



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, August 28, 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.

- 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)

X OTHER MATTERS

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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.

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I CALL TO ORDER, ROLL CALL

Mayor Warner called the meeting of August 14, 2012 to order at 7:02pm. The following members answered roll call: Mr. Gallagher, Ms. Wolfe, Mr. Brewer, Mr. Dudick, Ms. McAtamney, and Mayor Warner. Mr. Burke was absent.

II APPROVAL OF MINUTES

With no changes or corrections to the meeting minutes of July 24, 2012, Mayor Warner declared they would stand as submitted.

III APPROVAL OF AGENDA

Mr. Rick Holman reported a change under new business; Ordinance 25 will be brought forth at the August 28th meeting for first reading due to a change needed in the current wording of the ordinance. Numbering of other ordinances will remain as stands.

IV COMMUNICATIONS TO COUNCIL

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

Mayor Warner opened citizen's comments.

Mr. Tim Casey thanked Council for its forward thinking and leadership on the Harris Street project and working with the county to use that building, thanked the council for their hard work and expressed that many others are appreciative of the council for working with the County on the project.

Mr. Dan Bell, Community Member, stated that he sent a letter to Council regarding his position on the Library. Mr. Bell questioned the use of space and the amount of money dedicated to the project. Mr. Bell recommended postponing the expenditure or using a lesser dollar amount to build a new facility to house the library, instead of renovating the existing one. Mr. Bell noted that he is a Peak School supporter, but not related to the school.

Mr. Wayne Walton, Founder of Mountain Hours, presented a new currency concept for Summit County. Mr. Walton stated that 65 county businesses currently use it. He provided a flyer with an example of how the currency is being used in another community and referenced a video available online for more information.

Mr. Russell Whit, a parent of a child attending The Peak School, stated there is not a combative relationship between Council, Town or School District and The Peak School, as a recent Summit Daily News article indicated. Mayor Warner clarified the intent of the joint meeting with the School District was to discuss extracurricular options for alternatively schooled children.

Mr. Richard Himmelstein, parent of a The Peak School child, stated that school choice helped them pick Breckenridge as a place to live and that the economic value of Peak School is hard to quantify.

Mr. Jerry Davesick, community member, stated that he is in favor of the Library at the Harris Street location. Mr. Davesick commended Council for exploring other uses of the building and for keeping the main use open to the public, rather than a private entity.

Chris Renner, Founder of The Peak School, stated that he supports a new library. Mr. Renner stated that The Peak School has asked for time in front of Council, but believes he has not been granted that request. Mr. Renner stated that he desires a positive relationship and open dialog with the Town and he is concerned about the dollars allocated for the library.

With no further comments the citizen comments were closed.

B. BRECKENRIDGE RESORT CHAMBER UPDATE

John McMahon, Director of the Breckenridge Resort Chamber, stated July was stronger than last year with occupancy 12% up. The BRC is currently planning for the winter season with some added emphasis on international markets. Mr. McMahon also stated 9News is coming for a live remote at the Blue River Plaza on August 24th; Oktoberfest is extended to 3 days this year; and the next mixer is on August 19th at Grand Lodge. Mr. McMahon stated his concern about I-70 signage for long drive times that seems to be discouraging people from

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staying longer, and wants to encourage the I-70 Coalition to address this matter. Mr. McMahon stated the BRC Mission Statement has been revised and the relationship with BMAC is going well.

- C. USA PRO CYCLING CHALLENGE UPDATE FROM LOCAL ORGANIZING COMMITTEE CO-CHAIRS
Mike Schilling stated this was the last update before race. Mr. Schilling noted the rider list was released and good placement has occurred in advertising for the event. Final meetings and an emergency management meeting will take place this week. Mayor Warner and council thanked Mr. Schilling and the USPCC committee for their hard work on the event.

V CONTINUED BUSINESS

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

1. Council Bill No. 19, Series 2012 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH VAIL SUMMIT RESORTS, INC., A Colorado Corporation, AND PEAK 8 PROPERTIES, LLC (A Colorado Limited Liability Company)

Mayor Warner read the title into the minutes. Mr. Berry stated he will make the revisions discussed at the Work Session. Mr. Berry stated that one change was made from first reading in regards to a parking variance. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. Ms. McAtamney moved to approve Council Bill No. 19, Series 2012 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH VAIL SUMMIT RESORTS, INC., A Colorado Corporation, AND PEAK 8 PROPERTIES, LLC (A Colorado Limited Liability Company) to include the change from the Work Session. Ms. Wolfe seconded the motion.

The motion passed 5-0. Mr. Dudick recused himself from the vote because of a conflict of interest.

2. Council Bill, No. 24, Series 2012 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES POLICY 33 (RELATIVE) OF SECTION 9-1-19 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", CONCERNING ENERGY CONSERVATION

Mayor Warner read the title into the minutes. Mr. Berry stated the only change from the first reading was the enactment date on Page 26 of packet, changed to August 14.

Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. Mr. Gallagher moved to approve Council Bill, No. 24, Series 2012 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES POLICY 33 (RELATIVE) OF SECTION 9-1-19 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", CONCERNING ENERGY CONSERVATION. Ms. McAtamney seconded the motion.

The motion passed 6-0.

VI NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2012

1. Council Bill No. 25, Series 2012 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (CLAIMJUMPER PARCELS - 25.713 ACRES)

Council Bill No. 25, Series 2012 was not heard at this meeting. First reading was rescheduled to the August 28th meeting.

2. Council Bill No. 26, Series 2012 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (WEDGE & MBJ PARCELS - 34.026 ACRES)

Mayor Warner read the title into the minutes. Mr. Berry stated the Town owns the property and it is eligible for annexation. Discussion ensued regarding which Land Use District the parcel would be placed in if annexed; staff is researching which District is most appropriate based on Town and County zoning parameters.

Mr. Brewer moved to approve Council Bill No. 26, Series 2012 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (WEDGE & MBJ PARCELS - 34.026 ACRES). Mr. Dudick seconded the motion. The motion passed 6-0.

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3. Council Bill No. 27, Series 2012 - AN ORDINANCE AMENDING TITLE 4 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS REQUIRING THE ISSUANCE OF A SPECIAL PERMIT TO CONDUCT CERTAIN BUSINESS OPERATIONS ON TOWN STREETS

Mayor Warner read the title into the minutes. Mr. Berry stated the ordinance establishes a new ordinance for certain on-street businesses, and once Council issues initial permits for such businesses, staff can handle annual renewal if Council desires.

Ms. McAtamney moved to approve Council Bill No. 27, Series 2012 - AN ORDINANCE AMENDING TITLE 4 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS REQUIRING THE ISSUANCE OF A SPECIAL PERMIT TO CONDUCT CERTAIN BUSINESS OPERATIONS ON TOWN STREETS. Ms. Wolfe seconded the motion.

The motion passed 6-0.

B. RESOLUTIONS, SERIES 2012

1. GOCO Grant Resolution-A RESOLUTION SUPPORTING THE TOWN OF BRECKENRIDGE'S GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND, AND THE COMPLETION OF KINGDOM PARK MULTI-PITCH RENOVATION

Mayor Warner read the title into the minutes. Mr. Berry, stated GOCO requires this resolution as part of the grant application process.

Ms. Wolfe moved to approve A RESOLUTION SUPPORTING THE TOWN OF BRECKENRIDGE'S GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND, AND THE COMPLETION OF KINGDOM PARK MULTI-PITCH RENOVATION. Mr. Gallagher seconded the motion. The motion passed 6-0.

C. OTHER

VII PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS

With no request to call an item off the consent calendar, Mayor Warner declared the Planning Commission decisions would stand approved as presented.

Mr. Berry stated for the record that there was a Work Session discussion with Vail Resorts about the funding of a Cucumber Gulch restoration project. Mr. Berry stated all parties involved agreed on costs for their portions of the project. Mayor Warner thanked Vail Resorts for a positive and productive negotiation in this project.

B. DISMISSAL APPEAL HEARING

The appeal hearing concerning the removal of Michael Rath from the Planning Commission was held in accordance with Section 2-2-5 of the Town Code. A verbatim audio recording of the proceedings was made and will be maintained as required by law. No attempt is made in these minutes to set forth a verbatim record of the proceedings of the hearing.

At the conclusion of the hearing, Mr. Dudick moved that the Town Council affirm its August 1, 2012 decision to remove Michael Rath from the Town of Breckenridge Planning Commission. The motion was seconded by Mr. Gallagher. A roll call vote was held, and the motion passed 6-0.

The Mayor stated that motion having passed, it was ordered that Michael Rath's removal from the Town of Breckenridge Planning Commission on August 1, 2012 is affirmed, and the vacancy on the Planning Commission shall be filled as provided by law.

The Mayor declared that the appeal proceeding was concluded. (See attached exhibits)

VIII REPORT OF TOWN MANAGER AND STAFF

Mr. Holman stated the Fall Retreat will take place Oct. 30. He will be following up with more details.

IX REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (MAYOR WARNER)

Mayor Warner stated he attended a County Mayors and Council Members meeting. Discussed the Advanced

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Guideway System on I-70 and the location of stations within Summit County; Summit Ford request for Silverthorne use tax; Detox Center funding; new County bike rules. Mayor Warner attended the Sustainable Breck Biz meeting which had a good turnout.

- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)
No report.
- C. BRC (MR. BURKE)
No report.
- D. MARKETING COMMITTEE (MR. DUDICK)
No report.
- E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)
Ms. Wolfe stated the last meeting discussed HOA special assessments and the possibility of a new program to assist those in need of help to fund special assessments. Council Members suggested the Housing Authority work with HOAs to look at reserves and determine need. Discussed Eagle County continuing care complex to be built.
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)
Mr. Brewer stated he recently attended a Heritage Alliance retreat. Discussed the Inaugural Theobald awards; the Pro Cycling Challenge gathering on Barney Ford Lawn; Reiling Dredge; increased visitor numbers.
- G. WATER TASK FORCE (MR. GALLAGHER)
No report.
- H. LANDFILL TASK FORCE (MS. WOLFE)
No report.

X OTHER MATTERS

Mr. Gallagher asked when the posting for the vacant Planning Commissioner position will take place. Mr. Holman stated within 30 days. Mayor Warner asked if this position would fill the term. Ms. Dysktra stated yes, for the remainder of the term.

Council members discussed the 2013 Snowball event. General concern over timing of event, public safety, substance abuse and bands invited. Ms. Kim Dykstra passed out lodging community survey results.

Ms. McAtamney asked about the possibility to create an e-blast option for the RFP process. Ms. Dykstra said that is already an option.

Ms. Wolfe brought a reusable bag for display. Mayor Warner stated they need to listen to public feedback and make a decision.

XI SCHEDULED MEETINGS

XII ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10:02pm
Submitted by Helen Cospolich, Administrative Services

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 26 (Wedge & MBJ Parcels Annexation Ordinance)
DATE: August 20, 2012 (for August 28th meeting)

The second reading of the ordinance annexing the Wedge and MBJ Parcels to the Town is scheduled for your meeting on August 28th. 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 – AUG. 28**

2
3 **NO CHANGE FROM FIRST READING**

4
5
6 COUNCIL BILL NO. 26

7
8 SERIES 2012

9
10 AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL
11 PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE
12 (Wedge & MBJ Parcels - 34.026 acres)

13
14 WHEREAS, the Town of Breckenridge is the owner in fee of the hereafter described real
15 property; and

16
17 WHEREAS, the hereafter described real property is currently located in an
18 unincorporated area of Summit County, Colorado; and

19
20 WHEREAS, Section 31-12-106(3), C.R.S., provides that a municipality may annex by
21 ordinance municipally-owned real property without notice and hearing upon the determination
22 that the property is eligible for annexation under Section 30(1)(c) of Article II of the Colorado
23 Constitution, and Sections 31-12-104(1)(a) and 31-12-105 of the “Municipal Annexation Act of
24 1965”, Part 1 of Article 12 of Title 31, C.R.S.; and

25
26 WHEREAS, it is the desire of the Town Council to annex the hereinafter described
27 Town-owned property to the Town of Breckenridge.

28
29 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
30 BRECKENRIDGE, COLORADO:

31
32 Section 1. The Town Council finds that the Town of Breckenridge is the owner in fee of
33 the real property described in Section 3 of this ordinance, and that such property is not solely a
34 public street or right-of-way.

35
36 Section 2. The Town Council finds and concludes that the Town-owned real property
37 described in Section 3 of this ordinance is eligible for annexation to the Town of Breckenridge
38 under Section 30(1)(c) of Article II of the Colorado Constitution, and Sections 31-12-104(1)(a)
39 and 31-12-105, C.R.S. Specifically, the Town Council finds, determines and concludes that:

- 40
41 1. Not less than one-sixth of the perimeter of the area to be annexed is
42 contiguous with the existing boundaries of the Town of Breckenridge.

2. No annexation proceedings concerning the territory to be annexed have been commenced by another municipality.
3. The annexation of the subject real property will not result in the detachment of area from a school district.
4. The annexation of the subject real property will not result in the extension of the boundaries of the Town of Breckenridge more than three miles.
5. The Town of Breckenridge has a plan in place for the area to be annexed.

Section 3. The following described real property is hereby annexed to and made a part of the Town of Breckenridge, Colorado, to wit:

A TRACT OF LAND BEING PORTIONS OF THE NUGGET PLACER, U.S. MINERAL SURVEY NO. 20873, THE GROUND HOG NUMBERS 1, 2, AND 3, U.S.M.S. 15733, AND THE WILDCAT NUMBERS 1, 2, 3, 4 AND 5, U.S.M.S. NO. 15733, LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 6 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF SUMMIT, STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE 2-3 LINE OF SAID NUGGET PLACER, ALSO BEING ON THE 8-7 LINE OF THE CUCUMBER PLACER, M.S. 2630, WHENCE CORNER NO. 8 OF SAID CUCUMBER PLACER BEARS N84°36'58"W 181.01 FEET DISTANT, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF SKI HILL ROAD; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF SKI HILL ROAD ACCORDING TO A LAND SURVEY PLAT DATED SEPTEMBER 23, 1998 BY DREXEL BARREL & CO. (LOREN K. SHANKS, P.L.S. NO. 28285) RECORDED AS LSP-243 IN THE COUNTY RECORDS FOR THE FOLLOWING TWENTY (20) COURSES:

- 1.) N34°43'55"E A DISTANCE OF 50.26 FEET;
- 2.) 66.99 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 130.00 FEET AND A CENTRAL ANGLE OF 29°31'26";
- 3.) N05°12'29"E A DISTANCE OF 305.90 FEET;
- 4.) 58.25 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 70.00 FEET AND A CENTRAL ANGLE OF 47°40'31";
- 5.) N52°53'00"E A DISTANCE OF 206.18 FEET;
- 6.) 29.83 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 70.00 FEET AND A CENTRAL ANGLE OF 24°25'05";
- 7.) N77°18'05"E A DISTANCE OF 196.67 FEET;
- 8.) 56.11 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 70.00 FEET AND A CENTRAL ANGLE OF 45°55'41";
- 9.) S56°46'14"E A DISTANCE OF 137.57 FEET;
- 10.) 134.29 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 130.00 FEET AND A CENTRAL ANGLE OF 59°11'05";

- 1 11.) N64°02'41"E A DISTANCE OF 4.85 FEET;
- 2 12.) 176.23 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A
- 3 RADIUS OF 160.00 FEET AND A CENTRAL ANGLE OF 63°06'25";
- 4 13.) N00°56'16"E A DISTANCE OF 299.33 FEET;
- 5 14.) 71.35 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A
- 6 RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 136°16'40";
- 7 15.) S42°47'04"E A DISTANCE OF 334.12 FEET;
- 8 16.) 314.16 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A
- 9 RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 180°00'00";
- 10 17.) N42°47'04"W A DISTANCE OF 277.08 FEET;
- 11 18.) 54.33 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A
- 12 RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 155°38'17";
- 13 19.) S67°08'47"E A DISTANCE OF 89.50 FEET;
- 14 20.) 238.47 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A
- 15 RADIUS OF 130.00 FEET AND A CENTRAL ANGLE OF 105°06'08" TO A
- 16 POINT BEING THE SOUTHWEST CORNER OF THE ZEPPELIN
- 17 SUBDIVISION, AS RECORDED UNDER RECEPTION NUMBER 361076 IN
- 18 THE COUNTY RECORDS;

19
 20 THENCE ALONG THE SOUTH LINE OF SAID ZEPPELIN SUBDIVISION S60°42'35"E A
 21 DISTANCE OF 662.72 FEET TO THE SOUTHEAST CORNER; THENCE S64°32'38"E A
 22 DISTANCE OF 24.56 FEET TO A POINT ON THE 5-4 LINE OF THE SNIDER MILL SITE,
 23 M.S. 3537-B; THENCE S29°12'00"W, ALONG THE 2-3 LINE OF SAID GROUND HOG
 24 NO. 1, A DISTANCE OF 254.61 FEET; THENCE S45°17'00"W A DISTANCE OF 180.11
 25 FEET; THENCE S41°21'55"E A DISTANCE OF 11.82 FEET; THENCE S45°33'10"E A
 26 DISTANCE OF 39.91 FEET TO A POINT ON SAID 2-3 LINE OF GROUND HOG NO. 1,
 27 ALSO BEING THE NORTHWEST CORNER OF TRACT R, SHOCK HILL SUBDIVISION,
 28 ACCORDING TO THE PLAT RECORDED AT RECEPTION NUMBER 598532 IN THE
 29 COUNTY RECORDS; THENCE ALONG THE WEST LINE OF SAID TRACT R FOR THE
 30 FOLLOWING TWO (2) COURSES:

- 31
- 32 1.) S29°15'17"W A DISTANCE OF 488.91 FEET;
- 33 2.) S10°52'26"E A DISTANCE OF 207.19 FEET TO THE SOUTHWEST
- 34 CORNER, ALSO BEING A POINT ON SAID 2-3 LINE OF THE NUGGET
- 35 PLACER, AND ALSO THE NORTH LINE OF TRACT A (PUBLIC OPEN
- 36 SPACE), PEAKS 7 & 8 PERIMETER SUBDIVISION, ACCORDING TO THE
- 37 PLAT RECORDED AT RECEPTION NUMBER 730218 IN THE COUNTY
- 38 RECORDS;

39
 40 THENCE N84°36'58"W ALONG SAID LINE A DISTANCE OF 1,599.04 FEET TO THE
 41 POINT OF BEGINNING, CONTAINING 34.026 ACRES, MORE OR LESS.

42
 43 Section 4. Within thirty (30) days after the effective date of this ordinance, the Town
 44 Clerk is authorized and directed to:

45

- A. File one copy of the annexation map with the original of the annexation ordinance in the office of the Town Clerk of the Town of Breckenridge, Colorado; and
- B. File for recording three certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area with the Summit County Clerk and Recorder.

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

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

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 27 (Street Use Licensing Ordinance)

DATE: August 20, 2012 (for August 28th meeting)

The second reading of the new Street Use Licensing Ordinance is scheduled for your meeting on August 28th.

I have proposed a few minor changes to the ordinance. They are blacklined on the attached version of the ordinance.

The key changes are as follows:

1. Language has been added in Section 4-15-9(D)(2) (on page 8 of the ordinance) to allow for the newspaper notice of a public hearing to be published in the Summit County Journal on the Friday before the public hearing. Normally, if a prescribed period of time is less than seven days Saturdays, Sundays and legal holidays do not count in counting the applicable number of days. As a result, without this additional language the publication of the notice of public hearing on the Friday before the hearing would be too late. Staff thought that the ordinance should allow for a public hearing notice to be published on the Friday preceding the public hearing.

2. Language has been added in Section 4-15-11 (on page 11 of the ordinance) to allow the Town Manager to administratively modify or eliminate any permit condition during the term of the permit if good cause for such action is shown. I thought this was appropriate given the extensive and detailed special conditions for horse and carriage operations set forth in Section 4-15-12, and the possibility that some of those conditions may need to be tweaked from time to time throughout the term of the permit. Related language has been inserted in the definition of "Good Cause" in Section 4-15-4 (on page 3 of the ordinance)

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

- 1 4-15-17: Duties of Permittee
- 2 4-15-18: Suspension Or Revocation of Permit
- 3 4-15-19: Town Council Decision Is Final
- 4 4-15-20: Signage
- 5 4-15-21: Transition From Prior Development Permit
- 6 4-15-22: Penalties; Injunctive Relief
- 7 4-15-23: No Town Liability
- 8 4-15-24: Rules and Regulations

9
 10 4-15-1: SHORT TITLE: This Chapter shall be known and may be cited as the “2012 Town Of
 11 Breckenridge Street Use Licensing Ordinance.”

12
 13 4-15-2: AUTHORITY: The Town Council finds, determines, and declares that it has the power to
 14 adopt this Chapter pursuant to:

- 15
- 16 A. Section 31-15-501, C.R.S. (concerning municipal regulation of business), and in
 17 particular, Section 31-15-501(1)(h), C.R.S. (concerning municipal
 18 ~~regulations~~regulation of hackmen, omnibus drivers, carters, cabmen, porters,
 19 expressmen, and all others pursuing like occupations);
- 20 B. Section 31-15-702, C.R.S. (concerning municipal regulation of streets and alleys);
- 21 C. Section 31-15-103, C.R.S. (concerning municipal police powers);
- 22 D. Section 31-15-401, C.R.S.(concerning general municipal police powers);
- 23 E. The authority granted to home rule municipalities by Article XX of the Colorado
 24 Constitution; and
- 25 F. The powers contained in the Breckenridge Town Charter.

26 4-15-3: FINDINGS: The Town Council adopts this Chapter based upon the following findings of
 27 fact:

- 28
- 29 A. The primary purpose of a public street is for public travel.
- 30 B. There is no natural right to use the public streets for the purposes of private business
 31 or gain. Such rule is often stated as a cardinal doctrine of municipal law.
- 32 C. The Colorado courts have held that a municipality has the legal authority to
 33 regulate, by the issuance of a license or permit, the private business use of a public
 34 street that may obstruct the use of a public street for public travel.

- 1 D. If not regulated, the use of the public streets by those business activities regulated
- 2 by this Chapter can cause obstruction of the public streets along with the attendant
- 3 disruption to the right of the people to use the public streets as an avenue of travel.
- 4 E. The use of the public streets by those business activities regulated by this Chapter
- 5 are private, not public, uses.
- 6 F. The public receives some benefit for the use of the public streets by those business
- 7 activities regulated by this Chapter.
- 8 G. The issuance of a permit to use the public streets as authorized by this Chapter is
- 9 not inconsistent with the primary purpose of the public streets as described in
- 10 Finding A of this Section.
- 11 H. This Chapter is necessary and proper to provide for the safety, preserve the health,
- 12 promote the prosperity, and improve the order, comfort and convenience of the
- 13 Town and the inhabitants thereof.

14 4-15-4: DEFINITIONS:
15

- APPLICANT: A person who has submitted an application for permit pursuant to this Chapter.
- APPLICATION: An application for permit submitted pursuant to this Chapter.
- DAY: A calendar day, unless otherwise indicated.
- GOOD CAUSE (for the purpose of refusing or denying a permit renewal under this Chapter): Means:
- A. The permittee has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this Chapter; and any rule and regulation promulgated pursuant to this Chapter; any other law applicable to permittee; or
 - B. The permittee has failed to comply with any special terms or conditions that were placed on its permit at the time the permit was issued or were subsequently modified by the Town Manager pursuant to Section 4-5-11(B), or that were placed on its

permit in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings.

HORSE DRAWN CARRIAGE:	A wheeled vehicle pulled by a horse and used to carry people for a fee.
PARTY IN INTEREST:	The applicant; a resident of the Town; or the owner or manager of a property or business located within the Town.
PEDAL BUS:	Has the meaning provided in the Town's Traffic Code, Chapter 1 of Title 7 of this Code.
PEDICAB:	Has the meaning provided in the Town's Traffic Code, Chapter 1 of Title 7 of this Code.
PERMITTEE:	The person to whom a permit has been issued pursuant to this Chapter.
PERMITTED BUSINESS:	A business authorized to be operated on Town streets and alleys by a permit issued pursuant to this Chapter.
PERSON:	Has the meaning provided in Section 1-3-2 of this Code.
POLICE CHIEF:	The Police Chief of the Town, or the Police Chief's designee authorized to act pursuant to Section 1-7-2 of this Code.
PRIMARY LOCATION:	The primary physical location of the applicant's proposed business operation. If the applicant proposes to operate within the Town's Conservation District, the applicant's primary location must be located within the Conservation District.
TOWN:	Has the meaning provided in Section 1-3-2 of this Code.
TOWN MANAGER:	The Town Manager of the Town, or the Town Manager's designee authorized to act pursuant

to Section 1-7-2 of this Code.

1
2 4-15-5: PERMIT REQUIRED; EXCEPTIONS:

3 A. No person shall operate for hire any of the following business activities upon any
4 street or alley within the Town without a valid permit issued by the Town Council
5 in accordance with this Chapter:

- 6 1. a horse drawn carriage;
7 2. a pedicab;
8 3. a pedal bus; or
9 4. any other business whose operation on Town street or alleys routinely
10 includes, or may include, stopping on Town streets or alleys (except to
11 comply with applicable traffic regulations).

12 B. This Section shall not apply to:

- 13 1. a business engaged in interstate or intrastate commerce;
14 2. a business licensed or permitted to operate on Town streets or alleys by the
15 State of Colorado, including, but not limited to, taxicabs and similar forms
16 of public conveyance;
17 3. a business that operates on Town streets or alleys only to make deliveries;
18 4. a governmental or quasi-governmental entity while performing its lawful
19 governmental functions;
20 5. a business that the Town Manager determines is not subject to the terms and
21 conditions of this Chapter; and
22 6. any business that the Town may not lawfully require to have a permit to
23 operate on Town streets and alleys.

24 C. Any person operating a vehicle described in Subsection A of this Section on a
25 public street or alley in a special event authorized by the Town pursuant to Chapter
26 13 of Title 4 of this Code shall be exempt from the requirements of this Chapter, but
27 shall comply with the terms and conditions of the special event permit issued by the
28 Town.

29 D. This Chapter does not apply to the use of the public streets of the Town by any
30 person authorized to operate a business on the public streets pursuant to a valid

1 license or permit issued by the state or federal government, or any agency or
2 instrumentality thereof.

3 4-15-6: APPLICATION FOR PERMIT:
4

5 A. A person seeking to obtain a permit pursuant to this Chapter shall file an
6 application with the Town Manager. The form of the application shall be provided
7 by the Town Manager.

8 B. A permit issued pursuant to this Chapter does not eliminate the need for the
9 permittee to obtain other required Town licenses and permits related to the
10 operation of the permitted business, including, without limitation:

11 1. a development permit if required by the terms of Chapter 1 of Title 9 of this
12 Code;

13 2. a sign permit if required by the terms of the Town's Sign Code (Chapter 2 of
14 Title 8 of this Code);

15 3. a Town sales tax license; and

16 4. a Town Business and Occupational Tax License.

17 C. An application for a permit under this Chapter shall contain the following
18 information:

19 1. the applicant's name, address, and telephone number;

20 2. a statement of the nature of the applicant's proposed business;

21 3. the primary location of the business;

22 4. the primary route(s) over Town streets and alleys where the applicant
23 proposes to operate the business;

24 5. a statement of the applicant's qualifications and experience in operating the
25 proposed business;

26 6. a list of the applicant's equipment/animals that will be used to operate the
27 proposed business;

28 7. a statement of the training that will be provided to the applicant's
29 employees or contractors to be involved in the operation of the proposed
30 business

- 1 8. a list of any permit or license previously issued to the applicant authorizing
- 2 the operation of a business similar to the proposed business, and a statement
- 3 of any disciplinary action imposed by the issuing authority with respect to
- 4 such permit or license; and

- 5 9. any additional information that the Town Manager reasonably determines
- 6 to be necessary in connection with the investigation and review of the
- 7 application.

8 4-15-7: APPLICATION FEE: An applicant shall pay to the Town a non-refundable application
 9 fee when the application is filed. The purpose of the fee is to cover the administrative costs of
 10 processing the application, and monitoring and enforcing permits issued pursuant to this Chapter.
 11 For applications filed in 2012 the application fee is \$1,370.00. Thereafter, the amount of the
 12 application fee shall be fixed by the Town Council as part of its annual budget process.

13
 14 4-15-8: TOWN MANAGER’S PRELIMINARY INVESTIGATION OF APPLICATION:

- 15 A. Upon receipt of a properly completed application, together with all information
- 16 required in connection therewith, and the payment of the application fee as required
- 17 by Section 4-15-7, the Town Manager shall transmit copies of the application to:
- 18
- 19 1. the Police Department;
- 20 2. the Department of Community Development;
- 21 3. the Public Works Department; and
- 22 4. any other person or agency that the Town Manager determines should
- 23 properly investigate and comment upon the application.

- 24 B. Within twenty days of receipt of a completed application those Town departments
- 25 and other referral agencies described in Subsection A of this Section shall provide
- 26 the Town Manager with comments concerning the application.

- 27 C. If the Town Manager requests the applicant to provide additional information that
- 28 the Town Manager reasonably determines to be necessary in connection with the
- 29 investigation and review of the application, the applicant shall provide such
- 30 information within five days of the Town Manager’s request, unless the Town
- 31 Manager agrees to a longer time period.
- 32
- 33 D. The Town Manager shall complete his preliminary investigation of the application
- 34 with within forty five days of his receipt of the application, unless the applicant
- 35 agrees to an extension of such time period. The Town Manager’s preliminary

1 investigation of the application shall be provided to the Town Council and the
2 applicant in connection with the Town Council's review of the application.
3

4 4-15-9: TOWN COUNCIL REVIEW OF APPLICATION:
5

- 6 A. Once the Town Manager has completed his preliminary investigation of the
7 application as described in Section 4-15-8, the Town Manager shall schedule the
8 application for consideration by the Town Council at the earliest practicable date.
- 9 B. Written notice of the date and time of the meeting at which the Town Council will
10 consider the application shall be provided to the applicant at least ten days before
11 the meeting.
- 12 C. Before deciding the application the Town Council shall hold a public hearing to
13 receive public comments concerning the application.
- 14 D. Notice of the public hearing on the application shall be provided as follows:
- 15 1. Notice shall be published on the Town's website for at least five days prior
16 to the hearing;
- 17 2. Notice shall be published once in a newspaper of general circulation in the
18 Town at least ~~five~~ **three** days prior to the public hearing. **Notwithstanding**
19 **Section 1-3-5 of this Code intermediate Saturdays, Sundays, and legal**
20 **holidays are counted in determining compliance with this subsection;**
21 and
- 22 3. Notice shall be mailed by first class mail to all property owners whose
23 property lies within three hundred feet of the primary location of the
24 proposed business as described in the application. Such notice shall be
25 mailed by the Town not less than ten days prior to the public hearing.
- 26 E. At a public hearing held by the Town Council pursuant to this Chapter any party in
27 interest shall be allowed to present evidence.
- 28 F. At the conclusion of the public hearing the Town Council may require the applicant
29 to provide any additional information it reasonably determines to be necessary in
30 connection with the investigation and review of the application. For purpose of
31 rendering a decision on the application, the public hearing on the application shall
32 not be concluded until the applicant has provide the requested additional
33 information.

34 4-15-10: DECISION BY TOWN COUNCIL:
35

- 1 A. The Town Council shall review an application submitted pursuant to this Chapter
- 2 and approve, deny, or conditionally approve an application within thirty days of the
- 3 conclusion of the public hearing on the application unless, by written notice to the
- 4 applicant, the decision period is extended for an additional ten days if necessary for
- 5 the Town Council to complete its review of the application.

- 6 B. The Town Council shall issue a permit under this Chapter when, from a
- 7 consideration of the application, the evidence received at the public hearing, and
- 8 from such other information as may otherwise be obtained, the Town Council
- 9 determines that:
 - 10 1. The application (including any required attachments and submissions) is
 - 11 complete and signed by the applicant, and the applicant has provided any
 - 12 additional information concerning the application requested by either the
 - 13 Town Manager pursuant to Section 4-15-6(C)(9) or the Town Council
 - 14 pursuant to Section 4-15-9(F);
 - 15 2. The applicant has paid the application fee and any other fees required by
 - 16 Section 4-15-7;
 - 17 3. The application does not contain a material falsehood or misrepresentation;
 - 18 4. The application complies with all of the requirements of this Chapter;
 - 19 5.
 - 20 6. The proposed primary location of the business will not substantially
 - 21 interfere with motor vehicle or pedestrian travel, or pose a threat to the
 - 22 public health, safety or welfare;
 - 23 7. The operation of the proposed business on the Town streets and alleys is not
 - 24 likely to:
 - 25 a. cause substantial disruption of traffic or pedestrian flow in the area
 - 26 of the Town where the proposed business will operate;
 - 27 b. create a substantial inconvenience or annoyance to the public; or
 - 28 c. cause a public nuisance.
 - 29 In making this determination, the Town Council shall consider such factors
 - 30 as:
 - 31 a. the number of then-current permits issued under this Chapter;

- 1 b. the experience and qualification of the applicant to operate the
2 proposed business;
- 3 c. the quality of the equipment proposed to be used by the applicant in
4 operating the proposed business;
- 5 d. the days/hours of operation of the proposed business;
- 6 e. the proposed routes or area of operation of the proposed business;
- 7 f. the reasonable requirements of the Town and the desires of the
8 inhabitants as evidenced by petitions, remonstrances, or otherwise;
9 and
- 10 g. such other relevant and probative factors as may be determined by
11 the Town Council.
- 12 8. The granting of the application will not endanger public health or safety.
- 13 C. The Town Council shall deny an application for a permit under this Chapter if it
14 determines that:
- 15 1. Information contained in the application, or supplemental information
16 requested from the applicant, is found to be false in any material respect;
- 17 2. The applicant has had a permit issued under this Chapter revoked by the
18 Town Council within the two years immediately preceding the filing of the
19 application, or if the applicant owned a fifty percent or greater interest in
20 any business entity that has had a permit issued under this Chapter revoked
21 by the Town Council within the two years immediately preceding the filing
22 of the application;
- 23 3. The applicant is currently indebted to the Town for any lawfully assessed
24 tax or fee; or
- 25 4. The operation of the proposed business on the Town streets and alleys is
26 likely to:
- 27 a. cause substantial disruption of traffic or pedestrian flow in the area
28 of the Town where the proposed business will operate;
- 29 b. create a substantial inconvenience or annoyance to the public; or
- 30 c. cause a public nuisance.

1 5. The granting of the application will endanger public health or safety.

2 D. If the application is denied, the Town Council shall clearly set forth in writing the
3 grounds for denial.

4 E. If the application is conditionally approved, the Town Council shall clearly set
5 forth in writing the conditions of approval.

6 F. If an application is denied the application fee shall not be refunded.

7 4-15-11: AUTHORITY TO IMPOSE CONDITIONS ON PERMIT:
8

9 A. The Town Council shall have the authority to impose such reasonable terms and
10 conditions on a permit as may be necessary to protect the public health, safety, and
11 welfare, and to obtain compliance with the requirements of this Chapter and
12 applicable law.

13 B. **For good cause shown, the Town Manager may administratively modify or**
14 **eliminate any permit condition during the term of the permit.**

15 4-15-12: STANDARD TERMS AND CONDITIONS: The following shall be standard terms and
16 conditions for any permit issued under this Chapter:
17

18 A. The permittee shall procure and continuously maintain throughout the term of the
19 permit a policy of comprehensive commercial general liability insurance with
20 limits of liability not less than One Million Dollars (\$1,000,000) per claim, One
21 Million Dollars (\$1,000,000) aggregate, and Fifty Thousand Dollars (\$50,000) for
22 property damage. The Town shall be named as an additional insured under such
23 insurance policy. An ACORD Form 27, or other certificate of insurance acceptable
24 to Town Clerk, shall be completed by the permittee's insurance agent and provided
25 to the Town Clerk as evidence that policies providing the required coverages,
26 conditions, and minimum limits are in full force and effect and shall be reviewed
27 and approved by Town prior to commencement of the operations of the business
28 pursuant to the permit, and on each renewal or replacement of the policy during the
29 term of the permit.

30 B. The permittee shall indemnify and defend the Town, its officers, employees,
31 insurers, and self-insurance pool (with counsel acceptable to the Town), from and
32 against all liability, claims, and demands, on account of injury, loss, or damage,
33 including without limitation, claims arising from bodily injury, personal injury,
34 sickness, disease, death, property loss or damage, or any other loss of any kind
35 whatsoever, arising out of in any manner connected with the operation of the
36 business for which the permit was issued. The permittee shall investigate, handle,
37 respond to, and to provide defense for and defend against, any such liability,

1 claims, or demands at the sole expense of the permittee, and bear all other costs and
2 expenses related thereto, including court costs and attorney fees. The indemnity
3 obligation of this Subsection shall survive the expiration or revocation of the
4 permit, and shall continue to be fully enforceable thereafter.

5 C. If the permit authorizes the operation of a horse and carriage, the following
6 additional standard terms and conditions apply unless the Town Council otherwise
7 determines:

8 1. The driver or operator of the horse drawn carriage must be at least 18 years
9 of age, and have a valid Colorado driver's license.

10 2. The driver or operator of the horse drawn carriage must be qualified to
11 safely operate the horse drawn carriage.

12 3. The driver or operator of the horse drawn carriage must register with the
13 Police Chief by providing the Police Chief with a copy of the driver's or
14 operator's current Colorado driver's license.

15 4. The permittee shall:

16 a. Use new ropes or halters, not bridle ties, when stopped;

17 b. Properly adjust all equipment;

18 c. Not leave horses unattended while hitched or untied; and

19 d. Never remove the bridle while hitched to a horse drawn carriage.

20 e. Each horse drawn carriage shall be equipped with the following:

21 (i) Buckles only on hold back and driving end lines; snaps
22 allowed on other harness parts;

23 (ii) Throat latch;

24 (iii) Blinders;

25 (iv) Nose band;

26 (v) Brichen;

27 (vi) Buckle safes or keepers behind all buckles;

28 (vii) Round collar or breast collar style harness;

- 1 (viii) Kickstrap; and
- 2 (ix) Diapers/harness bags to trap manure.
- 3 f. The permittee shall maintain the horse drawn carriage and related
4 equipment in a clean and safe condition.
- 5 g. The permittee shall not permit horse waste to accumulate and create
6 an offensive odor.
- 7 h. The permittee shall properly collect and dispose of all horse waste.
8 Manure shall not be deposited in either Town refuse containers or
9 the Blue River. Urine shall be collected by an absorbent material
10 and disposed of properly.
- 11 i. The permittee shall immediately clean up any manure or urine
12 deposited onto a Town street, alley or sidewalk.
- 13 j. At the end of its operations each day the permittee shall wash down
14 the area of the street where its horses stand.
- 15 k. The permittee shall clean the storm sewer inlet structure nearest to
16 the area of the street where its horses stand at least two times each
17 year, once in June and again in September. The permittee shall
18 contact the Town's Public Works Department at least twenty four
19 hours prior to each cleaning, and again within twenty four hours
20 after each cleaning.
- 21 l. The permittee shall operate the horse drawn carriage in accordance
22 with all applicable state and local traffic laws.
- 23 m. This list is not intended to be exclusive, and the permittee shall take
24 such other and further action as may be needed to safely operate the
25 horse drawn carriage.
- 26 D. If the permit authorizes the operation of a pedicab, the following additional
27 standard terms and conditions apply unless the Town Council otherwise
28 determines:
- 29 1. A permittee shall comply with the following restrictions:
- 30 a. The driver or operator of the pedicab must be at least 18 years of
31 age, and have a valid Colorado driver's license.

- 1 4-15-14: PERMIT NOT TRANSFERABLE: A permit is non-transferable and non-assignable.
2 Any attempt to transfer or assign a permit voids the permit.
3
- 4 4-15-15: DURATION OF PERMIT: Each permit issued pursuant to this Chapter shall be valid for
5 one year from the date of issuance, unless the Town Council specifies a shorter term for the permit.
6
- 7 4-15-16: RENEWAL OF PERMIT:
8
- 9 A. A permittee does not have a vested right or a property right in the renewal of a
10 permit issued pursuant to this Chapter.
 - 11 B. Each permit issued pursuant to this Chapter may be renewed as provided in this
12 Section.
 - 13 C. An application for the renewal of an existing permit shall be made to the Town
14 Manager not less than forty-five days prior to the date of expiration. No application
15 for renewal shall be accepted by the Town Manager after the date of expiration. The
16 Town Manager may waive the forty-five days time requirement set forth in this
17 Subsection if the applicant demonstrates an adequate reason.
 - 18 D. The timely filing of a renewal application shall extend the current permit until a
19 final decision is made on the renewal application by the Town Council.
 - 20 E. At the time of the filing of an application for the renewal of an existing permit the
21 applicant shall pay a renewal fee in an amount fixed by the Town Council as part of
22 its annual budget process.
 - 23 F. The Town Council may, but is not required to, hold a public hearing on an
24 application for renewal of a permit.
 - 25 G. If the Town Council determines not to hold a public hearing on an application for
26 renewal of a permit, the permit may be renewed administratively by the Town
27 Manager. At the time of the administrative renewal of a permit the Town Manager
28 may impose any condition on the permit that the Town Council could lawfully
29 impose pursuant to this Chapter.
 - 30 H. The Town Council may refuse to renew a permit for good cause; provided,
31 however, that the Town Council shall not refuse to renew a permit without holding
32 a public hearing on the renewal application. If a public hearing on a renewal
33 application is held, notice of such hearing shall be given as provided in Section
34 4-15-9(D).
- 35 4-15-17: DUTIES OF PERMITTEE: It is the duty and obligation of each permittee to do the
36 following:

- 1
- 2 A. Comply with all of the terms and conditions of the permit, ~~and~~including, without
- 3 limitation, any special ~~conditions on the permit~~condition imposed by the Town
- 4 Council pursuant to Section 4-15-11;
- 5
- 6 B. Comply with all of the requirements of this Chapter; and
- 7
- 8 C. Comply with all other Town ordinances that are applicable to the business for
- 9 which the permit was issued.

8 4-15-18: SUSPENSION OR REVOCATION OF PERMIT:

- 9
- 10 A. A permit issued pursuant to this Chapter may be suspended or revoked by the Town
- 11 Council after a hearing for any of the following reasons:
- 12
- 13 1. Fraud, misrepresentation, or a false statement of material fact contained in
- 14 the permit application.
- 15
- 16 2. A violation of any Town, state, or federal law or regulation pertaining to the
- 17 operation of the business for which the permit was issued.
- 18
- 19 3. A violation of any of the terms and conditions of the permit, including,
- 20 without limitation, any special ~~conditions of approval~~condition imposed
- 21 upon the permit by the Town Council pursuant to Section 4-15-11.
- 22
- 23 4. The permittee or the permittee's employees, agents, or contractors were
- 24 involved in one or more accidents while operating the vehicle, device or
- 25 contrivance authorized by the permit that were determined to be the fault of
- 26 the operator.
- 27
- 28 5. Operations have ceased at the business for more than six months for any
- 29 reason.
- 30
- 31 6. Ownership of the permitted business has been transferred without the new
- 32 owner obtaining a permit pursuant to this Chapter.
- 33
- 34 B. In connection with the suspension of a permit, the Town Council may impose
- 35 reasonable conditions.
- 36
- 37 C. A hearing held pursuant to this Section shall be processed in accordance with
- 38 Chapter 19 of Title 1 of this Code.
- 39
- 40 D. For the purpose of disciplinary action imposed pursuant to this Section, a permittee
- 41 is responsible and accountable for the conduct of the permittee's employees,
- 42

1 agents, and contractors occurring in connection with the operation of the business
2 for which a permit has been issued.

3 E. In deciding whether a permit should be suspended or revoked, and in deciding what
4 conditions to impose in the event of a suspension, if any, the Town Council shall
5 consider all of the following:

- 6 1. The nature and seriousness of the violation.
- 7 2. Corrective action, if any, taken by the permittee.
- 8 3. Prior violation(s), if any, by the permittee.
- 9 4. The likelihood of recurrence.
- 10 5. All circumstances surrounding the violation.
- 11 6. Whether the violation was willful.
- 12 7. The number of previous violations by the permittee.
- 13 8. Previous sanctions, if any, imposed against the permittee.

14 F. No fee previously paid by a permittee in connection with the application shall be
15 refunded if such permit is suspended or revoked.

16 4-15-19: TOWN COUNCIL DECISION IS FINAL: Any decision made by the Town Council
17 pursuant to this Chapter shall be a final decision of the Town and may be appealed to the district
18 court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's or
19 permittee's (as applicable) failure to timely appeal the decision is a waiver the applicant's or
20 permittee's right to contest the denial or conditional approval of the application.

21
22 4-15-20: SIGNAGE: All signage for a business for which a permit has been issued shall comply
23 with the requirements of Chapter 2 of Title 8 of this Code.

24
25 4-4-21: TRANSITION FROM PRIOR DEVELOPMENT PERMIT: Any person required to
26 obtain a permit pursuant to this Chapter who holds a valid development permit issued pursuant to
27 Chapter 1 of Title 9 of this Code authorizing the operation of the permittee's business is not
28 required to obtain a permit pursuant to this Chapter until the current development permit expires or
29 is revoked. Thereafter, the person must obtain a permit pursuant to this Chapter.

30
31 4-15-22: PENALTIES; INJUNCTIVE RELIEF:
32

1 A. It is a misdemeanor offense for any person to violate any provision of this Chapter.
2 Any person convicted of having violated any provision of this Chapter shall be
3 punished as set forth in Chapter 4 of Title 1 of this Code.

4 B. If a business is required to have a permit issued pursuant to this Chapter the
5 operation of such business on a Town street or alley without a valid permit issued
6 pursuant to this Chapter may be enjoined by the Town in an action brought in the
7 municipal court pursuant to Section 1-8-10 of this Code, or in any other court of
8 competent jurisdiction. In any case in which the Town prevails in a civil action
9 initiated pursuant to this Section, the Town may recover its reasonable attorney fees
10 plus costs of the proceeding.

11 C. The remedies provided in this Section are in addition to any other remedy provided
12 by applicable law.

13 4-15-23: NO TOWN LIABILITY: The adoption of this Chapter and the issuance of permits
14 pursuant to this Chapter shall not create any duty to any person. No person shall have any civil
15 liability remedy against the Town, or its officers, employees or agents, for any damage or loss of
16 any kind arising out of or in any way connected with the issuance of any permit pursuant to this
17 Chapter. Nothing in this Chapter shall be construed to create any liability or to waive any of the
18 immunities, limitations on liability, or other provisions of the Colorado Governmental Immunity
19 Act, Section 24-10-101, et seq., C.R.S., or to waive any immunities or limitations on liability
20 otherwise available to the Town, or its officers, employees or agents.

21
22 4-15-24: RULES AND REGULATIONS: The Town Manager shall have the authority from time
23 to time to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary
24 for the proper administration of this Chapter. Such regulations shall be adopted in accordance with
25 the procedures established by Chapter 18, Title 1 of this Code.

26
27 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
28 various secondary Codes adopted by reference therein, shall continue in full force and effect.

29
30 Section 3. This ordinance shall be published and become effective as provided by Section
31 5.9 of the Breckenridge Town Charter.

32
33 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
34 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
35 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
36 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.
37
38

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

MEMO

TO: Breckenridge Town Council
FROM: Laurie Best, Community Development Department
RE: Claimjumper Annexation Ordinance-First Reading
DATE: August 8, 2012 (Updated for August 28, 2012)

Enclosed in your packets is an Ordinance to annex the Town-owned Claimjumper property. This property was part of the Town of Breckenridge Land Exchange which was completed in the spring of 2012 and the Patent was recorded on March 23, 2012. The Claimjumper property consists of two separate parcels identified as Annexation Parcel 1 and Annexation Parcel 2. Parcel 1 is 8.979 acres and is located between the Pinewood Village Apartments, which is already in Town, and the Claimjumper Condominiums, which are in the County. Parcel 2 is 16.654 acres and is located immediately north of the Claimjumper Condominiums. The annexation map which is included in your packet identifies the property. Within ninety days of the annexation the Town must place the annexed property into a Land Use District. The process of determining the appropriate land use district is underway and that will be presented to the Council at a future meeting.

Staff recommends approval of the Claimjumper Annexation Ordinance First Reading and will be available to answer questions on August 28th .

1
2 ***FOR WORKSESSION/FIRST READING – AUG. 28***

3
4 COUNCIL BILL NO. 25

5
6 SERIES 2012

7
8 AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL
9 PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE
10 (Claimjumper Parcels - 25.633 acres)

11
12 WHEREAS, the Town of Breckenridge is the owner in fee of the hereafter described real
13 property; and

14
15 WHEREAS, the hereafter described real property is currently located in an
16 unincorporated area of Summit County, Colorado; and

17
18 WHEREAS, Section 31-12-106(3), C.R.S., provides that a municipality may annex by
19 ordinance municipally-owned real property without notice and hearing upon the determination
20 that the property is eligible for annexation under Section 30(1)(c) of Article II of the Colorado
21 Constitution, and Sections 31-12-104(1)(a) and 31-12-105 of the “Municipal Annexation Act of
22 1965”, Part 1 of Article 12 of Title 31, C.R.S.; and

23
24 WHEREAS, it is the desire of the Town Council to annex the hereinafter described
25 Town-owned property to the Town of Breckenridge.

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

29
30 Section 1. The Town Council finds that the Town of Breckenridge is the owner in fee of
31 the real property described in Section 3 of this ordinance, and that such property is not solely a
32 public street or right-of-way. This ordinance is the written consent of the Town of Breckenridge
33 to the division of its property into two or more contiguous tracts for purpose of annexation as
34 required by Section 31-12-105, C.R.S.

35
36 Section 2. The Town Council finds and determines that the Town-owned real property
37 described in Section 3 of this ordinance is eligible for annexation to the Town of Breckenridge
38 under Section 30(1)(c) of Article II of the Colorado Constitution, and Sections 31-12-104(1)(a)
39 and 31-12-105, C.R.S. Specifically, the Town Council finds, determines and concludes that:

- 40
41 1. Not less than one-sixth of the perimeter of the area to be annexed is
42 contiguous with the existing boundaries of the Town of Breckenridge.
43

1 DISTANCE OF 226.15 FEET TO A POINT ON THE 2-3 LINE OF THE
2 GERMANIA LODGE, M.S. 12372;
3 2.) N19°38'26"E ALONG SAID 2-3 LINE A DISTANCE OF 253.80 FEET TO
4 CORNER NO. 2;
5 3.) S69°45'18"E A DISTANCE OF 146.31 FEET TO CORNER NO. 1;
6 4.) S18°55'14"W ALONG THE 1-4 LINE OF SAID GERMANIA LODGE A DISTANCE
7 OF 81.70 FEET TO A POINT ON SAID 2-3 LINE OF THE DORA L. LODGE;
8 5.) N67°42'46"E A DISTANCE OF 3.46 FEET TO A POINT ON THE LINE
9 BETWEEN SAID SECTIONS 25 AND 30;
10 6.) N60°56'12"E ALONG SAID 2-3 LINE OF THE DORA L. LODGE A DISTANCE OF
11 362.13 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE FOR
12 AIRPORT ROAD;

13 THENCE S04°32'41"E ALONG SAID WEST RIGHT-OF-WAY A DISTANCE OF 428.50
14 FEET; THENCE S79°10'09"W A DISTANCE OF 194.36 FEET TO THE POINT OF
15 BEGINNING, CONTAINING 391,119 SQUARE FEET OR 8.979 ACRES MORE OR
16 LESS.

17
18 PARCEL 2
19

20 A TRACT OF LAND LOCATED IN THE SW $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 6 SOUTH,
21 RANGE 77 WEST, AND IN THE SOUTH $\frac{1}{2}$ OF SECTION 25, TOWNSHIP 6 SOUTH,
22 RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF SUMMIT,
23 STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:
24

25 BEGINNING AT CORNER NO. 6 OF THE MASONIC PLACER, M.S. 9616, A
26 STANDARD B.L.M. BRASS CAP, WHENCE THE SOUTHWEST CORNER OF SAID
27 SECTION 30 BEARS S10°49'38"W 1,066.72 FEET DISTANT; THENCE N89°34'21"E A
28 DISTANCE OF 58.31 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE FOR
29 AIRPORT ROAD; THENCE S04°32'41"E ALONG SAID RIGHT-OF-WAY LINE A
30 DISTANCE OF 559.94 FEET TO A POINT ON THE 1-2 LINE OF THE DORA L. LODGE,
31 M.S. 16068; THENCE N24°59'52"W A DISTANCE OF 140.00 FEET TO CORNER NO. 1
32 OF THE IRON MASK LODGE, M.S. 16068; THENCE N29°08'37"W A DISTANCE OF
33 150.16 FEET TO CORNER NO. 2 OF SAID IRON MASK LODGE; THENCE ALONG THE
34 NORTH LINE OF THE CLAIMJUMPER CONDOMINIUM, ACCORDING TO THE PLAT
35 RECORDED AT RECEPTION NUMBER 159519 IN THE COUNTY RECORDS FOR THE
36 FOLLOWING FIVE (5) COURSES:
37

- 38 1.) S61°01'57"W A DISTANCE OF 175.95 FEET;
39 2.) S19°07'01"E A DISTANCE OF 1.79 FEET;
40 3.) S72°35'13"W A DISTANCE OF 8.90 FEET;
41 4.) S60°55'29"W A DISTANCE OF 38.42 FEET;
42 5.) S60°39'11"W A DISTANCE OF 1,002.35 FEET;

1
2 THENCE S58°23'15"W ALONG THE 2-3 LINE OF SAID IRON MASK LODGE A
3 DISTANCE OF 270.16 FEET TO CORNER NO. 3, OF SAID IRON MASK LODGE;
4 THENCE S29°25'20"E ALONG THE 3-4 LINE OF SAID IRON MASK LODGE A
5 DISTANCE OF 107.97 FEET TO A POINT ON THE NORTH LINE OF SHOCK HILL
6 SUBDIVISION, FILING NO. 2; THENCE S68°03'02"W ALONG SAID LINE A
7 DISTANCE OF 13.94 FEET TO A POINT ON THE 5-6 LINE OF THE HAROLD
8 PLACER, M.S. 7924; THENCE ALONG THE BOUNDARY OF SAID HAROLD PLACER
9 FOR THE FOLLOWING THREE (3) COURSES:

- 10
11 1.) N25°43'45"W A DISTANCE OF 526.95 FEET TO CORNER NO. 6;
12 2.) N55°10'32"E A DISTANCE OF 837.87 FEET TO CORNER NO. 7;
13 3.) N71°19'18"E A DISTANCE OF 548.68 FEET TO CORNER NO. 8;

14
15 THENCE CONTINUING ALONG THE 7-8 LINE OF THE HAROLD PLACER
16 EXTENDED N71°19'18"E A DISTANCE OF 28.28 FEET TO A POINT ON THE 6-7 LINE
17 OF SAID MASONIC PLACER; THENCE N89°35'17"E ALONG SAID 6-7 LINE A
18 DISTANCE OF 70.43 FEET TO A POINT ON THE SECTION LINE BETWEEN SAID
19 SECTIONS 25 AND 30; THENCE N89°34'21"E CONTINUING ALONG SAID 6-7 LINE
20 A DISTANCE OF 212.66 FEET TO THE POINT OF BEGINNING; CONTAINING 725,437
21 SQUARE FEET OR 16.654 ACRES MORE OR LESS.

22
23 Section 4. Within thirty (30) days after the effective date of this ordinance, the Town
24 Clerk is hereby authorized and directed to:

- 25
26 A. File one copy of the annexation map with the original of the annexation
27 ordinance in the office of the Town Clerk of the Town of Breckenridge,
28 Colorado; and
29
30 B. File for recording three certified copies of the annexation ordinance and
31 map of the area annexed containing a legal description of such area with
32 the Summit County Clerk and Recorder.
33

34 Section 5. This ordinance shall be published and become effective as provided in Section
35 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
39 held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the
40 ____ day of _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the
41 Municipal Building of the Town.
42
43

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

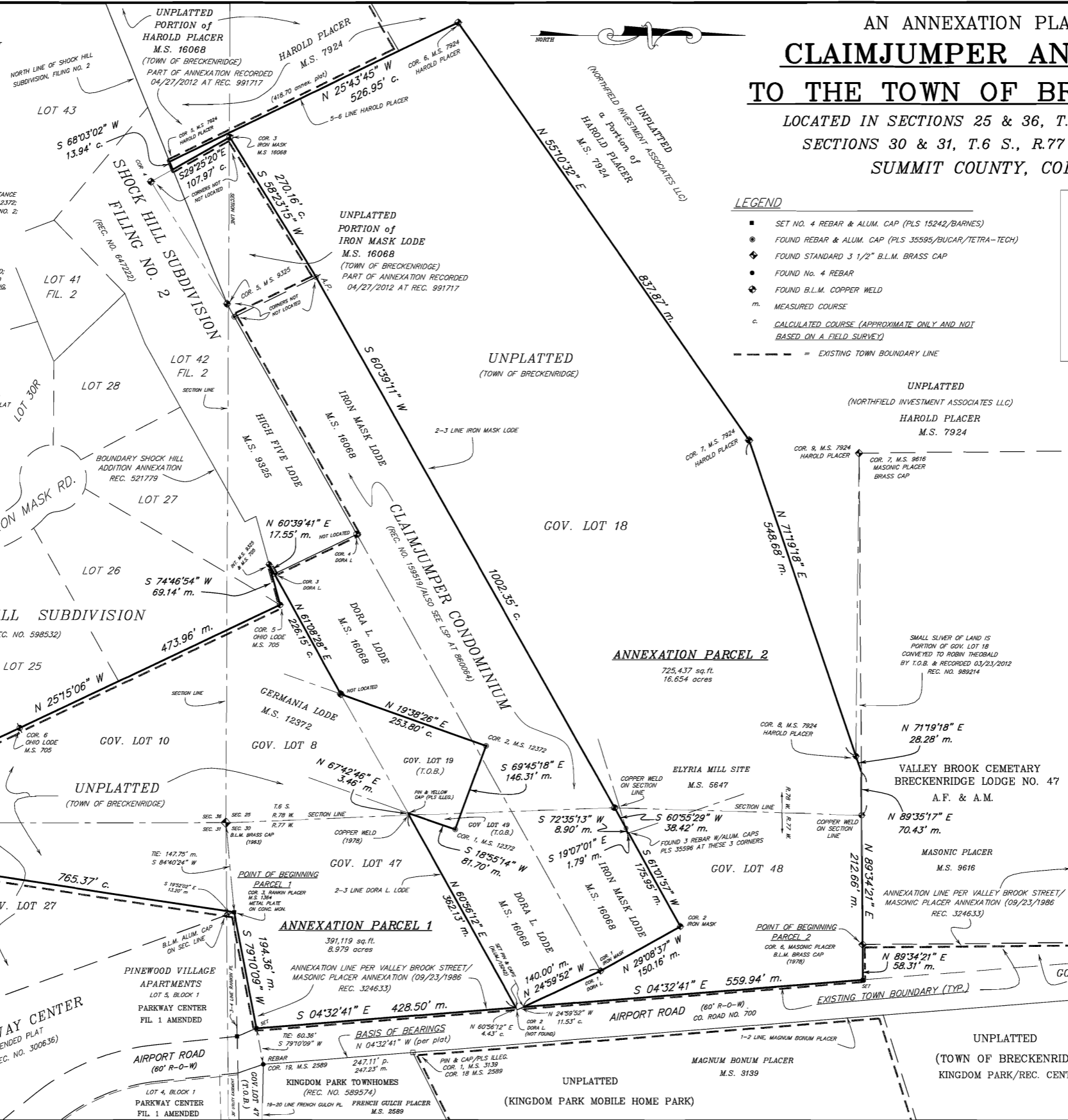
AN ANNEXATION PLAT FOR CLAIMJUMPER ANNEXATION TO THE TOWN OF BRECKENRIDGE

LOCATED IN SECTIONS 25 & 36, T.6 S., R.78 W. and SECTIONS 30 & 31, T.6 S., R.77 W. of 6th P.M. SUMMIT COUNTY, COLORADO

LEGAL DESCRIPTION

PARCEL 1
 A TRACT OF LAND LOCATED IN THE NW 1/4 OF SECTION 31 AND THE SW 1/4 OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 77 WEST AND ALSO THE 1/4 OF SECTION 36 AND THE SE 1/4 OF SECTION 25, TOWNSHIP 6 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF SUMMIT, STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:
 BEGINNING AT CORNER NO. 3 OF THE RANKIN PLACER, M.S. 1364, ALSO BEING THE NORTHWEST CORNER OF LOT 5, BLOCK 1, THE AMENDED PLAT OF PARKWAY CENTER, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 30 BEARS S84°02'24" W A DISTANCE OF 142.72 FEET DISTANT, THENCE S89°14'21" W A DISTANCE OF 765.37 FEET TO A POINT ON THE EAST LINE OF SHOCK HILL SUBDIVISION, AS RECORDED UNDER RECEPTION NUMBER 598532 IN THE COUNTY RECORDS, THENCE ALONG THE EASTERLY AND NORTHERLY BOUNDARY OF SAID SHOCK HILL SUBDIVISION FOR THE FOLLOWING THREE (3) COURSES:
 (1) N24°56'32" W A DISTANCE OF 445.17 FEET;
 (2) N25°15'06" W A DISTANCE OF 473.96 FEET;
 (3) S74°46'54" W A DISTANCE OF 69.14 FEET TO A POINT BEING AN ANGLE POINT ON THE SOUTH LINE OF LOT 42, SHOCK HILL SUBDIVISION, FILING NO. 2, AS RECORDED AT RECEPTION NUMBER 647222,
 THENCE N60°39'41" E A DISTANCE OF 17.55 FEET TO THE SOUTHEAST CORNER OF SAID LOT 42; THENCE ALONG THE SOUTHERLY LINE OF THE CLAIMJUMPER CONDOMINIUM, ACCORDING TO THE PLAT RECORDED AT RECEPTION NUMBER 159519 IN THE COUNTY RECORDS FOR THE FOLLOWING SIX (6) COURSES:
 (1) N61°08'28" E ALONG THE 3-2 LINE OF THE DORA L. LODE, M.S. 16068, A DISTANCE OF 220.16 FEET TO A POINT ON THE 2-3 LINE OF THE GERMANIA LODE, M.S. 12372;
 (2) N19°39'26" E ALONG SAID 2-3 LINE A DISTANCE OF 253.80 FEET TO CORNER NO. 2;
 (3) S69°45'18" E A DISTANCE OF 146.31 FEET TO CORNER NO. 1;
 (4) S18°55'14" W ALONG THE 1-4 LINE OF SAID GERMANIA LODE A DISTANCE OF 81.70 FEET TO A POINT ON SAID 2-3 LINE OF THE DORA L. LODE;
 (5) N67°42'46" E A DISTANCE OF 3.46 FEET TO A POINT ON THE LINE BETWEEN SAID SECTIONS 25 AND 30;
 (6) N60°36'12" E ALONG SAID 2-3 LINE OF THE DORA L. LODE A DISTANCE OF 362.13 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE FOR AIRPORT ROAD; THENCE S04°32'41" E ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 428.50 FEET; THENCE S79°10'09" W A DISTANCE OF 194.36 FEET TO THE POINT OF BEGINNING CONTAINING 391,119 SQUARE FEET OR 8.979 ACRES MORE OR LESS.

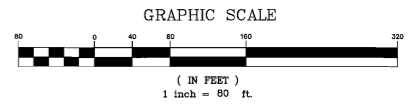
PARCEL 2
 A TRACT OF LAND LOCATED IN THE SW 1/4 OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 77 WEST AND IN THE SOUTH 1/2 OF SECTION 25, TOWNSHIP 6 SOUTH, RANGE 78 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF SUMMIT, STATE OF COLORADO, AND DESCRIBED AS FOLLOWS:
 BEGINNING AT CORNER NO. 6 OF THE MASONIC PLACER, M.S. 9616, A STANDARD B.L.M. BRASS CAP, WHENCE THE SOUTHWEST CORNER OF SAID SECTION 30 BEARS S10°49'38" W 1,066.22 FEET DISTANT, THENCE N89°34'21" E A DISTANCE OF 58.31 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE FOR AIRPORT ROAD; THENCE S04°32'41" E ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 559.94 FEET TO A POINT ON THE 1-2 LINE OF THE DORA L. LODE, M.S. 16068; THENCE N24°59'52" W A DISTANCE OF 140.00 FEET TO CORNER NO. 1 OF THE IRON MASK LODE, M.S. 16068; THENCE N29°08'37" W A DISTANCE OF 150.16 FEET TO CORNER NO. 2 OF SAID IRON MASK LODE; THENCE ALONG THE NORTH LINE OF THE CLAIMJUMPER CONDOMINIUM, ACCORDING TO THE PLAT RECORDED AT RECEPTION NUMBER 159519 IN THE COUNTY RECORDS FOR THE FOLLOWING FIVE (5) COURSES:
 (1) S81°01'57" W A DISTANCE OF 175.95 FEET;
 (2) S19°07'01" E A DISTANCE OF 1.79 FEET;
 (3) S72°35'13" W A DISTANCE OF 8.90 FEET;
 (4) S80°55'29" W A DISTANCE OF 38.42 FEET;
 (5) S60°39'11" W A DISTANCE OF 1,002.35 FEET;
 THENCE S58°23'15" W ALONG THE 2-3 LINE OF SAID IRON MASK LODE A DISTANCE OF 210.16 FEET TO CORNER NO. 3 OF SAID IRON MASK LODE; THENCE S29°25'20" E ALONG THE 3-4 LINE OF SAID IRON MASK LODE A DISTANCE OF 107.97 FEET TO A POINT ON THE NORTH LINE OF SHOCK HILL SUBDIVISION, FILING NO. 2; THENCE S68°13'02" W ALONG SAID LINE A DISTANCE OF 11.94 FEET TO A POINT ON THE 5-6 LINE OF THE HAROLD PLACER, M.S. 7924, THENCE ALONG THE BOUNDARY OF SAID HAROLD PLACER FOR THE FOLLOWING THREE (3) COURSES:
 (1) N25°43'45" W A DISTANCE OF 526.95 FEET TO CORNER NO. 6;
 (2) N57°10'32" E A DISTANCE OF 837.87 FEET TO CORNER NO. 7;
 (3) N71°19'18" E A DISTANCE OF 548.68 FEET TO CORNER NO. 8;
 THENCE CONTINUING ALONG THE 7-8 LINE OF THE HAROLD PLACER EXTENDED N71°19'18" E A DISTANCE OF 28.28 FEET TO A POINT ON THE 6-7 LINE OF SAID MASONIC PLACER; THENCE N89°35'17" E ALONG SAID 6-7 LINE A DISTANCE OF 70.43 FEET TO A POINT ON THE SECTION LINE BETWEEN SAID SECTIONS 25 AND 30; THENCE N89°34'21" E CONTINUING ALONG SAID 6-7 LINE A DISTANCE OF 212.66 FEET TO THE POINT OF BEGINNING CONTAINING 725,437 SQUARE FEET OR 16.654 ACRES MORE OR LESS.



- LEGEND**
- SET NO. 4 REBAR & ALUM. CAP (PLS 15242/BARNES)
 - FOUND REBAR & ALUM. CAP (PLS 35595/BUCAR/TETRA-TECH)
 - ◆ FOUND STANDARD 3 1/2" B.L.M. BRASS CAP
 - FOUND No. 4 REBAR
 - ◆ FOUND B.L.M. COPPER WELD
 - m. MEASURED COURSE
 - c. CALCULATED COURSE (APPROXIMATE ONLY AND NOT BASED ON A FIELD SURVEY)
 - - - EXISTING TOWN BOUNDARY LINE

ANNEXATION DATA:

ANNEXATION PARCEL 1	TOTAL PERIPHERY OF PARCEL: 3467.60'
	1/6 OF TOTAL PERIPHERY: 577.93'
	BOUNDARY CONTIGUOUS WITH CURRENT TOWN BOUNDARY: 2394.05'
ANNEXATION PARCEL 2	TOTAL PERIPHERY OF PARCEL: 4752.76'
	1/6 OF TOTAL PERIPHERY: 792.13'
	BOUNDARY CONTIGUOUS WITH CURRENT TOWN BOUNDARY: 1429.02'
TOTAL AREA OF ANNEXATION: 25.633 ACRES	



SURVEYOR'S CERTIFICATE

I, TERRY C. BARNES, BEING A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT AND SURVEY WERE PREPARED BY ME AND UNDER MY SUPERVISION AND THAT BOTH ARE ACCURATE TO THE BEST OF MY KNOWLEDGE.

DATED THIS _____ DAY OF _____, 20____.

SIGNATURE: TERRY C. BARNES
 COLORADO REGISTRATION NO. 15242

VALLEY BROOK CEMETARY
 (TOWN OF BRECKENRIDGE)

TOWN CLERK'S CERTIFICATE:

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN MY OFFICE AT _____ O'CLOCK, _____ M. THIS _____ DAY OF _____, 20____, AND IS DULY RECORDED.

TOWN CLERK _____

CLERK AND RECORDER'S CERTIFICATE:

STATE OF COLORADO }
 COUNTY OF SUMMIT } SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN MY OFFICE AT _____ O'CLOCK, _____ M. THIS _____ DAY OF _____, 20____, AND FILED UNDER RECEPTION NUMBER _____.

SUMMIT COUNTY CLERK AND RECORDER _____

VALLEY BROOK CEMETARY
 (TOWN OF BRECKENRIDGE)



Drawn TCB Dwg 20919ANX.DWG Project 20919
 Checked TCB Date 08/21/2012 Sheet 1 of 1

RANGE WEST
 ENGINEERS & SURVEYORS INC.
 P.O. Box 589
 Silverthorne, CO 80498 970-468-6281

MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Assistant Town Manager
Date: August 22, 2012
Subject: Resolution to approve IGA with County for Harris Street-Library

At the August 28, 2012 Town Council meeting, Staff will be presenting a resolution to approve an IGA with Summit County government for the renovation of 103 S. Harris Street and the future occupancy of the new South Branch Summit County Library at that location.

Attached for your review is the resolution and the latest version of the IGA. This version of the IGA incorporates those changes approved by the Council at your August 14th work session along with some minor edits made by the County. The County is still working on incorporating language that addresses the distribution of fundraising dollars based on the Charter of the Library Foundation. The described distribution of fundraising dollars will not change, but the manner in which those funds flow to the Town may change. We are expecting to receive an updated version of the IGA prior to the Town Council meeting which in turn will be forwarded to you. In the meantime, I wanted to provide you an opportunity to review the changes to date. Those highlighted changes include:

- A change in the lease term to 99 years (this is consistent with the recent lease term at the public works facility).
- Pro rata payments will be made by the County to the Town as work is being completed throughout the project.
- The ability of the Library Foundation to raise funds through the sale of naming rights; reserves the right to sell the naming of the building based on approval of the Council.
- Allows for an incentive to the Library Foundation to retain 10% of any additional funds raised over \$675,000 to be used for special enhancements to the library.
- Requires the County to pay 35% of the cost for major/emergency repairs to the building and requires each party to budget annually money to be used for those purposes.

The Town Attorney and I will be available at the work session for discussion and questions.

1 ***FOR WORKSESSION/ADOPTION – AUG. 28***

2
3 A RESOLUTION

4
5 SERIES 2012

6
7 A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH
8 SUMMIT COUNTY GOVERNMENT CONCERNING THE USE OF THE TOWN’S REAL
9 PROPERTY AT 103 SOUTH HARRIS STREET AS THE SOUTH BRANCH OF THE
10 SUMMIT COUNTY LIBRARY

11
12 WHEREAS, governmental entities are authorized by Article XIV of the Colorado
13 Constitution and Part 2 of Article 1 of Title 29, C.R.S., to co-operate and contract with one
14 another to provide any function, service, or facility lawfully authorized to each of the co-
15 operating or contracting governmental entities; and

16
17 WHEREAS, Summit County Government operates a county library system within
18 Summit County pursuant to Section 24-90-101, et. seq., C.R.S.; and

19
20 WHEREAS, as part of its library system, the County owns and operates the South
21 Branch of the Summit County Library located at 504 Airport Road, Breckenridge, Colorado
22 80424; and

23
24 WHEREAS, the Town is authorized to establish and operate a municipal library pursuant
25 to Section 24-90-107, C.R.S.; and

26
27 WHEREAS, the Town owns the real property commonly known as 103 South Harris
28 Street, Breckenridge, Colorado 80424; and

29
30 WHEREAS, there is currently located on the Town’s property a historic structure which,
31 if remodeled, will be suitable for uses that include a public library; and

32
33 WHEREAS, the Town and the County have agreed to jointly pay to design and then
34 remodel the Town’s property so that it will be suitable for uses that include a public library; and

35
36 WHEREAS, the Town and the County desire that the South Branch of the Summit
37 County Library be relocated from its current location to the Town’s property at 103 South Harris
38 Street; and

39
40 WHEREAS, a proposed Intergovernmental Agreement between the Town and the
41 County concerning the Town’s real property at 103 South Harris Street has been prepared, a
42 copy of which is marked Exhibit “A”, attached hereto, and incorporated herein by reference;
43 and

1 WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement
2 and finds and determines that it would be in the best interest of the Town to enter into such
3 Agreement.

4
5 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
6 BRECKENRIDGE, COLORADO, as follows:
7

8 Section 1. The Intergovernmental Agreement between the Town of Breckenridge and
9 Summit County Government concerning the use of the Town's real property at 103 South Harris
10 Street as the South Branch of the Summit County Library ("**Exhibit "A"** hereto) is approved,
11 and the Town Manager is authorized, empowered, and directed to execute such Agreement for
12 and on behalf of the Town of Breckenridge.
13

14 Section 2. Minor changes to or amendments of the approved agreement may be made by
15 the Town Manager if the Town Attorney certifies in writing that the proposed changes or
16 amendments do not substantially affect the consideration to be received or paid by the Town
17 pursuant to the approved agreement, or the essential elements of the approved agreement.
18

19 Section 3. This resolution is effective upon its adoption.
20

21 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2012.
22

23 TOWN OF BRECKENRIDGE
24
25
26

27 By _____
28 John G. Warner, Mayor

29 ATTEST:
30
31
32
33

34 _____
Town Clerk

35
36 APPROVED IN FORM
37
38
39
40

41 _____ date
42
43
44
45

46 800-105\IGA Resolution (08-22-12)
47

1 ***DRAFT August 22, 2012 DRAFT***

2
3 Additions To The Draft Reviewed At the August 14, 2012 Meeting Are
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6
7 INTERGOVERNMENTAL AGREEMENT
8 (103 South Harris Street - Library)
9

10 This Intergovernmental Agreement (this “**Agreement**”) is dated _____,
11 2012 (the “**Effective Date**”) and is between the TOWN OF BRECKENRIDGE, a Colorado
12 municipal corporation (the “**Town**”) and SUMMIT COUNTY, COLORADO, acting by and
13 through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO
14 (the “**County**”). The Town and the County are sometimes referred to individually as a “**Party**”,
15 and together as the “**Parties**.”
16

17 **Background**

18
19 The County operates a county library system within Summit ~~the~~ County pursuant to
20 Section 24-90-101, et. seq., C.R.S. As part of its library system, the County owns and operates the
21 South Branch of the Summit County Library located at 504 Airport Road, Breckenridge, Colorado
22 80424. The Town owns the real property commonly known as 103 South Harris Street,
23 Breckenridge, Colorado 80424. There is currently located on the Town’s property a historic
24 structure which, if ~~remodeled~~ **renovated** will be suitable for uses that include the ~~library~~ **Library,**
25 **as defined below.** The Parties have agreed to jointly pay to design and then remodel the Town’s
26 property so that it will be suitable for uses that include the ~~library~~ **Library,** all as more fully set
27 forth in this Agreement. The Parties desire that the ~~library~~ **Library** be relocated from its current
28 location to the Town’s ~~property~~ **Property, as defined below,** subject to the terms and conditions of
29 this Agreement.
30

31 **Agreement**

32
33 For and in consideration of the mutual promises and covenants contained herein, and intending to
34 be legally bound, the Parties agree as follows:
35

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

ACT: The Colorado Governmental Immunity Act, Part
1 of Article 10 of Title 24, C.R.S., as amended

INTERGOVERNMENTAL AGREEMENT

	from time to time.
BUILDING:	The improvements located upon the Property.
DEFAULTING PARTY:	A Party alleged to be in default under this Agreement.
EXISTING LIBRARY SITE:	The site of the South Branch of the Summit County Library as of the date of this Agreement, which property is commonly known as at 504 Airport Road, Breckenridge, Colorado and is more fully described on the attached <u>Exhibit “B”</u> .
<u>FOUNDATION:</u>	<u>The Summit County Library Foundation, a Colorado nonprofit corporation formed in 1990.</u>
LEASE:	The long term <u>99 year</u> lease agreement between the Town and the County described in Section 5.
LIBRARY:	The South Branch of the Summit County Library to be relocated to a portion of the Building as provided in this Agreement.
NON-DEFAULTING PARTY:	The Party asserting that the other Party is in default under this Agreement.
PLANS:	The plans for the Project approved by the Town and the County, as amended from time to time in accordance with this Agreement.
PRIOR LIBRARY IGA:	The Intergovernmental Agreement between the Parties dated March 1, 1995, as amended by the First Amendment to Intergovernmental Agreement dated October 1, 2001.
PROJECT:	The work of designing and remodeling <u>renovating</u> the Building as described in this Agreement.
PROPERTY:	The real property owned by the Town as described on the attached <u>Exhibit “A”</u> .
<u>SHARED USE AREAS:</u>	<u>Two multi-purpose rooms, a kitchen, the circulation space, the public restrooms, and</u>

INTERGOVERNMENTAL AGREEMENT

the parking areas of the Building.

1
2 3. Renovation of the Building.
3

- 4 A. The Building will be remodeled by the Town in accordance with the Plans.
- 5 B. The Town and the County must each approve the Plans. Once approved, the Plans
6 will not be changed without the Parties' consent.
- 7 C. The Town and the County will work cooperatively and in good faith with each
8 other throughout the design and construction of the Project.
- 9 D. The Town is responsible for the performance of all of the work required to
10 complete the Project. To that end, the Town will select the general contractor to
11 perform the work described in the Plans, and will enter into all necessary contracts
12 for the design and construction of the Project: with construction/demolition
13 anticipated to begin no later than July 15, 2013. The Town will consult with the
14 County before selecting the general contractor. The Town will not change the
15 general contractor without first consulting with the County.
- 16 E. The Town will complete the Project with due diligence. Subject to the force
17 majeure conditions described in Section 8, the Town will use its best efforts to
18 complete the Project and make the County's leased space in the Building,
19 including the Library, ready for the County's occupancy not later than ~~January 1,~~
20 2015 August 15, 2014, or such other date as may be agreed to by the Town and
21 the County after the selection of the contractor who will remodel the Building;
22 provided, however, as provided in Section 7, the Town is not liable to the County
23 for any delay in the completion of the Project.

24 4. Cost of the Project.

- 25 A. As of the date of this Agreement, the best information available to the Parties is that
26 the total cost of the Project will be approximately \$7,400,000. Any increase in the
27 cost of the Project must be reviewed and approved by both the Town and the
28 County.
- 29 B. The County will pay \$2,675,000 toward the cost of the Project. Such sum will be
30 paid upon request of the Town ~~either~~ in pro rata payments (using an estimated
31 35% County share of costs subject to final adjustment as provided herein)
32 based on the percentage of work completed as the construction progresses, ~~or at~~
33 ~~the end of the Project.~~
- 34 C. Subject to the remainder of this Section, the Town will pay the balance of the cost
35 of the Project.

1 D. The Town and the County will work cooperatively, expeditiously, and in good faith
2 to attempt to raise funds to help pay the cost of the Project. Such efforts will
3 include, without limitation, private donations, public and private grants, and similar
4 awards. It is expected that the ~~Summit Library Foundation~~ will be involved serve
5 as the lead organization in raising these funds for the Project Library, Shared
6 Use Areas and other common elements of the Project. Such Project funds will
7 be segregated from all other ongoing operational fund raising efforts of the
8 Foundation.

9 E. The Foundation will develop a plan to raise funds through the sale of naming
10 rights on the Library and Shared Use Spaces. The Town and the County have
11 the right to review and approve the proposed naming plan, as well as the right
12 to review and approve the proposed name(s) of the Library and Shared Use
13 Spaces, and the duration of the naming rights to be granted. The proposed
14 naming plan may include the Building name with the approval of the Town.

15 F. It is anticipated the fundraising effort for the Project will cease 120 days
16 following the County's occupancy of the Library portion of the Building.

17 G. E. Funds raised through the Parties' joint fundraising efforts of the Parties and the
18 Foundation will be applied as follows:

19 i. the first \$575,000 will be used to offset the costs incurred or to be incurred
20 by the Town to assist with the Library construction and complete the
21 Project as described in Section 4(C).

22 ii. any amount between \$575,001 and \$675,000 will be set aside and used for
23 special enhancements to the Library, which may include items such as the
24 book/resource collection, equipment, or other Library personal
25 property, to be designated by the County. Any funds described in this
26 Subsection that are not spent will be credited to the Town's financial
27 obligation as described in Section 4(C) .

28 iii. any amount in excess of \$675,000 will be used to offset the costs incurred or
29 to be incurred by the Town to assist with the Library construction and
30 complete the Project as described in Section 4(C), until the Town's share of
31 the cost to complete the Project has been reduced to \$2,675,000 (the amount
32 of the County's share of the cost to complete the Project as described in
33 Section 4(B)).

34 iv. any amount in excess of that required to reduce the Town's share of the cost
35 to complete the Project has been reduced to \$2,675,000 will be credited
36 equally to the Town and the County.

37 H. F. If the actual cost to complete the Project is:

INTERGOVERNMENTAL AGREEMENT

- 1 i. less than \$7,400,000 but greater than \$6,000,000, the difference between
2 \$7,400,000 and the actual cost to complete the Project will be credited to the
3 Town's financial obligation as described in Section 4(C);
4 ii. \$6,000,000 or less, \$1,400,000 will first be credited to the Town's financial
5 obligation as described in Section 4(C), and the remaining savings will then
6 be credited equally to the Town and the County.

7 **I. The Parties agree that if the Foundation raises more than \$675,000 for the**
8 **cost of the Project, the Foundation may retain ten percent of any amount in**
9 **excess of \$675,000 and used, in the Foundation's discretion, for special**
10 **enhancements to the Library, which may include items such as the**
11 **book/resource collection, equipment, or other Library personal property, to**
12 **be designated by the Foundation. Such enhancement funds may be expended**
13 **by the Foundation pursuant to this Section once the final plans and budget**
14 **for the special enhancements has been prepared and approved by both the**
15 **County and the Town.**

- 16 5. ~~Lease. Prior to the County's initial occupancy of the Building~~ **Within 90 days of the**
17 **acceptance of building plans by each Party,** the Town and the County will negotiate a
18 mutually acceptable ~~long term~~ **99 year** lease for the County's use of the Library portion of
19 the Building, as well as certain areas of the Building where use will be shared by the Town
20 and the County. ~~The shared use areas ("Shared Use Areas") will include the two~~
21 ~~multi-purpose rooms, the kitchen, the circulation space, the public restrooms, and the~~
22 ~~parking areas of the Building.~~ The lease will include, without limitation, the following
23 provisions:

- 24 A. The County will be required to pay 35% of the annual total cost of providing gas,
25 electricity, water, sewer, and trash removal/recycling for the Building.
26 B. The County will manage the Library and Shared Use Areas and, in connection with
27 such management, will pay for and provide required cleaning and routine
28 maintenance of the Library and the Shared Use Areas.
29 C. The Town will ~~pay~~ **reimburse the County for** 65% of the cleaning and routine
30 maintenance of the Shared Use Areas that the County manages as described in B,
31 above.
32 D. The Town will manage the remainder of the Building, and, in connection with such
33 management, will pay for and provide required cleaning and routine maintenance
34 of the remainder of the Building.
35 E. The Town will be responsible for performing all non-routine maintenance of the
36 Building, such as structural repairs, the replacement of the roof or boiler, and the
37 painting of the Building

1 F. ~~The Parties will agree on a mutually acceptable mechanism for paying for major or~~
2 ~~emergency repairs of the Building.~~ Unless otherwise agreed by the Parties, the
3 County will pay for 35% of the cost of major or emergency repairs of the
4 Building, and the Town will pay 65% of such costs. “Major repairs” include
5 the substantial repair or replacement of the Building’s roof, foundation,
6 exterior walls and glass, plumbing system, heating and ventilation systems,
7 electrical system, and the painting of the exterior of the Building.
8 “Emergency repairs” include the substantial repair or replacement of any
9 structural or non-structural component of the Building that must be
10 performed immediately in order to maintain the structure in a safe and
11 useable condition.

12 G. Each Party will budget and set aside in its annual budget funds to be
13 accumulated and used to pay the cost of major or emergency repairs of the
14 Building. The amount of funds annually set aside to pay the cost of major or
15 emergency repairs of the Building will be in the sound discretion of each of the
16 Parties. Each Party will annually report to the other Party the amount of
17 funds that have been set aside to pay the cost of major or emergency repairs to
18 the Building, and the Parties will meet and confer at least once each fiscal year
19 to discuss the condition of the Building, anticipated repairs to the Building,
20 and the adequacy of the Parties’ reserves for major or emergency repairs of
21 the Building.

22 6. Use of Remainder of Building.

23 A. The Town will retain ownership of the Building, and will have sole and exclusive
24 use and control over those portions of the Building that are not subject to the Lease.
25 The County has no right to use or control any portion of the Building that is not
26 subject to the Lease.

27 B. To ~~attempt to~~ avoid uses that conflict with the County’s use of the Building as the
28 Library, the Town will consult with the County with respect to potential uses and
29 future tenants of the portion of the Building that is not subject to the Lease. and will
30 not allow future tenants or Building uses that conflict with the Library except
31 on a rare or special occasion.

32 7. Exclusion of Remedies. IN NO EVENT WILL THE TOWN BE LIABLE FOR ANY
33 INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT
34 NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, OR
35 SAVINGS, BUSINESS INTERRUPTION, GOVERNMENT DISRUPTION, LOSS
36 OF CONFIDENCE IN GOVERNMENT, OR ANY OTHER CLAIM OF
37 WHATEVER KIND, ARISING FROM THE DELAY IN THE COMPLETION OF
38 THE PROJECT, EVEN IF THE TOWN HAS BEEN ADVISED OF THE
39 POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY
40 NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY
41 LIMITED REMEDY.

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

8 9. Insurance.

9 A. Required Insurance. Until the Project has been completed the Town and the County
10 will each procure and maintain the following minimum insurance coverages:

- 11 i. workers' compensation insurance to cover obligations imposed by
12 applicable laws for any employee of the Town or the County (as
13 applicable).
- 14 ii. general liability insurance with limits of liability not less than the limits of
15 liability established from time to time by the Act. The policy must include
16 coverage for bodily injury, broad form property damage (including
17 complete operations), personal injury (including coverage for contractual
18 and employee's acts), blanket contractual, products, and completed
19 operations.

20 Such coverages will be procured and maintained with forms and insurers
21 reasonably acceptable to the other Party. All coverage will be continuously
22 maintained until the Project has been completed. In the case of any claims-made
23 policy, the necessary retroactive dates and extended reporting periods will be
24 procured to maintain such continuous coverage.
25

26 B. Deductibles. The Town and the County are each solely responsible for any
27 deductible amounts required to be paid under their own required insurance policies
28 described in Subsection A.

29 C. Insurance Certificate. Each Party will provide the other Party with a certificate of
30 insurance evidencing that policies providing the required coverages, conditions,
31 and minimum limits are in full force and effect. Such certificates will be provided
32 within 10 days of the Effective Date of this Agreement, and on each renewal or
33 replacement of the required insurance policies throughout the term of this
34 Agreement. The completed insurance insurances will be sent to the Parties at the
35 addresses provided in Section 13.

36 10. Mutual Indemnification.

37 A. Indemnification By the Town. The Town will indemnify and defend the County, its
38 officers, employees, insurers, and self-insurance pool against all liability, claims,

1 and demands, on account of injury, loss, or damage, including, without limitation,
2 claims arising from bodily injury, personal injury, sickness, disease, death,
3 property loss or damage, or any other loss of any kind whatsoever, arising out of or
4 in any manner connected with this Agreement, to the extent that such injury, loss,
5 or damage is caused by:

- 6 i. the negligence or intentional wrongful act of the Town, or any officer,
7 employee, representative or agent of the Town; or
- 8 ii. the Town’s breach of this Agreement,

9 except to the extent such liability, claim or demand arises through the negligence or
10 intentional wrongful act of the County, its officers, employees, or agents, or the
11 County’s breach of this Agreement. To the extent indemnification is required under
12 this Agreement, the Town agrees to investigate, handle, respond to, and to provide
13 defense for and defend against, any such liability, claims, or demands at its
14 expense, and to bear all other costs and expenses related thereto, including court
15 costs and attorney fees.
16

17 B. Indemnification By the County. The County will indemnify and defend the Town,
18 its officers, employees, insurers, and self-insurance pool against all liability,
19 claims, and demands, on account of injury, loss, or damage, including, without
20 limitation, claims arising from bodily injury, personal injury, sickness, disease,
21 death, property loss or damage, or any other loss of any kind whatsoever, arising
22 out of or in any manner connected with this Agreement, to the extent that such
23 injury, loss, or damage is caused by:

- 24 i. the negligence or intentional wrongful act of the County, or any officer,
25 employee, representative or agent of the County; or
- 26 ii. the County’s breach of this Agreement,

27 except to the extent such liability, claim or demand arises through the negligence or
28 intentional wrongful act of the Town, its officers, employees, or agents, or the
29 Town’s breach of this Agreement. To the extent indemnification is required under
30 this Agreement, the County agrees to investigate, handle, respond to, and to
31 provide defense for and defend against, any such liability, claims, or demands at its
32 expense, and to bear all other costs and expenses related thereto, including court
33 costs and attorney fees.
34

35 C. Indemnity Subject To Applicable Law. The obligation of a Party to indemnify and
36 defend the other Party pursuant to this Section is expressly subject to any applicable
37 limitation or provision of the Act or any other law providing similar limitations or
38 protections, as well as to any applicable constitutional prohibition against a Party
39 indemnifying the other Party.

1 D. Indemnity For Worker's Compensation Claims.

- 2 i. The Town will indemnify and defend the County with respect to any claim,
3 damage, or loss arising out of any worker's compensation claim of any
4 employee of the Town.
- 5 ii. The County will indemnify and defend the Town with respect to any claim,
6 damage, or loss arising out of any worker's compensation claim of any
7 employee of the County.

8 E. Survival. The obligation of a Party to indemnify and defend the other Party
9 pursuant to this Section will survive the termination of this Agreement, and will
10 continue to be enforceable thereafter until such obligations are fully performed.

11 11. Prior Library IGA.

12 A. The Prior Library IGA is terminated. The recording of this Agreement with the
13 Summit County Clerk and Recorder constitutes the notice of termination of the
14 prior Intergovernmental Agreement as required by Section 6(D) of the Prior
15 Library IGA.

16 B. Notwithstanding the termination of the Prior Library IGA, it is agreed that upon the
17 first to occur of:

- 18 i. the transfer of legal title to the Existing Library Site by the County;
- 19 ii. any use of the Existing Library Site after the commencement of the Lease
20 other than as a County, Judicial System, or District Attorney's office; or
- 21 iii. the termination of the Lease for any reason,

22 then the County will pay to the Town: (1) a sum equal to 92% of the then-current
23 fair market value of the land (but not the improvements) comprising the Existing
24 Library Site, and (2) 100% of the then-current cost of the Plant Investment Fee for
25 the Existing Library Site that the Town deferred payment of pursuant to the Prior
26 Library IGA. The value of the Existing Library Site will be determined by
27 agreement of the Parties, or if the Parties cannot agree, then by the determination of
28 a qualified, impartial real estate appraiser employed and paid equally by the Parties.
29 The selection of the appraiser will be made by mutual agreement of the Parties, but
30 if the Parties cannot agree, then the appraiser will be selected by the then-President
31 of the Continental Divide Bar Association, or successor organization. The fair
32 market value for the Existing Library Site will be paid in cash to Town by the
33 County within 30 days of the Parties' receipt of the appraiser's determination of
34 value.
35

36 12. Default; Resolution Of Disputes.

- 1 A. Default. A default exists under this Agreement if any Party violates any covenant,
2 condition, or obligation required to be performed under this Agreement. If a
3 Defaulting Party fails to cure such default within ~~20~~30 business days after the other
4 Non-Defaulting Party gives written notice of the default to the Defaulting Party
5 then, at the Non-Defaulting Party's option, the Non-Defaulting Party may
6 terminate this Agreement. In the event of a default not capable of being cured
7 within ~~20~~30 business days, a Defaulting Party will not be in default if it commences
8 curing the default within ~~20~~30 business days after receipt of written notice of
9 default from the Non-Defaulting Party, and thereafter cures such default with due
10 diligence and in good faith. Notwithstanding any Party's right to terminate this
11 Agreement for an uncured default, this Agreement is subject to the rights of any
12 Party to invoke the remaining provisions of this Section.
- 13 B. Negotiation. Either Party may give the other Party written notice of any dispute
14 arising out of or related to this Agreement that is not resolved in the normal course
15 of business. The Parties will attempt in good faith to resolve any such dispute
16 promptly by negotiations between the Parties' Authorized Representatives. Within
17 15 business days after receipt of said notice, Authorized Representatives will meet
18 at a mutually acceptable time and place, and thereafter as often as they reasonably
19 deem necessary, to exchange relevant information and to attempt to resolve the
20 dispute. If the matter has not been resolved within 60 business days of the notice of
21 dispute, or if the Parties fail to initially meet within 15 business days, either Party to
22 the dispute may initiate mediation of the controversy as provided below.
- 23 C. Mediation. If the dispute has not been resolved by negotiation as provided above,
24 the Parties will endeavor to settle the dispute by mediation with a neutral third
25 Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they
26 may each appoint a neutral third Party to mediate.
- 27 D. Judicial Action. Any dispute arising out of or relating to this Agreement or the
28 breach, termination, or validity hereof, which has not been resolved by the methods
29 set forth above within 30 days of the initiation of mediation, may be finally
30 resolved by appropriate judicial action commenced in a court of competent
31 jurisdiction. The ~~parties~~Parties agree to venue in the courts of Summit County,
32 Colorado with respect to any dispute arising out of or relating to this Agreement.
33 **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE,**
34 **INTERPRET, OR CONSTRUE THIS AGREEMENT.**
- 35 E. Provisional Remedies. The procedures specified in this Section are the sole and
36 exclusive procedures for the resolution of disputes among the Parties arising out of
37 or relating to this Agreement; provided, however, that a Party may seek a
38 preliminary injunction or other provisional judicial relief if, in its judgment, such
39 action is necessary to avoid irreparable damage or to preserve the status quo.
40 Despite such action, the Parties will continue to participate in good faith in the
41 procedures specified in this Section.

- 1 F. Performance To Continue. Each Party is required to continue to perform its
2 obligations under this Agreement pending final resolution of any dispute arising
3 out of or relating to this Agreement.
- 4 G. Extension Of Deadlines. All deadlines specified in this Section may be extended
5 by mutual agreement.
- 6 H. Costs. Each Party will pay its own costs with respect to negotiation and mediation.
7 The prevailing Party in any judicial action is entitled to reimbursement from the
8 other Party for all reasonable costs and expenses, including attorney fees in
9 connection with such judicial action.

- 10 13. Notices. All notices required or permitted under this Agreement must given by registered
11 or certified mail, return receipt requested, postage prepaid, or by hand or commercial
12 carrier delivery, or by telecopies directed as follows:

13 If intended for the Town to:

14
15 Town of Breckenridge
16 P.O. Box 168
17 150 Ski Hill Road
18 Breckenridge, Colorado 80424
19 Attn: Timothy J. Gagen, Town Manager
20 Telecopier number: (970)547-3104
21 Telephone number: (970)453-2251
22

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

24
25 Timothy H. Berry, Esq.
26 Town Attorney
27 Timothy H. Berry, P.C.
28 131 West 5th Street
29 P. O. Box 2
30 Leadville, Colorado 80461
31 Telephone number: (719)486-1889
32 Telecopier number: (719)486-3039
33

34 If intended for the County, to:

35
36 Board of the County Commissioners
37 P.O. Box 68
38 Breckenridge, Colorado 80424
39 Attn: Gary Martinez, County Manager
40 Telephone number: (970)453-3401
41 Telecopier number: (970)453-3535
42

INTERGOVERNMENTAL AGREEMENT

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

2
3 Jeff Huntley, Esq.
4 Summit County Attorney
5 P.O. Box 68
6 Breckenridge, Colorado 80424
7 Telephone number: (970)453-3407
8 Telecopier number: (970)454-3535
9

10 Any notice delivered by mail in accordance with this Section is effective on the third
11 business day after being deposited in any post office or postal box regularly maintained by
12 the United States postal service. Any notice delivered by telecopier in accordance with this
13 Section is effective upon receipt if concurrently with sending by telecopier receipt is
14 confirmed orally by telephone and a copy of said notice is sent by certified mail, return
15 receipt requested, on the same day to that intended recipient. Any notice delivered by hand
16 or commercial carrier is effective upon actual receipt. Either Party, by notice given as
17 above, may change the address to which future notices may be sent. E-mail is not a valid
18 method for the giving of notice under this Agreement.
19

20 14. Pledged Cash Reserves. Both the Town and the County covenant and agree to appropriate
21 during their respective current (2012) fiscal years sufficient funds to allow them to perform
22 and pay for their respective obligations under Section 4 of this Agreement. Such funds will
23 constitute present cash reserves pledged irrevocably for the payment of the Parties'
24 financial obligations under this Agreement in accordance with Section 20(4)(b) of Article
25 X of the Colorado Constitution. Unspent funds appropriated during the current fiscal year
26 will be carried over to the next fiscal year until all appropriated funds have been spent in
27 accordance with this Agreement.

28 15. Governmental Immunity. The Parties are each relying on, and do not waive or intend to
29 waive by any provision of this Agreement, the monetary limitations of the Act, which
30 limitations are as of the date of this Agreement \$150,000 per person and \$600,000 per
31 occurrence, or any other limitation, right, immunity, defense or protection otherwise
32 available to the Town and the County, and their respective officers, representatives, agents
33 and employees.

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

38 17. Waiver. The failure of either Party to exercise any of its rights under this Agreement is not
39 a waiver of those rights. A Party waives only those rights specified in writing and signed
40 by either Party waiving its rights.

INTERGOVERNMENTAL AGREEMENT

- 1 18. Independent Contractor. In connection with this Agreement each of the Parties acts as an
2 independent contractor (and not an agent or employee of the other Party), without the right
3 or authority to impose tort or contractual liability upon the other Party.
- 4 19. Applicable Law. This Agreement is to be interpreted in all respects in accordance with the
5 laws of the State of Colorado.
- 6 20. Entire Agreement. This Agreement constitutes the entire agreement and understanding
7 between the Parties as to the subject matter of this Agreement, and supersedes any prior
8 agreement or understanding relating thereto.
- 9 21. Amendment. This Agreement may be modified or amended only by a duly authorized
10 written instrument executed by the Parties. No oral amendment or modification of this
11 Agreement is allowed.
- 12 22. Severability. If any of the provisions of this Agreement are declared by a final.
13 non-appealable judgment court of competent jurisdiction to be invalid, illegal or
14 unenforceable in any respect, the validity, legality and enforceability of the remaining
15 provisions of this Agreement will not in any way be affected or impaired thereby.
- 16 23. Section Headings. Section and subsection headings are inserted for convenience only and
17 in no way limit or define the interpretation to be placed upon this Agreement.
- 18 24. Authority. The individuals executing this Agreement on behalf of each of the Parties
19 represent to the other Party that they have all requisite powers and authority to cause the
20 Party for whom they have signed to enter into this Agreement, and to bind such Party to
21 fully perform its obligations as set forth in this Agreement.
- 22 25. No Adverse Construction. Both Parties acknowledge having had the opportunity to
23 participate in the drafting of this Agreement. This Agreement is not to be construed against
24 either Party based upon authorship.
- 25 26. Will and Will Not Defined. The terms “will” and “will not” as used in this Agreement
26 indicate a mandatory obligation to act or to refrain from acting, respectively, as described in
27 this Agreement.
- 28 27. Incorporation of Exhibits. All exhibits referred to in this Agreement are attached to and
29 incorporated by reference into this Agreement.
- 30 28. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties
31 and their respective successor governing boards.
- 32 29. Approval By Governing Boards or Other Authority. In accordance with Section
33 29-1-203(1), C.R.S., this Agreement will not become effective unless and until it has been
34 approved by the governing bodies of both the Town and the County, or by such persons as
35 has the power to approve this Agreement on behalf of the Town and the County.

INTERGOVERNMENTAL AGREEMENT

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
John G. Warner, Mayor

ATTEST:

Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: _____
Chair

ATTEST:

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

EXHIBIT "A"
TO
INTERGOVERNMENTAL AGREEMENT
(103 South Harris Street – Library)

Legal Description of the Property

LOTS 1 THROUGH 9, BLOCK 2, YINGLING & MICKLES ADDITION, AND THAT PORTION OF THE KLACK GULCH PLACER, U.S. MINERAL SURVEY NO. 1224 SITUATE BETWEEN WASHINGTON AVENUE AND LINCOLN AVENUE AND BOUNDED ON THE WEST BY BLOCK 4, ABBETT ADDITION AND ON THE EAST BY BLOCK 2, Y & M ADDITION, ALL IN THE TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO.

EXHIBIT "B"
TO
INTERGOVERNMENTAL AGREEMENT
(103 South Harris Street – Library)

Legal Description of the Existing Library Site

Lot C, Block 1, Parkway Center Subdivision Amended

Memorandum

To: Town Council

From: James Phelps, Assistant Director Public Works

Date: 8/23/2012 (for August 28th, Meeting)

Re: Intergovernmental Agreement (IGA) for Fixed Route Transit Service

The Town of Breckenridge and Summit County - Summit Stage entered into an IGA in September 2007 for the “contract” operation of the Breckenridge North Route (previously operated by the Summit Stage Transportation system).

The provisions of the IGA allowed for additional Breckenridge Free Ride service stops and improved time efficiencies for Summit Stage and Breckenridge Free Ride operations via the Town’s “hub and spoke” Free Ride system. The Breckenridge North Route was renamed the Breckenridge Free Ride – Purple Route. The original term of the IGA is five (5) years , and is eligible for renewal upon expiration (September 2012) for an additional five (5) year period

This resolution and IGA for consideration is a continuance of the current IGA with Summit County – Summit Stage for the operation of the Breckenridge North Route or Breckenridge Free Ride - Purple Route.

The Public Works Department and Transit Division recommends the continued operation and inclusion of this route as part of the Town’s Free Ride system.

Staff will be present at the Work Session to address any questions and/or concerns.

1
2 WHEREAS, the Town Council has reviewed the proposed new Intergovernmental
3 Agreement, and finds and determines that it would be in the best interest of the Town to enter
4 into such agreement.

5
6 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
7 BRECKENRIDGE, COLORADO, as follows:

8
9 Section 1. The “Intergovernmental Agreement For Provision of Fixed Route Transit
10 Services for the Breckenridge North (French Gulch/Wellington Area) Route” with Summit
11 County Government (“**Exhibit “A”**”) is approved; and the Town Manager is authorized,
12 empowered, and directed to execute such agreement for and on behalf of the Town of
13 Breckenridge.

14
15 Section 2. This resolution is effective upon adoption.

16
17 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2012.

18
19
20 TOWN OF BRECKENRIDGE, a Colorado
21 municipal corporation

22
23
24
25 By: _____
26 John G. Warner, Mayor

27
28 ATTEST:

29
30
31
32 _____
33 Town Clerk

34
35 APPROVED IN FORM

36
37
38
39 _____
40 Town Attorney date

Summit County Government / Town of Breckenridge
Intergovernmental Agreement for Provision of Fixed Route Transit Services for the
Breckenridge North (French Gulch / Wellington Area) Route
7/31/2012

THIS INTERGOVERNMENTAL AGREEMENT FOR PROVISION OF FIXED ROUTE TRANSIT SERVICES FOR THE BRECKENRIDGE NORTH (FRENCH GULCH / WELLINGTON AREA) ROUTE (the “IGA”) is made this ___ day of August , 2012, by and between the Summit County Government, 208 East Lincoln Ave., P.O. Box 68, Breckenridge, CO 80424, (“the County”), and the Town of Breckenridge, 150 Ski Hill Road, P.O. Box 168, Breckenridge, CO 80424 (“the Town”). The County and Town are hereinafter referred to collectively as the “Parties.”

WHEREAS, the County, pursuant to § 30-11-101(f) C.R.S., operates a mass transportation system, the Summit Stage, which provides Fixed Route Transit services which serve areas throughout Summit County, including within the Town of Breckenridge; and

WHEREAS, the Town, pursuant to § 31-15-711(1)(g) C.R.S., and its home rule powers pursuant to the Town Charter and Article XX, Section 6 of the Colorado Constitution, operates a mass transportation system, the Free Ride Transportation System, which provides Fixed Route Transit services which serve areas within the Town of Breckenridge; and

WHEREAS, the Summit Stage operates a route to provide fixed route services to residents in the French Gulch / Wellington area (“the Area”) which is within the Town of Breckenridge; and

WHEREAS, the County, through the Summit Stage, desires to have the Town of Breckenridge, through its Free Ride Transit System, operate the subject route within their (Free Ride’s) schedule; and

WHEREAS, the Town, through its Free Ride Transportation System, desires to operate the subject route within the Free Ride Transit System’s schedule; and

WHEREAS, pursuant to the provisions of Section 18 of Article XIV of the Colorado Constitution and Section 29-1-203, C.R.S., as amended, the Town and County may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Parties now desire to enter into this IGA to document their joint and several responsibilities and duties with regard to the operation of the subject mass transportation route services.

NOW THEREFORE, in consideration of the above and in consideration of the mutual and dependant covenants contained herein, the Parties agree as follows:

I. Purpose and Term:

1. The purpose of this IGA shall be to set forth the Parties' agreement regarding the scope of responsibilities and duties of the Town's provision of fixed route transit services in the Area.
2. The Term of this IGA shall extend from the date of this agreement for an initial period of five (5) years and shall include the option, upon agreement of the parties, to be renewed for additional five (5) year periods upon expiration of the first five (5) year period.

II. County Responsibilities:

1. The County (Stage) agrees to monitor performance and compliance in accordance with its policies, procedures, and performance indicators (reference Chapter II, Page 5, Goal 2, Summit Stage Operations Plan 2004-2009 as prepared by LSC Transportation Consultants, November 2003).
2. The County (Stage) agrees to prepare the yearly FTA Rural Transit National Transit Database ("NTD") reports for this route in accordance with Federal Code.
3. The County (Stage) agrees to pay the Town a fee of \$75.00 per revenue service hour for operation of service in the Area. Said payments shall be made within 15 days of receipt of a monthly invoice from the Town's Transit department.
4. The hourly rate paid to Town by County as described in Section II.3 shall be adjusted either upward or downward each year on the anniversary date of this IGA by a percentage equal to any percentage change in the Stage's operational costs as described in its approved fiscal operations budget for the upcoming fiscal year. If the Stage changes its method of calculating its operational costs during the term of this IGA, the parties shall meet and determine how to equitably adjust the hourly rate to be paid to the Town as described in Section II.3.
5. The County (Stage) agrees to allow the Town to operate an alignment throughout the Area that the Town deems to be desirable based upon its transit operations. The County (Stage) agrees to approve said alignment to the extent that it services those core portions of the Area based upon the Summit Stage Transportation Guide dated effective April 22, 2007. (see Attachment A, page 15, specifically French Creek, Wellington Neighborhood and County Road 450)
6. If the County elects not to renew this IGA for the second five year term as described in Section I.2, or if the County shall not make a necessary annual appropriation to fund this IGA as described in Section IV.8, then the County shall purchase from Town the vehicle that the Town purchased to provide the transit service required of it under this IGA, or any substitute or replacement vehicle. The purchase price for the vehicle shall be the then-current fair market value of the vehicle as of the date of nonrenewal or nonappropriation, whichever is applicable.

III. Town Responsibilities:

1. The Town agrees to continue to operate fixed route service in the Area in accordance with the core schedule and hours identified in the Summit Stage Transportation Guide dated effective April 22, 2007 (see Attachment A, page 15). The Town further agrees

that any alternative alignment for service in the Area will be approved by the Summit County BOCC and Summit Stage Advisory Board.

2. The Town agrees to commence service in conjunction with the Stage schedule change, November 11, 2007. The Town further agrees to publish the timetable for Area service in the Free Ride schedule guide.
3. In accordance with Section III.1 ,above, the Town agrees to place Free Ride bus stop signage and schedule information at all current stops on the Area schedule and to maintain said stops. (see Attachment A, page 15)
4. The Town agrees to present an invoice for monthly services to the County (Stage) on or before the 5th of the month following service.
5. The Town agrees to present, with its invoice, the service performance statistics for the previous month. The service performance statistics to be reported are as follows:
 - Passengers per day and monthly total passengers
 - Revenue hours operated per day and monthly total revenue hours
 - Revenue miles operated per day and monthly total revenue miles

The Town also agrees to submit, when applicable, a report of any vehicle accidents, passenger accidents or other incidents that may occur during any operational month. Said report shall only be for those mentioned occurrences, which are specific to the Area route.

6. The Town agrees to provide the County ninety (90) days notice in the event that the Town determines it is not in its interest to continue operation of this service. The County is not obligated to further compensate the Town for services or capital purchases upon such termination.

IV. General Provisions:

1. Notices. All notices, requests, consents, approvals, written instructions, reports or other communication by the Parties, under this Agreement, shall be in writing and shall be deemed to have given or served, if delivered or if mailed by certified mail, postage prepaid or hand delivered to the parties as follows:

Gary Martinez County Manager Summit County Government P.O. Box 68 Breckenridge, CO 80424	Tim Gagen Town Manager Town of Breckenridge P.O. Box 168 Breckenridge, CO 80424
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Either party may change the address to which notices, requests, consents, approvals, written instructions, reports or other communications are to be given by a notice of change of address given in the manner set forth in this paragraph IV.1.

2. This IGA does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceedings against either the County or the Town because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.
3. No modification or waiver of this IGA or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by the party to be charged herewith.

4. This written IGA embodies the whole agreement between the Parties hereto and there are no inducements, promises, terms, conditions or other obligations made or entered into by either the County or the Town other than those contained herein.
5. This IGA shall be binding upon the respective parties hereto, their successors or assigns and may not be assigned by anyone without the prior written consent of the other respective party hereto.
6. All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this IGA shall be interpreted as if such invalid agreement or covenant were not contained herein.
7. The Town has represented to the County and, likewise, the County has represented to the Town, that it possesses the legal ability to enter into this IGA. In the event that a court of competent jurisdiction determines that either of the parties hereto did not possess the legal ability to enter into this IGA, this IGA shall be considered null and void as of the date of such Court determination.
8. Notwithstanding anything to the contrary contained in this contract, the County shall have no obligations under this IGA without any appropriation thereof by the County in accordance with a budget adopted by the Board of County Commissioners in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Regulations, the Local Government Budget Law (C.R.S. 29-1-101 et. seq.).
9. Notwithstanding anything to the contrary contained in this contract, the Town shall have no obligations under this IGA without an appropriation of necessary funds by the Town in accordance with a budget adopted by the Town Council of the Town of Breckenridge in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Regulations, the Local Government Budget Law (C.R.S. 29-1-101 et. seq.).
10. Governmental Immunity. Neither the Town nor the County intends to waive by any provision of this Agreement the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.
11. This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado. Venue shall only be proper in Summit County, Colorado.
12. Illegal Aliens. As required by C.R.S. §8-17.5-101 C.R.S., *et seq.*, regarding Illegal Aliens - Public Contracts for Services, and this Contract, Contractor certifies and agrees as follows:

- A. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract; or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract.
- B. The Contractor shall confirm through participation in either the E-Verify Program or the Department Program, the employment eligibility of all employees who are hired to perform work under this Contract. (For information on applying for the Basic Pilot the Contractor may log on to <https://www.vis-dhs.com/employerregistration> and for information on applying for

the Department Program the log on to <http://www.coworkforce.com/lab/pcs/default.asp>)

C. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Contract is being performed.

(1) If the Contractor obtains actual knowledge that a Subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

a. Notify the Subcontractor and the County within three days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and

b. Terminate the Subcontract with the Subcontractor if within three days of receiving the notice required pursuant to (C)(1)(a) of this Contract, the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

(2) The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to its authority.

D. If Contractor fails to comply with any requirement of this section, the County may terminate the Contract for breach and the Contractor shall be liable for actual and consequential damages.

IN WITNESS WHEREOF, the Parties hereto have executed this IGA to be effective the day and year first set forth above.

Town of Breckenridge

Summit County Government

By: _____

By: _____

Tim Gagen, Town Manager
Town of Breckenridge

Gary Martinez, County Manager
Summit County Government

Date: _____

Date: _____

Memorandum

To: Town Council
From: Michael Mosher and Laurie Best, Community Development
Date: August 7, 2012
Re: Stan Miller Property Second Amended and Restated Annexation Agreement

In September 2011, Staff presented a memo to the Town Council regarding proposed modifications to the Miller Property. This memo addressed:

- a. Modification to the distribution of density to provide more flexibility regarding the placement and location of all uses (deed restricted units, market units, commercial uses).
- b. Provision to allow up to 20 commercial SFES.
- c. Potential Master Plan concept.

Both the Council and the Town Housing Committee reviewed the proposal and supported the changes which require an amendment to the existing Annexation Agreement, to be followed by a modification of the existing Master Plan.

Background:

The “Miller Property” is owned by SMI Land Inc. (SMI) and Braddock Holdings LLC (BHL). The goal of the property owner is to increase flexibility, particularly in regard to permitted uses and housing types on their portion of the property.

In April of 2008 the Town annexed approximately 40.4 acres (SMI property). The 40.4 acres were to be planned for development (master plan) in conjunction with 2.29 acres that was already in the Town. The annexation agreement established the permitted land uses, maximum density, minimum unit sizes, affordable housing caps, and an 18-year vesting, etc. As part of the process, the Land Use Guidelines (LUGs) for Land Use District 33 were modified identifying the Land Use Type and Intensity of Use. The annexation agreement was conditioned on approval of a single master plan. The Master Plan and LUGs were approved in 2008.

Summary:

A Resolution has been prepared to modify the Annexation Agreement. This is scheduled for your consideration this evening and the changes are consistent with the proposal discussed in September of 2011. The proposed amendment does not impact the overall density numbers, the public benefits associated with the annexation that includes four pocket parks or any of the affordable housing components (AMI targets, release rate, percent of market to deed restricted, etc). It does provide flexibility in terms of the location of uses, adds some commercial, and clarifies possible residential uses, specifically:

- Introduction of Commercial uses to the Master Plan, with a maximum density set as 20 SFES.
- Clarification of the definitions of “Unrestricted Residential Units”, “Restricted Units”, and “Units”.
- Clarification on how the unrestricted SFES may be used.

- Clarification of the Surcharge Fees associated with the Annexation.
- There are no proposed modifications to the Land Use Guidelines for Land Use District 33-North. Any negative impacts can be mitigated with the Development review.

Staff supports the Amended and Restated Annexation Agreement and recommends approval of the resolution. Staff will be available to answer questions.

SECOND AMENDED AND RESTATED ANNEXATION AGREEMENT

THIS SECOND AMENDED AND RESTATED ANNEXATION AGREEMENT (“Agreement”) is dated as of the 12th day of January, 2010 and is among the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“Town”), SMI LAND, LLC, a Colorado limited liability company (“SMI”), and BRADDOCK HOLDINGS LLC, a Colorado limited liability company (“Braddock”). SMI and Braddock are collectively referred to in this Agreement as (“Owners”).

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

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

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

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

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

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

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

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

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

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

“Annexation Surcharge” or “Surcharge” means the fee due and payable to the Town pursuant to Section 8 of this Agreement. Such fee shall be paid to the Town as a general annexation fee and in lieu of the transfer of raw water to the Town by the Owners.

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

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

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

“Commercial Unit” means any Unit approved for construction on the Master Planned Property pursuant to the Development Permit to be used for commercial purposes as defined under Applicable Town Ordinances.

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

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

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

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

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

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

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

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

“Phase II” means Tracts A and E.

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

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

“Restricted Units” means the 105 residential Units approved for construction on the Master Planned Property pursuant to the Development Permit which are to be and shall remain in perpetuity subject to the Restrictive Covenants, including both the Owner-Occupied Restricted Units and the Rental Restricted Units. Unless otherwise indicated, the term “Restricted Units” includes both the Owner-Occupied Restricted Units and the Rental Restricted Units.

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

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

“TDR” means a transferable development right as created pursuant to the intergovernmental agreement between the Town and the Board of County Commissioners of Summit County, Colorado.

“Units” includes Restricted Units, Unrestricted Residential Units and Commercial Units.

“Unrestricted Residential Units” means the residential Units approved for construction on the Master Planned Property pursuant to the Development Permit that are not Restricted Units.

“Unrestricted Units” includes both the Commercial Units and the Unrestricted Residential Units.

“Upper Blue Employee” mean an employee of a business physically located in and serving the Upper Blue River Basin.

“Upper Blue River Basin” means the geographic area bounded by Farmers Korner to the north; Hoosier Pass to the south; the Continental Divide to the East; and the top of the Ten Mile Range to the west.

2. **DEVELOPMENT SUBJECT TO APPLICABLE TOWN ORDINANCES AND DEVELOPMENT PERMIT.** Development of the Master Planned Property shall conform in all respects with the Applicable Town Ordinances and the Development Permit. The Master Planned Property shall only be developed in accordance with this Agreement and the Development Permit. All parties acknowledge that pursuant to Section 31-12-115, C.R.S., the Development Permit did not become effective until the Annexation Ordinance was passed on final reading.

3. **PROPOSED USE OF THE MASTER PLANNED PROPERTY.**

- 3.1 **Land Use District Designation.** The Annexation Property has been placed in Land Use District 33 and Land Use District 1. However, all of the development of the Master Planned Property will occur in Land Use District 33, and no development of the Master Planned Property shall be permitted within Land Use District 1.

- 3.2 **General Development Concept.** The general development concept for the Master Planned Property is as follows:

- (a) **Single Master Plan.** The Annexation Property and the 2.29 Acre Parcel shall be developed pursuant to a single master plan approved in accordance with Policy 39(Absolute) of the Town’s Development Code.
- (b) **Units.** The Master Plan shall provide for development of the Units on the Master Planned Property. At least 105 of the Units shall be Restricted Units, and the remainder of the Units may be Unrestricted Units. The

Restricted Units shall include not less than 65 Owner-Occupied Restricted Units, and the remainder of the Restricted Units may be Rental Restricted Units if located on the Tract A or Tract E in a multi-family configuration approved pursuant to the Master Plan.

- (c) **Density.** The 157 SFEs of density required for the development of the Master Planned Property shall be provided as follows:
 - (i) 22 SFEs already existed within the Town as of the date of the Annexation Agreement (19 SFEs transferred to the Master Planned Property from Braddock's adjacent "Braddock Flats" parcel and 3 SFEs that existed on the 2.29 Acre Parcel);
 - (ii) 26 SFEs exist on the Annexation Property under Summit County zoning as of the date of the Annexation Agreement;
 - (iii) If required to complete the development of the Unrestricted Units that will require a total of 57 SFEs, 9 TDRs are to be purchased for the development of the Master Planned Property; and
 - (iv) 100 SFEs are to be provided by the Town pursuant to Section 3.5.
- (d) **Phasing; Extended Vested Property Rights.** The Town acknowledges that SMI has sold Tract B to Braddock, and that Braddock intends to develop Tract B as soon as possible. The development of Tract B is planned to include 22 Restricted Units and 24 Unrestricted Residential Units. The Town further acknowledges that SMI intends to continue the current operations of Stan Miller, Inc. on Tracts A and E for approximately 10 years and that development of Units on Tracts A and E is not likely to occur until after those current operations cease.

The development of the Master Planned Property shall be phased over a period of approximately 18 years, and the Owners have obtained from the Town 18 years of extended vested property rights for the Development Permit to reflect such phasing. Phase I will be undertaken by Braddock commencing in 2010 and is expected to be completed in five to six years. Phase II will be undertaken by SMI, and is expected to be completed by the end of 2027.

- 3.3 **Construction of Restricted Units.** The 105 Restricted Units shall be constructed in accordance with the following schedule:
 - (a) 22 of the Restricted Units shall be constructed as part of Phase I; and
 - (b) the remaining 83 Restricted Units shall be constructed as part of Phase II.

- 3.4 **Development Density In Land Use District 33.** The Town of Breckenridge Land Use District Guidelines which were in effect as of the date of the Annexation

Agreement provided that a 1 to 75 floor area ratio was acceptable for service commercial development in Land Use District 33. However, the parties acknowledged that the Town staff had recommended to the Town Council that the Land Use District Guidelines for Land Use District 33 be amended to provide that a density of approximately 4.5 units per acre is acceptable for residential development in Land Use District 33 if the new Town density to be developed consists of not less than seventy five percent (75%) affordable housing units that are encumbered with a Town-approved restrictive covenant. Such an amendment was required in order for the Development Permit to be approved. The staff's recommendation was approved and acted upon by the Town as of the date of this Agreement.

- 3.5 **Transfer of Density.** Within 60 days after the last of the contingencies in Section 12 have been satisfied, the Town shall provide the density necessary for the development of the Restricted Units by transfer or exemption, and, if by transfer, the Town and the Owners shall enter into and record a density transfer agreement and covenant in a form acceptable to the Town Attorney. Nothing in this Agreement shall prohibit the provision of additional density for the development of additional Restricted Units by transfer or exemption by the Town, provided that the total density is subject to the Land Use Guidelines.
- 3.6 **Purchase of TDRs.** Owners shall pay the cost of purchasing the 9 TDRs required for the development of the Master Planned Property if required to complete the development of the Unrestricted Units, and Town shall have no liability for such cost. The timing for the purchase of the 9 TDRs for the Master Planned Property shall be determined in connection with the approval of the Master Plan. Nothing in this Agreement shall prohibit the purchase of additional TDRs for use in connection with the development of such additional Unrestricted Units as may be approved by an amendment of the Master Plan in compliance with Applicable Town Ordinances, provided that the total density is subject to the Land Use Guidelines.
- 3.7 **Minimum Unit Sizes.** The minimum size for the 105 Restricted Units shall be as follows: one-bedroom Restricted Units shall be a minimum of 600 square feet in size; two-bedroom Restricted Units shall be a minimum of 900 square feet in size; and three-bedroom Restricted Units shall be a minimum of 1200 square feet in size. There shall be no minimum size for the Unrestricted Units.
- 3.8 **Restrictive Covenants.**
 - (a) **Restrictive Covenants—Filing Against Master Planned Property.**
 - (i) At the time of the issuance of the first building permit for the construction of improvements to Tract B, Braddock shall execute and file the Restrictive Covenant for Tract B with the Clerk and

Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant for the Sale Parcel shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Section 3.8(g).

(ii) At the time of the issuance of the first building permit for the construction of improvements to Tract A or Tract E, SMI shall execute and file the Restrictive Covenant for Tracts A and E with the Clerk and Recorder of Summit County, Colorado. As originally filed, the Restrictive Covenant for Tracts A and E shall encumber both the Restricted Units and the Unrestricted Units. The Unrestricted Units may be released from the Restrictive Covenant as provided in Section 3.8(g).

(b) **Restrictive Covenant—Approval, Priority and Required General Topics.** The forms of the Restrictive Covenants shall be subject to the approval of the Town, and neither SMI nor Braddock shall file the Restrictive Covenants until they have been reviewed and approved by the Town. At the time of recording, the Restrictive Covenants shall be superior in priority to all liens and encumbrances against the Tract B and Tracts A and E, except for the lien of the general property taxes for the year in which a Restrictive Covenant is recorded and subsequent years. The Restrictive Covenants shall contain, without limitation, provisions regulating and limiting: (i) the ownership of each Restricted Unit; (ii) the occupancy and use of each Restricted Unit; (iii) the sale and resale of each Restricted Unit; and (iv) remedies for the breach or other violation of the Restrictive Covenant.

(c) **Restrictive Covenants—Mandatory Provisions Re: Owner-Occupied Restricted Units.** It shall be the stated intent of the Owner-Occupied Restrictive Covenants to ensure that each Owner-Occupied Restricted Unit is the exclusive and permanent residence of the owner of such unit. Therefore, and without limiting the generality of Section 3.8(b), the Restrictive Covenants shall provide that (i) each Owner-Occupied Restricted Unit shall be owned only by a natural person, unless otherwise allowed by the terms of the Restrictive Covenant; (ii) each owner of a Owner-Occupied Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Owner-Occupied Restricted Unit earns his or her living by working in Summit County, Colorado an average of at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons located primarily in Summit County, Colorado; and (iii) at all times, an owner of a Owner-Occupied Restricted Unit shall: (a) occupy the Owner-Occupied Restricted Unit as his or her sole place of residence, unless otherwise allowed by the terms of the applicable Restrictive Covenant, (b) not engage in any business activity on or in such

Owner-Occupied Restricted Unit, other than as permitted in the applicable land use regulations of the Town or by applicable Town ordinance, (c) sell or transfer the Owner-Occupied Restricted Unit only in accordance with the terms, conditions and limitations of the applicable Restrictive Covenant, (d) not sell or otherwise transfer the Owner-Occupied Restricted Unit for use in a trade or business, (e) not permit any use of occupancy of the Owner-Occupied Restricted Unit except in compliance with the terms, conditions and limitations of the applicable Restrictive Covenant, and (f) not encumber the Owner-Occupied Restricted Unit in an amount in excess of the owner's purchase price.

- (d) **Restrictive Covenants—Mandatory Provisions Re: Rental Restricted Units.** It shall be the stated intent of the Rental Restrictive Covenants to ensure that each Rental Restricted Unit is the exclusive residence of the tenant of such unit. Therefore, and without limiting the generality of Section 3.8(b), the Restrictive Covenants shall provide that (i) each Rental Restricted Unit may be owned by any legal entity capable of taking title to such Rental Restricted Unit under Colorado law; (ii) each tenant of a Rental Restricted Unit shall be a 18 years of age or older who, during the entire period of his or her occupancy of the Restricted Unit earns his or her living by working in Summit County, Colorado an average of at least 30 hours per week for a business physically located in Summit County, Colorado and providing goods or services to persons located primarily in Summit County, Colorado; and (iii) each tenant of a Rental Restricted Unit shall: (a) occupy the Restricted Unit as his or her sole place of residence, unless otherwise allowed by the terms of the applicable Restrictive Covenant, and (b) not engage in any business activity on or in such Restricted Unit, other than as permitted in the applicable land use regulations of the Town or by applicable Town ordinance. At all times, an owner of a Rental Restricted Unit shall: (i) sell or transfer the Rental Restricted Unit only in accordance with the terms, conditions and limitations of the applicable Restrictive Covenant, (ii) not sell or otherwise transfer the Rental Restricted Unit for use in a trade or business, (iii) and not permit any use of occupancy of the Rental Restricted Unit except in compliance with the terms, conditions and limitations of the applicable Restrictive Covenant.
- (e) **Restrictive Covenants—Exceptions.** The Restrictive Covenants shall provide that it shall not be a violation of the Restrictive Covenants if: (i) rooms within a Owner-Occupied Restricted Unit are rented to qualified occupants sharing the Owner-Occupied Restricted Unit with the unit owner; (ii) a Owner-Occupied Restricted Unit is rented for use and occupancy as qualifying employee housing for a maximum cumulative total of 12 months during the time of ownership by a unit owner or while the Owner-Occupied Restricted Unit is initially being marketed by the Owners; (iii) a Owner-Occupied Restricted Unit is owned or occupied by a person age 65 years or older who has owned and occupied the unit and

worked at paid employment in Summit County, Colorado at least 30 hours per week on an annual basis, for the previous 7 years, together with such person's spouse and minor children, if any; (iv) a Owner-Occupied Restricted Unit is owned or occupied by a person otherwise authorized to own or occupy the Owner-Occupied Restricted Unit pursuant to the applicable Restrictive Covenant who becomes disabled after commencing ownership or occupancy of the Owner-Occupied Restricted Unit such that he or she cannot work the required number of hours each week required by the applicable Restrictive Covenant, provided, however, that such person shall be permitted to own or rent the Owner-Occupied Restricted Unit for a maximum period of one year following the commencement of such person's disability unless a longer period of ownership or occupancy is authorized by the Town; and (v) guests visiting a qualified occupant and paying no rent or other consideration.

(f) **Restrictive Covenants—Sale and Resale Limitations.**

- (i) **Initial Sale Price.** The Restrictive Covenants shall contain provisions governing the sale and resale of each of the Restricted Units. Unless otherwise agreed by the Town, the Restrictive Covenants taken together shall provide that: (i) 54 of the Restricted Units will initially be sold by the Owners at a price that is equal to or less than 100% of the AMI based on the most current data as of the date of sale; provided, however, that there is no required initial sales price for any building containing Rental Restricted Units; (ii) 38 of the Restricted Units will initially be sold by the Owners at a price that is equal to or less than 125% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; (iii) 11 of the Restrictive Units will Initially be sold by the Owners at a price that is equal to or less than 150% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; (iv) 2 of the Restricted Units will initially be sold by the Owners at a price that is equal to or less than 180% of the AMI for Summit County, Colorado based on the most current data as of the date of sale; and (v) each prospective purchaser of a Restricted Unit shall meet income testing standards acceptable to the Town and consistent with the requirements of the applicable Restrictive Covenant. The affordable price calculations shall include the following: (i) a purchase price shall not exceed 30% of gross household income adjusted for household size based on average regional interest rates for a 30 year fixed-rate loan at an interest rate not to exceed 7.5 per cent (7.5%) per annum, based on the Federal Home Loan Mortgage Corporation (Freddie Mac®) index, or other index acceptable the Town; (ii) 10% down payment; (iii) \$250 monthly expenses (homeowner association dues; insurance; taxes); and (iv) a family size based on 1.5 persons per bedroom.

- (ii) **Income Testing Standards—Owner-Occupied Restricted Units.** The Town’s methodology for performing income testing for the Owner-Occupied Restricted Units shall be substantially as follows: (i) determine the size of the prospective purchaser’s household (this is based on the number of bedrooms in the particular Owner-Occupied Restricted Unit and a factor of 1.5 persons per bedroom [i.e., a two bedroom Owner-Occupied Restricted Unit equates to a three person household regardless of the actual size of the prospective purchaser’s family]); (ii) determine the AMI target for the particular Owner-Occupied Restricted Unit (either 100%, 125%, 150% or 180%); (iii) determine the prospective purchaser’s maximum allowed income using the AMI in effect at the time of sale for the applicable household size and the AMI percent calculated in item (ii); and (iv) determine the prospective purchaser’s most recent annual adjusted gross income based on the prospective purchaser’s federal income tax and pay records. A prospective purchaser shall be qualified to purchase an Owner-Occupied Restricted Unit if his or her adjusted gross income does not exceed the maximum allowed income by more than ten percent (i.e., a prospective purchaser may qualify to purchase a 100% AMI Owner-Occupied Restricted Unit if his or her income does not exceed 110% of the AMI). Income testing is required at the time of the initial sale of an Owner-Occupied Restricted Unit by the Owners, and on each subsequent resale.
- (iii) **Income Testing Standards—Rental Restricted Units.** The Town’s income testing standards for the Rental Restricted Units shall be designed and implemented so as to make the Rental Restricted Units available for rental by persons earning 100% or less of the AMI.
- (iv) **Initial Marketing Restriction—Owner-Occupied Restricted Units.** Owner-Occupied Restricted Units shall initially be marketed to Upper Blue Employees or Key Employees. If, after 60 days of actively marketing an Owner-Occupied Restricted Unit to an Upper Blue Employees and Key Employees, the Owners are unable to enter into an acceptable sales contract with an Upper Blue Employee or a Key Employee, then the Owner-Occupied Restricted Unit may be sold to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee).
- (v) **Initial Marketing Restriction—Rental Restricted Units.** Rental Restricted Units shall initially be made available for rental to Upper Blue Employees and Key Employees. If, after 60 days of actively soliciting the rental of an Rental Restricted Unit by an

Upper Blue Employee or a Key Employee, the Owners are unable to rent the Rental Restricted Unit to either an Upper Blue Employee or a Key Employee, then the Rental Restricted Unit may be rented to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee). After the initial 60 day period described above, if a Rental Restricted Unit becomes available for rental a qualified Upper Blue Employee or a qualified Key Employee shall be given preference over all other prospective tenants.

(vi) **Resale Price Limit.** Subsequent to the initial sale of an Owner-Occupied Restricted Unit by the Owners, the total price for which such Owner-Occupied Restricted Unit may be re-sold shall be determined as follows:

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

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

The Base Price Limit	X	100% of AMI most recently released prior to the selling owner’s sale	÷	100% of AMI in effect at the time of the selling owner’s purchase of the Residential Unit ²	=	ADJUSTED PRICE LIMIT
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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 Owner-Occupied Restricted Unit plus the Base Price Limit.

- (3) The resale price of any Owner-Occupied Residential Unit shall not exceed such Adjusted Price Limit. The Adjusted Price Limit shall not take into consideration any capital improvements made to the Owner-Occupied Restricted Unit by the selling owner, nor any real estate commission paid by the selling unit owner.
 - (4) Notwithstanding anything contained in the Restrictive Covenant to the contrary, the Adjusted Price Limit shall never be less than the purchase price actually paid by the selling owner for the Owner-Occupied Restricted Unit.
 - (5) If the owner of a Restricted Unit sells the Owner-Occupied Restricted Unit through the services of the Summit Housing Authority, a commission of not more than 2% of the Adjusted Price Limit may be paid to the Summit Housing Authority.
- (vii) **Appreciation Limiting Note and Deed of Trust.** Compliance with the terms and conditions of the Restrictive Covenant shall be secured by an “Appreciation-limiting Promissory Note and Deed of Trust, in a form acceptable to the Town, which Note and Deed of Trust shall be executed by each and every owner of an Owner-Occupied Restricted Unit.
- (g) **Release Ratio For Unrestricted Units.** In Phase I, 8 Unrestricted Residential Units may be released from the Restrictive Covenant upon transfer of 2 duplex lots allowing for 4 Restricted Units to Habitat for Humanity for no consideration after approval of the amendment to the Master Plan proposed by Braddock to convert certain single family Unrestricted Residential Units to duplexes and to convert the townhome Restrictive Units to duplexes. If Habitat for Humanity fails to obtain certificates of occupancy for 2 Restricted Units by the time Braddock has obtained certificates of occupancy for the 8 Unrestricted Residential Units, Braddock will complete 2 Restricted Units before any additional Unrestricted Units will be released from the Restrictive Covenant on Tract B. After the 8 Unrestricted Residential Units have been released from the Restrictive Covenant on Tract B and 2 Restricted Units had been issued certificates of occupancy, whether constructed by Habitat for Humanity or Braddock, 1 additional Unrestricted Residential Unit may be released from

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 Owner-Occupied Restricted Unit.

the Restrictive Covenant for each Restricted Unit sold within the affordable purchase price range. All 22 Phase I Restricted Units shall be sold prior to the last Phase I Unrestricted Residential Unit being sold. In Phase II, 1 Unrestricted Residential Unit may be released from the Restrictive Covenant for each 3 Restricted Units sold within the affordable purchase price range.

- (h) **Restrictive Covenants—Final Form.** The final form of the Restrictive Covenants may include provisions which vary from the specific requirements of Sections 3.8(c), 3.8(d), 3.8(e), and 3.8(f) only if the Town Attorney approves such provisions as being fully consistent with the intent of this Agreement, and with the standard housing covenant approved for use within Summit County, Colorado. Once a Restrictive Covenant has been recorded with the Summit County Clerk and Recorder, the provisions of the Restrictive Covenant shall control over the provisions of this Section 3.8.
- (i) **Administrative Guidelines.** The Restrictive Covenants and the Guidelines shall be interpreted in accordance with the following standards:
 - (1) to the extent the Guidelines are inconsistent with the Restrictive Covenants, the Restrictive Covenant shall control;
 - (2) to the extent the Restrictive Covenants are ambiguous or unclear, the Guidelines shall control; and
 - (3) if the Guidelines are less burdensome or less restrictive than the Restrictive Covenants, even if they are inconsistent with the Restrictive Covenants, the Guidelines shall control.

3.9 **Commercial Units.** At SMI's option, up to 20 of the 33 SFEs authorized for Unrestricted Units on Tracts A and E may be used for the development of Commercial Units.

4. **PUBLIC BENEFITS.** As public benefits and inducements to the Town to annex the Annexation Property, Owners and Braddock have provided or shall provide the following at no cost to the Town:

4.1 **Reclamation/Restoration of the Blue River.** The portion the Blue River running along the westerly edge of the Master Planned Property has been reclaimed and restored in accordance with the Blue River Restoration Master Plan and the Development Permit and permit for subdivision of the Master Planned Property, as approved by the Town. The river edges have been reclaimed and revegetated with natural landscaping and a soft surface trail will be created to link to planned trails at the northerly and southerly edges of the river corridor. The reclaimed/restored area, consisting of approximately 6.14 acres, has been

dedicated to the Town as public open space. The timing of the reclamation and restoration of the Blue River, and the dedication of the 6.14 acres of public open space to the Town, are established in the Master Plan.

- 4.2 **Right of Way Dedication; Construction of Stan Miller Drive.** A new 60 foot wide right of way has been dedicated to the Town and “Stan Miller Drive” shall be constructed by Owners within the dedicated right of way extending from the completed Tiger Road on the north to the soon-to-be completed Stan Miller Drive on the south. In addition, the full-movement curb cut off of Highway 9 to the current Stan Miller, Inc. business office will be abandoned. The timing of the dedication of the right of way and the construction of Stan Miller Drive are established in the Master Plan.
- 4.3 **Pocket Parks.** Four separate pocket parks will be placed on three acres of private open space with public easements for access to the Blue River. SMI or Braddock (as applicable) shall require the homeowners’ association for the portion of the Master Planned Property where the pocket parks are located to maintain the parks, but the public shall be allowed access to the pocket parks and the river, and shall be provided not less than eight parking spaces within the pocket parks, unless a smaller number is approved as part of the Master Plan. The timing of the construction and dedication of the pocket parks shall be established in the Master Plan.
- 4.4 **Restricted Units.** The parties acknowledge that the construction of the Restricted Units will also provide a substantial public benefit.
- 4.5 **Form of Dedications.** All dedications required by this Section 4 have been or shall be evidenced by an appropriate general warranty deed conveying marketable fee simple absolute title to the dedicated property to the Town, free and clear of all liens and encumbrances except the lien of the general property taxes for the year of conveyance, and subsequent years. The dedicator has or shall provide the Town with a title insurance policy in an amount of \$50,000 for each dedicated parcel. The form and substance of the deeds and title insurance policies shall be subject to the reasonable approval of the Town Attorney.
- 4.6 **Indemnification.** SMI and Braddock shall indemnify and defend the Town from all costs and expenses, including, but not limited to, attorneys’ fees and costs of litigation, arising from the work and dedications required by this Section 4.
- 4.7 **Public Benefits for Extended Vesting.** While nothing in this Agreement shall obligate the Town to provide extended vested property rights for the Development Permit, Town acknowledges that if, in its discretion, extended vested property rights for the Development Permit are granted, no public benefits other than those set forth in this Section 4 shall be required of the Owners.

5. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

- 5.1 **Extensions of Utility Services and Public Improvements.** Owners have paid or shall pay all costs for the design and construction of all public improvements and utility services necessary to serve the Master Planned Property, including, but not limited to, roads, curbs, gutters, sanitary and drainage sewers, water, street lights, electricity, telephone, gas, and cable television service, all in accordance with applicable Town or public utility company standards and specifications. Owners have dedicated or shall dedicate to the Town and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines and other public improvements, including public streets and trails, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.
- 5.2 **Sanitation District Connection Fees.** Without limiting the generality of Section 5.1, Owners shall pay all fees and charges required to connect the Units to the Breckenridge Sanitation District.
- 5.3 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the Breckenridge Town Code, Owners may be eligible for reimbursement from future connector(s) to the public improvements and utility services described in Section 5.1 which are extended by Owners to the Master Planned Property. Any claim for reimbursement shall be subject to the provisions and requirements of said Section 9-2-3-7 of the Breckenridge Town Code, as the same may be amended from time to time.
- 5.4 **Town Provision of Services.** Upon the extension of utility services and public improvements as provided for in 5.1 above and acceptance by the Town of the utility services and public improvements to be dedicated to the Town, the Town shall make available and provide all Town provided utilities and services to the Master Planned Property and Units or other improvements served by such utility services and public improvements on the normal and customary basis as such utilities and services are provided and for the normal and customary charges for such utilities and services, except as such charges may be waived by the Town as hereinafter provided.
6. **PUBLIC DEDICATIONS.** Except as expressly provided in this Agreement, there are no public dedications required as part of the annexation of the Annexation Property to the Town. The need for road rights-of-ways, open space, and pedestrian, bicycle, and skier access and trails will be evaluated during the subdivision process and site-specific development review process, and dedications made in accordance with Town regulations at such time.
7. **WATER CHARGES**
- 7.1 **PIF Charges.**

- (a) Pursuant to Section 12-4-9(A)(2) of the Breckenridge Town Code, the Town hereby waives the PIF charges for each of the Restricted Units.
- (b) Owners shall pay to the Town applicable PIF charges for each of the Unrestricted Units. Such charges shall be paid for each Unrestricted Unit at or prior to the first to occur of connection of the Unrestricted Unit to the Town's water utility system, or the issuance of a building permit for such Unrestricted Unit. If, for any reason, an Unrestricted Unit is not owned by the Owners at the time of the connection, the PIF shall be paid by the then-current owner of such Unrestricted Unit.

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

8. ANNEXATION SURCHARGE.

8.1 Surcharge Fees.

- (a) No Annexation Surcharge shall be required to be paid with respect to any of the Restricted Units.
- (b) An Annexation Surcharge shall be paid by the Owners to the Town for all of the Unrestricted Units, except for 22 of the 24 Unrestricted Residential Units in Phase I to be constructed using the 22 SFEs of density already within the Town for which Annexation Surcharges previously were paid. The Annexation Surcharges for all of the Unrestricted Units, except the foregoing described 22 Unrestricted Residential Units, shall be due and payable for each Unrestricted Unit prior to the first to occur of: (i) connection of the Unrestricted Unit to the Town's water utility system; or (ii) issuance of a building permit for such Unrestricted Unit. The amount of Annexation Surcharge for each Unrestricted Unit for which such Surcharge is due shall be equal to the then-current PIF charge per SFE at the time of the Annexation Surcharge becomes due.
- (c) Upon receipt of the Annexation Surcharges, such funds may be deposited by the Town into the Town's General Fund.

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

- A. application fees for the Development Permit;

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

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

- 10. **VESTED PROPERTY RIGHTS.** The Owners hereby waive any and all vested property rights that may exist on the Annexation Property. Further, nothing contained herein shall be construed as to create a vested property right for the Master Planned Property.
- 11. **NO RIGHT OF WAY DEVOTED TO AGRICULTURAL USE.** Owners state, represent and warrant to Town that as of the date of the Annexation Agreement no portion of the Annexation Property consisted of a public transportation right-of-way, a customary or regular use of which involves the movement of any agricultural vehicles and equipment as defined in Section 31-12-115(6)(c), C.R.S. As such, the parties agreed that the special notice provisions of Section 31-12-115(6)(b), C.R.S., were not applicable to the annexation of the Annexation Property to the Town.
- 12. **ANNEXATION CONTINGENCIES.** Town and Owners agree that the annexation of the Annexation Property and the effectiveness of this Agreement were contingent upon the occurrence of all of the following events, and the annexation and this Agreement shall be effective on the date on which the last of the following events occurs:
 - A. final approval by the Town of the Development Permit by the Town through its land use regulatory system;
 - B. final adoption by the Town of an ordinance amending the Land Use District Guidelines for Land Use District 33 as described in Section 3.4;
 - C. final adoption of an ordinance placing the Annexation Property into Land Use Districts 1 and 33;
 - D. the Town and the Owners' agreement on the terms of the Restrictive Covenant; and
 - E. Town's final approval of a Development Agreement providing not less than 18 years of extended vested property rights for the Development Permit, provided, however, that, because all of the foregoing events occurred or substantially occurred on or before one year from the date of the Annexation Agreement and, therefore, Owners may not pursue disconnection of the Annexation Property from the Town.

13. **PERIODIC REVIEW OF AGREEMENT.** SMI, Braddock, and Town agree that for so long as either SMI or Braddock own any of the Master Planned Property, they will meet and confer at least each 5 years to determine if changed conditions suggest that modifications to either this Agreement or to the Restrictive Covenants are appropriate. The parties agree to meet and confer sooner than each 5 years if the prevailing interest rate on a 30 year fixed rate mortgage increases above 7.5 % per annum, or thereafter by more than 2 percentage points at any time.
14. **MISCELLANEOUS.**
- 14.1 **Effective Date.** This Agreement shall become effective as of the date and time when all parties hereto have executed it.
- 14.2 **Parties' Authority.** The Town and Owners represent that each has the authority to enter into this Agreement according to applicable Colorado law and the Town's Home Rule Charter and Ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such party. This Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Agreement are effective.
- 14.3 **Recording.** This Agreement **SHALL BE RECORDED** in the Summit County Clerk and Recorder's Office in order to put prospective purchasers of the Annexation Property or other interested parties on notice as to the terms and conditions contained herein.
- 14.4 **Entire Agreement.** This Agreement and the exhibits hereto represent the entire understanding between the parties concerning the annexation of the Annexation Property to the Town, and no other agreement concerning the Annexation Property, oral or written, made prior to the date of this Agreement, which conflicts with the terms of this Agreement shall be valid as between the parties.
- 14.5 **Disconnection.** In the event of disconnection of the Annexation Property from the Town for any reason, the Town's infrastructure and service obligations shall be void and of no further force and effect.
- 14.6 **Modification.** This Agreement shall not be modified except in writing executed by all parties hereto.
- 14.7 **Additional Remedies.** If at any time any part hereof has been breached by the Owners, the Town may, in addition to other remedies, withhold approval of any or all building or other permits applied for by the Owners on its Annexation Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.
- 14.8 **Binding Effect.** The agreements and covenants as set forth herein shall be binding upon the Owners, their successors and assigns, and all persons who may hereafter acquire an interest in the Master Planned Property, or any part thereof.

- 14.9 **Joint And Several Liability.** If there are two or more Owners, the responsibility of the Owners shall be joint and several.
- 14.10 **Severability.** In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 14.11 **Incorporation of Exhibits.** The attached Exhibits “A” and “B” are incorporated herein by reference.
- 14.12 **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.
- 14.13 **Notices.** All notices required or permitted under this Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Town to:

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

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

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

If intended for SMI, to:

SMI Land LLC
P.O. Box 804
Breckenridge, CO 80424
Telecopier number: (970) 453-6095
Telephone number: (970) 453-6573

If intended for Braddock, to:

Braddock Holdings, LLC
135 S. Main Street
P. O. Box 7
Breckenridge, CO 80424
Telecopier number: (970)453-6502
Telephone number: (970)453-2325

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

Stephen C. West, Esq.
West, Brown, Huntley & Thompson, P.C.
100 South Ridge St.
P.O. Box 588
Breckenridge, CO 80424
Telecopier number: (970)453-0192
Telephone number: (970)453-2901

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

- 14.14 **Waiver.** The failure of any party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving such rights.
- 14.15 **Applicable Law.** This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado, without regard to principles of conflicts of laws.
- 14.16 **Counterparts.** This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the

parties are not signatories to the original or the same counterpart or signature page.

- 14.17 **Section Headings.** Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
- 14.18 **Amendment.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted.
- 14.19 **No Adverse Construction.** Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement shall not be construed against either party based upon authorship.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

SMI LAND, LLC
a Colorado limited liability company

By: _____
Kermit Miller, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Kermit Miller as Manager of SMI Land, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

BRADDOCK HOLDINGS LLC,
a Colorado limited liability company

By: Breckenridge Lands, Inc.,
its Manager

By: _____
Thomas Begley, President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Thomas Begley, President of Breckenridge Lands, Inc., Manager of Braddock Holdings LLC, a Colorado limited liability company.

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

EXHIBIT "A"

Legal Description of the Annexation Property

A parcel of real property situated in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian in the Town of Breckenridge, County of Summit, State of Colorado and being more particularly described as follows:

A part of the B & L No. 1 Placer (MS 114044), a part of the Accommodation Placer (MS 19361) and a part the Braddock Placer (MS 13465) more particularly described as follows;

Beginning at corner 5 of the B & L No. 1 Placer, corner also being corner 15 of the Munroe Placer (MS 1150) and the southwesterly corner of the West Braddock Subdivision;

thence the following four (4) courses along the southerly boundary West Braddock Subdivision:

1. thence $S75^{\circ}18'02''$, 660.00 feet along the 5-6 line of the B & L No. 1 Placer and the 15-14 line of the Munroe Placer to corner 6 of the B & L No. 1 Placer, corner 14 line of the Munroe Placer and corner 1 of the Accommodation Placer;

2. thence $S56^{\circ}04'10''E$, 310.00 feet;

3. thence $S05^{\circ}1'33''W$, 617.00 feet;

4. thence $S84^{\circ}28'27''E$, 452.80 feet to a point on the westerly right of way of Colorado State Highway 9;

thence $S12^{\circ}45'46''W$, 202.80 feet along the westerly right of way of Colorado State Highway 9 to the northeasterly corner of the Breckenridge Building Center property;

thence the following four (4) courses along the northerly and westerly boundaries of the Breckenridge Building Center property:

1. thence $N84^{\circ}21''W$, 522.58 feet;

2. thence $S05^{\circ}21'39''W$, 528.18 feet to a point on the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer;

3. thence $S56^{\circ}14'04''E$, 53.84 feet along the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer to corner 9 of the B & L No. 1 Placer and corner 4 of the Accommodation Placer;

4. thence $S11^{\circ}35'37''W$, 233.91 feet along the 9-10 line of the B & L No. 1 Placer and the 4-5 line of the Accommodation Placer;

thence $S87^{\circ}17'57''W$, 875.28 feet to a point on the 2-3 line of the B & L No. 1 Placer;

thence $N31^{\circ}46'32''E$, 373.09 feet along the 2-3 line of the B & L No. 1 Placer to corner 3 of the B & L No. 1 Placer;

thence $N20^{\circ}02'19''W$, 689.13 feet along the 3-4 line of the B & L No. 1 Placer to corner 4 of the B & L No. 1 Placer;

thence N13°35'04"E, 1037.85 feet along the 4-5 line of the B & L No. 1 Placer to the point of beginning.

Described parcel contains 40.41 acres, more or less.

Perimeter of parcel = 6556.46 feet;

Perimeter of parcel contiguous with Town of Breckenridge = 4456.39 feet

Perimeter of parcel contiguous with Town of Breckenridge = 67.97%

EXHIBIT "B"

Legal Description of 2.29 Acre Parcel

Parcel D-2, West Braddock Subdivision, according to the plat recorded November 19, 2007 under Reception No. 874097 of the records of the Clerk and Recorder of Summit County, Colorado

MEMORANDUM

To: Town Council

From: Joanie Brewster, Administrative Services Coordinator

Date: August 22, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the August 21, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF August 21, 2012:

CLASS C APPLICATIONS:

1) Hume Garage (JP) PC#2012058; 10 Meadow Lark Green

New garage plus unfinished bonus room with 353 sq. ft. of density and 484 sq. ft. of mass. Approved.

2) Lot 6A & 6B, The Shores (MM) PC#2012062; 138 Red Quill Lane & 288 Shores Lane

New duplex residence with 3 bedrooms, 3.5 bathrooms, 2,519 sq. ft. of density and 3,203 sq. ft. of mass (Lot 6A) and 3 bedrooms, 3.5 bathrooms, 2,379 sq. ft. of density and 3,052 sq. ft. of mass. Approved.

3) Crane Residence (MM) PC#2012063; 94 SCR 452

New single family residence with 3 bedrooms, 2.5 bathrooms, 4,482 sq. ft. of density and 5,317 sq. ft. of mass for a F.A.R. of 1:6.31. Approved.

4) Holby Residence (MM) PC#2012064; 53 Spalding Terrace

New single family residence with 4 bedrooms, 3.5 bathrooms, 3,299 sq. ft. of density and 4,518 sq. ft. of mass for a F.A.R. of 1:9.72. Approved.

5) Roya Residence (MM) PC#2012060; 93 Brooks Snider Road

New single family residence with 5 bedrooms, 5.5 bathrooms, 5,275 sq. ft. of density and 6,189 sq. ft. of mass for a F.A.R. of 1:4.30. Approved.

CLASS B APPLICATIONS:

1) Off Residence (MGT) PC#2012042; 104 South Harris Street

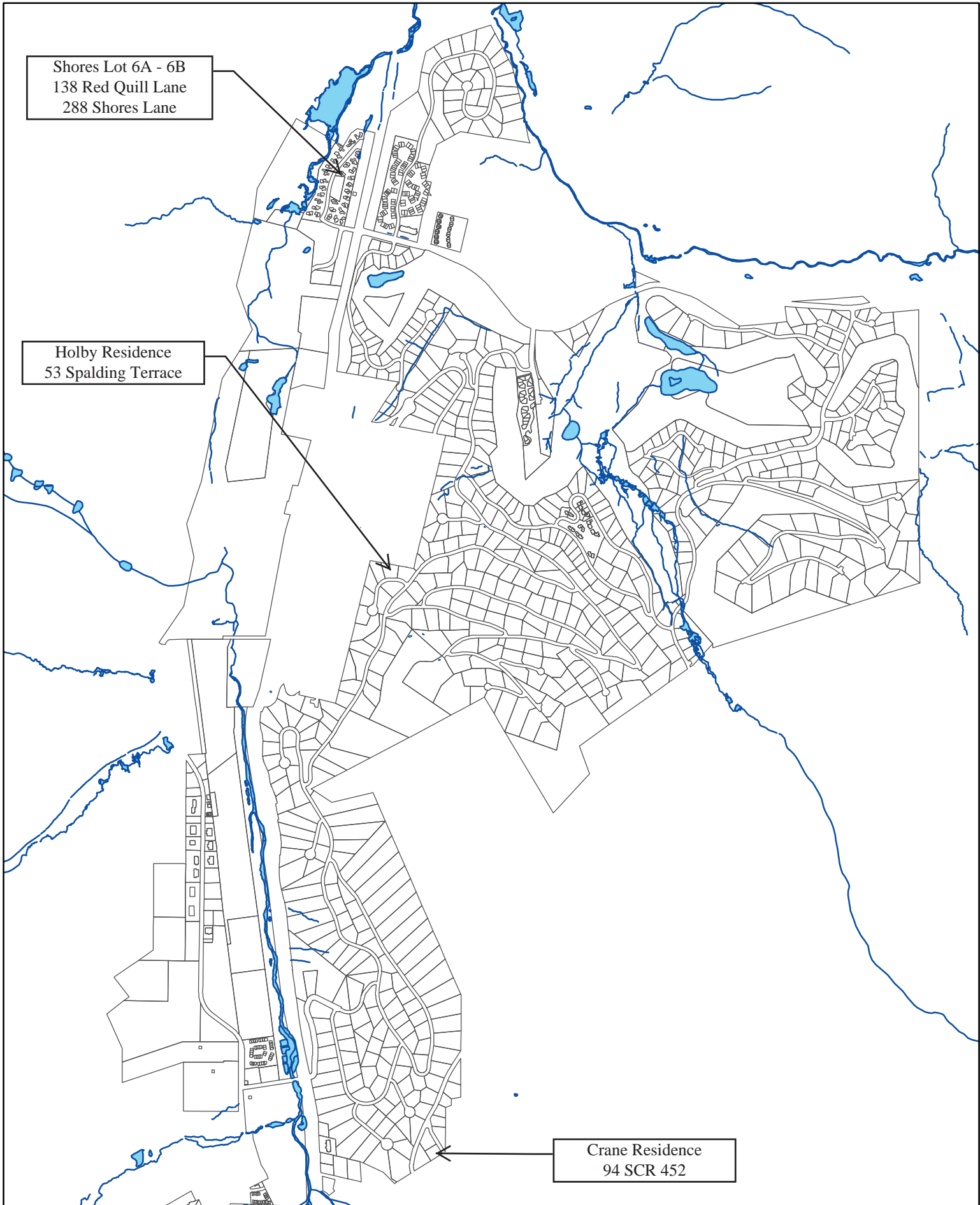
New single family residence with 4 bedrooms, 4 bathrooms, 2,524 sq. ft. of density, 2,856 sq. ft. of mass and restoration of an historic shed for a F.A.R. of 1:2.18. Approved.

2) BOEC Office Addition (MGT) PC#2012061; 575 South Park Avenue

Application to enclose existing covered areas, adding 1,000 sq. ft. to an existing office space of 1,244 sq. ft. Approved.

CLASS A APPLICATIONS:

None.



Shores Lot 6A - 6B
138 Red Quill Lane
288 Shores Lane

Holby Residence
53 Spalding Terrace

Crane Residence
94 SCR 452

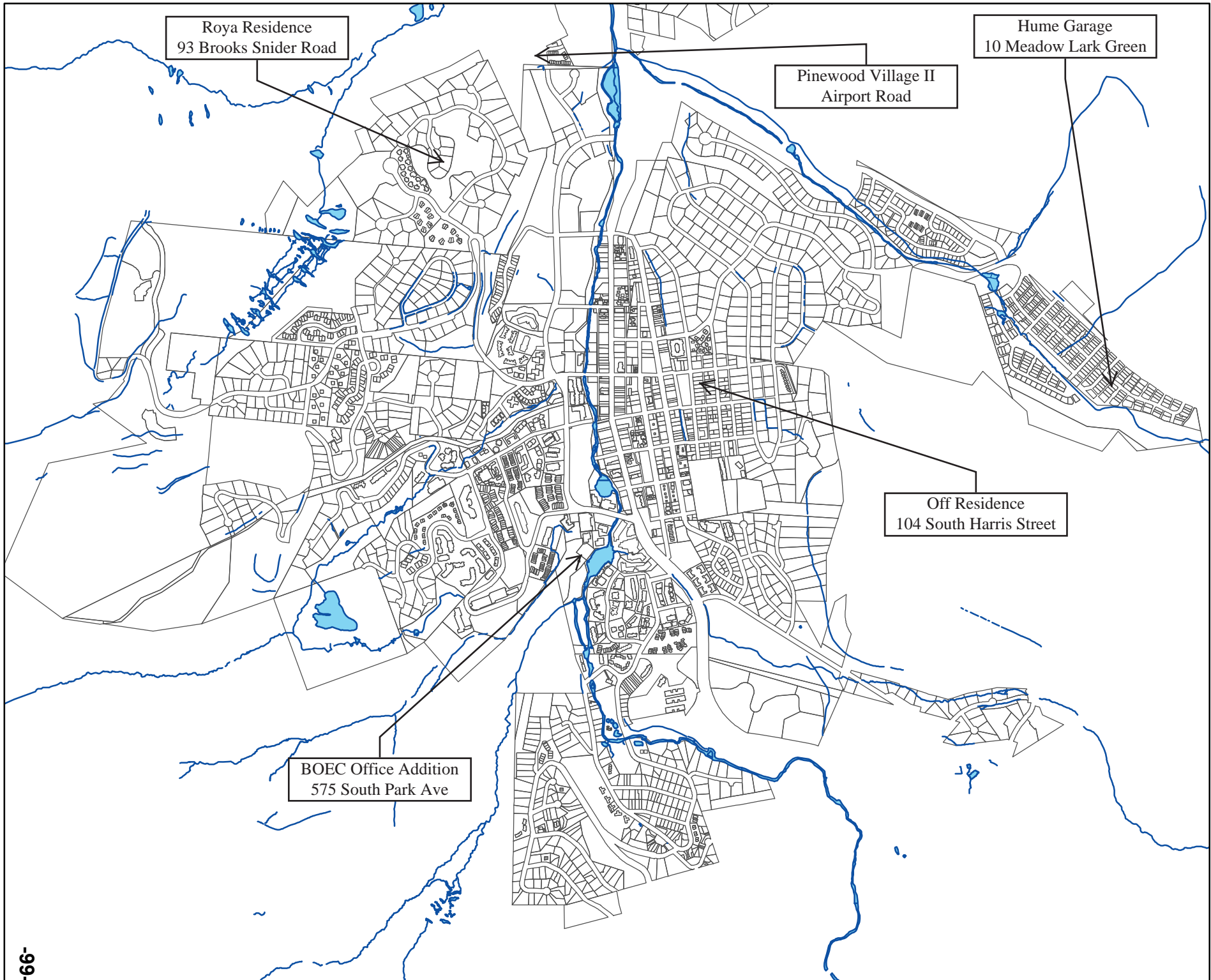
Breckenridge North

printed 4/12/2011



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





Roya Residence
93 Brooks Snider Road

Hume Garage
10 Meadow Lark Green

Pinewood Village II
Airport Road

Off Residence
104 South Harris Street

BOEC Office Addition
575 South Park Ave



NOT TO SCALE

printed 4/12/2011

Breckenridge South

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



PLANNING COMMISSION MEETING

The meeting was called to order at 7:03 pm

ROLL CALL

Kate Christopher Gretchen Dudney Jim Lamb
Dan Schroder David Pringle arrived at 7:13pm Trip Butler arrived at 7:49 pm
Gary Gallagher, Town Council Liaison
John Warner, Mayor

APPROVAL OF AGENDA

With no changes, the August 21, 2012 Planning Commission meeting agenda was approved unanimously (4-0).

APPROVAL OF MINUTES

With no changes, the August 7, 2012 Planning Commission meeting minutes were approved unanimously (4-0).

CONSENT CALENDAR:

1. Hume Garage (JP) PC#2012058; 10 Meadow Lark Green
2. Lot 6A & 6B, The Shores (MM) PC#2012062; 138 Red Quill Lane & 288 Shores Lane
3. Crane Residence (MM) PC#2012063; 94 SCR 452
4. Holby Residence (MM) PC#2012064; 53 Spalding Terrace
5. Roya Residence (MGT) PC#2012060; 93 Brooks Snider Road

With no requests for call up, the Consent Calendar was approved as presented.

TOWN COUNCIL REPORT:

Mayor Warner presented. Town Council on August 7, 2012 voted to affirm a decision to remove Michael Rath from the Planning Commission. The process began July 24 and with a 7-0 vote we removed him. Michael had the right to appeal, and after a public hearing we affirmed our decision. Michael was allowed to speak, and we still felt that the facts merited removal from the Planning Commission. This is in no way as Council trying to ‘muzzle’ the Planning Commission. Michael presented himself in an email as a Planning Commissioner and went onto criticize the Request for Proposals (RFP) process of the Riverwalk Center. If he had not identified himself as a Planning Commissioner, it would have been fine. He is a government official so he should go to Staff or Council if he had a concern. Michael’s feelings were that things were going too fast, and he fired out a letter to over 30-40 recipients thru the RFP process, saying that he didn’t agree with the Town and identified himself as a government official. We thought he may have some fairly valid points in his letter, but if you have a gripe, go to Staff or Council. We put the brakes on the RFP process before we met with Michael on August 7 and are hoping to get it moving again in October. We are willing to listen to what our Commissioners have to say, but the way he handled this was not appropriate.

Gary Gallagher, Town Council Liaison: One other thing Michael raised was whether there would be local participation for shaping and working in the process. We did say to Michael that the stakeholders are going to be involved and whatever consultant is chosen to lead this will make sure that stakeholders are involved. What he did was to undermine and undercut what we were trying to do and as a government ‘employee’ he went too far. The next step is that we have 30 days to find a replacement and appoint a new Planning Commissioner.

Questions?

Mr. Pringle: Did Michael identify himself as an employee? (Mayor Warner: Yes. It was his opinion that

the local design side wasn't being utilized.) (Mr. Gallagher: He had attended the meeting at the Riverwalk Center and walk through the district and everyone who attended understood the physical components. Everyone who attended that meeting was given the names of all others in the meeting. He used that list to email to others interested in the RFP; these were possible responders to the project.) (Mayor Warner: It was an inappropriate act for him to do as an employee.)

Mr. Schroder: We report to council. I never feel that if I had an issue as a Commissioner that I couldn't seek clarity with Council and do not feel muzzled. (Mayor Warner: It was so 'novel' and rare that Tim Berry had to write the script for us.) Did it ever happen before, Peter? (Mr. Grosshuesch: We had to do it once for absences.)

Mr. Pringle: We have to really think about the position that we are in, it is a privilege.

Ms. Dudney: I have to be away in the month of October, so I know that you are trying to fill the spot, and that four is a quorum.

Mr. Pringle: It is probably not a secret, but I don't believe that I will be reapplying for this seat. There are some big decisions to make. (Mayor Warner: We have turnover.) (Mr. Neubecker: We have this one; and then in November we have 3 open seats.) (Mayor Warner: I think that we made a mistake when we chose not to interview two sitting Commissioners in the past; consequently Mr. Lamb and Mr. Bertaux were not reappointed. My hope is that we get to interview the applicants as well as existing Commissioners who reapply.) (Mr. Neubecker: We probably don't touch base as much as we should, and interviewing sitting Commissioners is a good idea.)

Other Comments:

Mr. Pringle: Have you been to the rodeo? You ought to go. (Mayor Warner: No, but I am going this weekend.) I think we would be doing them a big service if we told them to turn up the volume a little bit. (Mayor Warner: We have had one complaint from the Highlands about noise, although I don't know how having biked by it.) Ms. Dudney: I live right across from the rodeo. People are complaining to the HOA Board of our neighborhood. It doesn't bother me, but it does bother some people who have homes near it. (Mr. Gallagher: The noise travels up. I went the first night, and Sunday I went to the Highlands and I parked my car for about 20 minutes and you could hear the rodeo. It wasn't deafening, but you could hear crowds and music. It's only 5pm-7pm.) Ms. Dudney: I'm just saying our neighbor wishes that we could turn it down. (Mayor Warner: Also we had a cruelty to animal complaint.)

Mr. Gallagher:

- a. We had 2 second readings of council bills. Energy Conservation Policy 33R: Owners of existing properties can now take advantage of energy improvements; it passed it second reading.
- b. The Development Agreement with the ski resort and Breck Grand Vacations passed.
- c. Cucumber Gulch Remediation: We arrived at a cost sharing plan; the ski resort is going to contribute \$65,000 and Town is paying \$65,000 with \$25,000 paid by Breck Grand Vacations as part of development agreement. Council was happy that ski resort has stepped up. (Mr. Schroder: Was there much cajoling?) (Mr. Lamb: Maybe 20 minutes.) We should all be very pleased. (Mr. Schroder: There was a comment in that meeting about sediment about catching it uphill.) The ski area has agreed to look hard at up the hill drainage to slow down the sediment before it gets to that 60 inch culvert. We will keep an eye on the ski resort, and will look at what we can do to lessen the sediment. (Mr. Neubecker: They have already started doing some of that work. They are building a retention pond; the other one is very close to the Alpine slide so we are trying to figure out how to keep the slide open. Maybe waiting until the slide is closed to do the construction.) The arrows are all pointing in the right direction; it is a case of making sure we proceed. (Ms. Dudney: Are the homeowners satisfied?) That part did not come out in the Council's conversation. Robin and Patty (Theobald) were not there, so perhaps they feel we are moving in

the right direction. (Mr. Truckey: Town Council didn't actually call up the Cucumber Gulch variance, so most of the discussion was about how to pay for it.)

- d. There was a straw vote; 5-1 in favor of moving ahead with the Harris Street building. It continues to move forward. A business deal between County / Library and Town; who is going to pay what, as money is raised through grants, etc. The business deal has been agreed to by both parties. It will be an official vote at next Town Council meeting. (Mr. Pringle: Do you anticipate any significant modification to the exterior?) Egress / exit from the Speakeasy may be changed. My understanding is that it will come before Planning Commission to see what happens to the exterior of the building, but I don't think there will be a lot of changes. It will be the Speakeasy reoriented downstairs and operate independently so they don't have to use the same exits, etc.
- e. Ice castles moving forward: Concern was regarding being on the lawns and ruining the grass so we changed location, to the south end of the Tiger Dredge lot. Also, the Snowball Express is probably not in the best interest of the town character; a lot of alcohol and abuse in Avon (25 instances where people rushed to the hospital). We decided to be more selective.

Questions?

Mr. Schroder: We haven't had a joint meeting with Town Council in a long time. (Mr. Gallagher: I asked Mayor Warner earlier that we should schedule one soon.) We would like to meet with you. (Mr. Gallagher: Mayor Warner said the same thing; need to get it back on the schedule.)

Ms. Dudney: We've had a number of cases that involve the movement of historic structures, so we had discussed a work session about that; we don't know how the Town Council feels about that; we are adhering to the code as we see it written. (Mr. Gallagher: We are looking forward and want to meet.) It involves a change of the code. (Mr. Gallagher: Staff is coming to you with suggestions and thoughts on this topic. This is an issue that will be a work session, which that I will join you in and we can talk about it; we do recognize that we need a code change.)

WORKSESSIONS

1. Pinewood Village II (MGT); Airport Road

Mr. Thompson presented a proposal to construct two buildings that would be 100% affordable rental housing. The property is adjacent to Land Use District 9.2, which recommends residential uses at a density of 10 units per acre. We still need to assign a Land Use District to this lot. The purpose of the work session is to see if the Planning Commission is comfortable with the increased height over the allowed height in current Land Use District 9.2. The proposed project includes two identical buildings: each building is 46,121 sq. ft., which equals 92,242 sq. ft. of density (8.73 UPA). The back building is five stories on the downhill side, the bottom level being the garage partially out of grade. The front building should have the garage mostly buried except for at the garage entry. Therefore the front building should feel like a four story building with stepped down ends which will be three stories. Land Use District 9.2 discourages buildings in excess of two stories. This would incur negative twenty (-20) points for going over the recommended height limit by two stories. Staff conducted an informal point analysis and believes the project may be eligible for some other positive points.

It appears possible the proposal could pass a point analysis; however, there are several unknowns in the proposal at this time. Provision of affordable rental housing is a priority goal of the Town Council and the Town is looking at higher densities on its affordable housing sites, provided the housing meets a "fit test" and achieves good design. Staff is looking at drafting a new Land Use District if the Commission is not comfortable with how the proposal works in Land Use District 9.2. At his point, Staff is looking for general feedback on the proposal.

- Did the Commission find that the proposed buildings fit on this site?
- Was the Commission comfortable with the proposed height of the buildings?
- What other feedback would the Commission have at this time?

Mr. Thompson: Introduced Mr. Jamie Fitzpatrick, Principal of Quorum Real Estate Group; Mr. Robert Miller, Architect, Mr. John Payne with the architecture firm PBA and Tim Casey, Mountain Marketing Associates, to answer any questions. We did have a site visit today at 12noon; we walked the property and had a stick that was 35' tall with balloons attached to string to simulate the height of the buildings but balloons popped in the trees. It was good though to be able to see what 35' looked like and we could imagine another 30' of height on top of that. Also, we had the buildings staked in the field so we were able to see the building footprints. During the site visit Tim Casey saw some possibilities for moving the proposed location of the buildings. I will let Corum discuss how to tweak the building to be away from Claimjumper a little bit more. Staff is considering a land use district that would allow these this use. Affordable housing is priority of the Council. Pinewood Village I rents at 95% occupancy; both Corum and the Town think that we have a need for more affordable housing.

Commissioner Questions / Comments:

- Ms. Dudney: This all affordable rental? Privately owned ground? (Mr. Fitzpatrick: It's Town owned land; we have a lease with Pinewood Village I; a 65 year lease and then the project reverts to the ground.) So the terms are lower than market rate? (Mr. Fitzpatrick: We used tax credits, and there and the affordability guidelines are 25% of the project at 50% of area median income, and another 25% at 75% AMI, and the rest are open market. AMI average is about 83%. We have yet to get to 83%. The land lease that we negotiate with city (Town) council will be generally the same as Phase I. The land value is \$1.) Density is a critical element to affordability. (Mr. Casey: There will be an elevator. The value of the site is that it is close to the recreation center, City Market; this is the last close-in site for affordable housing so we have looked at a different type; we did a market analysis to indicate that we are on point. We put up the water taps, so it's the Town's project at the end.)
- Mr. Lamb: You mentioned approaching 83% but what is the average AMI? (Mr. Fitzpatrick: It's like 10% below our ceiling (70%). We did not have a formal presentation prepared; work session to get feedback. The site plan visit was really good for us. More than one dimension; just from the general comments we heard we have the flexibility to move those buildings a little bit off Airport Road. We do have some grade issues if we go too far up the hill. At this point it is just architectural. Next step is to take your comments; work on the program, market study doesn't support the three bedrooms which will impact the building. Our next meeting will be in response to your comments and say here is where we are going.)
- Mr. Schroder: We were presented with three questions; Mr. Thompson kept asking "does it fit?" Does it fit the site? Are we comfortable with the height? Any other feedback? (Mr. Fitzpatrick: At this conceptual level, we have to figure out height and if it fits. We are comfortable with number of units and market side of it and demand. Now we need to get comfortable with the physical aspect; it's a big building and we wanted to do a different product. We have been working with the city (Town) manager and council; not a lot of sites like this, which has dictated the design.) We are curious about business side but we are on planning.
- Ms. Dudney: You really can't separate the two (business and planning); if you had fewer units would this still work? (Mr. Fitzpatrick: I think that we could; the number of units that we have is supported in the market. Originally, we had upwards of 130 units on the site; we thought that this was too dense for the site, as dictated by the slopes. We were creating retaining walls; and a wall parallel with Claimjumper.) You're talking about building more units, and I'm talking about two stories instead of three stories. (Mr. Fitzpatrick: You would go forward?) (Mr. Casey: In theory, we could build Pinewood II that is identical to Pinewood I and the issue is does it meet the need?) (Mr. Fitzpatrick: This is a more efficient use of the site; Pinewood I is 74 units and our portfolio is that it is the most expensive property to operate with so few units. Combing these two creates a number of efficiencies. We are probably

going to eliminate three bedroom units and incorporate studio units and one bedroom units. So the unit count may go up and be more efficient. This box is about 82,000 feet, and the box may change a little but if you replace the three bedroom with a one bedroom, you can fit more units on the property.) (Mr. Thompson: The one bedroom is 680 square feet; two bedroom is 939 square feet; three bedroom is 1,051 square feet.) I didn't attend the site visit, but my recollection is that how the mountain goes up behind that back building. (Mr. Miller: We pretty much staked it (showed Ms. Dudney the grade and site property lines with topographic map.))

Mr. Pringle: On the south end of that building, how far to the edge could you go before you get into issues? (Mr. Miller: We looked at that relationship, and I think that it is close to Claimjumper, so there is some discussion about pulling the building as a whole away from Claimjumper and even make it longer. The issue with this change is fire department access. As we pull it closer, there is a pinch point created which might be a problem with the fire department. Something is going to have to give.) Seems like a bunch of trees would be a lot cheaper. (Mr. Miller: I think that is a valid point; defensible space zone; by pulling it down we are saving a few of those really tall pines. Just looking at the grade, this building wants to rotate a little this way, and the other wants to span in the other direction.)

Ms. Dudney: I don't have a problem with the height with it nestled; I don't think that I have enough info to understand the front building. Are the trees really going to obscure the height? (Mr. Miller: Two things at play here: one thing is to keep the buildings the same; there is construction efficiency there, but if we start changing them, then we are into two building types and construction costs go up. I was trying to make it the most efficient.) (Mr. Fitzpatrick: Explain how the buildings step down.) (Mr. Miller: The intent is the grade goes east west and north to south; we are trying to bury building 1 into the green with three to four feet at the most exposure which once again, that is 4 stories in the middle part and steps down to three stories. Building #2 garage is completely buried on one corner and above grade on the other.) (Mr. Fitzpatrick: The building is also stepped down with 4 stories in the back and 5 including the garage.) (Mr. Casey: Basically we would have heated parking space; real demand for that; everyone likes their toys up here. That should be nice amenity and that keeps the cars hidden.)

Mr. Pringle: That has always been my issue with building residential housing; we talk about more storage and that is usually the first thing that gets thrown out. I think that is a shortcoming on our part. You also have some surface parking out front. (Mr. Fitzpatrick: We are trying to provide adequate parking; one of the things that we did was look at Pinewood I; what worked or didn't work. That helped us create a framework for Pinewood II. Storage is one of the biggest issues.) (Mr. Miller: There will be storage closets on the patios as well (enclosed); we are incorporating that in the plan off of the corridor.) No one considers the people living there, kayaks, bikes, etc.

Mr. Schroder: Back to the questions. Are the buildings are right for the site? Regarding District 9.2 which is adjacent, I don't feel well enough informed about land use. The buildings are good, but when you put the 35' post out and I stepped back into the south entrance to the Recreation Center, it looked so high. The question is, are you comfortable? I felt squirmy. It was forest service land, and I'm having a hard time. (Mr. Casey: We are envisioning 4 stories.) I do appreciate moving the Airport Road building back; if we were to support 4 to 5 stories, I would love to keep the tree buffer intact if we can. (Mr. Miller, Architect: Pushing it back will mean more uphill which will change the look and make it even higher.) As you start going into it, the more you dig, the more negative points you get, etc.

Mr. Lamb: That site visit was valuable; it is a tall building. I like the idea of burying it. I applaud you for doing the project. I think that it could really work with one less story. It looks a little big. It is hard to visualize. Perfect location, understand the argument, in your favor there are a lot

of tall trees, if the building pushes up to the taller trees I don't think that it will have too much of a negative impact. I wonder if there is any option. (Mr. Miller: Pinewood I is almost always 3 stories; it is pushed way up the hill, at three stories it is up there really high. Given where we are looking at starting this building in a ravine, pushing it into that low point creates a situation where the garage is buried, and where the front is lower than Pinewood I because of it.) (Mr. Casey: You drive that site, gauge off of Pinewood I; that upper level runs contiguous with the existing Pinewood building.) It seems like a fire truck could access the project from the other side. (Mr. Miller: I think the fire department doesn't want to go 150' on a dead end; they are really going to want this to be connected. Pulling the building back might allow us to shift it north and appease the pinch point. We were trying to align the entry drive, but if we pull it back, it will help that connection.)

Mr. Pringle: What would happen if you reduced it to two up to three and three up to 4? I think that is what we discussed originally. That is how it (Pinewood I) got to three stories and now its 3-4 and 4-5. It changes the scale. I think it has a negative impact on the rest of the development. I am leery of giving away; might reduce the need for elevators. I don't want to just say build a 5 story. (Mr. Miller: I think that it's a struggle between the economics of two different building types.) I am sensitive to your cause. (Mr. Fitzpatrick: We are changing the program, and next time we are in front of you, we'll see what you think.) (Mr. Casey: Just to clarify, the height is an issue for you because it's closer to Airport Road.) Mostly, I don't think that the perspective you are showing us is what we will see; it will change the scale of everything. I think we can massage this a little.

Ms. Christopher: I didn't get to go to the site; I am a little leery of 5 stories; I can kind of picture it. I know that we need the housing; I understand that cookie cutter is cheaper, but Breck isn't cookie cutter.

Mr. Butler: I apologize for being late; I drive by this every day. On the street scale, it would be nice if they started out lower. From two to 4, I understand the economics perspective. You have a builder there who knows what he is doing. Looks like a good project.

Mr. Schroder opened the worksession to public comment.

Ms. Carol Rockne: I have the property across the road; a duplex on that corner, Kingdom Park Townhomes. As a developer on the same amount of land we were allowed only 20 units; everyone loves those units. I hate to see the Town, just because it is the Town, do something that it wouldn't allow the developers to do. Land is so beautiful, last piece there. Mr. Pringle is right; first Pinewood was supposed to be two stories. Because they went up the hill, it went to three; I was perturbed at the time. No other developer could have done it. You can always build on this land; if it doesn't work for economics, the Town ignores you. This is going to be huge; it's not 5 stories, its 5.5 stories. I haven't even talked to the Claimjumper people; I'm sure that they are going to be upset. I think that they are great developers, but it's too huge. I haven't studied it; what happens with the garages...it's just used for storage and the residents park outside. We have other units, and you need more storage. Thank you. (Mr. Lamb: I just wanted to point out that the Town isn't getting any special privileges; the negative points and the code will be applied.) The code is 24 feet. They will never get enough positive points to offset 24 feet allowed height. (Mr. Schroder: Don't apologize; thank you for the feedback.) It's a great spot; I hope they get to develop it. It's the right spot; it's just that it's overwhelming in size.

Ms. Robin Reed: I spoke with Matt Thompson prior to the meeting; I have a place at Claimjumper and we discovered this on your agenda. We will be glad to work closely with you through the process. We have anticipated this for a long time; our concerns are the visual corridor, sunlight, landscaping, and buffers. We appreciate your discussion about moving the Building 2 further away from Claimjumper. Five stories are two stories higher than ours; and we have the shed roof, so the back of Claimjumper looks very tall, and some of those trees are beetle kill. It doesn't look like five stories are going to fade in the background. We would

like some discussion about a new land use district. We are limited on height and density as well. We are anxious to ‘play along’ and see what comes up and have our say. Thank you.

Mr. Lee Edwards: Strictly from a land planning perspective. When Phase I was done, what has changed, staff wise and Land Use District wise, between approval of Phase I and Phase II? (Mr. Neubecker: We were not here for the review of Phase I.) Phase I seems to fit into the neighborhood very well; the Vail Resorts stuff on Airport Rd was presented as rental housing; right next door to the proposal was accomplished extremely well. However, I don’t want the Town to be blinded by the prospect of affordable housing; Phase I including the garages continuing along would work better than this; maybe the mass in two large structures is triggering the comments. I would like to see a Phase II, I agree with the rental aspect; however, these two large structures are inappropriate.

There was no further comment and the worksession was closed.

FINAL HEARINGS:

1. Off Residence (MGT) PC#2012042; 104 South Harris Street

Mr. Thompson presented a proposal to construct a 3,091 sq. ft., four bedroom, four bath, single family house with an attached garage. The primary siding material is 4 ½” horizontal bevel lap cedar siding, the secondary siding material is vertical 1x6 square edge cedar tongue and groove or ship lap. The primary roof material is 50-year heavy weight asphalt composition shingles, with a metal roof over the garage and second floor bathroom. Applicants also propose a full restoration of the historic shed on the property.

The Planning Commission heard this case at a Preliminary Hearing on July 3, 2012. There was a discussion regarding the front module size as it relates to Priority Policy 118 of the Handbook of Design Standards for the Historic and Conservation Districts. The Planning Commission decided they were fine with the front module being slightly larger than the historic average and believes that the design meets Priority Policy 118. The Planning Commission also discussed the height of the connector element as it relates to Priority Policy 80A. The Planning Commission felt that the connector element meets Priority Policy 80A. The last issue discussed was negative points for moving historic structures. The majority of the Planning Commission agreed that moving a historic structure incurs negative five (-5) points per Policy 5/R Architectural Compatibility as it relates to Chapter 6.0 of the Handbook of Design Standards for the Historic and Conservation Districts.

Changes from Preliminary Hearing

1. The applicant has reduced the above ground density, from 9.06 UPA to 8.99 UPA. The above ground density has been reduced since the previous hearing from 2,080 sq. ft. down to 2,064 sq. ft.
2. Landscaping modifications: front yard along the street edge will be one (1) crabapple in the north corner, one multi-stem aspen in the middle, and one cottonwood in the south corner. Also, in the front yard will be another spruce, in the south corner by the porch and fence (per site plan) and some minor shrub adjustments. Sizes of the trees have also been increased.
3. A new south facing gable has been added to break up the roof over the porch.
4. Bathroom roof from front module that is on top of the connector element has been revised to a more typical gable end.
5. Oversized window on north elevation has been reduced in size to match the other windows.
6. Roof materials were clarified: barn/garage will be corrugated metal, wrap-around porch and upper dormer will be black asphalt composition shingles, front bay and entry will be sheet copper.
7. Fence plan: Along front property line is proposed as 36” tall wrought iron fence, 36” tall wood picket fence along the southern and northern property lines as shown on site plan. Applicant has proposed an unpainted 36” tall wood fence (Per Handbook of Historic of Design Standards for the Historic and Conservation Districts the fence should be painted).

8. Lawn: grass in front yard with irrigation system which includes drip irrigation.
9. Colors: same as Bradley Residence at 201 South French Street (purple).
10. Exterior lighting cut sheets have been provided and they meet the Town's Exterior Lighting Ordinance.

The shed is a contributing building, and Staff believes that removal of significant amounts of salvageable historic fabric would cause a reduction in the historic rating. Applicant has agreed to keep the historic fabric in place. Per the Applicant's proposed shed restoration plan:

1. Shed structure shall be braced internally with continuous microlams at the plate perimeter and floor perimeter, and crossing bracing as required to move the shed.
2. Shed shall be moved to the west portion of the lot.
3. Monolithic slab shall be poured per structural drawings 12" above existing elevation. Wall heights and ridge shall not exceed 12" elevation increase from existing.
4. Shed will be rotated 90 degrees per site plan, with gable end doors facing west.
5. New internal wall structure and roof structure to be determined on-site with building and planning departments, owners, builder and architect.
6. Construction sequencing to be determined at the same meeting.
7. Roof fabric only (not internal roof structure) may be removed and cannot be salvaged.
8. Contractor has been notified that no work can commence without approval from the Town of Breckenridge.

At this time, Staff believes that the application warrants the following points:

- Policy 5/R – Architectural Compatibility: negative five (-5) points changing the orientation of the historic shed,
- Policy 9/R – Placement of Structures: negative six (-6) for not meeting two setbacks,
- Policy 18/R – Parking: positive two (+2) for accessing the parking in the rear and putting it inside a garage off the alley,
- Policy 22/R – Landscaping: positive two (+2) points for a proposal that provides some public benefit, and
- Policy 24/R – Historic Preservation: positive six (+6) points for restoring the historic shed,
- Policy 33/R – Energy Conservation: positive one (+1) point for conducting a HERS rating,
- For a total of negative eleven (-11) points and positive eleven (+11), for a total passing points analysis of zero (0) points.

The Planning Department recommends approval of the Off Residence, PC#2012042, located at 104 S. Harris Street, Lot 3, Block 7, Yingling and Mickles, with the presented Findings and Conditions.

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

Commissioner Questions / Comments:

Ms. Christopher: No questions.

Mr. Butler: No questions.

Mr. Lamb: Fence should be redwood or cedar; but no questions.

Mr. Pringle: If you want to keep the fence natural, not critical; I have a continued argument about moving the shed without facing a stiff penalty. It's something we need to talk about.

Mr. Schroder: Nothing.

Ms. Dudney: Nothing.

Janet Sutterley, Architect: The house on Lot 4 to the south, they are restoring a fence that will go up against that fence. We thought that the wood fence would be nice backdrop. The wood goes down the south back side

and wrought iron on the north and front side. East side has a little wrought iron by the shed. The garage will be dark stained board on board so that it is set apart from the vertical siding. Same width. I know that you're discussing with Town Council in September; from a historic standpoint, we should just move the shed two feet to the south; can't do it for the negative points. I'm not asking you to change anything now, but when you go to Town Council, please consider a change. To offset a negative 8 points is impossible. Forced into turning the shed 90 degrees. I know we can't change it on this project, but I think the shed issue should be reevaluated. (Mr. Thompson: We didn't force them to move the shed; they had lots of options.) Didn't want to make the garage shorter, etc.; I'm just saying to please take that to Town Council.

Commissioner Questions/Comments:

Ms. Dudney: In some capacity, what would you do with the code? (Mr. Neubecker: Ms. Sutterley will be invited to the Planning Commission meeting when we discuss this possible code change; we aren't talking to Town Council at this point.)

Mr. Lamb: Okay with purple; we've allowed unpainted wood fences before not to mention that front yard fence is wrought iron.

Mr. Pringle: Please note my objection about the shed and the negative five (-5) points related.

Ms. Dudney: Is it in the findings and conditions (painted fence)? (Mr. Thompson: No.)

Mr. Schroder: There is a character that is encouraged; there is no color recommended. If it falls into the color palette, the chroma limit of the code.

Mr. Pringle: If they want clear paint, they can paint it later; we've already approved clear prior.

Ms. Dudney: The code leaves wiggle room via 'general' character; good reason for not being painted; looks better.

Ms. Christopher: Agree.

Mr. Butler: Agree.

Mr. Schroder: Agree.

Mr. Schroder opened the hearing to public comment.

Mr. Lee Edwards: Elevation is perfect; site works well with main building in front and service buildings in the rear; the buildings were historically scabbed down to; they don't have to be perfect. Things just evolved here; wrought iron probably didn't get here until the trains got here. The rooflines for this project are good. Landscaping: Two aspen trees are right next to this building. All these do is rub up against the building. If it's the staff recommending these two trees, it's not a good idea. (Mr. Pringle: I agree with you; more landscaping isn't necessarily better.) (Ms. Christopher: If you want to move the trees around Staff can take care of it.)

There was no further comment and the hearing was closed.

Ms. Dudney made a motion to approve the point analysis for the Off Residence, PC#2012042, 104 South Harris Street. Ms. Christopher seconded and the motion was carried unanimously (6-0).

Ms. Dudney made a motion to approve the Off Residence, PC#2012042, 104 South Harris Street, with the presented Findings and Conditions. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

COMBINED HEARINGS:

1) BOEC Office Addition (MGT) PC#2012061; 575 South Park Avenue

Mr. Thompson presented a proposal to enclose existing covered areas, adding 1,000 sq. ft. to an existing office space of 1,244 sq. ft. The exterior materials and colors will match the Maggie building. On July 10, 2012 the Town Council approved a Development Agreement with BOEC. The Agreement allows for 1,000 sq. ft. of density to be transferred to the site for the period of the lease, which is 25-years, for no rent. This site is subject to the Village at Breckenridge Master Plan as adopted in 1983 and subsequently amended in 1986. The Master Plan identifies this

site as the Maggie Building. The BOEC Offices at the Maggie Building cannot hold all of the students and instructors that need to meet there before their ski day begins. This expansion will allow for the room the students and instructors to prepare for their day together. Staff conducted a point analysis for this project and found it to comply with all absolute policies of the Development Code. Staff found no reason to warrant positive or negative points for this proposal.

Mr. Tim Casey, Applicant: We have to remove the improvements at termination of lease. They have been great; utilities; ski area stepped up huge to allow us to do this; our existing space is 2,500 square feet; we have as many as 20 students; our instructor ratios are 2-1. It's a little cramped. It's all pro-bono. And we've raised \$30,000 towards the \$60,000 that we need. Staff has been incredibly supportive; thank you.

Commissioner Questions / Comments:

No questions.

Ms. Dudney made a motion to approve the point analysis for the BOEC Office Addition, PC#2012061, 575 South Park Avenue. Ms. Christopher seconded and the motion was carried unanimously (6-0).

Ms. Dudney made a motion to approve the BOEC Office Addition, PC#2012061, 575 South Park Avenue, with the presented findings and conditions. Ms. Christopher seconded and the motion was carried unanimously (6-0).

OTHER MATTERS:

Mr. Neubecker: We are going to put together a field trip, possibly to Aspen to see historic district; maybe Steamboat to look at ski resort base village operations. Staff will be providing you additional info regarding the Development Agreement and how that relates to the Peak 8 project. (Mr. Butler: For field trip, Mondays and Tuesdays are always best.) (Ms. Christopher: Please give me advanced notice.) (Ms. Dudney: I am out most of October.)

ADJOURNMENT:

The meeting was adjourned at 9:22p.m.

Dan Schroder, Chair



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.

AUGUST 2012

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

SEPTEMBER 2012

Tuesday, September, 11; 3:00/7:30 p.m.	First Meeting of the Month
Friday, September 14; TBD	Coffee Talk
September 14-16; Main Street Breckenridge	Oktoberfest
Tuesday, September 25; 3:00/7:30 p.m.	Second Meeting of the Month

OCTOBER 2012

Tuesday, October 9, 2012; 3:00/7:30 p.m.	First Meeting of the Month
Friday, October 12; TBD	Coffee Talk
Tuesday, October 23; 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
3 rd Monday of the Month; 1:00 p.m.	Breckenridge Marketing Advisory Committee; Breck PD Training Room

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

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: GFOA DISTINGUISHED BUDGET PRESENTATION AWARD
DATE: AUGUST 15, 2012
CC: TIM GAGEN, RICK HOLMAN

Staff is proud to inform you of the awarding of the Government Finance Officers Association's (GFOA) Distinguished Budget Presentation Award for the Town's 2012 budget document.

This is a first time achievement for the Town, and was accomplished through years of process improvement to our annual budget process. Laura Kennedy, Accounting Manager, was instrumental in both the setting and achievement of this goal.

To comply with the requirements for the award, our budget document was augmented to include such items as our Town's Vision Plan and fund structure description. Staff also added features such as a glossary and comprehensive organizational chart to further increase the accessibility of our document. The actual budget financial information *per se* did not require any changes. Our document has always been adequate from a strictly financial and compliance perspective, but the changes for 2012 made the document much more comprehensive.

This award signifies the achievement of a significant process improvement. This accolade also means that both of the Town's major annual financial publications (the Budget and Comprehensive Annual Financial Report, or CAFR) are now recognized by the GFOA as meeting their requirements for excellence. This will give both our Council and Citizens even more confidence in their local government's dedication to protecting and managing our Town's finances. In addition, such recognition by the GFOA is an indicator to any outside institution, from credit rating agencies to potential lenders, that the Town of Breckenridge is managed and reporting at the highest level of excellence.

Town of Breckenridge Executive Summary
Economic Indicators
(Published August 22, 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.



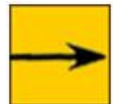
Unemployment: Local (June 2012)

Summit County's June unemployment rate of 8.9% is an improvement over the June 2011 rate of 9.1% yet higher than June 2010 rate of 8.5%. Summit's June rate is higher than Pitkin County (8.3%) but lower than Eagle County (9.3%), however our rate is still considered relatively high for the time of year (prior to 2008, the May unemployment rate typically did not rise above 5%). *(Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing up meaning that the unemployment rate has dropped and is 'getting better' and yellow indicates the condition as "fair".)* (Source: BLS)



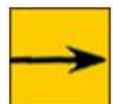
Unemployment: State (June 2012)

The Colorado state unemployment rate holds relatively steady with small increase of one tenth of a percent for the second consecutive month in June to 8.2% after several months of an incremental downward trend. This June is also lower than the June 2011 rate of 8.8% (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 (June-July 2012)

National unemployment rate remains relatively unchanged at 8.3% for July. Since January, we have seen the national rate hover between 8.1 and 8.3%. July 2012 remains trending down from last July's rate of 9.1% and July's 2010 rate of 9.5% even as more people enter the job market. (Source: BLS)



Destination Lodging Reservations Activity (July 2012)

Occupancy rates saw a significant increase of 12.7% for the month of July over July 2011. This is likely due in part to the high temperatures in the Front Range and other areas of the country in addition to strong travel numbers for the July 4th holiday. The Average Daily Rate also saw an increase of 4.5% for the month.

(Source: MTrip)



6 Month Projected YTD Occupancy (August-January 2012/2013)

Future bookings for the upcoming August-January 2013 period continues to show an increase of 4.4% in projected occupancy rate over the corresponding period last year. The Average Daily Rate also mirrors a small increase coming in at 2.2%. (Source: MTrip)



Traffic Counts and Sales Trend (July 2012)

July average daily traffic count in town on Highway 9 at Tiger Road was 21,689 total vehicles. As the traffic count exceeds 20,000, we expect to see an increase in sales tax revenues for July. *(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 (July 2012)

During the month of July, the traffic count at the Eisenhower tunnel (westbound) was down 2% over July 2011. On the other hand, data showed July traffic coming into town on Highway 9 rose significantly by 5% from July 2011. Traffic flows indicate that the Town is gaining its relative capture rate coming from the tunnel. (Source: CDOT)



Consumer Confidence Index-CCI (July 2012)

The Consumer Confidence Index (CCI) saw a jump of 3.2 points from June to July landing at 65.9 (1985=100). This gain is the first in a four month decline as consumers are more hopeful with the short term outlook however, continue to express concern over the long term economic conditions. It remains in the range that most economists consider a “good” level of consumer confidence. Based on the index level continuing to be in a state of flux, we expect that real estate transfer tax revenues will also generally lag over the same period until the index sees consistent improvement. (Source: CCB)



Mountain Communities Sales Tax Comparisons (June 2012)

The amount of taxable sales in Town for June 2012 was up 17.19% from June 2011 levels. Posting a substantial increase, Breckenridge holds the second top spot (2nd out of 8) of the mountain communities for sales tax collected for the month in comparison to last year’s June numbers. All of the communities showed increased sales. Year to date, the mountain communities in the top four spots include Aspen (up 9.44%), Glenwood Springs (7.21%), Snowmass (6.75%), and Breckenridge (6.71%). (Source: Steamboat Springs Finance Dept.)



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

The S&P 500 average monthly adjusted closing price saw a moderate rise for the second consecutive month, continuing a relatively fluctuating 2012 YTD. At the same time, we saw our RETT receipts take a drastic jump this month from Town collections in July 2011 and July 2010. Although we have seen a large increase this month, we believe that in general the RETT will continue to lag any 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 (July 2012)

July 2012 RETT collection (\$252,103) is a drastic 200% increase over July 2011 (\$83,522) and 35% over July 2010 (\$186,067). 2008 was the last time that July had such high collection numbers. (Source: Town Finance)



Real Estate Sales (June 2012)

After improved numbers in May, June Summit county real estate sales were down considerably in \$ volume by 21% however up 5% in the number of transactions compared to June 2011. Of that, Breckenridge took in 51% of the \$ volume and 42% of the transactions countywide for this month. This month reflects the consistency in the Breckenridge real estate market although it does not appear as strong this month throughout the rest of the county. (Source: Land Title)



Foreclosure Stressed Properties (June 2012)

Breckenridge properties (excluding timeshares) which have started the foreclosure process are at 28% (39 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.