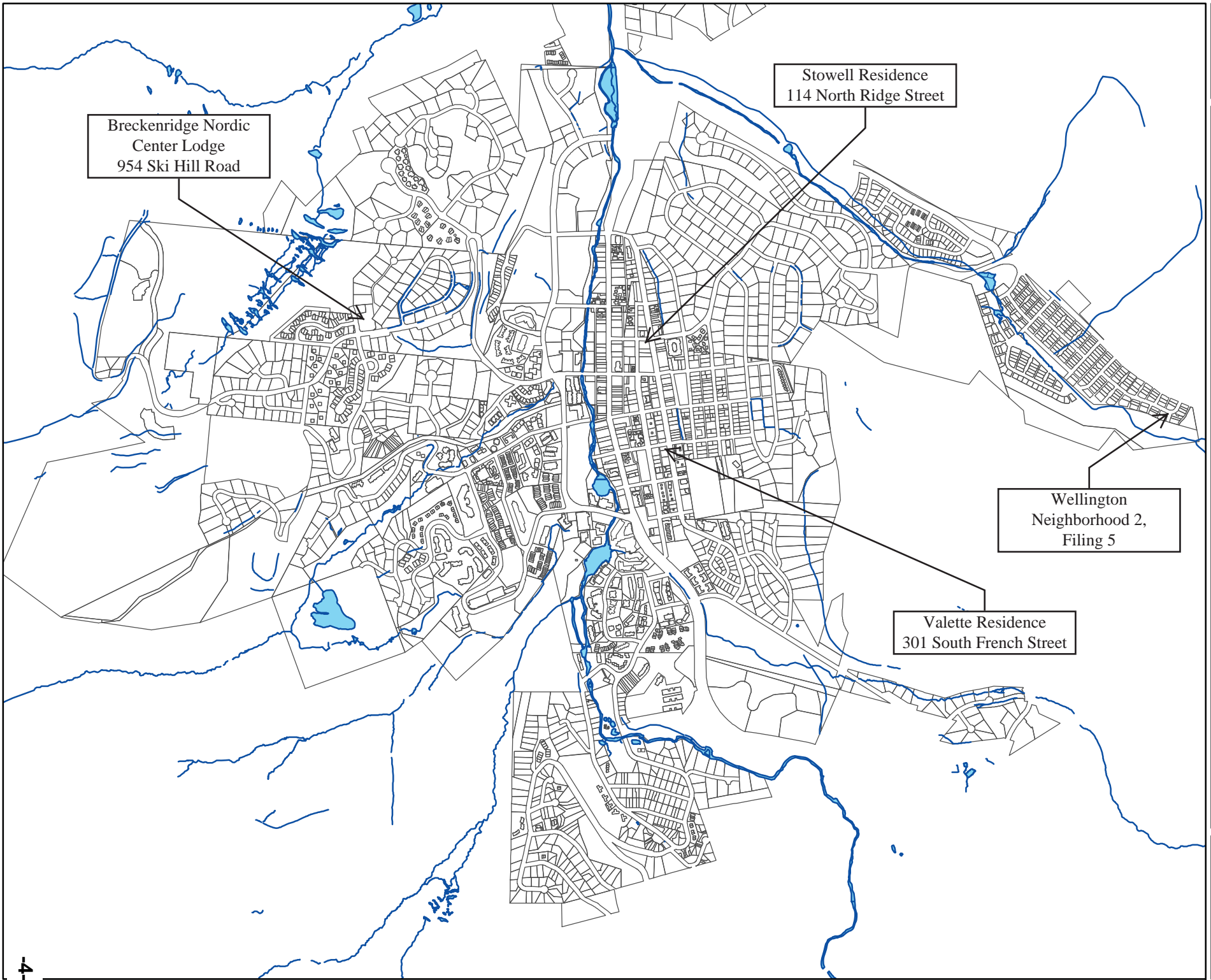
Breckenridge North

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.

printed 4/12/2011



NOT TO SCALE -3-



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 7:07 p.m.

ROLL CALL

Kate Christopher	Jim Lamb	Trip Butler
Gretchen Dudney	Michael Rath	Dan Schroder
Dave Pringle		

APPROVAL OF MINUTES

Ms. Dudney: On page 6, second sentence: Regarding Vendor Carts, should be: “just in case an owner disappears in the middle of the night”.

With one change, the March 20, 2012 Planning Commission meeting minutes were approved unanimously (7-0).

APPROVAL OF AGENDA

Mr. Neubecker: Noted a request for a call-up of the Carter Ridge Residence from the consent calendar.

Mr. Pringle: I request to table the Carter Ridge Residence from the Consent Calendar in order for it to be heard after the Nordic Center or the Valette Residence due to matter of a question regarding permit renewal.

Mr. Neubecker: Applicant has proposed a change that would eliminate negative points. We think it makes sense to discuss this application first, since Applicant is in the audience now.

With no other changes, the April 3, 2012 Planning Commission meeting agenda was approved unanimously (7-0).

CONSENT CALENDAR:

- 1) Carter Ridge Residence (MGT) PC#2012017, 114 North Ridge Street
- 2) Walker Residence (MGT) PC#2012018, 873 Fairways Drive

Mr. Pringle made a motion to call up the Carter Ridge Residence, PC#2012017, 114 North Ridge Street. The motion was seconded for discussion by Ms. Dudney. The motion was passed unanimously (7-0) and moved to the end of the consent calendar.

Carter Ridge Residence, PC#2012017, 114 North Ridge Street Call-Up:

Mr. Thompson gave a short presentation about the application for review for the Commission and the public in attendance. He discussed the proposed materials, with different materials on the two modules of the building. He discussed the site layout, driven by the large size of the lot, which is twice the size of most lots in the historic district. The following discussion and comments occurred:

Commissioner Questions / Comments:

Mr. Pringle: Disclosed that he had a conversation with Mr. Stowell, the Applicant, over the weekend, and wants to disclose that he did not discuss anything regarding this application but he wanted everyone to be aware that they are social friends. For the technical reason he just wanted to make sure that it was mentioned. He would have no financial benefit from this application and stated this as well. The Commission did not find this to be a conflict of interest.

Ms. Dudney: The primary building is barn wood? (Mr. Thompson: Yes, the vertical portion of the building is.) (Mr. Neubecker: Regarding Condition # 21, HERS rating, the Applicant will submit revised plans.)

Mr. Pringle: Brought up aspects of Policy 9; Absolute Policy, with roof overhand encroachment of 18 inches. (Mr. Neubecker: This policy assumes you are already getting the negative points.) Doesn't he get positive points for screened parking? (Mr. Neubecker: This is really a question of whether or not points were assigned properly in the first round.) If we are giving positive points for screening parking from the street on other applications, then why wouldn't this qualify for the points? If you put parking in a garage is it screened from public view? I thought the points weren't awarded consistently between the two applications (referring to another application on the same agenda). (Mr. Neubecker: If we assign the points for parking, we still have to make up one point.) (Mr. Thompson: If the applicant could get positive two points (+2) from parking he would get a HERS and try to get a

rating of ~60-80.) (Ms. Puester: Technically, all he would have to do is get a HERS rating, and he would make up that one point he needed.)

Ms. Dudney: I wanted to call it up for a different reason. Understand the priority policy for architectural compatibility. The policy itself has incoherent inconsistencies. (Mr. Thompson: The previous Commissions found Policy 145 non-applicable.) (Mr. Neubecker: The policy discusses both the general character of the existing neighborhood, and the desired character of the neighborhoods.) Personally I like the design; my question was precedence and we need to remember these priority policies can be inconsistent sometimes.

Mr. Rath, Ms. Christopher, Mr. Lamb and Mr. Butler had no questions.

Mr. Albert Stowell, Applicant: We designed the home so it looked like two small houses from the Ridge Street side. We will try to get permits from the city for trees on the city property. It is designed so it is a zero energy drain; looking to be a long-term residence and it will be a benefit to keep the overhang as designed, which encroaches on the side set back by 18”.

Ms. Dudney: What is the benefit of the overhang to the tenant? (Mr. Stowell: Limits snowmelt on the stairs to accessory apartment.) Would you want approval with no overhang vs. condition of approval with screening of parking space and you would have to work with the Town to get landscaping approved? Which would be your preference? (Mr. Stowell: I would rather keep the overhang.)

Mr. Schroder: So in order to screen the external parking, you would have to work with the Town? (Mr. Stowell: Yes.) (Mr. Neubecker: Discussed his concern for creating precedent for this Commission to deal with this issue, other people may view this as a front-yard. Do we want to award those other projects with positive points for parking in front yards?)

Mr. Pringle: We need to treat this as a unique situation. It isn't ideal but it is the reality.

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

Ms. Christopher: I agree with Mr. Pringle; I feel that it isn't an ideal situation. It doesn't have an alley, if the Applicant can screen the parking and do whatever he needs to do with the points, I am for that.

Mr. Lamb: Where I am coming from with regards to positive points for parking is, since there is a parking spot, unless it is shielded, I would have a problem awarding the positive points.

Mr. Pringle: Is the Town interested in an enclosed bus shelter in this location for positive points? (Mr. Thompson: There are generally not bus shelters in the historic district. Mr. Neubecker: We would need to consult with Transit and Public Works Department on transit shelters.)

Mr. Schroder: We are looking at a three point differential. Is anyone opposed to moving this forward? (Ms. Dudney: Moving it forward with what conditions?) (Mr. Neubecker: If there are any other major elements we need to mention them now and then we can discuss the points.)

Mr. Rath: On exterior materials, I would like to see samples of the actual materials. There is a huge variance of the actual materials. Seeing those colors would be very important. This is a point analysis question: if the Applicant is building an energy efficient house, isn't there some room for giving points for that? HERS score of 80 is an easy number to achieve. The average house is 100. (Mr. Neubecker: Maybe getting an 80 would be relatively easy; I believe they are discussing a “net zero” only on electricity.) (Mr. Thompson: Now we are looking at the HERS rating.) (Mr. Neubecker: We don't know where it would end up on the HERS because we haven't tested it yet.)

Mr. Schroder: (To the Commission): Does this application deserve positive points for screening the parking from public view?

Ms. Dudney: If the applicant leaves the overhang as is, but obtains a HERS rating and the parking is screened to staff satisfaction, I think it can be approved.

Ms. Dudney made a motion to approve the point analysis for Carter Ridge Residence, PC #2012017, 114 North Ridge Street, with the modification to provide positive two points (+2) for Policy 18/R for screening the parking to the satisfaction of the Town staff, and one positive point (+1) for energy conservation by obtaining a HERS rating. Ms. Christopher seconded and the motion was carried unanimously (7-0).

Ms. Dudney made a motion to change the conditions of approval for the Carter Ridge Residence, PC#2012017, 114 North Ridge Street, to

- Add a condition that the outside parking space must be screened to the approval of the Town Staff; and,
- Modify Condition 21 to say the Applicant must conduct a HERS rating, prior to issuance of a building permit.

Ms. Christopher seconded, and the motion was carried unanimously (7-0).

Ms. Dudney made a final motion to approve the Carter Residence, PC#2012017, 114 N. Ridge Street, to extend the development permit for three years. Ms. Christopher seconded and the motion was carried unanimously (7-0).

WORKSESSIONS:

1) Renewable Mechanical Mass Bonus (Policy 4) (JP)

Ms. Puester presented. The purpose of this worksession is to discuss possible changes to Policy 4 (Relative) Mass, to allow for additional mechanical room space for renewable energy systems such as solar hot water.

The Planning Commission discussed this policy previously at meetings on May 18, August 30 and December 6, of 2011. This issue addresses two different goals of the Town 1) encouraging energy efficiency and renewable sources of energy, and 2) maintaining community character (including building massing limitations). Staff would like to find a way to encourage the use of renewable energy without compromising character.

Almost all older multi-family buildings in Town have been built to or are over the allowed mass. In most cases, mechanical room additions for renewable energy systems could be accommodated within the existing building footprints but would consume additional mass. Many buildings in town have existing boilers with mechanical rooms which could accommodate needed improvements to convert to a renewable energy source by reconfiguring the existing mechanical room with no additional mass required (ex. Longbranch solar thermal system, 2011).

Since the December 6th Planning Commission meeting, Staff has discussed this policy with experts in the field including local mechanical engineers, designers, solar thermal installers and plumbers. Based on these consultations, Staff has proposed to increase the maximum square footage permitted from 300 to 350 square feet to address instances when a large building (25,000+ square foot multifamily building) is on an all electric heat source which would require the addition of boilers, solar hot water holding tank and piping. Staff believes that after consulting with the experts, this should address the worst case scenario, which is a large multi-family building on electric heat. Most buildings, including commercial (restaurant, retail and office) uses would require a much smaller renewable system. Any additional mass approved under this policy would have a covenant recorded against the property which states that the mass is permitted only for the mechanical room with a renewable energy source in perpetuity and may not be converted into any other use in the future.

Staff has proposed a revised policy which attempts to address the Commission's concerns voiced at the December 6th meeting. Staff welcomed Commissioner comments and input on the draft policy to get direction on the policy in order to move forward with ordinance language to the Town Council.

Commissioner Questions / Comments:

Mr. Pringle: What would you think if you took paragraphs A1 and A2 and you flip-flopped them so that they see A2 first? (Ms. Puester: Fine with that.)

Mr. Schroder: Good as presented and thank you for the Longbranch magazine article.

Mr. Rath: Yes, seems like this will help projects incorporate renewable systems into their remodels.

The remaining Commissioners agreed with Mr. Schroder's comments and no further questions or comments were made.

FINAL HEARINGS:

Mr. Schroder called a short break to allow Mr. Thompson to get a material board for the Commissioners to see regarding the Valette Residence.

Mr. Butler excused himself from the hearing due to a possible financial conflict with the Application as he will be bidding on the cabinets for the house.

1) Valette Residence (MGT) PC#2012010, 301 South French Street

Mr. Thompson presented a proposal to remove the existing non-historic structure and replace it with a 2,012 square-foot, two-story residence with four bedrooms, three bathrooms, one gas fireplace, two upper-level decks, and a lower level, one bedroom, one bathroom, 434 square-foot employee housing unit. Exterior materials include fiberglass composite shingle roof, scalloped cedar shingles at the gable ends, 4 ½ inch bevel hardboard siding (Priority Policy 125 recommends lap siding dimensions of approximately 4 inches), 3 ½ inch wide hardboard corner and window trim, wood deck railings, decorative cornice brackets and corbels, a real stone wainscoting around the base of the house varying in height from 9 to 18 inches, and a real stone and wood timber retaining wall for the driveway.

The applicant originally received approval in March 2005 to build the proposed home, and the permit was extended by a Class C permit in 2008. For financing reasons, the applicant was unable to start construction at that time. The approved Development Permit expired on August 27, 2009. The proposed design is almost identical to the plans approved in 2005 and 2008. There were no major issues at the preliminary hearing on March 6, 2012. There have been no plan changes from the March 6th, 2012, meeting.

Staff recommended the following point analysis:

- Negative ten points (-10) under Policy 3/R – Density/Intensity, as this application is 4% over the density recommendation of the Land Use District Guidelines.
- Positive ten (+10) points under Policy 24/R – Social Community, for the basement employee housing unit.
- Negative two (-2) points under Policy 33/R – Energy Conservation, for the 653 square feet of heated driveway.
- Positive two (+2) points under Policy 18/R - Parking, for the placement and screening of all off street parking areas from public view.

The application has a passing point analysis total of zero. Staff found that all Absolute Policies and Historic Guidelines have been met.

Staff found that the Valette Residence, Accessory Unit, and Removal of Existing Structure (PC#2012010), is compatible with the surrounding neighborhood and does a good job to hide its parking at the rear of the lot. Staff recommended that this project be approved with the presented Findings and Conditions.

Mr. Schroder opened the hearing to public comment.

Mr. John Raymond, builder for the project, wanted the Commission to know that the total square footage is 2,012.

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

Commissioner Questions / Comments:

Ms. Dudney: These colors have all been accepted? (Mr. Thompson: Yes, they all meet the correct chroma.)

Mr. Pringle: Last time we discussed removing one of the fireplace flues. (Mr. Raymond: We are putting PVC's in and we intend to do that. There is a gas burning fireplace and we will use a direct vent out the side.) That cleans up everything for me, instead of having a (smoke) stack out of the roof. Thank you for taking into consideration our previous concerns.

Ms. Dudney: No comment.

Mr. Schroder: Support approval and no comment on application.

Ms. Christopher: Yes.

Mr. Rath: Yes.

Mr. Pringle made a motion to approve the point analysis for the Valette Residence, PC#2012010, 301 South French Street. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

Mr. Pringle made a motion to approve the Valette Residence, PC#2012010, 301 South French Street, with the presented Findings and Conditions. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

2) Breckenridge Nordic Center Lodge (MGT) PC#2011050, 954 Ski Hill Road

Mr. Thompson presented a proposal to construct a new, 9,979 square foot Nordic Center to replace the existing Nordic Center building, which will be removed. The plan also includes a 53 space parking lot, including three ADA compliant

parking spaces. The building has been designed with a covered drop off area at the entrance to the lodge for guests. There is a large 20' x 37' west facing deck. The inside of the building has been designed to include: a lounge, coffee and snack bar, retail area, equipment rental area, an EPA Phase II wood burning device, restrooms, snow cat enclosed parking, two employee housing units, and an unfinished storage area in the lower level. A detached 668 square foot ski school building is proposed to the west of the proposed Nordic Lodge.

The current Nordic Center building will be removed to make way for the Cucumber Creek Estates Subdivision, which will take its access through the current parking lot and building location. The applicant had a preliminary hearing on September 20, 2011. At that hearing buffering the parking lot from the neighbors was the only issue. The applicant has addressed this issue by increasing the buffering through additional landscaping. Additional parking has been added next to the building for employees. There will also be a chandelier under the porte-cochere.

Staff suggested negative one (-1) point under Policy 6/R Building Height for a long unbroken ridgeline of over 50', positive four (+4) points under Policy 22/R for an above average landscaping plan, positive three (+3) points under Policy 20/R for a 100% public recreation facility, and positive five (+5) points under Policy 24/R for the inclusion of employee housing exceeding 7% of the proposed density, for a total passing point analysis of positive eleven (+11) points. All Absolute and Relative policies of the Development Code have been met.

The Planning Department recommended the Planning Commission approve the Breckenridge Nordic Center Lodge, (PC#2011050), located at 954 Ski Hill Road, Tracts C & D, Christie Heights, with the presented Findings and Conditions.

Commissioner Questions / Comments:

Mr. Schroder: Did we lose any trees? (Mr. Thompson: All of the x marks on the plans will be the trees that we will removed. Potentially looking to transplant some trees with an expected 50% survival rate.)

Ms. Dudney: Regarding the Town's off-street parking regulation; there is no specific number set? (Mr. Thompson: The amount of off-street parking for commercial recreation indoor and outdoor is set by special review of the Director and Planning Commission.)

Mr. Tom Peterson, Architect: There is a lot of below-grade square footage that won't be bulking up the building. We added a couple strips of landscaping islands to reduce the large amount of asphalt for parking. The gazebo has been removed; the ski school building is a more appropriate style of architecture and needs for the Nordic Center.

Mr. Gene Dayton and Mr. Matt Dayton, Applicants: Presented a 3D-model of the lodge. Added an extra storage room in the basement. All of the logs come from the gondola cut line and have been turned, lathed and sealed.

Ms. Theresa Dayton, Applicant: We have a 30 year contract with the Town to operate; the Town will inherit the building after 30 years. We also will have a timeframe to remove the other facility. We feel our adjustment was in the best interest of the Town, us and our guests.

Mr. Gene Dayton: In hindsight, this is the best location we could have come up with. The building will have a great view to the west and I think it will serve our customers better as Nordic skiers spend more time in the base lodge than alpine skiing.

Mr. Schroder opened the hearing to public comment.

Mr. Dave Garrett, adjacent property owner: Here to support the project. Ask if the Dayton's would reconsider the location of the dumpster enclosure. If a dumpster truck were to come into this area, it could be hard to maneuver. Maybe it could be relocated to the other side of the property allowing trucks to turn around easily, instead of driving all the way around parking lot. They are very considerate neighbors and I hope this passes.

Mr. John Quigley, Shock Hill Homeowners Association: Gene Dayton attended their last association meeting, they are 25-years away from receiving a full easement along the existing snowshoe trail to allow for access from the gondola to walk over to the new Nordic Center; talked to them about signs near the portal by signing in, which have been installed; we consider the Dayton's the First Citizens of Breckenridge.

Mr. Tim Casey, General Partner for Christy Heights Partnership: All of the parking and 1/3 of the building is on our property. We intend to donate it to the Town; that is our contribution towards this effort and the location is much better than originally intended. It is a partnership among us, the Town and the Applicants, and we support the project and would like to see it move forward.

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

Commissioner Questions/Comments:

- Ms. Christopher: The little tab of paved area above for the dumpster to turn around? (Mr. Thompson: It is a hammer head turn around for the employee parking. It will be used as a backing up spot.) On page 73/85; the lower foundation, is it brick or exposed cement? It looks solid white on our plans. (Mr. Peterson: It will be covered in stone.)
- Mr. Pringle: Is it possible to look into another location for the dumpster? (Ms. Dayton: Currently we do a lot of recycling; we only have once-a-week pick up and we hope to continue that.)
- Mr. Schroder: Like what I see and support Staff recommendation to approve the Breckenridge Nordic Center.
- Mr. Lamb: Great looking building and huge asset to the Town of Breckenridge. Great to see the neighbors are in support of this project.
- Mr. Pringle: It has taken a while to get to this point but here we are today approving it. It looks great and I couldn't be prouder of this and of you guys.
- Ms. Dudney: Can't wait for you to get started and to see it finished.
- Mr. Rath: Wonderful addition to the Town and can't wait to see it completed.
- Ms. Christopher: Good luck!
- Mr. Butler: Strongly supported.

Mr. Pringle made a motion to approve the point analysis of positive eleven (+11) for the Breckenridge Nordic Center Lodge, PC#2011050, 954 Ski Hill Road. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

Mr. Pringle made a motion to approve the Breckenridge Nordic Center Lodge, PC#2011050, 954 Ski Hill Road, with the presented Findings and Conditions. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

COMBINED HEARINGS:

1) Wellington Neighborhood 2, Filing 5 (MM) PC#2012019

Mr. Mosher presented a proposal to re-subdivide a portion of Lot 3, Block 6, of the Wellington Neighborhood (this will be the fifth filing for Phase II) in connection with the recently approved Wellington Neighborhood Phase II Master Plan. This re-subdivision will create 12 single family lots.

The proposed lot layout, green design and landscaping follows the patterns we have seen in the previously approved subdivisions of the Wellington Neighborhood. We welcome any comments from the Commission regarding the information presented in this report. Since we had no concerns with this proposal, Staff has advertised this review as a combined Preliminary and Final hearing. Staff pointed out an area next to French Gulch Road with a non-buildable area on two of the lots to ensure good sight visibility to French Gulch Road.

Staff recommended the Commission approve the Block 9, Wellington Neighborhood 2, Filing 5, a re-subdivision of a portion of Lot 3, Block 6, Wellington Neighborhood Preliminary Plat, PC#2012019, with the presented Findings and Conditions.

Commissioner Questions / Comments:

- Mr. Lamb: This design and layout is consistent with the rest of the Wellington area? (Mr. Mosher: Yes, follows Master Plan.)
- Ms. Dudney: Brought up Lot 21, which is very narrow. What house is being placed here? (Mr. Mosher: Homes are not part of this application, but they are planning on placing a model called the Aspen there. The model is narrow, and replaces one half of the former Double House (duplex).)
- Mr. Pringle: Didn't catch in the initial phase of the developments leading to one organized road in and out of the subdivision. (Mr. Mosher: The alleys disperse the traffic impact, and work better than concentrating the traffic on one road.)

- Mr. Schroder: Is there any idea on timing? (Mr. Mosher: The applicant is ready to bring in homes for review right now.)
- Mr. Neubecker: I don't think a lot of folks on this Commission have reviewed a subdivision before. We use the Subdivision Code, which does not follow a point analysis. (Mr. Schroder: We looked at The Shores.) (Ms. Dudney: The Hogan one on Hwy. 9 at the old BBC.) (Mr. Mosher: This was essentially our first affordable housing project and is subject to a Master Plan which has provisions that supersede the Development Code.)
- Mr. Schroder: How many homes is that going to be? (Mr. Mosher: There are 12 more lots; they are still selling, but not as rapidly as in the past.)

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

Commissioner Questions/Comments (Continued):

- Mr. Butler: No reservations at all.
- Ms. Christopher: I agree with Mr. Butler.
- Ms. Dudney: Fine.
- Mr. Pringle: No questions or comments

Mr. Pringle made a motion to approve the Wellington Neighborhood 2, Filing 5 (PC#2012019) with the presented Findings and Conditions. Ms. Christopher seconded, and the motion was carried unanimously (7-0).

OTHER MATTERS:

1) Town Council Joint Meeting (May 8, 2012) Memo (CN)

Mr. Neubecker presented a reminder memo to the Commission concerning the Joint Meeting with the Town Council, scheduled for May 8, 2012, from 6-7:30pm in Town Hall Council Chambers. Proposed topics for discussion include:

- Historic Preservation Incentives for Commercial Property
- McCain Property and F-Lot Update
- Solar Panels in Historic District/ Solar Gardens
- Re-development for Commercial / Lodging Sites. Need for more flexible standards?
- Transition Standards & Inclusion of School and Carter Park
- Planning Commission Field Trip
- Vendor Carts

To be realistic based on the short timeframe for the meeting, Staff recommended narrowing this list down to three priority issues. If time allows, other issues can also be discussed.

Some other issues that were mentioned at your last meeting, or new topics staff would like to discuss in the future, are listed below. Staff recommended discussing these issues during a work session to bring the Commission up to speed before discussing these with Town Council:

- Energy Efficiency/Review point system, as well as HERS Index for remodels
- Claimjumper Parcel for Employee Housing
- Old CMC / Harris Street Building
- New Recycle Center on Mc Cain Property

Commissioner Questions / Comments:

- Mr. Schroder: Would like to avoid the four topics at the bottom and focus on the seven above. Would like to suggest that we don't talk about Vendor Carts. (Ms. Christopher: Discussing a topic is different from briefing a topic.)
- Mr. Pringle: Renovations of duplexes: we have to have a precedent or talk about what we are going to do when Owner A wants to upgrade and remodel but Owner B (other half of duplex) and the other doesn't. (Mr. Neubecker: Is this a big enough issue to discuss with the Council?) What happens when some of these places come in for changes? (Ms. Christopher: I think it needs to be on the table, but possibly behind the scenes.)

- Mr. Schroder: Not in support of talking about our field trip with Town Council.
- Mr. Lamb: Three new Council members; almost want to put the question back on them, what are their issues?. (Mr. Pringle: We need to find out the new dynamics.) What is this Council looking like and what direction are they going to take us? (Mr. Neubecker: These folks have been attending meetings; I wouldn't anticipate a major direction change from the past Council.)
- Ms. Dudney: Solar panels and Mc Cain and F Lot. I think we need to look at what is going to come up in the next year; possibly the inclusion of School/Carter Park. I think these are the most likely.
- Mr. Lamb: Agree with Ms. Dudney. (Solar Panels and School/Carter Park with McCain / F-Lot.)
- Mr. Schroder: Want to run with Ms. Dudney's lead for conversation purposes. (Mr. Butler and Ms. Christopher agreed with Ms. Dudney's top 3.)
- Mr. Rath: I think it might be important to bring up how we will incentivize some of these multifamily properties to upgrade (remodel incentives). The solar panel issue is important and these solar gardens could be an issue (#1). Would be interested in hearing more about the F-Lot and what they are planning for that area. I heard they are doing green space with parking underneath. Also, I have heard that there might be a hotel put in Town.
- Ms. Christopher: Town Council sets pace, so to a certain extent what do they want to talk about? I don't really have a preference but I would like to know what is important to them.
- Ms. Dudney: I think Mr. Rath's point for incentives to remodel is an excellent idea. What could we do to incentivize improved exteriors? (Mr. Schroder: I think his idea is on point but I'm not sure our economy supports this right now. Maybe we can use this as #4.)
- Mr. Pringle: Ask the Town Council if there is anything they want to "undo".
- Mr. Neubecker: What about ways to encourage upgrades to existing lodging?

2) Top 10 List (CN)

Mr. Neubecker presented. Planning Department Staff keeps track of the most important long range planning and code updates through a list we call the Top 10 List. This list is developed in consultation with Planning Commission and Town Council to determine where staff resources should be focused, in addition to our regular workload of development review applications and inquiries from the public.

The most recent Top 10 List included the following items:

- Accessory Dwelling Units and Incentives
- Landscaping Policy and Defensible Space (Done)
- Land Use District 31 Update (Done)
- Energy Conservation Policy (Done)
- Solar Panels Update (Done)
- Affordable Housing policy
- Footprint Lots (Done)
- Free Commercial Basement Density for Historic Landmarking (Done)
- Fiber Cement Siding (Done)
- Adopt Transition Standards (Done)

Staff is currently (or will soon be) working on the following other priority items:

1. Mechanical Rooms for Renewable Energy
2. Sign Code Update
3. Service Commercial Zoning
4. Food Trucks Ordinance
5. Air Quality Policy
6. Water PIFs for Snack Bar/Deli

In preparation for the joint meeting with Town Council, staff suggested developing a list of the next Top 10 items for staff to focus on. These could include long range planning or code amendments. This list will be shared with the Town Council during the joint meeting on May 8th, and we will see what direction the Council provides for the Top 10 List. Staff intends to pursue work on the next Top 10 List as soon as time and resources allow. The order that they are forwarded to Planning Commission and Town Council will partly depend on the complexity of the project.

Following are some suggested items to consider, but Staff welcomed input from the Commission on your ideas for the Top 10 List:

- Major Remodels of Multifamily Housing: Provide some type of incentives, through the point system, for exterior remodels of older buildings.
- Condo Hotels Definition: Should a front desk still be required, even though many owners use management companies outside the building? Should a shuttle system be a required feature?
- Redevelopment Standards: Should we create standards and processes for redevelopment, or continue with the Development Agreement process? Should nearby redevelopment sites be allowed to “annex” into the Parking Service Area?
- Wildlife Policy: Develop a policy that protects and enhances wildlife corridors, sensitive habitat and keystone species.
- Impervious Surfaces: Provide incentives to reduce hard surfaces and improve water quality through on site detention, rain gardens, and permeable paving.
- Open Space Dedication upon Subdivision: Should lots within the Conservation District be exempt from the requirement to provide public open space? Would changes to this policy improve the urban form by creating the small lots that belong on the District?

Commissioner Questions / Comments:

- Mr. Pringle: Brought up the problem/lack of enforcement of employee housing. People get points for have an employee housing unit in their project, but it might sit empty. I don't want us to get handcuffed with other potential applicants because of Deed Restrictions.
- Ms. Dudney: Major remodels of multifamily housing, condo hotels, redevelopment standards.
- Mr. Schroder: I would agree with Ms. Dudney's top 3.
- Mr. Rath: Landscaping/The gateway to Breckenridge; now the first thing you see when you drive into Breckenridge is our construction storage area.
- Ms. Christopher: Rain gardens, impervious spacing.

ADJOURNMENT:

The meeting was adjourned at 10:00 p.m.

Dan Schroder, Chair

Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein, Assistant Town Engineer
DATE: April 4, 2012
RE: Public Projects Update

This memo is to update Council on the construction projects that will be occurring in 2012 and supply a brief background on each project for new Council members. Our website will be updated weekly with construction schedule and detour information. Interested residents are encouraged to subscribe to "Street Construction and Maintenance" updates from the Town's website to be automatically notified by email when updates are posted. Additionally businesses near the construction activities will be individually notified.

Main Street Revitalization

The Main Street revitalization process began in 2004 as a suggestion by Town Council. Initially Town hired a design consultant, Design Workshop, to guide the development of the vision for the Main Street "revitalization". Design meetings and open houses were held to include community stakeholders in the visioning process. In 2007, Council adopted the current Main Street Master Plan. Key concepts of the master plan include: improving pedestrian safety, calming vehicular traffic, improving landscape/amenity zones, and implementing improved way finding and signage.

Due to the limited construction season available on Main Street, small projects have been constructed each year as part of the CIP. Underground storm water projects were completed in 2006, 2007, & 2008 from Ski Hill Rd. north to French St. In 2009, pedestrian enhancements (bulb-outs & new crosswalks) were constructed at Lincoln/Ski Hill intersection and at the Washington Ave intersection in 2010. In the fall of 2011, the streetscape improvements (landscaping and flagstone paving) between Ski Hill Rd. and Washington Ave were started in the fall, and will be completed in April/May of this year.

A very aggressive project schedule is planned on N. Main St. for 2012. Pedestrian enhancements will be implemented at the Wellington, Watson, and French St intersections and the streetscape will be completed from Ski Hill Rd. north to Watson Ave. Construction is scheduled to begin the week of April 16th and run through the end of June.

We invite any interested Council members to schedule an appointment with the Engineering staff to review the plans and concepts in more detail.

Asphalt Overlays and Concrete Replacement

The Council has always been dedicated to maintaining Town's infrastructure in a good condition. Asphalt overlays provide an effective way to maintain roads and the Rec Path. Staff has determined that our roads typically need a new asphalt overlay approximately every 20 years, and have developed a long term budget that considers this schedule and materials escalation costs. The overlay and concrete budget for 2012 is \$500,000. Major locations for the 2012 project include overlay on the Rec Path from Valley Brook north to the Town limits (near Tiger Rd.), Boreas Pass Rd, and Broken Lance Rd. A two-week closure of the Rec Path will be required to complete the work. Work will begin when asphalt mix becomes locally available in the spring, anticipated to be May 7th. The Rec Path will reopen on weekends during the work period.

Concrete replacement is expected to begin after April 16th. Curb and gutter, sidewalk, and valley pan replacement will occur at approximately 25 locations throughout the Town. Concrete replacement requiring road closures will occur at the intersection of Valley Brook St./Airport Road, and French Street /Park Ave. This work at the Valley Brook intersection will be scheduled after the school year ends on June 1st.

Gold Pan Alley

The alley has deteriorated over the past few years with the steady level of vehicular, bus, bike and pedestrian traffic. Staff is currently designing drainage improvements, resurfacing improvements and a fire hydrant relocation for the Gold Pan Alley from Ski Hill to Watson. Reconstruction of the alley is anticipated for fall of 2012.

Recreation Center Softball Fence

The Recreation Center was constructed in 1990 and is now in need of upgrades, major maintenance, and repairs. The Town commissioned a study in 2006 that identified various improvements, upgrades and major maintenance items. As a result, the pool mechanical room has been upgraded, the roof over the pool was replaced and improved, and the locker rooms have been remodeled.

This year, the fence and netting system that protect the Rec Center from softballs is scheduled for an upgrade and replacement. Staff is currently soliciting firms for a design-build contract to be completed this summer. There will no interruption to the softball or Rec Center schedule during the installation of the new fence.

Arts District Projects

The Council has identified "accelerating the Arts District" as a priority. The work scheduled for the Arts District in 2012 is not based on an accelerated schedule. The Council will see the Arts District plan as a whole in the near future which may impact the work shown below.

Burro Barn Panelization: The Burro barn is a collapsed, dilapidated historic shed located in the Arts District. This project will inventory, stabilize, and protect the historic fabric for future use. Staff is currently soliciting architectural services and construction is planned for mid-summer.

Robert Whyte House: A structural and exterior renovation of the Robert Whyte House (next to the Breckenridge Theater on Ridge St.) was planned for 2012. Due to a delay in the grant for the Historic Structure Assessment, a precursor to the renovation work, the project is delayed until 2013.

Barney Ford Parking Lot: Staff is working on the design of a paved parking area at the southeast corner of the Arts District that incorporates an outdoor pit firing and kiln location, and improved space for outdoor events and festivals.

North Main Street Alley (alley between Gold Creek and Andorra condos)

Staff is considering options to improve traffic movements and safety at the intersection of the alley at French St., and also traffic flow in the alley between Wellington Rd. and French St. Changes to the alley, if needed, will be completed in the fall.

Public Works Administration Building

A new Public Works Administration building is planned at the Public Works campus at 1095 Airport Road. Construction is anticipated to begin this summer. Further history and detail on this project will be provided separately for the April 24th Council work session.

FINANCIAL MEMORANDUM

TO: TIM GAGEN, TOWN MANAGER
FROM: CLERK AND FINANCE DIVISION
SUBJECT: FEBRUARY NET TAXABLE SALES & RETT REPORTING
DATE: 4/3/2012

This memo explains significant items of note in relation to sales that occurred within the Town of Breckenridge in the month of February. Real Estate Transfer Tax, including an analysis of the monthly “churn” and sales by property type, is also included.

New Items of Note:

Net Taxable Sales

- Overall, Net Taxable sales for February fared well. We were up 9.2% over 2011. We also rose above 2006 #s overall.
- Restaurants continue to track as the best year ever. Returns are beginning to show an increase over prior year on an individual restaurant level. In response to the observation that this may be due more to the # of open restaurants included in the sector more than the success of individual restaurants, I can offer the following statistics:

Restaurant Sector	Increase over PY	Decrease over PY	New restaurants (over PY)	Closed restaurants (over PY)
Jan	28 restaurants	35 restaurants	10	5
Feb	43 restaurants	20 restaurants	12	6

- Retail sales are showing improvement. After collecting on unfiled returns for Jan, both months are now tracking ahead of 2006#s.
- While supplies may have tracked ahead of prior year, this wasn't saying much & we continue to track behind 2005.
- Utilities was down 8.4% & behind 2006. However, it was a warm January and this decrease over prior year is consistent with what I saw on my personal bill that was due in February.

Real Estate Transfer Tax

- Total March collections fell behind prior year by 54.1%. However, we are ahead of YTB budget by 1.1%
- We also fell behind PY churn for the month by 54% (or \$98,597).
- The month did fall short of budget by 14%.
- YTD sales of townhomes and single family homes are up vs. prior year.
- YTD Timeshares & single family homes comprised the majority of the sales for the month.

Continuing Items of Note:

- Net Taxable Sales are reported in the first Council meeting following the due date of the tax remittance to the Town of Breckenridge. Taxes collected from the customer by the vendor are remitted to the Town on the 20th of the following month.

- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are include on the report for the period of March.
- Net Taxable Sales are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.
- 2012 Real Estate Transfer Tax budget is based upon the monthly distribution for 2007. The reasoning is that we should compare to a year with a “normal distribution.”

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

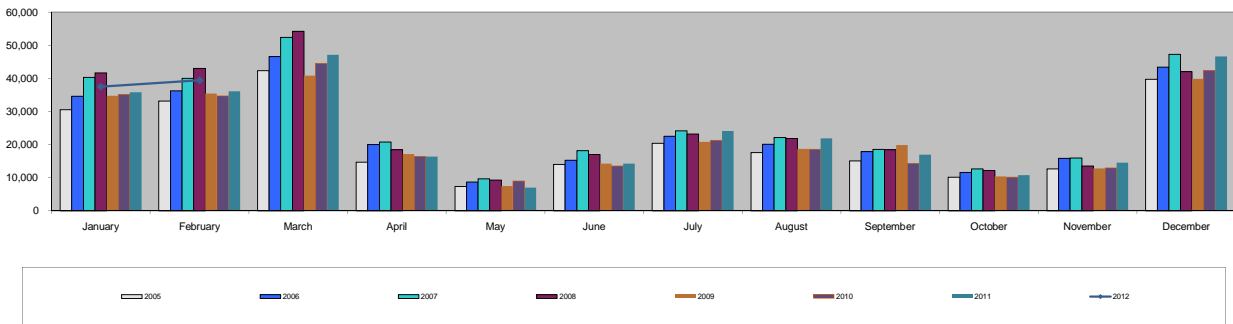
(in Thousands of Dollars)

Total - All Categories*

* excluding Undefined and Utilities categories

	Actual 2005	YTD 2005	Actual 2006	YTD 2006	Actual 2007	YTD 2007	Actual 2008	YTD 2008	Actual 2009	YTD 2009	Actual 2010	YTD 2010	Actual 2011	YTD 2011	Actual 2012	YTD 2012	Monthly 11-12	YTD % Change 11-12
January	30,549	30,549	34,589	34,589	40,283	40,283	41,665	41,665	34,783	34,783	35,105	35,105	35,805	35,805	37,497	37,497	4.7%	4.7%
February	33,171	63,720	36,236	70,825	40,034	80,317	43,052	84,717	35,453	70,236	34,791	69,896	36,128	71,933	39,437	76,934	9.2%	7.0%
March	42,370	106,090	46,603	117,428	52,390	132,707	54,237	138,954	40,810	111,046	44,485	114,381	47,101	119,034	0	76,934	n/a	n/a
April	14,635	120,725	19,963	137,391	20,758	153,465	18,483	157,437	17,171	128,217	16,346	130,727	16,371	135,405	0	76,934	n/a	n/a
May	7,355	128,080	8,661	146,052	9,629	163,094	9,251	166,688	7,475	135,692	8,999	139,726	6,971	142,376	0	76,934	n/a	n/a
June	14,043	142,123	15,209	161,261	18,166	181,260	16,988	183,676	14,286	149,978	13,557	153,283	14,235	156,611	0	76,934	n/a	n/a
July	20,366	162,489	22,498	183,759	24,168	205,428	23,160	206,836	20,788	170,766	21,346	174,629	24,134	180,745	0	76,934	n/a	n/a
August	17,625	180,114	20,071	203,830	22,125	227,553	21,845	228,681	18,656	189,422	18,603	193,232	21,878	202,623	0	76,934	n/a	n/a
September	15,020	195,134	17,912	221,742	18,560	246,113	18,481	247,162	19,806	209,228	14,320	207,552	16,969	219,592	0	76,934	n/a	n/a
October	10,170	205,304	11,544	233,286	12,687	258,800	12,120	259,282	10,410	219,638	10,226	217,778	10,740	230,332	0	76,934	n/a	n/a
November	12,647	217,951	15,877	249,163	15,943	274,743	13,483	272,765	12,809	232,447	12,985	230,763	14,549	244,881	0	76,934	n/a	n/a
December	39,687	257,638	43,431	292,594	47,258	322,001	42,076	314,841	39,859	272,306	42,343	273,106	46,651	291,532	0	76,934	n/a	n/a
Totals	257,638		292,594		322,001		314,841		272,306		273,106		291,532		76,934			

2012 Monthly Sales Tax Activity (in thousands of dollars)



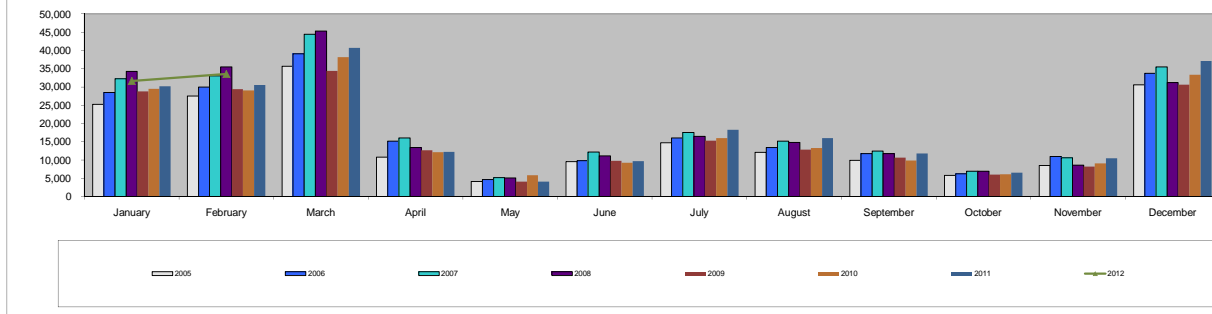
**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(In Thousands of Dollars)

Retail-Restaurant-Lodging Summary

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD % Change 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD		
January	25,240	25,240	28,528	28,528	32,258	32,258	34,290	34,290	28,802	28,802	29,538	29,538	30,174	30,174	31,663	31,663	4.9%	4.9%
February	27,553	52,793	29,972	58,500	33,039	65,297	35,511	69,801	29,401	58,203	29,090	58,628	30,504	60,678	33,565	65,228	10.0%	7.5%
March	35,705	88,498	39,051	97,551	44,390	109,687	45,338	115,139	34,428	92,631	38,136	96,764	40,676	101,354	0	65,228	n/a	n/a
April	10,773	99,271	15,134	112,685	16,025	125,712	13,410	128,549	12,653	105,284	12,154	108,918	12,281	113,635	0	65,228	n/a	n/a
May	4,179	103,450	4,647	117,332	5,146	130,858	5,111	133,660	4,125	109,409	5,836	114,754	4,077	117,712	0	65,228	n/a	n/a
June	9,568	113,018	9,789	127,121	12,225	143,083	11,112	144,772	9,829	119,238	9,302	124,056	9,713	127,425	0	65,228	n/a	n/a
July	14,766	127,784	16,038	143,159	17,499	160,582	16,446	161,218	15,305	134,543	15,993	140,049	18,296	145,721	0	65,228	n/a	n/a
August	12,122	139,906	13,446	156,605	15,167	175,749	14,815	176,033	12,859	147,402	13,261	153,310	16,010	161,731	0	65,228	n/a	n/a
September	9,897	149,803	11,761	168,366	12,418	188,167	11,794	187,827	10,705	158,107	9,894	163,204	11,834	173,565	0	65,228	n/a	n/a
October	5,824	155,627	6,248	174,614	6,934	195,101	6,977	194,804	5,986	164,093	6,143	169,347	6,517	180,082	0	65,228	n/a	n/a
November	8,557	164,184	10,963	185,577	10,650	205,751	8,637	203,441	8,234	172,327	9,068	178,415	10,513	190,595	0	65,228	n/a	n/a
December	30,619	194,803	33,736	219,313	35,517	241,268	31,211	234,652	30,667	202,994	33,363	211,778	37,081	227,676	0	65,228	n/a	n/a
Totals	194,803		219,313		241,268		234,652		202,994		211,778		227,676		65,228			

2012 Monthly Sales Tax Activity (in thousands of dollars)



Tourism Ratio (Retail + Restaurant)/Lodging

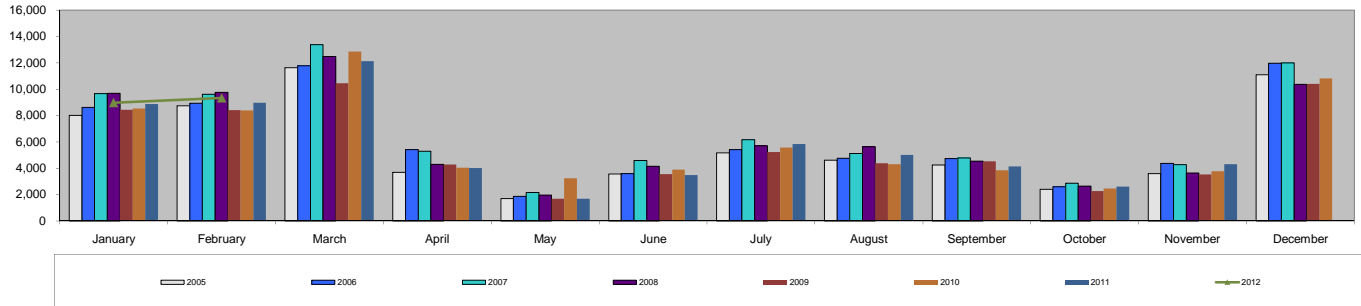
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail Sales

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	8,001	8,001	8,607	8,607	9,665	9,665	9,684	9,684	8,430	8,430	8,530	8,530	8,862	8,862	8,966	8,966	1.2%	1.2%
February	8,744	16,745	8,942	17,549	9,607	19,272	9,763	19,447	8,401	16,831	8,378	16,908	8,982	17,844	9,331	18,297	3.9%	2.5%
March	11,632	28,377	11,774	29,323	13,373	32,645	12,479	31,926	10,449	27,280	12,851	29,759	12,125	29,969	0	18,297	n/a	n/a
April	3,678	32,055	5,406	34,729	5,287	37,932	4,301	36,227	4,274	31,554	4,032	33,791	4,006	33,975	0	18,297	n/a	n/a
May	1,708	33,763	1,858	36,587	2,165	40,097	1,965	38,192	1,675	33,229	3,251	37,042	1,679	35,654	0	18,297	n/a	n/a
June	3,565	37,328	3,589	40,176	4,597	44,694	4,153	42,345	3,558	36,787	3,895	40,937	3,477	39,131	0	18,297	n/a	n/a
July	5,174	42,502	5,403	45,579	6,176	50,870	5,700	48,045	5,240	42,027	5,582	46,519	5,834	44,965	0	18,297	n/a	n/a
August	4,620	47,122	4,757	50,336	5,110	55,980	5,631	53,676	4,384	46,411	4,302	50,821	5,003	49,968	0	18,297	n/a	n/a
September	4,249	51,371	4,726	55,062	4,783	60,763	4,527	58,203	4,536	50,947	3,848	54,669	4,132	54,100	0	18,297	n/a	n/a
October	2,404	53,775	2,591	57,653	2,866	63,629	2,635	60,838	2,277	53,224	2,453	57,122	2,609	56,709	0	18,297	n/a	n/a
November	3,586	57,361	4,376	62,029	4,267	67,896	3,641	64,479	3,540	56,764	3,764	60,886	4,301	61,010	0	18,297	n/a	n/a
December	11,099	68,460	11,971	74,000	12,000	79,896	10,358	74,837	10,403	67,167	10,824	71,710	11,629	72,639	0	18,297	n/a	n/a
Totals	68,460		74,000		79,896		74,837		67,167		71,710		72,639		18,297			

2012 Monthly Sales Tax Activity (in thousands of dollars)



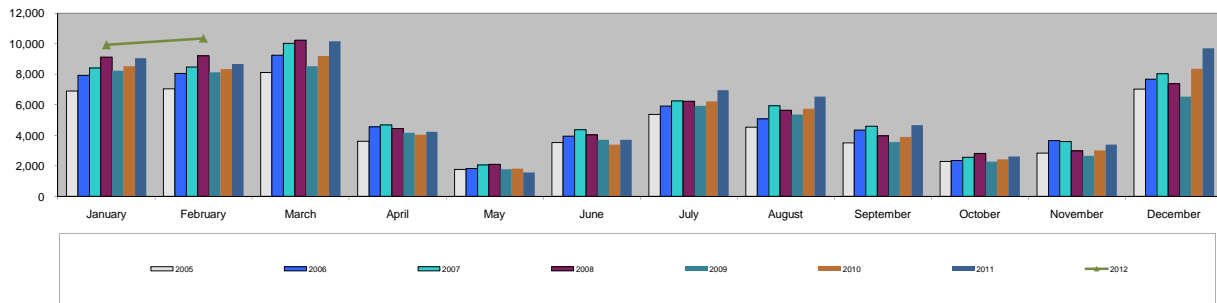
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Restaurants/Bars

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	6,897	6,897	7,924	7,924	8,414	8,414	9,117	9,117	8,231	8,231	8,515	8,515	9,039	9,039	9,922	9,922	9.8%	9.8%
February	7,047	13,944	8,058	15,982	8,467	16,881	9,208	18,325	8,129	16,360	8,343	16,858	8,660	17,699	10,351	20,273	19.5%	14.5%
March	8,117	22,061	9,256	25,238	10,015	26,896	10,240	28,565	8,527	24,887	9,186	26,044	10,151	27,850	0	20,273	n/a	n/a
April	3,609	25,670	4,552	29,790	4,678	31,574	4,440	33,005	4,173	29,060	4,042	30,086	4,222	32,072	0	20,273	n/a	n/a
May	1,760	27,430	1,832	31,622	2,058	33,632	2,107	35,112	1,783	30,843	1,812	31,898	1,570	33,642	0	20,273	n/a	n/a
June	3,525	30,955	3,938	35,560	4,370	38,002	4,030	39,142	3,712	34,555	3,397	35,295	3,704	37,346	0	20,273	n/a	n/a
July	5,375	36,330	5,905	41,465	6,249	44,251	6,218	45,360	5,931	40,486	6,222	41,517	6,949	44,295	0	20,273	n/a	n/a
August	4,521	40,851	5,067	46,532	5,933	50,184	5,639	50,999	5,365	45,851	5,729	47,246	6,526	50,821	0	20,273	n/a	n/a
September	3,498	44,349	4,340	50,872	4,585	54,769	3,971	54,970	3,565	49,416	3,883	51,129	4,656	55,477	0	20,273	n/a	n/a
October	2,290	46,639	2,352	53,224	2,564	57,333	2,818	57,788	2,285	51,701	2,420	53,549	2,618	58,095	0	20,273	n/a	n/a
November	2,841	49,480	3,651	56,875	3,593	60,926	2,972	60,760	2,649	54,350	3,006	56,555	3,380	61,475	0	20,273	n/a	n/a
December	7,017	56,497	7,681	64,556	8,028	68,954	7,371	68,131	6,524	60,874	8,351	64,906	9,701	71,176	0	20,273	n/a	n/a
Totals	56,497		64,556		68,954		68,131		60,874		64,906		71,176		20,273			

2012 Monthly Sales Tax Activity (in thousands of dollars)



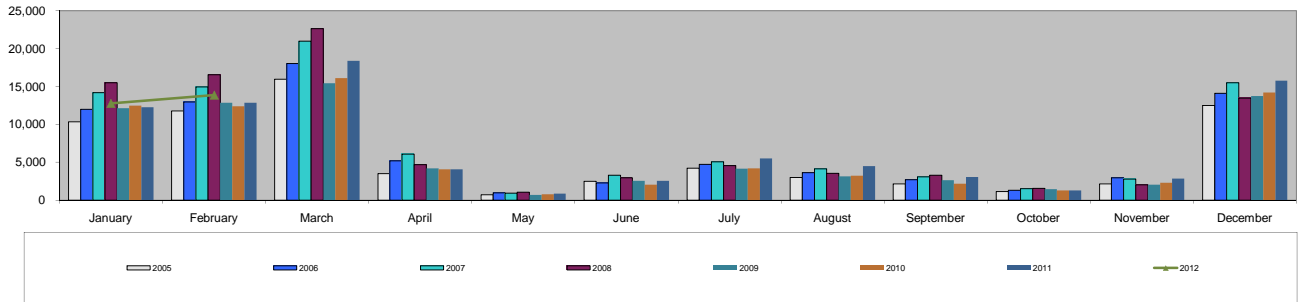
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Short-Term Lodging

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	10,342	10,342	11,997	11,997	14,179	14,179	15,489	15,489	12,141	12,141	12,493	12,493	12,273	12,273	12,775	12,775	4.1%	4.1%
February	11,762	22,104	12,972	24,969	14,965	29,144	16,540	32,029	12,871	25,012	12,369	24,862	12,862	25,135	13,883	26,658	7.9%	6.1%
March	15,956	38,060	18,021	42,990	21,002	50,146	22,619	54,648	15,452	40,464	16,099	40,961	18,400	43,535	0	26,658	n/a	n/a
April	3,486	41,546	5,176	48,166	6,060	56,206	4,669	59,317	4,206	44,670	4,080	45,041	4,053	47,588	0	26,658	n/a	n/a
May	711	42,257	957	49,123	923	57,129	1,039	60,356	667	45,337	773	45,814	828	48,416	0	26,658	n/a	n/a
June	2,478	44,735	2,262	51,385	3,258	60,387	2,929	63,285	2,559	47,896	2,010	47,824	2,532	50,948	0	26,658	n/a	n/a
July	4,217	48,952	4,730	56,115	5,074	65,461	4,528	67,813	4,134	52,030	4,189	52,013	5,513	56,461	0	26,658	n/a	n/a
August	2,981	51,933	3,622	59,737	4,124	69,585	3,545	71,358	3,110	55,140	3,230	55,243	4,481	60,942	0	26,658	n/a	n/a
September	2,150	54,083	2,695	62,432	3,050	72,635	3,296	74,654	2,604	57,744	2,163	57,406	3,046	63,988	0	26,658	n/a	n/a
October	1,130	55,213	1,305	63,737	1,504	74,139	1,524	76,178	1,424	59,168	1,270	58,676	1,290	65,278	0	26,658	n/a	n/a
November	2,130	57,343	2,936	66,673	2,790	76,929	2,024	78,202	2,045	61,213	2,298	60,974	2,832	68,110	0	26,658	n/a	n/a
December	12,503	69,846	14,084	80,757	15,489	92,418	13,482	91,684	13,740	74,953	14,188	75,162	15,751	83,861	0	26,658	n/a	n/a
Totals	69,846		80,757		92,418		91,684		74,953		75,162		83,861		26,658			

2012 Monthly Sales Tax Activity (in thousands of dollars)



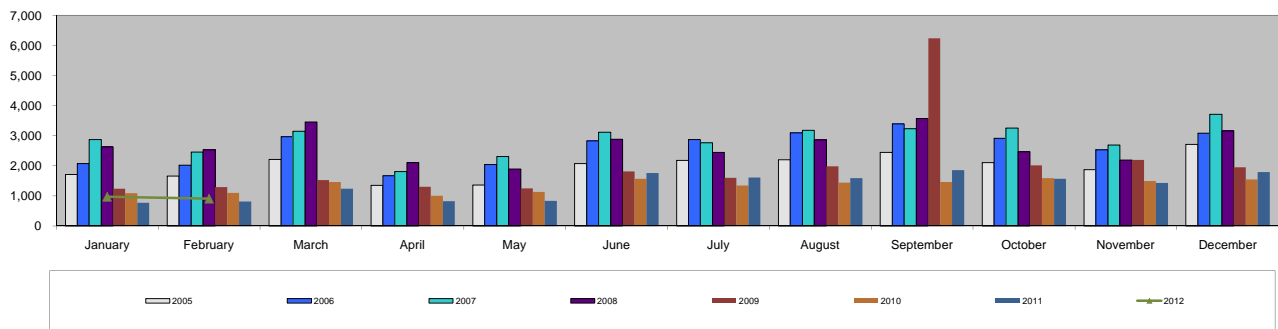
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Supplies

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	1,720	1,720	2,084	2,084	2,876	2,876	2,631	2,631	1,240	1,240	1,095	1,095	777	777	977	977	25.7%	25.7%
February	1,669	3,389	2,031	4,115	2,459	5,335	2,532	5,163	1,297	2,537	1,111	2,206	821	1,598	910	1,887	10.8%	18.1%
March	2,216	5,605	2,967	7,082	3,156	8,491	3,463	8,626	1,530	4,067	1,472	3,678	1,245	2,843	0	1,887	n/a	n/a
April	1,359	6,964	1,680	8,762	1,813	10,304	2,114	10,740	1,305	5,372	1,006	4,684	829	3,672	0	1,887	n/a	n/a
May	1,370	8,334	2,045	10,807	2,314	12,618	1,894	12,634	1,250	6,622	1,139	5,823	841	4,513	0	1,887	n/a	n/a
June	2,083	10,417	2,836	13,643	3,119	15,737	2,886	15,520	1,814	8,436	1,573	7,396	1,765	6,278	0	1,887	n/a	n/a
July	2,186	12,603	2,872	16,515	2,770	18,507	2,450	17,970	1,602	10,038	1,354	8,750	1,619	7,897	0	1,887	n/a	n/a
August	2,211	14,814	3,096	19,611	3,187	21,694	2,869	20,839	1,990	12,028	1,446	10,196	1,597	9,494	0	1,887	n/a	n/a
September	2,452	17,266	3,394	23,005	3,234	24,928	3,574	24,413	6,237	18,265	1,471	11,667	1,857	11,351	0	1,887	n/a	n/a
October	2,107	19,373	2,924	25,929	3,259	28,187	2,470	26,883	2,016	20,281	1,595	13,262	1,575	12,926	0	1,887	n/a	n/a
November	1,876	21,249	2,537	28,466	2,693	30,880	2,199	29,082	2,196	22,477	1,495	14,757	1,437	14,363	0	1,887	n/a	n/a
December	2,712	23,961	3,091	31,557	3,713	34,593	3,160	32,242	1,958	24,435	1,548	16,305	1,794	16,157	0	1,887	n/a	n/a
Totals	23,961		31,557		34,593		32,242		24,435		16,305		16,157		1,887			

2012 Monthly Sales Tax Activity (in thousands of dollars)



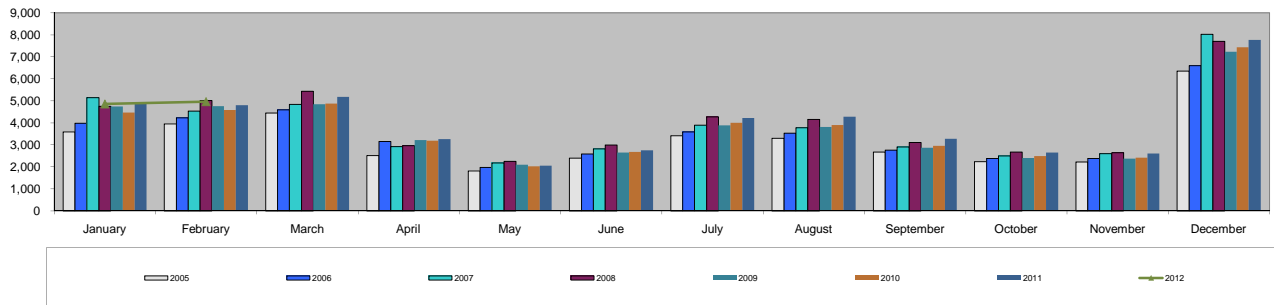
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Grocery/Liquor Stores

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	3,589	3,589	3,977	3,977	5,149	5,149	4,744	4,744	4,741	4,741	4,472	4,472	4,854	4,854	4,857	4,857	0.1%	0.1%
February	3,949	7,538	4,233	8,210	4,536	9,685	5,009	9,753	4,755	9,496	4,590	9,062	4,803	9,657	4,962	9,819	3.3%	1.7%
March	4,449	11,987	4,585	12,795	4,844	14,529	5,436	15,189	4,852	14,348	4,877	13,939	5,180	14,837	0	9,819	n/a	n/a
April	2,503	14,490	3,149	15,944	2,920	17,449	2,959	18,148	3,213	17,561	3,186	17,125	3,261	18,098	0	9,819	n/a	n/a
May	1,806	16,296	1,969	17,913	2,169	19,618	2,246	20,394	2,100	19,661	2,024	19,149	2,053	20,151	0	9,819	n/a	n/a
June	2,392	18,688	2,584	20,497	2,822	22,440	2,990	23,384	2,643	22,304	2,682	21,831	2,757	22,908	0	9,819	n/a	n/a
July	3,414	22,102	3,588	24,085	3,899	26,339	4,264	27,648	3,881	26,185	3,999	25,830	4,219	27,127	0	9,819	n/a	n/a
August	3,292	25,394	3,529	27,614	3,771	30,110	4,161	31,809	3,807	29,992	3,896	29,726	4,271	31,398	0	9,819	n/a	n/a
September	2,671	28,065	2,757	30,371	2,908	33,018	3,113	34,922	2,864	32,856	2,955	32,681	3,278	34,676	0	9,819	n/a	n/a
October	2,239	30,304	2,372	32,743	2,494	35,512	2,673	37,595	2,408	35,264	2,488	35,169	2,648	37,324	0	9,819	n/a	n/a
November	2,214	32,518	2,377	35,120	2,600	38,112	2,647	40,242	2,379	37,643	2,422	37,591	2,599	39,923	0	9,819	n/a	n/a
December	6,356	38,874	6,604	41,724	8,028	46,140	7,705	47,947	7,234	44,877	7,432	45,023	7,776	47,699	0	9,819	n/a	n/a
Totals	38,874		41,724		46,140		47,947		44,877		45,023		47,699		9,819			

2012 Monthly Sales Tax Activity (in thousands of dollars)



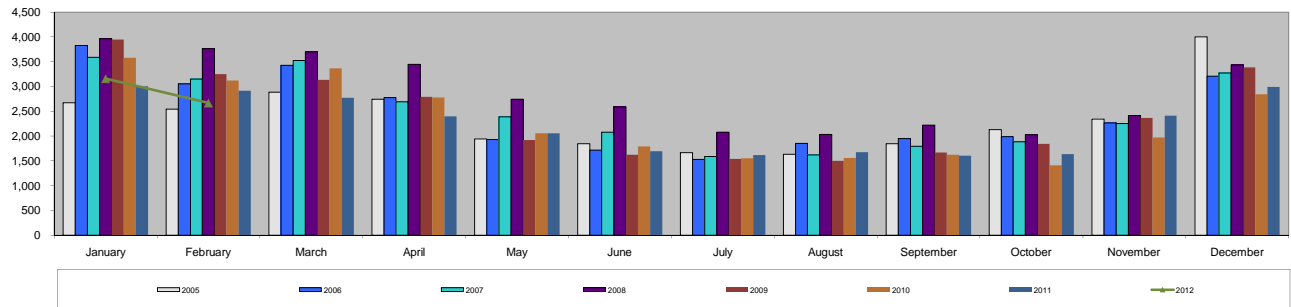
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Utilities

	2005		2006		2007		2008		2009		2010		2011		2012		Monthly 11-12	YTD 11-12
	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD	Actual	YTD				
January	2,675	2,675	3,829	3,829	3,591	3,591	3,961	3,961	3,950	3,950	3,577	3,577	3,004	3,004	3,159	3,159	5.2%	5.2%
February	2,540	5,215	3,056	6,885	3,149	6,740	3,765	7,726	3,253	7,203	3,118	6,695	2,913	5,917	2,668	5,827	-8.4%	-1.5%
March	2,883	8,098	3,428	10,313	3,525	10,265	3,699	11,425	3,134	10,337	3,365	10,060	2,772	8,689	0	5,827	n/a	n/a
April	2,741	10,839	2,778	13,091	2,694	12,959	3,448	14,873	2,792	13,129	2,779	12,839	2,400	11,089	0	5,827	n/a	n/a
May	1,939	12,778	1,926	15,017	2,386	15,345	2,742	17,615	1,917	15,046	2,057	14,896	2,057	13,146	0	5,827	n/a	n/a
June	1,846	14,624	1,713	16,730	2,078	17,423	2,588	20,203	1,620	16,666	1,793	16,689	1,693	14,839	0	5,827	n/a	n/a
July	1,663	16,287	1,529	18,259	1,588	19,011	2,075	22,278	1,539	18,205	1,548	18,237	1,614	16,453	0	5,827	n/a	n/a
August	1,629	17,916	1,854	20,113	1,621	20,632	2,031	24,309	1,497	19,702	1,558	19,795	1,673	18,126	0	5,827	n/a	n/a
September	1,843	19,759	1,949	22,062	1,792	22,424	2,219	26,528	1,667	21,369	1,625	21,420	1,604	19,730	0	5,827	n/a	n/a
October	2,127	21,886	1,987	24,049	1,883	24,307	2,026	28,554	1,845	23,214	1,412	22,832	1,632	21,362	0	5,827	n/a	n/a
November	2,340	24,226	2,264	26,313	2,251	26,558	2,411	30,965	2,364	25,578	1,972	24,804	2,409	23,771	0	5,827	n/a	n/a
December	4,005	28,231	3,206	29,519	3,271	29,829	3,435	34,400	3,389	28,967	2,845	27,649	2,991	26,762	0	5,827	n/a	n/a
Totals	28,231		29,519		29,829		34,400		28,967		27,649		26,762		5,827			

2012 Monthly Sales Tax Activity (in thousands of dollars)

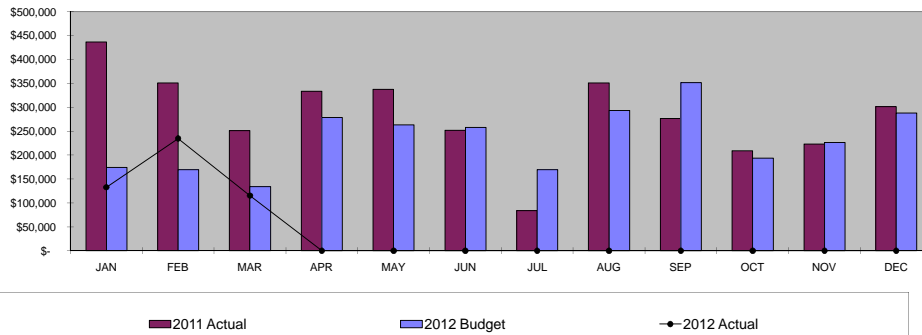


**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

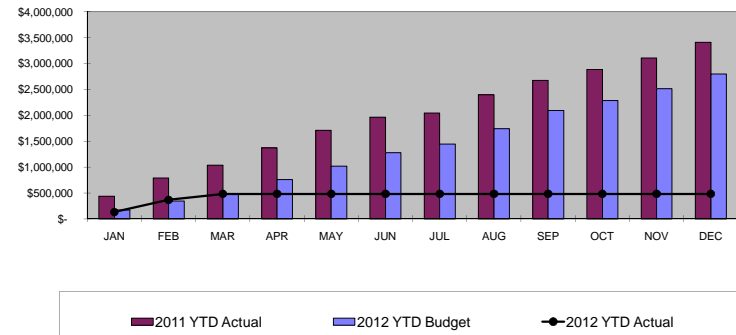
Sales Period	2007 Collections			2011 Collections			2012 Budget			2012 Monthly				2012 Year to Date			
	Tax Collected	Year To Date	Percent of Total	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2011	Actual	% of Budget	% Change from 2007	% Change from 2011
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 436,605	\$ 436,605	12.8%	\$ 174,140	\$ 174,140	6.2%	\$ 132,557	76.1%	-62.4%	-69.6%	\$ 132,557	76.1%	-62.4%	-69.6%
FEB	342,995	695,953	12.3%	350,866	787,471	23.1%	169,224	343,364	12.3%	234,630	138.7%	-31.6%	-33.1%	367,186	106.9%	-47.2%	-53.4%
MAR	271,817	967,770	17.1%	250,986	1,038,457	30.5%	134,107	477,470	17.1%	115,321	86.0%	-57.6%	-54.1%	482,507	101.1%	-50.1%	-53.5%
APR	564,624	1,532,394	27.0%	333,424	1,371,881	40.3%	278,570	756,040	27.0%	-	0.0%	n/a	n/a	482,507	63.8%	-68.5%	-64.8%
MAY	533,680	2,066,074	36.4%	337,577	1,709,458	50.2%	263,303	1,019,342	36.4%	-	0.0%	n/a	n/a	482,507	47.3%	-76.6%	-71.8%
JUN	522,999	2,589,073	45.6%	251,806	1,961,263	57.6%	258,033	1,277,375	45.6%	-	0.0%	n/a	n/a	482,507	37.8%	-81.4%	-75.4%
JUL	343,610	2,932,683	51.7%	83,522	2,044,785	60.0%	169,527	1,446,903	51.7%	-	0.0%	n/a	n/a	482,507	33.3%	-83.5%	-76.4%
AUG	594,349	3,527,032	62.1%	350,730	2,395,515	70.3%	293,235	1,740,138	62.1%	-	0.0%	n/a	n/a	482,507	27.7%	-86.3%	-79.9%
SEP	711,996	4,239,028	74.7%	276,774	2,672,289	78.5%	351,278	2,091,416	74.7%	-	0.0%	n/a	n/a	482,507	23.1%	-88.6%	-81.9%
OCT	392,752	4,631,779	81.6%	208,831	2,881,120	84.6%	193,773	2,285,189	81.6%	-	0.0%	n/a	n/a	482,507	21.1%	-89.6%	-83.3%
NOV	459,147	5,090,926	89.7%	223,271	3,104,391	91.2%	226,530	2,511,719	89.7%	-	0.0%	n/a	n/a	482,507	19.2%	-90.5%	-84.5%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 301,397	\$ 3,405,788	100.0%	\$ 288,281	\$ 2,800,000	100.0%	\$ -	0.0%	n/a	n/a	\$ 482,507	17.2%	-91.5%	-85.8%

2012 budget is based upon 2007 monthly distribution

2012 Monthly RETT Tax Collections



2012 Y.T.D. RETT Collections

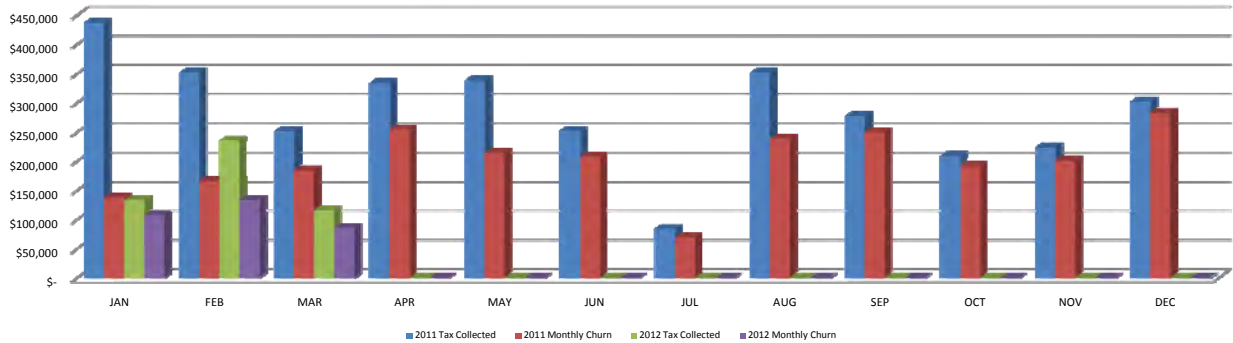


**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX CHURN
REPORTED IN THE PERIOD EARNED**

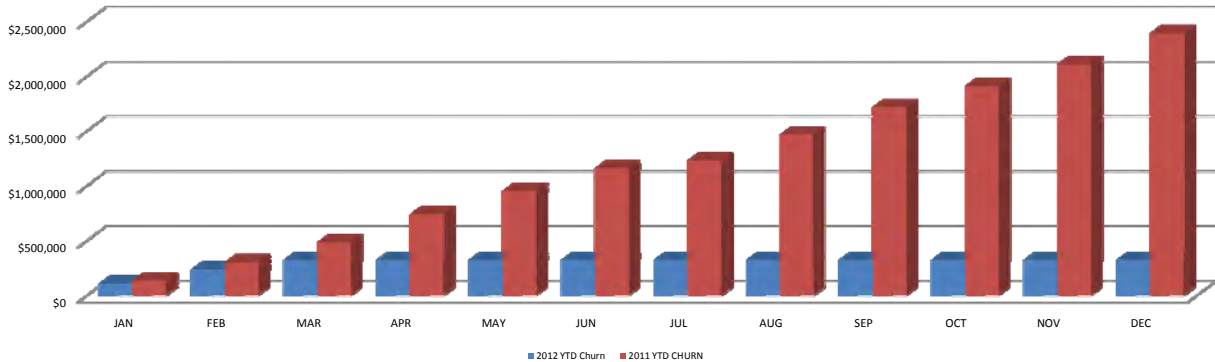
Sales Period	Tax Collected	Year To Date	2011 Collections				Monthly Churn	YTD Churn	% of YTD Total
			New Construction						
			Grand Lodge	1 Ski Hill	Water House	Other			
JAN	\$ 436,605	\$ 436,605	246,243	0	53,370	0	\$ 136,992	\$136,992	31.4%
FEB	\$ 350,866	\$ 787,471	147,234	26,482	11,550	0	\$ 165,599	\$302,592	38.4%
MAR	\$ 250,986	\$ 1,038,457	57,703	0	9,300	0	\$ 183,982	\$486,574	46.9%
APR	\$ 333,424	\$ 1,371,881	41,651	7,296	19,170	11,300	\$ 254,006	\$740,580	54.0%
MAY	\$ 337,577	\$ 1,709,458	87,830	36,403	0	0	\$ 213,344	\$953,925	55.8%
JUN	\$ 251,806	\$ 1,961,263	44,417	0	0	0	\$ 207,389	\$1,161,314	59.2%
JUL	\$ 83,522	\$ 2,044,785	14,277	0	0	0	\$ 69,244	\$1,230,558	60.2%
AUG	\$ 350,730	\$ 2,395,515	107,470	0	0	5,050	\$ 238,210	\$1,468,768	61.3%
SEP	\$ 276,774	\$ 2,672,289	27,114	0	0	0	\$ 249,660	\$1,718,428	64.3%
OCT	\$ 208,381	\$ 2,880,670	2,223	0	0	14,800	\$ 191,359	\$1,909,787	66.3%
NOV	\$ 223,271	\$ 3,103,941	5,083	17,212	0	0	\$ 200,975	\$2,110,762	68.0%
DEC	\$ 301,397	\$ 3,405,338	7,928	0	0	11,300	\$ 282,169	\$2,392,931	70.3%

Sales Period	Tax Collected	Year To Date	2012 Collections				Monthly Churn	YTD Budget	YTD Churn	% of YTD Total	% Change In Churn from Prior Year
			New Construction								
			Grand Lodge	1 Ski Hill	Water House	Other					
JAN	\$ 132,557	\$ 132,557	26,492	0	0	0	\$ 106,065	\$ 174,140	\$106,065	80.0%	-22.6%
FEB	\$ 234,630	\$ 367,186	69,718	0	0	32,250	\$ 132,661	\$ 343,364	\$238,726	65.0%	-21.1%
MAR	\$ 115,321	\$ 482,507	29,935	0	0	0	\$ 85,385	\$ 477,470	\$324,112	67.2%	-33.4%
APR	\$ -	\$ 482,507					\$ -	\$ 756,040	\$324,112	n/a	n/a
MAY	\$ -	\$ 482,507					\$ -	\$ 1,019,342	\$324,112	n/a	n/a
JUN	\$ -	\$ 482,507					\$ -	\$ 1,277,375	\$324,112	n/a	n/a
JUL	\$ -	\$ 482,507					\$ -	\$ 1,446,903	\$324,112	n/a	n/a
AUG	\$ -	\$ 482,507					\$ -	\$ 1,740,138	\$324,112	n/a	n/a
SEP	\$ -	\$ 482,507					\$ -	\$ 2,091,416	\$324,112	n/a	n/a
OCT	\$ -	\$ 482,507					\$ -	\$ 2,285,189	\$324,112	n/a	n/a
NOV	\$ -	\$ 482,507					\$ -	\$ 2,511,719	\$324,112	n/a	n/a
DEC	\$ -	\$ 482,507					\$ -	\$ 2,800,000	\$324,112	n/a	n/a

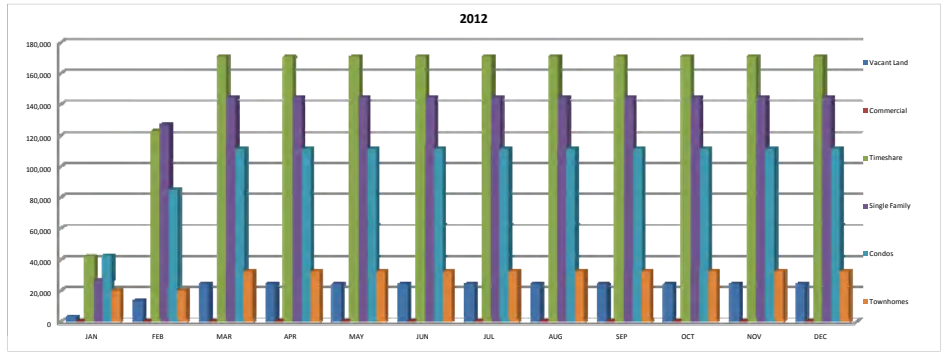
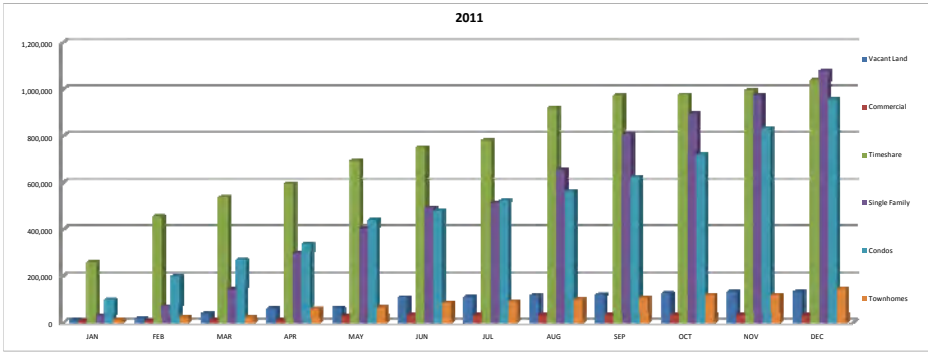
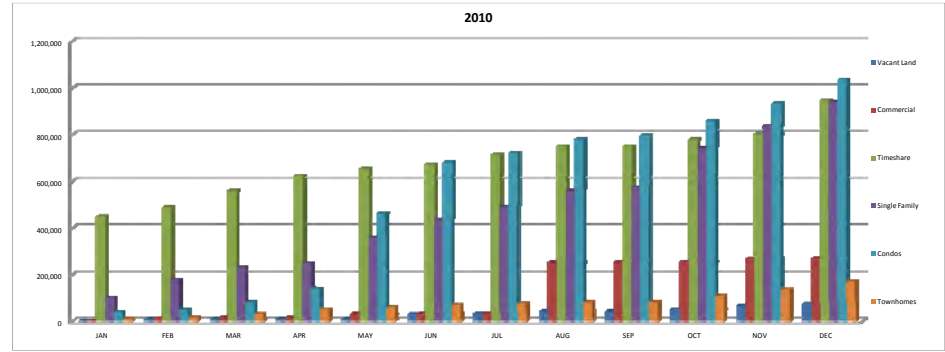
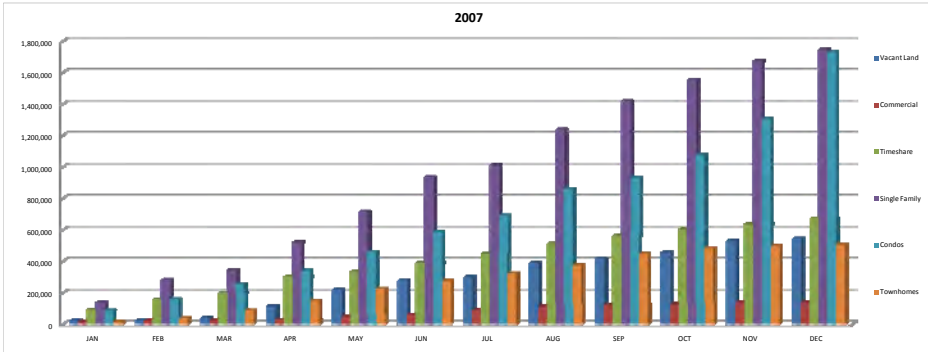
RETT Monthly Collections vs. Churn



YTD Churn Analysis

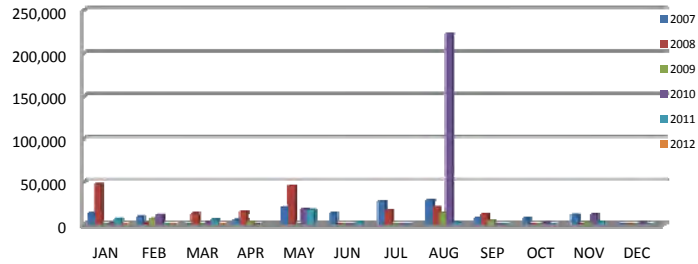


**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
YTD CATEGORIES BY MONTH**

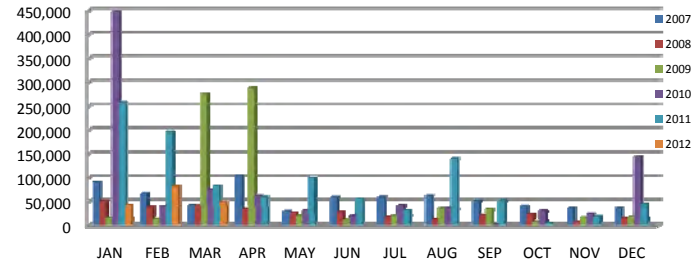


TOWN OF BRECKENRIDGE REAL ESTATE TRANSFER TAX COLLECTIONS MONTHLY BY CATEGORY

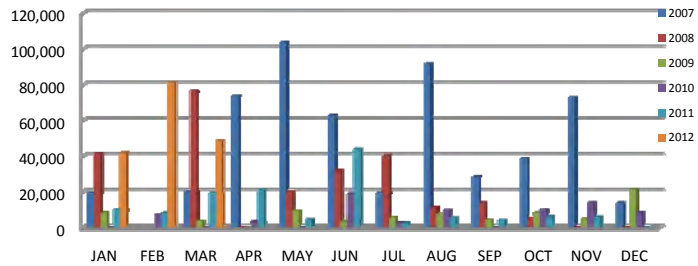
Commercial



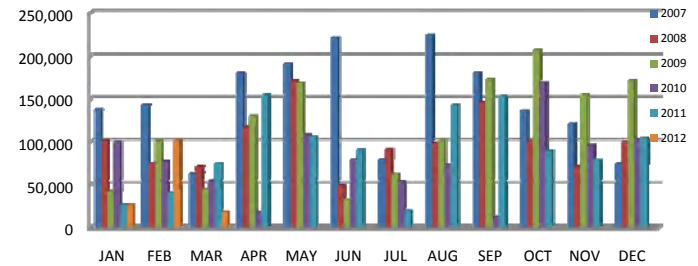
Timeshare



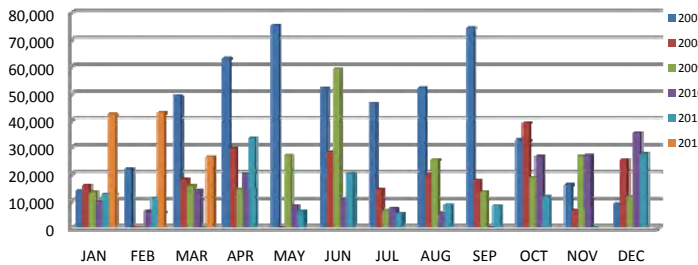
Vacant Land



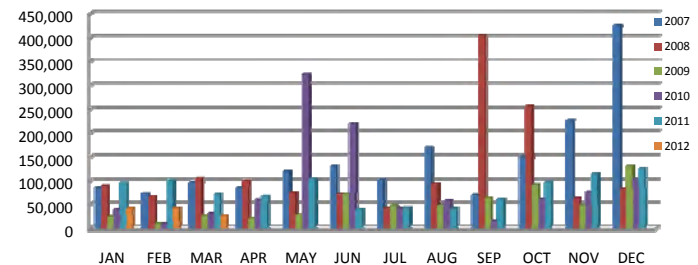
Single Family



Townhomes



Condos



2012 Council Appointments

Breckenridge Resort Chamber (BRC)

Breckenridge Heritage Alliance (BHA)

Breckenridge Marketing Advisory Committee (BMAC)

Breckenridge Open Space Advisory Commission (BOSAC)

Planning Commission

Housing & Child Care

Grants & Scholarships

Summit Combined Housing Authority (SCHA)

Water Task force

Sustainability Committee

Landfill Task Force

Mayor Pro Tem

Ski Area Discussion Committee



M E M O

Date: April 3, 2012 *(for 4.10.12 meeting)*
To: Mayor and Town Council Members
Cc: Town Manager, Assistant Town Manager
From: Riverwalk and Events Manager
RE: Feedback on Proposed Rodeo Event

Background:

Please see attached memo from the March 27, 2012 Town Council packet for background on the rodeo proposal. Since the March 27 meeting, Mr. Bays has submitted a Special Event Permit Application and a Special Camping Event Permit Application to the Town.

Public Feedback:

A letter outlining the rodeo proposal was emailed to the Silver Shekel, Highlands and Valley Brook HOA's as well as residents of Breck Terrace. The same letter was posted on doors at all residences and businesses on Airport Road (north of Valley Brook) and at Peak 7 east homes overlooking Block 11/Airport Road.

We have received 102 responses via email and phone as of 9pm on Wednesday, April 4. I will update Council with the latest results at the Town Council meeting on April 10. The responses are almost equally divided between supportive and in opposition to the proposal. The responses breakdown in the following way:

	In opposition	In support	Maybe/Neutral
Airport Road	6	8	1
Silver Shekel	20	20	5
Highlands	17	19	2
Peak 7 east	1	1	0
Other	2	0	0
	-----	-----	-----
Total	46	48	8

Feedback Summary:

Respondents in opposition most commonly brought up issues related to increased traffic, river/water contamination, smell, noise from the public address system, animal cruelty/welfare issues, dust, loss of property values (especially from Airport Road residents), light pollution, trash, loss of the use of the River Trail and

surrounding areas, disruption of the other activities such as fly fishing and the lack of ranching history to support/encourage this use. The following comments were typical and illustrate many of these points:

“Along with the incremental noise created by cars, crowds and animals, a particular concern is the use of a public address system every weekend evening all summer long for several hours... For those living very close, bright lights would also be a nuisance. Additionally, there is already a good amount of traffic on Highway 9 and we fear this situation will be magnified along with the additional dust that will get kicked up with that area repeatedly being disturbed. As nice as it is to bring new events to Breckenridge, we feel it would be very disruptive to have this particular type of event close to any residential area. Moreover, the whole arrangement sounds like it would turn that entire strip of Airport Road and Highway 9 into a terrible eyesore. We can't imagine this kind of "landscape" would make a favorable impression on people on their way into town.”

“The value of real estate on Airport Rd will decrease, lowering tax dollars even more. Consider the residential neighborhoods that surround other rodeo venues i.e. Western Stock Show, Eagle Fair Grounds. Steamboat Springs is a ranching community and Breckenridge is not. Our heritage is from mining.”

Respondents in support most commonly cited a desire to have new family oriented activities available to locals and to summer visitors, the potentially positive economic impact on the community, a love of rodeo in general and marketing opportunities presented by a rodeo event. The following comments were typical and illustrate many of these points:

“I think it would be a great event for Breckenridge and added revenue to both lodging, restaurants, and shopping for the town. I would probably attend more than once or twice and I am not a cowgirl or ranching person, but love the history of the event.”

“I think this could be a wonderful addition to Breckenridge. I used to love attending the rodeos at Snowmass and Steamboat. I think they have many positive impacts, including bringing more tourists to the area during the summer, and being an excellent family event.”

There were also # respondents who were neither strongly in opposition nor in support, but voiced concerns over insuring that negative impacts such as traffic and odor issues were mitigated or felt that there were too many dates and the event should be smaller. The following comment is typical of this category of responses:

“Overall, I do not have a problem with the rodeo. I think it may be a nice event and draw customers and tourists. My issue however, is the number of dates. If you were to request one day (or one weekend) per month in May-September I would immediately say "yes". But I think it's just too much.... If you want my approval (whatever that's worth), you will have to down size it significantly.”

Conclusion:

The Special Event Permit Application group requests feedback from Town Council about whether or not the proposed rodeo event should be allowed to occur at the Airport Road property during summer 2012. Also, we request direction regarding any potential sponsorship of this event as Mr. Bays would like the Town to become a sponsor of this event by providing the space for the rodeo free of charge or at a reduced cost.

If Town Council recommends that we go forward with this event, staff will work with the applicant to address and mitigate the concerns identified such as noise, dust, smell and traffic.



M E M O

Date: March 21, 2012 *(for 3.27.12 meeting)*
To: Mayor and Town Council Members
Cc: Town Manager, Assistant Town Manager
From: Riverwalk and Events Manager
RE: New Proposed Event- Breckenridge Stables PRCA Rodeo

Background and Concept:

In early March, Town staff were approached by Brad Bays, owner of Breckenridge Stables LLC and founder of Breckenridge Rodeo Education (a non-profit established to provide a rodeo experience in the Town of Breckenridge). Mr. Bays proposes holding an eleven week PRCA (Professional Rodeo Cowboys Association) organized and sanctioned event in the Airport Road parking lot. The proposed rodeo would run on Saturdays and Sundays from 6pm-8pm on the following dates: June 23, 24 and 30, July 1, 7, 8, 14, 15, 21, 22, 28 and 29, August 4, 5, 11, 12, 18, 19, 25 and 26 and September 1 and 2.

Events would include bareback riding, calf roping, saddle bronc, steer wrestling, team roping, barrel racing, bull riding, calf scramble, mutton busting and clown acts. Mr. Bays would hire PRCA (Professional Rodeo Cowboys Association) to put on all of the events, and Mr. Bays would provide all necessary infrastructure/services for this event including restrooms, security, tents, food/beverage (including alcohol) sales, lighting, rodeo arena, ambulance services, insurance, bleachers, veterinarians and trash services.

Proposed Target Audience and Anticipated Attendance:

The target demographic for spectators would be all ages, both visitors and locals- single and with families. Mr. Bays anticipates drawing 300-500 spectators per rodeo day. Proposed ticket prices would be: adults 15 and older- \$25, children 7-14 years old- \$15 and children 6 and under free. Competitors would be drawn from around the state and would sign up to compete on the PRCA website and would need to be members of PRCA.

The Breckenridge Police Department contacted the Steamboat Police Department for feedback regarding their rodeo event which is 20+ years old. The Steamboat event has a very similar format to this proposed Breckenridge rodeo (also PRCA run) and the event normally brings in a couple hundred people to 400 people. On special event days when

they have bull riding they get quite a bit more attendance. Breckenridge Stables LLC has indicated that they have extensive marketing experience which they would utilize to promote the rodeo.

Permit and Logistics:

Mr. Bays would be required to submit a Special Event Permit Application which would be reviewed by Town staff from Public Works, Police, Community Development, Events and Communications, Town Clerk and Recreation and Red, White and Blue Fire. Mr. Bays is requesting to lease the Airport Road parking lot. There would be a 300 foot x 450 foot fenced area where semi-permanent infrastructure such as tents, the arena, bleachers and livestock pens would remain throughout the summer. The rest of the lot would be used for parking during the event and would be open to public parking on non-event days as well.

The Steamboat Police Department reported getting some complaints about the noise, lighting and smell during the Steamboat rodeo. And they have had some issues in area bars with “rowdy cowboys”, but that has not been an every night occurrence. Overall, the Steamboat Police reported that the rodeo is well received by the community and visitors. In the next week, we are planning to ask for feedback concerning this proposed event from all Airport Road businesses and residents by going door to door with a letter. We feel most concerned about the impact on these businesses and residents, and feel it is vital that they have input during this permitting process.

In Steamboat, they allow trailers to park on the event grounds and trucks with sleepers to stay on site. Mr. Bays has indicated that sleeping onsite in your trailer or sleeper with your animals nearby is industry standard and expected, and Mr. Bays intends to also submit a Special Event Camping Permit Application.

Conclusion:

Mr. Bays has been considering proposing a rodeo in Breckenridge for several years in order to “preserve and promote the traditions of the West” here in Breckenridge. This event will be run by the non-profit Breckenridge Stables Rodeo Education, but will be supported by Breckenridge Stables LLC. Mr. Bays will spend between \$20,000 and \$25,000 per weekend to present this event with the hope that sponsorships, ticket, merchandise and food and beverage sales would cover as many of the expenses as possible. Mr. Bays would like the Town to become a major sponsor of this event by providing the space for the rodeo free of cost or at a reduced cost.

The Special Event Permit Application group would like to hear Town Council’s feedback concerning this event and would like to receive direction regarding any potential sponsorship of this event.

Memorandum

TO: Town Council

FROM: Tom Daugherty, Public Works Director

DATE: April 4, 2012

RE: MOU with County for PW Lease and Recycle Site

As part of the effort to bring the new Council up to date on current issues this memo will outline the Memorandum of Understanding we currently have with Summit County on the lease for the Public Works Yard and the recycle center.

The County owns property located on County Road 450 that currently has the recycle center, Road and Bridge Department storage, Ambulance storage and Sherriff's office storage. The County has identified this property as a good location for attainable housing. The Town and County have been looking for ways to free the property for the intended use.

The Town has determined that the recycle center could be relocated on a portion of the McCain property located just north of the Coyne Valley Road/ Airport Road intersection. The Road and Bridge Department could be moved into the Public Works Yard where we would also share use of the sand pile and fueling facilities. The Road and Bridge Department move will require some modifications to the Publics Works site. These modifications include relocating the Public Works Administration offices so that space can be used for equipment storage. The County will also need to build an additional building for all their storage needs.

The Town and County have entered into a MOU that outlines moving the County Road and Bridge Department and recycle center onto Town property. The Sherriff's storage and the ambulance storage will be relocated by the County separately from this MOU.

The Capital Improvement Plan (CIP) includes constructing the Public Works Administration building this summer as well as the County facilities. The County is funding their new facilities and providing a portion of the funding for the new PW Administration building. Staff is currently working on the PW Yard lease and expects to review that with the Council in the near future.

The recycle lease has been put on hold until the County Landfill/Recycle task force completes their duties sometime before the end of the year.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Memorandum**”) is dated November 30th, 2011 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and SUMMIT COUNTY, COLORADO, acting by and through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). The Town and the County are sometimes referred to individually as a “**Party**”, or together as the “**Parties.**”

ARTICLE I

Intent and Purpose

Section 1.1 Intent and Purpose of Memorandum. The Parties believe that it would be beneficial to the taxpayers of both the Town and County, and therefore in the public interest, for the Parties to cooperate with respect to the matters described in this Memorandum. Therefore, this Memorandum sets forth the Parties’ current understandings and intentions with respect to:

- (a) the relocation of the County’s “Recycling Center” from its current location at 143 County Road 450 in unincorporated Summit County (“**CR 450 Property**”) to a ±1.6 acre tract of Town-owned land on Coyne Valley Road in Breckenridge (“**Coyne Valley Road Property**”). The CR 450 Property is described on Exhibit “A” and the Coyne Valley Road Property is described on Exhibit “B”;
- (b) the relocation of the County’s Road & Bridge equipment and material storage facility from its current location at the CR 450 Property to the Town’s Public Works Facility located at 1095 Airport Road in Breckenridge along with future shared use of that facility, and
- (c) the redevelopment of the CR 450 Property into an attainable housing site.

The purpose of this Memorandum is to establish the framework for achieving the Parties’ mutual goals.

Section 1.2 Implementation of Memorandum. In order to implement this Memorandum the Parties intend to work diligently, cooperatively, and in good faith to develop and sign:

- (a) A long-term Lease for the relocation of the County’s Recycling Center to the Coyne Valley Road Property (see Section 2.1, below);
- (b) An agreement for the redevelopment of the CR 450 Property as mutually acceptable attainable housing project (see Section 2.2, below); and

MEMORANDUM OF UNDERSTANDING

(c) A long-term agreement for the shared use of the Town's Public Works Facility (see Article 3, below).

ARTICLE 2

Recycling Center

Section 2.1 Lease For New Recycling Center. The Parties intend to enter into a long-term Lease for the Coyne Valley Road Property. The Lease will allow the County to construct and operate a new Recycling Center on the site, and will free up a portion of the CR 450 Property for future use as an attainable housing site as described in Section 2.2. The Lease will be substantially in the form that is attached as Exhibit "C" to this Memorandum.

Section 2.2 Agreement For Redevelopment of CR 450 Property As Attainable Housing. The Parties intend to enter into an agreement for the redevelopment of the CR 450 Property as an attainable housing site upon mutually agreeable terms and conditions.

ARTICLE 3

Joint Use of Town's Public Works Facility

Section 3.1 Agreement For Shared Use of Town's Public Works Facility. The Town's current Public Works Facility is large enough to accommodate both the Town's public works operations and the County's "Upper Blue" public works operations. The Parties intend to enter into a long-term agreement for the County to use part of the Town's Public Works Facility as the County's Public Works Facility.

The key terms of such long-term agreement will be:

(a) The Town will abandon its current Public Works Administration Building (located at the Town's Public Works Facility), consisting of approximately 3,200 square feet, and will permit the current Public Works Administration Building to be converted and used by County for equipment storage and similar public works uses ("**County Public Works Building**").

(b) The intent of this agreement is to be perpetual, but in any event not less than 30 years.

(c) There will be no periodic rent paid to the Town by the County for the use of the County Public Works Building.

(d) The County will pay to plan, design, and remodel the County Public Works Building to meet its needs.

MEMORANDUM OF UNDERSTANDING

(e) The Town will have the discretionary right of review and approval of the County's proposed remodeling of the County Public Works Building. Any exterior remodeling of the County Public Works Building must be architecturally compatible with the current Town Public Works Facility, it being the Parties' intention that all of the buildings located (and to be located) at the Town's Public Works Facility during the term of the agreement will have the same general appearance. The Town's discretionary review is in addition to (and not in place of) the Town's governmental land use review and approval process (if applicable).

(f) The design and remodeling of the County Public Works Building will be done in compliance with the Town's building and technical codes, and may be inspected by the Town's Building Official to determine compliance with the applicable codes.

(g) In addition to the County Public Works Building, the County may construct one additional building at the Town's Public Works Facility ("**Additional Building**") on a site approximately 50 feet deep by 60 feet wide. If the County desires to construct the Additional Building, then:

(i) The site of the Additional Building must be acceptable to the Town (currently expected to be adjacent to the Public Works Building).

(ii) The County will pay to plan, design, and construct the Additional Building.

(iii) The Town will have the discretionary right of review and approval of the design of the Additional Building. The Additional Building must be architecturally compatible with both the Town Public Works Facility and the County Public Works Building as described in subsection (e), above. Such discretionary review is in addition to (and not in place of) the Town's governmental land use review and approval process.

(iv) If the County constructs the Additional Building, all provisions of this Article 3 (unless otherwise indicated) apply to both the Additional Building and the County Public Works Building.

(h) The Parties will jointly share the use of the "sand pile" that is located at the Town's Public Works Facility. It is currently anticipated that:

(i) each Party will purchase and pay for their own sand that will be stored in the sand pile;

(ii) the Parties will not share in the cost of purchasing sand; and

(iii) the Parties will be responsible for accounting for their respective usage of sand stored at the sand pile.

MEMORANDUM OF UNDERSTANDING

- (i) Each Party will be solely responsible for properly cleaning and maintaining its own facilities.
- (j) The Town will be responsible for properly cleaning and maintaining the common areas of the Town's Public Works Facility.
- (k) The County will reimburse the Town for any damage done to the Town's Public Works Facility as a result of County's negligence or intentionally wrongful act.
- (l) The Town will provide property (casualty) insurance on all of the buildings located (or to be located) at the Town's Public Works Facility, including all buildings owned by the Town and all buildings owned by the County. The County will reimburse the Town for the cost of insuring the County Public Works Building under the Town's property (casualty) insurance policy.
- (m) The County must provide its own property (casualty) insurance for its personal property, motor vehicles, and equipment to be stored in the County Public Works Building.
- (n) Both Parties will provide their own comprehensive general liability insurance with limits of liability not less than the limits of liability for local governments established by the Colorado Governmental Immunity Act.
- (o) The County will timely pay to the Town:
 - (i) the cost of all utilities used or consumed by it at the County Public Works Building. For any utility service that is not separately metered the Parties will agree on a formula whereby the County will pay its pro rata share of the cost of the unmetered utilities used or consumed by it at the County Public Works Building. The County, at its cost, may elect to install meters for any utility service used by it at the County Public Works Building;
 - (ii) its pro rata share of the total cost of maintenance, upkeep, repair, and replacement of the common areas of the Town Public Works Facility (exclusive of costs attributable only to the Town's Public Works Administration Building and other facilities used exclusively by the Town), including, but not limited to, a Facility Maintenance Fee that will establish a cash reserve to pay for needed maintenance, upkeep, repair and replacement of the common areas of the Town Public Work Facility.
- (p) To replace its current Public Works Administration Building (that will become the County's Public Works Facility pursuant to the Agreement) the Town will plan, design, and construct a new Public Works Administration Building at the Town's Public Works Facility. The Town will determine the location, size, and design of its new building.

MEMORANDUM OF UNDERSTANDING

(q) In recognition of the fact that the County will not be required to pay rent to occupy the County Public Works Building, the County will pay to the Town an amount mutually agreed upon by the Parties that is determined by considering any or all of the following factors:

(i) Calculating what it would have cost the County to plan, design, and construct the County Public Works Building had the County built the building in the year County first occupies the County Public Works Building; and

(ii) Considering such factors as age, condition of the existing building, and the value of the land beneath the building, and

(iii) Subtracting from such estimated construction costs the actual amount spent by County in demolishing and removing the interior walls and other Town's improvements in the County Public Works Building in connection with its remodel of the building. Such costs do not include the cost of new construction or improvements made by the County to the County Public Works Building, just those demolition and removal costs incurred by the County in removing the Town's existing improvements to the interior of the building so that the County can commence its actual remodeling of the County Public Works Building.

ARTICLE 4

General Provisions

Section 4.1 Termination. Either Party may terminate this Memorandum prior to any of the actions above being taken without the need for cause and without any liability upon not less than 10 days' written notice to the non-terminating Party given in accordance with Section 4.2. Thereafter, the terminating Party will be required to reimburse the other Party for out-of-pocket expenses incurred by such Party in connection with this Memorandum prior to the date of the notice of termination.

Section 4.2 Notices. All notices required or permitted under this Memorandum 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 the Town, to:

Timothy J. Gagen
Town Manager
Town of Breckenridge
P.O. Box 168

MEMORANDUM OF UNDERSTANDING

150 Ski Hill Road
Breckenridge, Colorado 80424

Telecopier number: (970)547-3108
Telephone number: (970)453-2941

If intended for County, to:

Board of County Commissioners
P.O. Box 68
Breckenridge, Colorado 80424
Attn: Gary Martinez, County Manager
Telephone number: (970)453-3401
Telecopier number: (970)453-3535

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

Jeff Huntley, Esq.
Summit County Attorney
P.O. Box 68
Breckenridge, Colorado 80424

Any notice delivered by mail in accordance with this Section will be effective on the third business day after being 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 effective upon receipt if concurrently with sending receipt is confirmed orally by telephone. Any notice delivered by hand or commercial carrier will be effective upon actual receipt. Either Party, by notice given as above, may change the address to which future notices may be sent.

Section 4.3 Amendment. This Memorandum may be amended only by a duly authorized written instrument executed by the Parties. Oral amendments to this Memorandum are not permitted.

Section 4.4 Applicable Law. This Memorandum is to be interpreted in all respects in accordance with the laws of the State of Colorado.

Section 4.5 Incorporation of Exhibits. The attached Exhibits "A", "B" and "C" are incorporated into this Memorandum by reference.

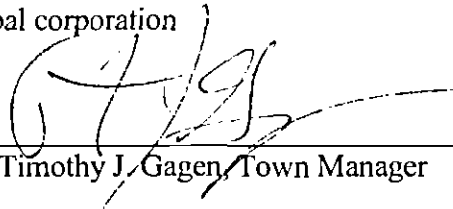
Section 4.6 Legal Effect of Memorandum. This Memorandum does not create a binding and legally enforceable agreement between the Parties. There are no legal or equitable remedies available to either Party resulting from a breach or alleged breach of the terms of this Memorandum. Instead, the purpose of this Memorandum is merely to establish a framework for

MEMORANDUM OF UNDERSTANDING

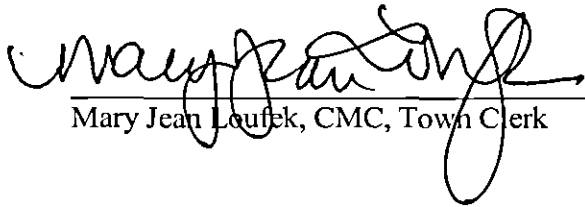
future binding agreements as described in this Memorandum. Neither this Memorandum, any statements made or documents prepared or submitted by the Parties in connection with the negotiations leading up to the execution of this Memorandum, nor any statements made or documents prepared or submitted by the Parties in connection with this Memorandum, are admissible in any litigation or other judicial or administrative proceeding.

Section 4.7 Annual Appropriation. If, notwithstanding the provisions of Section 4.6 of this Memorandum, it is finally determined that a Party has a financial obligation under this Memorandum, such obligation is subject to an annual appropriation being made by that Party's governing body in an amount sufficient to allow the Party to perform its. If sufficient funds are not appropriated for the payment of sums due hereunder by the governing body of the Party, this Memorandum will automatically terminate. Neither Party's obligations under this Memorandum constitutes 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.

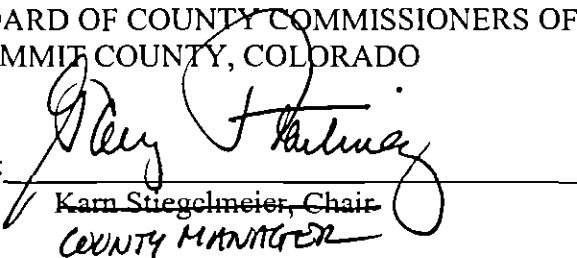
TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: 
Timothy J. Gagen, Town Manager

ATTEST:


Mary Jean Loufek, CMC, Town Clerk

BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO

By: 
Kam Stieglmeier, Chair
COUNTY MANAGER

ATTEST:



Kathleen Neel, Clerk and Recorder, and
ex-officio clerk to the Board of County Commissioners
800-101/MOU_2 (08-31-11)

Exhibit "A"

Legal Description of CR 450 Property

[TO BE ATTACHED]

EXHIBIT "A"

Exhibit "B"

Legal Description of Coyne Valley Road Property

[TO BE ATTACHED]

EXHIBIT "B"

Exhibit "C"

Proposed Lease For New Recycling Center

[TO BE ATTACHED]

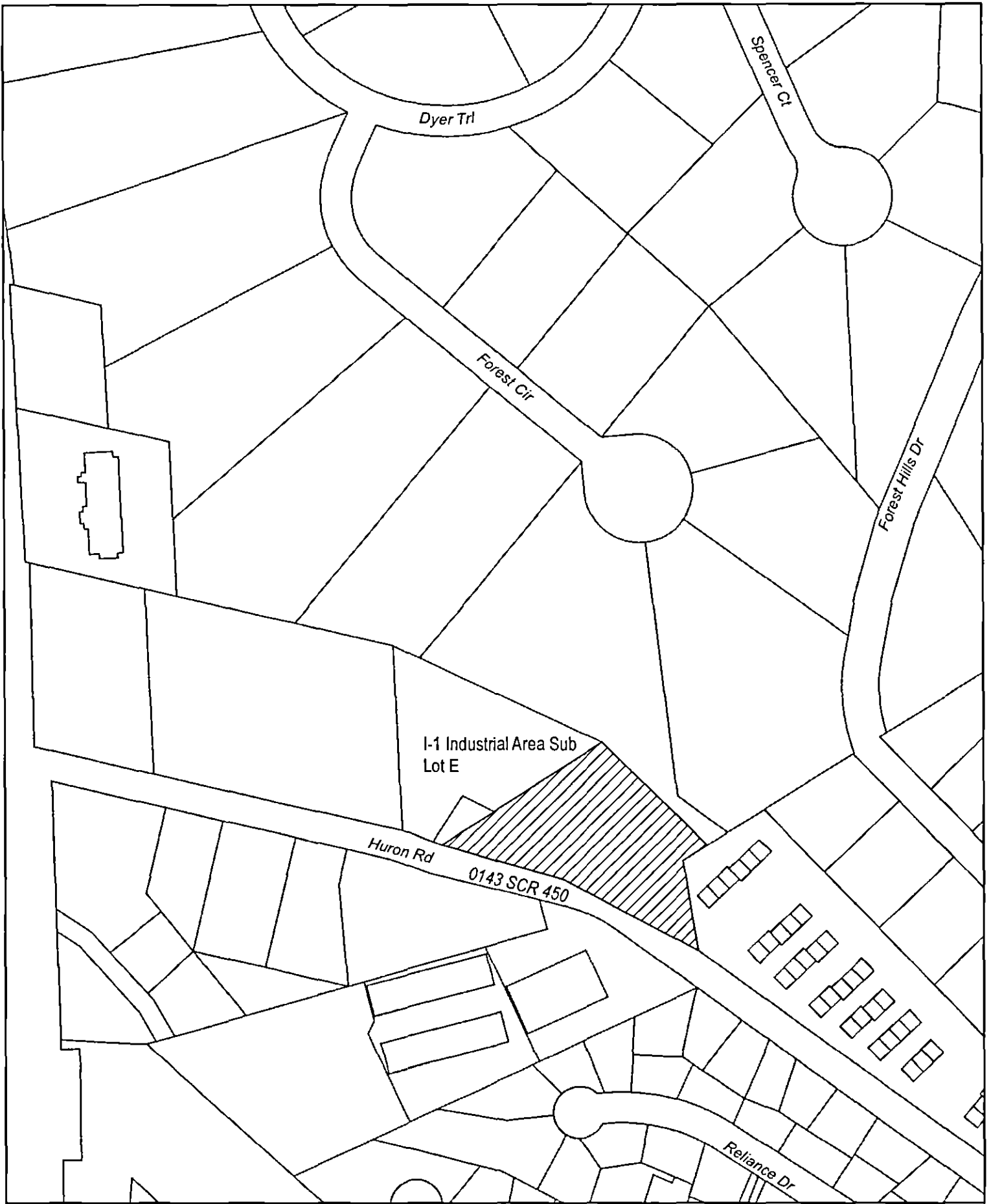
EXHIBIT "C"

Exhibit "A"

Legal Description of CR 450 Property

[TO BE ATTACHED]

EXHIBIT "A"



printed 11/15/2011

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

Exhibit A

1 inch = 200 feet

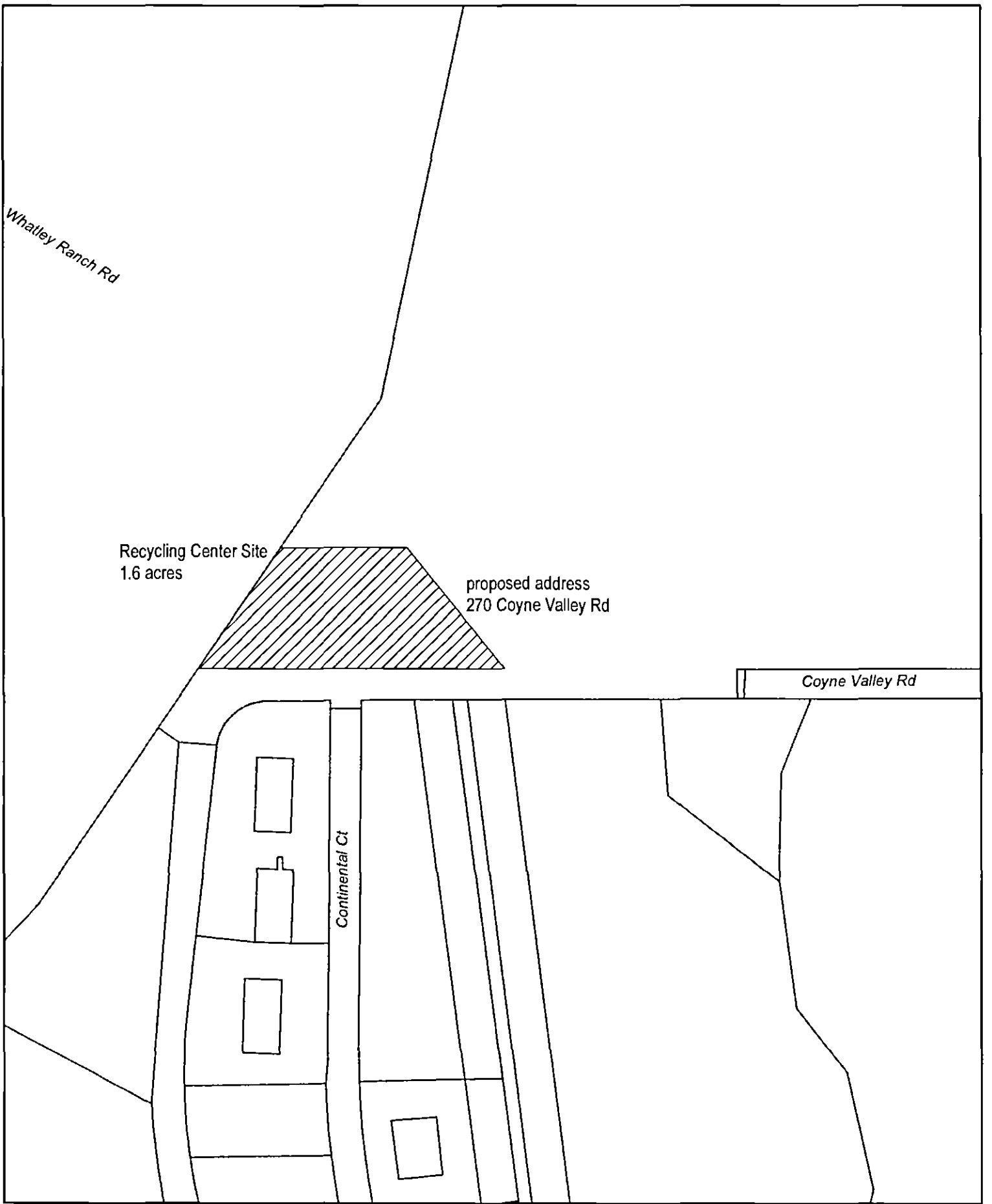


Exhibit "B"

Legal Description of Coyne Valley Road Property

[TO BE ATTACHED]

EXHIBIT "B"



printed 11/15/2011
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.

Exhibit B

1 inch = 200 feet



Exhibit "C"

Proposed Lease For New Recycling Center

[TO BE ATTACHED]

EXHIBIT "C"

Exhibit "C"

**LEASE
(New Recycling Center)**

THIS LEASE ("Lease") is dated _____, 2011 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO ("County").

ARTICLE 1 – BASIC LEASE PROVISIONS

1.1 Leased Premises. In consideration of County's keeping of the promises, covenants, and conditions required of it by this Lease, Town leases to County, and County leases from Town, for the term and upon the conditions of this Lease, the real property described on the attached Exhibit "A" ("Leased Premises").

1.2 Use Of Leased Premises. As of the date of this Lease the Leased Premises consist of vacant, unimproved land. County will use the Leased Premises only to construct and operate a new facility for the public collection of recyclable materials. County will not use the Leased Premises for any other purpose without Town's prior written consent.

1.3 Term. The term of this Lease ("Term") begins at 12:01 A.M., local time, on _____ 1, 201____ and ends, unless sooner terminated as hereafter provided, at 11:59 P.M., local time, on _____, 20__.

1.4 Surrender of Leased Premises.

(a) Upon the expiration or earlier termination of this Lease County will surrender the Leased Premises to Town in good condition, ordinary wear and tear excepted. Not later than the last day of the Term, County will remove its personal property and fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The cost of such removal will be borne by County, and County will repair all injury or damage done to the Leased Premises in connection with the installation or removal of County's personal property and trade fixtures. All of County's fixtures (including, but not limited to trade fixtures) that are so attached to the Leased Premises that they cannot be removed without material injury to the Leased Premises will, at Town's option, become the property of Town upon installation and remain with the Leased Premises upon surrender.

(b) Town may retain or dispose of any personal property, fixtures (including, but not limited to, trade fixtures), alterations or improvements left remaining by County at or upon the Leased Premises following the expiration or earlier termination of this Lease, and Town is not accountable to County for any damages for the loss or destruction thereof, or for any part of the proceeds of sale, if any, realized by Town. County waives all claims against Town for any damages suffered by County resulting from Town's retention or disposition of such personal property, fixtures (including, but not limited to, trade fixtures), alterations or improvements. County will reimburse the Town for Town's costs for storing, removing and disposing of any such personal property, fixtures (including trade fixtures) or alterations.

LEASE

ARTICLE 2 – RENT

2.1 **Rent.** There is no rent to be paid by the County for the lease of the Leased Premises. However, County will pay to Town any other amount required to be paid by County under this Lease.

2.2 **Interest On Past Due Amounts.** County will pay interest to Town on any sum due to Town under this Lease that is 30 days or more past due at the rate of 12% per annum from the date due until the date such payment is fully paid.

ARTICLE 3 – TOWN’S DISCLAIMERS AND EXCULPATORY PROVISIONS

3.1 **“As Is” Condition of Leased Premises.** County acknowledges that it had adequate and fair opportunity to inspect the Leased Premises prior to taking possession. The Leased Premises are leased by Town to County, and accepted by County, in “AS IS” condition. County’s act of taking possession of the Leased Premises is conclusive evidence that County accepted the Leased Premises in then “AS IS” condition, and that the Leased Premises were in satisfactory condition at the time of commencement of County’s possession.

3.2 **Delay In Delivery of Possession of Leased Premises.** Town is not liable to County for any delay in delivery of possession of the Leased Premises.

3.3 **Town’s Non-liability.** As a material part of the consideration to be received by Town under this Lease, County assumes all risk of damage to property or injury to persons in or upon the Leased Premises from any cause, other than Town’s gross negligence or intentional wrongful act, and County waives all claims in respect thereof against Town.

3.4 **Limitation of Remedies.** Town is not liable for any indirect, special, or consequential damages, including, but not limited to, loss of anticipated profits, revenue or savings, business interruption, or any similar claim arising from the Town’s breach of this Lease, even if Town has been advised of the possibility of such damages. This limitation applies notwithstanding the failure of an essential purpose of any limited remedy.

ARTICLE 4 – COUNTY’S AFFIRMATIVE OBLIGATIONS

4.1 **County Liable For Costs to Prepare Leased Premises For Use By County.** County is responsible for all work required to be done, and costs incurred in connection with, the preparation of the Leased Premises for County’s use.

4.2 **Utilities.** County will initiate, contract for, and obtain in its name, all utility services required on the Leased Premises, including, but not limited to, water, gas, electricity and telephone, and County will pay all charges for such services as they become due. Town is not liable for any personal injury or property damage resulting from the negligent operation or faulty installation of utility services provided for use on the Leased Premises, nor is Town liable for any injury or damage suffered by County as a result of the failure to make necessary repairs to

the utility facilities. County is liable for any injury or damages to the equipment or service lines of the utility suppliers that are located on the Leased Premises resulting from the negligent or deliberate acts of County, or its members, agents or visitors. In particular, County is liable for any loss or damage due to freezing, stoppage, or blockage of water pipes or plumbing fixtures on the Leased Premises.

4.3 **Taxes.** Because both Town and Country are tax-exempt entities under Colorado law, the parties anticipate that the Leased Premises will be tax-exempt throughout the Term. However, if any taxes are lawfully assessed against the Leased Premises as a result of County's use of the Leased Premises County will pay such taxes before they become delinquent.

4.4 **Maintenance And Snow Plowing.**

(a) County will, at its sole expense, keep and maintain the Leased Premises in as good and sanitary a condition and state of repair as existed at the commencement of the Term.

(b) County will, at its sole expense, provide all required maintenance and snow plowing necessary for the safe and lawful operation of the New Facility.

4.5 **Signs.** County will not post, place, affix, erect, or display any sign within or outside of the Leased Premises without Town's prior written approval, which approval may be granted, withheld, or conditionally approved in Town's sole and absolute discretion. In considering County's request to place a sign within or outside of the Leased Premises, Town acts in its capacity as landlord of the Leased Premises, and not in its governmental capacity. Town may remove any sign placed within or outside of the Leased Premises in violation of the portions of this subsection. In addition to obtaining Town's discretionary permission as described above, County must also obtain any required sign permit from Town acting in its governmental capacity. County will maintain all signs located within or outside of the Leased Premises in good, clean, and attractive condition. County will remove all signs placed by it within or outside of the Leased Premises at the expiration or earlier termination of this Lease, and repair any damage or injury caused thereby. If not so removed by County, the Town may remove such sign(s) at County's expense.

4.6 **Inspection And Entry.** Town and Town's authorized representatives may enter the Leased Premises at all times during reasonable hours to inspect the Leased Premises. County further agrees that the Town may go upon the Leased Premises at all times and:

(i) make any necessary repairs to the Leased Premises and perform any work therein that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or that the Town may deem necessary to prevent waste or deterioration of the Leased Premises;

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

(iii) otherwise protect any and all rights of Town,

all without any liability to County for damages.

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

4.7 Compliance With Laws. County, at its sole cost and expense, will comply with all applicable laws, ordinances, orders, and regulations of all governmental authorities with respect to the use of the Leased Premises, as amended from time to time throughout the Term. A judgment of any court or the admission by the County in any action or proceeding against it, whether Town is a party thereto or not, that it has violated any law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the fact as between Town and County.

ARTICLE 5 – COUNTY'S NEGATIVE OBLIGATIONS

5.1 Alterations. County will not make any change, improvement, alteration or addition to the Leased Premises without the prior written consent of Town given in accordance with this Lease. County will not make any change, improvement, alteration or addition to the Leased Premises without first having obtained a development permit from Town, acting in Town's governmental capacity.

5.2 Assignment And Subletting. County will not assign, sublet, license, pledge, encumber, or allow any other person or entity to occupy or use any or all of the Leased Premises without first obtaining Town's prior written consent, which consent may be granted, withheld, or conditionally approved in Town's sole, absolute, and subjective discretion. Any assignment, sublease, license, pledge, or encumbrance without Town's prior written consent is voidable by Town and, at Town's election, will constitute a default under this Lease. No consent by Town to any of the above acts will constitute a further waiver of the provisions of this Section. If Town consents to an assignment, sublease, or license County may be required, as a condition of granting consent, to pay Town's reasonable costs incurred in considering the proposed assignment, sublease, or license including, but not limited to, legal fees and credit checks.

5.3 Waste or Nuisance. County will not commit or permit to be committed any waste upon the Leased Premises. County will not commit or permit to be committed upon the Leased Premises any public or private nuisance, or any other act or occurrence prohibited by law.

ARTICLE 6 – NEW FACILITY

6.1 **County to Construct New Facility.** County will construct the New Facility. The New Facility will be open for use by the general public not later than _____, 2012.

6.2 **Cost of Constructing New Facility.** County will pay all costs of constructing the New Facility.

6.3 **Town's Governmental Review.** County will comply with the requirements of Section 9-4-5 of the **Breckenridge Town Code** by submitting information to the Town of Breckenridge Planning Commission with respect to the location and character of the propose New Facility. The procedures described in Section 9-4-5 of the **Breckenridge Town Code** will govern the Planning Commission's review of the information submitted by the County.

6.4 **Town's Discretionary Approval.** In addition to complying with the requirements of Section 9-4-5 of the **Breckenridge Town Code**), the planning and design of the New Facility requires the discretionary written approval of the Town Council of the Town of Breckenridge ("**Town Council**"). County 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 property. County understands, acknowledges, and agrees that the Town Council's discretionary approval required by this Section 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 County under this Section, such decision may not be revoked or materially changed without County's consent. Town will promptly review County's proposed plans and design for the New Facility under this Section.

6.5 **Subsequent Changes to New Facility.** During the Term Sections 6.3 and 6.4 apply to any proposed addition to or expansion of the New Facility after the Town's review initial approval of the New Facility, but only with respect to changes to any of the following elements of the New Facility: site plan; building footprint; parking; ingress and egress; building shapes and elevations; and exterior colors and materials.

6.6 **Building Codes.** The New Facility will be constructed in compliance with the Town's building and other technical codes.

6.7 **Green Design.** County will, to the extent it deems feasible in its sole discretion, construct the New Facility to meet the Leadership in Energy and Environmental Design ("**LEED**") Green Building Rating System standards. County will not be required to obtain LEED certification.

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ARTICLE 7 – INSURANCE

7.1 **County's Liability Insurance.** Throughout the Term County will, at its expense, continuously maintain comprehensive general liability insurance covering County's operations on the Leased Premises with limits of liability not less than the limits of liability for local governments established from time to time by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. ("Act"), which limits are, as of the effective date of this Lease, One Hundred Fifty Thousand Dollars (\$150,000) for injuries or damages sustained to one person in any single occurrence and Six Hundred Thousand Dollars (\$600,000) for injuries or damages sustained to two or more persons in any single occurrence. County's liability insurance policy will be endorsed to include the Town as an additional insured.

7.2 **Worker's Compensation Insurance.** Throughout the Term County will continuously maintain worker's compensation insurance as required by Colorado law covering all employees engaged in the performance of work at the Leased Premises.

7.3 **Additional Insurance Provisions.** Every insurance policy required by this Article 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 County. County is solely responsible for any deductible losses under its required insurance policies.

7.4 **Evidence of Insurance.** Prior to the commencement of this Lease, and on each subsequent renewal or replacement of the required insurance policies during the Term, County will give to Town a certificate of insurance evidencing compliance with the requirements of this Article. All required insurance policies will be renewed or replaced and maintained by the County throughout the Term to assure continuous coverage. If County fails to give the required insurance certificate within 10 days after notice or demand for it, such action will constitute a default under this Lease, and the Town may then proceed as provided in Article 10 of this Lease.

ARTICLE 8 – INDEMNIFICATION

8.1 **Indemnification By County.** To the extent permitted by law, and subject to any applicable limits of the Act, County will indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool from 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, arising out of or in any manner connected with this Lease or County's use or possession of the Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or demand arises through the gross negligence or intentional wrongful act of the Town, its officers, employees, or agents, or Town's breach of this Lease. If indemnification is required under this Section, County 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.

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8.2 **Survival.** The obligations of this Article 8 will survive the expiration or termination of this Lease.

ARTICLE 9 – EMINENT DOMAIN

9.1 **Eminent Domain.**

(a) **Definitions.** The terms “**eminent domain**,” “**condemnation**”, and “**taken**” and related terms as used in this Section include any taking for public or quasi-public use and private purchases in place of condemnation by any authority authorized by applicable law to exercise the power of eminent domain.

(b) **Entire Taking.** If the entire Leased Premises are taken by eminent domain, this Lease will automatically end on the earlier of:

- (i) the date title vests; or
- (ii) the date County is dispossessed by the condemning authority.

(c) **Partial Taking.** If the taking of a part of the Leased Premises materially interferes with County’s ability to continue its business operations in substantially the same manner then County may terminate this Lease on the earlier of:

- (i) the date when title vests;
- (ii) the date County is dispossessed by the condemning authority; or
- (iii) 60 days following notice to County of the date when vesting or dispossession is to occur.

If the taking of a part of the Leased Premises does not materially interfere with County’s ability to continue its business operations in substantially the same manner, then this Lease will terminate only as to part of the Leased Premises taken.

(d) **Awards and Damages.** Any compensation or damages paid by a condemning authority will be divided between the Town and County as follows:

(i) County is entitled to that portion of the compensation or damages that represents the amount of County’s moving expenses, business dislocation damages, County’s personal property and fixtures, and the unamortized costs of leasehold improvements paid for by County; and

- (ii) the balance of such compensation or damages belongs to the Town.

ARTICLE 10 – DEFAULT

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

(a) The vacating or abandonment of the Leased Premises by County, or the permanent closure to the public of the New Facility.

(b) The failure by County to make any payment required to be made by it under this Lease, as and when due, when such failure will continue for a period of 10 days after service of written notice thereof by Town to County.

(c) The failure by County to observe or perform any of the other covenants, conditions, or provisions of this Lease to be observed or performed by the County, or to obey rules promulgated by Town, within 10 days after service of written notice thereof by the Town to the County. In the event of a non-monetary default that is not capable of being corrected within 10 days, County will not be default if it commences correcting the default within 10 days of service of a demand for compliance notice and thereafter corrects the default with due diligence.

10.2 **Town's Remedies Upon Default.** If the County is in default under this Lease, Town has all of the remedies provided for in such circumstances by Colorado law.

10.3 **Default By Town.** Town will be in default under this Lease if Town fails to comply with any of the terms, provisions, or covenants of this Lease within 10 days following service of written notice thereof by County. In the event of a non-monetary default that is not capable of being corrected within 10 days, Town will not be default if Town commences correcting the default within 10 days of receipt of notification thereof and thereafter corrects the default with due diligence.

10.4 **County's Remedies Upon Default.** If the Town is in default under this Lease, County has all of the remedies provided for in such circumstances by Colorado law.

ARTICLE 11 – NONDISTURBANCE

11.1 **Quiet Enjoyment.** So long as there is no default in any of the other covenants, conditions, or provisions of this Lease to be performed, observed, or kept by County, Town covenants that County will peaceably and quietly hold and enjoy the Leased Premises for the entire Term.

ARTICLE 12 – TOWN'S RULES

12.1 **Rules.** County will faithfully observe and comply with any rules and regulations promulgated by Town with respect to the Leased Premises. The Town's rules and regulations must be reasonable, and may not unilaterally change or significantly alter the material terms and conditions of this Lease. The rules and regulations, and any amendments thereto, will be binding upon the County upon delivery to County.

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ARTICLE 13 – HAZARDOUS MATERIALS

13.1 **Hazardous Materials – Defined.** As used in this Article 13, the term “**Hazardous Materials**” means any chemical, material, substance or waste:

- (i) exposure to which is prohibited, limited, or regulated by any federal, state, county, regional or local authority, or other governmental authority of any nature; or
- (ii) that, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Leased Premises including, without limitation, any petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as “hazardous substances”, “hazardous materials”, “hazardous wastes” or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations, and precautions.

13.2 **Hazardous Materials – Prohibited.** County will full comply with all statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any federal, state, local, or other governmental agency with respect to the use, generation, storage, or disposal of Hazardous Materials. County will not cause, or allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the Leased Premises without the prior written consent of Town, which consent may be revoked at any time. County’s indemnification of Town pursuant to this Lease extends to all liability, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by County, or any person claiming under County, including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials by County or any person claiming under County; provided, however, the written consent by Town to the use, generation, storage, or disposal of Hazardous Materials will excuse County from County’s obligation of indemnification. In the event County is in breach of the covenants herein, after notice to County and the expiration of the earlier of:

- (i) the cure period provided in Section 10.1(c);
- (ii) the cure period permitted under applicable law, regulation, or order,

then Town may, in its sole discretion, declare a default under this Lease and/or cause the Leased Premises to be freed from the Hazardous Material and the cost thereof will be deemed additional rent hereunder and will immediately be due and payable from County. The obligations of County under this Section will survive the expiration or termination of this Lease.

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ARTICLE 14 – MISCELLANEOUS

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

14.2 **Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of Colorado will govern the interpretation, validity, performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this Lease must be commenced in Summit County, Colorado. Both parties waive the right to a jury trial in action to enforce, interpret, or construe this Agreement.

14.3 **Notices.** All notices required or permitted under this Lease 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: Timothy J. Gagen, Town Manager
Telecopier number: (970)547-3104
Telephone number: (970)453-2251

with a copy in each case (that 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 County to:

Board of County Commissioners
P.O. Box 68
Breckenridge, Colorado 80424
Attn: Gary Martinez, County Manager
Telephone number: (970)453-3401
Telecopier number: (970)453-3535

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

Jeff Huntley, Esq.
Summit County Attorney
P.O. Box 68
Breckenridge, Colorado 80424
Telephone number: (970)453-3407
Telecopier number: (970)454-3535

Any notice delivered by mail in accordance with this Section will be effective 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 effective upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone by the sending party. Any notice delivered by hand or commercial carrier will be effective upon actual receipt. Either party, by notice given as provided above, may change the address to which future notices may be sent. The provisions of this Section will not apply to any notice or demand that is required to be served in a particular manner by applicable law; and any such notice or demand will be served as required by law notwithstanding the provisions of this Section. E-mail is not a valid way to give notice under this Lease.

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

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

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

14.7 Amendment. This Lease may not be modified except by a written Lease signed by both the Town and County. Oral modifications of this Lease are not permitted.

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

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

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14.10 **Severability.** If any provision of this Lease is held to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Lease and the application hereof will not in any way be affected or impaired thereby.

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

14.12 **Advances By Town For County.** If County fails to do anything required to be done by it under the terms of this Lease (other than a failure to make the payments to Town herein required) the Town may, at its sole option, but without any obligation to do so, do or perform such act or thing on behalf of County, 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 must give notice to County as provided in Section 14.3, and afford the County not less than five days from the giving of such notice within which to do or perform the act required by County. Upon notification to County of the costs incurred by the Town County will promptly pay to Town the full amount of costs and/or expenses incurred by Town pursuant to this Section, together with interest thereon at the rate of 12% per annum.

14.13 **Governmental Immunity.** Both the Town and the County are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Act, as from time to time amended, or any other limitation, right, immunity or protection otherwise available to Town or the County, or their respective elected officials, officers, or employees.

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

14.15 **Town's Consent.** Except as otherwise expressly provided to the contrary in this Lease, wherever in this Lease it is provided that some act requires the Town's prior consent, such consent will not be unreasonably withheld by Town.

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

14.17 **Lease Not To Be Recorded.** This Lease **MAY NOT BE RECORDED** with the Clerk and Recorder of Summit County, Colorado.

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

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14.19 Non-Discrimination; Compliance With Applicable Laws. County:

(a) will not discriminate against any employee or applicant for employment to work at the Leased Premises because of race, color, creed, sex, sexual orientation, religion, national origin, or disability;

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

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

(d) will comply with all applicable federal, state, and local laws, rules and regulations. Without limiting the generality of the foregoing, County will comply with the applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory agency. The indemnification provisions of this Lease apply to County's failure to comply with all applicable laws or regulations.

14.20 No Partnership. The Town is not a partner, associate, or joint venturer of the County in the conduct of County's business at the Leased Premises. County is an independent contractor without the right or authority to impose tort or contractual liability upon the Town.

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

14.22 Annual Appropriation.

(a) Town's financial obligations under this Lease are subject to an annual appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow Town to perform its obligations under this Lease. If sufficient funds are not appropriated for such purpose, this Lease may be terminated by either party without penalty. Town's financial obligations under this Lease do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

(b) County's financial obligations under this Lease are subject to an annual appropriation being made by the Board of County Commissioners of Summit County, Colorado in an amount sufficient to allow County to perform its obligations under this Lease. If sufficient funds are not appropriated for such purpose, this Lease may be terminated by either party without penalty. County's financial obligations hereunder do not constitute a general obligation

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

14.23 **Incorporation of Exhibit.** The attached Exhibit "A" is incorporated herein by reference.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Timothy J. Gagen, Town Manager

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: _____
, Chair

ATTEST:

Kathleen Neel, Clerk & Recorder, and ex-officio
clerk to the Board of County Commissioners

XXX Lease (08-22-11)

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Exhibit "A"

LEGAL DESCRIPTION OF LEASED PREMISES

[TO BE INSERTED]

Exhibit "A"



MEMORANDUM

To: Mayor & Town Council
From: Tim Gagen, Town Manager
Date: April 2, 2012
Subject: *Breckenridge Nordic Center (BNC) Agreement*

As part of our process to get new council members up to speed on Town issues and as a reminder to existing council members, staff is highlighting significant agreements that we have entered into over the last several years. This memo covers the BNC Agreement.

The BNC agreement is between the owners of BNC (Dayton family) and the Town and provides for the removal of the current Nordic Center building, the building of a new Nordic Center and the contractual relationship between the Town and BNC for the next 30 years. By way of background, some 12 + years ago, the Town struck a deal to purchase Cucumber Gulch Reserve from the private land owner. This purchase included agreements to permit development of a down sized subdivision, a new access road to the subdivision and dedication of another lot to the Town when the Nordic Center future had been determined. With the purchase, the Town became owner of most of the land that BNC used and where some of their building set. The BNC then entered into renewable leases for use of the BNC. A couple of years later, the Town in negotiations with the Daytons purchased the remainder of the property where the BNC building set. In the original deal with the private land owner, it was promised that the BNC building would go away so the access road could be built.

That brings us to today, where the BNC has come up with plans to construct a new Nordic Center on Town land to replace the old building and have entered into the attached agreement. The highlights of the agreement are:

1. BNC will design and construct a new Nordic Center with Town approval.
2. Town agrees to provide BNC with loan for construction of the new BNC with a 30 year term at 4% interest and other conditions.
3. Town will design and build the site improvements, i.e. parking lot, water/sewer connections, landscaping, etc. at its cost which will be deducted from the final building cost of the Center unless BNC opts to do these improvements themselves.
4. The agreement provides that other than loan payments, the BNC will not pay other rent or lease payments for use of the BNC, and after 30 years the ownership of the new building reverts to the Town.
5. The agreement provides for how the new facilities can be used and how the Town might be able to use the facilities when they are not in use by BNC.

6. The agreement provides for buyout provisions for the new facility by the Town if in the future either the Town decides to cease nordic activity in Cucumber Gulch or the Daytons decide to discontinue operations.
7. The agreement has a set formula for what the Town would have to pay to buy out the new facility.
8. The agreements also address how the Town and BNC will operate after the 30 year loan period.

The BNC is currently going through the Planning Commission's approval process and it is anticipated that their plans will be before the Council shortly. Once Planning and Council approval is completed, the next steps will be loan documents for the financing and Town design and bidding of the site improvements.

Final
Agreement
Nordic Center

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FOR ADOPTION – MAY 24

A RESOLUTION

SERIES 2011

A RESOLUTION APPROVING AN AGREEMENT WITH BRECKENRIDGE NORDIC CENTER, L.L.C., A COLORADO LIMITED LIABILITY COMPANY, CONCERNING THE NEW BRECKENRIDGE NORDIC CENTER FACILITY

WHEREAS, the Town of Breckenridge desires to enter into the "Agreement Concerning New Breckenridge Nordic Center Facility" with Breckenridge Nordic Center, L.L.C., a Colorado limited liability company, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"); and

WHEREAS, the Town Council has reviewed the proposed Agreement, and finds and determines that it would be in the best interests of the Town and its residents for the Town to enter into the proposed Agreement; and

WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a Resolution may be used to approve a contract.

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

Section 1. The proposed "Agreement Concerning New Breckenridge Nordic Center Facility" with Breckenridge Nordic Center, L.L.C., a Colorado limited liability company (Exhibit "A" hereto) is approved; and the Town Manager is authorized, empowered, and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 2. The Town Manger is further authorized, empowered, and directed to take all necessary and appropriate action to fully implement the agreement approved in Section 1 of this resolution. In connection therewith, the Town Manager shall have the full power and authority to do and perform all matters and things necessary to the full implementation of the approved Agreement. The Town Council ratifies and confirms, in advance, all action taken by the Town Manager to implement the approved agreement.

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

Section 4. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF _____, 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 Deadliue	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

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

Depiction of Breckenridge Nordic Center Trails

[TO BE PREPARED AND INSERTED]



MEMORANDUM

To: Mayor and Town Council
From: Tim Gagen, Town Manager
Date: March 29, 2012
Subject: *CMC MOU*

As part of our process to get new council members up to speed on Town issues and as a reminder to current council members, staff is highlighting significant agreements that we entered into over the last several years. This memo covers the CMC MOU.

The CMC MOU struck the deal which allowed the Town to buy the old CMC Building on Harris Street in exchange for giving CMC 20 acres to build their new campus in Breckenridge. Highlights of the MOU include:

1. Town to buy old CMC for \$2.25 million.
2. Town to give CMC 20 acres on Block 11 for the new CMC campus if Frisco fell through, which it did.
3. Town to provide space either in the Harris Street building or in other space like the Arts District for CMC to use for ceramics, photography, art and dance for 10 years.

All the terms of the MOU have been met and now the Town has lease arrangements with CMC, the Speakeasy Theater and just recently the Peak's School to temporarily occupy space in the Harris Street building. The council over the last year has had ongoing discussion on the future permanent use of the building.

1 MEMORANDUM OF UNDERSTANDING

2
3 This Memorandum of Understanding ("MOU") is made and entered into at Breckenridge,
4 Colorado this 31st day of November, 2005, by and among the TOWN OF
5 BRECKENRIDGE, a Colorado municipal corporation ("Town") and COLORADO MOUNTAIN
6 JUNIOR COLLEGE DISTRICT ("CMC").
7

8 1. Recitals. The parties agree that the following statements are true, and are a material
9 part of this MOU:
10

11 A. CMC owns certain real property in Breckenridge, Colorado which is currently used as
12 its Summit Campus—Breckenridge Center.
13

14 B. CMC hopes to construct and operate a new consolidated Summit County, Colorado
15 campus in Frisco, Colorado.
16

17 C. If CMC is successful in acquiring land for its new consolidated Summit County
18 campus in Frisco it will no longer require its Breckenridge property.
19

20 D. If CMC desires to dispose of its Breckenridge property, Town has substantial interest
21 in acquiring such property for use as a new Town Hall.
22

23 E. The parties desire to set forth a preliminary, non-binding outline of the terms of a
24 possible sale of CMC's Breckenridge property to the Town, all as more fully set forth hereafter.
25

26 2. Legal Effect. **THIS MOU IS NOT INTENDED TO CREATE, NOR SHALL**
27 **THIS MOU EVER BE CONSTRUED OR INTERPRETED AS CREATING, A BINDING**
28 **AND LEGALLY ENFORCEABLE CONTRACT BETWEEN THE PARTIES. THERE**
29 **SHALL BE NO LEGAL OR EQUITABLE REMEDIES AVAILABLE TO EITHER**
30 **PARTY IN THE EVENT EITHER PARTY SHALL FAIL TO FULLY COMPLY WITH**
31 **THE PROVISIONS OF THIS MOU. THE SOLE REMEDY FOR THE FAILURE OF A**
32 **PARTY TO FULLY COMPLY WITH THE PROVISIONS OF THIS MOU SHALL BE**
33 **TERMINATION OF THIS MOU AS PROVIDED IN PARAGRAPH 6.**
34

35 3. Property Subject of the MOU. The real property owned by CMC which is the
36 subject of this MOU is legally described as follows:
37

38 Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, Block 2 Yingling and Mickles Addition Sub and Part of the
39 Klack Placer, Town of Breckenridge, County of Summit, CO
40

41 ("Property")
42

43 4. CMC Contingency. Town understands that CMC may not want to sell the Property
44 unless CMC is able to make suitable arrangements for the construction and operation of its new
45 consolidated Summit County campus in Frisco. As a result, Town understands that any actual
46 contract with CMC for the acquisition of the Property will contain a contingency that CMC must

1 be satisfied with the arrangements for its new Frisco campus, and that such contract would give
2 CMC the right to terminate the contract without penalty if it is dissatisfied with the arrangements
3 for its new Frisco campus in its sole and absolute discretion.
4

5 5. Contract Terms. It is the understanding of the parties that any actual contract
6 between them for the sale and purchase of the Property would include, at a minimum, the
7 following terms, conditions and provisions:
8

9 A. Purchase Price. The purchase price for the Property would be Two Million Two
10 Hundred Fifty Thousand Dollars (\$2,250,000).
11

12 B. Payment of Purchase Price. The purchase price would be paid to CMC in Good Funds
13 (as defined by Colorado law) at the time of closing.
14

15 C. Title. The Property would be conveyed by CMC to Town by special warranty deed,
16 and the title so conveyed would be marketable, subject only to such title exceptions as are
17 acceptable to the Town. CMC would pay for the cost of the Town's title insurance policy.
18

19 D. Closing. The closing of the purchase and sale of the Property ("Closing") would be
20 in the fall of 2008. The exact date of Closing would be subject to the mutual agreement of the
21 parties. The Closing could be extended by either party for good cause for a period of time not to
22 exceed twelve (12) months.
23

24 E. Periodic Updates. In January of each year during the term of the contract CMC
25 would update the Town on the status of its efforts to establish the new consolidated Summit
26 County campus in Frisco, and other matters of mutual concern.
27

28 F. Tenants. At the time of Closing, the Property would be subject to no leases or
29 tenancies.
30

31 G. Town Access Pending Closing. During the term of the contract the Town, and its
32 agents, employees, contractors and engineers, would have the right from time to time to enter
33 upon the Property at their risk for the purpose of inspecting the Property and conducting surveys,
34 engineering studies, borings, soil tests, investigations, feasibility studies and the like with prior
35 notice given to CMC. With CMC's prior approval, during such time period the Town would also
36 have the right to begin any renovations necessary to make the Property useable for the Town's
37 intended purposes. Town is responsible for all costs associates with these inspections and Town
38 agrees to indemnify, protect and hold CMC harmless from and against any liability, damage or
39 expense incurred by CMC in connection with any such inspection.
40

41 H. Satellite Classrooms. For an initial term of ten (10) years after Closing, Town would
42 agree to make 2-4 classroom areas available to CMC at no cost for CMC's use as satellite
43 classrooms. Each classroom shall be of sufficient size to accommodate 10-20 persons. The size
44 and location of the satellite classrooms would be subject to mutual agreement of the parties. Prior
45 to the expiration of the initial ten (10) year term, and any extensions(s) thereof, the parties would
46 agree to meet to determine if it is in their mutual interests to continue the arrangement for the use

1 of the 2-4 classroom areas, and, if so, upon what terms and conditions. The provisions of this
2 Subparagraph H would survive the Closing, and continue to be enforceable thereafter.

3
4 I. Future Space for CMC's Arts Programs and Breckenridge Arts District. Parties
5 would agree to work together and to cooperate in good faith for the purpose of implementing and
6 maintaining facilities to permit CMC to use, at no charge, its ceramics studio, photography lab,
7 dance studio and art gallery, either in their current locations at the Property or at one or more
8 suitable locations with the Town of Breckenridge "Arts District." The location(s) for the
9 ceramics studio, photography lab, dance studio and art gallery within the Town of Breckenridge
10 Arts District would be subject to the future agreement of the parties, and could be changed from
11 time to time.

12
13 J. Reservation of Block 11 Property. Town currently owns a substantial portion of
14 Block 11, An Amended Replat of the Breckenridge Airport Subdivision. Until December 31,
15 2007 (unless extended by mutual agreement of the parties), Town would agree to reserve up to
16 twenty (20) buildable acres of such land for CMC's future use as an alternative site for a
17 consolidated Summit County campus in the event CMC is unsuccessful in its negotiations for the
18 proposed campus in the greater Frisco area. The location of the twenty (20) acres would be
19 subject to the mutual agreement of the parties, as would any final contract for the conveyance of
20 such acreage to CMC. The Town's obligation to reserve such acreage would terminate if CMC
21 is successful in negotiating for the construction and operation of the campus in the greater Frisco
22 area.

23
24 K. Town's Contingencies. The Town's obligation to purchase the Property under the
25 contract would be contingent upon the following: (i) the Town's determination that the Property
26 could be redeveloped for its use as a Town Hall at a reasonable cost and within a reasonable time
27 frame; (ii) the Town's determination through soil tests, environmental assessment, or such other
28 means as the Town determines that the Property is not contaminated by any hazardous waste,
29 underground storage tank, petroleum, regulated substance or similar material; and (iii) an
30 appropriation being made by the Town Council of the Town of Breckenridge in an amount
31 sufficient to allow the Town to complete the purchase of the Property in accordance with the
32 terms of the contract. The Town would have the right to terminate the contract without penalty if
33 any of these contingencies were not satisfied.

34
35 6. Termination. Either party may terminate this MOU without the need for cause and
36 without any liability upon not less than ten (10) days' written notice to the non-terminating party
37 given in accordance with the provisions of Paragraph 7 of this MOU.

38
39 7. Notices. All notices required or permitted under this MOU shall be given by
40 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
41 carrier delivery, or by telecopies, directed as follows:

42
43 If intended for the Town, to:

44
45 Timothy J. Gagen
46 Town Manager

1 Town of Breckenridge
2 P.O. Box 168
3 150 Ski Hill Road
4 Breckenridge, Colorado 80424
5

6 Telecopier number: (970)547-3108
7 Telephone number: (970)453-2941
8

9 If intended for CMC, to:

10
11 Dr. Leah L. Bornstein, Dean
12 Colorado Mountain College, Summit Campus
13 P.O. Box 2208
14 Breckenridge, Colorado 80424
15

16 Telecopier number: () _____
17 Telephone number: (970) 453-6757, ext. 2614
18

19 Any notice delivered by mail in accordance with this paragraph shall be deemed to have
20 been duly given on the second business day after the same is deposited in any post office or
21 postal box regularly maintained by the United States postal service. Any notice delivered by
22 telecopier in accordance with this paragraph shall be deemed to have been duly given upon
23 receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a
24 copy of said notice is sent by certified mail, return receipt requested, on the same day to that
25 intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to have
26 been duly given upon actual receipt. Either party, by notice given as above, may change the
27 address to which future notices may be sent.
28

29 8. Modification. This MOU may be modified or amended only by a duly authorized
30 written instrument executed by the parties hereto.
31

32 9. Applicable Law. This MOU shall be interpreted in all respects in accordance with the
33 laws of the State of Colorado.
34

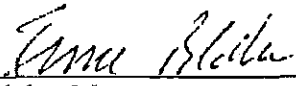
35 10. No Constitutional Debt. With respect to both the Town and CMC, nothing in this
36 MOU shall constitute a general obligation indebtedness or multiple year direct or indirect debt or
37 other financial obligation whatsoever within the meaning of the Constitution or laws of the State
38 of Colorado.
39

40 11. Directions to Prepare Contract. Upon the execution of this MOU, the parties shall
41 direct their respective counsel to promptly prepare a draft contract for the purchase and sale of
42 the Property in accordance with this MOU. Such contract shall be submitted to the respective
43 governing bodies of the parties within six (6) months of the date of this MOU. **This MOU is not**
44 **intended to be a binding contract, and until such a contract is executed, neither party will**
45 **be bound.**
46

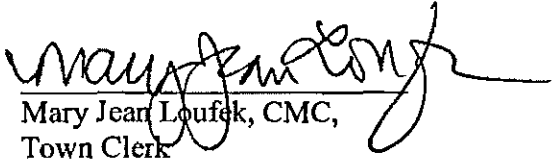
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Executed the date first written above.

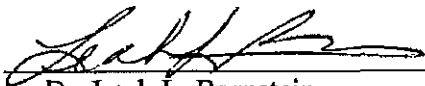
TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By 
Ernie Blake, Mayor

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

COLORADO MOUNTAIN JUNIOR COLLEGE
DISTRICT

By: 
Dr. Leah L. Bornstein

Title: Dean - CMC - Summit
Dean, Summit Campus



MEMORANDUM

To: Mayor & Town Council
From: Tim Gagen, Town Manager
Date: April 2, 2012
Subject: *Ski Company Preliminary Agreement*

As part of our process to get new council members updated on Town issues and as a reminder to existing council members, staff is highlighting significant agreements that we have approved. This memo covers the Ski Area Preliminary Agreement.

The Preliminary Agreement was approved in 2002 between the Ski Area and the Town and was a watershed agreement for the relationship between the two. It remains today as the underpinning of most of the subsequent agreements that the Town and Ski Area have entered into. I have attached a Memo I did for the Council in 2004 which highlights the main deal points which I won't repeat here.

Some other highlights of the agreement are:

1. Allows Town use of the Gondola Lots in the Summer.
2. Provides for a future look at parking needs of Ski Area if studies show parking demand has changed.
3. Provides for a meet and confer annually on problems due to peak congestion.
4. Ski Area provided land for the Transit Center.
5. Town will cooperate on creation of metro districts for Peak 7 and 8 development.
6. Town and Ski Area would work together on any town-wide pay parking program.

This agreement has been mostly implemented and since the construction of the gondola, the Town has received back over \$5.3 million from incremental RETT and Property Tax from the development on Peak 7 and 8 to offset its contribution to the gondola.

MEMO

TO: Mayor & Council

FROM: Tim Gagen

DATE: April 21, 2004

RE: Ski Company Agreement

At our most recent Work Session Council requested that I summarize key elements of the Ski Company Agreement and give a perspective on what it brings to the Town. I will start with the important deal points and try to add what I recall from the Council debate on them.

1. *Parking*- Probably the most significant give was the guarantee of 2,500 parking spaces, which more importantly ensured that 1560 of these spaces will be permanently guaranteed in the core of Town on Watson, Sawmill and Parkway Lots.
2. *Density*- The 2nd most significant give was the removal of 130 sFe's of density from Watson and Sawmill up to Peaks 7 & 8. The Council agreed that the density fit better up on the mountain and it removed a threat of substantial development down in the core of Town. They also agreed to adhere to the 25% density reduction of JUMP when and if development was proposed on the Watson, Sawmill and Parkway Lots. In addition the agreement of density transfer up to peak 7 & 8 resolved the total build out debate for 7 & 8. The Ski Company originally proposed much more than 501 total sFe's that was eventually approved.
3. *Commercial Space*- The 3rd Concession was the limit of just 15,000 sqft of commercial space other than ski services up on peaks 7 & 8. The Ski Company originally proposed a much larger # which was considered a threat to the commercial core of Town.
4. *Gondola/Ski Back*- The Councils willingness to financially participate in the Gondola & Ski Back stemmed from the deal points listed above and the positive benefits these elements made to the integrated transportation plan we have developed. These elements made the transportation hub in the parking lots work and reduced traffic and buses on Ski Hill Rd and at the Ski Hill/Park Avenue intersection. It also reduced the amount of parking at the base of Peak 8 and will help move forward the completion of the Riverwalk along Watson and Sawmill and create pedestrian/plaza connections from the parking lots right to Main St. To fund our share the theory was to only use new incremental revenues (RETT and property tax) that would be generated from the Peaks 7 & 8 development and to pay this as the

revenues were generated. Another possible opportunity/benefit of the Gondola was to revitalize the North end of Main St. by establishing a direct connection to Main and incorporate some development on the Town/Ski Area property to link Main St to the parking. This connection has been argued as providing a better draw to get people out of the parking lots than providing the trolley connection that we currently have.

5. *Other Benefits*- The Ski Area also agreed to donate 64.7 acres of open space in the Cucumber Gulch area and donated \$200,000 to childcare.

What has Changed?

The main changes since the original signing of the agreement are the economy, a rethinking by the ski industry of high cost capital infrastructure like a gondola and its return on investment, the access to financing after the "Enron Scandal" and timing. Timing, in particular has become our concern in that the sooner we can get Vail to move on the Gondola and Ski Back the more likely they will get it done and we would reap the positive benefits noted above. Part of this concern is related to Vail's focus on redevelopment projects in Vail and the turning around of Keystone. In other words, if we don't strike soon our improvements may become a lower priority. This is why we have been willing to entertain paying our share more on the front end as an incentive to complete within two years.

Finally, the Council previously set aside our \$6.7 million commitment in a lock box in the fund balances of the General Fund and Excise Tax Fund. The new commitment with the reduction in cost of the Gondola now is equal to approximately \$5.3 million. If we were to pay up front our fund balance after the payment would be approximately \$11.4 million, which is still very healthy and again leads the Council to feeling comfortable to consider paying up front.

PRELIMINARY AGREEMENT

This Preliminary Agreement ("Preliminary Agreement") is entered into as of the 20th day of MAY, 2002 between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and VAIL SUMMIT RESORTS, INC., a Colorado corporation doing business as BRECKENRIDGE SKI RESORT ("BSR").

Recitals

The parties agree that the following statements of fact are true, correct and a material part of this Preliminary Agreement:

A. BSR has submitted an application to amend its existing Master Plan for its properties located within those parts of the Town of Breckenridge which are commonly known as "Peaks 7 & 8", as well as applications to annex certain of its properties into the Town.

B. If the Town grants final approval of BSR's application for an amended master plan, it is anticipated that such approval will include one or more final development agreements between the Town and BSR.

C. Town and BSR have determined that it is in both of their best interests to enter into certain initial agreements and to set forth certain initial understandings preliminary to possible final approval of BSR's amended master plan, possible final annexation of the BSR properties to the Town, and possible approval of one or more final development agreements related to the development of BSR's properties which are subject to the amended master plan application.

Now, Therefore, the parties agree as follows:

1. Definitions. In addition to such terms as may be defined elsewhere in this Preliminary Agreement, the following terms will have the meanings provided for them throughout this Preliminary Agreement:

A. "Amended Plan" means the proposed Amended Master Plan for the Peak 7 and 8 Bases, an application for which has been submitted to the Department of Community Development, as it may be modified and approved.

B. "Gondola" means a gondola providing transportation between the Sawmill and Watson Lots and the Peak 8 Base, via Shock Hill and the Peak 7 Base.

C. "Parkway Center Lot" means Block 4, Parkway Center and Tract Q, Shock Hill.

D. "Peak 7 Base" means that property to the northwest of the PMA connected to the Peak 8 Base by the proposed realigned Summit County Road 3 and including both property included under the Peak 8 Master Plan and property petitioned by BSR to be annexed to the Town of Breckenridge.

E. "Peak 8 Base" means the property generally located in the area of the base of the Peak 8 ski lifts and covered by the Peak 8 Master Plan.

F. "Peak 8 Master Plan" means the existing Master Plan as set forth and provided for in the Amended Master Plan Agreement between the Town and Aspen Skiing Company dated October 16, 1986 and recorded November 5, 1986 at Reception No. 326852, with Exhibit D thereto amended by Development Permit #91-1-1.

G. "PMA" means Preventive Management Area as defined in Ordinance 9, Series 2000.

H. "SFE" means single family equivalent as that term is currently used in connection with the Peak 8 Master Plan, the Sawmill Lot, Watson Lot, and Parkway Center Lot.

I. "Skier Facilities" means those improvements constructed or to be constructed for the purposes of ticket sales, administration of the Breckenridge Ski Resort, nursery or daycare facilities, lockers for guests and employees, skier cafeterias, restrooms, lounges, storage areas, ski patrol and first aid facilities and ski school activities, all of which facilities or activities were included in the description of skier services in the Peak 8 Master Plan.

J. "Skiway" means the skiway required to be constructed by BSR as provided for in the Annexation Agreement dated October 13, 1999 and recorded in the Summit County, Colorado records on October 22, 1999 at Reception No. 608585.

K. "Watson and Sawmill Lots" means Lots 1-4 Sawmill Station Square, Filing # 3 ("Watson Lot") and Lot 1, Block 3,

Parkway Center ("Sawmill Lot"), which are sometimes referred to as the Miners and Tailings Lots.

2. Map. To provide the parties and others reviewing this Preliminary Agreement with a better understanding of the various properties which are the subject of this Preliminary Agreement, a map is attached as Exhibit A. The map generally identifies the separate parcels of property owned by BSR, those parcels for which annexation petitions are currently pending with the Town, the Town parcel proposed to be used for parking, and the proposed alignment of the Gondola.

3. Parking. Town and BSR agree as follows with respect to skier and other parking matters:

A. Not less than 2,500 skier parking spaces will be provided for use by BSR's customers, as follows:

- (i) a total of not less than 200 spaces will be provided by BSR at the Peak 7 Base and the Peak 8 Base;
- (ii) not less than 240 spaces will be provided by BSR at Beaver Run;
- (iii) not less than 550 spaces will be provided by BSR on the Sawmill Lot;
- (iv) not less than 490 spaces will be provided by BSR on the Watson Lot;
- (v) not less than 520 spaces will be provided by BSR on the Parkway Center lot; and
- (vi) not less than 500 spaces will be made available by Town for BSR's use as overflow parking at the Town's Block 11, Breckenridge Airport Subdivision property, to be used at such times and/or upon such conditions as Town and BSR subsequently agree.

B. The 1,560 spaces on the Sawmill Lot, Watson Lot and Parkway Center Lot may be shifted by BSR among the three lots or concentrated in a structured arrangement upon one or more but less than all of the three lots.

C. The Sawmill Lot and Watson Lot will be made available to Town for its use in the summer months upon the same general terms and conditions as such lots have been used in the past.

D. The number of parking spaces to be maintained on the Sawmill Lot and the Watson Lot will be increased (and the total of 2,500 parking spaces to be provided will be similarly increased) to the extent that the amount of parking which is available to be used on the Sawmill and Watson Lots is increased by the possible vacation by the Town of the Town's Watson Avenue right of way.

E. The total number of parking spaces required to be maintained by BSR may be modified in the future with the mutual consent of both the Town and BSR, if parking studies prove that such influences as development of additional destination lodging, economic or travel trends, lift ticket and pass pricing strategies, or new and improved transportation facilities alter the demand for parking.

F. If BSR proceeds with development on any of the Sawmill, Watson or Parkway Center Lots in the future, it will be BSR's responsibility as part of such development to provide all required incremental parking for such development and to maintain the 1,560 spaces required above. Improved or structured parking for the 1,560 spaces may qualify for public or other funding sources if available and acceptable to the Town.

4. Capacity Issues. BSR agrees to meet and confer with the Town, at least annually, to discuss problems occurring with BSR's, the Town's and other public and private facilities on the busiest days of the year in order to identify causes for and potential solutions to such peaks and to attempt to implement strategies to address or avoid such problems.

5. Intermodal Transportation Center. BSR and the Town agree to pursue an intermodal transportation center as follows:

A. An intermodal transportation center, including associated circulation ("Intermodal Center"), may be incorporated by BSR into the design of and planning for improvements to be constructed on the Watson and Sawmill Lots pursuant to the Amended Plan. The cost of design, construction and financing of the Intermodal Center will be the responsibility of the Town, and not BSR, but Town and BSR shall

coordinate design and construction of the Intermodal Center and Gondola to the extent possible.

B. Any density required for an Intermodal Center will be provided by the Town.

C. BSR has previously provided Town with certain written assurances requested by the Colorado Department of Transportation ("CDOT") with respect to the availability of land on the Watson and Sawmill Lots for the construction of the Intermodal Center. BSR will continue to provide the Town and CDOT with such additional assurances and agreements as may be necessary to facilitate and preserve such funding as may be available from CDOT for the Intermodal Center; provided, however, that any such assurances or agreements may provide that if existing property rights for the Watson and Sawmill Lots are reduced in connection with BSR providing property for such Intermodal Center, then compensation deemed adequate by BSR for such property or property rights will be payable to the extent of any reduction.

6. Gondola. BSR and the Town agree as follows with respect to the Gondola and related transportation matters:

A. The Town has previously granted to BSR a variance, exception or waiver of the Cucumber Gulch Overlay Protection District Regulations with respect to the proposed construction of the Gondola. Subject to further agreements with respect to matters such as funding and operation plans, the Gondola will be included as part of the Amended Plan. Upon approval of the Amended Plan including the Gondola, Town will grant such easements as are required by the Colorado Passenger Tramway Safety Board for the Gondola.

B. BSR and the Town will jointly pursue the following funding opportunities for the Gondola (which is estimated to cost \$16 million), the Skiway (which is estimated to cost \$4 million) and other transportation facilities:

- (i) BSR will provide \$10 million for the Gondola and the Skiway;
- (ii) Town will provide the means for and/or be credited with the following contributions toward the \$10 million balance for the Gondola and the skiway:

- (a) \$1,300,000 will be contributed by BSR in lieu of acquiring the Parkville property for density to be transferred to the annexation property;
- (b) \$2 million of the proceeds from BSR's sale of two parcels of land in the Continental Subdivision acquired by BSR to provide approximately 500 spaces for overflow parking now planned to be accommodated on the Town's Block 11, Airport Subdivision property as described above. Such \$2 million shall be credited toward the Town's contribution to the Gondola and the skiway regardless of the actual amount for which BSR's Continental Subdivision property is sold;
- (c) Approximately \$6.7 million (net of any financing, issuance or credit enhancement or support costs) from a tax increment financing ("TIF") arrangement which may be established by the Town in connection with BSR's development at Peaks 7 and 8, the Sawmill Lot, the Watson Lot, the Parkway Center Lot and/or Phase II of Mountain Thunder Lodge, or such other funding mechanisms as may be mutually agreed to by Town and BSR. Town shall retain the discretion to finally determine whether to establish TIF or other funding mechanisms. If a TIF is formed, the terms thereof shall be subject to subsequent negotiation and agreement between the Town and BSR; provided, however, that it is preliminarily agreed that: (i) the TIF will include only such incremental tax revenues as the Town shall determine; (ii) the Town will consider authorizing the issuance of debt by the TIF district only if the Town is satisfied, in its discretion, that adequate security for the repayment of such debt will be provided; and (iii) revenues generated by the TIF will be used, first, to pay for the Gondola and Skiway or for repayment of any debt authorized to pay for the Gondola and Skiway, next, to reimburse BSR for the cost

of any credit enhancement or support provided by BSR in connection with the financing of the Gondola and Skiway, and then as provided in subparagraph 6.D. below.

C. Town and BSR will work together on the development and implementation of a Town-wide pay parking program.

D. After the financing of the Gondola and Skiway has been completed, any additional funds as the Town determines can be raised from the TIF arrangement or other public finance mechanisms may be applied to additional transportation and other related facilities, including the Intermodal Center, bus maintenance facilities, parking, and other capital expenditures for transportation.

E. The deadline for the completion of the Skiway provided for in the Cross Annexation Agreement shall be extended to coincide with the initiation of Gondola service.

7. Density/Density Transfers. BSR and the Town agree as follows with respect to density for the Amended Plan and other density and density transfer matters:

A. The 341 SFES of density included in the Peak 8 Master Plan plus 25,860 square feet (approximately 26 SFES) available for Skier Facilities, will be retained for use at Peak 7 and 8 and the additional density necessary to provide a total of 501 SFES (135 SFES at Peak 7 to accommodate approximately 131 residential units plus Skier Facilities and commercial spaces and 366 SFES at Peak 8 to accommodate approximately 340 residential units plus Skier Facilities and commercial spaces), including the density necessary for the development of parcels to be annexed to the Town, will be obtained by the transfer of 130 SFES density from the Sawmill, Watson and Parkway Center Lots to the Peaks 7 and 8 Bases, plus credit for the existing 4 SFES of density attributable to the annexation parcels under current County land use regulations.

B. In addition, up to an additional 30 SFES of density may be transferred from the Sawmill, Watson and Parkway Center lots to Lot 1, Village at Breckenridge Subdivision ("Maggie") and Tract C, Four Seasons of Breckenridge Village Filing No. 2; up to 40 SFES of density may be transferred to Lot 13, Village at Breckenridge Subdivision (Ten Mile Room); and up to 40 SFES of density may be transferred to Lot 3 of the Breckenridge Mountain Lodge Area Subdivision, if needed on these parcels.

C. All proposed density transfers will be subject to compliance with Towns current Subdivision Standards and Development Code.

D. Any of the density which is not actually transferred to a receiving site shall be retained on the Sawmill, Watson and Parkway Center Lots.

E. The density for Skier Facilities at the Peaks 7 and 8 Bases shall be generally as shown on the attached Exhibit B.

F. The commercial density at the Peaks 7 and 8 Bases shall be generally as shown on the attached Exhibit C.

G. None of the Skier Facilities constructed by BSR may be used as a private club or other restricted access facility requiring membership.

H. Any density required for an Intermodal Center or any public parking structure will be provided by the Town.

8. Public Benefits. As required public benefits or other commitments required for all of BSR's pending annexation petitions and applications and for all of the development agreements anticipated or reasonably required to carry out the terms of this Agreement, and as contributions toward the goals of the Community, BSR shall do, pay or provide the following:

A. In order to further the stated goals of the Joint Upper Blue Master Plan as adopted by the Town, BSR will voluntarily reduce its buildable density on the Sawmill, Watson and Parkway Center Lots by an amount equal to 25% of the total amount of density approved for development by BSR in the Amended Plan, excluding density used by BSR for Skier Facilities. By way of example, if the total density approved for development by BSR in the Amended Plan is 501 SFES, including total of 60 SFES of Skier Facilities, BSR will voluntarily reduce its density on the Sawmill, Watson and Parkway Center Lots by a total of 110.25 SFES [$501 - 60 \times 0.25 = 110.25$]. Such voluntary density reduction shall be memorialized in a written covenant acceptable in form and substance to BSR and Town. Additionally, at the time of any of the density transfers described in Paragraph 7, above, the amount of density remaining on the Sawmill, Watson or Parkway Center Lots will be determined and set forth in one or more agreements between the Town and BSR.

B. The PMA in Cucumber Gulch will be protected by a joint conservation effort by the Town and BSR, including monitoring of water quality and either a conservation easement or a deed acceptable to Town and BSR for both the 12.2 acres of wetlands required to be preserved under BSR's existing master plan (as shown on Exhibit D) and the additional 52.5 acres within the Cucumber Gulch Overlay Protection District (as shown on Exhibit D). The Peaks 7 and 8 annexation parcels will be annexed into the Town with no additional public benefits required by the Town in connection with such annexations.

C. BSR will contribute to the Town (or such non-profit organization as the Town may designate) \$200,000 for construction of child care facilities, \$100,000 of which shall be payable upon execution of the Development Agreement to be entered into between the Town and BSR which will authorize the Town's Planning Commission to review and approve the Amended Plan, which plan will not be in compliance with the Town's Land Use Guidelines; parking requirements reduced from those provided for in the Town's Off-Street Parking Regulations; property rights vested for a period exceeding three years; and such other matters as may be necessary or appropriate. The remaining \$100,000 shall be payable upon approval of the Amended Plan.

9. Metro Districts. Town will support BSR in the creation of two metropolitan districts for Peaks 7 and 8.

10. Construction of New Lifts. BSR intends to proceed with construction of Lift 7 and replacement of Lift 4 (subject to USFS approval and resolution of lift design issues) to be ready for use in the 2002-2003 ski season.

11. Effect of Agreement. The substantive provisions of this Preliminary Agreement will be incorporated into any Amended Plan subsequently approved by the Town. Nothing in this Preliminary Agreement will obligate Town to approve an Amended Plan; and if no Amended Plan is subsequently approved by Town, this Preliminary Agreement will be null, void and of no further force and effect.

12. Ski Area Condition Precedent. If the Amended Plan for Peaks 7 and 8 including 501 SFEs (or such lower number as may be acceptable to BSR) is not approved by Town, then each party will be released from its commitments provided above.

13. No Disqualification. The thoughts, concerns and opinions of those Town Council members who participated in the

approval of this Preliminary Agreement or any agreement contemplated by this Preliminary Agreement will not be construed or interpreted for any reason as a pre-judgment of an actual development permit application which may hereafter be submitted by BSR with respect to any BSR properties, including, but not limited to the pending application for an Amended Plan, and will not form the basis of any claim by BSR that any Town Council member should be disqualified from reviewing the pending application for an Amended Plan or any subsequent development permit application submitted by the BSR.

VAIL SUMMIT RESORTS, INC.

TOWN OF BRECKENRIDGE

By: 

Roger McCarthy,
Senior Vice President
and Chief Operating Officer

By: 

Timothy J. Gagen, Town Manager

Exhibit c
Analysis of Proposed Commercial Space

Commercial Square Footage	Peak 7	Peak 8	Total
Vail Resorts Restaurants & Bars		-	-
Vail Resorts Rental/Retail	500	6,500	7,000
Tenant Retail/Restaurants	-	8,500	8,500
Total	<u>500</u>	<u>15,000</u>	<u>15,500</u>

Exhibit B
Analysis of Proposed Skier Services Space

Skier Services Square Footage	Peak 7	Peak 8	Total
Children's Facilities	1,500	12,000	13,500
Ski School	-	2,600	2,600
Guest Services			-
Lockers	1,000	2,600	3,600
Restrooms	800	1,500	2,300
Tickets	-	2,500	2,500
Ski Patrol	350	1,500	1,850
Employee Lockers	1,000	4,100	5,100
Administrative Offices	11,000		11,000
Vail Resorts Day Skier Restaurants	2,000	15,000	17,000
Total Skier Services	17,650	41,800	59,450

Note:

The above numbers include replacement of 25,860 existing skier services, that do not count as density.

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: SOLAR GARDEN STATUS
DATE: APRIL 3, 2012
CC: TIM GAGEN, RICK HOLMAN

The purpose of this memo is to update Council with regards to the latest developments concerning the Town's two potential solar garden (SG) projects. Not much has changed since the prior staff update to Council of February 28, 2012. As such, this memo is written to advise continuing Council members of this fact as well as to get incoming members up to speed.

Both projects have been approved in principle by Council for construction. The two properties involved are the Stillson and McCain parcels. These parcels are located on Wellington Road near the stables and on the far north end of Breckenridge to the west of highway 9, respectively. Currently, Xcel has still not released the parameters for the application and proposal processes. Xcel has delayed this process several times and latest estimate from the utility for the opening of the program is May 2012, which is the same time frame estimate from February.

Our development partner, Clean Energy Collective (CEC), has been marketing the potential projects here in Summit County. High County Conservation Center (HC3) has also been a part of this marketing effort. CEC has been taking non-binding letters of intent for each site. The Stillson SG, 500 kW, is spoken for outside of 75 kW remaining for small subscribers. Interested parties include the Towns of Breckenridge, Silverthorne, Dillon, Summit County and private citizens. The McCain 2mW project is roughly 50% reserved on that same LOI basis. Copper Mountain, the Towns of Breckenridge and Silverthorne, as well as Grand Resorts and private citizens have expressed interest in this project.

We are still in negotiations with Alpine Rock with regards to their ownership interests on the McCain parcel. As such, the exact location of the array has yet to be finalized.

In summary, the Town and CEC have done everything we can to be ready for participation in this project. The series of delays on the part of Xcel have put the feasibility of summer 2012 construction in doubt, but it is still a possibility at this time.

I will be happy to answer any questions Council may have at the April 10 work session.