



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, July 8, 2008
3:00 pm**

ESTIMATED TIMES:

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

3:00 - 3:30 pm	I. <u>GONDOLA LOT MASTER PLAN REVIEW</u>	<i>Page 2</i>
3:30 - 4:00 pm	II. <u>VALLEYBROOK</u>	<i>Verbal</i>
4:00 - 4:15 pm	III. <u>PLANNING COMMISSION DECISIONS</u>	<i>Page 3</i>
4:15 - 4:45 pm	IV. <u>LEGISLATIVE REVIEW</u> *	
	• Harassment Ordinance Updates	<i>Page 111</i>
	• Timberline Lease	<i>Page 116</i>
	• Subdivision Plat Certificate	<i>Page 139</i>
4:45 - 5:15 pm	V. <u>MANAGERS REPORT</u>	
	• Public Projects Update	<i>Page 8</i>
	• Housing/Childcare Update	<i>Verbal</i>
	• Committee Reports	<i>Page 9</i>
5:15 - 5:45 pm	VI. <u>PLANNING MATTERS</u>	
	• CMC Property Conveyance/Parking	<i>Verbal</i>
	• French Creek Annexation	<i>Page 11</i>
5:45 - 6:30 pm	VII. <u>OTHER</u>	
	• Community Forum Recreation Presentation	<i>Page 13</i>
	• Nordic Lease	<i>Page 74</i>
	• BRC Winter Recap	<i>Page 102</i>
6:30 - 7:30 pm	VIII. <u>EXECUTIVE SESSION</u>	
	• Town Manager Eval	

Dinner will be served to Town Council and Town Staff

***ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA**

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

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



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Senior Planner

DATE: July 2, 2008

SUBJECT: Gondola Lot Master Plan

The Planning Staff and Vail Resorts Development Company have been working together on refining the concept plan for the development of the properties surrounding the gondola. Based on input for the Town Council and from the public open houses, the Client Review Team has narrowed our recommendations down to one option, which we call the “Grand Hotel” plan.

Over the past few weeks, DTJ Design has made several revisions to the plan. These changes include moving the hotel closer to the gondola, adjacent to Watson Avenue, and moving one of the parking structures closer to Town Hall. The south parking structure would be wrapped on the north side with hotel rooms. The project still includes some commercial uses across from the hotel (to the east), a locomotive park, a skier services and transit building to the south and west of the gondola, and a parking structure north of the gondola. In addition to the new concept for the site plan, DTJ Design has also begun conceptual work on the gondola plaza and river improvements, as well as architectural concepts.

We look forward to sharing these plans with you on Tuesday, and hearing your input on the direction of this project.

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: July 2, 2008

Re: Town Council Consent Calendar from the Planning Commission Decisions of the July 1, 2008, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF July 1, 2008

CLASS C APPLICATIONS:

1. Warpecha Residence (MGT) PC#2008070; 219 Glen Eagle Loop

Construct a new single-family residence with 5 bedrooms, 5 bathrooms, 5,642 sq. ft. of density and 6,435 sq. ft. of mass for a F.A.R. of 1:5.00. Approved.

2. Fishman Residence (MGT) PC#2008075; 173 Champion Trail

Construct a new single-family residence with 5 bedrooms, 5 bathrooms, 3,492 sq. ft. of density and 4,530 sq. ft. of mass for a F.A.R. of 1:3.90. Approved.

3. 12 Peak Eight Court (MGT) PC#2008072, Lot 1 Peak Eight Place; 12 Peak Eight Court

Construct a new single-family residence with 5 bedrooms, 6 bathrooms, 6,209 sq. ft. of density and 7,029 sq. ft. of mass for a F.A.R. of 1:2.20. Approved.

4. Stevens Addition (CK) PC#2008074; 109 Streamside Circle

Addition to existing single-family residence to create a total of 3 bedrooms, 3.5 bathrooms, 2,191 sq. ft. of density and 2,446 sq. ft. of mass. Approved.

PLANNING COMMISSION MEETING

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

ROLL CALL

Michael Bertaux
Mike Khavari
Dan Schroder

Rodney Allen
Leigh Girvin

Dave Pringle arrived @ 7:07
Jim Lamb

APPROVAL OF MINUTES

With no changes, the minutes of the June 17, 2008 Planning Commission meetings were approved unanimously (4-0). Ms. Girvin and Mr. Schroder abstained as they were not at the meeting.

APPROVAL OF AGENDA

With no changes, the Agenda for the July 1, 2008 Planning Commission meeting was approved unanimously (6-0).

CONSENT CALENDAR:

1. Warpecha Residence (MGT) PC#2008070; 219 Glen Eagle Loop
2. Fishman Residence (MGT) PC#2008075; 173 Champion Trail

Mr. Khavari was having a hard time with a few parts on this particular application and suggested a call up.

3. 12 Peak Eight Court (MGT) PC#2008072, Lot 1, Peak 8 Place; 12 Peak Eight Court
4. Stevens Addition (CK) PC#2008074; 109 Streamside Circle

Ms. Girvin made a motion and Mr. Bertaux seconded to call up the Fishman Residence Application, PC#2008075, 173 Champion Trail. The motion was approved unanimously (6-0).

Staff reviewed the application and explained the roof line was longer than 50', and thus incurred one negative (-1) point and pointed out this applicant's best views are looking north. Staff recommended positive three (+3) points for the design of the home, which was oriented for solar gain, per Policy 33/R.

Mr. Pringle arrived at 7:07pm.

Mr. Khavari: Sought explanation on window orientation and why positive three (+3) points were awarded. (Staff pointed out the windows were orientated to take advantage of the solar orientation, with much natural light and heat gain from the south and west, and few windows on the north.) Mr. Khavari didn't like the roof; thought it was too long. Felt the negative point for the long roof was being made up by positive three (+3) points for the window orientation. Sought clarification regarding slope of driveway to ensure slope was 8% or less. (Applicant pointed out slope was 8% or less.)

Ted Shaffer, Agent: Was trying to take advantage of the views and take advantage of as much natural light as possible with southern exposed windows.

Mr. Lamb: Asked staff if the topography and trees on the south side would shield the windows from the sun. (Staff pointed out the topography would not interfere with the sun reaching the windows.)

Mr. Bertaux: Didn't like the roof but ok with negative one (-1) point. He was fine with the orientation.

Mr. Pringle: Had no problem with the application, but did feel the roof line was definitely too long.

Mr. Lamb: Felt an effort for solar gain was being made and believed it will work.

Mr. Allen: Totally designed for solar orientation.

Ms. Girvin: Neat looking home that takes advantage of solar orientation. Didn't like the roof line.

Mr. Schroder: Feels the high windows would be beneficial for solar gain.

Mr. Khavari: Didn't agree with positive three (+3) points for the windows and orientation.

Mr. Lamb moved to approve the point analysis as presented by staff for the Fishman Residence, PC#2008075, 173 Champion Trail. Mr. Allen seconded. The motion was approved 6-1 with Mr. Khavari dissenting.

Mr. Allen made to approve the Fishman Residence, PC#2008075, 173 Campion Trail, with the presented findings and conditions and Mr. Bertaux seconded. The motion was approved unanimously (7-0).

With no other motions, the remainder of the consent calendar was approved unanimously (7-0).

WORKSESSIONS:

1. Courthouse Square (MGT) PC#2008076; 114 North Ridge Street

Mr. Thompson presented a worksession on 114 North Ridge Street. The applicant is trying to design a house to fit on this lot, but is concerned about the required setbacks per the Handbook of Design Standards, which they feel forces the house too far back from Ridge Street and compromises the design of the home. Per the Handbook of Design Standards for the Historic and Conservation Districts, Priority Policy 89: **Maintain the established historic set-back dimensions in new construction.**

- “Front and side yard setbacks for new buildings should be similar to those of historic buildings in the area.”
- “In some areas, the setbacks will be uniform and buildings will be perceived to align along the block. In such cases, this alignment should be reinforced with new development.”
- “In other areas, historic setbacks may vary within an established range. In these cases, new building setbacks should also fit within this range.”

Staff believes that there is a clear uniform setback on this block. The Matthew Stais Architects building and the County building foundations are setback 52’ from property line along Ridge Street. The original historic County Courthouse was built 50’ back from the Ridge Street property line (the non-historic addition is at about 15’ off of the Ridge Street property line).

“A second site of interest contains two historic houses lying to the north of the Court House. This row presents a streetscape conveying a sense of character from the period of historic significance. These buildings are now used for County offices” (one is now Matt Stais Architecture and one is a Summit County building). “These buildings should be preserved and future improvement plans should seek to protect their historic integrity.”

Furthermore, the "Design goal for the North End Residential Character Area: The overall goal for the North End Residential Character Area is to reinforce and re-establish the historic scale and character of development."

Per Page 2, North End Residential Character Area #2: "Mature evergreen trees stand as the tallest elements in this area. Many of these are seen in early photographs of the town and are a part of the area's historic character. This is especially true along the ridge. These give a distinct character to the area and establish a larger scale that helps tie many lots together visually." It seems like most of the mature trees on Lot 3 are in the 52' historic setback of the two structures to the south and could be saved if structures are not built in the setback.

Another question with this property is how it would be subdivided in the future so the two different structures could be sold to different owners. (The property owner, Al Stowell, may keep the property under one common owner). If the property is subdivided, a public open space dedication equal to ten percent of the land or ten percent of the value of the land must be made. In order to avoid this dedication, the applicant would either not subdivide, or would plat a condominium or footprint lots.

Staff believed that as a condominium, this would be a “subdivision of a structure” and the applicant would not have to pay the 10% cash in lieu of the dedication of land, per the Subdivision Code. In terms of precedent, past proposals to create footprint lots have not been subject to the open space dedication.

1. Did the Planning Commission believe the Staff interpretation of Priority Policy 89 is correct?
2. Did the Planning Commission believe the Staff interpretation of Section 9-2-4-13 if the Town Subdivision Standards?

Marc Hogan, Agent: Appreciated the commission’s time in working to come to the best solution for this property. The applicant is here tonight to talk about setbacks. Struggled with setback issue, 22.19 feet is the average set back in this character area. Mr. Hogan explained existing plans for the project. Garage is necessity in Summit Count to build a nice home. Discussed the possibility of underground parking, not really the direction the applicant wanted to

go in. Trying to orient house east and west. Seeking guidance on 52 foot setback. The applicant is not proposing a subdivision.

Al Stowell, Applicant: Thanked commission for their work to date. Previous plan was to build these two homes and then sell one. He explained his dissatisfaction with council's prior decision related to the 10% land dedication or fee in lieu. Thought that \$150,000 dedication was excessive.

Commissioner Questions/Comments:

Mr. Bertaux: Supported Mr. Thompson's staff report in favor of 52 foot setback. This is a unique block: Carter Museum, the County Courthouse, the two historic homes just to the south of this property. Applicant could not hide Land Title unless someone built right in front of it. Shift density and mass to the front of the property to fit two car garage in rear and keep the two garages separated. Some of the density and mass could be built on top of the garage. Streetscape is significant. Right now believes the setback should be at 52 feet. Spread density over garages.

Mr. Allen: This block is different and therefore relief should be considered. Holding the 52 foot line was bad planning. This project should look good from all three adjacent streets. Would like to take an average of the district and move forward. If subdividing, it would be a better plan; go with it.

Mr. Pringle: Agreed with architects' opinion that their proposed plan is better. Felt Town Council was holding out for more with the subdivision proposal which was inappropriate. Suggested going back to the subdivision proposal. Would like to see a traditional development pattern with two separate homes with no attachment. Respect setbacks of two historic homes on the block. Eight or ten foot deviation from the established setback would not affect the policy in a negative way. Thought the applicant should be sympathetic to the historic setback but doesn't have to be 52 feet exactly.

Ms. Girvin: Disclosed the property is for sale and her father has the listing. Sought clarification on the land use district this property was located in. (Staff identified the district as 18-2.) Unique block and important to have larger setbacks. The people that built the historic houses to the south and the Carter Museum had respect for outdoors and wanted large yard with nature at their front door. Residential use only is short sighted and maybe commercial or live-work should be considered; or better yet keep it as open space.

Mr. Lamb: In a way French Street is being treated like an alley. (Staff pointed out the engineers would prefer an entrance off any street except Wellington). Look at the block verses the district for the historic setback. Liked the setback at 52 feet and noted the trees would be saved. Would be open to small compromise, but not more than a few feet.

Mr. Schroder: This lot is on three streets; pushing the garages together blocks view corridors from French Street. Concerned about precedent set with 52 foot setback change given to a prior application. Very much in favor of giving more leeway in regard to the setbacks. In favor of extending setback forward. Thought residential would work here.

Mr. Khavari: Sought clarification on whether or not this application was already before the commission. (Staff explained that the previous application was for a subdivision and this current application does not propose a subdivision. The worksession tonight is more about the historic setbacks.) Suggested staff include prior work session meeting minutes when discussing a previous application. Sought clarification regarding entrance orientation for the structure on this property. Would really like to see two separate buildings. Focus on French and Wellington Streets. Would be willing to be more flexible on setbacks if it would look better from French Street.

2. Paperless Packets (MT)

Mr. Truckey presented a memo outlining the desire of the Mayor to move toward paperless packets. The Planning Commission would receive packets electronically and be able to view them during the meeting at a desktop station with a flat screen monitor, which would be on the countertop at a slight angle so it would not obstruct the audience's view of the Commissioners. Staff could still have one set of paper plans which could be projected on the big screen and could be used for presentations.

Commissioner Questions/Comments:

Mr. Pringle: What about the computer notepads that had been used before? (Mr. Truckey indicated there had been some problems with their use and losing the flashcards.) Suggested laptops for each commission member. It would be nice to Google different policies. Weigh the pros and cons of paper, which can

be recycled, verses computer which must be manufactured and uses electricity. If we do go the computer route, make the code and historic design guidelines available on each machine for easy reference at meetings.

Ms. Girvin: Important to have low profile so computer screens do not interfere with eye-to-eye contact with the audience.

Mr. Schroder: Really liked paper packets. Would be in favor of an agreeable compromise.

Mr. Khavari: The sooner we convert the better since the future is paperless.

TOWN COUNCIL REPORT:

Town Council Member was absent; therefore, there was no report.

OTHER MATTERS:

None.

ADJOURNMENT:

The meeting was adjourned at 8:49p.m.

Mike Khavari, Chair

Memorandum

TO: Town Council
FROM: Tom Daugherty, Town Engineer
DATE: July 2, 2008
RE: Public Projects Update

Wellington Oro Water Treatment Plant

The project is continuing to move forward with the ongoing installation of the plant equipment, plumbing and electrical. The plant construction is expected to be completed at the end of August 2008 with a final 60 day process commissioning to follow in September and October. The EPA representative visited the project on June 26, 2008, reviewed the progress and stated no objections to the project schedule.

Boreas Pass Road

The project is under design by staff. The goal is to have the project to bid in the fall of this year.

Riverwalk Center

The concession area is nearly resolved. Only the outside doors remain to be completed. Once we receive the roll up doors the building will be complete.

Fuqua

Utilities are being placed and the building is expected to be operational by the first week in July.

Vista Point Playground

Staff are working with contractors and landscaping companies on pricing the work and schedule.

MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: July 2, 2008

RE: Committee Reports

LLA **MJ Loufek** **July 1**

Special Meeting

- A Show Cause Hearing was held for Jake's Dive Bar LLC d/b/a Jake's Dive Bar. The charges considered by the Liquor Licensing Authority included: (1) selling, serving, delivering, or permitting the sale, serving, or procuring of an alcohol beverage to a visibly intoxicated person; and (2) selling, serving, or delivering, or permitting the sale, serving, or procuring of an alcohol beverage to or for a person under the age of twenty-one years.
- Seth Murphy, attorney for Breckenridge PD, withdrew the charge off selling, serving, delivering, or permitting the sale, serving, or procuring of an alcohol beverage to a visibly intoxicated person.
- At the conclusion of the hearing, Ms. Katz moved to dismiss the charge of selling, serving, or delivering, or permitting the sale, serving, or procuring of an alcohol beverage to or for a person under the age of twenty-one years for lack of evidence. Four members were in favor of the motion, one member voted in opposition to the motion.

Summit Stage **James Phelps** **June 25**

At the prior Annual Retreat, John Jones presented a projected year-end budget deficit of \$630,000.00. This projected deficit is two pronged but mainly weighted in higher fuel costs. Rising bus maintenance costs also contribute to this projected deficit. At the Annual Retreat the Board asked John Jones to explore options for reducing the projected deficit.

There was a significant discussion of a Service Modification Plan that was presented by John Jones. There are six recommendations to the plan that could result in a \$350,000.00 savings for CY 2008. The recommendation of highest note is that of a service modification for reducing all routes with ½ hour service to 1 hour service during non-peak hours or between 9A-3P. The only current routes that would not be affected are Summit Cove and Copper Mountain, which currently now have 1 hour service. The Breckenridge Free Ride (Purple Route) will not be affected by this service modification plan. Additionally, a recommendation to delay the winter service plan to a start date of December 07, 2008 would yield a net gain of 20 service days for an additional savings. The Winter Service Plan would operate through April 19, 2009. As part of the proposal

it was recommended to suspend the biodiesel program, this would result in a savings of \$16,000. The Summit Stage Board passed a motion for the service modification plan to be presented to the BOCC on July 01, 2008. The service modification plan was passed and will be effective July 27, 2008.

The Board is still exploring and discussing possibilities for a fare base structure and options for tax increase. The service modification plan as proposed is recognized by the Board as a temporary solution with commitment to restoring service to current levels in the future.

Other Meetings

CML	Tim Gagen	No Meeting
Wildfire Council	Peter Grosshuesch	No Meeting
CAST	Tim Gagen	No Meeting
NWCCOG	Peter Grosshuesch	No Meeting
Public Art Commission	Jen Cram	No Meeting
I-70 Coalition	Tim Gagen	No Meeting
SCHA	Tim Gagen	No Meeting
Police Advisory Committee	Rick Holman	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
BEDAC	Julia Skurski	No Meeting

TO: Breckenridge Town Council
FROM: Laurie Best, Community Development Department
RE: French Creek Annexation Inquiry-3rd discussion
DATE: June 26, 2008 (for July 8th work session)

On July 24, 2007 and September 11, 2007 the Council had preliminary discussions with representatives of the French Creek Home Owners Association (HOA) about annexation. The Council provided staff and the HOA with some general feedback regarding a potential annexation. The discussions were then put on hold until after the 2008 Council election. The French Creek homeowners now have an annual meeting scheduled for late July 2008, at which time they would like to ask homeowners if they support pursuing annexation. Prior to that meeting the HOA would like to reconfirm conditions under which the Town might consider annexation so they can prepare an 'annexation information sheet' for the owners. Following are the key issues which the HOA would like to discuss and confirm:

Cost/Benefit and Financial Contribution:

Staff estimates that the expenses associated with servicing French Creek will exceed the revenue generated. The preliminary cost/benefit analysis (July 13, 2007) indicated a \$3 million deficit over 10 years. This assumes the Town accepts and maintains the internal roads which are now maintained by the HOA. The estimate also included approximately \$550,000 in capital improvements (\$350,000 in road/drainage improvements that should be done immediately, approximately \$102,400 in road/drainage improvements that should be done within 5 years, and approximately \$100,000 for a new culvert at Magnum Bonum Drive). Assuming a 5% annual increase in construction costs, these capital improvements could be in excess of \$600,000 if initiated in 2009.

During the previous work sessions the Council indicated that the homeowners would be expected to contribute towards the capital improvements. The Council discussed a split, either 50/50 or 75% Town/25% homeowners. Since financial participation is a significant issue for the 150 homeowners, the HOA would like to ask this Council what share of the costs (if any) might be covered by the Town.

Redevelopment and Setbacks:

Since French Creek is built out (150 homes on 153 lots), the most significant issue for development is scrape offs, additions, garages, and redevelopment. The homes vary from 785 square feet to 3,886 square feet with an average of 1,200 square feet. The lots vary from 3,500 square feet to 27,000 square feet with an average of 6,982 square feet. The County setback requirements are 20' front, 10' side, 10' rear, and a minimum 20' between structures. Much of the existing development does not meet these setbacks and the County has approved new development under their variance process. Since the Town has more stringent criteria for variances it is unlikely that new development would be approved in the Town via variances.

During previous work sessions the Council was amenable to creating specific setbacks in the LUGs to accommodate the unique, compact development that exists in French Creek. Rather than applying the Town's absolute requirements (15' front house, 20' front garage,

15' side and rear, and 40' combined side) the Council indicated that the County setbacks would be acceptable. This is similar to the LUGs that were adopted for the smaller lots in Warriors Mark.

However, the HOA would like some additional flexibility, specifically:

- *Would the Town consider a front setback of 15' for all development?*
- *Would the Town consider eliminating any combined side yard requirement, and rely solely on the 10' setback requirement?*
- *Would the Town allow small garages/storage sheds at 3' from side/rear property line?*
- *Would the Town allow second story additions to existing homes that do not meet the setback requirements?*

While these allowances would enable homeowners to make additions for storage, garage, and living space, staff is concerned about a 15' front setback for a garage, a 3' setback on side and rear for garage/storage, and second story pop ups. The neighborhood is already very compact. Reduced setbacks and second floor additions could change the character of the neighborhood and create very tight conditions.

Absolute Requirements-Paved Parking, Architectural Character, Landscaping:

The majority of the units were constructed in the 1960s on very irregularly shaped lots, without on-site parking, and with little attention to architectural details. During the last work session the Council considered a request to allow the non-conforming properties to remain as is. The HOA proposed that owners be required to comply with all absolute policies (including paved on-site parking, architecture character, exterior materials and colors, adequate snow storage, and landscaping) in order to increase the square footage of the existing home by 10% or more.

Is the Council still comfortable with this trigger?

Home Size:

The Council discussed an FAR or maximum home size for French Creek during the last work session. Because the lots vary significantly in size, the HOA was concerned that an FAR would create inequities and too much variation in home size.

Does the Council support a home size limitation?

Town Code:

The HOA has been advised of other Town Codes that will be enforced upon annexation and may affect the residents and landowners, including, but not limited to:

- Inoperable vehicles may not be stored in public view
- Trash cans must be stored in buildings or include a locking mechanism
- Leash law
- No parking on roadways or right of ways
- Noise ordinance

Summary

To assist the HOA is assessing homeowner interest, we are asking for Council feedback regarding the financial contribution, setbacks, absolute requirements, and home size. These issues are denoted in the italics. Thank you for your consideration.



MEMORANDUM

TO: Town Council
FROM: Lynn Zwaagstra, Director of Recreation
DATE: July 8, 2008
SUBJECT: Recreation Department Community Forum Presentation

Community Forum Process:

The Recreation Department hired an independent consultant to run community forums to gather feedback from the community on their priorities for the Recreation Center. This included gathering feedback on how people use the Recreation Center, their current and future needs, and their willingness to fund possible improvements to the Recreation Center. These forums were publicized via flyers, email invitations, Summit Daily ads, press releases, Channel 10 spots, and RSN. In addition, a community survey was posted on the Town's website. Please see the attached report by GreenPlay, LLC, for details and results.

Brief Summary of Results/Recommendations:

Community Forum Attendance: May 19 @ 14 people, June 11 day session @ 17 people, June 11 evening session @ 13 people

Online surveys collected, including surveys entered for community forum participants = 172

The Town should focus on the following facility components

- Cardiovascular and weight equipment
- Aerobics/fitness/dance
- Indoor interactive playground
- Gymnasium with indoor track
- Indoor tennis
- Weight room
- Youth programming space

Is the community willing to fund renovation or expansion to the Recreation Center?

Yes – 37 of 44

No – 2 of 44

No answer – 5 of 44

The Town should focus on the following program areas

- Fitness and wellness programs
- Adult sports and dance programs
- Youth learn to swim programs
- Youth outdoor adventure programs
- Personal training programs
- Expanding child care hours and more programs for children

Needed from Council:

At this time, staff is seeking council reaction to the community forum results.

1. Based upon the community forum and survey results, how does council wish to proceed regarding Recreation Center improvements?
2. If proceeding with improvements, what are your top priorities for the improvements?

Background Context:

In November of 2006, the Recreation Department engaged a project team to assess the physical condition of the Recreation Center in order to make recommendations for needed maintenance and repair. This resulted in the 2007 pool and mechanical systems repair project, as well as other planned projects being funded through the CIP process.

In addition to the physical assessment, the team conducted a facility use assessment (“programming study”) that analyzed current use, participation statistics, key stakeholder input, current programming, industry trends, and possible future needs of the community. This yielded the recommendations summarized below.

Review of Ken Ballard’s “Facility Use Study” Recommendations:

1. Prioritize and fund the deferred maintenance items that have been noted in the technical assessment.
2. Make improvements to the locker rooms.
3. Relocate and convert the indoor tennis courts.
4. Reconfigure the lobby, entry and pro-shop area to support the planned new use of the tennis court space.
5. Expand the aquatics area to include additional leisure pool space.
6. With the improvements to the center noted above, program and service expansion is possible. The focus should be in the following areas: fitness classes, personal training and wellness, youth programs, leisure pool, elite athlete training.
7. Replace the multi-purpose field surface with artificial turf.
8. Other improvements: climbing wall expansion, expand Avalanche Physical Therapy, signage improvements, improve technology, improve parking lot lighting, admin space, storage, and kitchen improvements.

These recommendations yielded possible options for Recreation Center renovation. Duane Crawmer from Barker Rinker Seacat produced some conceptual drawings to illustrate ways to address current deficiencies and accommodate community growth. Upon review of these conceptual drawings, council provided direction for the Recreation Department to proceed with a public input process to gather feedback on the community’s priorities.



TOWN OF BRECKENRIDGE

Public Involvement Process for Recreation Center Improvements

DRAFT FOR TOWN COUNCIL

APPROVAL

JUNE 30, 2008

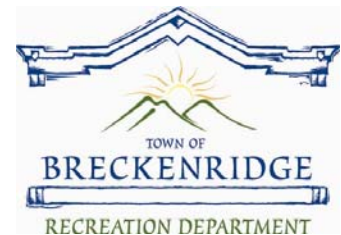


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Project Team

Lynn Zwaagstra, Recreation Director

Consultants

Karon Badalamenti, CPRP, Principal-in-Charge
 Stacy Turner, Project Consultant

*For more information about this document,
 contact GreenPlay, LLC*
 3050 Industrial Lane, Broomfield, CO 80020
 Telephone: 303.439.8369
 Fax: 303.439.0628
 Email: info@greenplayllc.com
www.greenplay.com



Context

In March 2008, the Town of Breckenridge began an extensive public outreach and involvement process to determine community priorities for desired spaces and programs to be located or provided at the Recreation Center. These priorities would drive possible re-purposing and facility renovations. Determining the community’s willingness to pay or not led to the order of magnitude for the potential capital project.

The vision for this body of work was to facilitate a Public Involvement Process to determine the community’s perceptions of importance, need for, and willingness to pay for renovations to the Breckenridge recreation facility.

The public involvement process began in May 2008 and completed within two months. Critical to the success of the plan were a number of considerations for measuring performance as shown in Table 1.

Table 1: Project Vision

Critical Success Factors	Performance Measures
<ol style="list-style-type: none"> 1. Engage the community, stakeholders, decision makers, special interest groups, etc. 2. Determine facility amenities/components that are most important with the highest unmet need. 3. Determine the Town’s willingness or reluctance to pay for the apparent top priorities. 4. Determine recommendations to proceed or not to proceed with prioritized facility improvements and renovations. 	<ol style="list-style-type: none"> 1. Facilitate three community forums using a PowerPoint introductory presentation focusing on the process, the role of the community in this part of the process, trends and best practices in parks and recreation, and obtaining the desired input. 2. Assist the Town with the creation of a questionnaire to quantify participants’ assessment of importance and need for current facility amenities and programming. Facilitate discussions and quantify the desired priorities from the participants for additional facility amenities using “Dot-ocracy”. 3. Facilitate discussions and quantify the participants’ willingness or reluctance to pay for the apparent top priorities using “GreenPlay bucks”. 4. Analyze the questionnaires’ tabulated results provided by the Town, “Dot-ocracy” and “GreenPlay bucks”; provide summary report with prioritized recommendations.

Background

In November of 2006, the Recreation Department engaged a project team to assess the physical condition of the Recreation Center in order to make recommendations for needed maintenance and repair. This resulted in the 2007 pool and mechanical systems repair project, as well as other planned projects being funded through the CIP process.

In addition to the physical assessment, the team conducted a facility use assessment that analyzed current use, participation statistics, key stakeholder input, current programming, industry trends, and possible future needs of the community. This yielded the recommendations summarized below.

1. Prioritize and fund the deferred maintenance items that have been noted in the technical assessment.
2. Make improvements to the locker rooms.
3. Relocate and convert the indoor tennis courts.
4. Reconfigure the lobby, entry, and pro-shop area to support the planned new use of the tennis court space.
5. Expand the aquatics area to include additional leisure pool space.
6. With the improvements to the center noted above, program and service expansion is possible. The focus should be in the following areas: fitness classes, personal training and wellness, youth programs, leisure pool, elite athlete training.
7. Replace the multi-purpose field surface with artificial turf.
8. Other improvements: expand the climbing wall, expand Avalanche Physical Therapy, signage improvements, improve technology, improve parking lot lighting, admin space, storage, and kitchen.

Integration with the Town's Previous Planning Efforts

In December 2006, a "Recreation Center Facility Use Study" was completed by Ballard*King which resulted in the eight recommendations above. These recommendations yielded possible options for Recreation Center renovation. Duane Crawmer from Barker Rinker Seacat produced conceptual drawings to illustrate ways to address current deficiencies and accommodate community growth. These options were presented to the Town Council in February 2008, which led to the public involvement process.

Public Involvement

Three Community Forums were held on May 19, 2008 in the evening and June 11, 2008 over lunch and in the evening. Several methods were used to determine and quantify the priorities for facility spaces and programs, as well as the community's willingness to pay or not. These included open-ended questions and general public comment, voting by "dot-ocracy", voting with GreenPlay Bucks, and a survey instrument. The Town conducted extensive advertisement and promotional efforts for the public meetings.

Publicity Efforts

Publicity for the Community Forums included:

- Four press release postings in the Summit Daily News
- Three special ¼ page ads in the Summit Daily News
- Ongoing radio announcements
- Channel 10 - 1 minute spot repeated for 2 weeks
- Flyers posted in the Recreation Center and Ice Arena
- Email invites to every regular user of the Recreation Center and its programs (200+ people) - sent 4 times by staff
- Two email invites sent to "all users" in the Town of Breckenridge email system - 188 Town employees
- Letters handed out to youth program participants' parents, fitness classes, and guests coming in at the front desk
- Invites sent to Town Council

*(Copies of the press releases, flyers, newspaper articles, and advertisements can be found in **Appendix A**)*

Resulting Attendance at Community Forums

Forty-four members of the community (both residents and non-residents living in the surrounding areas) participated in the three Community Forums. A complete listing of all responses can be found in **Appendix B**.

Community Forums Questions and Results

1. How long have you been a resident of **Breckenridge** (by show of hands)?
 - < 5 years **5**
 - 5-9 years **5**
 - 10-19 years **12**
 - 20+ years **9**
 - Not a resident, but use programs/facilities or care **9**
 - Did not answer **4**
2. On a scale of 1-5 (5 being totally available), rate the availability of various facility space and equipment.
 - 1 = **0**
 - 2 = **4**
 - 3 = **11**
 - 4 = **15**
 - 5 = **11**
 - Did not answer = **3**

3. On a scale of 1-5 (5 being the best), rate the overall level of **maintenance** of the **Breckenridge Recreation Center**. Please identify significant concerns.
- 1 = 0
 - 2 = 3
 - 3 = 6
 - 4 = 23
 - 5 = 7
 - Did not answer = 5
4. Why do you use Town facilities/programs?
Duplicate answers from meetings include:
- Have fun/social/meet people
 - Physical therapy
 - Affordable
 - Weather dependent/alternative to outdoors
 - Fitness/wellness – this was mentioned at all three meetings
 - Yoga – this was mentioned at all three meetings
 - Youth/kids programs – this was mentioned at all three meetings
 - Workout
 - Tennis
5. Do you currently use non-Town (including other cities) indoor facilities/programs? If yes, which ones and why?
Duplicate answers from meetings include:
- Silverthorne Recreation Center – this was mentioned at all three meetings
 - Yoga facilities
 - Ski Areas
6. If you had a blank check, what **improvements/changes/additions** would you make to **Breckenridge Recreation Center**?
Responses that were voted for by five or more as their priority included:
- 2-3'x/day yoga, spinning, Pilates – 5
 - Indoor ¼-mile track with synthetic turf – 5
 - Indoor tennis courts (x-2) – 6
 - Indoor playground – 12
 - Lounge Area/waiting area and around pool – 5
 - Outdoor water sports pool – 7
7. Are there programs or services you would like to see that are not currently offered?
Responses that were voted for by five or more as their priority included:
- 2-3'x/day yoga, spinning, Pilates – 5
 - Health & personal training/wellness nutrition program – 7
 - Additional offerings of existing classes - 10
 - Additional childcare hours – 5
 - Fitness/wellness classes – 6
 - Entry level fitness classes – 5

- Kids programs – 5
- Resident/non resident fees the same – 6
- Tennis – 11
- Salsa, Swing, Ballroom Dance Classes – 8

It was explained to the attendees that the Town might consider a General Obligation Bond that would be paid back in 10 years. A \$6 million bond could be financed through a 1-mil property tax funding question. One mil would cost about \$20 per year on residential property for a home with an assessed value of \$250,000. Typical homes in the Town of Breckenridge range between \$500,000-750,000. One mil would cost about \$72 per year on commercial property. The groups used \$50 per year as the dollar amount while considering the following question

8. Do you think residents would be supportive of a tax increase or bond issue, if it is found that there are insufficient funds to renovate or add on to the **Breckenridge Recreation Center** and programs to the standards desired by the community?

Yes = **37**

No = **2**

Did not answer = **5**

Additional comments:

- Dream bigger; the Town could spend more and we'd support it
- Consider private funding
- Can't afford a tax increase
- Raise fees for visitors; and consider that one fee covers all programs through memberships
- Re-consider the user fee structure; don't want one fee for everything
- Consider presenting three financial and design options as an order of magnitude and see what the community will tolerate

It was explained to the attendees that the user fee structure currently in place and any modifications to it only fund the operating budget. A different funding source would be necessary for a major capital project of this magnitude.

GreenPlay Bucks Results

Upon leaving the Community Forums the attendees were given \$50 GreenPlay Bucks (five \$10 bills equal to the willingness to pay question previously discussed) to spend anyway they chose. A table was set up with over sixty paper bags with the names of aquatics and facility components from the list in survey questions 1 and 3. The choices included a bag that said "other" and one that said "I don't want the Town to spend any money on improving or adding onto the Recreation Center."

The bags should have totaled \$2,200 (44 participants at \$50 each). The total collected in the bags was \$2,080. The following top seven amenities or programs received GreenPlay Bucks totaling \$100 or more indicating a willingness to fund or not spend money:

- | | |
|--|-------|
| • Indoor Tennis Courts | \$190 |
| • Weight room/CV equipment/circuit space area | \$170 |
| • Interactive playground area for young children | \$120 |
| • Racquetball/Wallyball/Handball courts | \$120 |

- Don't spend any money \$120
- Tennis programs \$110
- Outdoor Leisure Pool \$100

Survey Results

The Town of Breckenridge conducted a web-based survey through Survey Monkey. One hundred, seventy-two surveys were completed of which 121 were completed on-line. The same survey was distributed to the Community Forum attendees and each was entered by the Director to be tabulated and counted in the results. A copy of the survey instrument is in **Appendix C**.

When you correlate the programs with the highest unmet needs and importance, you get the following top 5 program areas to consider focusing on.

Top five most important programs with the highest un-met need

Program	# of Responses	1 st Choice	2 nd Choice	3 rd Choice
1. Fitness and wellness programs	63	37	13	14
2. Adult sports programs	44	19	17	14
3. Youth learn to swim programs	41	12	6	6
4. Youth outdoor adventure programs	41	8	11	8
5. Personal training programs	40	0	9	8

Tennis programs ranked 14th in unmet need and 3rd in importance. Youth summer day camp programs ranked 16th in unmet need and 4th in importance. Preschool programs ranked 10th in unmet need and 6th in importance. This correlation indicates that although very important, the need for these programs is better met than other ranked needs.

Table 2 shows how often the respondents and members of their households would use various aquatics features. Then respondents were asked to indicate their first, second and third choice for the features they would most likely use.

The results indicated that the top aquatic features that respondents and members of their households would be most likely to use were:

	First Choice	Second Choice	Third Choice
25-yard, 4-lane lap pool	28	8	13
Water slide	17	13	10
Lazy river	14	12	19
Outdoor Pool	14	11	4(leisure) 1(lap)
Outdoor leisure pool	13	6	4
Steam room/sauna	13	14(steam) 5(sauna)	8(steam) 4(sauna)
Hot tub	11+ 3(outdoor)	23 + 2(outdoor)	23 + 3(outdoor)
Leisure pool (with slides/features)	10	7	7
Diving boards	8	12	9
Warm(er) water/therapy pool	5	13	5

Table 2: How Often Respondent and Household Members Would Use Aquatics Features

Listed below are aquatic features that exist or could be incorporated into a remodel of the Breckenridge Recreation Center. For each one, please indicate approximately how often you and members of your household DO USE, or WOULD USE, each of the features.						
Answer Options	Seldom or Never	Less Than Once / Month	At Least Once / Month	A Few Times Per Month	Several Times Per Week	Response Count
(A) Area for swim lessons	79	22	20	34	12	167
(B) Water slide	52	22	29	52	12	167
(C) A leisure pool with vortex & kiddie fountain	63	17	26	47	11	164
(D) 25-yard, 4-lane lap pool with lift	48	28	29	43	18	166
(E) A lazy river that allows you to float on a floatation	55	27	26	42	17	167
(F) Water sprays with interactive spray features for	68	24	18	43	14	167
(G) Warm water area for therapeutic purposes	67	29	23	30	15	164
(H) Diving boards	75	25	24	25	15	164
(I) Hot tub area (indoor or outdoor)	33	21	26	57	29	166
(J) Steam room	52	35	29	33	16	165
(K) Dry sauna	63	33	29	28	12	165
(L) Outdoor spray pads / spray ground / water features	70	31	22	25	16	164
(M) Outdoor leisure pool	47	26	27	41	26	167
(N) Rope swing	71	28	30	26	10	165
(O) Other	31	3	0	4	11	49
				Other (please specify)		20
				<i>answered question</i>		168
				<i>skipped question</i>		4

What follows is a summary of which three aquatic features listed above respondents and members of their households would most likely use.

First choice for aquatics amenities:

25-yard, 4-lane lap pool with lift	28	Outdoor hot tubs	3
Water slide	17	Olympic pool	2
Lazy river	14	Kid(die) pool	2
Outdoor Pool	14	Baseball diamond	1
Outdoor leisure pool	13	Family locker rooms	1
Steam room/sauna	13	Rope swing	1
Hot tub	11	Play area for kids in pool	1
Leisure pool (with slides/features)	10	Water aerobics	1
Diving boards	8	Tennis	1
Water spray	6	Indoor tennis	1
Warm(er) water/therapy pool	5	Kayak park	1
Swim lessons/area	7	Adult swimming pool with water fitness	1

Second choice:

Hot tub	23	Swim lessons/area	4
Steam room/spa	14	Spray things	4
Warm(er) water/therapy pool	13	Outdoor spray pads/ground/features	3
Water slide	13	Rope swing	3
Diving boards	12	Water spray	2
Lazy river	12	Outdoor lap pools	2
Outdoor Pool	11	Outdoor hot tub	2
25-yard, 4-lane lap pool with lift	8	Tennis	1
Leisure pool (with slides/features)	7	Lap lanes	1
Outdoor leisure pool	6	Free swim in the pool / water basketball	1
Kid(die) pool	5	Exercise area	1
Sauna	5	Recreational play / swim area	1

Third choice:

Hot tub	23	Outdoor hot tub	3
Lazy river	19	Outdoor water features	3
Sauna	14	Kids play area	2
25-yard, 4-lane Lap pool	13	Pool	2
Water slide	10	Water spray	2
Diving boards	9	Outdoor spraypad	1
Steam room/spa	8	Water features	1
Rope swing	7	Outdoor lap pools	1
Leisure pool (with slides/features)	7	Tennis	1
Warm(er) water/therapy pool	5	Aquatic features that a toddler can use	1
Outdoor leisure pool	4	Bouldering wall over water	1
Outdoor spray pads	4	Separate lesson pool	1
Swim lessons/area	4		

Table 3 shows how often the respondents and members of their households would use various facility components. Then respondents were asked to indicate their first, second and third choice for the features they would most likely use.

The results indicated that the facility components that respondents and members of their households would be most likely to use were:

	First Choice	Second Choice	Third Choice
Cardiovascular equipment	25	27	29
Aerobics/fitness/dance	16	11	9
Indoor interactive playground	17	19	9
Gymnasium	10	9	3
Indoor tennis	17	3	3
Weight room	16	27	15
Youth programming space	11	8	6

The following is a summary of the rest of the facility components ranking.

	First Choice	Second Choice	Third Choice
Indoor synthetic turf	7	4	4
Racquetball/Wallyball	7	0	3
Indoor track	5	14	12
Climbing wall	4	5	8
Family locker room	4	4	9
Preschool	4	2	3
Childcare	3	4	3
Multi Activity Court (MAC gym)	2	4	12
Multi-purpose space	2	3	2
Bouldering	1	3	3
Arts and crafts	1	2	1
Birthday party room	1	1	0
Teaching kitchen	0	2	5
Indoor stage/theater	0	2	2

Table 3: How Often Respondents/Household Members Would Use Facility Components

Listed below are facility components that exist or could be incorporated into a remodel to the Breckenridge Recreation Center. For each one, please indicate approximately how often you and members of your household DO USE, or WOULD USE, each of these features.						
Answer Options	Seldom or Never	Less Than Once / Month	At Least Once / Month	A Few Times / Month	Several Times / Week	Response Count
(A) Gymnasium for basketball, volleyball, etc.	46	45	33	25	12	161
(B) Youth programming space	70	19	23	23	26	161
(C) Multi-purpose space (with kitchen) for classes,	71	44	19	23	6	163
(D) Aerobics/fitness/dance space	34	21	27	30	49	161
(E) Arts and crafts rooms	77	38	25	14	9	163
(F) Teaching kitchen	92	31	23	9	7	162
(G) Cardiovascular equipment/circuit space	14	17	21	39	71	162
(H) Weight lifting / power lifting space	25	21	26	39	51	162
(I) Indoor running/walking track	24	26	31	41	40	162
(J) Preschool program space	106	19	9	12	15	161
(K) Childcare area for children of parents using	91	18	15	16	20	160
(L) Indoor stage/performing arts	104	25	20	8	6	163
(M)Bouldering wall	69	33	30	22	9	163
(N) Rock climbing wall	65	28	34	23	12	162
(O) Indoor synthetic turf field	80	24	20	25	11	160
(P) Racquetball/handball/wallyball courts	69	38	27	18	10	162
(Q) Indoor interactive playground for children	74	17	14	25	30	160
(R) Family locker rooms	66	19	22	25	28	160
(S) Indoor tennis courts	89	21	22	13	17	162
(T) Multi-activity court for youth programming (MAC	74	18	24	22	21	159
(U) Birthday party room	100	40	11	7	3	161
(V) Other	28	2	0	1	6	37
Other (please specify)						10
						<i>answered question</i> 164
						<i>skipped question</i> 8

Table 4 shows the ranking of household need for various programs. The top five programs NOT currently meeting the needs 50% or less indicating a priority to focus on include:

Program	Number of Responses
1. Fitness and wellness programs	63
2. Adult sports programs	44
3. Youth learn to swim programs	41
4. Youth outdoor adventure programs	41
5. Personal training programs (strength conditioning/training)	40

The second priority for programs to focus on includes:

Program	Number of Responses
6. Youth sports programs	39
7. Youth art, dance, music, performing arts	37
8. Outdoor adventure programs	37
9. Environmental education programs	37
10. Preschool programs	33
11. Leagues and tournaments	33
12. Visual arts (drawing, painting, pottery)	31
13. Adult art, dance, music, performing arts	31
14. Tennis programs	31
15. Youth gymnastics programs	29
16. Youth summer day camp programs	29
17. Climbing programs	28
18. Special events (races, egg hunts, etc.)	27
19. After school programs	24
20. Kayaking / white water programs	22
21. Power lifting programs	18
22. Before school programs	13
23. Adaptive (special population) programs	8

Table 4: Household Need for Various Programs

Please indicate if YOU or any member of your HOUSEHOLD has a need for each of the recreation PROGRAMS listed below by checking YES or NO next to the recreation program. If YES, please RATE HOW WELL the the current programs MEET YOUR NEEDS.

Answer Options	YES	NO	100% Meets My Needs	50% Sometimes Meets My	0% Does Not Meet My Needs	Response Count
(A) Youth learn to swim programs	68	86	27	34	7	155
(B) Preschool programs	40	113	10	18	15	154
(C) Before school programs	17	135	7	1	12	153
(D) After school programs	39	111	18	17	7	153
(E) Youth outdoor adventure programs	57	92	15	32	9	152
(F) Youth sports programs	61	87	19	28	11	151
(G) Youth gymnastics programs	39	111	9	15	14	151
(H) Youth summer day camp programs	56	95	26	20	9	153
(I) Fitness and wellness programs	96	51	32	60	3	154
(J) Personal training programs (strength	69	79	28	31	9	152
(K) Power lifting programs	26	121	14	13	5	151
(L) Visual arts (drawing, painting, pottery)	38	115	7	9	22	153
(M) Youth art, dance, music, performing arts	42	108	5	18	19	152
(N) Adult art, dance, music, performing arts	33	113	4	10	21	150
(O) Adult sports programs	69	79	20	35	9	152
(P) Adaptive (special population) programs	8	138	4	3	5	147
(Q) Special events (races, egg hunts, etc.)	66	85	30	25	2	152
(R) Tennis programs	46	102	15	22	9	151
(S) Kayaking / white water programs	25	122	4	14	8	151
(T) Outdoor adventure programs	57	90	13	28	9	150
(U) Environmental education programs	61	88	12	27	10	151
(V) Leagues and tournaments	54	92	19	27	6	150
(W) Climbing programs	39	108	12	22	6	150
<i>answered question</i>						157
<i>skipped question</i>						15

The following tables show the ranking of household importance for various programs. The respondents were asked to indicate their first, second and third choice for the most important programs.

The results indicated that the most important programs were:

Program	First Choice	Second Choice	Third Choice
Fitness and wellness/lifting	37	13	14
Adult sports/leagues/tournaments	19	17	14
Tennis	17	3	5
Youth summer day camp programs	16	6	4
Learn to swim	12	6	6
Preschool	10	5	3

The following is a summary of the remainder of the programmatic importance ranking.

Program	First Choice	Second Choice	Third Choice
Outdoor Adventure	8	11	8
Youth before/after-school programs	8	12	2
Youth sports	6	4	6
Gymnastics	4	1	1
Visual Arts	1	5	5
Special Events	1	3	7
Kayaking	1	3	3
Power lifting/weight lifting	1	1	3
Personal Training	0	9	8
Adult art, dance, music, performing arts	0	6	2
Youth art, dance, music, performing arts	0	5	5

Demographics of the Survey Respondents

The population of the Town of Breckenridge is estimated to be around 3,400. According to the demographics of the survey respondents, males make up almost 62% of the population, while females make up 38%. The 2000 Census indicated roughly a 50/50 split between the genders. Additionally, the household income of the survey respondents represented 52% with a household income of \$80,000 or greater, while the 2000 Census ranked 25% of the population with an income of \$75,000 or greater. The demographics of the Community Forum attendees are included in the profiles below and are shown separately at the end of **Appendix B. Tables 5 through 10** address the demographics of the survey respondents.

Table 5: Gender

What is your gender?		
Answer Options	Response Percent	Response Count
Male	38.0%	60
Female	62.0%	98
<i>answered question</i>		158
<i>skipped question</i>		14

Table 6: Age Range

What is your age range?		
Answer Options	Response Percent	Response Count
18-25	5.0%	8
26-35	25.2%	40
36-45	40.3%	64
46-55	17.0%	27
56-65	5.7%	9
65	6.9%	11
<i>answered question</i>		159
<i>skipped question</i>		13

Table 7: Children

Do you have children?		
Answer Options	Response Percent	Response Count
Yes, at home	54.1%	85
Yes, not at home	13.4%	21
No children	32.5%	51
<i>answered question</i>		157
<i>skipped question</i>		15

Table 8: Household Income

What is your household income?		
Answer Options	Response Percent	Response Count
< \$35,000	6.7%	10
\$35-45,000	6.7%	10
\$45-60,000	11.3%	17
\$60-80,000	23.3%	35
> \$80,000	52.0%	78
<i>answered question</i>		150
<i>skipped question</i>		22

Table 9: Place of Residence

Where do you currently live?		
Answer Options	Response Percent	Response Count
Town of Breckenridge	48.4%	77
Summit County	29.6%	47
Blue River	7.5%	12
Alma/Fairplay	5.0%	8
Frisco	3.8%	6
Other	5.7%	9
Other (please specify)		14
<i>answered question</i>		159
<i>skipped question</i>		13

Table 10: Attendance at Community Forum

On which day did you attend the recreation center community forum?		
Answer Options	Response Percent	Response Count
Did not attend	67.7%	107
May 19, 6:30-8:30pm	9.5%	15
June 11 11:30am-1:30pm	12.0%	19
June 11, 6:30-8:30pm	10.8%	17
<i>answered question</i>		158
<i>skipped question</i>		14

Key Issues and Recommendations

Key Issues

The following key issues emerged from the Community Forums and survey results:

- There appears to be a willingness to pay to fund the priority improvements, additions, and re-purposing of spaces in the Recreation Center - the Town is in a “GO” position to further refine design options based on the Key Focus Areas
- The correlation between importance and unmet need indicates that although some facility components or programs are very important, the need for these programs is better met than other ranked needs
- The following programs have high importance and low un-met need (comparatively) but were items for discussion
 - Tennis programs ranked 14th in unmet need and 3rd in importance.
 - Youth summer day camp programs ranked 16th in unmet need and 4th in importance.
 - Preschool programs ranked 10th in unmet need and 6th in importance.

Key Focus Areas

The results of the Community Forums were compared with the survey results. When all information is considered, the following focus areas are recommended as priorities.

1. The Town should focus on the following aquatics amenities
 - a. 25-yard, 4-lane lap pool or laps lanes with the leisure pool
 - b. Water slide, diving boards, lazy river, improved waiting area
 - c. Outdoor leisure and play pool with added water features
 - d. Steam room/sauna
 - e. Hot tub
 - f. Warm(er) water/therapy pool (opportunity for partnerships)
2. The Town should focus on the following facility components
 - a. Cardiovascular and weight equipment
 - b. Aerobics/fitness/dance
 - c. Indoor interactive playground
 - d. Gymnasium with indoor track
 - e. Indoor tennis (perhaps a field house in combination with and indoor synthetic turf field)
 - f. Weight room
 - g. Youth programming space
3. The Town should focus on the following program areas
 - a. Fitness and wellness programs (additional programs and offering current programs more times throughout the day; programs specifically mentioned included nutrition, yoga, spinning, Pilates, and entry-level fitness classes)
 - b. Adult sports and dance programs
 - c. Youth learn to swim programs
 - d. Youth outdoor adventure programs
 - e. Personal training programs
 - f. Expanding child care hours and more programs for children should be considered

Additional Considerations and Recommendations

Consider the following points and additional recommendations depending on available resources and funding constraints:

1. While less than 6% of the GreenPlay Bucks spent went to the bag marked “I don’t want the Town to spend any money on improving or adding onto the Recreation Center,” this should be balanced with those who said “Dream bigger; the Town could spend more and we’d support it.”
2. Consider presenting three financial and design options as an order of magnitude and see what the community will be willing to fund and support through a survey, town hall forums, and stakeholder meetings.
3. As an enhancement to bond funding, consider the following options:
 - a. Generate private or donated funding for a capital campaign
 - b. Create a residency buy-in option to fund the non-resident’s pro-rata share (equal to resident bond) which would also entitle the non-resident to use programs at resident rates
 - c. Create an improvement district to include surrounding non-residents of the Town who are also users
 - d. Coordinate a larger county-wide planning effort
4. It is clear that some residents may have a concern over their ability to pay. Review the Town’s “ability to pay” policies and practices so that persons of all ages can be afforded the opportunity to participate and not be prohibited due to a financial hardship. Create a fair and consistently applied application process. Finance the scholarship program through the General Fund, any carry over funds, or other means of alternative funding, such as philanthropy.
5. Questions regarding the fee structures, what’s included or not, resident and non-resident fees, the impact of visitors, and where subsidy is applied (or the tax investment) were discussed during the Community Forums. The Town should consider further refinement of their core services, resource allocation and cost recovery philosophy. This would result in the creation of a supporting policy document and model to be adopted by Town Council. GreenPlay uses **Core Services and Resource Allocation: The Pyramid Methodology** to develop an agency’s philosophy, create a model, and policy. See **Appendix D** for more information.

Appendix List

Appendix A - Community Forum and Survey Publicity Efforts

Appendix B - Community Forums Questions and Results

Appendix C - Survey Instrument

Appendix D - Core Services and Resource Allocation: The Pyramid Methodology

Appendix A - Community Forum and Survey Publicity Efforts



FOR IMMEDIATE RELEASE

May 9, 2008

Contact: Helen Cospolich

(970) 453-1734

Breckenridge Recreation Center Community Forum Process

The Town of Breckenridge's Recreation Department is teaming up with GreenPlay, LLC, a national parks, recreation and open space consulting firm, to facilitate a public involvement process to examine renovation options to the Breckenridge Recreation Center. This public involvement process will examine the community's needs, prioritize those needs, and facilitate discussion on the community's willingness to pay for renovations to the Recreation Center.

Each community forum will last no more than 2 hours. Participants are asked to attend for the duration of the meeting as there will be facilitated discussion occurring. The community forums are scheduled for the following dates and times.

- Monday, **May 19**, 2008, from 6:30-8:30 pm at the Breckenridge Recreation Center
- Wednesday, **June 11**, 2008, from 11:30-1:30 pm at the Stephen C. West Ice Arena
- Wednesday, **June 11**, 2008, from 6:30-8:30 pm at the Stephen C. West Ice Arena

Participant feedback at the community forums will provide critical information on the community's current and future recreational needs. All Breckenridge residents, as well as other community members who use the facility, are asked to consider participating at one of the sessions.

RSVP's are recommended as there is limited space in each scheduled forum. Please contact the Breckenridge Recreation Center at (970) 453-1734 to RSVP.

###



FOR IMMEDIATE RELEASE

May 30, 2008

Contact: Helen Cospolich

(970) 453-1734

Breckenridge Recreation Center Community Forum Process

The Breckenridge community is invited to participate in a planning process to shape the future of the Breckenridge Recreation Center.

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- Wednesday, **June 11**, 2008, from 6:30-8:30 pm at the Stephen C. West Ice Arena

Participant feedback at the community forums will provide critical information on the community's current and future recreational needs. This is the community's chance to indicate if they would like the Recreation Center renovated, expanded, or to have new services offered.

All Breckenridge residents, as well as other community members who use the facility, are asked to consider participating at one of the sessions.

RSVP's are recommended as there is limited space in each scheduled forum. Please contact the Breckenridge Recreation Center at (970) 453-1734 to RSVP.

The community is also asked to go to the Town website at www.townofbreckenridge.com, under the Recreation Center link, and fill out a survey assessing your recreation needs.

###

SDN ~~010000~~ 5/16

Join us in helping to shape our future!

**Breckenridge Recreation Center
Community Forum Process**

The Breckenridge Recreation Department has teamed up with GreenPlay, LLC to ask for public input to examine renovation options to the Recreation Center. Community members are encouraged to attend one of these sessions:

Monday, May 19, 6:30-8:30 pm, Recreation Center
Wednesday, June 11, 11:30 am-1:30 pm, Stephen C. West Ice Arena
Wednesday, June 11, 6:30-8:30 pm, Stephen C. West Ice Arena



*RSVP's are recommended due to limited space.
Please call (970) 453-1734.*

SDN 6/4/08

Join us in helping to shape our future!

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**Wednesday, June 11, 11:30 am-1:30 pm, Stephen C. West Ice Arena
Wednesday, June 11, 6:30-8:30 pm, Stephen C. West Ice Arena**



*RSVP's are recommended due to limited space.
Please call (970) 453-1734.*

Breckenridge Rec Center to go online

Users of the Breck Recreation Department will be able to use a new computer network to access activities

By **HARRIET HAMILTON**
SUMMIT DAILY NEWS

BRECKENRIDGE — Registering for programs and keeping track of activities will soon become much simpler for users of the Breckenridge Recreation Department, when the Town's three recreation facilities launch an online service to manage user accounts.

Administered by the San Diego-based Active Network, the new Breckenridge system should be up and running by the end of May, said Town recreation department marketing coordinator Helen Cospolich. Once in place, it will allow users to register online for classes and activi-

ties, view all their recreation transactions, make online payments, and print receipts.

"It's meant to make everybody's life a lot easier," Cospolich said.

Users will be able to create secure online accounts on the network, and monitor them from any Internet-enabled computer 24 hours a day. Parents will be able to view youth program details, schedules and availability

Users will be able to create secure online accounts on the network, and monitor them from any Internet-enabled computer 24 hours a day. Parents will be able to view youth program details, schedules and availability and register for them online.

ty and register for them online.

All account holders will also be able to see every transaction they've ever made with the department, including every Rec Center visit, Cospolich added.

In addition to remote access, the system will eventually provide members with self check-in at the Rec Center, thereby minimizing waits and improving

overall flow.

The Active Network, familiar to many as a common site to register for 10K races and triathlons, was founded in 1998 as a web portal to connect regional grassroots sports with recreational athletes. Since then, the company has expanded into marketing and non-sports community site development and administration.

According to its website, Active.com now represents more than 100,000 events and more than 4,000 community organizations. With greater than 12 million registered users, it has been listed by Inc. 500 as one of the fastest growing privately held companies in the nation.

For more information about Breckenridge's roll-out of the new system, call (970) 453-1734, or visit www.townofbreckenridge.com.

Harriet Hamilton can be reached at (970) 668-4651, or at hhamilton@summitdaily.com.

Breckenridge Rec Center seeks public input

DAILY NEWS STAFF REPORT

BRECKENRIDGE — The Breckenridge Recreation Center is taking input from the public tonight as it examines renovation possibilities.

"This public involvement process will examine the community's needs, prioritize those needs, and facilitate discussion on the community's willingness to pay for

renovations to the recreation center," according to a press release.

The town recreation department is joining with recreation, national parks and open space consulting firm GreenPlay, LLC, in examining options. Each of three community forums are to last less than two hours. Participants are asked to RSVP and attend the forums in their entirety.

Tonight's forum tonight is at the recreation center from 6:30-8:30 p.m. The next two are June 11 at the Stephen C. West Ice Arena, from 11:30 a.m. to 1:30 p.m. and from 6:30 -8:30 p.m.

Breckenridge residents and others who use the recreation center are encouraged to attend. Space is limited. For more information and to RSVP, call the center at (970) 453-1734.

Tennis courts on wish list in Breck

Residents share ideas for improvements to the Town's recreation program

By **ROBERT ALLEN**
SUMMIT DAILY NEWS

BRECKENRIDGE — Residents shared desire for more tennis courts and other amenities at a forum regarding renovation of the Breckenridge Recreation Center on Monday evening.

"The participation numbers for this facility are just astronomical," recreation center director Lynn Zwaagstra

said. "There are many, many, many times when (the center is) completely packed. And we can't put more people into this facility — so we're here with a need for additional space."

The forum was the first of three aimed to identify how the public would like the facilities and services improved. GreenPlay, LLC, a consulting firm, organized the forum to allow for input through discussion, surveys and hands-on exercises. About 13 residents attended Monday.

Zwaagstra said as the meeting began that the center has been working to repair and improve the facilities follow-

ing the findings of consultants hired about a year and a half ago. Part of the improvements include a programming study to find who uses the center and how they participate.

"And that led us down the road to taking a look at how do we add to the recreation center to meet the needs of our community into the future. As you know, we are actually a growing community, especially with the affordable housing projects that are due on line here in the next couple years," she said.

Karon Badalamenti, a certified park and recreation professional from GreenPlay, discussed with attendees

some of the trends in recreation facilities nationwide. She said environment-friendly designs, themed decors and synthetic turf are among a number of popular improvements such centers are implementing.

After explaining the options available, she opened the floor to suggestions. The most support was expressed in favor of additional tennis courts. Folks also shared interest in increased dance and cooking classes, an outdoor pool, and a softball four-plex with lighted bathrooms and concessions.

SEE TENNIS, PAGE A4

TENNIS:

From A1

Near the end, the issue of financing was addressed. Badalamenti said property tax increases would be a likely method for implementation. Attendees shared that other entities will be asking

voters for mill-levy increases this fall and that the recreation center might not have the best chances.

Some said the cost of living in Breckenridge is high enough that, when coupled with an uncertain national economy, additional expenses of any kind would be challenging.

Other financial options discussed included naming rights for corporations and membership

rate adjustments.

The next two forums are to be conducted with the same format. These will be June 11 at the Stephen C. West Ice Arena, from 11:30 a.m. to 1:30 p.m., and from 6:30-8:30 p.m.

Participants are asked to RSVP at (970) 453-1734.

Robert Allen may be contacted at rallen@summitdaily.com

June 16, 2008 Powered by TECNAVIA

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05/21/2008 3:33 pm

BRINGING COMMUNITIES TOGETHER

COMMUNITY NOTES

Get it in the Paper

Send your events and announcements for the Community Notes page to notes@summitdaily.com, drop through the front door slot at 40 W. Main St., Frisco, or fax to (970) 668-0755, attention 'Community Notes.'

SHS class of 1988 planning reunion

The Summit High School class of 1988 will be holding its 20-year class reunion on homecoming weekend, Oct. 3-5, in Breckenridge. Class members can RSVP to Todd McKinley at shs1988@gmail.com.

They are still trying to locate the following class members:

Tina Arnett, Georgia Poiriez, Micah Stevens, Sean Bell, Greg Marler, Billy Rose, Michele Strickland, Nikki Brecht, Debbie Martin, Lee Scheuerman, Heather Triplett, Ron Drolsbough, Sheila (Bowen) McKinstry, Teri Sheakley, Robert Wheatley, Cheryl Font, Amie McLean, Tina Silcox, Brian Hanes, Jennifer McPherson, Jeff Smith, Diana Jang-Kaufman, Sean Neiman, Shannon Smith, Julie (Purcell) Leiker, Jill Phillips and Shawn Smith. If you know where any of these class members may be located, please contact Todd at shs1988@gmail.com

Breckenridge Recreation Center community forums

The Breckenridge community is invited to participate in a planning process to shape the future of the Breckenridge Recreation Center.

The recreation department and consultants from GreenPlay, LLC, will host forums Wednesday to examine and prioritize community needs, and willingness to pay for recreation center renovations.

The forums will be at the Stephen C. West Ice Arena from 11:30 a.m. to 1:30 p.m., and from 6:30-8:30 p.m. Participant feedback is encouraged, and RSVPs are recommended. Contact the recreation center at (970) 453-1734.

The community is also asked to go to the

Town website at www.townofbreckenridge.com, under the Recreation Center link, to fill out a survey assessing recreation needs.

NRO debuts new symphony for children

The National Repertory Orchestra will perform the American debut of a new symphony for children by composer Kim Scharnberg with maestro Carl Topilow conducting at 2 p.m. Tuesday, June 17, at the Breckenridge Riverwalk Center.

The new symphony is part of the NRO's "Kidz Calliope" program sponsored by the Town of Breckenridge, tickets are \$5.

— Daily News staff reports

Thank-YOUs

Do you want to thank someone in the community? Send us your thank-you in 150 words or less to notes@summitdaily.com



To the Summit County community

The family and friends of Mamadou Gologo extend their deep and heartfelt thanks for your generosity at their recent tragic loss.

His wife, father and "extended" family at city Market sincerely appreciate the donations and the expressions of sympathy offered to them during this difficult time.

Thank you Summit County for your care and friendship.

Imam Cheikh Sy
and the entire African community

Appendix B - Community Forums Questions and Results



Town of Breckenridge - Community Forums

I. GreenPlay conducted a brief introduction to the team, the project, the process and some ideas to get conversation going –a **10-minute PowerPoint presentation** including some key national trends relative to the project, or known key issues to look at.

Color-coded responses to open ended questions:

5/19/08 Blue

6/11/08 11:30am Purple

6/11/08 6:30pm Orange

II. Questions for all attendees together.

1. How long have you been a resident of **Breckenridge** (count show of hands)?
 - < 5 years **5**
 - 5-9 years **5**
 - 10-19 years **12**
 - 20+ years **9**
 - Not a resident, but use programs/facilities or care **9**
 - Did not answer **4**

2. Why do you use Town facilities/programs?
 - Have fun
 - Loose weight
 - No alternative for indoor tennis (only 1 in Summit County)
 - Avalanche Therapy/PT resource
 - They are here
 - Fitness
 - Meet people
 - Training
 - Inexpensive
 - Learn about wellness
 - Youth activities
 - Health
 - Quality of Life
 - Health/Fitness
 - Kids Programs
 - Fun
 - Workout
 - Social
 - Instructor quality
 - Physical therapy
 - Meetings
 - Weather dependant

Educational
Escape from Kids
Affordable/Value
Good Condition
Fundraisers
Tennis & Classes
De-stress
Workout
Kids programs
Outdoor education
Rehabilitation
Climbing
CV
Weights
Adult programs
Alternative to outdoor workouts
Health/fitness value
Yoga
Swim lessons
Swim slide
Quality speakers
Steam room
Childcare
Skateboarding
Spinning

Duplicate answers from meetings include:

- Have fun/social/meet people 5/19, 6:30 pm and 6/11 11:30am
 - Physical therapy – 5/19 and 6/11 11:30am
 - Affordable – 5/19 and 6/11, 11:30 am
 - Weather dependent/alternative to outdoors 5/11, 11:30am and 6:30pm
 - Fitness/wellness – all three mtgs.
 - Yoga – all three mtgs.
 - Youth/kids programs – all three mtgs.
 - Workout – 6/11, 11:30am and 6:30pm
 - Tennis – 5/19 and 6/11 11:30am
3. Do you currently use non-Town (including other cities) indoor facilities/programs? If yes, which ones and why?
- Golf course
Silverthorne Recreation Center
Snap Fitness
Other county fields
Yoga facilities
Elevation Fitness in Dillon/Silverthorne
Ski Areas
Summit County Senior Center
Trails

Daycare providers
 Fairplay
 Silverthorne Recreation Center
 Frisco Senior Center
 Oasis 9600
 Abby Hall
 Copper Mountain
 Glenwood Hot Springs
 Ski area
 Home
 Elementary Schools/Playgrounds
 Bike path – Keystone
 Dillon Reservoir
 Colorado Mountain College
 Children’s Museum indoor playground
 Backcountry climbing
 Silverthorne pool for kids
 The Toy Store indoor play area
 Yoga
 Pilates
 Playgrounds – Silverthorne, Frisco, Dillon
 Children’s Museum
 Bike riding in parking lots
 Dance classes
 Free tennis courts
 Boulder Rock Club
 The Spot – Boulder
 Red Mountain Rock – Silverthorne
 Outside massage therapists
 Skateparks – Silverthorne, Frisco, Fairplay

Duplicate answers from meetings include:

- Silverthorne Recreation Center – all three meetings
- Yoga facilities – 5/19 and 6/11, 6:30pm
- Ski Areas – 5/19 and 6/11, 11:30am

4. On a scale of 1-5 (5 being totally available), rate the availability of various facility space and equipment.

1 = 0

2 = 4

3 = 11

4 = 15

5 = 11

Did not answer = 3

5. On a scale of 1-5 (5 being the best), rate the overall level of **maintenance** of the **Breckenridge Recreation Center**. Please identify significant concerns.

1 = 0

2 = 3

3 = 6

4 = 23

5 = 7

Did not answer = 5

6. If you had a blank check, what **improvements/changes/additions** would you make to **Breckenridge Recreation Center?** *(Captured on flip chart - Used "Dot-ocracy" for quantitative assessment of priorities)*

Longer childcare

4-plex tennis w/lighted bathrooms and concessions – 2

Better drop off area

Additional parking

Indoor softball field – 1

Batting cages – 2

Dog park – 3

Improved "leisure" pool – Apex center style - water tube slides – 2

Olympic pool – 1

Outdoor water sports pool – 2

Solar panels on south gym – 3

Upgraded clay courts and outdoor tennis courts

2 indoor tennis courts – 4

Earlier hours – 1

Open on holidays

Larger child's playground

Outdoor pool – 5

Gym – 2

4 indoor tennis courts – 3

Lounge Area/waiting area and around pool – 5

Racquet ball courts – 4

Expansion to cardio room – 2

Indoor playground – 5

Renovate men's shower – 1

Locker-rooms – 3

Family locker rooms- 1

Kiddy slide pool – 1

Health & personal training/wellness nutrition program – 7

Physical therapy space – 1

Outdoor tennis lounge clubhouse

Cardio Theater – 1

Storage & Office Space – 3

Freight elevator

Ping Pong

Wireless fitness equipment (Wii) – 2

Meeting space

Bowling

Juice bar – 2

Teen space

News monitors

Indoor riding arena – 1

** Community-wide Programming/duplication of service

Operable elevator

Nature center – 2

24/7 hours

Wave pool, tiki bar

Indoor tennis courts (x-2) – 6

Another or larger fitness room – 2

More climbing “wall” space/bouldering space/make space more efficient/staff support on wall – 4

Coffee shop

Indoor ¼-mile track with synthetic turf – 5

Indoor playground – 7

Instructional tennis court

Upper body aerobic bike

Shade in CV room

Quiet yoga area – 2

Activities appropriate for acoustic space 5am – 11pm hours – 2

1 squash/2 racquetball courts – 1

2-3’x/day yoga, spinning, Pilates – 5

Outdoor Pool/leisure & lap pool

Family change room renovation – 1

Expand outdoor playground

Longer daycare hours – 1

Infant care space

Combo indoor/outdoor pool

Outdoor climbing pillar/ice & instruction – 3

Expanded indoor and outdoor skatepark – 1

Kayak park improvements

#6 Compiled responses with “dot-ocracy”

4-plex tennis w/lighted bathrooms and concessions – 7

Indoor softball field – 1

Batting cages – 2

Dog park – 3

Improved “leisure” pool – Apex center style - water tube slides – 2

Olympic pool – 1

Outdoor water sports pool – 7

Solar panels on south gym – 3

2 indoor tennis courts – 4

Earlier hours – 1

Gym – 2

Lounge Area/waiting area and around pool – 5

Racquet ball courts – 4

Expansion to cardio room – 2

Indoor playground – 12

Renovate men’s shower – 1

Locker-rooms – 3

Family locker rooms(family changing area)- 2
 Kiddy slide pool – 1
 Health & personal training/wellness nutrition program – 7
 Physical therapy space – 1
 Cardio Theater – 1
 Storage & Office Space – 3
 Wireless fitness equipment (Wii) – 2
 Juice bar – 2
 Indoor riding arena – 1
 Nature center – 2
 Indoor tennis courts (x-2) – 6
 Another or larger fitness room – 2
 More climbing “wall” space/bouldering space/make space more efficient/staff support on wall – 4
 Indoor ¼-mile track with synthetic turf – 5
 Quiet yoga area – 2
 5am – 11pm hours – 2
 1 squash/2 racquetball courts – 1
 2-3’x/day yoga, spinning, Pilates – 5
 Longer daycare hours – 1
 Outdoor climbing pillar/ice & instruction – 3
 Expanded indoor and outdoor skatepark – 1

7. Are there programs or services you would like to see that are not currently offered? *(Captured on flip chart - Used “Dot-ocracy” for quantitative assessment of priorities)*

Cooking classes – 1
 Classes throughout the day – 1
 Salsa Swing Dance Classes – 3
 Consistent pricing/membership and classes included – 1
 Resident/non resident fees the same – 6
 Juice/snack bar
 Recycle
 Toddler ski lessons – 1
 Free massage – 1
 Tennis – 11
 Free tennis – 3
 Ballroom dancing – 2
 Ping pong – 2
 Kids programs – 5
 Hot yoga – 3
 Elementary aged gymnastics – 3
 Elementary aged ballet – 1
 Tai chi – 3
 Fitness/wellness classes – 6
 Entry level fitness classes – 5
 Meditation – 2
 Dry land Nordic training – 4
 Teen programs

Recycling
Water aerobics – 2
Earlier program times for private swim lessons w/dedicated space – 2
Outdoor swim/dive lessons – 3
Playground supervision – 2
Master swimming – 2
Nutrition classes
Cooking classes – 2
Active programs
Additional childcare hours – 5
Qigong
All kinds of dance classes – 3
Preschool aged day camp – 3
“Under 3” classes – 4
Teen sports/classes – 1
Teen late night programs
Kickboxing – 2
Tai bo
Climbing instruction – 1
Skateboard instruction
“Over 50” active classes – 2
Outdoor education – 1
Kayak programs
Variety skill level fitness classes/ “green level” classes – 3
Additional offerings of existing classes - 10

#7 Compiled responses with “dot-ocracy”

Cooking classes – 1
Classes throughout the day – 1
Salsa, Swing, Ballroom Dance Classes – 8
Consistent pricing/membership and classes included –1
Resident/non resident fees the same – 6
Toddler ski lessons – 1
Free massage – 1
Tennis – 11
Free tennis – 3
Ping pong – 2
Kids programs – 5
Hot yoga – 3
Elementary aged gymnastics – 3
Elementary aged ballet – 1
Tai chi – 3
Fitness/wellness classes – 6
Entry level fitness classes – 5
Meditation – 2
Dry land Nordic training – 4
Water aerobics – 2
Earlier program times for private swim lessons w/dedicated space – 2
Outdoor swim/dive lessons – 3

Playground supervision – 2
Master swimming – 2
Cooking classes – 2
Additional childcare hours – 5
Preschool aged day camp – 3
“Under 3” classes – 4
Teen sports/classes – 1
Kickboxing – 2
Climbing instruction – 1
“Over 50” active classes – 2
Outdoor education – 1
Variety skill level fitness classes/ “green level” classes – 3
Additional offerings of existing classes - 10

8. Do you think residents would be supportive of a tax increase or bond issue, if it is found that there are insufficient funds to renovate or add on to the **Breckenridge Recreation Center** and programs to the standards desired by the community? What other ways should be explored to fund your vision

Yes = **37**

No = **2**

Did not answer = **5**

9. Anything else we should keep in mind as we move forward?
- Dream bigger; the Town could spend more and we’d support it
 - Consider private funding
 - Can’t afford a tax increase
 - Raise fees for visitors; and consider that one fee covers all programs through memberships
 - Re-consider the user fee structure; don’t want one fee for everything
 - Consider presenting three financial and design options as an order of magnitude and see what the community will tolerate

III. Survey questions that matched those available on line were distributed to each attendee to answer and hand in. The responses were entered into the survey response database.

IV. Upon leaving attendees were given \$50 GreenPlay Bucks (five \$10 bills) to spend anyway they choose. Their money was to be deposited into paper bags placed on a table that had the names of aquatics and facility components from the survey list. The bags included one that said “I don’t want the Town to spend any money on improving or adding onto the Recreation Center.” *(The GreenPlay bucks will be counted for quantitative assessment of funding priorities)*

Demographics for Appendix B – Community Forum Questions and Results

	May 19 at 6:30pm	June 11 at 11:30am	June 11 at 6:30pm
Gender			
Male	66.7%	42.1%	35.3%
Female	33.3%	57.9%	64.7%
Age			
18-25	6.7%	5.3%	0%
26-35	0	15.8%	11.8%
36-45	46.7%	36.8%	41.2%
46-55	6.7%	5.3%	23.5%
56-65	6.7%	15.8%	11.8%
65+	33.3%	21.1%	11.8%
Children			
Yes, at home	33.3%	36.8%	52.9%
Yes, not at home	20%	31.6%	23.5%
No children	46.7%	31.6%	23.5%
Household Income			
<\$35,000	7.7%	0%	6.7%
\$35,000-45,000	0	11.1%	0%
\$45,000-60,000	7.7%	0%	20%
\$60,000-80,000	53.8%	27.8%	26.7%
\$80,000+	30.8%	61.1%	46.7%
Residence			
Town of Breckenridge	33.3%	47.4%	58.8%
Summit County	53.3%	36.8%	17.6%
Blue River	6.7%	0%	17.6%
Alma/Fairplay	6.7%	5.3%	0%
Frisco	0	5.3%	5.9%
Other	0	5.3%	0%

Appendix C - Survey Instrument

Recreation Center Community Forum Survey

1. Aquatics Features

1. Listed below are aquatic features that exist or could be incorporated into a remodel of the Breckenridge Recreation Center. For each one, please indicate approximately how often you and members of your household DO USE, or WOULD USE, each of the features.

	Seldom or Never	Less Than Once / Month	At Least Once / Month	A Few Times Per Month	Several Times Per Week
(A) Area for swim lessons	jñ	jñ	jñ	jñ	jñ
(B) Water slide	jñ	jñ	jñ	jñ	jñ
(C) A leisure pool with vortex & kiddie fountain	jñ	jñ	jñ	jñ	jñ
(D) 25-yard, 4-lane lap pool with lift	jñ	jñ	jñ	jñ	jñ
(E) A lazy river that allows you to float on a floatation device through a pool of slowly moving water or walk against the current for exercise	jñ	jñ	jñ	jñ	jñ
(F) Water sprays with interactive spray features for young children	jñ	jñ	jñ	jñ	jñ
(G) Warm water area for therapeutic purposes	jñ	jñ	jñ	jñ	jñ
(H) Diving boards	jñ	jñ	jñ	jñ	jñ
(I) Hot tub area (indoor or outdoor)	jñ	jñ	jñ	jñ	jñ
(J) Steam room	jñ	jñ	jñ	jñ	jñ
(K) Dry sauna	jñ	jñ	jñ	jñ	jñ
(L) Outdoor spray pads / spray ground / water features	jñ	jñ	jñ	jñ	jñ
(M) Outdoor leisure pool	jñ	jñ	jñ	jñ	jñ
(N) Rope swing	jñ	jñ	jñ	jñ	jñ
(O) Other	jñ	jñ	jñ	jñ	jñ

Other (please specify)

* 2. Which THREE of the aquatic features listed above would you and members of your household be MOST LIKELY to USE? Please write in the titles for your 1st, 2nd, and 3rd choices by using the choices from the list in question #1 above.

1st choice - most likely to use

2nd choice - second most likely to use

3rd choice - third most likely to use

Recreation Center Community Forum Survey

2. Rec Center Features

1. Listed below are facility components that exist or could be incorporated into a remodel to the Breckenridge Recreation Center. For each one, please indicate approximately how often you and members of your household DO USE, or WOULD USE, each of these features.

	Seldom or Never	Less Than Once / Month	At Least Once / Month	A Few Times / Month	Several Times / Week
(A) Gymnasium for basketball, volleyball, etc.	jn	jn	jn	jn	jn
(B) Youth programming space	jn	jn	jn	jn	jn
(C) Multi-purpose space (with kitchen) for classes, meetings, receptions, birthday parties, etc.	jn	jn	jn	jn	jn
(D) Aerobics/fitness/dance space	jn	jn	jn	jn	jn
(E) Arts and crafts rooms	jn	jn	jn	jn	jn
(F) Teaching kitchen	jn	jn	jn	jn	jn
(G) Cardiovascular equipment/circuit space	jn	jn	jn	jn	jn
(H) Weight lifting / power lifting space	jn	jn	jn	jn	jn
(I) Indoor running/walking track	jn	jn	jn	jn	jn
(J) Preschool program space	jn	jn	jn	jn	jn
(K) Childcare area for children of parents using recreation center facilities	jn	jn	jn	jn	jn
(L) Indoor stage/performing arts	jn	jn	jn	jn	jn
(M)Bouldering wall	jn	jn	jn	jn	jn
(N) Rock climbing wall	jn	jn	jn	jn	jn
(O) Indoor synthetic turf field	jn	jn	jn	jn	jn
(P) Racquetball/handball/wallyball courts	jn	jn	jn	jn	jn
(Q) Indoor interactive playground for children	jn	jn	jn	jn	jn
(R) Family locker rooms	jn	jn	jn	jn	jn
(S) Indoor tennis courts	jn	jn	jn	jn	jn
(T) Multi-activity court for youth programming (MAC gym)	jn	jn	jn	jn	jn
(U) Birthday party room	jn	jn	jn	jn	jn
(V) Other	jn	jn	jn	jn	jn

Other (please specify)

Recreation Center Community Forum Survey

- * 2. Which THREE of the recreation center features listed above would you and members of your household be MOST LIKELY to USE? Please write your 1st, 2nd, and 3rd choices in the spaces below using choices from question #1 above.

1st choice - most likely to use

2nd choice - second most likely to use

3rd choice - third most likely to use

Recreation Center Community Forum Survey

3. Programming Options

1. Please indicate if YOU or any member of your HOUSEHOLD has a need for each of the recreation PROGRAMS listed below by checking YES or NO next to the recreation program. If YES, please RATE HOW WELL the the current programs MEET YOUR NEEDS.

	YES	NO	100% Meets My Needs	50% Sometimes Meets My Needs	0% Does Not Meet My Needs
(A) Youth learn to swim programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(B) Preschool programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(C) Before school programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(D) After school programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(E) Youth outdoor adventure programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(F) Youth sports programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(G) Youth gymnastics programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(H) Youth summer day camp programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(I) Fitness and wellness programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(J) Personal training programs (strength conditioning/training)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(K) Power lifting programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(L) Visual arts (drawing, painting, pottery)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(M) Youth art, dance, music, performing arts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(N) Adult art, dance, music, performing arts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(O) Adult sports programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(P) Adaptive (special population) programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(Q) Special events (races, egg hunts, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(R) Tennis programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(S) Kayaking / white water programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(T) Outdoor adventure programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(U) Environmental education programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(V) Leagues and tournaments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(W) Climbing programs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Recreation Center Community Forum Survey

* 2. Which THREE of the recreation programs listed above are the MOST IMPORTANT to you or members of your household. Write your 1st, 2nd and 3rd most important program choices from the choices in question #1 listed above.

1st most important
program choice

2nd most important
program choice

3rd most important
program choice

Recreation Center Community Forum Survey

4. Demographics

1. What is your gender?

Male

Female

2. What is your age range?

18-25

36-45

56-65

26-35

46-55

65+

3. Do you have children?

Yes, at home

Yes, not at home

No children

4. What is your household income?

< \$35,000

\$45-60,000

>\$80,000

\$35-45,000

\$60-80,000

* 5. Where do you currently live?

Town of Breckenridge

Alma/Fairplay

Summit County

Frisco

Blue River

Other

Other (please specify)

6. On which day did you attend the recreation center community forum?

Did not attend

June 11 11:30am-1:30pm

May 19 6:30-8:30pm

June 11 6:30-8:30pm

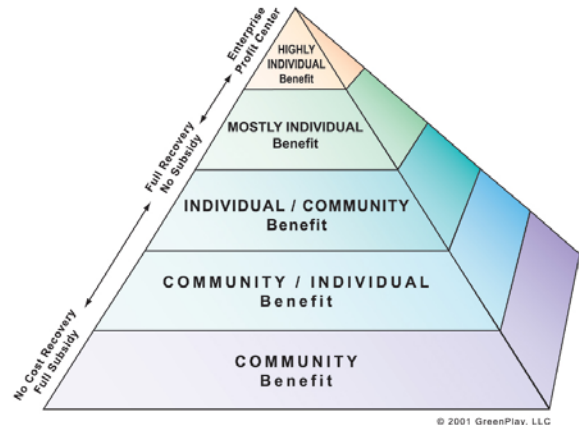
Appendix D

Core Services and Resource Allocation: The Pyramid Methodology

CORE SERVICES AND RESOURCE ALLOCATION: THE PYRAMID METHODOLOGY

The creation of a core services identification, resource allocation, and cost recovery philosophy and policy is a key component to maintaining an agency's financial control, equitably priced offerings, and identifying core programs, facilities and services.

Critical to this philosophical undertaking is the support and buy-in of elected officials and advisory boards, staff and ultimately of citizens. Whether or not significant changes are called for, the organization wants to be certain that it is philosophically aligned with its constituents. The development of the cost recovery philosophy and policy is built upon a very logical foundation, using the understanding of who is benefiting from the parks and recreation service to determine how that service should be paid for.



The development of the cost recovery philosophy can be separated into the following steps:

Step 1 – Building on Your Organization's Values, Vision, and Mission

The entire premise for this process is to align values, core services and resources to fulfill the Community's vision and mission. It is important that organizational values are reflected in the vision and mission. Often mission statements are a starting point and further work needs to occur to create a more detailed common understanding of the interpretation of the mission. This is accomplished by involving staff in a discussion of a variety of Filters.

Step 2 – Understanding the Pyramid Methodology, the Benefits Filter, and Secondary Filters

Filters are a series of continuums covering different ways of viewing service provision. The **Primary Filters** influence the final positioning of services as they relate to each other and are summarized below. The **Benefits Filter**, however, forms the **foundation** of the **Pyramid Model** and is used in this discussion to illustrate a cost recovery philosophy and policies for parks and recreation organizations. The other filters are explained later.

Filter	Definition
Benefit	Who receives the benefit of the service? (Skill development, education, physical health, mental health, safety)
Access/Type of Service	Is the service available to everyone equally? Is participation or eligibility restricted by diversity factors (i.e., age, ability, skill, financial)?
Organizational Responsibility	Is it the organization's responsibility or obligation to provide the service based upon mission, legal mandate, or other obligation or requirement?
Historical Expectations	What have we always done that we can't change?
Anticipated Impacts	What is the anticipated impact of the service on existing resources? On other users? On the environment? What is the anticipated impact to not providing the service?
Social Value	What is the perceived social value of the service by constituents, city staff and leadership, and policy makers? Is it a community builder?

THE BENEFITS FILTER

The principal foundation of all the filters is the **Benefits Filter**. It is shown first as a continuum and then applied to the Core Services and Resource Allocation Pyramid model.

Conceptually, the base level of the pyramid represents the mainstay of a public parks and recreation program. Programs appropriate to higher levels of the pyramid should only be offered when the preceding levels below are full enough to provide a foundation for the next level. This foundation and upward progression is intended to represent the public parks and recreation core mission, while also reflecting the growth and maturity of an organization as it enhances its program and facility offerings.

It is often easier to integrate the values of the organization with its mission if they can be visualized. An ideal philosophical model for this purpose is the pyramid. In addition to a physical structure, *pyramid* is defined by Webster's Dictionary as "an immaterial structure built on a broad supporting base and narrowing gradually to an apex." Parks and recreation programs are built with a broad supporting base of core services, enhanced with more specialized services as resources allow. Envision a pyramid sectioned horizontally into five levels.

COMMUNITY Benefit

The foundational level of the pyramid is the largest, and includes those programs, facilities, and services that benefit the **COMMUNITY** as a whole. These programs, facilities, and services can increase property values, provide safety, address social needs, and enhance quality of life for residents. The community generally pays for these basic services and facilities through taxes. These services are offered to residents at minimal or no fee. A large percentage of the tax support of the agency would fund this level of the pyramid.

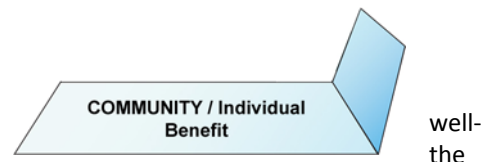
Examples of these services could include the existence of the community parks and recreation system, the ability for youngsters to visit facilities on an informal basis, development and distribution of marketing brochures, low-income or scholarship programs, park and facility planning and design, park maintenance, or others.



NOTE: All examples are generic - your programs and services may be very different based on your agency's mission, demographics, goals, etc.

COMMUNITY / Individual Benefit

The second and smaller level of the pyramid represents programs, facilities, and services that promote individual physical and mental being, and provide recreation skill development. They are generally more traditionally expected services and beginner instructional levels. These programs, services, and facilities are typically assigned fees based on a specified percentage of direct and indirect costs. These costs are partially offset by both a tax subsidy to account for the **COMMUNITY** Benefit and participant fees to account for the **INDIVIDUAL** Benefit.



Examples of these services could include the ability of teens and adults to visit facilities on an informal basis, ranger led interpretive programs, and beginning level instructional programs and classes, etc.

INDIVIDUAL / Community Benefit

The third and even smaller level of the pyramid represents services that promote individual physical and mental well-being, and provide an intermediate level of recreational skill development. This level provides more **INDIVIDUAL** Benefit and less **COMMUNITY** Benefit and should be priced accordingly. The individual fee is set to recover a higher percentage of cost than for programs and services that fall in the lower pyramid levels.



Examples of these services could include summer recreational day camp, summer sports leagues, year-round swim team, etc.

MOSTLY INDIVIDUAL Benefit

The fourth and still smaller pyramid level represents specialized services generally for specific groups, and may have a competitive focus. In this level programs and services may be priced to recover full cost, including all direct and indirect expenses.

Examples of these services might include specialty classes, golf, and outdoor adventure programs. Examples of these facilities might include camp sites with power hook-ups.



HIGHLY INDIVIDUAL Benefit

At the top of the pyramid, the fifth and smallest level represents activities that have a profit center potential, and may even fall outside of the core mission. In this level, programs and services should be priced to recover full cost plus a designated profit percentage.

Examples of these activities could include elite diving teams, golf lessons, food concessions, company picnic rentals and other facility rentals, such as for weddings, or other services.



Step 3 – Sorting Services

It is critical that this sorting step be done with staff, and with governing bodies and citizens in mind. This is where ownership is created for the philosophy, while participants discover the current and possibly varied operating histories, cultures, missions, and values of the organization. It is the time to develop consensus and get everyone on the same page, the page you write together. Remember, as well, this effort must reflect the community and must align with the thinking of policy makers.

Sample Policy Development Methodology Language:

XXX community brought together staff from across the department to sort existing programs into each level of the pyramid. This was a challenging step. It was facilitated by an objective and impartial facilitator in order to hear all viewpoints. It generated discussion and debate as participants discovered what different staff members had to say about serving culturally and economically different parts of the community; about historic versus recreational parks; about adults versus youth versus seniors; about weddings and interpretive programs; and the list goes on. It was important to push through the “what” to the “why” to find common ground. This is all what discovering the philosophy is about.

Step 4 – Determining Current Subsidy/Cost Recovery Levels

Subsidy and cost recovery are complementary. If a program is subsidized at 75%, it has a 25% cost recovery, and vice-versa. It is more powerful to work through this exercise thinking about where the tax subsidy is used rather than what is the cost recovery. When it is complete, you can reverse thinking to articulate the cost recovery philosophy, as necessary.

The overall subsidy/cost recovery level is comprised of the average of everything in all of the levels together as a whole. Determine what the current subsidy level is for the programs sorted into each level. There may be quite a range in each level, and some programs could overlap with other levels of the pyramid. This will be rectified in the final steps.

Step 5 – Assigning Desired Subsidy/Cost Recovery Levels

Ask these questions: Who benefits? Who pays? Now you have the answer; who benefits – pays! The tax subsidy is used in greater amounts at the bottom levels of the pyramid, reflecting the benefit to the **Community** as a whole. As the pyramid is climbed, the percentage of tax subsidy decreases, and at the top levels it may not be used at all, reflecting the **Individual** benefit. So, what is the right percentage of tax subsidy for each level? It would be

appropriate to keep some range within each level; however, the ranges should not overlap from level to level.

Again, this effort must reflect your community and must align with the thinking of your policy makers. In addition, pricing must also reflect what your community thinks is reasonable, as well as the value of the offering.

Examples

Many times categories at the bottom level will be completely or mostly subsidized, but you may have a small cost recovery to convey value for the experience. The range for subsidy may be 90-100% - but it may be higher, depending on your overall goals.

The top level may range from 0% subsidy to 50% excess revenues above all costs, or more. Or, your organization may not have any activities or services in the top level.

Step 6 – Understanding the Other Factors and Considerations

Inherent in sorting programs into the pyramid model using the Benefits Filter is the realization that other factors come into play. This can result in decisions to place programs in other levels than might first be thought. These factors also follow a continuum form however do not necessarily follow the five levels like the Benefits Filter. In other words, the continuum may fall totally within the first two levels of the pyramid. These factors can aid in determining core programs versus ancillary programs. These factors represent a layering effect and should be used to make adjustments to an initial placement in the pyramid.

THE COMMITMENT FACTOR: What is the intensity of the program, what is the commitment of the participant?



THE TRENDS FACTOR: Is the program or service tried and true, or is it a fad?



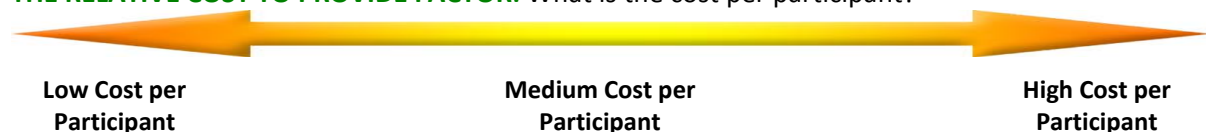
THE POLITICAL FILTER: What is out of our control?

This filter does not operate on a continuum, but is a reality, and will dictate from time to time where certain programs fit in the pyramid

THE MARKETING FACTOR: What is the effect of the program in attracting customers?



THE RELATIVE COST TO PROVIDE FACTOR: What is the cost per participant?



THE ECONOMIC CONDITIONS FACTOR: What are the financial realities of the community?



FINANCIAL GOALS FACTOR: Are we targeting a financial goal such as increasing sustainability, decreasing subsidy reliance?



Step 7 – Adjust Fees and Other Funding Resources to Reflect Your Comprehensive Cost Recovery Philosophy

Across the country, ranges in overall cost recovery levels can vary from less than 10% to over 100%. Your organization sets your target based on your mission, stakeholder input, funding, and/or other circumstances. This exercise may have been completed to determine present cost recovery level. Or, you may have needed to increase your cost recovery from where you are currently to meet budget targets. Sometimes just implementing the policy equitably to existing programs is enough, without a concerted effort to increase fees. Now that this information is apparent, the organization can articulate where it has been and where it is going – by pyramid level and overall - and fees can be adjusted accordingly.

Step 8 – Use Your Efforts to Your Advantage in the Future

The results of this exercise may be used:

- To articulate your comprehensive cost recovery philosophy;
- To train staff at all levels as to why and how things are priced the way they are;
- To shift subsidy to where is it most appropriately needed;
- To recommend program or service cuts to meet budget subsidy targets, or show how revenues can be increased as an alternative; and,
- To justify the pricing of new programs.

This Core Services and Resource Allocation: The Pyramid Methodology Outline is provided by:



GreenPlay, LLC, 3050 Industrial Lane, Suite 200, Broomfield, CO 80020
(303) 439-8369; Toll-free: 1-866-849-9959; Info@GreenPlayLLC.com; www.GreenPlayLLC.com

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MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: 7/2/2008

RE: Breckenridge Nordic Center Lease Renewal

Issue:

Consideration of a renewal to the lease for the Breckenridge Nordic Center

History:

In 2003 after the Town bought the land where the Breckenridge Nordic Center building stands the Town and Mr. Dayton entered into a lease for the use of Town owned land to operate the Nordic operation. This lease was for 5 years and was a unique arrangement to recognize the land sale to the Town and a future commitment to construct a replacement Nordic/Nature Center when the current building was required to be removed.

It's now time to consider a renewal lease. The major change in the renewal lease is contained in Article 7 Town Compensation which establishes the compensation the Town will be paid for allowing use of its property (primarily Cucumber Gulch) to conduct the Nordic operation. The original lease contemplated that this compensation would be similar to what other Nordic centers pay for this privilege. The language in Article 7 mirrors the same language that is used in Mr. Dayton's lease for the Frisco Nordic Center except for the provisions regarding rental of the building and is set at the same 17.5%. We have retained language contemplating a new Nordic Center and made a few other clean up changes. This new lease has been given to Mr. Dayton for his review and we wanted to get any final comments from Council before we finalize it and prepare it for approval hopefully at the July 22, 2008 meeting.

1 **DRAFT June 30, 2008 DRAFT**

2
3 SUBSTANTIVE Additions To The Prior Agreement Dated September 9, 2003 Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 **NORDIC LICENSE AGREEMENT**

7
8 THIS NORDIC LICENSE AGREEMENT ("**Agreement**") is made and entered into
9 at Breckenridge, Colorado effective as of the ___ day of _____,
10 ~~2003, 2008~~, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal
11 corporation ("**Town**") and BRECKENRIDGE NORDIC CENTER, ~~LLC~~**L.L.C.**, a
12 Colorado limited liability company ("**Operator**").

13
14 ~~WHEREAS, Eugene L. Dayton and the Town have entered into a Contract of Sale~~
15 ~~for him to sell and the Town to buy certain real property used in connection with the~~
16 ~~Operator's operation of the Breckenridge Nordic Center; and~~

17
18 ~~WHEREAS, the Contract of Sale pertains only to the purchase of real property,~~
19 ~~and this Agreement is intended to permit Operator to continue Nordic business according~~
20 ~~to the terms of the agreement set forth below; and~~

21
22 WHEREAS, the Town owns certain land and trail easements which are suitable
23 for use for Nordic skiing; and

24
25 WHEREAS, Operator desires to use the Town's land and trail easements to
26 operate the Breckenridge Nordic Center; and

27
28 WHEREAS, the Town is willing to grant to Operator a license to use the Town's
29 land and trail easements in connection with the operation of the Breckenridge Nordic
30 Center in accordance with, and subject to the terms and conditions of, this Agreement.

31
32 NOW, THEREFORE, the parties agree as follows:

33
34 **ARTICLE 1**

35 **GENERAL**

36
37 **1.1 Consideration.** Town enters into this Agreement for and in consideration of the
38 payment of compensation by Operator as herein provided, ~~the sale by Eugene L. Dayton~~
39 ~~of the real property known as Tract C, Christie Heights Subdivision, Filing No. 1,~~
40 ~~Breckenridge, Colorado,~~ and the performance and observance by Operator of the
41 covenants and agreements herein.

42 **1.2 Incorporation Of Exhibits.** Exhibits "A", "B" and "C", which are attached
43 hereto, shall be deemed incorporated into this Agreement.

1 ARTICLE 2

2 DEFINITIONS

3
4 **2.1** "Commencement Date" shall mean the date provided in Section 4.01 **4.1** for the
5 commencement of this Agreement.

6 **2.2** "**Compensation**" shall mean the amount due to Town from Operator
7 **pursuant to Article 7 of this Agreement.**

8 **2.3** "**Financial Services Manager**" shall mean the **Financial Services Manager of**
9 **the Town of Breckenridge.**

10 **2.4** "**Gold Run**" shall mean the Gold Run Nordic Center owned and operated by the
11 Town at the Town's golf course.

12 **2.5** "**Gross Revenue**" shall mean all revenues, of whatever kind or nature,
13 **generated by Operator from the conduct of Operator's Business. When properly**
14 **recorded and accounted for, a reduction from Gross Revenues shall be allowed for:**
15 **(i) bona fide returns for credit; (ii) sales taxes collected for remittance to the State or**
16 **Town; and (iii) federal excise taxes collected that must be separately stated,**
17 **collected from the customer and remitted to the federal government by the**
18 **Operator. No deduction or reduction from Gross Revenues shall be allowed for bad**
19 **debts, loss from theft or any other deduction, except as expressly provided otherwise**
20 **in this Agreement.**

21 **2.6** "**New License Agreement**" shall mean the new license agreement described in
22 **Section 12.4 of this Agreement that may be negotiated and entered into by the**
23 **parties.**

24 **2.7** "**New Nordic Skiing Facility**" shall mean an entirely new facility to be designed
25 and built by the Town on its real property which is located immediately adjacent to and
26 westerly of the Property.

27 **2.8** "**Operator's Business**" shall mean the Breckenridge Nordic Center located at
28 1200 Ski Hill Road in Breckenridge, Colorado.

29 **2.9** "**Past Due Interest Rate**" shall mean interest accruing at 12% per annum
30 commencing on the fifth calendar day after the date such amount is due and owing until
31 fully paid to the Town.

32 **2.10** "**Property**" shall mean only the land and trail easements described and depicted
33 on the attached **Exhibit "A"**.

34 **2.11** "**Taxes**" shall mean all personal property and real property taxes which may be
35 levied, assessed or imposed arising out of Operator's occupancy and use of the Property
36 pursuant to this Agreement.

1 **2.12** "Term" shall mean the term of this Agreement as provided in Section 4.01 **4.1**.

2 **2.13** "Town Manager" shall mean the Town Manager of the Town of Breckenridge.

3 **2.14** "**Town Recreation Department**" shall mean the **Recreation Department of**
4 **the Town of Breckenridge, or any authorized representative thereof.**

5 **ARTICLE 3**

6 **GRANT OF LICENSE**

7
8 **3.1** **License Granted.** The Town hereby grants to the Operator the personal privilege
9 and permission to enter upon and use the Property subject, however, to the terms and
10 conditions of this Agreement. Such privilege and permission shall be exclusive during
11 the Term of this Agreement, and shall terminate upon the expiration or earlier termination
12 of this Agreement as hereafter provided.

13 **3.2** **No Interest In Land.** Operator understands, acknowledges and agrees that this
14 Agreement does not create an interest or estate in Operator's favor in the Property. The
15 Town retains legal possession of the full boundaries of the Property and this Agreement
16 merely grants to the Operator the personal privilege to use the Property in strict
17 accordance with the terms of this Agreement. This Agreement shall in no event be
18 construed to create an assignment coupled with an interest in favor of the Operator.
19 Operator shall expend any time, money or labor upon the Property at Operator's own risk
20 and peril. Town may enter upon the Property at any time to inspect Operator's use
21 thereof, or for any purpose necessary to protect Town's interest in the Property.

22 **3.3** **Limited Scope Of License.** The license granted to the Operator is limited in
23 scope to use for Nordic skiing, snowshoeing operations, and other related winter
24 operations including, but not limited to, kick sleds and sit skis. However, ~~as part of~~
25 ~~Operator's Business~~ Operator shall not be permitted to conduct sleigh rides or evening
26 dinners without the prior written permission of the Town. Operator shall not have the
27 right to alter or change the Operator's use of the Property without the Town Manager's
28 prior written consent.

29 **3.4** **"As Is" Condition of Property.** Operator accepts the Property in its current
30 condition, AS IS, with all faults, latent or patent. Operator warrants and represents that it
31 has examined or has been afforded a reasonable opportunity to examine all matters
32 concerning the Property that it deems material to this Agreement and its use of the
33 Property, including, without limitation, topography, geology, sizes and dimensions, any
34 hazardous or unsafe conditions, any applicability of any governmental requirements and
35 availability of permits, approvals and other entitlements from governmental authorities.
36 Operator acknowledges that it is relying solely upon its own judgment and expertise as to
37 such matters;; the condition of the Property;; and its suitability for use in Operator's
38 Business.

39 **3.5** **Disclaimer. TOWN HAS NOT MADE AND DOES NOT HEREBY MAKE**
40 **ANY REPRESENTATIONS OR WARRANTIES TO OPERATOR THAT THE**

1 PROPERTY IS SUITABLE OR ADEQUATE IN ANY RESPECT FOR THE
2 ACTIVITIES OR USES THAT OPERATOR INTENDS TO CONDUCT OR MAY
3 CONDUCT THEREON. ALL EXPRESS AND IMPLIED WARRANTIES ARE
4 HEREBY DISCLAIMED. OPERATOR ACKNOWLEDGES AND AGREES
5 THAT THERE ARE NO PROMISES, REPRESENTATIONS, AGREEMENTS,
6 WARRANTIES (WHETHER EXPRESS OR IMPLIED), CONDITIONS OR
7 UNDERSTANDING, WHETHER ORAL OR WRITTEN, BETWEEN THE
8 PARTIES RELATED TO THE PROPERTY OR THE USE THEREOF OTHER
9 THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT.

10 **3.6 Use of Shed.** As part of the license hereby granted, Operator shall have the right
11 to use the shed which is located on the Property. However, Town may terminate
12 Operator's right to use such shed (without terminating Operator's right to use the
13 Property pursuant to this Agreement); upon not less than 60 days' written notice. Upon
14 the giving of such notice by Town, Operator's right to use the shed shall terminate on the
15 date specified in the notice.

16 ARTICLE 4

17 TERM

18
19 **4.1 Term.** The Term of this Agreement shall commence upon the execution hereof
20 by all parties ~~(the "Commencement Date")~~ and shall expire, subject to earlier termination
21 by the Town as hereafter provided, and further subject to the possible execution of a New
22 License Agreement for an extended term as described in Section ~~11.04,~~**12.4**, at noon on
23 the first to occur of: (i) the date the New Nordic Skiing Facility is ready for occupancy
24 and use, or (ii) five (5) years from the Commencement Date. It is the hope of the parties
25 that they will be able to ~~establish~~**continue** a mutually beneficial long term relationship,
26 but nothing herein shall ever be interpreted or construed as obligating the Town to extend
27 the ~~term~~**Term** of this Agreement beyond the ~~term~~**Term** expressly set forth in this
28 Agreement.

29 **4.2 Early Termination. Notwithstanding the stated Term of this Agreement as**
30 **set forth in Section 4.1, either party may terminate this Agreement, without liability**
31 **for breach, upon not less than thirty (30) days' prior written notice given to the**
32 **other party in accordance with Section 13.8 of this Agreement.**

33 **4.3 Surrender Of Property.** Upon the expiration or earlier termination of this
34 Agreement, or on the date specified in any demand for possession by Town after any
35 default by Operator, this Agreement, and the license herein granted to Operator, shall
36 terminate and Operator covenants and agrees to surrender possession of the Property to
37 Town in the same condition as when first occupied, ordinary wear and tear excepted.

38 ARTICLE 5

39 NATURE OF RELATIONSHIP BETWEEN TOWN AND OPERATOR

1 **5.1** **Town Right To Control How Nordic Operations Are Conducted On Town**
2 **Property.** Although the purpose of this Agreement is to establish a collaborative
3 relationship between the Town and the Operator with respect to the provision of Nordic
4 skiing opportunities for the residents and visitors to the Town of Breckenridge, Operator
5 understands and acknowledges that the Operator's use of the Property to conduct
6 Operator's Business shall be subject to the Town's ultimate right and authority to
7 determine whether Nordic skiing operations will be conducted on ~~all~~ Town-owned
8 properties, including, but not limited to the Property, and, if so, how such operations will
9 be conducted. In that regard, it is agreed that the Town shall have the ultimate right to
10 determine how Operator's Business at the Property is to be conducted, and how
11 Operator's Business operations at the Property shall relate to other Nordic skiing
12 operations which are conducted on Town property. However, it is the intent of the Town
13 that Operator's Business at the Property shall be conducted in keeping with generally
14 accepted industry practices and procedures for Nordic skiing operations throughout the
15 United States.

16 **5.2** **Required Cooperation.** Without limiting the generality of Section 5.01, **5.1**, it is
17 agreed:

18 **A. The Breckenridge Recreation Department will be the primary contact**
19 **between the Operator and the Town. The Recreation Department Director will**
20 **serve as the contract manager. To the fullest extent possible, Operator's annual**
21 **opening/closing dates, all activities, events, marketing, advertising, and pass sales as**
22 **specified below will be coordinated with the Recreation Department.**
23

24 **B.** ~~A.~~ Each May during the term of this Agreement the parties will meet and
25 review the past season's operations at both Gold Run and Operator's Business, and
26 discuss an operation plan for the ~~ensuing~~**next** year. **This operating plan will be**
27 **finalized in a second meeting in August.** The goal of the collaborative ~~meeting~~**meetings**
28 will be to continue and enhance the development of the Operator's Business and Gold
29 Run as affiliated, regionally significant, ~~u~~ Nordic destinations.
30

31 **C.** ~~B.~~ All admission passes which are sold or disseminated by Operator entitling
32 patrons to use the Property (including, without limitation, daily, weekly and season
33 passes) shall be coordinated with Gold Run, so that the holder of a pass sold or
34 disseminated by Operator for the Property shall be entitled to use Gold Run at no
35 additional cost, and the holder of a pass sold or disseminated by Town at Gold Run shall
36 be entitled to use the Property at no additional cost. Each year throughout the term of this
37 Agreement the Town shall determine a fair apportionment between Operator and Town
38 of the compensation received from the sale of all admission passes sold or disseminated
39 by Town and Operator. The parties shall agree upon a mutually acceptable formula for
40 dividing pass revenues each year between the Operator's Business at the Property and
41 Gold Run based on fairness and actual usage of the two facilities. ~~If the parties are~~
42 ~~unable to agree upon such a formula for any reason~~ **As a general guideline**, pass revenues
43 each year shall be divided proportionately between the Property and Gold Run based on
44 actual usage of such facilities by pass holders.
45

1 ~~C. To the fullest extent possible, all activities and events which are conducted by~~
2 ~~the Operator at the Property shall be coordinated with the Town’s “Gold Run Nordic~~
3 ~~Center” operations.~~

4
5 ~~D. To the fullest extent possible, all marketing, advertising and promotional~~
6 ~~efforts undertaken by Operator with respect Operator’s Business at the Property shall be~~
7 ~~coordinated with Gold Run operations.~~

8
9 D. ~~E.~~ Operator’s financial and accounting records with respect to Operator’s
10 Business at the Property shall be fully coordinated with the Town’s financial and
11 accounting records relating to the operation of Gold Run. Any proprietary information
12 concerning Operator’s Business obtained by Town pursuant to this Paragraph ~~E~~D shall be
13 treated as confidential information under the Colorado Open Records Act, and shall not
14 be disclosed to the public unless such disclosure is ordered by a court of competent
15 jurisdiction. If the Town receives a request for Operator’s financial and accounting
16 records, it shall immediately notify Operator so that Operator may take such action as
17 may be appropriate to protect its records and prevent public disclosure thereof.

18
19 **ARTICLE 6**

20 **OPERATION OF OPERATOR’S BUSINESS AND USE OF TRAILS**

21 Operator agrees as follows with respect to the operation of Operator’s Business
22 and the use of the Property:

23
24 **6.1 General Intent.** The intent of the Town in entering into this Agreement is that
25 Operator will:

26 (a) operate Operator’s Business in a manner that will provide a
27 **professional and** high quality ~~and professional operation to provide skier~~**offering**
28 **classical, skate skiing, and snowshoeing** services ~~and~~**on the highest quality** groomed
29 trails ~~for classical and skate skiing, and snow shoeing.~~

30 (b) provide a clean and orderly facility for the use and enjoyment of
31 the patrons of Operator’s Business. Without limiting the generality of the preceding
32 sentence, Operator shall comply with all applicable laws, rules and regulations in
33 connection with the operation of Operator’s Business at the Property.;

34 (c) **ensure that courteous and friendly service will be provided to**
35 **all patrons without regard to race, color, creed, sex, sexual orientation, marital**
36 **status, national origin, ancestry, age, religion or disability; and**

37 (d) **uphold and support applicable policies and programs of the**
38 **Town while serving as good will ambassador of the Town.**

39 This Agreement, and the Operator’s performance hereunder, shall be interpreted in
40 accordance with the intent expressed in this Section.

1
2 **6.2 Operator Duties--Generally.** Operator shall control, administer, operate,
3 manage and maintain Operator's Business and the Property in a professional, businesslike
4 manner, in good condition and in accordance with all legal requirements as described in
5 Section ~~6.04~~**6.4**. Operator shall not permit any unreasonably unsafe condition to exist on
6 the Property at any time, understanding that the Property ~~are~~**is** intended to be used for
7 Nordic skiing.

8 **6.3 Standards of Operation.** Operator shall operate Operator's Business in
9 accordance with the Standards of Operation set forth on **Exhibit "B"**.

10 **6.4 Compliance With All Laws And Regulations.** Operator agrees not to use or
11 permit the Property to be used for any purpose prohibited by the laws of the United States
12 or the State of Colorado or the ordinances or Charter of the Town of Breckenridge, or not
13 authorized hereunder, and it further agrees that it will use or manage the Property in
14 accordance with all applicable federal, state and local laws. Operator further agrees to
15 submit any report or reports or information which the Town is required by law or
16 regulation to obtain from Operator or which the Town Manager may reasonably request
17 relating to Operator's operations.

18 **6.5 Waste, Nuisance Or Impairment Of Value.** Operator agrees that nothing shall
19 be done on or upon the Property which might impair the value of the Property or which
20 would constitute waste or a nuisance.

21 **6.6 Restriction On Changes And Alterations.** Operator agrees not to improve,
22 change, or alter the Property without following the proper planning procedures through
23 the Town.

24 **6.7 Removal Of Operator's ~~Personalty~~Personal Property and Equipment.** Upon
25 the expiration or earlier termination of this Agreement, all of Operator's personal property
26 and equipment shall be removed from the Property. If Operator fails to remove any of
27 Operator's personal property and equipment by the expiration or termination of this
28 Agreement Town may, at its option, keep and retain any such property and/or equipment
29 or dispose of the same and retain any proceeds therefrom, and Town shall be entitled to
30 recover from Operator any costs incurred in removing the same and in restoring the
31 Property which are in excess of the actual proceeds, if any, received by Town from
32 disposition of such personal property and equipment.

33 **6.8 Ticket Disclaimer.** Operator shall include on each season pass, ticket,
34 complimentary pass or other evidence of admission to Operator's Business that entitles
35 the bearer to use all or any part of the Property the disclaimer language shown on **Exhibit**
36 **"BC"**, or other language mutually acceptable to both parties.

37 **ARTICLE 7**

38 **TOWN COMPENSATION**

1 **7.1 Compensation. Operator shall pay to Town, as compensation for the**
2 **privilege granted by this Agreement, a sum equal to seventeen and one half percent**
3 **(17.5 %) of Operator's Gross Revenues. The Compensation shall be paid, without**
4 **deduction, setoff, prior notice or demand, in accordance with Section 7.2 of this**
5 **Agreement.**

6 **7.2 Payment Of Compensation. Not later than the 20th day of each**
7 **month during the term of this Agreement Operator shall furnish to the Financial**
8 **Services Manager, in a form acceptable to the Financial Services Manager, a true**
9 **and accurate verified statement of its Gross Revenues for the preceding month**
10 **signed by an officer of Operator, and shall simultaneously pay to Town the**
11 **Compensation due to Town for the preceding month calculated in accordance with**
12 **Section 7.1. Town and the Operator shall jointly develop a standardized reporting**
13 **form which Operator may use to report its monthly Gross Revenues.**

14 **7.3 Season Pass Sales. Town shall collect payments for all season pass**
15 **sales related to the operation of Operator's Business. Town shall pay Operator its**
16 **agreed percentage (as determined pursuant to Section 5.2(C)) in November and**
17 **December of each year, and final settlement of season pass revenues for such year**
18 **shall occur at the end of the Nordic ski season. Town shall retain from each**
19 **distribution of season pass revenues made to Operator pursuant to this section a**
20 **sum equal to seventeen and one half percent (17.5 %) of Operator's share of the**
21 **distribution. Such retained funds are part of the Compensation due to Town for the**
22 **privilege granted by this Agreement as described in Section 7.1.**

23 **7.4 Interest On Past Due Amounts. Any payments due to Town under**
24 **this Agreement which are not made when due shall accrue interest at the Past Due**
25 **Interest Rate from the date due until fully paid.**

26 **7.5 Place And Manner Of Payments. All sums payable to Town under**
27 **this Agreement shall be made at the following:**

28 **Financial Services Manager**
29 **Town of Breckenridge**
30 **P. O. Box 168**
31 **Breckenridge, CO 80424**
32

33 **or at such other place as the Financial Services Manager may hereafter designate by**
34 **written notice provided to Operator in accordance with Section 13.8 of this**
35 **Agreement. All sums shall be made in legal tender of the United States. Any check**
36 **given to the Town shall be received by it subject to collection, and Operator agrees**
37 **to pay any charges, fees or costs incurred by the Town for the collection, including**
38 **reasonable attorney's fees.**
39

40 **7.6 Books Of Account And Auditing. Operator shall keep within the**
41 **limits of Summit County, Colorado true and complete records and accounts of all**
42 **Gross Revenues, including daily bank deposits. By July 15th of each year Operator**

1 shall furnish to Town a true and accurate summary statement of the Operator's
2 total Gross Revenues for Operator's Business during the most recent Nordic ski
3 season (showing the authorized deductions or exclusions in computing the amount
4 of such Gross Revenues). Such statement may be prepared and certified to be true
5 and correct by Operator's bookkeeper; provided, however, that if the Financial
6 Services Manager has a reasonable objection to the use of Operator's bookkeeper to
7 prepare such statement, Operator will engage an independent certified public
8 accountant, or other qualified person acceptable to the Financial Services Manager,
9 to prepare and certify such statement.

10 Operator shall provide its own point of sales system, to include cash registers
11 and a system of accounting that tracks revenue on both a day-to-day and event-by-
12 event basis. Operator shall further maintain a system of bookkeeping reasonably
13 satisfactory to the Financial Services Manager. The Financial Services Manager
14 shall have the right to inspect and copy such books and records during normal
15 business hours. Operator shall keep and preserve all sales slips, cash register tapes,
16 sales books, bank books or duplicate deposit slips, and all other evidence of Gross
17 Revenues for at least three (3) years, or until sooner audited by Town.

18
19 The Financial Services Manager shall have the right at any time upon 15
20 days' written notice to audit all of the books of account, bank statements,
21 documents, records, returns, papers and files of Operator relating to the Gross
22 Revenues. Operator, within 10 days of written notice of the request to audit, shall
23 make all such documents available for examination at the Agreement Premises.

24
25 If Town determines after an audit that the Gross Revenues for any reporting
26 period as shown by Operator's statement(s) have been understated by more than
27 three percent (3%), Operator shall pay to Town the cost of such audit and the
28 amount of any deficiency, plus interest on such amount at the Past Due Interest
29 Rate from the date due. The Town's right to perform such an audit shall expire
30 three (3) years after Operator's statement of Gross Revenues has been delivered to
31 the Town.

32
33 If the audit conducted by the Financial Services Manager shows that the
34 Operator's Gross Revenues for any reporting period have been understated more
35 than three percent (3%), Operator shall have the right to have an independent audit
36 conducted at its expense. Such audit shall be completed within thirty (30) days from
37 the date Operator is notified of the results of the Financial Services Manager's
38 audit. The Financial Services Manager and the independent auditor shall attempt
39 to reconcile any discrepancies between the two audits. If the Financial Services
40 Manager and the independent auditor are unable to reconcile any such
41 discrepancies, either party may enforce its right or remedies under this Section by
42 appropriate judicial action as provided by law.

43
44 Operator expressly agrees that Financial Services Manager may inspect any
45 sales tax return or report and accompanying schedules and data which Operator
46 may file with Town pursuant to the Town's Retail Sales Tax Ordinance, and

1 Operator waives any claim of confidentiality which it may have in connection
2 therewith.

3
4 **7.7** Town's Lien and Security Interest. Town shall have at all times a first
5 security interest and a lien for all Compensation and other sums of money becoming
6 due hereunder from Operator upon all goods, wares, equipment, fixtures, furniture,
7 inventory and other personal property of Operator situated in or located upon the
8 Property, and such property shall not be removed therefrom without the express
9 written consent of Town until all arrearages in Compensation and other sums of
10 money then due to Town hereunder shall first have been paid. Upon the occurrence
11 of any event of default by Operator, Town may foreclose the security interest and
12 lien in the manner provided by law. Town may file a financing statement (and
13 necessary extensions, renewals or replacements thereof throughout the Term of this
14 Agreement) in a form legally sufficient to perfect the security interest in the lien
15 granted to Town pursuant to this Section.

16 **ARTICLE 8**

17 **INDEMNITY AND INSURANCE**

18
19 **8.1 Indemnification.** Operator agrees to indemnify and hold harmless the Town, its
20 officers, employees and self-insurance pool, from and against all liability, claims, and
21 demands, on account of injury, loss, or damage, including without limitation claims
22 arising from bodily injury, personal injury, sickness, disease, death, property loss or
23 damage, or any other loss of any kind whatsoever, which arise out of or are in any
24 manner connected with this Agreement, to the extent (but only to the extent) that such
25 injury, loss, or damage is caused by the breach of this Agreement by Operator, the
26 negligence or other fault of Operator, or any officer, employee, contractor, representative,
27 agent or patron of the Operator, or which arise out of any worker's compensation claim of
28 any employee of the Operator. To the extent indemnification is required under this
29 Section, Operator agrees to: (i) investigate, handle, respond to, and to provide defense for
30 and defend against, any such liability, claims, or demands at the sole expense of
31 Operator; and (ii) to bear all other costs and expenses related thereto, including court
32 costs and attorney fees, whether or not any such liability, claims, or demands alleged are
33 ultimately determined to be groundless, false, or fraudulent.

34 **8.2 Insurance.** Operator agrees to secure at its own expense, and to keep in force at
35 all times during the Term hereof, the following insurance:

36 **(a) Comprehensive General Liability Insurance.** A special form
37 comprehensive general liability insurance policy, including public liability and property
38 damage, with a company reasonably acceptable to and approved by the Town Manager,
39 covering the Operator's use of the Property; the operations of the Operator's Business
40 hereunder; the products therein; and, bodily injury or death and property damage, with
41 combined single limits of not less than million dollars (\$1,000,000). Such policy shall be
42 endorsed to include the Town, its officers and employees as additional insured.

1 **(b)** **Worker's Compensation Insurance.** Operator shall maintain at
2 all times adequate worker's compensation insurance (including occupational disease
3 hazards) with an authorized insurance company, or through the Colorado State
4 Compensation Insurance Fund, or through an authorized self-insurance plan approved by
5 the State of Colorado, insuring the payment of compensation to all its employees.

6 An ACCORD Certificate No. 27 evidencing the existence of the policies shall be
7 delivered to the ~~Finance Director~~**Financial Services Manager** prior to the
8 Commencement Date, **and upon the renewal or replacement of such policies**
9 **throughout the Term of this Agreement.** Upon request by the Town Manager,
10 Operator agrees to furnish to the ~~Finance Director~~**Financial Services Manager** at any
11 time during the Term of this Agreement the original or a certified copy of said policy or
12 policies.

13
14 Each such policy or certificate shall contain a provision insuring contractual
15 liability of Operator to the Town. Each such policy or certificate shall contain a valid
16 provision or endorsement substantially providing that "This policy will not be canceled,
17 or materially changed or altered, without first giving thirty (30) days' prior written notice
18 thereof to the ~~Finance Director~~**Financial Services Manager**, Town of Breckenridge, P.
19 O. Box 168, Breckenridge, CO 80424, sent by certified mail, return receipt requested."
20

21 Each such policy or certificate shall also contain a valid provision or endorsement
22 providing substantially as follows: "Any coverage afforded the Town of Breckenridge
23 hereunder shall apply as primary insurance and any other insurance issued to the Town of
24 Breckenridge shall apply as excess and non-contributing insurance." Operator shall be
25 solely responsible for any deductible losses under any insurance policy required by this
26 Agreement.

27
28 If the insurance described in this Section is not reasonably available, Operator
29 **shall** promptly ~~shall~~ cause notice of that fact to be delivered to the Town. In the event
30 the substitute coverage which is available is not satisfactory to the Town, it may
31 terminate this Agreement ~~subject to any applicable provision of Section 11.05.~~
32

33 No employee of Operator shall be entitled to worker's compensation or
34 unemployment compensation benefits from the Town.
35

36 **ARTICLE 9**

37 **DEFAULT; REMEDIES AND TERMINATION**

38
39 **9.1** **Default.** Operator shall be in default under this Agreement if Operator:

40 **(a)** fails to timely pay when due to Town the Compensation or any
41 other payment required hereunder; ~~or~~

42 **(b)** becomes insolvent, or takes the benefit of any present or future
43 insolvency or bankruptcy statute, or makes a general assignment for the benefit of

1 creditors, or consents to the appointment of a receiver, trustee or liquidator of any all of
2 its property; ~~or~~

3 (c) transfers or attempts to transfer its interest under this Agreement,
4 without the prior written approval of the Town, by reason of death, operation of law,
5 assignment, sublease or otherwise, to any other person, entity or corporation; ~~or~~

6 (d) abandons, deserts or vacates the Property during the Term of this
7 Agreement; ~~or~~

8 (e) suffers any lien or attachment to be filed against the Property
9 because of any act or omission of Operator, and such lien or attachment is not discharged
10 of record within sixty (60) days after receipt of notice thereof by Operator; or

11 (f) fails to keep, perform and observe any other promise, covenant,
12 duty, obligation or agreement set forth in this Agreement, and such failure continues for a
13 period of more than five (5) days after delivery by Town Manager of a written notice of
14 such breach or default arising out of the failure to pay money, and thirty (30) days for any
15 breach or default arising out of any non-monetary obligations, except in cases of public
16 safety and emergency where a shorter period is specified herein, or where fulfillment of
17 Operator's obligation requires activity over a period of time and Operator within five (5)
18 days of notice commences in good faith to perform whatever may be required to correct
19 its failure to perform and continues such performance diligently and without interruption
20 except for causes beyond its control. Notwithstanding the foregoing, Operator shall be
21 allowed the opportunity to cure the same default only twice during the term of this
22 Agreement. Upon the third occurrence of the same default there shall be no right to cure,
23 and Town may proceed to terminate this Agreement as hereafter provided.

24 **9.2 Remedies.** If Operator defaults in any of the covenants, terms and conditions
25 herein, AND SUCH DEFAULT IS NOT CURED WITHIN THE TIME ALLOWED BY
26 THIS AGREEMENT, the Town may exercise any one or more of the following
27 remedies:

28 (a) The Town may elect to allow this Agreement to continue in full
29 force and effect and to enforce all of Town's rights and remedies hereunder, including
30 without limitation, the right to collect compensation as it becomes due together with
31 interest at the Past Due Interest Rate; or

32 (b) The Town may cancel and terminate this Agreement and the
33 license herein granted, with or without process of law (except in the case of wrongful
34 termination) , and without liability for so doing, upon giving written notice of termination
35 to Operator specifying the date and time when such termination is to be effective, at
36 which time all rights of the Operator hereunder shall terminate.

37 If Town elects to terminate, Operator shall be liable to Town for all amounts
38 owing at the time of termination, including, but not limited to, compensation or other
39 sums due plus interest thereon at the Past Due Interest Rate, together with any other
40 amount to fully compensate Town for all loss of compensation, damages, and costs,

1 including attorney's fees, caused by Operator's failure to perform its obligations
2 hereunder, or which in the ordinary course would likely result therefrom.

3
4 **(c)** The Town may elect to reenter and take possession of the Property
5 and expel Operator or any person claiming under Operator, and remove all effects as may
6 be necessary, without prejudice to any remedies for damages or breach. Such reentry
7 shall not be construed as termination of this Agreement unless a written notice
8 specifically so states; however, the Town reserves the right to terminate the Agreement at
9 any time after reentry.

10 **9.3 Remedies Cumulative.** The remedies provided in this Agreement shall be
11 cumulative and shall in no way affect any other remedy available to Town under law or
12 equity. OPERATOR EXPRESSLY WAIVES AND RELEASES ANY RIGHT TO
13 RECOVER PUNITIVE OR CONSEQUENTIAL DAMAGES AS A RESULT OF ANY
14 BREACH OF THIS AGREEMENT BY TOWN.

15 **9.4 Waivers.** No failure of Town to insist upon the strict performance of a term,
16 covenant or agreement contained in this Agreement, and no acceptance of full or partial
17 payment during the continuance of any default by Operator, shall constitute a waiver of
18 any such term, covenant or agreement or a waiver of any such right or remedy or a
19 waiver of any default by Operator.

20 **ARTICLE 10**

21 **DAMAGE, DESTRUCTION OR LOSS OF OPERATOR'S PROPERTY**

22
23 Except to the extent caused by the negligence or willful misconduct of Town, its
24 officers, agents and employees, the Town shall not be liable for any damage, destruction
25 of or loss of Operator's property from the Property caused by theft, burglary or any other
26 cause.

27
28 **ARTICLE 11**

29 **TAXES**

30 **11.1 Taxes.**

31
32 ~~A. **Taxes Defined.** As used in this Agreement, the term "taxes" shall mean~~
33 ~~all personal property and real property taxes which may be levied, assessed or imposed~~
34 ~~arising out of Operator's occupancy and use of the Property pursuant to this Agreement.~~
35

36 **(a) Possessory Interests.** Pursuant to Section 39-3-105, C.R.S., all
37 real or personal property owned by Town is exempt from taxation. However, the parties
38 acknowledge that Operator's occupancy and use of the Property pursuant to this
39 Agreement may be deemed to be a taxable possessory interest pursuant to Section 39-1-
40 103(17)(a), C.R.S.

1 **(b) Operator To Pay Taxes.** Any taxes lawfully assessed arising
2 from Operator’s occupancy and use of the Property pursuant to this Agreement shall be
3 paid by Operator, and Operator shall indemnify and hold Town harmless from any such
4 taxes. Any taxes due arising from Operator’s occupancy and use of the Property pursuant
5 to this Agreement shall be paid by Operator in a timely manner. Prior to the last day for
6 payment of such taxes without penalty or interest, Operator shall provide to Town a
7 photostatic copy of the receipt(s) or cancelled check(s) showing payment of the taxes.
8 Operator may pay any taxes in installments if permitted by law.

9 **(c) Operator's Right to Contest Taxes.** In the event Operator is
10 liable for the payment of any taxes arising from Operator’s occupancy and use of the
11 Property pursuant to this Agreement, Operator shall have the right, at its sole expense, to
12 contest any such taxes by the commencement and prosecution, in good faith and with due
13 diligence, of appropriate legal proceedings; provided that Operator makes timely
14 payment of such taxes if Operator loses the contest. Operator shall advise Town prior to
15 instituting any such contest and shall as a condition of exercising such right provide
16 Town such reasonable assurance as it may request that such contest will be in compliance
17 with the provisions of this Paragraph. Town, at Operator's sole cost and expense, shall
18 reasonably cooperate with Operator in any such contest, may join in the contest, and shall
19 execute and deliver such documents and instruments as may be necessary or appropriate
20 for prosecuting an effective contest.

21 **ARTICLE 12**

22 **NEW NORDIC SKIING FACILITY**

23 **12.1 Intent.** At the time of the execution of this Agreement, the Town intends to plan,
24 design and construct a New Nordic Skiing Facility on the Town’s real property which is
25 located immediately adjacent to and westerly of the Property. The parties have entered
26 into this Agreement in anticipation of the possible construction by the Town of the New
27 Nordic Skiing Facility. The purpose of this Section ~~11~~12 is to set forth the parties’ rights
28 and expectations with respect the New Nordic Skiing Facility as of the date of this
29 Agreement.

30 **12.2 Town’s Reservation of Authority; No Constitutional Obligation.** Nothing in
31 this Agreement shall ever be interpreted or construed as obligating the Town to actually
32 construct the New Nordic Skiing Facility. The Town has, and shall always retain, the
33 absolute right and discretion to determine whether to construct the New Nordic Skiing
34 Facility. Nothing in this Section ~~11~~12 shall ever be interpreted or constructed as
35 imposing upon the Town a general obligation indebtedness or multiple year direct or
36 indirect debt or other financial obligation whatsoever within the meaning of the
37 Constitution or laws of the State of Colorado.

38 **12.3 Planning Process for New Nordic Skiing Facility.** The Town will perform a
39 master planning process for the Town’s real property which is located immediately
40 adjacent to, and westerly of, the Property, and the Town’s Nordic skiing trails located
41 near the Property, for the purpose of determining the feasibility of constructing the New

1 Nordic Skiing Facility on such land. Operator will be included as a stakeholder in the
2 Town's master planning process. As a stakeholder, the Operator shall be consulted on all
3 phases of the planning process, but the decision of the Town with respect to both the
4 planning process and the possible construction of the New Nordic Skiing Facility shall be
5 final. The Town's master planning process will include the preparation of a plan for the
6 New Nordic Skiing Facility which will accommodate a Nordic operation and other
7 potential functions on the site.

8 **12.4 License Agreement For New Nordic Skiing Facility.** If Town, in its sole and
9 absolute discretion, determines to construct the New Nordic Skiing Facility, the Town
10 covenants and agrees to negotiate in good faith with Operator for the purpose of
11 attempting to agree upon a ~~new~~New License Agreement to be offered to Operator to
12 replace this Agreement (~~“New License Agreement”~~). The terms and conditions of any
13 New License Agreement to be offered to Operator are subject to negotiation and
14 agreement in the event the Town determines to actually construct the New Nordic Skiing
15 Facility; however, it is agreed that any New License Agreement (if ever executed) will
16 minimally include: (i) an initial term of five (5) years, and a provision for one or more
17 renewal options; however, any New License Agreement may provide for the periodic
18 adjustment in the amount of ~~compensation~~Compensation to be paid by Operator to
19 Town for the use of the New Nordic Skiing Facility during each such extension term; (ii)
20 performance standards related to Operator's use of the New Nordic Skiing Facility; (iii)
21 the obligation of the Operator to pay to Town a periodic fee for the use of the New
22 Nordic Skiing Facility, which fee will be comparable to periodic fees paid by operators of
23 similar Nordic skiing facilities and operations in Colorado; (iv) the unilateral right of the
24 Town to terminate the New License Agreement at anytime during its term, without being
25 liable to Operator for breach of the New License Agreement, in the event Town
26 determines, in its sole and absolute discretion, to permanently discontinue Nordic skiing
27 operations on the Town-owned real property which is the subject of the New License
28 Agreement (~~subject to the obligation of the Town to compensate Operator as provided in~~
29 ~~Section 11.05, below~~); and (v) such other terms and conditions as may be acceptable to
30 the Town and the Operator. The parties covenant and agree to negotiate in good faith to
31 attempt to agree upon the actual terms and conditions of a New License Agreement
32 consistent with the foregoing, but nothing in this Agreement shall obligate either the
33 Town or the Operator to agree on the actual terms and conditions of a New License
34 Agreement, and there shall be no remedy by either party in the event the parties are
35 unable to agree upon the actual terms and conditions of a New License Agreement after
36 the parties have negotiated in good faith.

37 ~~**11.05 Compensation To Operator In the Event of the Permanent Discontinuance of**~~
38 ~~**Nordic Skiing Operations.**~~ In the event that the Town elects to terminate the New
39 ~~License Agreement during the first three years of the initial term of the New License~~
40 ~~Agreement as a result of the permanent discontinuation of Nordic skiing operations on~~
41 ~~the Town-owned real property (as provided in Section 11.04, above), Town shall~~
42 ~~compensate Operator as follows:~~

43 ~~A. Town shall pay to Operator an amount equal to the Operator's actual net~~
44 ~~profits derived from the operation of the Operator's Business at the Property for the one~~

1 full winter season immediately preceding the termination of the New License (“Agreed
2 Compensation”). As used in this Paragraph A, the term “net profits” shall mean all
3 revenue actually received by Operator’s from the operation of Operator’s Business at the
4 Property, less those expenses actually and necessarily incurred and expended by the
5 Operator in connection with its operation of Operator’s Business at the Property.
6 Operator shall accept the Agreed Compensation as full compensation for any and all
7 losses or damages incurred by Operator related to or arising from the Town’s decision to
8 terminate the New License Agreement. The payment of the Agreed Compensation shall
9 be subject to the future appropriation of all necessary funds by the Town Council of the
10 Town of Breckenridge, and nothing in this Paragraph A shall constitute a constitute a
11 general obligation indebtedness or multiple year direct or indirect debt or other financial
12 obligation whatsoever within the meaning of the Constitution or laws of the State of
13 Colorado. In the event of such a failure to make the required appropriations, the Operator
14 shall not be required to vacate the Property or the New Nordic Skiing Facility or cease
15 operations, but shall continue until (and unless) such appropriations are made and the
16 agreed payment is received.

17
18 ~~B. Operator shall accept the Agreed Compensation as full compensation for any
19 and all losses or damages, of whatever kind or nature, incurred, suffered or sustained by
20 Operator as the result of the Town’s termination of the New License Agreement. Upon
21 payment of such sum, Operator shall be deemed to have irrevocably waived any and all
22 claims, of whatever kind or nature, and under whatever legal theory of liability, against
23 the Town related to or arising from the Town’s termination of the New License
24 Agreement. Operator shall deliver or caused to be delivered upon request such additional
25 documents and instruments as may be required to accomplish the intent of this
26 Agreement.~~

27
28 **12.5 Removal of Existing Nordic Facility From the Property.** If the Town actually
29 constructs the New Nordic Skiing Facility, Operator shall use its best efforts to have its
30 existing Breckenridge Nordic Center building removed from its location , at the
31 Operator’s sole cost, within nine (9) months after a certificate of occupancy is issued for
32 the New Nordic Skiing Facility. However, if earlier removal of the Operator’s
33 Breckenridge Nordic Center Building from its location is required by the developer of the
34 adjacent Christie Heights property (Timothy J. Casey, or his successor real estate
35 developer), then Operator shall remove such building, at the Operator’s sole cost, as and
36 when required. In the event the existing Breckenridge Nordic Center building is not
37 removed by Operator as provided above, Town shall assume the responsibility to remove
38 such building from the Property as and when required in connection with the
39 development of the adjacent Christie Heights property by Timothy J. Casey, or his
40 successor real estate developer. If Operator is required to move the existing Breckenridge
41 Nordic Center building as provided above, Town and Operator shall meet and confer to
42 determine how best to provide a temporary facility for Operator’s Business, including the
43 terms and conditions with respect thereto which would be acceptable to both parties. If
44 Operator is permitted to construct or locate a temporary facility, Operator shall secure
45 any Town development or building permit which may be required by Town ordinances
46 with respect to such temporary facility.

1 **12.6 Complete Agreement Concerning New Nordic Skiing Facility.** This Section
2 ~~11.2~~ constitutes the entire agreement and understanding between the parties with respect
3 to the possible future designing, planning and construction by the Town of a New Nordic
4 Skiing Facility, and supersedes any prior agreement or understanding relating to such
5 matter.

6 ARTICLE 13

7 MISCELLANEOUS PROVISIONS

8
9 **13.1 Agreement Binding Upon Successors.** This Agreement shall be binding upon
10 and extend to the successors and permitted assigns of the respective parties hereto.

11 **13.2 Governing Law.** This Agreement shall be deemed to have been made in and
12 shall be construed in accordance with the laws of the State of Colorado.

13 **13.3 Assignment.** Operator covenants and agrees not to assign, pledge, encumber,
14 transfer or sublet its rights in this Agreement, in whole or in part, nor grant any license or
15 concession hereunder, without the prior written consent of the Town Manager, which
16 consent shall not be unreasonably withheld. Any action or attempted action by the
17 Operator in violation of the preceding sentence shall, at the option of said Town
18 Manager, automatically terminate this Agreement and all rights of the Operator
19 hereunder.

20 **13.4 Force Majeure.** Neither party hereto shall be liable to the other for any failure,
21 delay or interruption in the performance of any of the terms, covenants or conditions of
22 this Agreement due to causes beyond the control of that party, including, without
23 limitation, strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of
24 God, acts of the public enemy, acts of superior governmental authority, weather
25 conditions, floods, riots, rebellion, sabotage or any other circumstance for which such
26 party is not responsible or which is not in its power to control.

27 **13.5 Acts By Authorized Representatives.** Any act required or permitted to be
28 performed under this Agreement by the Town Manager or the ~~Finance Director~~**Financial**
29 **Services Manager** may also be performed by the authorized representative of such
30 person.

31 **13.6 No Partnership.** Town shall not be construed or held to be a partner, associate or
32 joint venturer of Operator in the conduct of Operator's Business. Operator shall at all
33 times have the status of an independent contractor without the right or authority to
34 impose tort or contractual liability upon the Town.

35 **13.7 Communications.** All communications (oral, written, telephonic and electronic)
36 between the Operator and the Town related to this Agreement shall be directed to the
37 Town Manager of the Town of Breckenridge, or his designee. Operator shall not
38 communicate directly with any member of the Town Council of the Town of
39 Breckenridge with respect to any matter related to this Agreement.

1 **13.8 Notices.** All notices required to be given to the Town or Operator hereunder shall
2 be in writing and sent by certified mail, return receipt requested, addressed to:

3 Town: Town Manager
4 Town of Breckenridge
5 P. O. Box 168
6 Breckenridge, CO 80424
7

8 With a copy (which
9 shall not constitute
10 notice) to:

11 Timothy H. Berry, Esq.
12 Timothy H. Berry & Murphy, P.C.
13 P. O. Box 2
14 Leadville, CO 80461

15 Operator:

16 Breckenridge Nordic Center,
17 LLCL.L.C.
18 P. O. Box 1776
19 Breckenridge, CO 80424

20 With a copy (which
21 shall not constitute
22 notice) to:

23 Mark Richmond, Esq.
24 Richmond, Neiley & Sprouse &
25 Murphy, LLC
26 PO Box 280
27 Frisco, CO 80443

28 Either party hereto may designate in writing from time to time the address of substitute or
29 supplementary persons within the State of Colorado to receive such notices. The
30 effective date of service of any such notice shall be the date such actually delivered, or
31 two business days after notice is mailed to Operator or Town Manager.
32

33 **13.9 Paragraph-Headings.** The ~~paragraph~~ article and section headings herein are for
34 convenience in reference only and are not intended to define or limit the scope of any
35 provision of this Agreement.

36 **13.10 Severability.** If any covenant, condition or provision contained in this
37 Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of
38 any such covenant, condition or provision shall in no way affect any other covenant,
39 condition or provision herein; provided, that the invalidity of any such covenant,
40 condition or provision does not materially prejudice either party hereto in its respective
41 rights and obligations contained in the valid covenants, conditions or provisions of this
42 Agreement.

43 **13.11 Terminology.** Wherever applicable, the pronouns in this Agreement designating
44 the masculine or neuter shall equally apply to the feminine, neuter and masculine

1 genders. Furthermore, wherever applicable within this Agreement, the singular shall
2 include the plural, and the plural shall include the singular.

3 **13.12 Attorney's Fees.** If any action is brought in a court of law by either party to this
4 Agreement concerning the enforcement, interpretation or construction of this Agreement,
5 the prevailing party, either at trial or upon appeal, shall be entitled to reasonable
6 attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution
7 or defense of such action.

8 **13.13 Third Parties.** This Agreement does not, and shall not be deemed or construed
9 to, confer upon or grant to any third party (except a party to whom the Operator may
10 assign this Agreement in accordance with the terms hereof) any right to claim damages or
11 to bring any suit, action or other proceeding against either the Town or the Operator
12 because of any breach hereof or because of any of the terms, covenants, agreements and
13 conditions herein.

14 **13.14 Advances By Town For Operator.** If Operator shall fail to do anything required
15 to be done by it under the terms of this Agreement (other than a failure to make the
16 payments to Town herein required) the Town may, at its sole option, but without any
17 obligation to do so, do or perform such act or thing on behalf of Operator, and in doing so
18 the Town shall not be deemed to be a volunteer; provided, however, that before
19 exercising its rights under this Section Town shall give notice to Operator as provided in
20 Section ~~8.019.4~~ with respect to the giving of notice of default, and shall afford the
21 Operator five (5) days from the giving of such notice within which to do or perform the
22 act required by Operator. Upon notification to Operator of the costs incurred by the
23 Town Operator shall promptly pay to Town the full amount of costs and/or expenses
24 incurred by Town, together with interest thereon at the Past Due Interest Rate.

25 **13.15 Non-Discrimination.** Operator hereby agrees that it (i) will not discriminate
26 against any employee, applicant for employment or patron because of race, color, creed,
27 sex, sexual orientation, marital status, national origin, ancestry, age, religion or
28 disability; (ii) will insure that applicants are employed and that employees are treated
29 during employment without regard to their race, color, creed, sex, sexual orientation,
30 marital status, national origin, ancestry, age, religion or disability; and (iii) will in all
31 solicitations or advertisements for employees to be engaged in the performance of work
32 at Operator's Business state that all qualified applicants will receive consideration for
33 employment without regard to race, color, creed, sex, sexual orientation, marital
34 status, national origin, ancestry, age, religion or disability

35 **13.16 Governmental Immunity.** The parties hereto understand and agree that Town is
36 relying on, and does not waive or intend to waive by any provision of this Agreement, the
37 monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any
38 other rights, immunities, and protections provided by the Colorado Governmental
39 Immunity Act, Section 24-11-111, 10-101, et seq., C.R.S., as from time to time amended,
40 or any other limitation, right, immunity or protection otherwise available to Town, its
41 officers, or its employees.

1 **13.17 No Recording.** Neither this Agreement, nor a copy or memorandum of this
2 Agreement shall be recorded in the real property records of the Clerk and Recorder of
3 Summit County, Colorado. The recording of this Agreement or a copy or memorandum
4 thereof by Operator shall constitute a breach of this Agreement.

5 **13.18 Entire Agreement.** The parties acknowledge and agree that the provisions herein
6 constitute the entire agreement and that all representations made by any officer, agent or
7 employee of the respective parties, unless included herein, are null and void and of no
8 effect. No alterations, amendments, changes or modifications, unless expressly reserved
9 to the Town Manager herein, shall be valid unless executed by an instrument in writing
10 by all the parties with the same formality as this Agreement.

11 **13.19 Termination of Prior Agreement; Unperformed Duties and Obligations To**
12 **Continue. The Nordic License Agreement between the parties dated September 9,**
13 **2003 is terminated; however, such termination shall not affect any unperformed**
14 **obligations or liabilities provided for in such agreement, and such obligations and**
15 **liabilities shall continue in effect until fully performed.**

16 IN WITNESS WHEREOF the parties hereto have executed this Agreement
17 effective as of the date first above written.

18
19 TOWN OF BRECKENRIDGE, a Colorado
20 (AFFIX TOWN municipal corporation
21 SEAL HERE)

22
23 ATTEST:

24
25 By _____
26 Timothy J. Gagen, Town Manager
27
28 _____
29 Mary Jean Loufek, CMC,
30 Town Clerk

31 BRECKENRIDGE NORDIC CENTER,
32 LLC,L.L.C., a Colorado limited liability
33 company

34
35 By _____
36 Eugene L. Dayton, Manager
37

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

5 The foregoing instrument was acknowledged before me this ____ day of
6 _____, ~~2003~~**2008** by Timothy J. Gagen, Town Manager, and
7 Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado
8 municipal corporation.

9
10 WITNESS my hand and official seal.

11
12 My commission expires: _____.

13
14
15 _____
16 Notary Public

17
18 STATE OF COLORADO)
19) ss.
20 COUNTY OF SUMMIT)
21

22 The foregoing instrument was acknowledged before me this ____ day of
23 _____, ~~2003~~**2008** by Eugene L. Dayton, as Manager of Breckenridge
24 Nordic Center, ~~LLC~~**LLC**, a Colorado limited liability company.

25
26 WITNESS my hand and official seal.

27
28 My commission expires: _____.

29
30
31 _____
32 Notary Public
33

EXHIBIT "A"

TO NORDIC LICENSE AGREEMENT BETWEEN THE TOWN OF
BRECKENRIDGE AND BRECKENRIDGE NORDIC CENTER, LLC, L.C.

Description/Depiction of Property

The Property consists of the following:

1. Tract C, Christie Heights Subdivision Filing No. 2, County of Summit and State of Colorado; and
2. The winter trails easements or licenses owned by the Town of Breckenridge and depicted as follows:

See attached Exhibit "A-1", which is incorporated herein by reference

EXHIBIT "B"

TO NORDIC LICENSE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND BRECKENRIDGE NORDIC CENTER, LLC, L.L.C.

Standards of Operation

The following standards shall apply to Operator's use of the Property pursuant to this Agreement from and after the date of this Agreement. However, recognizing that the parties need flexibility in order to address the unique nature of Operator's Business at the Property, as well as unanticipated situations or changed circumstances, it is agreed that the parties may meet and confer from time to time throughout the term of this Agreement to determine if the specific standards set forth below should be refined, amended or eliminated.

A. Operator shall provide a sufficient quantity of properly maintained, **high quality**, rental equipment for the users of Operator's Business. This includes, but is not limited to, different types of skis for different abilities, ages, and experience levels, boots, bindings and poles. Snowshoes and toddler sleds shall also be available for rent. It is possible that Operator may run out of equipment or certain sizes during busy times and this would not constitute a breach of this Agreement.

B. Operator may make available at Operator's Business Nordic ski lessons for all ability levels. Such lessons shall be given by qualified instructors. **PSIA certification is encouraged.**

C. At its option, Operator may sell retail food, beverages, clothing, ski equipment and other related ski accessories. Operator shall collect applicable sales taxes on any such sales. **For all food and beverage sales, Operator will comply with applicable food, beverage, and alcohol requirements of the State of Colorado, Summit County and the Town's Liquor Licensing Authority.**

D. ~~Operator shall be responsible for developing a signage plan in conjunction with the Town.~~ All signs will be designed and constructed to be in accordance with those used by the Town for system trails, as determined by Town staff. Signs indicating the environmental sensitivity of the Cucumber Gulch area should be included as part of the sign plan. The operator shall include language on their signage ensuring that users stay on approved and designated trails. The Town shall have the right to review and approve such signage, including any temporary signs. The Town's approval shall not be unreasonably withheld.

E. All equipment, benches, temporary signage, lighting and all other artificial infrastructure and equipment associated with the operation of the Nordic Center shall be prohibited from Cucumber Gulch during the non-operating season. The operation of Operator's Business at the Property shall otherwise fully comply with the Town's Cucumber Gulch **Recreation** Master Plan, as from time to time amended throughout the

term of this Agreement. Conversely, the Town will remove all equipment **and materials** associated with its summer operations so that Operator's Business will not be disrupted.

F. ~~Initially,~~ **Operator will groom all trails to the highest quality level possible. Quality groomed trails contribute to the success of the operation and help contribute to making Breckenridge a regionally significant Nordic destination.**

Operator shall be responsible for providing all tracksetting and trail grooming services in connection with the operation of Operator's Business. All open trails shall be groomed by noon of each operating day. ~~During snowfall hours, Operator shall groom trails throughout regular operating hours and at least once during the evening hours. The Property will be returned to normal operating status after races or special events prior to opening the next day,~~ **and throughout the day when heavy snowfall conditions exist.** Grooming shall be limited to daylight hours (unless there are special circumstances such as a race or exceptionally heavy snowfall) to reduce the potential for accidents, such as snow cats breaking through the ponds, and to reduce impacts to winter wildlife. Grooming shall be avoided during periods of insufficient snow accumulation and temperature conditions. Operator shall use its best efforts to minimize the disturbance to surrounding property caused by its mechanized trail grooming activities. ~~The parties understand, acknowledge and agree that, at some point during the term of this Agreement that Town may assume the responsibility for tracksetting and trail grooming services at the Property. If that happens, Operator shall be required to reimburse Town the reasonable cost of the provision of such services.~~ Notwithstanding anything contained in this Paragraph to the contrary, the overall quality of Operator's trail grooming at the Property (including both grooming schedule and grooming standards) shall be at least equal to the overall quality of the trail grooming (both grooming schedule and grooming standards) used by the Town at Gold Run. **Grooming logs and trail conditions should be recorded on a daily basis, and such records shall be available on request by the Town.**

G. Operator's Business shall be available throughout the Nordic ski season to host special events, programs and scheduled races in coordination with the Town's "Gold Run Nordic Center" operations. Such special events, programs and races shall be scheduled by Operator and may include, without limitation, middle school, high school and college races, regional race series races, and ski training clinics. Nothing herein contained shall require the Operator to provide services or use without compensation or require the expenditures in excess of anticipated resulting revenues.

H. Operator shall not sell or permit the use of alcohol on the Property at any time without a permit to do so.

I. No motorized vehicles (other than trail-grooming and other trail-maintenance equipment) shall be permitted on the Property.

J. Operator shall not permit any hazardous materials or substances regulated under any environmental law or ordinance to be stored or deposited on the Property or wetlands in contravention of applicable law. Operator shall develop and submit to Town for its

review and approval a written safety and operations plan detailing how Operator would handle a mechanical and equipment failure which results in fuel and/or chemical leaks or spills which impact the Property or wetlands. Town shall not unreasonably withhold its approval of Operator's plan. Once approved by Town, Operator shall implement and adhere to the approved safety and operations plan throughout the Term of this Agreement.

K. Operator shall not open, maintain, or otherwise operate trails in areas containing wetlands or other waters of the U.S. prior to the accumulation of adequate snowfall (2 feet) in a given season, as determined by the Operator with the concurrence of the Town. Operator should conduct a site visit with Town staff to determine whether adequate snowfall (2 feet) has accumulated prior to commencement of grooming in the wetlands.

L. Operator shall minimize the trimming of vegetation, especially hydrophytic vegetation, associated with the maintenance and operation of trails at the Nordic center. The trimming of willows and other hydrophytic vegetation within the trail corridor shall not disturb root structures. Trimming of wetland vegetation should occur in the winter following the first grooming pass. Only the tops of the plants will be trimmed. Snowcats will not be used until a more solid base is established using snowmobiles.

M. Operator shall minimize the number of times the groomed trails cross the wetlands and other waters of the U.S. In the 1999-2000 season, the trails crossed the wetlands six times. Under no circumstances shall this number increase without the prior approval of the Town.

N. Operator, in consultation with the Town, should assess drainage patterns and beaver activity prior to the onset of the winter season to determine fluctuations in drainage patterns. In some instances, subsequent minor adjustments to Nordic trails may be permissible. However, any new winter trail alignments must be approved in writing and in advance by the Town.

O. Large rocks, logs, fallen branches and other debris should be removed by Operator from the trail surface prior to the onset of each winter season.

P. Operator shall minimize damage to any existing vegetation, including trees. Damaged vegetation should be documented, assessed, and repaired or removed. The documentation should be submitted to the Town for review and approval.

Q. Willows shall not be cut lower than 24 inches above ground (after leaf-drop) to minimize disturbance to wetland vegetation.

R. Any grooming instances potentially affecting wildlife or vegetation should be reported to the Town and mitigation measures agreed upon and implemented.

S. If there are future accidents involving grooming equipment (i.e. grooming equipment falling through the ice into beaver ponds), snowmobiles shall be used to

replace snow cats as the required means of trail grooming in wetlands areas. Snowmobiles shall also be required to follow the same guidelines as set forth in this Exhibit C..

T. If at any time snowmobiles create a disturbance to wetland areas, all mechanized trail grooming in wetlands may be prohibited by Town. In such an event, all Nordic trails in wetlands would remain ungroomed and be used for ski touring only.

U. If it is determined through scientific sampling and analysis that the compaction in sensitive soils from grooming is detrimental in the long run to fens, wildlife or vegetation, the Town will reevaluate the use of mechanized grooming in those areas.

V. All temporary Nordic and snowshoe signage shall be removed by the Operator at the end of each winter season.

W. At the end of each winter season, Operator shall replace all fencing and Town signage for Cucumber Gulch (~~environmental awareness and interpretive~~) which Operator removed in connection with the operation of Operator's Business.

X. Operator shall ensure that the condition of the historic cabin on the Property is the same at the end of each winter season as it was at the beginning of such season, normal wear and tear excepted.

EXHIBIT "C"

TO NORDIC LICENSE AGREEMENT BETWEEN THE TOWN OF
BRECKENRIDGE AND BRECKENRIDGE NORDIC CENTER, LLC.

Disclaimer

The purchaser of this ticket agrees and understands that skiing can be hazardous. Trail conditions vary constantly because of weather changes and skier use. Ice, variations in terrain, moguls, forest growth, rocks and debris, other obstacles and hazards, including other skiers, may exist throughout the area. Be aware that snowmaking and snow grooming may be in progress at any time. Always ski in control.

This Disclaimer will be reviewed periodically and is subject to revisions by Operator's insurance company and attorney, so long as the revised language is consistent with Nordic ski industry standards.

BRC Marketing Team's Top Line Report Winter 2007-2008 Recap

The 2007/2008 winter season was once again a good season for travel and tourism, despite even greater challenges due to an ever weakening economy, weakening dollar, increasing costs for gas, the erosion of the national housing market and continued global unrest.

RRC Associates Winter 2007/2008 Research Demographic Data

- There has been a noticeable shift in the number of international visitors, up almost five points over the same period last winter to 17 percent of total visitation.
- The increase in international visitors is offset by a corresponding five point drop in out of state visitors to 58.2 percent of total visitation. Colorado instate visitors grew slightly while day visitors remained the same.
- Key individual states visiting were Texas, Florida, Illinois, and California with the U.K. by far the largest source of international visitors.
- Winter 2007/2008 average visitors were more likely to be 35-years-old. About 40 percent of visitors were single, 25 percent were couples with no children, 23 percent were couples with children and the rest were empty nesters.
- The average household income this winter was up slightly to \$107,298.

Growth in tourism sales tax numbers continued this winter with a gain of 1.1 percent over the same period last year (Nov – April). A large decline in April can be attributed to the Easter holiday being so early in the season. Breckenridge Ski Resort is once again the most visited ski are in the country although slightly down from last season. While the 2007/2008 winter season was reasonably successful in terms of sales tax revenue for the town and visitation to the ski resort, going forward it will be important to recognize the slowdown in the economy as well as monitor the national and global economy to be prepared to address possible changes and obstacles in the future.

Key BRC Metrics:

1. Taxable Lodging Revenue to Central Reservations

Winter 2006/7	Winter 2007/8				Summer 2007	Summer 2008
Actual	Projections	Actual	% of Goal	% Change	Actual	Projections
(Nov - April)	(Nov - April)	(Nov - April)	Achieved	YOY	(May-Oct)	(May-Oct)
\$3,063,097	\$3,333,964	\$2,765,538	82.95%	-9.71%	\$537,036	\$607,511

- Overall Lodging tax was up 3.4 percent for winter 2007/2008 over winter 2006/2007 indicating an overall town wide increase in lodging revenue, driven more by an increase in rates than occupancy which was relatively flat.
- Lodging revenue was down 4 percent for similar destinations across the industry.
- Central Reservations taxable lodging revenue was down 10 percent. The reasons for this decline are:
 - Lack of inventory - demand for lodging was far greater than the supply during the holidays and spring break.
 - Easter weekend coming so early in the season.
 - Great skiing conditions across the country spreading out visitation as compared to the previous two winter seasons.
 - The first signs that Breckenridge is beginning to feel the downturn in the national economy.

- Summer projections were made based on the facts available last summer at the time of last year's Marketing Plan.

2. Lodging Revenue Generated from BRC Group Sales

	Winter 2006/7	Winter 2007/8		Summer 2007	Summer 2008
	Actual	Actual	% Change	Actual	Projections
	(Nov - April)	(Nov - April)	YOY	(May-Oct)	(May-Oct)
Lodging Revenue from Sales	\$332,341	\$784,382	236.02%	\$724,893	\$780,000

- The large increase in revenue from this winter to last winter is due to the revenue generated directly due to Group Sales' efforts from the National Brotherhood of Skiers Mini Summit in January.
- This statistic reflects a revised form of measurement for group sales. This measurement will be called, "Lodging Revenue Generated from Group Sales" and be projected and reported moving forward.

3. Event Attendance

	Winter 2006/7	Winter 2007/8				Summer 2007	Summer 2008
	Actual	Projections	Actual	% of Goal	% Change	Actual	Projections
	(Nov - April)	(Nov - April)	(Nov - April)	Achieved	YOY	(May-Oct)	(May-Oct)
Event Attendance	52,960	65,000	59,985	92.28%	13.26%	55,350	65,000

- Events were strong due to the continued longevity and success of winter events and the improved Spring Massive event for which the attendance has been reported for the first time. All winter events were up except Mardi Gras due to the early timing of Fat Tuesday and extreme cold.
- The summer events projection is being updated to 65,000 from 60,000 to account for Ride the Rockies coming June 21, the 2008 Colorado Stage International Cycle Classic August 22 and growth in Kingdom Days.

4. Customer Satisfaction Scores

	Winter 2006/7	Winter 2007/8				Summer 2007	Summer 2008
	Actual	Projections	Actual	% of Goal	% Change	Actual	Projections
	(Nov - April)	(Nov - April)	(Nov - April)	Achieved	YOY	(May-Oct)	(May-Oct)
Guest Service Scores	87.15%	90.00%	90.00%	100.00%	3.27%	85.00%	90.00%
"Friendliness of town" from RRC score (1 to 5 scale)	4.0	xx	4.0	xx	0%	4.2	4.3

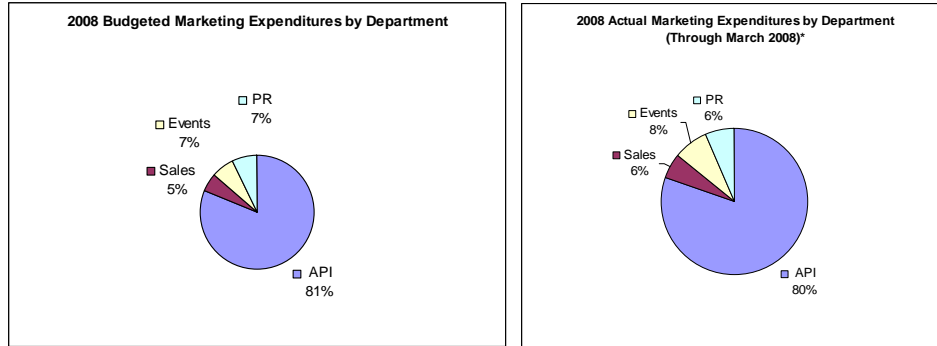
- Guest service scores continue to be very strong year over year.
- This winter 1092 employees have been trained in comparison to 324 in the 2006/2007 winter season. This winter 20 businesses have been Friends Welcome certified as compared to 5 businesses in the 2006/2007 winter season. These increases can be attributed to the turnover at the Friends Welcome Director position last winter and the increased awareness of Friends Welcome in the community.
- Over 6,600 employees have been trained to date and 194 businesses have been Friends Welcome certified since its start in 2000.
- "Overall friendliness of the town" had an average rating this winter of 4.0 on a scale of one to five, five being the best. This is unchanged from 4.0 last season, and up from the 5-year historic average of 3.9.

- “Friendliness of Town” is an RRC survey score that has been previously recorded and is now being reported as a component of the BRC metric. Projections will be made moving forward.

BRC Marketing Efforts at a Glance (Calendar Year)

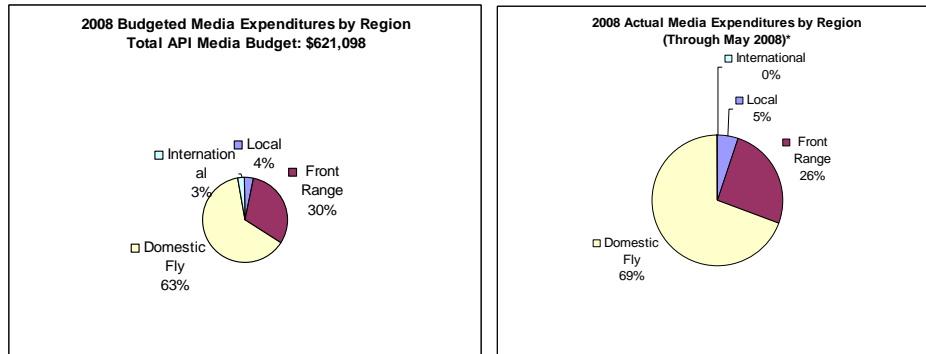
The following charts show the initial breakout of the marketing budget by department and breakouts of the media budget by region and vehicle. This is a quick glance on where we are at versus where we budgeted to be at the time of the 2008 Marketing Plan.

2008 Marketing Budget Breakout by Department



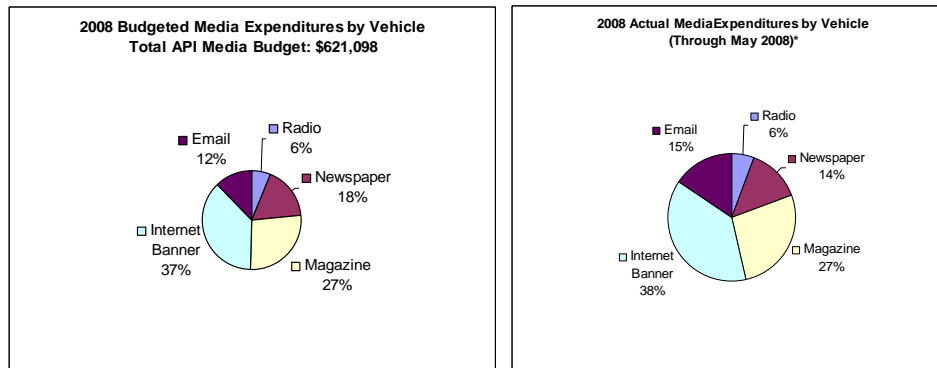
* 23.2% of total budget spent by March 2008

2008 Media Budget Breakout by Region



* 47.5% of Media budget spent through May 2008

2008 Media Budget Breakout by Vehicle



* 47.5% of Media budget spent through May 2008

Key highlights from winter 2007/2008:

- Facilitated the National Brotherhood of Skiers (NBS) (900) and renegade skiers (360) experience Jan 12-18 as the key contact for the group. Total estimated value brought into town from that group was \$1,860,000.
- Attracted television and print media coverage in Breckenridge highlighting winter activities and events including Extreme Makeover Home Edition, Keeping up with the Kardashians, Family Circle Magazine, the Associated Press, Men's Journal, the New York Times, and others highlighting events, activities and the Welcome Center.
- Utilized the approved travel stipend to attract higher quality teams at the 2008 Budweiser Select International Snow Sculpture Championships. This season's event saw 16 teams representing 10 countries
- Took a leading role in the cooperative effort strengthening the in-town Spring Massive events.

Key objectives for summer 2008:

Looking forward to summer, the BRC is cautiously optimistic and expects a solid summer season. According to the Wall Street Journal's *Summer Travel Trends* from April 2008, this summer's travelers will be staying closer to home while destinations will see more international travelers. Visitors will be staying for shorter periods in less expensive accommodations and spending less on food and retail goods. We will be keeping an eye the changing economy, the price of gas, the exchange rate and other factors that influence visitor behavior. We will adjust our plans accordingly.

- Appeared with Breckenridge mountain bikers on the Today Show in a two and a half minute segment and on Good Day New York this April. Coordinated and participated in the Colorado Tourism Office's "Let's Talk the Many Season's of Colorado" trade show and media luncheon in Madison Square Park.
- Redesign gobreck.com. Scheduled to launch this summer, gobreck.com will be more interactive, easier to navigate, have more information for locals and create a faster easier "path of less resistance" to the booking engine. The redesign of gobreck.com, will increase the ease of use and functionality of the Web site. It will feature Breck 150 creative and events for 2009 as well as have a history component beyond the 150th celebration.
- We continue to be in our primary markets of Denver, Colorado Springs, Kansas City, St. Louis, Chicago, Dallas, Houston, Atlanta and Miami and are testing four expanded markets, New York, New Orleans, Philadelphia and Phoenix.
- Work with Beaver Run Resort to highlight Breckenridge for the Meetings Planners International (MPI) Colorado Showcase. Taking place September 28 this event is a wonderful opportunity to showcase Breckenridge to qualified meeting planners.
- Work to showcase Breckenridge as the starting point for the 2008 Colorado Stage International Cycle Classic as well as Ride the Rockies which ends this year's event here on June 21. This event will bring 1,500 to 2,000 riders and their families to town.



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, July 8, 2008 (Regular Meeting); 7:30 p.m.

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES** - June 24, 2008 Regular Meeting *Page 107*
- III APPROVAL OF AGENDA**
- IV COMMUNICATIONS TO COUNCIL**
 - A. Citizen's Comment - (Non-Agenda Items ONLY; 3 minute limit please)
 - B. BRC Director's Report
- V CONTINUED BUSINESS**
 - A. **SECOND READING OF COUNCIL BILL, SERIES 2008 - PUBLIC HEARINGS****
- VI NEW BUSINESS**
 - A. **FIRST READING OF COUNCIL BILL, SERIES 2008 -**
 - 1. Council Bill No. 27, Series 2008-AN ORDINANCE REPEALING AND READOPTING WITH CHANGES SECTION 6-3A-4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE MUNICIPAL OFFENSE OF HARASSMENT** *Page 111*
 - 2. Council Bill No. 28, Series 2008- AN ORDINANCE APPROVING A LEASE WITH TIMBERLINE LEARNING CENTER, A COLORADO NONPROFIT CORPORATION** *Page 116*
 - 3. Council Bill No.29, Series 2008- AN ORDINANCE REPEALING AND READOPTING WITH CHANGES APPENDIX "A" TO CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE SUBDIVISION STANDARDS", CONCERNING REQUIRED SUBDIVISION PLAT CERTIFICATES** *Page 139*
 - B. **RESOLUTIONS, SERIES 2008- None**
 - C. **OTHER- None**
- VII PLANNING MATTERS**
 - A. Planning Commission Decisions of July 1, 2008 *Page 3*
- VIII REPORT OF TOWN MANAGER AND STAFF***
- IX REPORT OF MAYOR AND COUNCILMEMBERS***
 - A. CAST/MMC (Mayor Warner)
 - B. Breckenridge Open Space Advisory Commission (Mr. Rossi)
 - C. BRC (Mr. Bergeron)
 - D. Summit Combined Housing Authority (Ms. McAtamney)
 - E. Breckenridge Heritage Alliance (Mr. Joyce)
- X OTHER MATTERS**
- XI SCHEDULED MEETINGS** *Page 149*
- XII ADJOURNMENT**

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

CALL TO ORDER AND ROLL CALL

Mayor Warner called the June 24, 2008 Town Council Meeting to order at 7:36 p.m. The following members answered roll call: Mr. Bergeron, Mr. Joyce, Mr. Mamula, Ms. McAtamney, Mr. Millisor, Mr. Rossi, and Mayor Warner.

APPROVAL OF MINUTES – June 10, 2008 Regular Meeting

With no changes, Mayor Warner declared the minutes were approved.

APPROVAL OF AGENDA

Town Manager, Tim Gagen, commented that Council Bill 26, Series 2008 will be removed from the agenda.

COMMUNICATIONS TO COUNCIL

A. Citizens Comment - (Non-Agenda Items ONLY; 3 minute limit please)

- 1.) Marty Lessow- Kudos to Town about the Carter Park Dog Park. Was impressed with the new Riverwalk Center.
- 2.) Chris Johnson- Had skateboarding down Main Street the other day in celebration of National Skateboarding Day. Concerned that people are getting tickets for riding on roads and they don't think skateboarding should be banned from Town streets. They are using their skateboards at transportation. Asked Council to look into what we can do to come to a compromise.
- 3.) Clayton Conway- Asked if Council could overturn a State Law. Hopes we can come up with something
- 4.) Carolyn Foley- Wondering if they can have a probationary period for the people that have warnings already.
- 5.) Skyler Grochos- Tourists yell at us for skating on sidewalk so where are they supposed to skate for transportation. Thanked Council for the skateboard park and camps.
- 6.) Skylers mom- Reiterated that the skateboards are a mode of transportation
- 7.) Erin Mobley- Thanks for putting the bike path at the bottom of Ski Hill
- 8.) Willy Patterson- Thanks Council for looking at this issue. Told Council that the sidewalks are really bad. The street is smoother.
- 9.) Carolyn Castanza- commented that it is a tourist town and that people don't always know the laws. The bikes and boarders can be a problem and she hopes the Council will consider the drivers. Feels roads are for motor vehicles.

B. BRC Director's Report- Corry Mihm- Research Data- Co State tourism numbers for 2007 were up 2006. She also stated other statistics. Breckenridge is tied for 5th & 6th most visited destination location. Breckenridge Ski Resort was the most visited ski resort in the nation. Length of stay has been down in CO. Occupancy figures for Breckenridge Lodging- June numbers down, July up, August down and September up. Summer business is not hurting as much as some other resorts we are competitive with. Room revenue should hopefully be better than our competition. On-line bookings are ahead of our competition. Channel 2 was here for Kingdom days. There was good attendance for the weekend. Increase in the number of spectator for Outhouse races. Editor of American Cowboy Magazine was here. A lot of interest in Breck 150. Hosted French Tour Operator.

Mr. Mamula- What percentage of CO growth is tourism?

Mr. Rossi- questioned whether she had data on length of stay of occupancy this summer. She will get that.

There was some further discussion by Staff, Council and Corry regarding the state of tourism in Colorado and Breckenridge in particular.

Mayor Warner questioned whether there will be a sun setting of the tourism board again. She commented that every fiscal year they are at risk.

Citizen Marty Lessow commented that he is nervous because Main Street has a lot of people on it but they are not carrying shopping bags. We need to continue to realize that even though people may still be coming here and occupancy rates are up that retail sales are declining because people are not shopping as much.

CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2007 & 2008 – PUBLIC HEARINGS**

1. Council Bill No. 24, Series 2008- AN ORDINANCE AMENDING SECTION 5-2-3-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE PLACEMENT AND REMOVAL OF GARBAGE CANS AND RECEPTACLES

Tim Berry commented that there were some changes from the work session. He handed out a version with the changes which he explained.

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

Mr. Bergeron moved to approve Council Bill No. 24, Series 2008 on second reading in the version that was handed out. Mr. Rossi made the second. Motion passed 7-0.

2. Council Bill No. 25, Series 2008- AN ORDINANCE ADOPTING A SUSTAINABLE BUILDING CODE FOR THE TOWN OF BRECKENRIDGE

Tim Berry commented that the ordinance would adopt a new sustainable building code for the Town. There were no changes from first reading.

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

Ms. McAtamney moved to approve Council Bill No. 25, Series 2008 on second reading. Mr. Bergeron seconded. Motion passed 7-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2008-

1. Council Bill No. 26, Series 2008- AN ORDINANCE APPROVING A CONTRACT OF SALE WITH COLORADO MOUNTAIN COLLEGE FOUNDATION, INC., A COLORADO NONPROFIT CORPORATION
This was removed from the agenda.

B. RESOLUTIONS, SERIES 2008

1. A RESOLUTION ADOPTING THE TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN, DATED MARCH 25, 2008, AS THE TOWN'S ANNEXATION PLAN PURSUANT TO SECTION 31-12-105(1)(E), C.R.S.

Tim Berry commented that the Municipal Annexation Act requires the Town to annually adopt an “annexation plan.” The adoption of the annexation plan is a precondition to doing any annexation. The Town has historically complied with requirement of the law by adopting its own comprehensive plan as the Town’s annexation plan. The resolution will adopt the Town’s new Comprehensive Plan as the Town’s required annexation plan.

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

Mr. Millisor moved to approve the Resolution, 2008. Ms. McAtamney seconded. Motion passed 7-0.

D. OTHER

PLANNING MATTERS

• Planning Commission Decisions of June 17, 2008.

With no requests for call up, Mayor Warner stated the Planning Commission decisions of the June 17, 2008 meeting would stand as presented.

Town Council Representative, Mr. Mamula commented that he did bring up Landscaping Plans. A couple houses were so close to the envelope that there was not room for adequate landscaping. Talked a little about Theobald’s remodel on the corner of Main and Ski Hill. He is very impressed with the way staff handles Planning and he really has faith in the staff. Council nominated Mr. Mamula to be the

liaison for the Planning Commission. Mr. Mamula commented that he will have to miss some meetings. Mayor Warner commented that if he was allowed to he would like to be the substitute.

Mr. Rossi moved to appoint Mr. Mamula as the Planning Commission Liaison. Mr. Millisor made the second. All were in favor.

REPORT OF TOWN MANAGER AND STAFF

Town Manager, Tim Gagen, commented that he asked Kim to convene the grants committee since they had their first request to use the new RWC. Kim and Vanessa also mentioned a potential swift fund project. Asked how Council wanted to proceed with skateboarding group. The Council agreed that they wanted it on the next agenda. Tim gave some background info on why the owner of the Speakeasy Theater has been contacting staff and Council. Council agreed that they could not make any commitment. There was further discussion. The Council stands behind the Speakeasy but they can't make any commitments especially since they don't own the building. Staff will write a letter in response to Guy's request for Council support.

Solar Panels- The Council was in favor of doing something such as waiving building permit fee if someone is adding solar panels to an existing building. Staff will research and take a crack at putting something together as a starting point.

REPORT OF MAYOR AND COUNCILMEMBERS

A. Report of Mayor (CAST/MMC)

Mayor Warner commented that he met with several Mayors/Managers when on Ride the Rockies.

B. Breckenridge Open Space Advisory Commission (Mr. Rossi)

Mr. Rossi had nothing to report.

C. BRC (Mr. Bergeron)

Mr. Bergeron had nothing to report.

D. Summit Combined Housing Authority (Ms. McAtamney)

Ms. McAtamney had nothing to report.

E. Breckenridge Heritage Alliance (Mr. Joyce)

Mr. Joyce handed out a brochure. This was their annual meeting, elected new officers, reviewed financial statements. They are going to take the point on looking into coming to the Town for a space for non-profits. They received 2 grants. They talked about Engine #9.

OTHER MATTERS

Mr. Bergeron asked if we have heard back from Mr. Gilchrist. Tim Gagen commented that we believe that we have not heard back because of other legal matters that they feel may be going on. Mr. Bergeron asked about giving the Sleigh Rides a tent if possible. Mr. Mamula asked how the Chief feels about not giving tickets in the 2am-6am hours when there is no snow. Chief Holman commented that he has already started implementing this and they are going to change the signs to say that parking restrictions between the 2am-6am hours will be enforced November–April in Town Parking lots, Main Street and Ridge Street. They will do a press release on this as well as on no re-parking. Mayor Warner commented that the Town Party was great. He wants to look at being greener at events like that and encourage reuse of cups. He would like the green team to look how our events can be more sustainable. Mentioned a request from the Summit Huts Association in regard to building a hut on Town owned property. Mr. Bergeron mentioned that the dog park needs a sign that states that people must attend to their dogs and can not leave them there unattended.

ADJOURNMENT

With no further business to discuss the regular meeting was adjourned at 9:06 pm.

Submitted by Alison Kellermann, Administrative Services Manager

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, June 24, 2008
PAGE 4

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Revised Harassment Ordinance

DATE: June 30, 2008 (for July 8th meeting)

The section of the Town Code dealing with the municipal offense of “harassment” was adopted in 1981. As the term implies, harassment is a crime that involves certain types of conduct that are intended to harass, annoy or alarm another person.

The Town’s current Harassment Ordinance does not deal with harassing conduct done by computer or telephone. We have recently had an incident where a person received numerous text messages that we believe were intended to harass the recipient of the messages. However, because the Town’s current Harassment Ordinance does not deal specifically with text messaging the offense could not be filed in the Town’s Municipal Court. The state Harassment Statute does deal with such modern-day crimes as harassment by computer and telephone, so the charges were ultimately filed in the Summit County Court under the state statute.

Seth Murphy, the Town’s Municipal Court Prosecutor, has suggested that the Town’s current Harassment Ordinance be updated along the lines of the current state Harassment Statute. I agree. Updating the ordinance will allow the Town to prosecute all forms of harassment in the Municipal Court, which I believe to be in the Town’s best interest.

Enclosed is a proposed ordinance repealing and replacing the current Town’s Harassment Ordinance with language taken directly from the state Harassment Statute. You will notice that section (A)(4) specifically deals with harassment done via telephone, computer, computer network or computer system. Other sections of the proposed ordinance track the language of other forms of harassment as defined in the current state law.

The current Town harassment ordinance is shown in strikethrough language at the end of the proposed ordinance.

Fro the reasons described above, it is my recommendation that the proposed ordinance be adopted .

I will be happy to discuss this ordinance with you next Tuesday.

1 **FOR WORKSESSION/FIRST READING – JULY 8**

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2008

9
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES SECTION 6-3A-4
11 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE MUNICIPAL OFFENSE OF
12 HARASSMENT

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

16
17 Section 1. Section 6-3A-4 of the Breckenridge Town Code, entitled “Harassment”, is
18 amended so as to read in its entirety as follows:

19
20 6-3A-4: HARASSMENT:

21
22 **A. A person commits harassment if, with intent to harass, annoy, or alarm**
23 **another person, he or she:**

24
25 **1. Strikes, shoves, kicks, or otherwise touches a person or subjects him to**
26 **physical contact; or**

27
28 **2. In a public place directs obscene language or makes an obscene gesture to**
29 **or at another person; or**

30
31 **3. Follows a person in or about a public place; or**

32
33 **4. Initiates communication with a person, anonymously or otherwise by**
34 **telephone, computer, computer network, or computer system in a manner**
35 **intended to harass or threaten bodily injury or property damage, or makes**
36 **any comment, request, suggestion, or proposal by telephone, computer,**
37 **computer network, or computer system that is obscene; or**

38
39 **5. Makes a telephone call or causes a telephone to ring repeatedly, whether**
40 **or not a conversation ensues, with no purpose of legitimate conversation; or**

41
42 **6. Makes repeated communications at inconvenient hours that invade the**
43 **privacy of another and interfere in the use and enjoyment of another's home**
44 **or private residence or other private property; or**
45

1 **7. Repeatedly insults, taunts, challenges, or makes communications in**
2 **offensively coarse language to, another in a manner likely to provoke a**
3 **violent or disorderly response.**

4
5 **B. As used in this section, unless the context otherwise requires, "obscene"**
6 **means a patently offensive description of ultimate sexual acts or solicitation**
7 **to commit ultimate sexual acts, whether or not said ultimate sexual acts are**
8 **normal or perverted, actual or simulated, including masturbation,**
9 **cunnilingus, fellatio, anilingus, or excretory functions.**

10
11 **C. Any act prohibited by subsection (A)(4) of this section may be deemed to**
12 **have occurred or to have been committed at the place at which the telephone**
13 **call, electronic mail, or other electronic communication was either made or**
14 **received.**

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

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

23
24 Section 4. The Town Council hereby finds, determines and declares that it has the power
25 to adopt this ordinance pursuant to: (i) the provisions of Sections 31-15-103 and Section 31-15-
26 401, C.R.S. (concerning municipal police powers); and (ii) the powers possessed by home rule
27 municipalities in Colorado.

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

31
32 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
33 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
34 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
35 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
36 Town.

37
38 TOWN OF BRECKENRIDGE, a Colorado
39 municipal corporation

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42
43 By _____
44 John G. Warner, Mayor

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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

CURRENT TOWN HARASSMENT ORDINANCE

6-3A-4: HARASSMENT:

It shall be unlawful to commit harassment. An actor commits harassment if, with intent to harass, annoy or alarm any other person, he unlawfully:

A. ~~Strikes, shoves, kicks or otherwise touches a person or subjects the person to physical contact. (Ord. 13, Series 1981)~~

B. ~~Initiates communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily harm or property damage or makes any comment, request, suggestion or proposal by telephone which is obscene or describes a lewd and indecent display.~~

C. ~~Makes a telephone call or causes a telephone to ring repeatedly whether or not a conversation ensues, with no purpose of legitimate conversations. (Ord. 1, Series 1984)~~

D. ~~Repeatedly insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response.~~

E. ~~Repeatedly insults, taunts or challenges another in a public place by means of statements or gestures calculated to cause embarrassment to the person to whom the conduct refers when said statements or gestures signify facts or circumstances for which the actor does not or cannot provide a factual basis.~~

F. ~~Following Persons:~~

1. ~~Follows a person in or about a public place, after demand by the person or on his behalf, has been made that the actor stop following the person.~~

2. ~~For purposes of this subsection F, follow or following means to intentionally stay or attempt to stay in close proximity of another by means of being in the same vicinity as another person or by means of anticipating another's destination. Whether an actor is in close proximity to another will be a factual determination depending upon the means used to effectuate the following.~~

3. ~~It shall be an affirmative defense to prosecution under this subsection F that the defendant was engaged in a lawful investigation of the person, was attempting to serve process upon the person, or was attempting to deliver an emergency message to the person, and said following was within the scope of such activity.~~

G. ~~Any act prohibited by subsections B or C of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received. (Ord. 13, Series 1981)~~

TO: Breckenridge Town Council
FROM: Laurie Best, Community Development Department
RE: Timberline Learning Center-Lease
DATE: June 26, 2008 (for July 8th)

The Timberline Learning Center (TLC) is scheduled to open in August. The childcare center will be operated in the Town-owned building which is under construction at 170 Valley Brook Street. Enclosed in your packets is a lease between the Town and TLC that authorizes TLC to occupy the building for the purpose of operating a childcare center. Staff has worked with TLC on the lease and we believe the draft that is included in your packet protect the Town's interest while making additional childcare slots available to the community. Following is a summary of the key issues/terms addressed in the lease:

- Five year lease- term beginning August 1, 2008;
- Lease includes furnishing and fixtures owned by the Town;
- TLC will be responsible for building maintenance, upkeep, and repair;
- TLC will be required to obtain loss, liability, and worker's compensation insurance;
- TLC will be required to submit an annual report/budget for Town approval to address budget, salaries, rates, capital reserve account, fundraising, etc.

The Lease is scheduled for first reading this evening. Staff will be available during the work session to answer questions. Thank you.

1 ***FOR WORKSESSION/FIRST READING – July 8***

2
3 COUNCIL BILL NO. ____

4
5 Series 2008

6
7 AN ORDINANCE APPROVING A LEASE WITH TIMBERLINE LEARNING CENTER, A
8 COLORADO NONPROFIT CORPORATION
9 (Child Care Centerq170 Valley Brook Road)

10
11 WHEREAS, the Town of Breckenridge owns the real property located at 170 Valley
12 Brook Road; and

13
14 WHEREAS, the Town is willing to lease such real property to Timberline Learning
15 Center, a Colorado nonprofit corporation, for use as a child care facility; and

16
17 WHEREAS, a proposed Child Care Center Lease has been prepared by the Town
18 Attorney and reviewed by the Town Council; and

19
20 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

21
22 The council may lease, for such time as council shall determine, any real or
23 personal property to or from any person, firm, corporation, public and private,
24 governmental or otherwise.

25
26 and;

27
28 WHEREAS, the term of the proposed Lease is five years, and Section 1-11-4 of the
29 Breckenridge Town Code requires that any real estate lease entered into by the Town which
30 exceeds one year in length must be approved by ordinance.

31
32 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
33 BRECKENRIDGE, COLORADO:

34
35 Section 1. The proposed Child Care Center Lease between the Town and Timberline
36 Learning Center, a Colorado nonprofit corporation, a copy of which is marked Exhibit "A",
37 attached hereto and incorporated herein by reference, is approved, and the Town Manager is
38 hereby authorized, empowered, and directed to execute such Lease for and on behalf of the
39 Town of Breckenridge.

40
41 Section 2. Minor changes to or amendments of the approved Lease may be made by the
42 Town Manager if the Town Attorney certifies in writing that the proposed changes or
43 amendments do not substantially affect the consideration to be received or paid by the Town
44 pursuant to the approved agreement, or the essential elements of the approved agreement.

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

Section 4. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2008, 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:

Mary Jean Loufek, CMC,
Town Clerk

1 ***DRAFT June 30, 2008 DRAFT***

2
3 CHILD CARE CENTER LEASE

4
5 THIS CHILD CARE CENTER LEASE ("Lease") is dated _____,
6 2008 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation
7 ("**Landlord**") and TIMBERLINE LEARNING CENTER, a Colorado nonprofit corporation
8 ("**Tenant**").
9

10 **ARTICLE 1**

11 **BASIC LEASE PROVISIONS**

12 1.1 Leased Premises. For the term and upon the conditions of this Lease, Landlord
13 leases to Tenant, and Tenant leases from Landlord, the premises known as 170 Valley Brook
14 Road, Breckenridge, Colorado ("**Leased Premises**"), together with the Landlord's personal
15 property described on the attached **Exhibit "A"** ("**Leased Personal Property**"). Unless the
16 context clearly requires otherwise, the term "Leased Premises" includes both the leased real
17 property and the Leased Personal Property.

18 1.2 Use Of Leased Premises. Tenant will use the Leased Premises for the operation of
19 a licensed child care facility to:

- 20 (a) serve children from infancy through school age;
- 21 (b) provide a preschool program for children aged 2½ years to 5 years;
- 22 (c) encourage community involvement and volunteerism with respect to early
23 childhood education in Summit County, Colorado; and
- 24 (d) provide education and care of children away from their homes, that is
25 available to the general public, in a manner that will enable the residents of Summit County to be
26 gainfully employed.

27 The Leased Premises may also be used by Tenant for functions ancillary to the described
28 programs, such as staff meetings and training, Board of Director meetings, classes for parents
29 and social functions related directly to the operation of the Tenant's child care business at the
30 Leased Premises, such as graduation. Tenant will not use the Leased Premises for any other
31 purpose without Landlord's prior written consent.

32 1.3 Term. The term of this Lease ("**Term**") begins at 12:01 A.M. on August 1, 2008
33 and ends, unless sooner terminated as provided in this Lease, at 11:59 P.M. on July 31, 2013.
34 Each lease year ("**Lease Year**") commences on August 1st and ends on the following July 31st.

35 1.4 Surrender of Leased Premises.

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

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

21 1.5 Holdover. If Tenant continues to hold possession of the Leased Premises after the
22 natural expiration of the Term of this Lease, then such holding over is not a renewal of the Lease
23 for the whole term, but Tenant will be a tenant from month to month only under the same terms
24 and conditions as are provided in this Lease; EXCEPT Landlord may, at Landlord's option,
25 establish a new monthly rent for any holdover period upon ten days' prior written notice to
26 Tenant.

27 1.6 Landlord's Governmental Powers. Tenant acknowledges that Landlord has, and
28 will continue to have, those governmental rights, powers, and authority provided by applicable
29 law, including, without limitation, the Breckenridge Town Charter and the ordinances, rules and
30 regulations of the Town of Breckenridge. Tenant also acknowledges this Lease does not limit or
31 restrict the Landlord's rights, powers, and authority over the Leased Premises when Landlord is
32 acting in its governmental capacity as a home-rule municipality under Colorado law.

33 1.7 "Will" Is Mandatory. Whenever it is provided in this Lease that a party "**will**"
34 take some action or refrain from taking such action, such term indicates a mandatory obligation
35 by such party either to take or to refrain from taking action, whichever is applicable in the
36 context of the provision.

37 **ARTICLE 2**

38 **RENT AND SECURITY**

1 2.1 Rent. At the time of the signing of this Lease Tenant has paid to Landlord rent for
2 the full Term of this Lease in the amount of Ten Dollars (\$10.00), the receipt and sufficiency of
3 which is hereby acknowledged by Landlord.

4 2.2 Landlord's Lien and Security Interest. Landlord has a first security interest and a
5 lien for all sums of money becoming due from Tenant upon all goods, wares, equipment,
6 fixtures, furniture, inventory, and other personal property of Tenant located within or upon the
7 Leased Premises, and such property may not be removed from the Leased Premises without the
8 express written consent of Landlord until all sums of money then due to Landlord under this
9 Lease have been paid. In the event of Tenant's default under this Lease Landlord may foreclose
10 the security interest and lien in the manner provided by law. Tenant understands that Landlord
11 may file a financing statement (and necessary extensions, renewals or replacements thereof
12 throughout the Term of this Lease) in a form legally sufficient to perfect the security interest in
13 the lien granted to Landlord pursuant to this Section.

14 **ARTICLE 3**

15 **LANDLORD'S DISCLAIMER AND EXCULPATORY PROVISIONS**

16 3.1 "As Is" Condition of Leased Premises. Tenant acknowledges that it had adequate
17 and fair opportunity to inspect the Leased Premises prior to taking possession. The Leased
18 Premises are leased by Landlord and accepted by Tenant in "**AS IS**" condition. Tenant's act of
19 taking possession of the Leased Premises is conclusive evidence that Tenant accepts the Leased
20 Premises in then "**AS IS**" condition, and that the Leased Premises were in satisfactory condition
21 at the time of commencement of Tenant's possession.

22 3.2 Landlord's Non-liability. As a material part of the consideration to Landlord for
23 this Lease, Tenant assumes all risk of damage to property or injury to persons in or upon the
24 Leased Premises from any cause other than Landlord's gross negligence or intentional wrongful
25 act, and Tenant hereby waives all claims in respect thereof against Landlord.

26 **ARTICLE 4**

27 **TENANT'S AFFIRMATIVE OBLIGATIONS**

28 4.1 Required Licenses. Throughout the Term of this Lease Tenant will obtain and
29 maintain in full force and effect:

30 (a) a Town of Breckenridge Business and Occupational License Tax
31 ("BOLT") license; and

32 (b) all licenses, consents, and permits necessary for the use of the Leased
33 Premises as a licensed child care center.

34 Tenant will advise Landlord immediately if Tenant or Tenant's operations at the Leased
35 Premises become subject to any material inquiry or investigation by any governmental entity

1 4.2 Utilities. Tenant will pay before delinquency all charges for utilities used or
2 consumed by Tenant at the Leased Premises, including, without limitation, water, gas, heat,
3 electricity, power, telephone, cable television, internet service, other communications services,
4 and sewer service charges. Tenant will place all utility contracts in its sole name. Tenant may
5 contest any utility charge so long as Tenant diligently prosecutes the contest pursuant to
6 appropriate legal proceedings. If any unpaid utility charge leads to a lien being filed against the
7 Leased Premises, Tenant will promptly cause such lien to be discharged.

8
9 4.3 Taxes.

10 (a) Taxes Defined. As used in this Lease, the term "**Taxes**" means all personal
11 property and real property taxes levied, assessed, or imposed arising out of Tenant's occupancy
12 and use of the Leased Premises pursuant to this Lease.

13 (b) Possessory Interests. Pursuant to Section 39-3-105, C.R.S., all real or
14 personal property owned by Landlord is exempt from taxation. However, the parties
15 acknowledge that Tenant's occupancy and use of the Leased Premises pursuant to this Lease
16 may be deemed to be a taxable possessory interest pursuant to Section 39-1-103(17)(a), C.R.S.

17 (c) Tenant To Pay Taxes. All Taxes that are lawfully assessed will be paid by
18 Tenant in a timely manner, and Tenant will indemnify and hold Landlord harmless from such
19 Taxes. Prior to the last day for payment of such Taxes without penalty or interest, Tenant will
20 provide to Landlord a photostatic copy of the receipt(s) or cancelled check(s) showing payment
21 of the Taxes. Tenant may pay any Taxes in installments if permitted by law.

22 (d) Tenant's Right to Contest Taxes. If Tenant is liable for the payment of any
23 Taxes the Tenant has the right, at its sole expense, to contest the Taxes by the commencement
24 and prosecution, in good faith and with due diligence, of appropriate legal proceedings; provided
25 that Tenant makes timely payment of such Taxes if Tenant loses the contest. Tenant will advise
26 Landlord prior to instituting any such contest and will as a condition of exercising such right
27 provide Landlord such reasonable assurance as it may request that such contest will be in
28 compliance with the provisions of this Section. Landlord, at Tenant's sole cost and expense, will
29 reasonably cooperate with Tenant in any such contest, may join in the contest, and will execute
30 and deliver such documents and instruments as may be necessary or appropriate for prosecuting
31 an effective contest.

32 4.4 Maintenance of the Leased Premises and Related Obligations.

33 (a) Tenant's Maintenance Duties. Tenant will keep and maintain the non-
34 structural portions of the Leased Premises in a good and sanitary condition and state of repair at
35 its cost. This obligation includes, without limitation, maintaining the nonstructural elements of:
36 the interior and exterior of the building; the roof; and the mechanical, heating, ventilation, and air
37 conditioning system and the PV panels. Tenant will also provide all required watering, mowing,
38 and maintenance of the landscaping of the Leased Premises, and the playground area and
39 equipment. Landlord will provide Tenant with a maintenance schedule for the mechanical,
40 heating, ventilation, and air conditioning system and the PV panels, as well as the landscaping,

1 and Tenant will perform all required maintenance in accordance with the Town's schedule.
2 Tenant shall submit a maintenance and repair log to the Town for approval annually. The log
3 shall describe all maintenance that was performed along with the date and the name of the
4 company that performed the work. This log shall include all scheduled maintenance as well as
5 additional maintenance and repair that was performed. The maintenance and repair log shall be
6 submitted with the annual budget report described in Section 12.1 Tenant will not permit any
7 person to provide maintenance work at the Leased Premises until such person has been approved
8 by the Town.

9 (b) Landlord Maintenance Duties. Landlord will maintain the foundation and
10 the structural portions of the Leased Premises.

11
12 4.5 Snow Removal. Tenant will provide all necessary snow and ice plowing and
13 removal from the parking lot(s) of the Leased Premises, and from all sidewalks and walkways of
14 the Leased Premises.

15 4.6 Janitorial Services. Tenant will keep the Leased Premises in a clean and sanitary
16 condition at all times, and will arrange for and pay the cost of all required janitorial and trash
17 removal services required for the Leased Premises. All contracts for required janitorial services
18 for the Leased Premises will be placed solely in Tenant's name.

19 4.7 Security. Tenant will provide at its cost all security required to protect the health,
20 welfare, and safety of the users of the Leased Premises.

21 4.8 Signs. Tenant may paint or affix any signs upon the Leased Premises as Tenant
22 will determine; provided, that prior to painting or affixing a sign the Tenant will obtain all
23 necessary sign permit(s) from Landlord, acting in its governmental capacity. Tenant will
24 maintain all signs located upon the Leased Premises in good, clean, and attractive condition.
25 Tenant will remove all signs placed by Tenant upon the Leased Premises at the expiration or
26 earlier termination of the of this Lease, and Tenant will repair any damage or injury to the
27 Leased Premises caused thereby. If not so removed by Tenant, the Landlord may remove such
28 sign(s) at Tenant's expense.

29 4.9 Inspection And Entry. Landlord and Landlord's authorized representatives may
30 enter the Leased Premises at all times during reasonable hours for the purposes of inspecting the
31 Leased Premises and taking other lawful action. Landlord may go upon the Leased Premises at
32 all times and:

33 (a) make any necessary repairs to the Leased Premises and perform any work
34 which may be necessary to comply with this Lease or with any laws, ordinances, rules or
35 regulations of any public authority or that the Landlord may deem necessary to prevent waste or
36 deterioration of the Leased Premises;

37 (b) post any notice provided for by law, or

38 (c) otherwise to protect any and all rights of Landlord

1 without any liability to Tenant for damages or any abatement of rent. Nothing in this Section
2 implies any duty on the part of the Landlord to do any work which under any provision of this
3 Lease the Tenant is required to do, nor will it constitute a waiver of Tenant's default in failing to
4 do the same. No reasonable exercise by the Landlord of any rights herein reserved will entitle the
5 Tenant to any damage or compensation of any kind from Landlord for any injury, loss, damage
6 or inconvenience occasioned thereby, nor to any abatement of rent.

7
8 4.10 Compliance With Laws. Tenant will at its cost comply with all laws, ordinances,
9 orders, and regulations of all governmental authorities with respect to the use of the Leased
10 Premises and the operation of its business at the Leased Premises, including, without limitation,
11 applicable county and state regulations pertaining to the operation of licensed child care
12 facilities. A judgment of any court of competent jurisdiction or the admission of Tenant in any
13 action or proceeding, whether Landlord is a party thereto or not, that Tenant has violated any
14 law, ordinance, requirement or order in the use of the Leased Premises, will be conclusive of the
15 fact as between Landlord and Tenant.

16 **ARTICLE 5**

17 **TENANT'S NEGATIVE OBLIGATIONS**

18 5.1 Alterations. Tenant will not make any change, improvement or addition to, or
19 alteration of the Leased Premises without Landlord's prior written consent. Any change,
20 improvements, addition or alteration to the Leased Premises will become the property of the
21 Landlord; will be considered as part of the Leased Premises; and may not be removed from the
22 Leased Premises by Tenant upon the expiration or earlier termination of this Lease.

23 5.2 Assignment And Subletting. Tenant will not assign, sublet, license, or allow any
24 other person or entity to occupy or use any or all of the Leased Premises without first obtaining
25 Landlord's prior written consent. Any assignment, sublease, or license made by Tenant without
26 Landlord's prior written consent is voidable and, at Landlord's election, constitutes a default
27 under this Lease. No consent by Landlord to any of the above acts will constitute a further
28 waiver of the provisions of this Section. If Landlord chooses to consent to an assignment,
29 sublease, or license Tenant may be required, as a condition of granting consent, to pay
30 Landlord's reasonable costs incurred in considering the proposed action including, without
31 limitation, legal fees and credit checks.

32 5.3 Assignment By Operation of Law. Neither this Lease nor any interest herein is
33 assignable or transferable by operation of law, and if any proceeding under the Bankruptcy Code,
34 is commenced by or against Tenant, or if Tenant is adjudged insolvent, makes any assignment
35 for the benefit of creditors, or if a post-judgment writ of attachment or execution is levied on the
36 leasehold estate created by this Lease and not released or satisfied within 30 days, or if a receiver
37 is appointed for Tenant with authority to take possession or control of the Leased Premises or the
38 business conducted therein by Tenant, then this Lease, at Landlord's option, will immediately
39 terminate and will not be treated as an asset of Tenant.

40 5.4 Waste or Nuisance. Tenant will not commit or permit the commission of any
41 waste upon the Leased Premises. Tenant will not commit or permit the commission of public or

1 private nuisance upon the Leased Premises. Tenant will not do any act or thing on the Leased
2 Premises that is prohibited by law.

3 5.5 Liens. Tenant will not permit any lien to be filed against the Leased Premises
4 including, without limitation, a lien arising out of any work performed, materials furnished, or
5 obligations incurred by Tenant. If a lien to enforce any claim for utilities, services or materials
6 alleged to have been provided in connection with the Leased Premises is recorded, Tenant will
7 cause the lien to be released of record within 60 days after the lien statement is recorded. Prior to
8 commencing the construction of any improvements upon the Leased Premises, Tenant will post
9 and keep posted notice of Landlord's non-liability of the Leased Premises pursuant to Section
10 38-22-105, C.R.S.

11

12

ARTICLE 6

13

INSURANCE

14 6.1 Landlord's Building Insurance. Landlord will at its cost keep the Leased
15 Premises insured against damage or destruction by fire, earthquake, vandalism, and other perils
16 in the amount of the full replacement value of the improvements located on the Leased Premises,
17 as such value may exist from time to time.

18 6.2 Tenant's Personal Property Insurance. Tenant will at its cost to keep its personal
19 property and trade fixtures located in or upon the Leased Premises insured with "all risks"
20 insurance in an amount to cover one hundred percent (100%) of the replacement cost of the
21 property and the fixtures.

22 6.3 Tenant's Liability Insurance. Tenant will at its cost maintain public liability
23 insurance covering Tenant's operations on the Leased Premises with minimum combined single
24 limits of not less than One Million Dollars (\$1,000,000.00). Tenant's liability insurance policy
25 will be endorsed to include the Landlord as an additional insured.

26 6.4 Tenant's Activities Not to Increase Insurance Rates. Tenant will not do anything
27 in or about the Leased Premises which will increase the Landlord's insurance rates on the Leased
28 Premises. Tenant will pay to Landlord upon demand the amount of any increase in premiums for
29 Landlord's insurance specifically resulting from Tenant's acts, whether or not the Landlord has
30 consented to the Tenant's act. If Tenant installs any electrical equipment that overloads the lines
31 in the Leased Premises, Tenant will make whatever changes are necessary to comply with the
32 requirements of the insurance underwriters and governmental authorities having jurisdiction.

33 6.5 Additional Insurance Provisions. Every policy required above will be primary
34 insurance. The party required to procure and maintain a particular insurance policy will be solely
35 responsible for any deductible losses under such policy. Every policy of insurance required by
36 this section will be continuously maintained during the entire Term of this Lease.

37 6.6 Insurance Criteria. Insurance policies required by this Lease will:

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

5 (b) provide that the insurance cannot be cancelled or materially changed in
6 the scope or amount of coverage unless 15 days' advance notice is given to the nonprocuring
7 party.

8 However, Landlord's required casualty insurance may be issued by the Colorado Inter-
9 governmental Risk Sharing Agency.

10
11 6.7 Evidence of Insurance. Prior to the commencement of this Lease, each party will
12 give certificates of insurance to the other party evidencing compliance with the insurance
13 requirements of this Section. The policies will be renewed or replaced and maintained by the
14 party responsible for such policy throughout the Term of this Lease to assure continuous
15 coverage. If either party fails to give the required certificate within 10 days after notice or
16 demand for it, the other party may obtain and pay for that insurance and receive reimbursement
17 from the party required to have the insurance.

18 6.8 No Interest in Insurance Proceeds. The Landlord has no interest in proceeds of
19 any insurance carried by the Tenant on the Tenant's interest in this Lease, and the Tenant has no
20 interest in the proceeds of any insurance carried by the Landlord.

21 6.9 Worker's Compensation Insurance. Throughout the Term of this Lease Tenant
22 will maintain at its cost worker's compensation insurance (including occupational disease
23 hazards) through the Colorado State Compensation Insurance Fund, or through an authorized
24 self-insurance plan approved by the State of Colorado, insuring the payment of worker's
25 compensation benefits to all its employees engaged in the performance of work at the Leased
26 Premises.

27 **ARTICLE 7**

28 **INDEMNIFICATION**

29 7.1 Indemnification By Tenant. Tenant will indemnify and defend the Landlord, its
30 officers, employees, insurers, and self-insurance pool against all liability, claims, and demands
31 for injury, loss, or damage, including, without limitation, claims arising from bodily injury,
32 personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind
33 whatsoever, arising out of or are in any manner connected with this Lease, to the extent that such
34 injury, loss, or damage is caused by:

- 35 (a) Tenant's use or occupancy of the Leased Premises pursuant to this Lease;
36 (b) Tenant's breach of this Lease; or
37 (c) a worker's compensation claim of any employee of Tenant,

1 except to the extent such liability, claim, or demand arises through the negligence or wrongful
2 act(s) of the Landlord, its officers, employees, or agents, or Landlord's breach of this Lease. To
3 the extent indemnification is required under this Lease, Tenant will investigate, handle, respond
4 to, and to provide defense for and defend against, any such liability, claims, or demands at its
5 expense, and to bear all other costs and expenses related thereto, including court costs and
6 attorney fees.

7
8 **ARTICLE 8**

9 **LOSS OF LEASED PREMISES**

10 8.1 Damage To or Destruction Of Leased Premises. If the Leased Premises are
11 damaged by fire or other perils which are fully covered by Landlord's insurance on the Leased
12 Premises, Landlord agrees to forthwith repair same, and this Lease will remain in full force and
13 effect; however, Tenant may terminate this Lease by giving the Landlord not less than 30 days'
14 notice in accordance with the provisions of Section 14.2 of this Lease.

15 8.2 Eminent Domain.

16 (a) Definitions. The terms "eminent domain", "condemnation", "taken", and
17 the like in this Section include any taking for public or quasi-public use and private purchases in
18 place of condemnation by any authority authorized by applicable law to exercise the power of
19 eminent domain.

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

22 (i) the date title vests; or

23 (ii) the date Tenant is dispossessed by the condemning authority.

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

27 (i) the date when title vests;

28 (ii) the date Tenant is dispossessed by the condemning authority; or

29 (iii) 60 days following notice to Tenant of the date when vesting or
30 dispossession is to occur.

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

34
35 (d) Awards and Damages. Any compensation or damages paid by a
36 condemning authority will be divided between the Landlord and Tenant as follows:

1 (i) Tenant will be entitled to that portion of the compensation or damages
2 which represents the amount of Tenant's moving expenses, business dislocation damages,
3 Tenant's personal property and fixtures, and the unamortized costs of leasehold
4 improvements paid for by Tenant; and

5 (ii) the balance of such compensation or damages will belong to the Landlord.

6

1
2 **ARTICLE 9**

3 **DEFAULT**

4 9.1 Default By Tenant. The occurrence of any one or more of the following events
5 will constitute a default and breach of the Lease by Tenant:

6 (a) The vacating or abandonment of the Leased Premises by Tenant.

7 (b) The failure by Tenant to make any payment of rent or any other payment
8 required to be made by Tenant pursuant to this Lease, as and when due, where such failure will
9 continue for a period of ten days after service of written notice thereof by Landlord to Tenant.

10 (c) The failure by Tenant to observe or perform any of the other covenants,
11 conditions or provisions of this Lease to be observed or performed by the Tenant, or to obey
12 rules promulgated by Landlord, within ten days after service of written notice thereof by the
13 Landlord to the Tenant. If there is a non-monetary default which is not capable of being
14 corrected within ten days, Tenant will not be default if it commences correcting the default
15 within ten days of service of a demand for compliance notice and thereafter corrects the default
16 with due diligence.

17 (d) The making by Tenant of any general assignment or general arrangement
18 for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged
19 bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy
20 (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); the
21 appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets
22 located at the Leased Premises or of Tenant's interest in this Lease where possession is not
23 restored to Tenant within 45 days; or the attachment, execution, or other judicial seizure of
24 substantially all of Tenant's interest in this Lease, where such seizure is not discharged in 45
25 days.

26 9.2 Landlord's Remedies Upon Default. If the Tenant is in default under this Lease,
27 Landlord will have all of the remedies provided for in such circumstances by Colorado law.

28 9.3 Default By Landlord. Landlord will be in default under this Lease if it fails to
29 comply with any of the terms, provisions or covenants of this Lease within ten days following
30 service of written notice of default by Tenant. If there is a non-monetary default which is not
31 capable of being corrected within ten days, Landlord will not be default if it commences
32 correcting the default within ten days of receipt of notification thereof and thereafter correct the
33 default with due diligence.

34 9.4 Tenant's Remedies Upon Default. If the Landlord is in default under this Lease,
35 Tenant will have all of the remedies provided for in such circumstances by Colorado law.

36 **ARTICLE 10**

37 **NONDISTURBANCE**

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10.1 Quiet Enjoyment. Landlord covenants that so long as there is no default in any of the covenants to be performed, observed, or kept by Tenant, the Tenant will peaceably and quietly hold and enjoy the Leased Premises for the entire Term of this Lease.

ARTICLE 11

LANDLORD’S RULES

11.1 Rules. Tenant will faithfully observe and comply with any rules and regulations that Landlord may from time to time promulgate with respect to the Leased Premises. The rules and regulations, and any amendments thereto, will be binding upon the Tenant upon delivery of a copy of such rules and regulations to Tenant.

ARTICLE 12

LANDLORD’S SPECIAL RIGHTS

12.1 Landlord's Right To Approve Tenant's Annual Budget. In order to assure the Landlord and the public that Tenant's operation of its child care facility pursuant to this Lease will continue to serve the child care needs of the general public throughout the Term of this Lease, each year the Landlord will have the right to review and approve Tenant’s annual budget. Not later than September 1st each year, Tenant will submit to Landlord a proposed annual budget. The Tenant’s proposed annual budget (“**proposed annual budget**”) will include, without limitation, the following information concerning the upcoming Lease Year:

- (a) an estimate of Tenant’s anticipated income and expenses;
- (b) Tenant’s proposed capital reserve account;
- (c) Tenant’s proposed rates for child care services; and
- (d) Tenant’s proposed salary schedule and benefits description.

Tenant will provide such other information as may be requested by Landlord, and will meet with Landlord to review and consider Tenant’s proposed annual budget. Landlord will have 45 days to review and consider the Tenant’s proposed annual budget. Approval of Tenant’s annual budget will not be unreasonably withheld by Landlord. Failure of Landlord to act upon a request for a change in Tenant's rates and fees within the 45 day review period will be deemed to be an approval of the proposed annual budget, unless the Landlord and Tenant agree to extend such review period. If Tenant’s annual budget is specifically disapproved by the Landlord in writing, then Tenant will not begin operations during its next Lease Year until the annual budget is approved by the Town. Absent written disapproval of Tenant's annual budget by Landlord as required herein, Tenant may continue its operations during its next Lease Year.

12.2 Tenant’s Fundraising. Each Lease Year during the Term of this Lease Tenant will engage in fundraising activities for the purpose of raising funds for the operation of Tenant’s

1 child care center at the Leased Premises. Tenant will use its best effort to raise not less than 3%
2 of its annual operating budget by such fundraising activities.

3 12.3 Reports. Tenant shall provide any and all required reports to the Summit
4 Foundation and to Summit County Government for grants received by Tenant for the
5 construction of the Timberline Learning Center facilities. A copy of required reports
6 and/or schedules are attached hereto as Exhibit B.
7

8 **ARTICLE 13**

9 **HAZARDOUS MATERIALS**

10
11 13.1 Hazardous Materials—Defined. As used in this Section, the term "Hazardous
12 Materials" will mean any chemical, material, substance or waste:

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

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

23 13.2 Hazardous Materials--Prohibited. Tenant will strictly comply with all statutes,
24 laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by
25 any federal, state, local or other governmental agency with respect to the use, generation,
26 storage, or disposal of Hazardous Materials. Tenant will not cause, or allow anyone else to
27 cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the
28 Leased Premises without the prior written consent of Landlord, which consent may be revoked at
29 any time. Tenant's indemnification of Landlord pursuant to this Lease will extend to all liability,
30 including all foreseeable and unforeseeable consequential damages, directly or indirectly arising
31 out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by
32 Tenant, or any person claiming under Tenant, including, without limitation, the cost of any
33 required or necessary repair, cleanup, or detoxification and the preparation of any closure or
34 other required plans, whether such action is required or necessary prior to or following the
35 termination of this Lease, to the full extent that such action is attributable, directly or indirectly,
36 to the use, generation, storage, or disposal of Hazardous Materials by Tenant or any person
37 claiming under Tenant; provided, however, the written consent by Landlord to the use,
38 generation, storage, or disposal of Hazardous Materials will excuse Tenant from Tenant's
39 obligation of indemnification. In the event Tenant is in breach of the covenants herein, after
40 notice to Tenant and the expiration of the earlier of: the cure period provided in Section 9.1(c) or
41 the cure period permitted under applicable law, regulation, or order, Landlord may, in Landlord's

1 sole discretion, declare a default under this Lease and/or cause the Leased Premises to be freed
2 from the Hazardous Material and the cost thereof will be deemed additional rent hereunder and
3 will immediately be due and payable from Tenant. The representations and warranties of Tenant
4 under this Section will survive, notwithstanding the expiration or termination of this Lease.

5 **ARTICLE 14**

6 **MISCELLANEOUS**

7 14.1 Attorneys Fees/Costs. If any action is brought in a court of law by either party
8 concerning the enforcement, interpretation or construction of this Lease, the prevailing party,
9 either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including
10 expert witness' fees, incurred in the prosecution or defense of such action.

11 14.2 Notices. All notices required or permitted under this Lease will be given by
12 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
13 carrier delivery, or by telecopies, directed as follows:

14
15 If intended for Landlord, to:

16
17 Town of Breckenridge
18 P.O. Box 168
19 150 Ski Hill Road
20 Breckenridge, Colorado 80424
21 Attn: Town Manager
22 Telecopier number: (970)547-3104
23 Telephone number: (970)453-2251
24

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

26
27 Timothy H. Berry, Esq.
28 Timothy H. Berry, P.C.
29 131 West 5th Street
30 P. O. Box 2
31 Leadville, Colorado 80461
32 Telecopier number: (719)486-3039
33 Telephone number: (719)486-1889
34

35 If intended for Tenant, to:

36
37 Timberline Learning Center
38 P.O. Box 3098
39 Breckenridge, CO 80424
40 Telecopier number: (970)_____

41 Telephone number: (970)_____

42

1 with a copy in each case (which will not constitute notice) to:
2

3 Frederick V. Sprouse, Esq.
4 Richmond, Sprouse & Murphy, LLC.
5 P. O. Box 280
6 Frisco, Colorado 80443
7 Telecopier number: (970)668-3757
8 Telephone number: (970)668-0176
9

10 Any notice delivered by mail in accordance with this Section will be deemed to have been duly
11 given and received on the third business day after the same is deposited in any post office or
12 postal box regularly maintained by the United States postal service. Any notice delivered by
13 telecopier in accordance with this Section will be deemed to have been duly given and received
14 upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone
15 and a copy of said notice is sent by certified mail, return receipt requested, on the same day to
16 the intended recipient. Any notice delivered by hand or commercial carrier will be deemed to
17 have been duly given and received upon actual receipt. Nothing in this Lease shall preclude the
18 giving of a particular notice in the manner required by law. Either party, by notice given as
19 provided above, may change the address to which future notices may be sent.
20

21 14.3 Entire Agreement. This Lease contains the complete and final expression of the
22 agreement of the parties. All negotiations, considerations, representations, and understandings
23 between the parties related to this Lease are contained in this Lease document.

24 14.4 Amendment. This Lease may not be modified except by a written agreement
25 signed by both the Landlord and Tenant. Oral modifications of this Lease are not permitted.

26 14.5 Captions. The headings of the sections contained in this Lease are for
27 convenience only and do not define, limit, or construe the contents of the articles and sections.

28 14.6 Waiver. The failure of either party to exercise any of such party's rights under
29 this Lease will not be a waiver of those rights. A party waives only those rights specified in
30 writing and signed by the party waiving such rights.

31 14.7 Severability. In case one or more of the provisions contained in this Lease, or any
32 application hereof, will be invalid, illegal or unenforceable in any respect, the validity, legality
33 and enforceability of the remaining provisions contained in this Lease and the application hereof
34 will not in any way be affected or impaired thereby.

35 14.8 Force Majeure. Neither party hereto will be liable to the other for any failure,
36 delay or interruption in the performance of any of the terms, covenants or conditions of this
37 Lease due to causes beyond the control of that party including, without limitation, strikes,
38 boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy,
39 acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or
40 any other circumstance for which such party is not responsible or which is not in its power to
41 control.

1 14.9 Advances By Landlord For Tenant. If Tenant fails to do anything required to be
2 done by it under the terms of this Lease (other than a failure to make the payments to Landlord
3 herein required) the Landlord may, at its sole option, but without any obligation to do so, do or
4 perform such act or thing on behalf of Tenant, and in doing so the Landlord will not be deemed
5 to be a volunteer; provided, however, that before exercising its rights under this Section Landlord
6 must give notice to Tenant as provided in Section 14.2, and Landlord will allow the Tenant not
7 less than five days from the giving of such notice within which to do or perform the act required
8 by Tenant. Upon notification to Tenant of any costs or expenses incurred by the Landlord
9 pursuant to this Section Tenant will promptly pay to Landlord the full amount of costs and/or
10 expenses incurred by Landlord, together with interest thereon at the rate of twelve percent (12%)
11 per annum.

12 14.10 Governmental Immunity. The parties hereto understand and agree that Landlord
13 is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary
14 limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights,
15 immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-
16 10-101, et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity or
17 protection otherwise available to Landlord, its officers, or its employees.

18 14.11 No Adverse Construction Based On Authorship. Each party had the opportunity
19 to participate in the drafting of this Lease. This Lease is not to be construed against either party
20 by virtue of such party having drafted this Lease.

21 14.12 Landlord's Consent. Except as otherwise expressly provided to the contrary in
22 this Lease, wherever in this Lease it is provided that some act requires the Landlord's prior
23 consent, such consent may be granted, withheld, or conditionally approved in Landlord's sole
24 and absolute discretion.

25 14.13 Authority. The individual executing this Lease on behalf of the Tenant represents
26 and warrants to Landlord that she has all requisite power and authority to bind the Tenant and to
27 cause the Tenant to fully perform its obligations under this Lease. The individual executing this
28 Lease on behalf of the Landlord represents and warrants to Tenant that he has all requisite power
29 and authority to bind the Landlord and to cause the Landlord to fully perform its obligations
30 under this Lease.

31 14.14 Third Parties. This Lease does not confer upon or grant to any third party (except
32 a party to whom the Tenant may assign this Lease in accordance with the terms hereof) any right
33 to claim damages or to bring suit, action or other proceeding against the Landlord because of any
34 breach hereof or because of any of the terms, covenants, agreements, and conditions herein.

35 14.15 Lease Not To Be Recorded. This Lease **IS NOT TO BE RECORDED** with the
36 Clerk and Recorder of Summit County, Colorado.

37 14.16 Time of Essence. Time is of the essence of this Lease.

38 14.17 Governing Laws; Venue. The laws of the State of Colorado will govern the
39 interpretation, validity, performance and enforcement of this Lease. Any litigation brought to
40 construe or enforce this Lease must be commenced in Summit County, Colorado.

1 14.18 Non-Discrimination; Compliance With Applicable Laws. Tenant:

2 (a) will not discriminate against any employee or applicant for employment
3 because of race, color, creed, sex, sexual orientation, religion, national origin, or disability;

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

7 (c) will in all solicitations or advertisements for employees to be engaged in
8 the performance of work at the Leased Premises state that all qualified applicants will receive
9 consideration for employment without regard to race, color, creed, sex, sexual orientation,
10 religion, national original or disability. Tenant will further comply with all applicable federal,
11 state, and local laws, rules and regulations. Without limiting the generality of the foregoing,
12 Tenant will comply with the applicable provisions of the Americans With Disabilities Act, 42
13 U.S.C. §12101, et seq. (Public Law 101-336), and all applicable regulations and rules
14 promulgated thereunder by any regulatory agency. The indemnification and termination
15 provisions of this Lease will apply with respect to Tenant’s failure to comply with all applicable
16 laws or regulations.

17 14.19 Binding Effect. The covenants, conditions, and obligations contained in this Lease
18 are binding upon and inure to the benefit of the parties and their respective successors and
19 permitted assigns.

20 14.20 Annual Appropriation. Financial obligations of the Landlord under this
21 Agreement payable after the current fiscal year are contingent upon funds for that purpose being
22 appropriated, budgeted and otherwise made available by the Town Council of the Town of
23 Breckenridge, Colorado. If sufficient funds are ever not made available, this Lease may be
24 terminated by either party without penalty. Landlord’s obligations under this Lease does not
25 constitute a general obligation indebtedness or multiple year direct or indirect debt or other
26 financial obligation whatsoever within the meaning of the Constitution or laws of the State of
27 Colorado.

28 14.21 Incorporation of Exhibit. The attached Exhibit “A” is incorporated herein by
29 reference.

30 14.22 Approval By Ordinance. The execution of this Lease by the Town Manager was
31 authorized by Ordinance No. _____, Series 2008.

32 LANDLORD:

33
34 TOWN OF BRECKENRIDGE, a Colorado
35 municipal corporation
36

37
38
39 By _____
40 Timothy J. Gagen, Town Manager

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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

TENANT:

TIMBERLINE LEARNING CENTER., a Colorado
nonprofit corporation

By: _____

Title: President

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1500-56\ Lease (06-11-08)

Exhibit "A"

LIST OF LEASED PERSONAL PROPERTY

[TO BE INSERTED]

Exhibit "A"

MEMO

TO: Town Council

FROM: Town Attorney

RE: Subdivision Plat Certificates Ordinance

DATE: July 2, 2008 (for July 8th meeting)

Each subdivision plat filed in the Town has a series of plat “certificates” shown on the face of the document. These certificates typically include a certificate from the owner of the property dedicating streets, alleys and easements to the Town; and separate certificates signed by the Town (both Mayor and Planning Commission), the surveyor, the title company; Town Clerk; and County Clerk and Recorder. The form of the certificates is set forth in Exhibit “A” to the Subdivision Ordinance.

Recently, the County has suggested that we add a new plat certificate to be signed by the County Treasurer confirming that all property taxes have been paid for the property that is the subject of the subdivision plat. Apparently, other municipalities in the county do this and it helps the County make sure taxes are properly paid.

We have needed to update our subdivision plat certificates for some time. This seems like an appropriate time to do so.

Enclosed is an ordinance adopting a series of new subdivision plat certificates. The only really substantive changes to the plat are:

1. A consolidation of the Town plat certificates into one single certificate. This eliminates the need for separate signatures by the Mayor and Planning Commission Chair, and replaces it with a single Town certificate that can be signed by the Director of the Department of Community Development or an assistant.
2. Adds the new County Treasurer certificate as requested by Summit County.
3. Eliminates the certificate from the project engineer. This certificate does not relate to the title of the land being subdivided, and is unnecessary. We deal with engineering issues through a separate Subdivision Improvement Agreement.

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

1 ***DRAFT June 27, 2008 DRAFT***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2008

9
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES
11 APPENDIX "A" TO CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE
12 TOWN CODE, KNOWN AS THE "BRECKENRIDGE SUBDIVISION
13 STANDARDS", CONCERNING REQUIRED SUBDIVISION PLAT
14 CERTIFICATES

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

18
19 Section 1. Appendix "A" to Chapter 2 of Title 9 of the Breckenridge Town Code, known
20 as the "Breckenridge Subdivision Standards", is hereby repealed and readopted with changes so
21 as to read in its entirety as follows:

22
23 **APPENDIX A**

24
25 **PLAT CERTIFICATES**

26
27 **The following certificates and notices, properly executed and in**
28 **substantially the following form, shall be shown on the face of each final**
29 **subdivision plat before it is recorded with the Summit County Clerk and**
30 **Recorder. Any substantive variation from the text of the certificates as shown**
31 **must be approved by the Town Attorney. Any other certificates or notices**
32 **that are deemed necessary for the purposes of the particular plat shall also**
33 **be included at the time of its submission. Note: The following plat notes must**
34 **be customized to fit the facts of the particular plat (i.e., if the owner is not an**
35 **entity, but are two individuals, the reference to the type of the business entity**
36 **must be deleted; "has laid out" must be changed to "have laid out"; and so**
37 **forth.)**

38
39 **Owner's Certificate:**

40
41 **KNOW ALL MEN BY THESE PRESENTS:**

1 That _____, a Colorado _____, being
2 the owner of the following described real property situate in the Town of
3 Breckenridge, County of Summit, State of Colorado:

4
5 (insert legal description)
6

7 has laid out, subdivided and platted the same into lots, tracts, streets, and
8 easements as shown hereon under the name and style of
9 _____, and by these presents, do hereby set apart
10 and dedicate to the perpetual use of the public all of the streets, alleys and
11 other public ways and places as shown hereon, and further hereby dedicates
12 those portions of land labeled as easements for the installation and
13 maintenance of public utilities as shown hereon. (and/or other purposes)
14

15 IN WITNESS WHEREOF, _____ has caused its
16 name to be hereunto subscribed this _____ day of _____,
17 20__.
18

19 [Insert Signature Block]
20

21 State of Colorado _____)
22 _____) ss.
23 County of Summit _____).
24

25 The foregoing instrument was acknowledged before me this _____
26 day of _____, 20__ , by _____, as
27 _____, and _____, as
28 _____ of _____, a Colorado
29 _____.
30

31 Witness my hand and official seal.
32

33 _____
34 Notary Public
35

36 My commission expires: _____
37

38 Town of Breckenridge Certificate:

39 This plat is approved this _____ day of _____, 20__.
40

41 TOWN OF BRECKENRIDGE
42

43
44 By: _____
45

Page 2

Director, Department of
Community Development

NOTICE:

Public notice is hereby given that the Town of Breckenridge hereby accepts all of the offers of dedication made by this plat. However, such acceptance does not constitute an acceptance of the roads and rights of way reflected hereon for maintenance by the Town.

Until such roads and rights of way meet Town road specifications and are specifically accepted by the Town, the maintenance, construction, and all other matters pertaining to or affecting said roads and rights of way are the sole responsibility of the owners of the land embraced within this subdivision.

[NOTE: The Town Certificate on any subdivision plat may be executed by the Director of the Department of Community Development, or any Assistant Director.]

Town Clerk's Certificate:

I hereby certify that this instrument was filed in my office at _____ o'clock .M. on _____, 20____, and is duly recorded.

Town Clerk

Surveyor's Certificate:

I, _____, being a registered land surveyor in the State of Colorado, do hereby certify that this plat of _____ was prepared by me and under my supervision from a survey made by me and under by supervision, that both this plat and the survey are true and accurate to the best of my knowledge and belief, and that the monuments were placed pursuant to Section 38-51-105, C.R.S.

Dated this _____ day of _____, 20____.

Surveyor

1 Title Company Certificate:

2
3 _____ does hereby certify that it
4 has examined the title to all lands shown hereon, and all lands herein
5 dedicated by virtue of this plat, and title to all such lands is in the owner
6 named above free and clear of all liens, taxes and encumbrances, except as
7 follows:

8
9 Dated this _____ day of _____, 20 _____.

10
11
12 _____
13 Agent

14
15 Certificate Of Taxes Paid:

16 I, the undersigned, do hereby certify that the entire amount of all taxes due
17 and payable as of _____, 20 _____ upon parcels of
18 real estate described on this plat are paid in full.

19
20
21 Dated this _____ day of _____ 20 _____ ad.

22
23
24
25 _____
26 Summit County Treasurer or Designee

27
28 Clerk and Recorder's Certificate:

29
30 State of Colorado _____)
31 _____) ss.
32 County of Summit _____)
33

34 I hereby certify that this instrument was filed in my office at _____
35 o'clock _____M., this _____ day of _____, 20 _____, and is
36 filed under Reception No. _____.

37
38
39
40 _____
41 Summit County Clerk and Recorder

42
43 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
44 various secondary codes adopted by reference therein, shall continue in full force and effect.

1 Section 3. The Town Council hereby finds, determines and declares that it has the power
2 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
3 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
4 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
5 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
6 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
7 contained in the Breckenridge Town Charter.
8

9 Section 4. The Town Council hereby finds, determines and declares that it has the power
10 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
11 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
12

13 Section 5. This ordinance shall be published and become effective as provided by
14 Section 5.9 of the Breckenridge Town Charter.
15

16 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
17 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
18 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
19 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
20 Town.

21
22 TOWN OF BRECKENRIDGE, a Colorado
23 municipal corporation
24
25

26
27 By _____
28 John G. Warner, Mayor
29

30 ATTEST:
31
32
33

34 _____
35 Mary Jean Loufek, CMC,
36 Town Clerk
37
38
39
40
41
42

1 CURRENT PLAT CERTIFICATES;

2
3 APPENDIX A

4
5 Plat Certificates

6
7 The following certificates and notices shall be shown on the face of the Final Plat.
8 Any other certificates or notices that are deemed necessary for the purposes of the
9 particular plat shall also be included at the time of its submission.

10
11 Owner's Certificate.

12
13 KNOW ALL MEN BY THESE PRESENTS:

14
15 That _____, a Colorado Corporation, being the owner of
16 _____, located in Section _____, Township Range _____ West of the Sixth Principal
17 Meridian, Town of Breckenridge, County of Summit, State of Colorado, more
18 particularly described as follows:

19
20 (Legal Description)

21
22 Have laid out, subdivided and platted the same into lots, tracts, streets, and
23 easements as shown hereon under the name and style of _____ and by
24 these presents, do hereby set apart and dedicate to the perpetual use of the public
25 all of the streets, alleys and other public ways and places as shown hereon and
26 hereby dedicate those portions of land labeled as easements for the installation
27 and maintenance of public utilities as shown hereon. (and/or other purposes)

28
29 IN WITNESS WHEREOF, _____ and _____ have caused their names
30 to be hereunto subscribed this ____ day of _____, A.D., ____.

31
32 ATTEST:

33
34 _____

35 Secretary

36
37 (Corporate Seal) _____

38 President

1
2 Breckenridge Planning Commission Certificate.

3
4 Approved this ____ day of _____ A.D., ____, Town Planning Commission,
5 Breckenridge, Colorado.

6
7 _____
8 _____ Chairman

9
10 Breckenridge Town Council Certificate.

11
12 Approved this ____ day of _____ A.D., ____, Town Council, Breckenridge,
13 Colorado. This approval does not guarantee that the size of soil or flooding
14 conditions of any lot shown hereon are such that a building permit may be issued.
15 This approval is with the understanding that all expenses involving necessary
16 improvements for all utility services, paving, grading, landscaping, curbs, gutters,
17 street lights, street signs, and sidewalks shall be financed by others and not the
18 Town of Breckenridge.

19
20 ATTEST: _____
21 Town Clerk _____ Mayor

22
23 Notice.

24
25 Public notice is hereby given that acceptance of this platted subdivision by the
26 Town of Breckenridge does not constitute an acceptance of the roads and rights of
27 way reflected hereon for maintenance by said Town.

28
29 Until such roads and rights of way meet Town road specifications and specifically
30 accepted by the Town, the maintenance, construction, and all other matters
31 pertaining to or affecting said roads and rights of way are the sole responsibility
32 of the owners of the land embraced within this subdivision.

33
34 Clerk's Certificate.

35
36 State of Colorado)
37)ss.
38 Town of Breckenridge)

39
40 I hereby certify that this instrument was filed in my office at ____ o'clock, ____,
41 A.D., ____, and is duly recorded.

42
43 _____
44 _____ Town Clerk

1 Acknowledgement.

2
3 State of Colorado)
4 County of Summit) ss.
5 Town of Breckenridge →

6
7 The foregoing instrument was acknowledged before me this ____ day of _____,
8 A.D., ____, by _____ as President and _____ as Secretary of _____, a
9 Colorado corporation.

10
11 Witness my hand and official seal.

12
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44 _____
45 _____

17 Surveyor's Certificate.

18
19 I, _____, being a registered land surveyor in the State of Colorado, do hereby
20 certify that this Plat of _____ was prepared by me and under my
21 supervision from a survey made by me and under by supervision, that both this
22 Plat and the survey are true and accurate to the best of my knowledge and belief,
23 and that the monuments were placed pursuant to CRS 136-24.

24
25 Dated this ____ day of _____, A.D., ____.

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30 Engineer's Certificate.

31
32 All road and drainage improvements are to be constructed according to road and
33 drainage plans that have been approved for construction by the Breckenridge
34 Town Engineer.

35
36 _____
37 _____
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39 _____
40 _____
41 _____
42 _____
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45 _____

39 Title Company Certificate.

40
41 _____ does hereby certify that we have examined the title to all lands
42 shown hereon and all lands herein dedicated by virtue of this Plat and title to all
43 such lands is in the dedicator free and clear of all liens, taxes and encumbrances,
44 except as follows:
45 _____

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Dated this ____ day of _____, A.D., ____.

_____ Agent

Clerk and Recorder's Certificate.

State of Colorado)
) ss.
County of Summit)

I hereby certify that this instrument was filed in my office at _____, this
day of _____, A.D., ____, and filed under reception no. _____.

_____ Summit County Clerk and
_____ Recorder

(Ord. 23, Series 1992)



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.

JULY 2008

Tuesday, July 8	First Meeting of the Month
Tuesday, July 22	Second Meeting of the Month
Friday, July 25	BMF Gala
Tuesday, July 29	Public Official Liability Training

August 2008

Tuesday, August 12	First Meeting of the Month
Tuesday, August 26	Second Meeting of the Month
Thursday, August 28-29	CAST

OTHER MEETINGS

2 nd & 4 th Tuesday of the Month; 7:00pm	Planning Commission; Council Chambers
1 st Wednesday of the Month; 4:00pm	Public Art Commission; 3 rd floor Conf Room
2 nd Thursday of the Month; 3:00pm	BEDAC; 3 rd floor Conf Room
2 nd Monday of the Month; 5:30pm	BOSAC; Council Chambers
2 nd & 4 th Tuesday of the Month; 1:30pm	Board of County Commissioners; County
3 rd Thursday of the Month; 7:00pm	Red White and Blue; Main Fire Station
2 nd Thursday of the Month; 5:30pm	Sanitation District;
Last Wednesday of the Month; 8am	Breckenridge Resort Chamber; BRC Offices
4 th Wednesday of the Month; 9am	Summit Combined Housing Authority;
2 nd Wednesday of the Month; 12 pm	Breckenridge Heritage Alliance; Gaymon Cabin

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