



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, June 26, 2012; 7:30 PM

Town Hall Auditorium

I	CALL TO ORDER, ROLL CALL	
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*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. 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.

B. PLANNING COMMISSION REPORT (MR. GALLAGHER)

VIII REPORT OF TOWN MANAGER AND STAFF

IX REPORT OF MAYOR AND COUNCILMEMBERS

- A. CAST/MMC (MAYOR WARNER)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)
- C. BRC (MR. BURKE)
- D. MARKETING COMMITTEE (MR. DUDICK)
- E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)
- G. WATER TASK FORCE (MR. GALLAGHER)
- H. LANDFILL TASK FORCE (MS. WOLFE)

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XII ADJOURNMENT

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CALL TO ORDER/ROLL CALL

The following members answered roll call: Mr. Burke, Ms. McAtamney, Ms. Wolfe, Mr. Gallagher and Mayor Warner. Mr. Dudick, and Mr. Brewer were absent

APPROVAL OF MINUTES - MAY 22, 2012

Mayor Warner declared the minutes would stand as submitted.

APPROVAL OF AGENDA

Mr. Gagen added an Executive Session under Other Matters for advice from the Town Attorney regarding litigation updates and negotiations, and removed the Breckenridge Resort Chamber update due to the joint meeting with the BRC at the June 26, 2012 meeting.

COMMUNICATIONS TO COUNCIL

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

Mayor Warner opened Citizen's Comment. There were no comments and the Citizen's Comments were closed.

B. USA PRO CYCLING CHALLENGE UPDATE FROM LOCAL ORGANIZING COMMITTEE CO-CHAIRS

Lucy Kay reported they are in increasingly good shape for the event; they are in the \$40,000 range for sponsorship; all sponsorship contracts are signed; they will announce sponsor names once they have a good group in the next two weeks; they are still looking for a zero waste sponsor for the start village; they are giving window stickers to all businesses instead of just the sponsors to display in town; there is a merchandizing program for retailers to sell official merchandize; the event will have two and a half laps around town before they ride south to Hoosier Pass; there will not be a hand-cycle event due to their Olympic training schedule; there will be a fill of events, including bands throughout the day; they do not have a signature band this year because it is a Friday instead of a Saturday event; pre-event marketing will have a tie into Breck Bike Week; there will be a speaker at Colorado Mountain College's (CMC's) speaker series on July 5th; Scott Fortner is doing 30 second spots for regional and national advertising during the Tour de France, and year-round oriented 15 second spots closer to the event on Denver media; Mike Schilling did a video with Byron Swezy of two cyclists riding the Stage on You Tube; the community outreach meetings are scheduled for late July and early August; they are trying to get a meeting on the Blue River agenda, since they will be impacted during the race; volunteers are well over 200, including the Cub Scouts; they are way ahead on volunteers due to repeat members; and, they are in good shape on the budget. She thanked the Council for their support of the event.

CONTINUED BUSINESS

A. SECOND READING OF COUNCILS BILLS, SERIES 2012 - PUBLIC HEARINGS

1. Council Bill No. 15, Series 2012- AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (Part Of Town's Public Works Facility)

Mayor Warner read the title into the minutes. Tim Berry, Town Attorney stated the ordinance is continued to the next meeting while Tom Daugherty, Public Works Director/Town Engineer and the county continue to work out the details of the lease.

Mr. Burked moved to continue Council Bill No. 15, Series 2012- AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (Part Of Town's Public Works Facility) to the June 26, 2012 meeting. Ms. McAtamney seconded the motion. The motion passed 5-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2012

1. Council Bill No. 16, Series 2012- AN ORDINANCE AMENDING ARTICLE F OF CHAPTER 3 OF THE BRECKENRIDGE TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATING TO ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS

Mayor Warner read the title into the minutes in the form handed out. Mr. Berry stated the ordinance has been revised to comply with state liquor laws and liquor regulations; fermented malt beverage is now included; and, all references to pedicabs, pedibusses and horse-drawn carriages have been eliminated. He asked that the Council members refer to this

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version.

Mr. Gallagher moved to approve the amended Council Bill No. 16, Series 2012- AN ORDINANCE AMENDING ARTICLE F OF CHAPTER 3 OF THE BRECKENRIDGE TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATING TO ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS in the form handed out. Mr. Burke seconded the motion. The motion passed 5-0.

2. Council Bill No. 17, Series 2012- AN ORDINANCE AMENDING SECTION 5-5-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE ISSUANCE OF A SPECIAL PERMIT AUTHORIZING OPEN BURNING WITHIN THE TOWN

Mayor Warner read the title into the minutes. Mr. Berry stated the Town code has an established procedure where the town reviews and approves open burning requests, and this will change the process so the Town Manager approves open burning requests instead of the Council. Mr. Burke asked if denied requests may appeal. Mr. Berry stated yes.

Mr. Gallagher moved to approve Council Bill No. 17, Series 2012- AN ORDINANCE AMENDING SECTION 5-5-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE ISSUANCE OF A SPECIAL PERMIT AUTHORIZING OPEN BURNING WITHIN THE TOWN. Ms. Wolfe seconded the motion. The motion passed 5-0.

B. RESOLUTIONS, SERIES 2012

1. A RESOLUTION APPROVING A PRELIMINARY AGREEMENT WITH CORUM REAL ESTATE GROUP, INC. AND MOUNTAIN MARKETING ASSOCIATES, LTD. CONCERNING THE DEVELOPMENT OF PINWOOD VILLAGE, PHASE 2

Mayor Warner read the title into the minutes. Mr. Gagen, Town Manager stated this is an agreement for an exclusive partnership with Corum to move forward with the feasibility study for Phase 2 of Pinewood, with the goal to enter into the development agreement with Corum.

Ms. McAtamney moved to approve A RESOLUTION APPROVING A PRELIMINARY AGREEMENT WITH CORUM REAL ESTATE GROUP, INC. AND MOUNTAIN MARKETING ASSOCIATES, LTD. CONCERNING THE DEVELOPMENT OF PINWOOD VILLAGE, PHASE 2. Mr. Burke seconded the motion. The motion passed 5-0.

C. OTHER

PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS - JUNE 5, 2012

Mayor Warner stated they received an email communication from Paul Dunkelman urging the Council to call up the decision of Ski Side condos. With no request to call an item off the consent calendar, Mayor Warner declared the Planning Commission Decisions would stand approved as presented.

B. PLANNING COMMISSION REPORT (Mr. Gallagher)

Mr. Gallagher reported the January 2011 code change to score the energy conservation for new and existing projects worked well for new, but not existing projects; Julia Puester, Planner II developed a new scoring system for existing projects; and, the revised scoring system passed unanimously and will come before Council in July.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen stated fireworks were discussed during the work session; and, the plan is purchase and stockpile fireworks until another opportunity arises, which could be New Year's or next year. He stated the Town does not plan of having fireworks this year. Kim Dykstra-DiLallo, Director of Communications mentioned the possibility of a laser light show, but agreed viewers would need to be close to see it. Ms. McAtamney asked when the name of the band for the Fourth of July. Ms. Dykstra-DiLallo it will be announced on June 16.

REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (MAYOR WARNER)

Mayor Warner reported there was a wonderful report from Tamara Drangstveit, Executive Director of Family Intercultural & Resource Center (FIRC) regarding their outreach program, educational programs and utilities support; Peter Bakken, Hearthstone Restaurant General Manager talked about the housing needs assessment; there was discussion on single-use plastic bags; concept where there is traction from the County Commissioners, interest from Frisco, and mentioned Whole Foods already has a program in place; there are phase appropriate successes in other municipalities; talked about it as SustainableBreck; and, there is some broad based support in the county to modify the use of single use bags. Mayor Warner added he would love to see the conversation get bigger to waste and water

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bottles. Ms. McAtamney suggested Council members go on Facebook and like “Bag It” the movie, because they post every day, and the Town should have a town-based project to promote the program. The Council mentioned there is a program with the 5th grade class at Upper Blue.

Mr. Gagen reported he is happy with the feedback from the Landfill Task Force because they are starting to frame the issue; the trash haulers provided good information; they seem to be leaning toward single-stream recycling leaving the glass out, which may drastically increase the volume; recycle centers will continue to be a separate business; the volume-based system is coming to the forefront, where people will be charged for the number of bags they put out; and, the recyclables may be bagged and hauled to a larger facility to sort out because it would cost over half a million dollars to sort it here.

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)-No report.

C. BRC (MR. BURKE)-No report.

D. MARKETING COMMITTEE (MR. DUDICK)

No report.

The Council discussed branding the community as a whole versus branding for small interest groups; Mr. Dudick should lead the discussion on communication between BMAC and BRC; and, there should be a clear consensus to show that it is not driven by one Council member.

Mr. Gagen asked the Council what their preference is to fill the vacancy in BMAC since it is a small-sized lodging vacancy. Kim Dykstra-DiLallo mentioned there is some outside interest for the one spot. The Council decided to get the names from the previous pool, and if they do not want to choose from that pool, they will open it up for other candidates.

E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)-No report.

F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)-No report.

G. WATER TASK FORCE (MR. GALLAGHER)-No report.

H. LANDFILL TASK FORCE (MS. WOLFE)-No report.

OTHER MATTERS

Mr. Burke mentioned three people from the Wellington neighborhood and one from another neighborhood are concerned about the dust from the stables. The Council discussed the big trucks coming to and from the area; that they could talk to Brad Bays, Breckenridge Stables if the dust from there becomes a problem; and, that the dust is most likely not from the stables, but from development, which by code needs to maintain dust mitigation.

Ms. Wolfe stated, while volunteering for the Breckenridge Film Festival, she received several complaints regarding the odor from the women’s rest room at the Welcome Center.

Mr. Gallagher received a call from Greg Abernathy regarding a dangerous situation where kids on bikes take a short cut, and dart out onto the street. Mr. Gagen said staff will contact Greg Morrison, Assistant Police Chief to assess the situation.

Ms. McAtamney inquired if the Breckenridge Recreation Program has a similar program to Silverthorne’s inexpensive recreation center youth Summer pass. Ms. Dykstra-Dilallo stated Breckenridge has the Summer Hip & Hop pass for \$45.00.

2. EXECUTIVE SESSION

Ms. McAtamney moved to go into executive session pursuant to: Paragraph 4(a) of Section 24-6-402, C.R.S., relating to the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest. Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions. Paragraph 4(c) of Section 24-6-402, C.R.S., relating to matters required to be kept confidential by federal or state law or rules and regulations. [NOTE: A motion made under this part of the statute must include the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.] Paragraph 4(d) of Section 24-6-402, C.R.S., relating to details of security arrangements or investigations. Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators. Paragraph 4(f) of Section 24-6-402, C.R.S., relating to personnel matters. Paragraph 4(g) of Section 24-6-402, C.R.S., relating to the consideration of documents protected by the mandatory nondisclosure provisions of the “Colorado Open Records Act”, Part 2 of Article 72 of Title 24 of the Colorado Revised Statutes. Ms Wolfe made the second. A roll call was taken and all were in favor of the motion.

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Ms. McAtamney moved to adjourn the executive session at 9:29 pm. Mr. Burke made the second. All were in favor of the motion.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 9:29 pm.
Submitted by Cathy Boland, Accounting Coordinator.

ATTEST:

Laura Kennedy, Town Clerk

John Warner, Mayor

Memorandum

TO: Town Council

FROM: Tom Daugherty, Public Works Director

DATE: June 20, 2012

RE: Public Works Lease to County

Attached is the second reading of the ordinance giving permission to enter into a long term lease with Summit County to use space in the Public Works yard. The changes to the lease incorporate the requirement that the CR 450 Property be developed into attainable housing that can be found in paragraph 2.4. Some additional changes have been made to the lease to clarify the terms of the lease while keeping the intent of the terms.

1 ***FOR WORKSESSION/SECOND READING – JUNE 26***

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

4
5 COUNCIL BILL NO. 15

6
7 Series 2012

8
9 AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY
10 COMMISSIONERS OF SUMMIT COUNTY, COLORADO
11 (Part of Town’s Public Works Facility)

12
13 WHEREAS, the Town of Breckenridge owns the real property commonly known as “the
14 Town of Breckenridge Public Works Facility” located at 1095 Airport Road, Breckenridge,
15 Colorado (“**Public Works Facility**”); and

16
17 WHEREAS, a portion of the Public Works Facility is suitable for use by the Board of
18 County Commissioners of Summit County, Colorado (“**County**”) as the location of the County’s
19 Road & Bridge equipment and material storage facility; and

20
21 WHEREAS, the Town is willing to lease a portion of the Public Works Facility to the
22 County for use as the County’s Road & Bridge equipment and material storage facility; and

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

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

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

32
33 and;

34
35 WHEREAS, the term of the proposed Lease with the County exceeds one year in length;
36 and

37
38 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
39 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

40
41 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
42 BRECKENRIDGE, COLORADO:

1 ***DRAFT June 15, 2012 DRAFT***

2
3 **LEASE**

4
5 THIS LEASE (“Lease”) is dated _____, 2012 and is between the
6 TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“Town”) and the BOARD
7 OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“County”). The
8 Town and the County are sometimes referred to individually as a “Party”, and together as the
9 “Parties.”

10
11 **ARTICLE 1 - BASIC LEASE PROVISIONS**

12 1.1 **Intent and Purpose.** The purpose of this Lease is provide land for the relocation
13 of the County’s Road & Bridge equipment and material storage facility from its current location
14 at 143 County Road 450 in unincorporated Summit County, Colorado (“**County Road 450**
15 **Property**”) to the Leased Premises, and to partially implement the Parties’ Memorandum of
16 Understanding dated November 30, 2011 (“MOU”).

17 1.2 **Definition of “Public Works Facility.”** The “Public Works Facility” as
18 described in this Lease is located at 1095 Airport Road, Breckenridge, Colorado, and consists (or
19 will consist) of:

20 (a) the Town’s new Public Works Administration Building to be constructed
21 by the Town as provided in Section 1.3;

22 (b) the Town’s current Public Works Administration Building that will be
23 remodeled by Town for County’s use as the County’s new Public Works Building as provided in
24 Section 1.5, and constitutes the Leased Premises under this Lease; and

25 (c) the Common Area as described in Section 1.5.

26 1.3 **Town’s New Public Works Administration Building.** To replace its current
27 Public Works Administration Building the Town will plan, design, and construct a new Public
28 Works Administration Building at the Public Works Facility (“**Town’s New Public Works**
29 **Administration Building**”). The Town will determine the location, size, and design of Town’s
30 New Public Works Administration Building. The Town’s New Public Works Administration
31 Building will be completed in time for the County to take possession of the Leased Premises in
32 accordance with this Lease.

33 1.4 **Leased Premises.** In consideration of County’s payment of the sums due to Town
34 under this Lease, and the keeping of the other promises, covenants, and conditions required of
35 County by this Lease, Town leases to County, and County leases from Town, for the term and
36 upon the conditions of this Lease, the real property described and depicted on the attached
37 **Exhibit “A”** (“**Leased Premises**”). The Leased Premises will be used for the location of the

1 County's Public Works Building ("**County's Public Works Building**") and, if constructed by
2 the County as provided in Section 6.2, the Additional Building.

3 1.5 **Preparation of Leased Premises For Use By County.** In order to expedite and
4 reduce conflict on the site, the Town will, at its cost, remodel the Leased Premises for the
5 County's use as the County's Public Works Building so that it functions as an equipment storage
6 space similar to the other equipment storage buildings currently on the Public Works Facility.
7 This work will generally include demolishing the existing office finish, placing bay doors in each
8 bay, replacing the existing boiler with radiant heating, replacing a portion of the concrete floor
9 with a sloped floor and drains, and relocating the electric outlets to the outside walls. All
10 required work will be completed by the Town to the reasonable satisfaction of the County not
11 later than May 1, 2013.

12 1.6 **Common Area.** As part of this Lease County also has the right to use the
13 common area of the Public Works Facility ("**Common Area**"), subject to this Lease and the
14 Town's rules concerning the use of such area. County has no interest in, or right to use or
15 occupy, any portion of the Public Works Facility except for the Leased Premises and the
16 Common Area.

17 1.7 **Use of Leased Premises.** The Leased Premises will be used by County only for
18 the location and operation of the County's Road & Bridge equipment and material storage
19 facility, and for directly related public works uses. County will not use the Leased Premises for
20 any other purpose without Town's prior written consent.

21 1.8 **Term.**

22 (a) The term of this Lease ("**Term**") begins when the County takes possession
23 of the Leased Premises following the completion of the remodeling of the Leased Premises by
24 Town as described in Section 1.5, and ends, unless sooner terminated as hereafter provided, at
25 11:59 P.M., local time, on May 1, 2111. The Parties will execute an amendment to this Lease
26 confirming the date of the commencement of the Term of this Lease. Prior to the expiration of
27 the Term, the Town and County will negotiate in good faith to attempt to reach agreement on the
28 possible extension of the Term, or to enter into a new lease for the Leased Premises; provided,
29 however, that nothing in this Lease obligates either Party to agree to an extension of the Term, or
30 to enter into a new lease for the Leased Premises.

31 (b) Notwithstanding the stated Term of this Lease, either the Town or the
32 County may terminate this Lease, without liability for breach, upon not less than one year's
33 advance written notice to the other Party. If the Town elects to terminate this Lease pursuant to
34 this subsection (b), Town will, diligently and in good faith, assist County in County's efforts to
35 find a suitable replacement location for its County's Road & Bridge equipment and material
36 storage facility.

37 1.9 **Surrender of Leased Premises.**

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

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

20 **ARTICLE 2 – RENT, SECURITY AND OTHER CONSIDERATION**

21 2.1 **Rent.** There is no periodic rent to be paid by the County for the lease of the
22 Leased Premises. However, County will pay to Town as and when due any amount required to
23 be paid by County under this Lease.

24 2.2 **Interest on Past Due Amounts.** County will pay interest to Town on any sum
25 due to Town under this Lease that is 30 days or more past due at the rate of 12% per annum from
26 the date due until the date such payment is fully paid.

27 2.3 **Due Date, Place and Manner of Payments.**

28 (a) All sums payable to Town under this Lease are due 30 days after County's
29 receipt of Town's properly documented invoice. County will notify Town of any objection
30 within 14 days of the invoice date, identifying the reasons for such objection in writing, and
31 timely paying that portion of the invoice not in dispute. Invoices will be considered acceptable to
32 County if no such objections are made. If objections to an invoice are made by the County, the
33 dispute will be resolved in accordance with Article 13.

34 (b) Sums due to the Town will be paid to:

35 Town of Breckenridge
36 Clerk & Finance Division
37 Attn: Accounts Receivable

1 P. O. Box 168
2 Breckenridge, CO 80424
3

4 or at such other place as the Town Manager of the Town of Breckenridge (“**Town Manager**”)
5 may hereafter designate by written notice provided to County in accordance with Section 16.1 of
6 this Lease.

7 2.4 **Additional Consideration To Be Received By Town.** As additional
8 consideration to be received by Town under this Lease County covenants and agrees with the
9 Town that once the County takes possession of the Leased Premises pursuant to this Lease the
10 County Road 450 Property will be jointly redeveloped with the Town as an attainable housing
11 site. The Parties agree to act expeditiously and in good faith to arrive at mutually agreeable
12 terms, conditions, and schedules for the redevelopment of the County Road 450 Property.

13 **ARTICLE 3 - TOWN’S DISCLAIMERS AND EXCULPATORY PROVISIONS**

14 3.1 **Delay In Delivery of Possession of Leased Premises.** Town is not liable to
15 County for any delay in delivery of possession of the Leased Premises to County.

16 3.2 **Town’s Non-liability.** As a material part of the consideration to be received by
17 Town under this Lease, County assumes all risk of damage to property or injury to persons in or
18 upon the Leased Premises from any cause other than Town’s gross negligence or intentional
19 wrongful act, and County waives all claims in respect thereof against Town.

20 3.3 **Limitation of Remedies.** Town is not liable for any indirect, special, or
21 consequential damages, including, but not limited to, loss of anticipated profits, revenue or
22 savings, business interruption, or any similar claim arising from the Town’s breach of this Lease,
23 even if Town has been advised of the possibility of such damages. This limitation applies
24 notwithstanding the failure of an essential purpose of any limited remedy.

25 **ARTICLE 4 - COUNTY’S AFFIRMATIVE OBLIGATIONS**

26 4.1 **Damages to Leased Premises and Public Works Facility.** County will pay for
27 any damage to the Leased Premises caused by County or resulting from County’s use of the
28 Leased Premises pursuant to this Lease. County will also pay for any damage to other portions of
29 the Public Works Facility caused by County’s negligence or intentional wrongful act. County
30 will pay for any such damage within 30 days of receipt of notice from the Town.

31 4.2 **Taxes.** Because both Town and Country are tax-exempt entities under Colorado
32 law, the parties anticipate that the Leased Premises will be tax-exempt throughout the Term.
33 However, if any taxes are lawfully assessed against the Leased Premises as a result of County’s
34 use of the Leased Premises County will pay such taxes before they become delinquent.

35 4.3 **Signs.** County will not post, place, affix, erect, or display any sign within or
36 outside of the Leased Premises without Town’s prior approval. In considering County’s request

1 to place a sign within or outside of the Leased Premises, Town acts in its capacity as landlord of
2 the Leased Premises, and not in its governmental capacity. Town may remove any sign placed
3 within or outside of the Leased Premises in violation of the portions of this Section. County will
4 maintain all signs located within or outside of the Leased Premises in good, clean, and attractive
5 condition. County will remove all signs placed by it within or outside of the Leased Premises at
6 the expiration or earlier termination of this Lease, and repair any damage or injury caused
7 thereby. If not so removed by County, the Town may remove such sign(s) at County's expense.

8 4.4 **Inspection and Entry.** Town and Town's authorized representatives may enter
9 the Leased Premises at all times during reasonable hours to inspect the Leased Premises. County
10 further agrees that the Town may go upon the Leased Premises at all times and:

11 (a) perform any work therein that may be necessary to comply with any laws,
12 ordinances, rules or regulations of any public authority or that the Town may deem necessary to
13 prevent waste or deterioration of the Leased Premises;

14 (b) post any notice provided for by law; or

15 (c) otherwise protect any and all rights of Town,

16 all without any liability to County for damages.

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

23 4.5 **Compliance With Laws.** County, at its sole cost and expense, will comply with
24 all laws, ordinances, orders, and regulations of all governmental authorities with respect to the
25 use of the Leased Premises. A judgment of any court or the admission of County in any action or
26 proceeding against County, whether Town is a party thereto or not, that County has violated any
27 law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the
28 fact as between Town and County.

29 **ARTICLE 5 - UTILITIES AND MAINTENANCE**

30 5.1 **Utilities.**

31 (a) Town will provide water, gas, and electricity for County's use at the
32 Leased Premises if any of such utilities are not separately metered,

33 (b) For any utility service that is not separately metered the Parties will agree
34 on a formula whereby the County will pay its pro rata share of the cost of the unmetered utilities
35 used or consumed by it at the Leased Premises.

1 (c) County, at its cost, may elect to install meters for any utility service used
2 by it at the Leased Premises. County will contract (in its own name) and pay for any utilities
3 provided to the Leased Premises that are separately metered.

4 (d) County will contract (in its own name) and pay for any telephone, cable
5 television, and internet services used by County at the Leased Premises.

6 5.2 **Facility Maintenance Fee.** County will pay its pro rata share of the total cost of
7 maintenance, upkeep, repair, and replacement of the Common Area (exclusive of costs
8 attributable only to the Town's new Public Works Administration Building and other facilities
9 used exclusively by the Town). County's pro rata share will be based on the square footage of
10 the Leased Premises compared to the square footage of the Town's New Public Works
11 Administration Building and any other facilities at the Public Works Facility used exclusively by
12 the Town. Town will bill County on a regular basis, monthly or quarterly, at its discretion.

13 5.3 **Maintenance and Snow Plowing.**

14 (a) **County's Maintenance Duties.** County will provide, at its expense, all
15 required maintenance and upkeep of the Leased Premises.

16 (b) **Maintenance of the Common Area.** Town will provide, at its expense
17 all required cleaning and maintenance of the Common Area. Town will bill County, and County
18 will pay to Town, for County's pro rata share on a regular basis. County's pro rata share will be
19 determined in accordance with Section 5.2.

20 (c) **Snow Removal.** Town will provide all snow plowing, and snow and ice
21 removal for the Public Works Facility.

22 5.4 **Sand Piles.** The Parties will jointly share the use of the "sand pile" that is located
23 at the Public Works Facility. With respect to the sand piles, it is agreed that:

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

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

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

29 **ARTICLE 6 - COUNTY'S NEGATIVE OBLIGATIONS**

30 6.1 **Alterations and Improvements.**

31 (a) "Alteration" means:

1 (i) any further modification of or change to the County Public Works
2 Building after Town completes the initial remodeling of the County's Public Works
3 Building as described in Section 1.5;

4 (ii) the construction of the Additional Building as described in Section 6.2;
5 and

6 (iii) any other alteration, addition, substitution, installation, change, and
7 improvement to the Leased Premises.

8 (b) County is responsible for constructing and paying for all Alterations.

9 (c) County will not make any Alteration to the Leased Premises without the
10 prior written consent of Town, which consent may be granted, withheld, or conditionally
11 approved in Town's sole, absolute, and subjective discretion.

12 (d) The exterior of any Alteration must be architecturally compatible with the
13 New Town Public Works Administration Building, it being the Parties' intention that all of the
14 buildings located (and to be located) at the Public Works Facility during the Term will have the
15 same general appearance.

16 (e) County will provide Town with plans for the construction or installation of
17 any proposed Alteration at least 60 days prior to the planned commencement of construction.
18 County will also provide any supplemental information requested by Town. County will not
19 make any Alteration that has not been approved by Town.

20 (f) The following will be conditions of Town's consent to the construction of
21 any alteration to the Leased Premises by County:

22 (i) The work will be performed and completed:

23 (A) in accord with the submitted plans and specifications;

24 (B) in a workmanlike manner.

25 (C) in compliance with the Town's building and technical codes, and
26 may be inspected by the Town's Building Official to determine compliance with
27 the applicable codes.

28 (D) in compliance with all applicable laws, rules, regulations,
29 ordinances, and other requirements of governmental authorities.

30 (E) using new materials, unless otherwise agreed by Town; and

31 (F) with due diligence.

PUBLIC WORKS FACILITY LEASE

1 (ii) County will only use workers and contractors of whom Town approves.

2 (iii) County will modify plans and specifications because of reasonable
3 conditions set by Town after reviewing the plans and specifications.

4 (iv) County's contractors will carry builders risk insurance in an amount then
5 customarily carried by prudent contractors, and workers' compensation insurance for its
6 employees complying with applicable law.

7 (v) Upon request County will give Town evidence that it complied with any
8 condition set by Town.

9 (g) Any Alteration made by County to the Leased Premises will become the
10 property of the Town; will be considered as part of the Leased Premises; and will not be
11 removed from the Leased Premises by County upon the expiration or earlier termination of this
12 Lease unless removal is ordered by the Town.

13 (h) County will not make any Alteration without first having submitted the
14 proposed Alteration to the Town for review in accordance with the Town's "Public Project"
15 process described in the Town's Development Code.

16 6.2 **Additional Building.** In addition to the County Public Works Building, the
17 County may construct one additional building at the Leased Premises ("**Additional Building**")
18 on a site of a maximum size of 50 feet deep by 60 feet wide. If the County desires to construct
19 the Additional Building, then:

20 (a) the site of the Additional Building must be acceptable to the Town
21 (currently expected to be adjacent to the County Public Works Building).

22 (b) the County will pay to plan, design, and construct the Additional Building.

23 (c) Section 6.1 will apply to the construction of the Additional Building.

24 (d) if the County constructs the Additional Building, all provisions of this
25 Lease (unless otherwise indicated) apply to both the Additional Building and the County Public
26 Works Building.

27 (e) in order to expedite and reduce conflict on the site, the Town will, upon
28 County's request and at no charge to the County, manage the project and construct the
29 Additional Building as part of its contract to build the New Town Public Works Administration
30 Building. If the County requests the Town to manage and construct the Additional Building, the
31 following provisions apply:

32 (i) the County and the Town will work together to negotiate a price that is
33 acceptable to the County with the Town's contractor; and

1 (ii) the Town will make payment to the contractor for the costs of the
2 Additional Building;

3 (iii) the County will reimburse the Town within 30 days for any costs paid to
4 the contractor for the Additional Building; and

5 (iv) The contractor will provide separate billing to the Town for the Additional
6 Building to account for the costs of the Additional Building.

7 (f) if the Additional Building is built, it will become the property of the
8 Town; will be considered as part of the Leased Premises; and will not be removed from the
9 Leased Premises by County upon the expiration or earlier termination of this Lease unless
10 removal is ordered by the Town.

11 **6.3 Assignment and Subletting.**

12 (a) County will not assign, sublet, license, pledge, encumber, or allow any
13 other person or entity to occupy or use any or all of the Leased Premises without first obtaining
14 Town's prior written consent. Any assignment, sublease, license, pledge, or encumbrance
15 without Town's prior written consent is voidable by Town and, at Town's election, will
16 constitute a default under this Lease. No consent by Town to any of the above acts will constitute
17 a further waiver of the provisions of this Section.

18 (b) If Town consents to an assignment, sublease, or license County may be
19 required, as a condition of granting consent, to pay Town's reasonable costs incurred in
20 considering the proposed assignment, sublease, or license including, but not limited to, legal fees
21 and credit checks.

22 **6.4 Waste or Nuisance.** County will not commit or permit to be committed any waste
23 upon the Leased Premises. County will not commit or permit to be committed upon the Leased
24 Premises any public or private nuisance, or any other act or thing prohibited by law.

25 **ARTICLE 7 - COUNTY'S PAYMENT TO TOWN IN LIEU OF RENT**

26 **7.1 Payment Due to Town.** In lieu of the payment of periodic rent to occupy the
27 Leased Premises, the County will pay to the Town the sum of \$454,000. Such sum will be paid
28 in full within 20 days of the issuance of the certificate of occupancy for the County Public Works
29 Building.

30 **ARTICLE 8 - INSURANCE**

31 **8.1 County's Liability Insurance.** Throughout the Term County will, at its expense,
32 continuously maintain comprehensive general liability insurance with limits of liability not less
33 than the limits of liability for local governments established from time to time by the Colorado
34 Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. ("**Act**"), which limits are, as of
35 the effective date of this Lease, \$150,000 for injuries or damages sustained to one person in any

1 single occurrence and \$600,000 for injuries or damages sustained to two or more persons in any
2 single occurrence. County's liability insurance policy will be endorsed to include the Town as an
3 additional insured.

4 **8.2 Worker's Compensation Insurance.** County will maintain at all times
5 throughout the Term worker's compensation insurance as required by Colorado law insuring the
6 payment of compensation to all its employees engaged in the performance of work at the Leased
7 Premises.

8 **8.3 Property and Casualty Insurance.**

9 (a) Town will provide property (casualty) insurance on all of the buildings
10 located (or to be located) at the Public Works Facility, including all buildings owned by the
11 Town and all buildings owned by the County. County will reimburse Town for the cost of
12 insuring the County Public Works Building (and the Additional Building if built) under the
13 Town's property (casualty) insurance policy.

14 (b) County will provide its own property (casualty) insurance for its personal
15 property, motor vehicles, and equipment to be the stored in the Leased Premises.

16 **8.4 Additional Insurance Provisions.** Every insurance policy required to be carried
17 by this Article to be carried by County will be primary insurance, and any insurance carried by
18 Town, its officers, or its employees, or carried by or provided through any insurance pool of
19 which Town is a member, will be excess and not contributory insurance to that provided by
20 County. County is solely responsible for any deductible losses under its required insurance
21 policies.

22 **8.5 Insurance Criteria.** Insurance policies required by this Lease will:

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

27 (b) provide that the insurance cannot be cancelled or materially changed in the
28 scope or amount of coverage unless 15 days' advance notice is given to the Town.

29 **8.6 Evidence of Insurance.** Prior to the commencement of this Lease, and on each
30 subsequent renewal or replacement of the required insurance policies during the Term, County
31 will give to Town a certificate of insurance evidencing compliance with the requirements of this
32 Section. All required insurance policies will be renewed or replaced and maintained by the
33 County throughout the Term to assure continuous coverage. If County fails to give the required
34 insurance certificate within 10 days after notice or demand for it, such action will constitute a
35 default under this Lease, and the Town may then proceed as provided in Article 12 of this Lease,

1 and/or Town may obtain and pay for that insurance and receive reimbursement from the County,
2 together with interest thereon at the rate of 12% per annum.

3 **ARTICLE 9 - INDEMNIFICATION**

4 9.1 **Indemnification by County.** To the extent permitted by law, and subject to any
5 applicable limits of the Act, County will indemnify and defend the Town, its officers, employees,
6 insurers, and self-insurance pool from all liability, claims, and demands, on account of injury,
7 loss, or damage, including, without limitation, claims arising from bodily injury, personal injury,
8 sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever,
9 arising out of or in any manner connected with this Lease or County's use or possession of the
10 Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or demand
11 arises through the gross negligence or intentional wrongful act of the Town, its officers,
12 employees, or agents, or Town's breach of this Lease. If indemnification is required under this
13 Section, County will investigate, handle, respond to, and to provide defense for and defend
14 against, any such liability, claims, or demands at its expense, and bear all other costs and
15 expenses related thereto, including court costs and attorney fees.

16 9.2 **Survival.** The obligations of this Article 9 will survive the expiration or earlier
17 termination of this Lease.

18 **ARTICLE 10 - EMINENT DOMAIN**

19 10.1 **Eminent Domain.**

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

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

26 (i) the date title vests; or

27 (ii) the date County is dispossessed by the condemning authority.

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

31 (i) the date when title vests;

32 (ii) the date County is dispossessed by the condemning authority; or

1 (iii) 60 days following notice to County of the date when vesting or
2 dispossession is to occur.

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

6
7 (d) **Awards and Damages.** Any compensation or damages paid by a
8 condemning authority will be divided between the Town and County as follows:

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

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

14 **ARTICLE 11 - HAZARDOUS MATERIALS**

15 11.1 **Hazardous Materials - Defined.** As used in this Section, the term "**Hazardous**
16 **Materials**" means any chemical, material, substance or waste:

17 (a) exposure to which is prohibited, limited, or regulated by any federal, state,
18 county, regional or local authority, or other governmental authority of any nature; or

19 (b) that, even if not so regulated, may or could pose a hazard to the health or
20 safety of the occupants of the Public Works Facility, including, without limitation, any
21 petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances
22 defined as "hazardous substances", "hazardous materials", "hazardous wastes" or other similar
23 designations in the Comprehensive Environmental Response, Compensation and Liability Act of
24 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act,
25 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules,
26 regulations, and precautions.

27 11.2 **Hazardous Materials - Prohibited.** County will fully comply with all statutes,
28 laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by
29 any federal, state, local, or other governmental agency with respect to the use, generation,
30 storage, or disposal of Hazardous Materials. County will not cause, or allow anyone else to
31 cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the
32 Leased Premises without the prior written consent of Town, which consent may be revoked at
33 any time. County's indemnification of Town pursuant to this Lease extends to all liability,
34 including all foreseeable and unforeseeable consequential damages, directly or indirectly arising
35 out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by
36 County, or any person claiming under County, including, without limitation, the cost of any
37 required or necessary repair, cleanup, or detoxification and the preparation of any closure or

1 other required plans, whether such action is required or necessary prior to or following the
2 termination of this Lease, to the full extent that such action is attributable, directly or indirectly,
3 to the use, generation, storage, or disposal of Hazardous Materials by County or any person
4 claiming under County; provided, however, the written consent by Town to the use, generation,
5 storage, or disposal of Hazardous Materials will excuse County from County's obligation of
6 indemnification. In the event County is in breach of the covenants herein, after notice to County
7 and the expiration of the earlier of:

8 (a) the cure period provided in Section 12.1(c); or

9 (b) the cure period permitted under applicable law, regulation, or order,

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

14 **ARTICLE 12 - DEFAULT**

15 **12.1 Default by County.** The occurrence of any one or more of the following events
16 will constitute a default and breach of the Lease by County:

17 (a) The vacating or abandonment of the Leased Premises by County;

18 (b) The failure by County to make any payment due from County hereunder
19 as and when due, if such failure continues for a period of 10 days after service of written notice
20 thereof by Town to County;

21 (c) The failure by County to observe or perform any of the other covenants,
22 conditions, or provisions of this Lease to be observed or performed by the County, or to obey
23 rules promulgated by Town, within 10 days after service of written notice thereof by the Town to
24 the County. In the event of a non-monetary default that is not capable of being corrected within
25 10 days, County will not be default if it commences correcting the default within 10 days of
26 service of a demand for compliance notice and thereafter corrects the default with due diligence;
27 or

28 (d) The filing by or against County of a petition to have County adjudged
29 bankrupt.

30 **12.2 Exceptions to Cure Periods.** The cure period provided in Section 12.1(c) does
31 not apply to:

32 (a) Emergencies; or

33 (b) County's failure to maintain the insurance required by Article 8.

1 13.4 **Attorneys' Fees** If any action is brought in a court of law by either Party to this
2 Agreement concerning the enforcement, interpretation or construction of this Agreement, the
3 prevailing Party, either at trial or upon appeal, will be entitled to reasonable attorneys' fees, as
4 well as costs, including expert witness' fees, incurred in the prosecution or defense of such
5 action.

6 13.5 **Equitable Relief.** Nothing in this Article prevents a Party from seeking to obtain
7 from a court of competent jurisdiction a temporary restraining order, preliminary injunction,
8 permanent injunction, or other appropriate form of equitable relief, to enforce the provisions of
9 this Lease if such action is authorized by applicable law.

10 **ARTICLE 14 - NO DISTURBANCE**

11 14.1 **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, Town
12 covenants that so long as the amounts due to Town under this Lease are paid as and when due,
13 and there is no default in any of the other covenants, conditions, or provisions of this Lease to be
14 performed, observed or kept by County, the County will peaceably and quietly hold and enjoy
15 the Leased Premises for the entire Term.

16 **ARTICLE 15 - TOWN'S RULES**

17 15.1 **Rules.** County will faithfully observe and comply with any rules and regulations
18 promulgated by Town with respect to the Leased Premises. The Town's rules and regulations
19 must be reasonable, and may not unilaterally change or significantly alter the material terms and
20 conditions of this Lease. The rules and regulations, and any amendments thereto, will be binding
21 upon the County upon delivery to County.

22 **ARTICLE 16 - MISCELLANEOUS**

23 16.1 **Notices.** All notices required or permitted under this Lease must be given by
24 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
25 carrier delivery, or by telecopies, directed as follows:

26 If intended for Town to:
27
28 Town of Breckenridge
29 P.O. Box 168
30 150 Ski Hill Road
31 Breckenridge, Colorado 80424
32 Attn: Town Manager
33 Telecopier number: (970)547-3104
34 Telephone number: (970)453-2251
35

36 with a copy in each case (that will not constitute notice) to:
37

1 Timothy H. Berry, Esq.
2 Timothy H. Berry, P.C.
3 131 West 5th Street
4 P. O. Box 2
5 Leadville, Colorado 80461
6 Telecopier number: (719)486-3039
7 Telephone number: (719)486-1889
8

9 If intended for County to:

10
11 Board of County Commissioners
12 P.O. Box 68
13 Breckenridge, Colorado 80424
14 Attn: Gary Martinez, County Manager
15 Telephone number: (970)453-3401
16 Telecopier number: (970)453-3535
17

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

19
20 Jeff Huntley, Esq.
21 Summit County Attorney
22 P.O. Box 68
23 Breckenridge, Colorado 80424
24 Telephone number: (970)453-3407
25 Telecopier number: (970)454-3535
26

27 Any notice delivered by mail in accordance with this Section will be effective on the
28 third business day after the same is deposited in any post office or postal box regularly
29 maintained by the United States postal service. Any notice delivered by telecopier in accordance
30 with this Section will be effective upon receipt if concurrently with sending by telecopier receipt
31 is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt
32 requested, on the same day to the intended recipient. Any notice delivered by hand or
33 commercial carrier will be effective upon actual receipt. Either Party, by notice given as
34 provided above, may change the address to which future notices may be sent. The provisions of
35 this Section do not apply to any notice or demand that is required to be served in a particular
36 manner by applicable law; and any such notice or demand must be served as required by law
37 notwithstanding the provisions of this Section. E-mail is not a valid way to give notice under this
38 Lease.

39
40 16.2 **“Day” Defined.** Unless otherwise indicated, the term “day” means a calendar
41 (and not a business) day.
42

1 16.3 **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory
2 obligation to act or to refrain from acting as specifically indicated in the context of the sentence
3 in which such word is used.

4 16.4 **Complete Agreement.** It is understood and agreed that this Lease contains the
5 complete and final expression of the agreement between the Parties, and there are no promises,
6 representations, or inducements except as are herein provided. All negotiations, considerations,
7 representations, and understandings between the Parties related to this Lease are contained
8 herein.

9 16.5 **Amendment.** This Lease may not be modified except by a written amendment
10 signed by both the Town and County. Oral modifications of this Lease are not permitted.

11 16.6 **Captions.** The headings of the sections and subsection contained in this Lease are
12 for convenience only and do not define, limit, or construe the contents of the articles, sections
13 and paragraphs.

14 16.7 **Waiver.** The failure of either Party to exercise any of such Party’s rights under
15 this Lease is not a waiver of those rights. A Party waives only those rights specified in writing
16 and signed by the Party waiving such rights.

17 16.8 **Severability.** If any provision of this Lease is held to be invalid, illegal, or
18 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
19 contained in this Lease and the application hereof will not in any way be affected or impaired
20 thereby.

21 16.9 **Force Majeure.** Neither Party will be liable to the other for any failure, delay, or
22 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to
23 causes beyond the control of that Party including, without limitation, strikes, boycotts, labor
24 dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of
25 superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage
26 or any other circumstance for which such Party is not responsible or that is not in its power to
27 control.

28 16.10 **Advances by Town For County.** If County fails to do anything required to be
29 done by it under the terms of this Lease (other than a failure to make the payments to Town
30 herein required) the Town may, at its sole option, but without any obligation to do so, do or
31 perform such act or thing on behalf of County, and in doing so the Town will not be deemed to
32 be a volunteer; provided, however, that before exercising its rights under this Section Town must
33 give notice to County as provided in Section 16.1, and afford the County not less than five days
34 from the giving of such notice within which to do or perform the act required by County. Upon
35 notification to County of the costs incurred by the Town County will promptly pay to Town the
36 full amount of costs and/or expenses incurred by Town pursuant to this Section, together with
37 interest thereon at the rate of 12% per annum.

1 16.11 **Governmental Immunity.** Both the Town and the County are relying on, and do
2 not waive or intend to waive by any provision of this Lease, the monetary limitations (presently
3 \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and
4 protections provided by the Act, as from time to time amended, or any other limitation, right,
5 immunity or protection otherwise available to Town or the County, or their respective elected
6 officials, officers, or employees.

7 16.12 **No Adverse Construction Based On Authorship.** Each Party had the
8 opportunity to participate in the drafting of this Lease. This Lease is not to be construed against
9 either Party by virtue of such Party having drafted this Lease.

10 16.13 **Town's Consent.** Except as otherwise expressly provided to the contrary in this
11 Lease, wherever in this Lease it is provided that some act requires the Town's prior consent, such
12 consent will not be unreasonably withheld by Town.

13 16.14 **Third Parties.** There are no third Party beneficiaries of this Lease.

14 16.15 **Lease Not To Be Recorded.** This Lease **MAY NOT BE RECORDED** with the
15 Clerk and Recorder of Summit County, Colorado.

16 16.16 **Time of Essence.** Time is of the essence of this Lease.

17 16.17 **Governing Laws.** The laws of the State of Colorado will govern the
18 interpretation, validity, performance, and enforcement of this Lease.

19 16.18 **Non-Discrimination; Compliance with Applicable Laws.** County:

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

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

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

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

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ATTEST:

Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: _____
Chair

ATTEST:

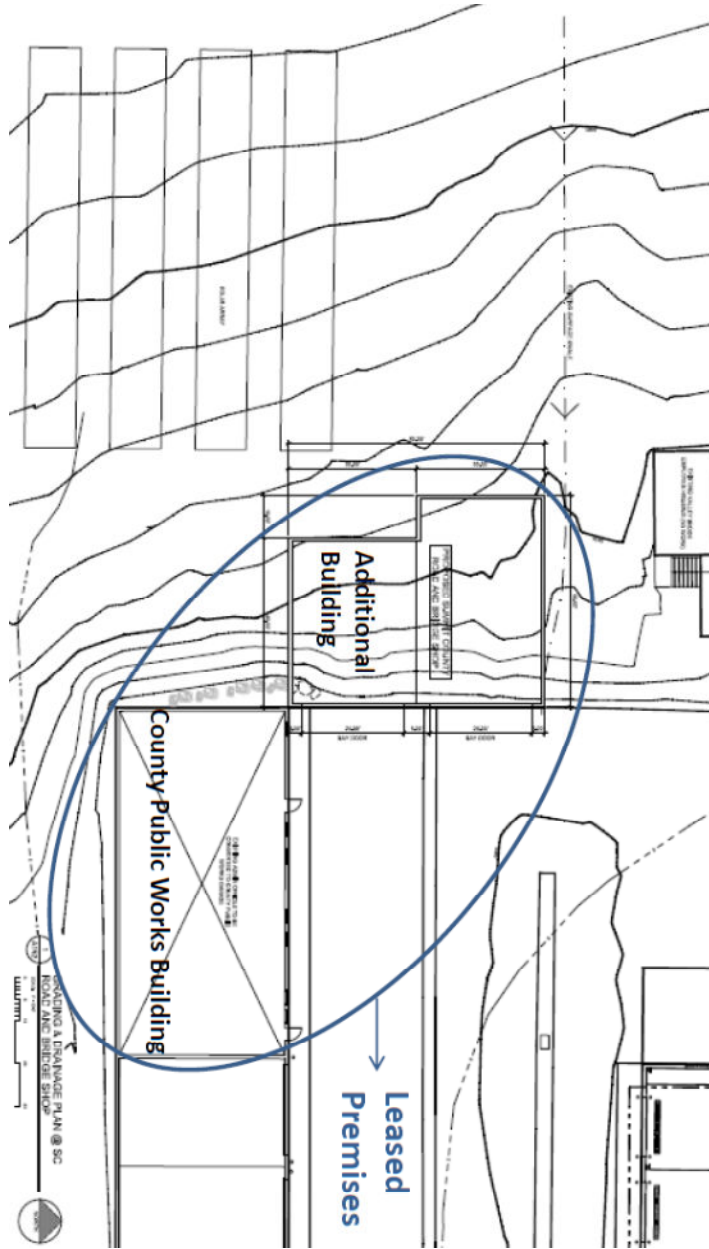
Kathleen Neel, Clerk and Recorder, and ex-officio
clerk to the Board of County Commissioners

1500-69 Lease (06-15-12)(Blacklined)

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Exhibit "A"

DESCRIPTION AND DEPICTION OF LEASED PREMISES



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MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 16 (making miscellaneous amendments to Town's liquor regulations)

DATE: June 18, 2012 (for June 26th meeting)

The second reading of the ordinance making miscellaneous amendments to the Town's liquor regulations is scheduled for your meeting on June 26th. There are no changes proposed to ordinance from first reading.

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

1
2 ***FOR WORKSESSION/FIRST READING – JUN. 26***

3
4 ***NO CHANGE FROM FIRST READING***

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

8
9 COUNCIL BILL NO. 16

10
11 Series 2012

12
13 AN ORDINANCE AMENDING ARTICLE F OR CHAPTER 3 OF THE BRECKENRIDGE
14 TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATING TO ALCOHOL,
15 CIGARETTES AND AMUSEMENT ESTABLISHMENTS

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

19
20 Section 1. Subsection 6-3F-9(C) of the Breckenridge Town Code is amended to read in
21 its entirety as follows:

22 C. This section shall not apply to a duly licensed package liquor store or vendor,
23 **or to a brew pub licensed pursuant to Section 12-47-415, C.R.S., that sells**
24 **only its own manufactured products in sealed container for off premises**
25 **consumption.**

26
27 Section 2. Subsection 6-3F-16(A) of the Breckenridge Town Code is amended to read in
28 its entirety as follows:

29 A. 1. It is unlawful for any person to possess any alcoholic beverage in any open
30 container or to consume any alcoholic beverage in any public place within the
31 town, or in the interior of any motor vehicle while the motor vehicle is either
32 parked on a public street, right of way or alley within the town or is being
33 operated on a public street, right of way or alley within the town.

34
35 2. The provisions of subsection A1 of this section shall not apply to the
36 possession of an open container or the consumption of an alcoholic beverage
37 within the licensed premises of an establishment licensed by the town to sell
38 such beverage for consumption upon the premises, or to the possession of an
39 open container or the consumption of any **fermented malt beverage**, malt
40 liquor or a vinous liquor as defined in the Colorado liquor code in those public
41 parks known as “Kingdom Park” and “Carter Park.”
42

1 Section 3. Section 6-3F-20 of the Breckenridge Town Code is amended to read in its
2 entirety as follows:

3
4 6-3F-20: TIME RESTRICTION- LICENSEE: It shall be unlawful for a licensee
5 or an employee of a licensee to sell, serve, or distribute an alcoholic beverage **for**
6 **consumption on** at the licensed premises between the hours of 2 A.M. and 7
7 A.M.

8
9 Section 4. Except as specifically amended hereby, the Breckenridge Town Code, and the
10 various secondary codes adopted by reference therein, shall continue in full force and effect.

11 Section 5. The Town Council hereby finds, determines and declares that this ordinance is
12 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
13 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
14 thereof.

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

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

20 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
21 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
22 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
23 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
24 Town.

25
26 TOWN OF BRECKENRIDGE, a Colorado
27 municipal corporation

28
29
30 By _____
31 John G. Warner, Mayor

32
33 ATTEST:

34
35
36 _____
37 Town Clerk

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 17 (Special Burn Permit Ordinance)
DATE: June 18, 2012 (for June 26 meeting)

The second reading of the ordinance authorizing the Town Manager to issue special burn permits is scheduled for your meeting on June 26th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – JUNE 12**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 17

9
10 Series 2012

11
12 AN ORDINANCE AMENDING SECTION 5-5-5 OF THE BRECKENRIDGE TOWN CODE
13 CONCERNING THE ISSUANCE OF A SPECIAL PERMIT AUTHORIZING OPEN
14 BURNING WITHIN THE TOWN

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

18
19 Section 1. Section 5-5-5 of the Breckenridge Town Code is amended to read in its
20 entirety as follows:

21
22 5-5-5: SPECIAL PERMITS:

23
24 A. Notwithstanding the provisions of section 5-5-3 of this chapter, the ~~town~~
25 ~~council~~ **town manager** shall have the authority to issue a special permit for the
26 purpose of authorizing open burning within the town. An application for such a
27 permit shall be made in writing to the ~~town council~~ **town manager** and shall state
28 the date, time, location and purpose of such fire, and a description of all safety
29 and precautionary measures planned. **The burden of proof with respect to an**
30 **application filed under this subsection A shall be upon the applicant.** The
31 ~~town council~~ **town manager** shall act upon such request at its next regularly
32 scheduled meeting following **within ten days of the town manager's** receipt of
33 the completed application; **provided, however, that the town manager may**
34 **extend the deadline for deciding an application by an additional seven days if**
35 **required to complete the review of the application.** The ~~town council~~ **town**
36 **manager** may grant such application if ~~it~~ **the town manager** finds that there are
37 special and unique circumstances ~~which~~ that justify granting the application. All
38 open burning conducted within the town pursuant to a special permit issued
39 pursuant to this section shall be conducted in accordance with the rules pertaining
40 to open burning contained in the town's fire code. The ~~town council~~ **town**
41 **manager** may impose such other reasonable conditions upon a special permit as ~~it~~
42 **the town manager** ~~shall determine~~ to be necessary to adequately protect the
43 health, safety and welfare of the town and its inhabitants. It shall be unlawful for
44 any person to conduct any open burning within the town in violation of the terms
45 and conditions of a special permit issued pursuant to this section.

1
2 **B. An applicant for a special burn permit submitted pursuant to subsection**
3 **A of this section has the right to appeal the town manager’s denial or**
4 **conditional approval of an application submitted under subsection A of this**
5 **section to the town council. An applicant’s appeal of the town manager’s**
6 **denial or conditional approval of an application shall be conducted in**
7 **accordance with Section 1-19-13 of this code. The burden of proof in an**
8 **appeal filed under this subsection B is upon the applicant. If the town council**
9 **finds by a preponderance of the evidence that the decision of the town**
10 **manager was correct, the town council shall uphold the decision of the town**
11 **manager. If the town council finds by a preponderance of the evidence that**
12 **the decision of the town manager was incorrect, the town manager’s decision**
13 **shall be set aside and the special burn permit issued (if it was previously**
14 **denied) or the conditions of approval of such permit stricken or modified.**
15 **The applicant’s failure to timely appeal the town manager’s decision of an**
16 **application submitted pursuant to subsection A of this section is a waiver the**
17 **applicant’s right to contest the denial or conditional approval of the**
18 **application. If there is any conflict between the provisions and requirements**
19 **of this subsection B and the provisions and requirements of Section 1-19-13**
20 **of this code, the provisions and requirements of this subsection B control.**
21

22 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
23 various secondary codes adopted by reference therein, shall continue in full force and effect.
24

25 Section 4. The town council hereby finds, determines and declares that this ordinance is
26 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
27 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
28 thereof.
29

30 Section 5. The town council hereby finds, determines and declares that it has the power
31 to adopt this ordinance pursuant to the provisions of Section 31-15-601, C.R.S., and the powers
32 possessed by home rule municipalities in Colorado.
33

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

37 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
38 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
39 regular meeting of the town council of the Town of Breckenridge, Colorado on the ____ day of
40 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
41 Town.
42

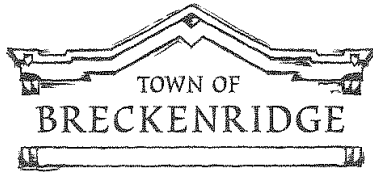
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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk



MEMORANDUM

TO: Town Council
FROM: Chris Neubecker, Current Planning Manager
DATE: June 20, 2012
SUBJECT: First Reading: Air Quality/Policy 30 (Ordinance 18, Series 2012)

On May 22, 2012 the Town Council directed staff to change the Development Code policy concerning Air Quality. Scheduled for first reading Tuesday night is an ordinance that would make the following primary changes to the current Development Code policies on Air Quality:

1. Eliminate negative points for wood fired ovens, such as pizza ovens.
2. Allow replacement of older wood-burning fireplaces with cleaner burning EPA Phase II wood-burning fireplaces.

Wood Fired Pizza Ovens

Wood fired pizza ovens are specialty cooking appliances that use the burning of hardwoods and fruitwoods to cook foods very quickly and at very high temperatures. These ovens create less smoke and emissions than wood fireplaces, which usually use pine and other softwoods as fuel. Wood fired ovens create much less smoke than wood smokers, which rely on relatively low temperatures to produce smoke in order to flavor foods and keep meats moist. In addition, there are few restaurants or bars that use wood fired ovens and, as a result, we expect that they will have little impact to the overall air quality in the Breckenridge area. In addition, most restaurants are leasing space as tenants, and earning positive points to mitigate negative points is very difficult in most cases. For these reasons, we recommend changing this policy to eliminate the negative points for wood fired ovens.

Replacing Old Fireplaces

The current Development Code places a limit on the number of wood burning fireplaces allowed in various spaces, depending on the use. In some cases, wood burning fireplaces do not get replaced with cleaner burning fireplaces because the current codes would not allow fireplaces in the first place. (Many existing fireplaces are non-conforming because they were installed before the current policy was adopted, but the policy still prohibits replacement fireplaces.) This policy would allow replacement of older fireplaces with newer, cleaner burning EPA Phase II appliances, even though a fireplace would not be allowed for new construction.

Staff and the Town Attorney will be at the meeting on Tuesday to answer any questions on this ordinance.

1 **FOR WORKSESSION/FIRST READING – JUNE 26**

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2012

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”,
12 CONCERNING AIR QUALITY
13

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

16
17 Section 1. The definition of “Wood burning Cooking Appliance” in Section 9-1-5 of the
18 Breckenridge Town Code is amended to read in its entirety as follows:
19

20
21 **WOOD BURNING COOKING
22 APPLIANCE:**

Any cooking appliance that utilizes the burning
of wood for fuel, **including, but not limited
to, a wood smoker. A wood-fired oven is not
classified as a wood burning cooking
appliance.**

23
24 Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
25 the following definitions:
26

WOOD SMOKER:

**Any cooking appliance that utilizes the
burning of wood with the intent of
producing smoke and relatively low cooking
temperatures (usually below 400 degrees
Fahrenheit) in order to cook and infuse
flavor into foods (usually meats and other
types of barbeque) at relatively low
temperatures.**

WOOD-FIRED OVEN:

**A cooking appliance that utilizes the
burning of hardwoods and/or fruitwoods
with the intent of cooking pizzas and other
foods quickly and at very high temperatures
(usually above 500 degrees Fahrenheit).**

24
25 Section 3. Section 9-1-19-30A (ABSOLUTE) AIR QUALITY of the Breckenridge
26 Town Code is amended to read in its entirety as follows:

1
2 **30. (ABSOLUTE) AIR QUALITY (30/A):** Due to the effects of unregulated wood
3 burning appliances on the air quality of Breckenridge as the Town continues to
4 grow, it is necessary to place limitations on the number of new wood burning
5 appliances in order to protect the quality of our air. In order to retain the quality of
6 air present in Breckenridge the following Policy shall apply. Those projects that
7 wish to provide additional fireplaces or stoves over and above those allowed here
8 shall do so through the use of gas, electricity, or similar means.
9

10 A. The number of wood burning appliances that may be installed in any
11 project constructed or remodeled within the Town is hereby limited to
12 the following:
13

14 (1) Single-Family Residential: One wood burning appliance per dwelling unit. No
15 wood burning appliances shall be allowed in any accessory apartments.
16

17 (2) Duplex And Townhouse Residential: One wood burning appliance per
18 dwelling unit; provided, that each unit has one thousand five hundred (1,500)
19 square feet or more of internal heated floor area. No wood burning appliances
20 shall be allowed in units with less than one thousand five hundred (1,500)
21 square feet of internal heated floor area.
22

23 (3) Multi-Unit Residential: One wood burning appliance per floor located in a
24 lobby or common area containing greater than one thousand (1,000) square
25 feet, with a maximum of two (2) per individual building. No such wood
26 burning appliances shall be allowed in dwelling units.
27

28 (4) Restaurant Or Bar: One wood burning appliance per restaurant or bar, or
29 restaurant/bar combined.
30

31 B. The installation of coal-burning appliances is prohibited.
32

33 C. The installation of a wood burning appliance which does not meet or
34 exceed any applicable emission standards promulgated by the United
35 States Environmental Protection Agency is prohibited.
36

37 D. The installation of a wood burning cooking appliance, wood smoker,
38 or wood-fired oven is prohibited except in a restaurant or
39 restaurant/bar combined; and not more than: (i) one wood burning
40 cooking appliance, (ii) one wood smoker, and (iii) one wood-fired
41 oven is are permitted per restaurant or restaurant/bar combined.
42

43 E. No development shall cause directly or indirectly, either by itself or
44 incrementally, a violation of the ambient air quality standards for the
45 region as established from time to time by the Colorado Department of
46 Health.

1
2 **F. Exceptions: Notwithstanding subsection A of this policy, if an**
3 **existing wood burning appliance is proposed to be replaced with a**
4 **new wood burning appliance that meets or exceeds the**
5 **Environmental Protection Agency phase II emissions standards,**
6 **the replacement wood burning appliance may be allowed even**
7 **though wood burning appliances would not otherwise be allowed**
8 **for new construction at the property, and even though the**
9 **property would contain more wood burning appliances than**
10 **allowed by subsection A of this policy.**

11
12 Section 4. Section 9-1-19-30R (RELATIVE) AIR QUALITY of the Breckenridge Town
13 Code is amended to read in its entirety as follows:

14
15 **30. (RELATIVE) AIR QUALITY (30/R):**

16
17 A. Where wood burning appliances are permitted:

18
19 It is encouraged that all developments install alternative methods of
20 heating, rather than wood burning appliances. To encourage the use of
21 alternative methods of heating, the following point analysis shall be
22 utilized to evaluate how well a proposal meets this Policy:

23
24 0 The installation of a wood burning appliance; or gas
25 fireplace.

26
27 -2 The installation of a wood burning cooking appliance **or**
28 **wood smoker** in a restaurant or restaurant/bar combined.

29
30 **0 The installation of a wood-fired oven in a restaurant or**
31 **restaurant/bar combined.**

32
33 2 x (0/+2)

34 B. Beyond the provisions of Policy 30 (Absolute) of this
35 Section, other measures which are likely to reserve or enhance the
36 quality of the air are encouraged. Measures which are effective
37 over the long-term are preferred.

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

40
41 Section 6. The Town Council hereby finds, determines and declares that it has the power
42 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
43 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
44 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
45 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to

1 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
2 contained in the Breckenridge Town Charter.

3
4 Section 7. The Town Council hereby finds, determines and declares that it has the power
5 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
6 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

7
8 Section 8. This ordinance shall be published and become effective as provided by
9 Section 5.9 of the Breckenridge Town Charter.

10
11 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
12 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
13 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
14 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
15 Town.

16
17 TOWN OF BRECKENRIDGE, a Colorado
18 municipal corporation

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

24
25 ATTEST:

26
27
28
29 _____
30 Town Clerk



MEMORANDUM

To: Mayor & Town Council
From: Tim Gagen, Town Manager
Date: April 17, 2012
Subject: *4th Amendment to Lease Agreement - Pinewood*

In 1995, the Town entered into a land lease agreement with Breckenridge Village Apartments, LLC (Corum) to provide land for the development of the Pinewood Village affordable rental project. This lease agreement provided the framework for the financing arrangements for Pinewood, including the land lease payments back to the Town for the use of the land. Recently, Corum has seen the opportunity to refinance their existing debt on the project with HUD and greatly accelerate the timing of when the Town's lease payments will begin.

The Town has expressed an interest in participating in the refinancing to enhance the approval of the larger refinancing through HUD. The proposed role for the Town would be to provide \$600,000 toward the refinancing with an interest rate of 3.70% and a term of 35 years which mirrors the proposed HUD refinancing terms. This refinancing will allow the financial pro forma of the project to begin paying the Town its land lease in 2012 instead of the original pro forma at 2024. The refinancing pro forma also shows that debt service for our loan beginning in 2012. In addition to accelerating the land lease payments, the Town will be earning 3.7% on our money loaned which is significantly greater than our current investment interest. Attached are the pro formas without refinancing and with refinancing, which show the change in land lease timing.

In reviewing how to best document the loan by the Town, it was decided to use the existing lease agreement template and amend it to reflect the loan as opposed to creating a new separate agreement. To be consistent with the lease, the loan repayment is referred to as "annual minimum rent" in the amendment. The Town Attorney and Staff have worked with Corum to develop the amendment to the lease and are comfortable with the proposed amendment. If Council is also comfortable with the proposed amendment, we recommend consideration under the first reading at the regular meeting as this change needs to be done by ordinance.

1 ***FOR WORKSESSION/FIRST READING – JUNE 26***

2
3
4 COUNCIL BILL NO. ____

5
6 Series 2012

7
8 AN ORDINANCE AUTHORIZING THE EXECUTION OF A FOURTH AMENDMENT TO
9 LEASE WITH BRECKENRIDGE VILLAGE APARTMENTS, LLC, A COLORADO
10 LIMITED LIABILITY COMPANY

11
12 WHEREAS, the Town and Breckenridge Village Apartments, LLC, a Colorado limited
13 liability company (“**BVA**”), entered into that certain Lease dated June 14, 1995 (“**Original**
14 **Lease**”), whereby the Town leased to BVA, and BVA leased from the Town, that certain real
15 property known as Lot 5, Block 1, Parkway Center Subdivision, Town of Breckenridge, County of
16 Summit and State of Colorado, for the construction and operation by BVA of an affordable housing
17 project known as “Pinewood Village”; and

18
19 WHEREAS, Section 20.9 of the Lease provides that the Lease may be amended by written
20 agreement executed by the parties; and

21
22 WHEREAS, the Original Lease has been amended by that certain Amendment to Lease
23 dated November 20, 1995, (the “**First Amendment**”), that certain Second Amendment to Lease
24 dated February 28, 1996, (the “**Second Amendment**”), and that certain Third Amendment to
25 Lease dated June 3, 1996, (the “**Third Amendment**”), and

26 WHEREAS, the Town and BVA desire to further amend the Lease as set forth in the
27 proposed “Fourth Amendment To Lease”, a copy of which is marked **Exhibit “A”**, attached hereto
28 and incorporated herein by reference; and

29
30 WHEREAS, the Town Council has reviewed the proposed Fourth Amendment to Lease,
31 and finds and determines that its approval would be in the best interest of the Town and its citizens.

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

35
36 Section 1. The Fourth Amendment to Lease between the Town and Breckenridge Village
37 Apartments, LLC, a Colorado limited liability company (**Exhibit “A”** hereto) is approved, and the
38 Town Manager is authorized, empowered, and directed to execute such document for and on behalf
39 of the Town of Breckenridge.

40
41 Section 2. The Town Council hereby finds, determines, and declares that it has the power
42 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
43 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (the "Fourth Amendment") is made and entered into to be effective the 30th day of June, 2012, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation, ("Landlord") and BRECKENRIDGE VILLAGE APARTMENTS, LLC, a Colorado limited liability company, ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Lease dated June 14, 1995, (the "Original Lease") pursuant to which Landlord leased to Tenant, subject to the terms, conditions and restrictions provided in the Original Lease, the Property as more particularly described therein, and

WHEREAS, the Original Lease has been amended by that certain Amendment to Lease dated November 20, 1995, (the "First Amendment"), that certain Second Amendment to Lease dated February 28, 1996, (the "Second Amendment"), and that certain Third Amendment to Lease dated June 3, 1996, (the "Third Amendment"), and

WHEREAS, the Original Lease, as amended by the First Amendment, Second Amendment and Third Amendment is herein collectively referred to as the "Lease", and

WHEREAS, Tenant is entitled to a Preferred Return on Tenant's Invested Equity, which has an accrued and unpaid balance ("Tenants Accrued Return"), as of the date of this Fourth Amendment, of One Million Four Hundred Eighty-Seven Thousand One Hundred Six and 00/100th Dollars,(\$1,487,106.00), and

WHEREAS, Landlord desires to prepay to Tenant a portion of the future Preferred Return on Tenant's Invested Equity, in advance of its payment from Operation Proceeds or Disposition Proceed from the Property, and

WHEREAS, Landlord and Tenant desire to provide for the payment of a minimum rent to Landlord, and

WHEREAS, Tenant has the present intent to refinance the existing financing on the Property and is pursuing such refinancing in good faith in a commercially reasonable manner, and

WHEREAS, it the expectation of both Landlord and Tenant that any refinancing on the Property will be sufficient to pay in full the balance of the future Preferred Return on Tenant's Invested Equity, and

WHEREAS, Landlord and Tenant desire to amend the Lease pursuant to this Fourth Amendment to reflect such agreements.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the undersigned hereby amend the Lease and otherwise provide as follows:

1. Landlord Advance to Tenant. Contemporaneously with the execution of this Fourth Amendment, Landlord shall pay to Tenant the sum of Six Hundred Thousand and 00/100th Dollars (\$600,000.00), as an advance against the future Preferred Return on Tenant's Invested Equity.

2. Operation Proceeds. The definition of Operation Proceeds set forth as Section 1.30 is deleted and the following is substituted in lieu thereof:

"1.30 "Operation Proceeds" shall mean all proceeds received from the operation of the Project less (i) the Annual Minimum Rent, (ii) the Preferred Return, and (iii) all costs and expenses of the Project, including without limitation, debt service, taxes, insurance, management fees and all other operational and maintenance expenses."

3. Rent Payable to Landlord. The first sentence of Section 6.1 of the Original Lease is hereby deleted and the following is substituted in lieu thereof:

"6.1 Rent. During the Term, Tenant shall pay to Landlord the Annual Minimum Rent. In addition, to the extent Operation Proceeds are available, Tenant shall pay to Landlord an amount equal to the Operation Proceeds, multiplied by the Landlord's Interest. The "Annual Minimum Rent" shall mean and refer to an annual amount of Thirty Thousand Five Hundred Ninety-Seven and 24/100th Dollars (\$30,597.24)¹, payable solely from "Surplus Cash" as defined in and set forth in financing currently encumbering the Property or any Refinancing. To the extent Surplus Cash is not available, no Annual Minimum Rent shall be payable and all such deferred amounts of Annual Minimum Rent shall be payable out of future Surplus Cash next available. The Annual Minimum Rent shall terminate Thirty-Five (35) years after the date hereof."

4. Payment of Tenant's Accrued Return. Landlord and Tenant agree that, subject to the payment of the Annual Minimum Rent, the Tenant's Accrued Return shall be payable from Operation Proceeds and Disposition Proceeds.

5. No Further Amendments. Except as amended above, the remaining terms, conditions and restrictions of the Lease shall remain unmodified and in full force and effect. No further amendment, alteration or modification of the Lease shall be valid unless made in writing and executed by Landlord and Tenant.

¹ The Annual Minimum Rental is calculated as follows: \$600,000 [Landlord's prepayment of a portion of the future Preferred Return on Tenant's Invested Equity] fully amortized at an interest rate of 3.7% [agreed interest on prepayment] for a period of 35 years [term of repayment] = \$30,597.24 (rounded). The entire unpaid balance of the Annual Minimum Rental (both principal and interest) may be paid to Landlord by Tenant at anytime without penalty.

6. Conflicts. If any provision of this Fourth Amendment is in conflict with the provisions of the Lease, then the terms and conditions of this Fourth Amendment shall control.

7. Counterparts. This Fourth Amendment or other agreements between the parties may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission, or in electronic format via email as a “.pdf” file, and said facsimile and/or electronically transmitted signature shall be deemed to have the same force and effect as an original signature counterpart. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

8. Defined Terms. The terms in this Fourth Amendment which are capitalized but not defined in this Fourth Amendment shall have the same meanings which are given to such terms in the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the date first set forth above.

Tenant:

BRECKENRIDGE VILLAGE APARTMENTS,
LLC, a Colorado limited liability company

By: CORUM BRECKENRIDGE EQUITIES,
LLC, a Colorado limited liability company,
Manager

By: _____
Name: _____
Title: _____

Attest:

By: _____
Name: _____
Title: _____

Landlord:

TOWN OF BRECKENRIDGE

By: _____
Name: _____
Title: _____

Pinewood Refinance Cash Flow - HUD 83.7% LTV with \$600,000 Town Loan

Assumptions		CHFA Loan Refinance Details	Refinance Proceeds Waterfall
Revenue Increase	2%	Loan Amount	HUD Loan
Expense Increase	3%	Loan Term in Years	Breckenridge Loan/Advance
Refinance Date	11/30/2012	Pass Thru Rate	CHFA 1st Balance
Town of Breckenridge Loan/Advance Date	6/30/2012	FHA MIP	CHFA 2nd Balance
		Service Fee	Summit HA Note Balance
		Net Rate	Prepayment Penalty
		P&I	Loan Cost
			Construction Cost
			Reserves
			PCNA/Appraisal
			Accrued Preferred Return Due
			Future Preferred Return
			LOC
			Proceeds
			\$ -

	Period	1	2	3	4	5	6	7	8	9	10	35
	2012 Budget	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2047
Income Statement												
Rental Income	902,510	920,560	938,971	957,751	976,906	996,444	1,016,373	1,036,700	1,057,434	1,078,583	1,100,155	1,804,920
Other Income	86,650	88,383	90,151	91,954	93,793	95,669	97,582	99,534	101,524	103,555	105,626	173,290
Total Revenue	989,160	1,008,943	1,029,122	1,049,705	1,070,699	1,092,113	1,113,955	1,136,234	1,158,959	1,182,138	1,205,781	1,978,211
Expenses	444,779	458,122	471,866	486,022	500,603	515,621	531,089	547,022	563,433	580,336	597,746	1,251,547
NOI	544,381	550,821	557,256	563,682	570,096	576,492	582,865	589,212	595,526	601,802	608,035	726,664
Refinanced Debt Service *	378,346	366,335	366,335	366,335	366,335	366,335	366,335	366,335	366,335	366,335	366,335	366,335
DSCR	1.44x	1.5x	1.52x	1.54x	1.56x	1.57x	1.59x	1.61x	1.63x	1.64x	1.66x	1.98x
Project Surplus Cash Flow**	166,035	184,486	190,921	197,347	203,761	210,157	216,530	222,877	229,191	235,467	241,700	360,329
Town of Breckenridge Annual Minimum Rent***	15,299	30,597	30,597	30,597	30,597	30,597	30,597	30,597	30,597	30,597	30,597	15,299
Balance Surplus Cash	150,736	153,889	160,324	166,750	173,164	179,560	185,933	192,280	198,594	204,870	211,103	345,030
Town Land Lease Payment****	83,017	92,243	95,461	98,674	101,880	105,078	108,265	111,438	114,595	117,734	120,850	180,164
Total Town of Breckenridge Payments	98,316	122,840	126,058	129,271	132,478	135,676	138,862	142,036	145,193	148,331	151,447	195,463

*HUD refinance loan to cover CHFA 1st and 2nd Notes, Summit HA Note, Accrued Preferred Return, and all Closing Costs. Assumed to commence 11.30.12, with 35 year amortization at 3.70%

** Project Surplus cash is based off NOI. Does not include Capital Expenditures and Other Owner Expenses which will impact cash flow

*** Town of Breckenridge loan/advance to pay off Future Preferred Return Payments due. Assumed to commence 7.1.12 with 35 year amortization at 3.70%. Loan has to match HUD amortization period

**** 50% of balance of surplus cash

Current Performance

Pinewood Current Cash Flow

Assumptions

Revenue Increase	2%
Expense Increase	3%
Revenue Increase over budget	0%

Income Statement	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2047
Rental Income	902,510	920,560	938,971	957,751	976,906	996,444	1,016,373	1,036,700	1,057,434	1,078,583	1,100,155	1,122,158	1,144,601	1,167,493	1,804,920
Other Income	86,650	88,383	90,151	91,954	93,793	95,669	97,582	99,534	101,524	103,555	105,626	107,738	109,893	112,091	173,290
Total Revenue	989,160	1,008,943	1,029,122	1,049,705	1,070,699	1,092,113	1,113,955	1,136,234	1,158,959	1,182,138	1,205,781	1,229,896	1,254,494	1,279,584	1,978,211
Expenses	466,737	480,739	495,161	510,016	525,317	541,076	557,308	574,028	591,248	608,986	627,255	646,073	665,455	685,419	1,313,334
NOI	522,423	528,204	533,961	539,688	545,382	551,036	556,646	562,206	567,710	573,152	578,525	583,823	589,039	594,165	664,877
CHFA 1st Principal and Interest	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967	332,967
CHFA 2nd Principal and Interest	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856	29,856
Summit HA Principal and Interest	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615	16,615
Total Current Debt Service	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438	379,438
<i>DISCR</i>	1.38x	1.39x	1.41x	1.42x	1.44x	1.45x	1.47x	1.48x	1.5x	1.51x	1.52x	1.54x	1.55x	1.57x	1.75x
Project Cash Flow	142,985	148,766	154,523	160,250	165,944	171,598	177,208	182,768	188,272	193,714	199,087	204,385	209,600	214,727	285,439
Accrued Preferred Return Due	1,475,050	1,520,836	1,492,856	1,459,120	1,419,656	1,374,498	1,202,900	1,025,691	842,923	654,652	460,938	261,851	57,466	-	-
Annual Preferred Return *	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786
Less: Surplus Cash - est	(75,000)	(148,766)	(154,523)	(160,250)	(165,944)	(171,598)	(177,208)	(182,768)	(188,272)	(193,714)	(199,087)	(204,385)	(209,600)	(214,727)	(285,439)
Preferred Return Balance	1,520,836	1,492,856	1,459,120	1,419,656	1,374,498	1,202,900	1,025,691	842,923	654,652	460,938	261,851	57,466	(152,134)	(214,727)	(285,439)
Preferred Return Payment	75,000	148,766	154,523	160,250	165,944	171,598	177,208	182,768	188,272	193,714	199,087	204,385	133,533	107,363	142,719
Land Lease Payment	-	-	-	-	-	-	-	-	-	-	-	-	76,067	107,363	142,719

*Amortization of Preferred Return over 20 years at 12% per Breckenridge Land Lease

Historical Preferred Return Payments and Accrual

Developer Agreement

Tenants Invested Equity	\$914,351
Term	20 Years
Interest Rate	12%

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Annual Preferred Return Due	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786	120,786
Preferred Return Payments			-	-	-	-	-	-	-	-	20,583	119,837	124,899	71,421	-
Cumulative Preferred Return	120,786	241,572	362,358	483,144	603,930	724,716	845,502	966,288	1,087,074	1,207,860	1,308,063	1,309,012	1,304,899	1,354,264	1,475,050

Summary

Cumulative Preferred Return	1,811,790
Cumulative Payments	336,740
Accrued Preferred Return Due	\$1,475,050

MEMORANDUM

To: Mayor and Town Council
From: Shannon Haynes, Chief of Police
Date: June 20, 2012
Subject: Fire Restriction Emergency Ordinance

Staff is recommending Town Council approve an emergency ordinance that will allow the Mayor, by proclamation, to prohibit or limit burning and other acts on public and private lands when an extreme fire hazard exists within the Town.

There is competent evidence of an imminent threat of a destructive wildfire in Summit County and/or the Town of Breckenridge. Extremely dry weather conditions are persisting and are forecast to continue or worsen for the foreseeable future. The Governor of the State of Colorado has declared a statewide fire ban and numerous destructive wildfires are currently occurring within the State of Colorado. On Wednesday, June 20th the Summit County Board of Commissioners enacted a Stage 2 fire ban within the county, in keeping with a similar ban that is anticipated being issued by the Forest Service for the White River National Forest on Friday, June 22, 2012.

Staff is asking for this to be read as an emergency ordinance on June 26th, 2012 so Mayor Warner may consider immediately issuing a proclamation placing further prohibitions and limitations on burning within the Town.

1 **FOR WORKSESSION/ADOPTION AS EMERGENCY**
2 **ORDINANCE - JUNE 26**

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

6
7 COUNCIL BILL NO. ____

8
9 Series 2012

10
11 AN ORDINANCE AUTHORIZING THE MAYOR TO IMPOSE NECESSARY FIRE
12 RESTRICTIONS IN TIME OF EXTREME FIRE HAZARD; DECLARING AN
13 EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS
14 ORDINANCE

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

18
19 Section 1. Chapter 5 of Title 5 of the Breckenridge Town Code is amended by the
20 addition of a new Section 5-5-5-1, to be entitled “Fire Emergencies”, which shall read in its
21 entirety as follows:

22
23 **5-5-5-1: FIRE EMERGENCIES: When the Mayor finds that conditions of**
24 **extreme fire hazard exist within the Town he or she may, by proclamation:**
25 **(i) close such Town owned land as he or she may find to be in such condition**
26 **of extreme hazard to the general public; (ii) prohibit or limit burning or**
27 **other acts on public or private lands within the Town to such a degree and in**
28 **such ways as he or she deems necessary to reduce the danger of forest fire;**
29 **and (iii) temporarily modify or eliminate the exemptions described in Section**
30 **5-5-4 of this Code. The Mayor shall notify the other members of the Town**
31 **Council and the Town Manager of his actions after issuing the proclamation.**
32 **The Mayor shall declare the end of any such emergency only upon a finding**
33 **that the conditions of extreme fire hazard no longer exist. It is unlawful and**
34 **a misdemeanor offense for any person to violate the terms, conditions, and**
35 **limitations of a mayoral proclamation issued pursuant to this Section.**
36 **Section 5-5-6 of this Code applies to any violation of the terms, conditions,**
37 **and limitations of a mayoral proclamation issued pursuant to this Section.**
38

39 Section 2. The Town Council hereby finds, determines and declares that it has the power
40 to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning general municipal
41 police powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the
42 authority granted to home rule municipalities by Article XX of the Colorado Constitution; and
43 (iv) the powers contained in the Breckenridge Town Charter.
44

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500-226\Fire Emergency Ordinance (06-19-12)



To: Breckenridge Town Council
From: Laurie Best Community Development Department
Date: June 18, 2012 (for worksession June 26th)
Re: Maggie Placer Annexation Modification-Resolution

Enclosed in your packets is a resolution to approve an Amended Annexation Agreement which will replace an Annexation Agreement that was executed in 2007 between the Town of Breckenridge and Henry F. Harris and recorded in the Summit County records under reception number 871523. The original annexation agreement was approved in 2007 and a Class A Development Permit (2008024) was approved in 2009, but no development has occurred and the site is still vacant.

At the June 12th worksession, the Town Council agreed to move forward with an amendment as proposed by the property owner. The substantive changes include:

- 1) a reduction of the total number of units to a maximum of 20
- 2) an allowance for up to 10 of these units to be released as market units
- 3) a reduction to the initial sale price to 80% and 95% AMI (assuming 6.5% interest rate)
- 4) use of local labor and suppliers for the construction

Please note that the owner's current development permit expires in August of 2012 and it will not be feasible to perform substantial construction before the expiration. Therefore, the amendment that has been prepared for your approval also extends the development permit until August of 2014 and includes a condition that building permits be in place and construction commenced no later than June 1, 2013. The owner has indicated that their intent is to begin construction as soon as possible and that this condition is acceptable.

Staff supports the Amended Annexation Agreement and will be available during the worksession on June 26th to answer questions.

1 **FOR WORKSESSION/ADOPTION - JUNE 26**

2
3 A RESOLUTION

4
5 SERIES 2012

6
7 A RESOLUTION APPROVING AN AMENDED ANNEXATION AGREEMENT WITH
8 MAGGIE PLACER, LLC, a Colorado limited liability company
9 (Maggie Placer Annexation)

10
11 WHEREAS, the Town of Breckenridge and Henry F. Harris, Jr. entered into that certain
12 Annexation Agreement dated October 19, 2007 and recorded in the Summit County, Colorado
13 real estate records on October 19, 2007 at Reception No.871523 (“Annexation Agreement”); and
14

15 WHEREAS, Maggie Placer, LLC, a Colorado limited liability company, is the successor
16 in interest to Henry F. Harris; and
17

18 WHEREAS, by Resolution No. 24, Series 2009, adopted August 25, 2009, the Town
19 Council approved a proposed Amended Annexation Agreement with Maggie Placer, LLC, a
20 Colorado limited liability company, but such Amended Annexation Agreement was never signed
21 nor recorded; and
22

23 WHEREAS, the Town and Maggie Placer, LLC, a Colorado limited liability company,
24 have come to agreement on the terms and conditions of a new Amended Annexation Agreement
25 that will replace the Annexation Agreement in its entirety, all as more fully set forth in the
26 proposed Amended Annexation Agreement (Maggie Placer Annexation), a copy of which is
27 marked **Exhibit “A”**, attached hereto and incorporated herein by reference; and
28

29 WHEREAS, the Town Council has reviewed the proposed Amended Annexation
30 Agreement (Maggie Placer Annexation), and finds and determines that the approval of such
31 agreement would be in the best interests of the Town and its citizens.
32

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

35
36 Section 1. The Amended Annexation Agreement (Maggie Placer Annexation) between
37 the Town and Maggie Placer, LLC, a Colorado limited liability company (**Exhibit “A”** hereto),
38 is approved, and the Town Manager is authorized, empowered, and directed to execute such
39 document for and on behalf of the Town of Breckenridge.
40

41 Section 2. Resolution No. 24, Series 2009, adopted August 25, 2009 is repealed.
42

43 Section 3. This resolution is effective upon adoption.
44

45 RESOLUTION ADOPTED AND APPROVED THIS ____ DAY OF _____, 2012.
46
47

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
John G. Warner, Mayor

ATTEST:

Town Clerk

APPROVED IN FORM

Town Attorney date

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AMENDED ANNEXATION AGREEMENT

THIS AMENDED ANNEXATION AGREEMENT ("*Amended Agreement*") is made and entered into this _____ day of _____, 2012, by and between the Town OF BRECKENRIDGE, a Colorado municipal corporation ("*Town*") and MAGGIE PLACER, LLC, a Colorado limited liability company ("*Owner*").

WHEREAS, Owner is the owner of the real property described in Exhibit "A" ("*Property*"); and

WHEREAS, by Ordinance No. 29, Series 2007, the Town annexed the Property to the Town; and

WHEREAS, the Town and Henry F. Harris, Jr., Owner's predecessor in interest, entered into that Annexation Agreement dated October 19, 2007 and recorded October 19, 2007 under Reception No. 871523 of the records of the Clerk and Recorder of Summit County, Colorado ("*Annexation Agreement*"); and

WHEREAS, Owner and Town desire to enter into an Amended Agreement to replace the Annexation Agreement in its entirety, all as more fully set forth hereafter.

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

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

"Annexation Surcharge" or "Surcharge" shall mean the fee due and payable to Town pursuant to Paragraph 7 of this Amended Agreement. Such fee shall be paid to Town as a general annexation fee and in lieu of the transfer of raw water to Town by the Owner.

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

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

“AMI” shall mean the Area Median Income for Summit County, Colorado based on the most current data as of the date of the sale of a Restricted Unit.

“Development Permit” shall mean the initial Development Permit issued by Town for the subdivision/development (PC#2008024) including the off-site improvements at the existing Highway 9 intersection to the Ski and Racquet Club, and any amendments thereto subsequently approved by Town through its land use regulatory system.

“Owner” shall mean Maggie Placer, LLC., its successors and assigns, and all other subsequent owners of the Property.

“PIF” shall mean the then-current Town Plant Investment Fee as provided for by the ordinances or regulations of Town at the time such charges are due and payable to Town as provided in Paragraph 6 of this Amended Agreement.

“Property” shall mean that certain real property described on the attached **Exhibit “A”**.

“Restricted Units” shall mean the 10 residential Units approved for construction on the Property pursuant to the Development Permit, which are to be and shall remain in perpetuity subject to the Restrictive Covenant. Pursuant to the Development Permit, there shall be 4 two bedroom Restricted Units, and 6 three bedroom Restricted Units.

“Restrictive Covenant” shall mean the restrictive covenant executed by Owner for the benefit of Town as described in Paragraph 3.5 of this Amended Agreement.

“SFE” shall mean a single family equivalent of density as defined by the Applicable Town Ordinances.

“Unit” includes both the Restricted Units and the Unrestricted Units. Pursuant to the Development Permit, there shall be a maximum of 20 Units developed on the Property (10 Restricted Units and 10 Unrestricted Units),

“Unrestricted Unit” means the 10 residential Units approved for construction on the Property pursuant to the Development Permit which are not Restricted Units.

2. **DEVELOPMENT.** Development of the Property shall conform in all respects with the Applicable Town Ordinances.

3. **PROPOSED USE OF AND RESTRICTIONS ON THE PROPERTY.**

3.1 **Land Use District Designation.** The Property is located in Land Use District 30.

3.2 **Development Density.** Town of Breckenridge Land Use District Guidelines which are in effect as of the date of this Amended Agreement provide that the maximum density in Land Use District 30 is per approved plat between 2 and 25 units per acre. As of the date of this Amended Agreement, the Property is unplatted. However, the parties acknowledge that Town

staff has recommended to Town Council that a subdivision plat for the Property be approved allowing a development of 20 Units on the 1.85 acre parcel. Under the applicable Town guidelines such density is acceptable for multi-family development in Land Use District 30. The parties acknowledge that the Town staff's recommendation has not been approved or acted upon by Town as of the date of this Amended Agreement, and that nothing in this Amended Agreement shall obligate Town to approve the proposed plat. However, if such plat is not adopted within one year of the date of this Amended Agreement, the Owner shall have the rights and remedies provided in Paragraph 11 of this Amended Agreement.

3.3 Plan Of Development. Town and Owner agree that the Property will only be developed in accordance with the Development Permit. The Town and Owner agree that the Owner will seek an amendment to the Development Permit to reduce the total number of Units to 20, with a maximum of 10 Unrestricted Units and a minimum of 10 Restricted Units. The Town agrees to extend the initial Development Permit for two additional years through August 24, 2014. The Owner agrees to utilize Summit County vendors, businesses, and employees for all construction authorized by the Development Permit, unless otherwise authorized by the Town in writing. Owner shall commence development of the Property by obtaining a building permit and breaking ground for the work authorized by the Development Permit and the Building Permit not later than June 1, 2013. Owner shall thereafter diligently and continuously prosecute the work authorized by the Development Permit and Building Permit to completion.

3.4 Minimum Size of Units. The minimum size for the 4 two-bedroom Restricted Units shall be 1,000 square feet (density), and the minimum size for the 6 three-bedroom Units shall be 1,250 square feet (density). There shall be no minimum size for the Unrestricted Units.

3.5 Terms of Restrictive Covenant.

3.5.1 Restrictive Covenant - Generally. At the time of the issuance of the first building permit for the construction of improvements to the Property, Owner shall execute and file the Restrictive Covenant with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Paragraph 3.5.3. The Restrictive Covenant shall be subject to the approval of Town, and the Owner shall not file the Restrictive Covenant until it has been reviewed and approved by Town. At the time of recording, the Restrictive Covenant shall be superior in priority to all liens and encumbrances against the Property, except for the lien of the general property taxes for the year in which the Restrictive Covenant is recorded and subsequent years.

3.5.2 Restrictive Covenant - Required General Topics. The Restrictive Covenant shall contain, without limitation, provisions regulating and limiting:

- (i) the ownership of each Restricted Unit;
- (ii) the occupancy and use of each Restricted Unit;
- (iii) the sale and resale of each Restricted Unit; and
- (iv) remedies for the breach or other violation of the Restrictive Covenant.

3.5.3 Restrictive Covenant - Release of Unrestricted Units. The Restrictive Covenant shall contain provide that one Unrestricted Unit may be released from the Restrictive Covenant for every three Restricted Units which are sold at the agreed sales price as described in Paragraph 3.5.6. All of the Restricted Units shall remain subject to the Restrictive Covenant in perpetuity, unless otherwise expressly agreed to by Town.

3.5.4 Restrictive Covenant - Mandatory Provisions Re: Ownership and Use. It shall be the stated intent of the Restrictive Covenant to ensure that each Restricted Unit is the exclusive and permanent residence of the owner of such Unit. Therefore, and without limiting the generality of Paragraph 3.5.2, the Restrictive Covenant shall provide that:

- A. each Restricted Unit shall be owned only by a natural person, unless otherwise allowed by the terms of the Restrictive Covenant;
- B. each owner of a Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Restricted Unit earns his or her living by working at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons primarily located in Summit County, Colorado. (qualified occupant);
- C. the owner of a Restricted Unit shall list for sale any other developed residential property owned by such owner in Summit County, Colorado within 120 days after acquiring the Restricted Unit; and
- D. at all times, an owner of a Restricted Unit shall:
 - 1. occupy the Restricted Unit as his or her sole place of residence; unless otherwise allowed by the terms of the Restrictive Covenant;
 - 2. not engage in any business activity on or in such Restricted Unit; other than as permitted in the applicable land use regulations of Town or by applicable Town ordinance;
 - 3. sell or transfer the Restricted Unit only in accordance with the terms; conditions and limitations of the Restrictive Covenant;
 - 4. not sell or otherwise transfer the Restricted Unit for use in a trade or business;
 - 5. not permit any use of occupancy of the Restricted Unit except in compliance with the terms; conditions and limitations of the Restrictive Covenant;
 - 6. not voluntarily encumber the Restricted Unit in an amount in excess of the owner's purchase price; and
 - 7. not own any other residential property in Summit County; Colorado; except as may be expressly authorized by the Restrictive Covenant.
- E. Upon the written consent of the Town, which may be recorded, a non-qualifying natural person or entity that owns and/or operates a business located in and serving the County may purchase a Unit; provided, however, that by taking title to a Unit, such Owner shall be deemed to agree to the rental restrictions authorized by the Restrictive Covenant.

3.5.5 Restrictive Covenant - Exceptions. The Restrictive Covenant shall provide that it shall not be a violation of the Restrictive Covenant if:

- A. rooms within a Restricted Unit are rented to qualified occupant sharing the Restricted Unit with the Unit owner;
- B. Restricted Unit is rented for use and occupancy to qualified occupant for a maximum cumulative total of 12 months during the time of ownership by a Unit owner or while the Restricted Unit is initially being marketed by the Owner;
- C. Restricted Unit is owned or occupied by a person age 65 years or older who has owned and occupied the Unit and worked at paid employment in Summit County, Colorado at least 30 hours per week on an annual basis, for the previous 7 years, together with such person's spouse and minor children, if any;
- D. Restricted Unit is owned or occupied by a person otherwise authorized to own or occupy the Restricted Unit pursuant to the Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Restricted Unit such that he or she cannot work the required number of hours each week required by the Restrictive Covenant, provided, however, that such person shall be permitted to own or rent the Restricted Unit for a maximum period of one year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by Town; and
- E. guests visiting a qualified occupant and paying no rent or other consideration.

3.5.6 Restrictive Covenant - Sale and Resale Limitations; Key Employee Priority. No Restricted Unit may be sold except to a person who is at the time of sale:

- (i) an employee of a business physically located in and serving the Upper Blue River Basin as defined from time to time in the Town's Development Code or other applicable land use regulations ("Upper Blue Employee"); or
- (ii) an employee of a business, private organization, or governmental entity providing essential services in Summit County as determined by the Town, including, but not limited to: municipal employees, school district employees, and emergency and medical personnel ("Key Employee").

The provisions of this Paragraph shall apply both to the initial sale of a Restricted Unit by the Owner, and to all subsequent resales of the Restricted Unit. In the event of the foreclosure of a deed of trust, mortgage or other voluntary or involuntary lien, the person acquiring title to the Restricted Unit shall resell the Restricted Unit only in compliance with the requirements and limitations of this Paragraph.

A seller shall initially attempt in good faith to sell a Restricted Unit to a Key Employee or an Upper Blue Employee by actively marketing the Restricted Unit to such group of prospective purchasers. If, after 30 days of actively marketing the Restricted Unit to Key

Employees and Upper Blue Employees, the seller has been unable to enter into an acceptable sales contract with a Key Employee or an Upper Blue Employee, then the Unit may be sold to an employee of a business physically located in and serving Summit County.

3.5.6.1 Initial Sale Price.

3.5.6.1.1 The initial sale price for each Restricted Unit shall be calculated based on the following formula:

1. Take current Summit County Area Median Income (“AMI”) (based on 1.5 persons per bedroom);
2. Divide by 12 (monthly median income);
3. Multiply by .30 (maximum 30% of household income allowed for housing expense);
4. Subtract \$350 (allowance for homeowners' association fees, dues/Taxes/Insurance);
5. = Maximum Monthly Mortgage expense

Use the Maximum Monthly Mortgage Expense to calculate the maximum initial sale price assuming 90% down payment and 6.5% interest rate.

3.5.6.1.2 The Restrictive Covenant shall contain provisions governing the sale and resale of each of the Restricted Units. Unless otherwise agreed by Town, the Restrictive Covenant shall provide that:

- A. 2 of the Restricted Units will initially be sold by the Owner at a price at or below 80% of the AMI based on the most current data as of the date of sale;
- B. 8 of the Restricted Units will initially be sold by the Owner at a price at or below 95% of the AMI based on the most current data as of the date of sale; and
- C. Each prospective purchaser of a Restricted Unit shall meet income testing standards to be established by the Town and consistent with the requirements of the Restrictive Covenant.

3.5.6.2 Resale Price Limit. Subsequent to the initial sale of a Restricted Unit by the Owner, the total price for which such Restricted Unit may be re-sold shall be determined as follows:

- A. The selling owner’s purchase price at the time of the acquisition of the Restricted Unit, exclusive of any real estate commission paid at the time of acquisition, shall be the Base Price Limit.
- B. The Base Price Limit shall be increased to reflect a cost of living adjustment. Such amount shall be the selling owner’s “Adjusted Price Limit.” The Adjusted Price Limit shall be the lesser of:

The Base	X	.0025	X	the number of whole months from the date of a Unit Owner’s purchase	+	The Base Price	=	ADJUSTED PRICE
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Price Limit				to the date of a Unit Owner's sale of the Residential Unit		Limit ¹		LIMIT
-------------	--	--	--	--	--	--------------------	--	-------

OR

The Base Price Limit	X	100% of AMI most recently released prior to the selling owner's sale	÷	100% of AMI in effect at the time of the selling owner's purchase of the Residential Unit ²	=	ADJUSTED PRICE LIMIT
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- C. The resale price of any Residential Unit shall not exceed such Adjusted Price Limit except to allow the cost of eligible capital improvements made by the Owner which includes only those Capital Improvements that are approved by the Town in accordance with the Town's Affordable Housing Guidelines including Administrative Rules and Regulations promulgated by the Town..
- D. Notwithstanding anything contained in the Restrictive Covenant to the contrary, the Adjusted Price Limit shall never be less than the purchase price actually paid by the selling owner for the Restricted Unit.
- E. If the owner of a Restricted Unit sells the Restricted Unit through the services of the Summit Housing Authority, a commission of not more than 2% of the Adjusted Price Limit may be paid to the Summit Housing Authority.

Compliance with the terms and conditions of the Restrictive Covenant shall be secured by an "Appreciation-limiting Promissory Note and Deed of Trust, in a form acceptable to Town, which Note and Deed of Trust shall be executed by each and every owner of a Restricted Unit.

3.5.7 Restrictive Covenant - Final Form. The final form of the Restrictive Covenant will comply with U.S. Department of Housing and Urban Development for use with FHA-insured mortgage loans, and may include provisions which vary from the specific requirements

¹ The Base Price Limit multiplied by one quarter of one percent (0.25%) multiplied by the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Residential Unit plus the Base Price Limit.

² The Base Price Limit multiplied by a fraction the numerator of which is the 100% of AMI most recently released prior to a selling owner's sale and the denominator of which is the 100% of AMI in effect at the time of the selling owner's purchase of the Restricted Unit.

of Paragraphs 3.5. 4, 3.5.6 and 3.5.7 only if Town Attorney approves such provisions as being fully consistent with the intent of this Amended Agreement and with the Town's Affordable Housing Guidelines including Administrative Rules and Regulations promulgated by the Town. Once the Restrictive Covenant has been recorded with the Summit County Clerk and Recorder, the provisions of the Restrictive Covenant shall control over the provisions of this Paragraph 3.

3.6 Transfer of Density. Within 60 days after the last of the contingencies in Paragraph 11 have been satisfied, Town shall provide or allow any density necessary for the development of the Restricted Units, and Town and the Owner shall enter into and record a density transfer agreement and covenant in a form acceptable to Town Attorney.

4. UTILITY SERVICE AND PUBLIC IMPROVEMENTS.

4.1 Extensions of Utility Services and Public Improvements. Owner shall pay all costs for the design and construction of all public improvements and utility services necessary to serve the Property, including, but not limited to, roads, curbs, gutters, sanitary and drainage sewers, water, street lights, electricity, telephone, gas, and cable television service, all in accordance with applicable Town or public utility company standards and specifications. Owner shall dedicate to Town and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines and other public improvements, including public streets and trails, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.

4.2 Sanitation District Connection Fees. Without limiting the generality of Paragraph 4.1, Owner shall pay all fees and charges required to connect the Units to the Breckenridge Sanitation District.

4.3 Reimbursement For Improvements. Pursuant to Section 9-2-3-7 of the Breckenridge Town Code, Owner may be eligible for reimbursement from future connector(s) to the public improvements and utility services described in Paragraph 4.1 which are extended by Owner to the Property. Any claim for reimbursement shall be subject to the provisions and requirements of said Section 9-2-3-7 of the Breckenridge Town Code, as the same may be amended from time to time.

4.3 Town Provision of Services. Upon the extension of utility services and public improvements as provided for in Paragraph 4.1 above and acceptance by Town of the utility services and public improvements to be dedicated to Town, Town shall make available and provide all Town provided utilities and services to the Property and Units or other improvements served by such utility services and public improvements on the normal and customary basis as such utilities and services are provided and for the normal and customary charges for such utilities and services, except as such charges may be waived by Town as hereinafter provided.

5. PUBLIC DEDICATIONS. There are no public dedications required as part of the annexation of the Property to Town. The need for road rights-of-ways, open space, and pedestrian, bicycle, and skier access and trails will be evaluated during the subdivision process

and site-specific development review process, and dedications made in accordance with Town regulations at such time.

6. WATER CHARGES

6.1 PIF Charges.

6.1.1 Pursuant to Section 12-4-9(A)(2) of the Breckenridge Town Code, Town hereby waives the PIF charges for each of the Restricted Units. As required by Section 12-4-9(C) of the Breckenridge Town Code, the Town Council finds and determines that sufficient cause has been demonstrated for the waiver of the PIF charges for the Restricted Units, and that waiving such charges is in the public interest.

6.1.2 Owner shall pay to Town applicable PIF charges for each of the Unrestricted Units. Such charges shall be paid for each Unrestricted Unit at or prior to the first to occur of connection of the Unrestricted Unit to Town's water utility system, or the issuance of a building permit for such Unrestricted Unit. If, for any reason, an Unrestricted Unit is not owned by the Owner at the time of the connection, the PIF shall be paid by the then-current owner of such Unrestricted Unit.

6.2 Water Rates. Water users on the Property (including owners of both the Restricted Units and the Unrestricted Units) shall pay the then-current rates for water service and other water charges paid by in-Town water users, subject to all decreases or increases in fees adopted in accordance with Town ordinances and regulations. Such water users are subject to all rules, regulations and ordinances pertaining to Town's water utility system, including all future amendments.

7. ANNEXATION SURCHARGE.

7.1 Surcharge Fees.

7.1.1 No Annexation Surcharge shall be paid with respect to any of the Restricted Units.

7.1.2 An Annexation Surcharge shall be paid by the Owner to Town for each of the Unrestricted Units. The Annexation Surcharges shall be due and payable for each Unrestricted Unit prior to the first to occur of:

- (i) connection of the Unrestricted Unit to Town's water utility system; or
- (ii) issuance of a building permit for such Unrestricted Unit.

The amount of the Annexation Surcharge for each Unrestricted Unit shall be equal to the then-current PIF charge per SFE at the time the Annexation Surcharge becomes due.

7.1.3 Upon receipt of the Annexation Surcharges, such funds shall be deposited by Town into Town's General Fund.

8. **OTHER TOWN CHARGES:** Town hereby waives the following fees, charges or taxes:

- A. application fees for the Development Permit for the Restricted Units;
- B. fees for future development permit applications, review of plans, building permits and any similar application or permit fees for the future improvement of any Restricted Unit; and
- C. real estate transfer taxes upon the transfer of any Restricted Unit.

Nothing contained herein shall constitute a waiver by Town of its rights to collect all of its normal and customary fees and taxes with respect to any portion of the Property except for the Restricted Units.

9. **VESTED PROPERTY RIGHTS.** Owner waives any and all vested property rights that may exist on the Property prior to its annexation to Town. Further, nothing contained herein shall be construed as to create a vested property right for the Property.

10. **NO RIGHT OF WAY DEVOTED TO AGRICULTURAL USE.** Owner states, represents and warrants to Town that as of the date of this Amended Agreement no portion of the Property consists of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment as defined in Section 31-12-115(6)(c), C.R.S. As such, the parties agree that the special notice provisions of Section 31-12-115(6)(b), C.R.S., are not applicable to the annexation of the Property to Town.

11. **ANNEXATION CONTINGENCIES.** Town and Owner agree that the annexation of the Property and the effectiveness of this Amended Agreement are contingent upon the occurrence of all of the following events, and the annexation and this Amended Agreement shall be effective on the date on which the last of the following events occurs:

- A. final approval by Town of any required amendment to the Development Permit by Town through its land use regulatory system; and
- B. Town's approval of the Restrictive Covenant.

Provided, however, that, if all of the foregoing events have not occurred on or before one year from the date hereof, then this Amended Agreement shall be null and void and of no further force or effect, and Owner may pursue disconnection of the Property from Town, and Town shall not object to such disconnection.

12. MISCELLANEOUS.

12.1 **Effective Date.** This Amended Agreement is contingent upon Town approval of the annexation and shall become effective as of the date and time when the annexation itself becomes effective.

12.2 **Parties' Authority.** Town and Owner represent that each has the authority to enter into this Amended Agreement according to applicable Colorado law and Town's Home Rule Charter and ordinances, and each represents that the terms and conditions hereof are not in

violation of any agreement previously entered into by such party. This Amended Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Amended Agreement are effective.

12.3 **Recording.** This Amended Agreement **SHALL BE RECORDED** in the Summit County Clerk and Recorder's Office in order to put prospective purchasers of the Property or other interested parties on notice as to the terms and conditions contained herein.

12.4 **Entire Agreement.** This Amended Agreement and the exhibit(s) hereto represent the entire understanding between the parties, and no other agreement concerning the Property, oral or written, made prior to the date of this Amended Agreement, which conflicts with the terms of this Amended Agreement shall be valid as between the parties. Without limiting the generality of the preceding sentence, this Amended Agreement supersedes and replaces in its entirety the Annexation Agreement, and in the event of a conflict between this Amended Annexation Agreement and the Annexation Agreement, this Amended Agreement shall control.

12.5 **Disconnection.** In the event of disconnection of the Property from Town for any reason, Town's infrastructure and utility service obligations under this Amended Agreement shall be void and of no further force and effect.

12.6 **Modification.** This Amended Agreement shall not be modified except in writing executed by all parties hereto.

12.7 **Additional Remedies.** If at any time any part hereof has been breached by the Owner, Town may, in addition to other remedies, withhold approval of any or all building or other permits applied for by the Owner on its Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.

12.8 **Binding Effect.** The agreements and covenants as set forth herein shall be binding upon the Owner, its successors and assigns, and all persons who may hereafter acquire an interest in the Property, or any part thereof.

12.9 **Joint And Several Liability.** If there are two or more Owners, the responsibility of the Owners shall be joint and several.

12.10 **Severability.** In case one or more of the provisions contained in this Amended Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Amended Agreement shall not in any way be affected or impaired thereby.

12.11 **Incorporation of Exhibit.** Exhibit "A", which is attached hereto, is incorporated herein by reference.

12.12 **Attorney's Fees.** If any action is brought in a court of law by either party to this Amended Agreement concerning the enforcement, interpretation or construction of this Amended Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to

reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

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

If intended for Town, to:

Town of Breckenridge
P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424
Attn: Town Manager
Telecopier number: (970)547-3104
Telephone number: (970)453-2251

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

Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
131 West 5th Street
P. O. Box 2
Leadville, Colorado 80461
Telecopier number: (719)486-3039
Telephone number: (719)486-1889

If intended for Owner, to:

Maggie Placer, LLC
P.O. Box 1718
Avon Colorado 81620
Telephone number: (407) 928-7057

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

12.14 **Waiver.** The failure of either party to exercise any of its rights under this Amended Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by either party waiving such rights.

12.15 **Applicable Law.** This Amended Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado.

12.16 **Counterparts.** This Amended Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.

12.17 **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Amended Agreement.

12.18 **Amendment.** This Amended Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Amended Agreement are not permitted.

12.19 **No Adverse Construction.** Both parties acknowledge having had the opportunity to participate in the drafting of this Amended Agreement. This Amended Agreement shall not be construed against either party based upon authorship.

IN WITNESS WHEREOF, the parties have executed this Amended Agreement the date first written above.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

ATTEST:

Town Clerk

By: _____
Timothy J. Gagen, Town Manager

MAGGIE PLACER, LLC, a Colorado
limited liability company

By: _____
Deborah Linden

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Timothy J. Gagen, Town Manager, and _____, Town Clerk, of Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by Deborah Linden, as _____ of Maggie Placer, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT "A"

Legal Description

A PARCEL OF LAND LOCATED IN THE MAGGIE PLACER, U.S.M.S. No. 1338, IN SEC. 6, TOWNSHIP 7 SOUTH, RANGE 77 WEST OF THE 6th P.M., COUNTY OF SUMMIT, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT COLORADO STATE HIGHWAY NO. 9 MONUMENT T.S. 80+50 ON THE WESTERLY R.O.W. OF SAID HIGHWAY NO. 9, WHICH POINT IS, IN FACT, THE TRUE POINT OF BEGINNING.

THENCE; S02°07'30"E, ALONG SAID WESTERLY R.O.W. A DISTANCE OF 311.40 FEET.

THENCE; 98.75 FEET ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1030.00 FEET, A CHORD BEARING OF S10°48'45"E, AND A CHORD OF 98.71 FEET.

THENCE; S76°26'29"W, A DISTANCE OF 24.05 FEET.

THENCE; N23°31'59"W, A DISTANCE OF 32.00 FEET.

THENCE; 111.08 FEET ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 205.24 FEET, A CHORD BEARING OF N39°02'16"W, AND A CHORD OF 109.73 FEET.

THENCE; N54°32'30"W, A DISTANCE OF 172.17 FEET.

THENCE; 139.94 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 83.90 FEET, A CHORD BEARING OF N06°45'32"W, AND A CHORD OF 124.27 FEET.

THENCE N41°01'17"E, A DISTANCE OF 250.76 FEET.

THENCE; S89°04'00"E, A DISTANCE OF 67.32 FEET TO A POINT IN THE WESTERLY R.O.W. OF SAID COLORADO HIGHWAY No. 9,

THENCE; S00°56'00"W, ALONG SAID WESTERLY R.O.W. A DISTANCE OF 112.18 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 1.82 ACRES, MORE OR LESS.

MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Assistant Town Manager
Date: June 20, 2012
Subject: Resolution to Ban “Permissible” Fireworks

In 2006 the Town Council amended the Town’s ordinance pertaining to fireworks with the intent of allowing “permissible” fireworks in the Town between the period of July 3rd and July 5th of each year. The amended ordinance defines permissible fireworks as:

Small fireworks which produce a visual effect at a height no greater than six feet (6') above the ground, including, but not limited to, wheels, ground spinners, illuminating torches and colored fire in any form, dipped sticks and sparklers. Firecrackers, torpedoes, roman candles and skyrockets are not permissible fireworks.

At that same time, a section was added to the ordinance that allows the Town Council when necessary to adopt by resolution a prohibition of the possession, use, discharge, or explosion of permissible fireworks during a specific year of high fire danger to lessen the likelihood of a wildfire.

Staff is presenting a resolution to the Council that would prohibit the possession and use of permissible fireworks from July 3, 2012 through July 5, 2012 based on the high-risk fire danger currently being experienced in Summit County. As a reminder to the Town Council, our current ordinance already prohibits the possession and use of all fireworks including permissible on all other days.

1 G. On June 14, 2012 John W. Hickenlooper, the Governor of the State of Colorado,
2 issued Executive Order D2012-015 imposing a statewide ban on open burning (including most
3 fireworks) (“**Executive Order**”), with certain exceptions described in the Executive Order.

4 H. In the section of the Executive Order entitled “Background and Need” the
5 Governor describes the extremely dangerous weather conditions that currently exist throughout
6 the State of Colorado, specifically including high temperatures and dry conditions, and concludes
7 that “(t)hese weather conditions and circumstances attest to the continuing threat to life, health
8 and property posed by wildfires on Colorado’s public and private lands.” Such extreme and
9 dangerous weather conditions currently exist in Summit County, Colorado, including within the
10 Town of Breckenridge, and the threat of wildfires within the Town is real.

11 I. The statutory authorization for local fireworks regulations in Section 12-28-107,
12 C.R.S., requires that such local regulations “do not permit or authorize the sale, use or possession
13 of fireworks in violation of (Article 28 of Title 12, C.R.S.).”

14 J. Section 12-28-102(6), C.R.S., allows the possession and discharge of “permissible
15 fireworks” throughout the State only at such “times that it is lawful” for such conduct to occur.

16 K. Because the Executive Order generally bans private fireworks throughout the
17 State of Colorado, including permissible fireworks, it is necessary and appropriate for the Town
18 to temporarily remove the authorization in the Breckenridge Fireworks Ordinance for the use of
19 permissible fireworks within the Town.

20 L. The elimination of the right to possess, use, discharge and explode “permissible
21 fireworks” within the Town of Breckenridge between July 3 and July 5 of this year (2012) is
22 necessary in the considered judgment of the Town Council, not only to comply with the
23 Executive Order, but to avert the start of or lessen the likelihood of wildfire within the Town.

24 Section 2. Definition. As used in this resolution, the term “permissible fireworks” has the
25 meaning provided in Section 6-3C-11 of the Breckenridge Town Code. Such definition defines
26 “permissible fireworks”, in pertinent part, as follows:
27

28 (s)mall fireworks which produce a visual effect at a height no greater than 6 feet
29 above the ground, including, but not limited to, wheels, ground spinners,
30 illuminating torches and colored fire in any form, dipped sticks and sparklers.
31

32 Section 3. Unlawful To Possess, Use, Discharge or Explode Permissible Fireworks.
33 Pursuant to the authority granted to the Town Council by Section 6-3C-11(F) of the
34 Breckenridge Town Code, and in accordance with Executive Order D2012-015 issued by the
35 Governor of the State of Colorado on July 14, 2012, beginning at 12:01 A.M. on July 3, 2012
36 and ending at 11:59 P.M. on July 5, 2011 it is unlawful and a misdemeanor offense for any
37 person to possess, use, discharge or explode permissible fireworks anywhere within the Town.
38

39 Section 4. Penalty. Any person who violates Section 3 of this resolution is guilty of
40 having violated Section 6-3C-11 of the Breckenridge Town Code and, upon conviction, shall be
41 punished as set forth in Title 1, Chapter 4 of the Breckenridge Town Code.

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Section 5. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2012.

TOWN OF BRECKENRIDGE

By: _____
John G. Warner, Mayor

ATTEST:

Town Clerk

APPROVED IN FORM

Town Attorney Date

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DRAFT June 20, 2012 DRAFT

[TO BE PRINTED ON TOWN LETTERHEAD]

A MAYORAL PROCLAMATION DECLARING THAT CONDITIONS OF EXTREME FIRE HAZARD EXIST WITHIN THE TOWN OF BRECKENRIDGE; AND IMPOSING TEMPORARY RESTRICTIONS TO REDUCE THE CHANCE OF WILDFIRE

Background and Need

On June 14, 2012 John W. Hickenlooper, the Governor of the State of Colorado, issued Executive Order D2012-015 imposing a statewide ban on open burning (“**Executive Order**”), with certain exceptions described in the Executive Order. In the section of the Executive Order entitled “Background and Need” the Governor describes the extremely dangerous weather conditions that currently exist throughout the State of Colorado, specifically including high temperatures and dry conditions, and concludes that “(t)hese weather conditions and circumstances attest to the continuing threat to life, health and property posed by wildfires on Colorado’s public and private lands.” Such extreme and dangerous weather conditions currently exist in Summit County, Colorado, including within the Town of Breckenridge, and the threat of wildfires within the Town is real.

The Board of County Commissioners of Summit County, Colorado have recently declared a “fire hazard emergency” for unincorporated Summit County, and have enacted “Stage 2 Fire Restrictions.” Such action is further evidence of the extremely dangerous conditions that currently exist within Summit County, including the Town of Breckenridge.

Section 5-5-5-1 of the Breckenridge Town Code empowers the Mayor of the Town of Breckenridge, upon a finding that conditions of extreme fire hazard exist within the Town, by proclamation to: (i) close such Town owned land as he or she may find to be in such condition of extreme hazard to the general public; (ii) prohibit or limit burning or other acts on public or private lands within the Town to such a degree and in such ways as he or she deems necessary to reduce the danger of forest fire; and (iii) temporarily modify or eliminate the exemptions described in Section 5-5-4 of the Town Code.

Finding

I find and determine that conditions of extreme fire hazard currently exist within the Town of Breckenridge.

Proclamation

Now, Therefore, I, John G. Warner, Mayor of the Town of Breckenridge, Colorado proclaim as follows:

Section 1. Declaration of Fire Hazard Emergency. A fire hazard emergency is declared to exist within the Town of Breckenridge, Colorado.

1
2 **Section 2. Fire Restrictions Imposed.** Fire restrictions within the Town of Breckenridge
3 are proclaimed strictly prohibiting and making it unlawful for a person to engage in any activity
4 that poses a significant risk of starting a wildfire, including without limitation:
5

- 6 A. Building, maintaining, attending or using any fire or campfire, coal, or wood burning
7 stove, including but not limited to, commercially designed and manufactured outdoor
8 fireplaces, candles, luminaries and tiki torches.
9
- 10 B. Smoking in any forested/unimproved natural areas.
11
- 12 C. Disposing out of doors any burning object, including without limitation cigarettes,
13 cigars, or matches.
14
- 15 D. Operating a chainsaw without an approved spark arrester, 5 gallons of water, a
16 2A10BC classified dry chemical fire extinguisher and a round point shovel with an
17 overall length of at least 36 inches. The fire extinguisher must be immediately
18 accessible to the equipment operator. The water and shovel may be kept with fueling
19 supplies but must be readily available for use.
20
- 21 E. Welding, or operating acetylene or other torch with open flame.
22
- 23 F. Inflating and propelling hot air balloons.
24

25 **Section 3. Exceptions.** Except as may otherwise be provided in the Executive Order, or other
26 applicable law, rule or regulation, the following activities are permitted within the Town of
27 Breckenridge:
28

- 29 1. Welding by a person possessing a current permit, contract or letter of authorization from
30 the Summit County Sheriff and any other entity within whose jurisdiction or on whose
31 property the activity is proposed including municipalities, fire districts, metropolitan
32 district, resort, private property owner or the United States Forest Service when the
33 subject welding area is barren or cleared of all flammable materials at least ten feet on all
34 sides from equipment.
35
- 36 2. Fires contained within liquid-fueled or gas fueled stoves.
37
- 38 3. Smoking within an enclosed vehicle, trailer, building or tent.
39
- 40 4. Engaging in any activity by persons with a permit or letter of authorization from the
41 Summit County Sheriff and any other entity within whose jurisdiction or on whose
42 property the activity is proposed including municipalities, fire districts, metropolitan
43 district, resort, private property owner or the United States Forest Services that
44 specifically authorizes the prohibited act or omission.
45
- 46 5. Fires in fireplaces or stoves within all buildings.
47

1 6. Fires caused or administered by any Federal, State, or local officer or member of an
2 organized rescue or firefighting force in the performance of an official duty.

3
4 **Section 4. Exemptions in Section 5-5-4 Temporarily Suspended.** To the extent
5 inconsistent with this Proclamation, the exemptions to the Town's permanent ban on open
6 burning set forth in Section 5-5-4 of the Breckenridge Town Code are suspended for the duration
7 of this Proclamation.

8
9 **Section 5. Duration of Proclamation.** This Proclamation shall continue in full force and
10 effect until I find and declare that the conditions of extreme fire hazard no longer exist within the
11 Town.

12
13 **Section 6. Enforcement.** Pursuant to Section 5-5-5-1 of the Breckenridge Town Code it
14 is unlawful and a misdemeanor offense for any person to violate the terms, conditions, and
15 limitations of this Proclamation. The penalties and other remedies provided for in Section 5-5-6
16 of the Breckenridge Town Code applies to any violation of the terms, conditions, and limitations
17 of this Proclamation.

18
19 **Section 7. Effective Date and Time.** This Proclamation is issued and is effective this
20 ____ day of June, 2012 at _____ o'clock __. M.

21
22 TOWN OF BRECKENRIDGE

23
24
25
26 By _____
27 John G. Warner, Mayor

28
29 ATTEST:

30
31
32
33 _____
34 Town Clerk
35

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: June 20, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the June 19, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF June 19, 2012:

CLASS C APPLICATIONS:

None.

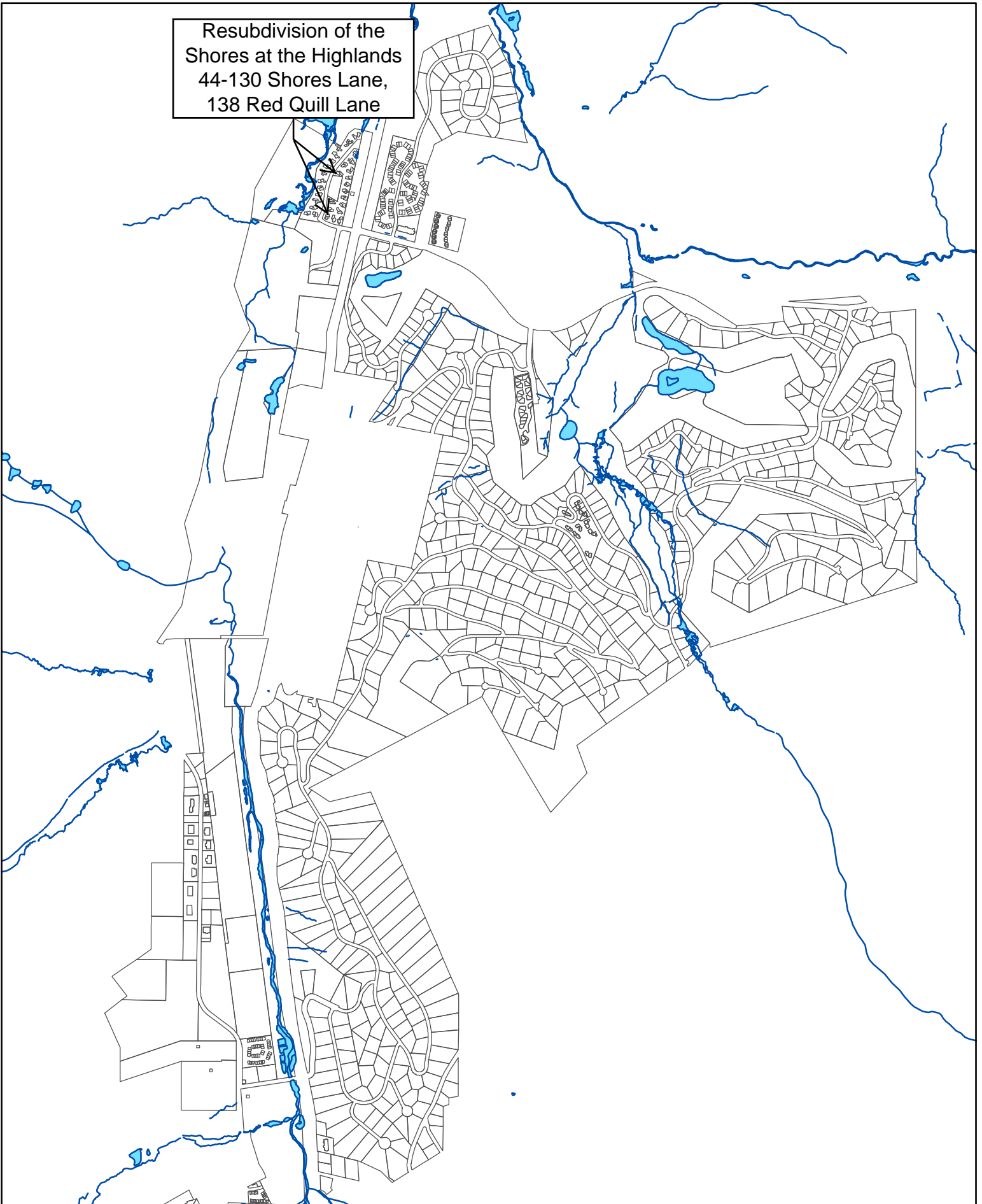
CLASS B APPLICATIONS:

1. Harris Residence Rehabilitation, Restoration and Addition (MM) PC#2011060; 206 South French Street
 - a) To restore and rehabilitate the historic house, remove a non-historic closet attached to the rear of the house, build a full basement beneath the historic house and build an attached 1,080 square foot new addition at the rear of the lot for a total of 2,095 sq. ft. of density, 1,088 sq. ft. landmarked basement density, 2,032 sq. ft. above ground density, and 1,169 sq. ft. mass. The historic shed and outhouse will be restored and moved on the lot. Vehicular access to the garage will be taken off of the French Street right of way. Approved.
 - b) Recommendation that the Town Council adopt an ordinance to Landmark the historic structure for the Harris Residence Restoration, Rehabilitation, Addition, Landmarking and Setback Variance request (PC# 2012020, 206 South French Street), based on proposed restoration efforts and the fulfillment of criteria for architectural significance as stated in Section 9-11-4 of the Landmarking Ordinance. Approved.
2. Resubdivision of Shores at the Highlands (MGT) PC#2012033; 44-130 Shores Lane and 138 Redo Quill Lane
A Resubdivision of Tract A-1 and Tract B, to create Lot 6, Lot 17, Lot 18, and Lot 19 the Shores at the Highlands Subdivision, Filing 3. Approved.
3. Shock Hill Waste Remediation Variance (CN) PC#2012041; 260 Shock Hill Drive
Remove mining waste rock from various locations throughout Tract E and consolidate and cap waste rock in one on-site location. Revegetate disturbed soils with native seed mix and allow a variance from the Cucumber Gulch Overlay Protection District Ordinance, as the project is within the Preventive Management Area (PMA) of Cucumber Gulch. Approved.

CLASS A APPLICATIONS:

None

Resubdivision of the
Shores at the Highlands
44-130 Shores Lane,
138 Red Quill Lane

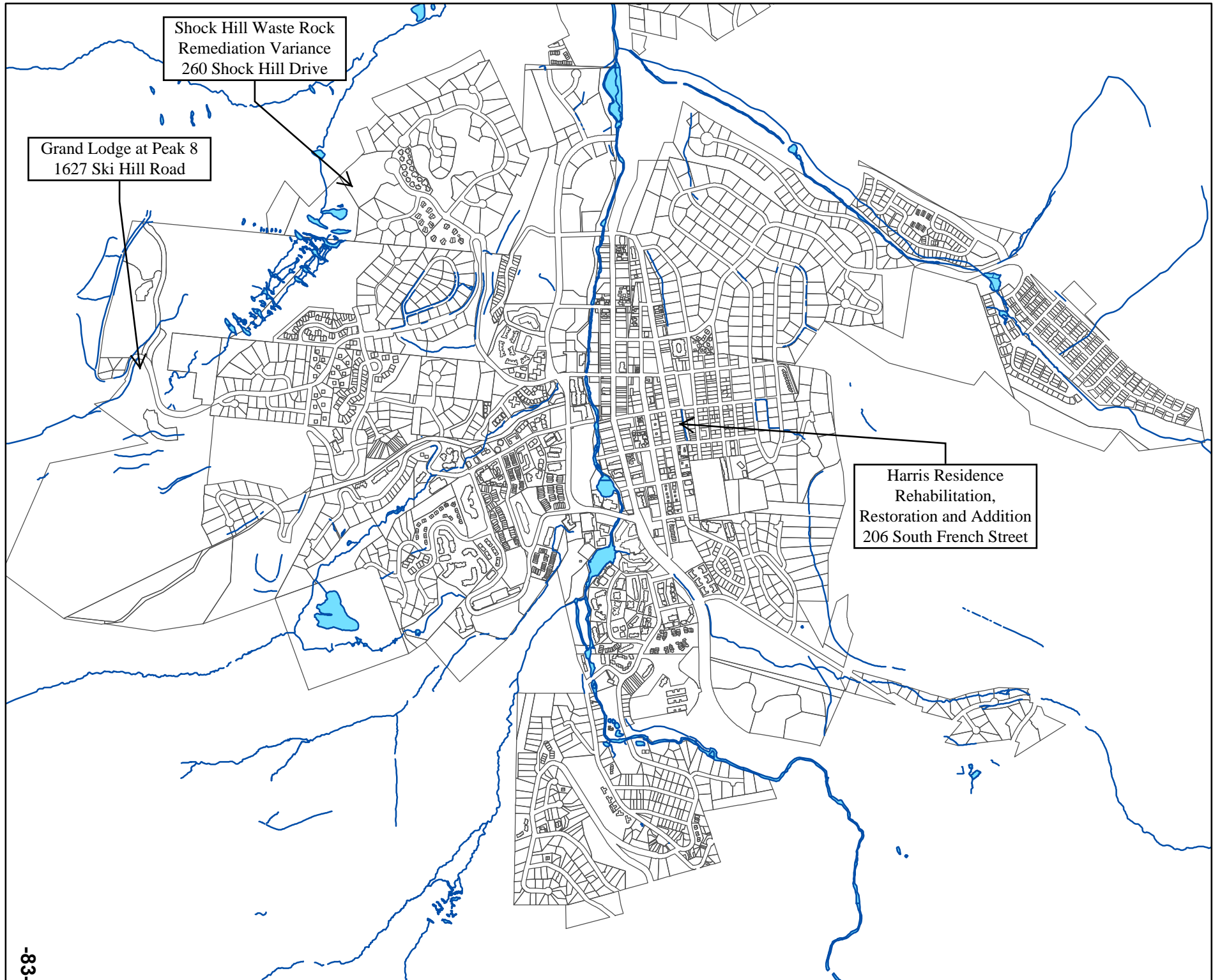


Breckenridge North

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

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

TOWN COUNCIL REPORT:

None.

WORKSESSIONS:

1. Grand Lodge at Peak 8 (MM); 1627 Ski Hill Road (CR 3)

Mr. Mosher presented a proposal to construct an interval ownership resort (Condo-hotel, of similar size and scale to the south building of the Grand Lodge at Peak 7) at the Base of Peak 8 west of One Ski Hill Place and the proposed Building 804.

The view corridors established during the review of the Amendment to the Breckenridge Ski Resort Peaks 7 and 8 Master Plan were an important part of the approval process. The general concept was to maintain visible links from key areas between buildings to the mountains behind as development proceeded. With the introduction of the proposed Grand Lodge at Peak 8, the two smaller buildings illustrated on the Master Plan exhibit will be replaced. The primary impact of the view corridors associated with the proposed building footprint is the impact between the building and the existing Skiwatch Condominiums west of the building. This corridor is narrower and more restrictive with this proposal. Also, it is not directly visible from the Ski Hill Road right of Way. Staff believes that the view corridors have been maintained. Staff welcomed any Commissioner comments in the impacts of the new proposal to the view corridors shown on the master plan.

The existing One Ski Hill Place is five stories tall with a focal point cupola that tops the overall height at 100-feet. The proposed Grand Lodge at Peak 8 will also be five stories tall and sits above on the slope of the hill to the west. The overall structure is longer and narrower than the adjacent buildings. The building has been broken up (by Staff recommendation) into two main masses. The roof forms step down at the edges. This differs from the single structures of One Ski Hill Place and the future Building 804. Also, much of the structure will be hidden behind the future Building 804 when viewed from Ski Hill Road. Did the Commission believe the massing and roof forms meet the intent of the Master Plan Notes?

The plazas at the Grand Lodge at Peak 8 step with the hillside and offer different degrees of public access.

- Plaza Level (on grade with Building 804 and Gondola Plaza) includes public access to lower lobby, public bathrooms, ski valet, and Breckenridge Ski Resort functions (first aid and employee lockers).
- Terrace Level (one level above, accessible from the skiway or via stairs from plaza) contains a café and terrace open to the public, and private entrance to resort amenities.
- Main Floor (one level above terrace) includes a large private courtyard with outdoor pools and other resort amenities, similar to the Grand Lodge at Peak 7.

Did the Commission believe the proposal meets the intent of the plaza as it is associated with the existing Master Plan?

1. View Corridors
2. Overall Massing
3. Plaza Interaction

Commissioner Questions / Comments:

Mr. Schroder: Would the view corridors being presented tonight be compromised with 804? (Mr. Mosher: There could be some slight changes; if anything, 804 will respect more of what is happening at the plaza level. There have been some changes with how this mountain has been accessed.)

Mr. Matt Stais, Architect: Excited to get input tonight. Trying to find a way to share the space for this new resort. The 2005 master plan was actually an amendment from the 2003 master plan; it

actually shows quite different configurations. Please don't take the 2005 master plan as set in stone. We are hoping to accomplish another 5-star ski-in-ski-out property; something the Town has been looking for over the years. Extensive guest amenities are important; we are really hoping to animate that plaza, hoping to expand that into a bigger area. The project is planned between for 40-60 units (2 bedrooms/4 bedrooms, etc.), which would enable different ways to sell units depending on season. Important to have ski patrol and first aid in this location. Building is proposed to bench into hillside. The lobby will be in the middle linking the different phases. The larger mass will hopefully work with 804 in the future so it cradles the mountain front with a plaza. Designing building to work with what is going to be developed in the future. Working hard so this doesn't compete with One Ski Hill Place since we know that is important with the master plan.

Mr. Schroder: How will it feel? One Ski Hill Place; will it continue to feel like the anchor once this is developed? (Mr. Stais: Yes, I think it will, but eventually it might be 804 since that will be the central place. Ski School and other things might wind up in 804. Ours will be a little of a backdrop but we are hoping to have as much engagement with the plaza as we can.)

Mr. Matt Stais: Would like to point out that 2005 master plan was our starting point. We feel the view corridors that we have might be the same or somewhat of an improvement. Would be happy to have a site visit with Commission if necessary; future building 804 will be hiding the bulk of our building. Ground level from Peak 8 Place is 50 feet above our ground level.

Mr. Lamb: So the entryway is all glass? (Mr. Stais: We haven't looked into that completely; we would like to have it read like a more open link between the two buildings.) If you came from that back would you take an escalator down? (Mr. Stais: Right now I think they would just check in on that same level instead of having to walk up all those stairs; and if they park in the garage they can take the elevator up.)

(Mr. Schroder opened the worksession to public comment. There was no public comment made, and the worksession was closed.)

Commissioner Questions / Comments (Continued):

Ms. Dudney: Fine with the proposed plan on all three points.

Mr. Lamb: Ok with it as well, view corridors are fine. Massing is nicely broken up. The plaza is a good idea.

Mr. Schroder: One more view corridor than previously; fine with adjustments. Overall massing is broken down at edges. We are talking about a grand scale for a ski resort that is very well known. I do appreciate how the plaza will trickle around the entire Peak 8 area. In support of what you all are presenting.

Mr. Butler: In support of all three points. Looks just what Breckenridge is all about.

Ms. Christopher: Agree with all three points. Meets intent and then some; well thought out designs. It looks good.

Mr. Rath: I think the proposal conforms; I do want to note that it is a little overwhelming when you see these buildings that are so tall. I would say that I know we have to have development out there but the view of the mountain is kind of gone; that is the master plan.

The meeting was called to order at 7:02 p.m.

ROLL CALL

Kate Christopher

Trip Butler

Gretchen Dudney

Michael Rath

Jim Lamb

Dan Schroder

Gary Gallagher, Town Council Liaison was absent and Dave Pringle arrived at 7:21pm.

APPROVAL OF MINUTES

With no changes, the June 5, 2012 Planning Commission meeting minutes were approved unanimously (6-0).

APPROVAL OF AGENDA

With no changes, the June 19, 2012 Planning Commission meeting agenda was approved unanimously (6-0).

FINAL HEARINGS:

1) Harris Residence Rehabilitation, Restoration and Addition (MM) PC#2012020; 206 South French Street
Mr. Mosher presented a proposal to restore and rehabilitate the historic house, remove a non-historic closet attached to the rear of the house, build a full basement beneath the historic house and build an attached 1,080 square foot new addition at the rear of the lot. The historic shed and outhouse will be restored and moved on the lot. Vehicular access to the garage will be taken off of the French Street right of way. The historic house is to be locally landmarked.

A summary of what is proposed at this final hearing:

- Relocate the historic house to the north and relocate the historic out-building and outhouse at the back of the lot.
- Restore the historic house with new roof, replace damaged or non-historic siding, repair or replace windows, remove the non-historic bay window and attached shed.
- Add a new dormer to the east facing roof of the historic house.
- Create a new full basement beneath the historic portion of the house and a portion the connector link.
- Build a 1-1/2 story addition at the rear of the property.
- Create a paver-strip driveway along the south edge of the property with a paver courtyard in front of the two-car garage.
- Locally Landmark the building, creating ‘free’ basement density beneath the historic portion of the house.

Changes since the May 19, 2012 Planning Commission Meeting

1. The overall density has been slightly reduced.
2. The above ground density has been reduced and is now at 9 UPA resulting in no negative points.
3. A preliminary HERS report has been submitted by a certified HERS Engineer showing a rating of less than 60 for positive three (+3) points.
4. French/sliding doors are proposed in the interior of the link facing the courtyard.
5. The shed is now proposed 10-feet off of the rear property line.
6. The west facing windows on the new addition better represent the proper solid-to-void ratio seen elsewhere in the Historic District.
7. The east facing windows on the addition have been reconfigured to vertically oriented double hung style. One window has a “false barn-door” cover.
8. The upper level deck has been increased in size slightly, but is screened better from public view.
9. The snow storage has been changed to be more efficient.
10. The only tree on the property is being removed and being replaced with two 8-foot spruce trees.
11. One of the trees in the Town’s ROW is proposed to be removed.

The applicants and agent have been working with Staff to resolve outstanding issues and seek a passing score of zero points on the Point Analysis. At this time the applicants and Staff are comfortable with the proposal meeting the intent of the Development Code. Staff has resolved issues regarding the point assignment with the applicants and agent. Staff welcomed any Commissioner Comments.

Commissioner Questions / Comments:

- Ms. Dudney: When do you know if you achieve that HERS rating or not? (Mr. Mosher: They go through three different tests to confirm that they meet these; Planning Review, Building Review and at Certificate of Occupancy. They don't move forward if they don't have a passing analysis.)
- Mr. Pringle: What happens in the future if we find out that they don't qualify for the three points by swapping out the energy efficient products for a lesser quality item; it is like what if the landscaping that they plant dies after we assign positive points? Do you force them to replant things? I am all for energy conservation and all of this but there is no way to measure if they are following this in the future. It is a self-fulfilling prophecy. Don't like the way this policy is written for positive points.
- Ms. Janet Sutterley, Architect for the Applicant: No comments.
- Tony Harris, Applicant: Comfortable with the way things are going with this project. Not sure what I have agreed to with the HERS rating system of points in the Code, but we will certainly do everything we can for this project. We have agreed to lots of extra insulation and other things for the HERS rating, but we will work through that as we go. Regarding the trees in the Town ROW; they are a worry. They are basically doomed. I am not sure that I like where those trees are going when we are pretending like we are saving them. It is a real issue for me. The other issue I was wondering about was the shed setback: why can't we put that shed back at a five-foot setback off of the Klack. We just got blindsided when we got back and tried to do this project. What am I going to do with that three-foot gap between the shed and the new addition that just collects snow? I would like you to consider giving us the five-foot setback when we move the shed and give us a little bit more space for the new addition. Also not happy with receiving negative points for moving the historic structures on the property and not receiving positive 12 points for the restoration.
- Annie Harris, Applicant: When the original owner planted the trees in the ROW (30 years ago) they were really cute, they are just ugly now. (She presented photos and the discussion to the Commissioners which Staff hadn't seen prior to the meeting.) (Mr. Mosher: If the Applicant chooses, Staff can recommend this application be postponed to a future date. Unfortunately, this date would likely be in August as future meetings are full.)
- Mr. Pringle: These trees aren't on their property. (Mr. Mosher: They are Town owned trees.) If you can talk to the applicant about ways to take care of the trees and not postpone this application than we should do that.
- Mr. Mosher: As mentioned at the last meeting, asking for a variance to move the shed would not meet the Variance criteria as the hardship in this case has been created by the applicant. The only reason why the shed is being pushed back is because of the size of the proposed addition. (Ms. Dudney: Also, the Klack is not an alley; if it were an alley then you could only have 5-feet. We can't make it an alley. It is just Town property; and from Town property you have to have 10-feet.) (Mr. Schroder: Our empathy may come out in the notes but we do have to follow Town codes.) (Mr. Harris: I feel a little stuck that I'm getting dinged on points when I am doing this huge restoration.)
- Ms. Dudney: It sounds like you should be able to make the HERS work. (Mr. Harris: My whole reason for doing the HERS, we are already basically doing it anyway. The issue is going to be the old windows; we will be making every effort we can. I mean we are going to be living there.) (Mr. Rath: With our codes it is not hard to build an above average house.) (Mr. Lamb: If they said you would get a 57 HERS than my money is on the fact that you will get a 57 HERS.) (Mr. Rath: If it weren't for this HERS rating, your house wouldn't have passed. There is some good in that.)
- Ms. Dudney: (To Mr. Schroder) You weren't at the last meeting. (To Mr. and Mrs. Harris) We all wanted to say how pleased we are with how you are going to do this renovation.
- Mr. Lamb: This is a good project as well and it seems that staff is going to work out some things. I would like to applaud you about your 57 HERS rating.

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

Commissioner Questions / Comments (Continued):

Mr. Pringle: We never used to charge five negative points for moving a shed within a site, especially when we are preserving it and restoring it. Five negative points is a lot. Now we have established this precedent and I think it is wrong. In the past we haven't charged these points and we can argue that we are establishing this in each application. (Mr. Schroder: This is code question, and we aren't changing code tonight.) The code says if you are relocating the building off-site you don't get the negative points. We still come back with the same recommendation. (Ms. Sutterley: We also moved the main house and we are moving the shed and outhouse. It wasn't just the shed; we moved the house three feet to the north.) (Mr. Mosher: This is how it should be interpreted as stated in the report with bold underline. It doesn't talk about on-site and off-site specifically. It says: "Removing a building from its historic setting diminishes our ability to interpret the history of the district to the fullest extent possible and therefore should be avoided.")

Mr. Rath: This discussion is similar and it is going to be ongoing. I think we should have instruction from above. (Mr. Neubecker: We could discuss this policy without talking about applications.)

Ms. Christopher: I was on the boat with being empathetic about the Klack; it feels like an alley but it isn't and we have to follow the rules. I don't have quite as much history about moving small structures. (Mr. Lamb: It sounds like it is coming completely from code.) (Mr. Pringle: Seems like we are applying a lot of different points to a good project.) (Ms. Dudney: Better to have these absolute standards so they aren't vague when people come in with different applications.)

Mr. Pringle made a motion to change the final point analysis 5R from negative five (-5) points to zero (0) points. Mr. Butler seconded and the motion failed (6-1 against).

Mr. Lamb made a motion to approve the point analysis for the Harris Residence Rehabilitation, Restoration and Addition PC#2012020, 206 South French Street. Mr. Rath seconded, and the motion was carried unanimously (7-0).

Mr. Lamb made a motion to approve the Harris Residence Rehabilitation, Restoration and Addition PC#2012020, 206 South French Street, with the presented findings and conditions. Mr. Rath seconded, and the motion was carried unanimously (7-0).

Mr. Lamb made a motion to recommend the Town Council adopt an ordinance to Landmark the historic structure for the Harris Residence Restoration, Rehabilitation, Addition, Landmarking and Setback Variance request PC# 2012020, based on proposed restoration efforts and the fulfillment of criteria for architectural significance as stated in Section 9-11-4 of the Landmarking Ordinance. Ms. Christopher seconded, and the motion was carried unanimously (7-0).

COMBINED HEARINGS:

1) Resubdivision of Shores at the Highlands (MGT) PC#2012033; 44-130 Shores Lane and 138 Red Quill Lane
Mr. Thompson presented a proposal to resubdivide of The Shores at The Highlands, Filing No. 3, A Resubdivision of Tract A-1 and Tract B, to create Lot 6, Lot 17, Lot 18, and Lot 19 the Shores at the Highlands Subdivision, Filing 3. Tract B boundary will be vacated by this Plat.

This Subdivision modification does not present any concerns to Staff. There will be further detailed review of the development on this property with each individual duplex application. Staff welcomed any further comments from the Commission. Since Staff had no concerns with this proposal, Staff has advertised this review as a combined Preliminary and Final hearing. If, for any reason, the Commission has any concerns, Staff asked that this application be continued rather than denied.

Commissioner Questions / Comments:

Ms. Dudney: Why only four lots?

Ms. Christopher: Is the rest of the space future lots? (Mr. Thompson: Yes, I believe so.)

Mr. John Niemi, Applicant: We are asking for four lots since it is regarding financing. Next week people will be cleaning up what was left there before. I have to put up for lots for securities as needed per the lenders. It is kind of a hassle and we appreciate the Town working with us.

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

Ms. Dudney made a motion to approve the Resubdivision of the Shores at the Highlands, PC#2012033, 44-130 Shores Lane and 138 Red Quill Lane, with the presented findings and conditions. Mr. Pringle seconded, and the motion was carried unanimously (7-0).

2) Shock Hill Waste Rock Remediation Variance (CN) PC#2012041; 260 Shock Hill Drive

Mr. Neubecker presented a proposal to remove mining waste rock from various locations throughout Tract E, consolidate and cap waste rock in one on-site location, and revegetate disturbed soils with native seed mix.

The Planning Department recommended approval of the Shock Hill Mining Waste Rock Remediation & Variance (PC#2012041) with the presented Findings and Conditions. The Breckenridge Open Space Advisory Committee (BOSAC), the committee responsible for overseeing stewardship of Cucumber Gulch, reviewed the rock remediation proposal at their meeting on June 18. BOSAC made the following recommendations:

Commissioner Questions / Comments:

Mark Truckey: Off property and right by cabin there is another pile on Town Property, so another question was to see what we should do about that. (Mr. Niemi: We think helping you clean that up while we are doing this would be a good thing, we are checking how it that would work. Would the Town be looking for that final letter saying that it would be clean or saying that since we would have equipment down there that we could clean it up?)

Mr. Butler: Tetra-tech is going to do the work? (Mr. Niemi: Yes, they do all the planning and are responsible for the work. We are paying for it all. We need to know what the Town is looking for if they want that pile removed.)

Mr. Schroder: The proposal tonight is Shock Hill's property. The further piece has been there for a hundred or so years. Does Town feel that this is necessary because they are there anyway; is it actually that bad? (Mr. Grosshuesch: If we can go through the drill and resolve it and it works for both parties than it probably makes sense.)

Mr. Butler: Why are we worrying about this stuff? (Mr. Niemi: The property has to be clean in order for us to change the title.)

Mr. Schroder: What about the owners that are being affected by this? (Mr. Niemi: I have been in contact with them.)

Mr. Rath: This happens. This waste is going onto Town property. (Mr. Neubecker: Could this be a conservation easement or private open space? We have been discussing these possibilities.) If the Town does end up owning that land in the future with water pollution, it wouldn't be coming from us. I am really interested in how you guys are going to do this. If they can get it done in five days I will be more than astonished. I would rather you be there for ten days

and make sure that you aren't hurrying. My worry is that excavators get sloppy; someone needs to supervise who is impartial; someone who isn't involved. (Mr. Truckey: Someone will be up there monitoring what they do and it will be tested by the State once they are done.) If they really want to establish something on that hill, they are going to need some water.

Ms. Christopher: Is there an erosion plan? (Mr. Niemi: I can't say for certain but I do know that when we met with planning and folks from BOSAC we readjusted our plans with their input.) (Mr. Neubecker: The plan did identify some, yes.)

Mr. Rath: How long will the fence stay there? Until the grass is established? I don't want the town to end up with a headache.

Mr. Lamb: He did mention that the vegetation is a focal point of the restoration. (Mr. Rath: Where are you getting that dirt from? Are you trucking that in? Where are they getting it from? Are they going to excavate it from the same site?) In the big scheme they are moving a lot of dirt out. They never mentioned dump trucks in-or-out. How are you going to get the dirt into the truck or the loader? Are you going to dump that into the loader? If they run into the problem do they fix it a way that is acceptable to us or what?

Mr. Schroder: Ultimately do we approve the variance, would this be a good idea? (Mr. Grosshuesch: These are all points well taken, we will talk internally about how we will deal with this issue. The State will look at the final state of the property and go from there with approving it.)

Mr. Rath: I had to deal with hazardous waste on my farm so I am very concerned about this. I want the Town to know what is going on up there all the time. How are they going to stage this? How is it going to get to where it needs to be? I don't see a plan in place showing us how exactly they are going to do it. (Mr. Pringle: Is someone in the Town going to oversee this project? An owner's representative?) (Mr. Neubecker: We as Staff members can go up there.) (Mr. Grosshuesch: Please review Condition #12.)

Mr. Schroder: Personally happy to see this remediation taking place. (Mr. Niemi: This property is going to change title, in order for it to change title it has to be done right and the State has to come out and provide a letter proving that it passes. We have always planned on dedicating it to the Town. Because of this the Town might want us to keep it and dedicate it to Open Space property.) (Mr. Grosshuesch: This has happened before, i.e. in the Highlands. We are totally thinking about what we are taking in the form of public dedications now. This just happens to be for another reason.)

Mr. Rath: The questions I asked weren't in the letter. That is my point.

Mr. Schroder opened the hearing to public comment.

Mr. Michael Gallagher (On behalf of Lot 38, Shock Hill): Wondering if the red dots are what we are cleaning up? (Ms. Christopher: Yes.)

No more public comment was made and the hearing was closed.

Mr. Butler made a motion to approve the Shock Hill Waste Rock Remediation Variance, PC#2012041, 260 Shock Hill Drive, with the presented findings and conditions. Ms. Christopher seconded, and the motion was carried unanimously (7-0).

OTHER MATTERS:

Mr. Grosshuesch: Regarding Field Trips; would we get a tour of a ski area base in time before all this happens? The Mayor mentioned Park City.

Mr. Neubecker: Possibly historic district trips? Potentially Crested Butte?

Ms. Dudney: Talk to other districts about seeing all of these historic homes coming in for all these renovations. There has been a high number in the past year. Maybe ask them what other issues they are having? (Mr. Neubecker: We would like to identify issues and then develop a field trip about that.)

ADJOURNMENT:

The meeting was adjourned at 8:50 p.m.

Dan Schroder, Chair

Town of Breckenridge Executive Summary
Economic Indicators
(Published June 20, 2012)

Indicator Monitoring System

Up and down arrow symbols are used to show whether the indicator appears to be getting better, appears stable, or is getting worse. We have also designated the color green, yellow or red to display if the indicator is currently good, fair or poor.



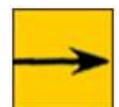
Unemployment: Local (April 2012)

Summit County's April unemployment rate rose thirteen percent from March's rate to 6.6%. April's rate is significantly lower than the April 2011 rate of 7.4% while higher than April 2010 rate of 6.2%. Due to the seasonality of the economy, an increase in unemployment in April is typical. Summit's April rate is in the same range as Pitkin County (6.5%) and lower than Eagle County (8%), however our rate is still considered relatively high for the time of year (prior to 2009, the Feb. unemployment rate typically did not rise above 3%). *See comparison chart below. (Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing down meaning that the unemployment rate has dropped and is 'getting worse' and yellow indicates the condition as "fair".)* (Source: BLS)



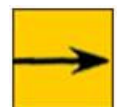
Unemployment: State (April-May 2012)

The Colorado State unemployment rate dropped slightly by two tenths of a percent in April to 8% after several months of a downward trend. The rate then rose again in May two tenths of a percent to 8.2%. (The highest unemployment rate the State has ever seen was 9.3% in February 2011-rates tracked since 1976) (Source: State of Colorado)



Unemployment: National (April-May 2012)

National unemployment rate remains fairly level after an insignificant increase in May of one tenth of a percent to 8.2% after seven months of incremental decreases. May 2012 remains trending down from last May's rate of 9.1% and May's 2010 rate of 9.7%. (Source: BLS)



Destination Lodging Reservations Activity (May 2012)

Occupancy rates saw a drop of 9.4% for the month of May over May 2011. The Revenue per Available Room (RevPAR) saw a dip of 0.8% meanwhile the Average Daily Rate (ADR) rose 9.5% (as reported to MTrip). (Source: MTrip)



6 Month Projected YTD Occupancy (June-November 2012)

Future bookings for the upcoming June-November 2012 period are showing a significant increase of 14% in projected occupancy rate over the corresponding period last year, as well as increase in RevPAR of 11.4% while ADR decreased 2.2%. (Source: MTrip)



Traffic Counts and Sales Trend (May 2012)

May traffic count in town on Highway 9 at Tiger Road was 13,970 total vehicles. As the traffic count is under 20,000, we expect to see increased sales tax revenues for May. *(Note: There is a strong correlation between high net taxable sales and traffic once a 20,000 vehicle count has been reached. Please see detailed report on website for chart.)* (Source: CDOT and Town of Breckenridge Finance)



Traffic Count at Eisenhower Tunnel and Highway 9 (May 2012)

During the month of May, the traffic count at the Eisenhower tunnel (westbound) was up 6.8% over May 2011. Data also showed May traffic coming into town on Highway 9 rose significantly by 13% from May 2011. Traffic flows indicate that the Town is gaining its relative capture rate coming from the tunnel. (Source: CDOT)



Consumer Confidence Index-CCI (May 2012)

The Consumer Confidence Index (CCI) saw a dip of 3.8 from April to May at 64.9 (1985=100). This decline is a notable shift (of 5.5%) however it is still in the range that most economists consider a “good” level of consumer confidence. Based on the index level continuing to rise and fall, we expect that real estate transfer tax revenues will also fluctuate over the same period until the index sees consistent improvement. (Source: CCB)



Mountain Communities Sales Tax Comparisons (April 2012)

The amount of taxable sales in Town for April 2012 was up 1.57% from April 2011 levels. Posting a small increase, Breckenridge is in the top three (3rd out of 8) of the mountain communities for sales tax collected for the month in comparison to last year's April's numbers whereas, half of the mountain communities tracked showed declining sales. Year to date, the mountain communities in the top four spots include Glenwood Springs (up 7.97%), Aspen (7.24%), Snowmass (6.21%), and Breckenridge (4.14%). (Source: Steamboat Springs Finance Dept.)



Standard & Poor's 500 Index and Town Real Estate Transfer Tax (May 2012)

The S&P 500 average monthly adjusted closing price saw a moderate decline for the second month in a row after a relatively fluctuating 2011/2012 YTD. At the same time, we saw our RETT receipts decrease this month from Town collections in May 2011 and 2010. We believe that RETT will continue to lag the growth rates that the S&P 500 achieves for the near future. A prolonged positive change in RETT will likely require a long sustained recovery in the S&P 500 index, with an increase in the wealth effect. *See website for detailed chart and additional information.* (Source: S&P 500 and Town Finance)



Town of Breckenridge RETT Collection (May 2012)

May 2012 RETT collection (\$292,708) saw a decline 13% from May 2011 (\$337,577). This May is also down from May 2010 (\$484,618) by 39%. (Source: Town Finance)



Real Estate Sales (April 2012)

April 2012 compared to April 2011 Summit county real estate sales were down considerably in \$ volume by 20%, however saw a moderate increase of 7% in the number of transactions. Of that, Breckenridge took in 37% of the \$ volume and 29% of the transactions countywide for this month. This month reflects a continued overall downward trend in \$ volume over the last seven months (Feb. 2012 being the only month of increase). (Source: Land Title)



Foreclosure Stressed Properties (April 2012)

Breckenridge properties (excluding timeshares) which have started the foreclosure process are at 25% (23 properties) of the total units within Summit County in 2012 YTD. These are considered distressed properties which may or may not undergo the foreclosure process. Should these properties actually undergo foreclosure, these properties may sell at an accelerated rate and lower price per square foot in the short term. (Source: Land Title)



If you have any questions or comments, please contact Julia Puester at (970) 453-3174 or juliap@townofbreckenridge.com.



Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge, unless otherwise noted.

JUNE 2012

Monday, June 25; 2:00 p.m.; Town Hall 3 rd Floor Conference Room	Budget Training
Tuesday, June 26; 3:00/7:30 p.m.	Second Meeting of the Month

JULY 2012

Friday, July 4; 9:30 a.m.; Main St Breckenridge	Parade
Tuesday, July 12; 3:00/7:30 p.m.	First Meeting of the Month
Friday, July 13; Amazing Grace	Coffee Talk
Tuesday, July 26; 3:00/7:30 p.m.	Second Meeting of the Month

AUGUST 2012

Tuesday, August 14; 3:00/7:30 p.m.	First Meeting of the Month
Friday, August 24; Main St Breckenridge	USA Pro Cycling Challenge
Tuesday, August 28; 3:00/7:30 p.m.	Second Meeting of the Month

OTHER MEETINGS

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

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