



*Come Join Us to Bid
Farewell*

to

Mayor Ernie Blake

&

*Council Member Rob
Millisor*

March 25, 2008

4:00pm

Council Chambers



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, March 25, 2008
4:00 pm**

****NOTE: CHANGE IN START TIME****

Work Session

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.

4:00 – 4:30pm	I. <u>FAREWELL TO MAYOR BLAKE & COUNCIL MEMBER MILLISOR</u>	
4:30 – 4:45pm	II. <u>PLANNING COMMISSION DECISIONS</u>	<i>Page 3</i>
4:45 – 5:30pm	III. <u>LEGISLATIVE REVIEW</u> *	
	• Water Ordinance**	<i>Page 22</i>
	• Security Guard License Repeal**	<i>Page 25</i>
	• Rockpile Ranch Land Exchange**	<i>Page 28</i>
	• Xcel Franchise Renewal Agreement**	<i>Page 56</i>
	• Xcel Street Lighting**	<i>Page 102</i>
	• Bunchman Easement Agreement**	<i>Page 104</i>
	• 2006 International Building Code Adoption**	<i>Page 128</i>
	• Fence Policy**	<i>Page 159</i>
	• Chihuahua Land Exchange Agreement**	<i>Page 168</i>
	• Comp Plan**	<i>Page 183</i>
	• Cobb & Ebert Management Plan**	<i>Page 191</i>
5:30 – 6:00pm	IV. <u>MANAGERS REPORT</u>	
	• Public Projects Update	<i>Page 9</i>
	• Housing/Childcare Update	<i>Verbal</i>
	• Committee Reports	<i>Page 10</i>
	• Union Mill Repository Agreement	<i>Separate</i>

***ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** *Page 13*

**** FINAL ACTION ITEM**

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: Peter Grosshuesch

Date: March 19, 2008

Re: Town Council Consent Calendar from the Planning Commission Decisions of the March 18, 2008, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF March 18, 2008

CLASS C APPLICATIONS:

1. McKennie Residence (MGT) PC#2008027; 92 Dyer Trail
Construct a new single-family residence with 4 bedrooms, 5 bathrooms, 4,590 sq. ft. of density and 5,468 sq. ft. of mass for a F.A.R. of 1:5.70. Approved.
2. Beaver Run Summer Function Tent (CK) PC#2008025
Construct a temporary tent providing additional space for conferences and functions for use during the summer only. Approved.
3. Sill Residence (CK) PC#2008026; 67 Rounds Road
Construct a new single-family residence with 4 bedrooms, 4.5 bathrooms, 5,840 sq. ft. of density and 6,798 sq. ft. of mass for a F.A.R. of 1:6.48. Approved.
4. Sunset Condo Remodel (CK) PC#2008028; 450 Four O'Clock Road
Remodel exterior of condo complex, including installation of new siding, railings, decking material, stairs, paving, snowmelt system, rock base, roofing materials and new paint colors. Approved.
5. Shores Duplex, Lots 30A & B (MM) PC#2008022; 279 & 295 Shores Lane
Construct a new duplex with 3 bedrooms, 3.5 bathrooms, 2,356 sq. ft. of density and 3,024 sq. ft. of mass on the South side (Unit A, 279 Shores Lane) and 4 bedrooms, 3.5 bathrooms, 2,643 sq. ft. of density and 3,299 sq. ft. of mass on the North side (Unit B, 295 Shores Lane). Approved.

CLASS B APPLICATIONS:

1. Lot 2, Block 7, Yingling & Mickles (MGT) PC#2008002; 102 South Harris Street
Construct a new single-family residence with 2,481 sq. ft. of density and 3,013 sq. ft. of mass for a F.A.R. of 1:2.0, plus some historic preservation on the sheds near the alley and a variance from rear yard setbacks. Approved.

- Mr. Pringle: Changes made are appreciated. This project is compatible with development to the north. I understand the views that were enjoyed by the neighbors, but the applicant has a right to develop the property, and it follows the design guidelines. Unfortunately, the views that were enjoyed for years will now be developed. The restorations to the sheds are positive. Agreed with landscaping points assigned.
- Mr. McAllister: Sought clarification from staff regarding views. (Staff pointed out policies addressing views, in policy 6 and 7.) The code doesn't specify situations like this application. Code does not have mandatory view preservation. Point analysis was acceptable.
- Mr. Bertaux: Agreed with others. Project is approvable by point analysis. Additional parking space in front of garage doors is not restricted. Yes, it will have some impact on the use of the alley. There would be a big change to the neighbors but the code allows for the change. This is a good-looking building that respects adjoining properties. Landscaping points assigned are acceptable. This is a good addition to the historic district.
- Mr. Allen: Agreed with Mr. Pringle's comments. Landscaping proposal is acceptable as proposed, as well as points assigned. No need to increase landscaping size for points.
- Mr. Khavari: Simple architecture with adequate landscaping. Vistas are important and the applicant has taken it upon themselves to protect the neighbors view to the best of their ability. Ok with garage on the alley. Ok with the connector element. Ok with landscaping as proposed. Vistas are important, but Ms. Sutterly has done what she could with the design.

Mr. Pringle made a motion to approve the point analysis for the Hastings Residence (Lot 2, Block 7, Yingling & Mickles), PC#2008002, 102 South Harris Street. Mr. McAllister seconded, and the motion was carried unanimously (5-0).

Mr. Pringle made a motion to approve the variance request for the Hastings Residence (Lot 2, Block 7, Yingling & Mickles), PC#2008002, 102 South Harris Street. Mr. McAllister seconded, and the motion was carried unanimously (5-0).

Mr. Pringle made a motion to approve the Hastings Residence (Lot 2, Block 7, Yingling & Mickles), PC#2008002, 102 South Harris Street, with the findings and conditions as proposed by the staff. Mr. McAllister seconded, and the motion was carried unanimously (5-0).

PRELIMINARY HEARINGS:

1. Maggie Placer Development (MM) PC#2008024; 9525 CO State Highway 9

Mr. Mosher presented a proposal to develop the Maggie Placer property with 18 deed/equity permanently restricted housing units in the form of condominiums. Pursuant to the Annexation Agreement, there shall be 6 one-bedroom Restricted Units, 8 two-bedroom Restricted Units, and 4 three-bedroom units. All parking for the units is surface spaces placed south of the building.

Staff has been working with John Springer, of Springer Development, and John M. Perkins, AIA, of JMP Architects to present a proposal to the Planning Commission regarding the development of the recently annexed Lot 6, Tract 7-77, Section 06, Quarter 2, Maggie Placer, MS#1338, (Maggie Placer Development). 82% of the proposed units would be permanently affordable (this application) and the remaining four market units would be cluster single-family homes (separate applications). The permanently affordable rate is set at 80% AMI to 115% AMI. All of the affordable housing would be constructed prior to the sale of the four market rate lots. This development would not be phased.

This proposal is off to a good start and, with the small lot, had obtained 82% of the units as permanently affordable. The cluster home sites and subsequent development of the homes will be reviewed as separate Class C applications after the subdivision is processed. Staff did have concerns with the overall building height and expected revisions for the next hearing. The Planning Department recommended this application return for a second review. Staff is working with the Town and County engineers to improve access off of Highway 9 to avoid flow through the Ski and Racquet Club driveway. Additional trees are proposed along east side to add buffers.

Staff requested Commissioner comments on the site buffering and any other aspects of this application.

John Springer, Springer Development (Applicant): Trying to break even on this project. Wanted to develop a quality project. Larger than average units with 9-foot tall ceilings. Willing to bring ceilings down to 8 foot if need be to address building height. These units will have gas radiant heat and will have high-end finishes. Regarding Ski and Racquet concerns, he explained his interpretation to the Commission and pointed out the improvements he felt would be made to the intersection and access points. Had not contacted neighbors yet as the design was just reviewed by the engineers.

Mr. Khavari opened the hearing to public comment.

George Grill (The Corral HOA): Drainage at the north end of the site is a concern since the Corral is directly downhill. Didn't want to see water from the hard surface areas of this development being channeled off-site to the Corral. Concerned about the setback from Highway 9 and the need for a provision for a footpath down into downtown to avoid trespassing through the Corral property. (Staff noted that there is already a Town sidewalk built along Highway 9. The existing trespass is from the Ski and Racquet Club tenants.)

Dan Olmer (Agent for Ski and Racket): Concerned about access to the site from Highway 9. He felt communications haven't been open between the HOA of Ski and Racquet and the developer. We sent a letter to the developer requesting a meeting, but have not heard back. The parking for the number of units proposed is insufficient. Open storage for "toys" is another problem he foresees. There is not enough space for either parking or storage.

Jan Bowman (Director with Ski and Racket): Was totally opposed to this application. Regarding access onto the highway, it is already a mess now and increased usage would only worsen the situation. The drainage pond is a terrible mosquito breeding ground. A sewer drain would help this problem. Two thirds of the units in Ski and Racquet are owner occupied. There are already too many cars trying to access Highway 9. Ski and Racquet is totally opposed to allowing any access via the existing curb cut along Highway 9 for this project. Project accesses site through Ski and Racquet property, but permission has not been granted. Access was granted to Allair Timbers.

Norman Stein (Director with Ski and Racket): Suggested other access points should be considered.

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

Commissioner Questions/Comments:

Mr. Pringle: Are we able to sustain the buffers on the north or backside? (Staff explained yes, they would be sustained.) Nice architecture. Access to the driveway needs to be worked out. Access could be from Highway 9, but that would make matters worse. Parking and storage should be bumped up if possible. Height overage needs to be addressed. Consider snowmobile and other toy parking on-site if possible, as these are always a problem. Consider adding guest parking. The four single-family lots should be considered and discussed further.

Mr. McAllister: Agreed with Mr. Pringle. Snow storage will be dealt with in detail later but will there be any issues? (Staff felt comfortable with snow storage to be addressed later.) Salute you for trying to make the site work for employee housing. This is an aggressive program for a small piece of property. Extra on-site storage is a concern. Will the proposed indoor storage be sufficient? Extra parking will also be a concern. Glad to see the design conform to the Ridgeline Development recommendations. Site drainage and subsequent impacts needs to be addressed. Work to avoid future lawsuit with neighbors. Circulation is key to address. Eager to hear solutions to Commission's and neighbor's concerns.

Mr. Bertaux: Sought clarification for next meeting regarding the detention pond. (Staff discussed options.) Sought clarification regarding square footage for the different types of units and number of bedrooms. (Mr. Springer: 1-bedrooms are 786 sq. ft., 2-bedrooms are 1,114 sq. ft. and 3-bedrooms are 1,614 sq. ft.). Storage is a concern; are there additional storage areas? (Mr. Mosher: no.) Work on height issues with staff. Must be convinced circulation and site access issues are resolved with neighbors. Parking lot needs more landscaping and buffering, looks too tight. May need to add guest parking. Need to solve access problems. Needs more landscaping for buffers. Maybe spray the lodgepole trees so they will survive in the future. Mr. McAllister said the site plan was "aggressive"; I would say it is "tight". Address drainage issues Mr. Grill discussed.

- Mr. Allen: Agreed with comments made. Sought clarification regarding whether or not this application would need to comply with the new landscaping policy. (Mr. Mosher: explained the applicant would not be required to follow the new policy because their application was submitted prior to policy revisions.) Sought clarification regarding height. (Staff addressed height policy.) Efforts applauded for affordable housing on such a tight site. Height must conform to Code. Floor plans are generous and 9-foot ceilings are great; try to keep them and knock them down only where needed to address height. Buffering and visual impact is a concern around the site; but won't put much weight into existing lodgepole pine forest. Trail or sidewalk plans would be appreciated. Parking, although meeting Code, might be insufficient and overflow parking is encouraged, as it would help with guests. The legal access needs to be sorted out.
- Mr. Khavari: Agreed with all comments mentioned. The applicant needs to talk to Ski and Racket and work things out. Generous square footage is very nice.

WORKSESSIONS:

1. Solar Panels (JS)

Ms. Skurski presented a memo and first draft on the solar panel policy for buildings within and outside of the Conservation District.

The topic of solar panels on historic structures is on the Planning Commission's Top Five list. With a greater emphasis on renewable energy, Staff foresaw that applications for solar panels would increase in the future. There are no standards in the current Development Code that would specifically prohibit this; therefore, Staff has allowed the use of solar panels both inside and outside of the Conservation District. This policy would serve as a guideline to where solar panels would be appropriately placed on structures or sites. Staff drafted a policy based on Commissioner comments and concerns for structures and sites within and outside of the Conservation District. Staff would like to get Commissioner comments on the drafted policy.

Staff had presented this topic as a worksession item to the Commission on February 12. The following bullet points summarize the direction given from that previous worksession:

- Do not change the slope of the existing roofline.
- Permit panels on the non-primary elevation.
- Distinguish new construction from historic structures.
- Include detached site arrays in criteria.
- Panels must not damage the historic roof or structure.

Commissioner Questions/Comments:

- Mr. Pringle: Historic fabric is of primary concern; the historic character should always take precedence. It should be a compatible color. There may be some instances where panels may not be allowed if impacts to the historic character are too great via stark color contrast or would reduce the rating of the house. (Ms. Skurski stated that technology will ultimately evolve and may allow for better, less obtrusive and less visual applications in the future.) The roof color should be considered for new construction to blend. Research wind power along with solar panels.
- Mr. Bertaux: Would like a percentage limit of the roof to be covered by panels, such as 50%. Pictures of various applications and a material sample would help. Include language which would not allow for a stark contrast.
- Mr. Allen: If it is new construction, the roof should match the color of the panels but if it is not a new roof, the color should be complimentary. Regarding paragraph A: with a single pitch, would a panel be approved? (Ms. Skurski stated that a definition for non-primary elevation could be added.) Sought clarification regarding replacing historic windows beyond repair with solar windows.
- Mr. McAllister: If panels are used, the colors of the panels and the roof should match. Might not be approved if the panels are contrasting. The historic character is the first concern.
- Mr. Khavari: It's amazing how windows can be repaired to make them efficient; it's expensive but works well. Liked the first paragraph, but would strengthen it even more to justify saying no if it doesn't work for the site.

TOWN COUNCIL REPORT:

Dr. Warner was absent; therefore, there was no Town Council report.

OTHER MATTERS:

None.

ADJOURNMENT:

The meeting was adjourned at 9:16p.m.

Mike Khavari, Chair

Memorandum

TO: Town Council
FROM: Tom Daugherty, Town Engineer
DATE: March 20, 2008
RE: Public Projects Update

Main Street

An open house will be held on Thursday, March 27 at 4:00 to 6:00 in the 3rd floor conference room in Town Hall. The traffic control plan and construction phasing will be presented. Flyers are being distributed to the businesses along Main Street as well as advertising in the paper and on the radio.

Riverwalk Center Roof

Project continues on time.

Valley Brook Childcare

Project continues on time.

Gondola Lots Master Plan

The Client Review Team (CRT) for the Gondola Parking Lots Master Plan met on March 13th with the design consultants to look at 3 revised concept plans. The three preferred concepts included the "Breckenridge Station" icon hotel plan, an "Extend the grid" plan, and a "Main Street Extended" plan. The design consultants will tweak the preferred designs and return with some more detailed plans for the next CRT meeting in late March. We anticipate a work session with the Town Council on April 8th.

MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: 3/20/2008

RE: Committee Reports

Police Advisory Committee

Rick Holman

March 6

➤ **April 1st – “Gaper” Day @ Vail:** Chief Holman shared the plans for a coordinated effort between the Police Department and Vail Resorts in addressing Gaper Day issues. Significantly enhanced extra-duty police staffing, with Vail Resorts funding half of the cost, is planned. Vail Resorts will also take a much stronger approach in curbing inappropriate activity on the mountain, while uniformed police officers will provide both an enforcement and deterrent presence. In addition, Vail will be distributing posters to local businesses which will be used to educate their employees and discourage participation. The PAC suggested some discussion at the high school level, to accomplish the same objectives.

➤ **Missing Person Update:** The Chief provided an update regarding the continued efforts to locate missing person Michael Barbieri, and responded to questions from the PAC. Investigators and patrol staff have following up on leads and conducted searches through several “zones” identified by Summit County Search & Rescue leaders. The Chief meets frequently with Barbieri’s family, and the Assistant Chief responds to numerous media requests.

➤ **Late Night Bar Issues:** The Chief outlined the efforts being led by the Mayor and the Town to encourage owners of bars and restaurants to join in on a voluntary program to begin to minimize the impacts of over-serving during late night hours.

➤ **Traffic Flow Management:** Chief Holman shared observations regarding traffic flow – egress & ingress during busy weekends, and sought PAC input. It was agreed that traffic flow both in and out of town was significant, yet had been managed fairly well this year. The department plans additional traffic direction efforts through March, and is also coordinating traffic flow on the south side of Breckenridge with Vail’s Breckenridge Emergency Services (BES) team.

➤ **Sergeant Position Vacancy:** The Chief advised the group that the efforts to fill the current sergeant position vacancy would also involve a community interview panel. Three-four (3-4) Police Advisory Committee members will be invited to serve on this panel.

BEDAC started discussion on one of the Top 5 Items, Workforce Issues. The start of the topic focused primarily on the credit crisis and the difficulty of getting a mortgage loan in today's market and ways that the Town could assist.

The Economic Indicators Sub-committee reported on their progress to the group.

March/April Meeting Schedule -

- BPAC will meet again on March 26th to review Sculpture on the Blue applications and continue to work on the Valley Brook Child Care - Artistic Fence Call to Artists.
- There will not be a regular meeting in April.

Maintenance Plan

- BPAC will work to develop a year round maintenance plan to include snow removal, cleaning and necessary maintenance.

Please see the minutes from the March 5, 2008, meeting for more details.

On February 27th the Summit Stage Board met at their regularly scheduled monthly meeting.

There was brief discussion of the Breckenridge Free Ride transfer connection. The Stage knows that the Town of Breckenridge has selected a Transit Operations Consultant that will look at this connection. Currently the Stage operates on 40 min. service which requires a 20 min layover at Breckenridge Station. The Stage has indicated that it makes sense to wait for the report before any schedule changes are made as Breckenridge routes will also be examined with the Transit Operation Plan.

Out of county transit service was discussed under old business. Questions remain as to feasibility. Upcoming commissioner elections may catalyze future discussions. No further action steps taken at this time. Summit Stage does know that Town of Breckenridge is exploring Van Pool transit options for outlying areas.

Total Ridership for January: 291,572, an increase of 1.46% over 2007. Paratransit ridership 25.18% increase. Late Night Ridership 10,933 an increase of 10.47% over 2007.

Transit tax collections through December 31, 2007 were up 7.8%, total transit tax collections for 2007 were \$7,890,968.00.

The next Summit Stage Board meeting is scheduled for March, 26th.

Summit Stage Retreat scheduled for May 2008. Date TBD.

	<u>Other Meetings</u>	
CML	Tim Gagen	No Meeting
Wildfire Council	Peter Grosshuesch	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
I-70 Coalition	Tim Gagen	No Meeting
CAST	Tim Gagen	No Meeting
NWCCOG	Peter Grosshuesch	No Meeting



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, March 25, 2008 (Regular Meeting); 7:30 p.m.

I CALL TO ORDER and ROLL CALL

II APPROVAL OF MINUTES – March 11, 2008 Regular Meeting

Page 15

III APPROVAL OF AGENDA

IV COMMUNICATIONS TO COUNCIL

- A. Citizens Comment - (Non-Agenda Items ONLY; 3 minute limit please)
- B. BRC Director's Report
- C. Goose Gossage Proclamation

V CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILL, SERIES 2008 – PUBLIC HEARINGS**

1. Council Bill No. 10, Series 2008- AN ORDINANCE AMENDING SECTION 12-6-4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE DISCONTINUANCE OF WATER SERVICE TO OUT OF TOWN WATER CUSTOMERS WHEN NECESSARY TO COMPLY WITH A CEASE AND DESIST ORDER

Page 22

2. Council Bill No. 11, Series 2008- AN ORDINANCE REPEALING CHAPTER 6 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING SECURITY GUARDS

Page 25

3. Council Bill No. 12, Series 2008- AN ORDINANCE APPROVING AN AGREEMENT TO EXCHANGE REAL ESTATE WITH THE ROCK PILE RANCH OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION

Page 28

4. Council Bill No. 13, Series 2008- AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND PUBLIC SERVICE COMPANY OF COLORADO

Page 56

5. Council Bill No. 14, Series 2008- AN ORDINANCE APPROVING AN AGREEMENT WITH STILES PARTNERSHIP LLP AND STILES II PARTNERSHIP LLP

Page 104

6. Council Bill No. 15, Series 2008- AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODES OF THE TOWN OF BRECKENRIDGE; ADOPTING BY REFERENCE AND AMENDING THE INTERNATIONAL BUILDING CODE, 2006 EDITION; THE INTERNATIONAL RESIDENTIAL CODE, 2006 EDITION, INCLUDING APPENDIX CHAPTERS G AND K; THE INTERNATIONAL MECHANICAL CODE, 2006 EDITION, INCLUDING APPENDIX A; THE INTERNATIONAL PLUMBING CODE, 2006 EDITION; INCLUDING APPENDICES C, E, F AND G; THE INTERNATIONAL ENERGY CONSERVATION CODE, 2006 EDITION; THE NATIONAL ELECTRICAL CODE, 2008 EDITION; THE ICC ELECTRICAL CODE—ADMINISTRATIVE PROVISIONS, 2006 EDITION; THE INTERNATIONAL FUEL GAS CODE, 2006 EDITION, INCLUDING APPENDICES A AND B; THE UNIFORM CODE FOR BUILDING CONSERVATION, 1997 EDITION, INCLUDING APPENDIX CHAPTER 3; AND THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1997 EDITION; AND PROVIDING PENALTIES FOR THE ENFORCEMENT OF SAID CODES

Page 128

7. Council Bill No. 16, Series 2008- AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING POLICY 4 7 (ABSOLUTE) CONCERNING FENCES AND GATES

Page 159

VI NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2008-

NONE

B. RESOLUTIONS, SERIES 2008-

1. A RESOLUTION APPROVING A STREET LIGHT MAINTENANCE AGREEMENT WITH PUBLIC SERVICE COMPANY OF COLORADO

Page 102

2. A RESOLUTION APPROVING AN AGREEMENT WITH CHIHUAHUA, LLC, A COLORADO LIMITED LIABILITY COMPANY, CONCERNING THE PROPOSED SNAKE RIVER LAND EXCHANGE

Page 168

3. A RESOLUTION ADOPTING THE “TOWN OF BRECKENRIDGE COMPREHENSIVE PLAN, DATED MARCH 25, 2008”, AS THE MASTER PLAN FOR THE PHYSICAL DEVELOPMENT OF THE TOWN

Page 183

4. A RESOLUTION CONCERNING THE COBB AND EBERT PLACER OPEN SPACE MANAGEMENT PLAN
C. OTHER

Page 191

VII PLANNING MATTERS

- A. Planning Commission Decisions of March 18, 2008
- B. Town Council Representative Report (Dr. Warner)

Page 3

VIII REPORT OF TOWN MANAGER AND STAFF*

IX REPORT OF MAYOR AND COUNCILMEMBERS*

- A. CAST (Mayor Blake)
- B. Breckenridge Open Space Advisory Commission (Mr. Bergeron)
- C. BRC (Mr. Rossi)
- D. Multi-Jurisdictional Housing Authority (Mr. Millisor)
- E. Breckenridge Heritage Alliance (Ms. McAtamney)
- F. Liquor Licensing Authority (Mr. Bergeron)

X OTHER MATTERS

XI SCHEDULED MEETINGS

Page 220

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

** Second Readings are Final Action Items. Public comment will be allowed during the public comment portion of the reading.

CALL TO ORDER AND ROLL CALL

Mayor Blake called the March 11, 2008 Town Council Meeting to order at 7:30 p.m. The following members answered roll call: Mr. Bergeron, Mr. Mamula, Ms. McAtamney, Mr. Rossi, Mr. Millisor, Dr. Warner and Mayor Blake.

APPROVAL OF MINUTES – February 26, 2008 Regular Meeting

Dr. Warner commented that on the last page of the minutes the title should say “licensed” not “ucensed”.

APPROVAL OF AGENDA

Town Manager, Tim Gagen, removed the first resolution, The Chihuahua Resolution from the agenda.

COMMUNICATIONS TO COUNCIL

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

1. Marty Lessow- commented that Woods Drive and French where the skiers cross from the free parking lot to the Gondola lot does not have a crosswalk. He believes there will be a tragedy. He wondered why the Elite Athletes April Fools Day was cancelled.

2. Dave Newkirk- He wanted to make it clear that the letter he wrote to the Council was his letter and not on behalf of the School District. He has been working on this for a while. Mr. Bergeron asked how bad the fields are. Dave commented that last year no one took care of them in the beginning of the year and some things were done mid season. He would like to keep them to the standard that they

2. Tony Lord addressed a speed limit change on Tiger Road. The last traffic study was done in the summer. He feels that 40 MPH is too high especially because of the increase in residents. Visibility is impaired during the winter because of the high snow banks. He feels the speed limit needs to be reduced and is the cause of Wendy Fields death. It goes back to 30 MPH after the Town limits when it becomes County Road. In the future there will be even more dump trucks on that road so it will be heavily traveled. He thinks it needs to be looked at.

3. Steve Jefferson- echoed Tony’s comments. His driveway is a school district bus stop. It is not a good situation. Feels it can be dropped. There is not another 40 MPH speed limit in Town other than Highway 9.

4. Alton Scales, CMC President- Ground breaking on April 8th at 3:00. On St. Patrick’s Day they are sponsoring a Poetry Slam.

B. BRC Director’s Report – Corry Mihm- Addressed some of Marty’s concerns about April Fools Day. They have been working to minimize some of the counter productive efforts associated with Aril Fools. The ski area, town and BRC have been trying to stop some of the negative aspects of April Fools Day because of Gaper Day which has come out of it. Restaurant Association decided not to do the BBQ because they did not want to look like they are supporting Gaper Day. Focus for Spring Massive is on comedy and music. Candidate Meet and Greets are coming up- March 13 and March 27. They have hosted some media over the last week. They have had some freelancers in and family focused media that the State brought in. Group Sales Numbers for 2007- Total group sales portion of lodging revenue is 15.2% of the total, roughly \$14.4 million of group lodging out of the total lodging. 8.2% is groups that the BRC has been involved with. They have been trying to focus on how to help people manage their experience while here on our super peak times. They have put together travel tips so guests understand what to expect. They hope to help people understand what the experience will be like.

Mayor Blake commented on Dave Newkirk’s comments and that they did go to the School District who committed to maintaining the fields. He also commented on the speed limit comments and said that going to the Chief was the right person to go to and that they will continue to look at it.

CONTINUED BUSINESS

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

1. Council Bill No. 6, Series 2008- AN ORDINANCE ADOPTING AMENDED GUIDELINES FOR LAND USE DISTRICT 33

Tim Berry commented that at the last meeting the Council adopted an ordinance placing the recently annexed Stan Miller property in Land Use District 33. However, as was acknowledged in the Annexation Agreement, the Land Use Guidelines for District 33 need to be amended in order to allow for the development of the Stan Miller property as contemplated by the annexation proposal. It is a condition of the Stan Miller Annexation Agreement that the Land Use District 33 Guidelines be amended to accommodate the proposed Stan Miller development.

The revised guidelines will allow for the Planning Commission to consider and ultimately approve (if appropriate) the proposed Master Plan for the development of the Stan Miller property. Without the amendment to the Land Use District 33 Guidelines, the proposed Stan Miller Master Plan cannot be approved as submitted.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Bergeron moved to approve Council Bill No. 6, Series 2008 on second reading. Mr. Mamula made the second. The motion passed 7-0.

2. Council Bill No. 9, Series 2008- AN ORDINANCE AMENDING SECTION 6-3B-10 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE MUNICIPAL OFFENSE OF “JOYRIDING”

Tim Berry commented that the ordinance would amend the Town’s municipal offense of “Joyriding.” Joyriding is basically taking someone else’s vehicle on a temporary basis without permission. The ordinance was carefully drafted so that it did not apply to criminal conduct that constitutes a “felony” under Colorado law. Town’s Joyriding Ordinance does not apply to felony auto theft therefore the ordinance expressly provides that it does not apply if the perpetrator commits \$500 or more of property damage in the course of the joyride.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Bergeron moved to approve Council Bill No. 9, Series 2008 on second reading. Mr. Millisor made the second. The motion passed 7-0.

B. FIRST READING OF COUNCIL BILLS, SERIES 2008-

1. Council Bill No. 10, Series 2008- AN ORDINANCE AMENDING SECTION 12-6-4 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE DISCONTINUANCE OF WATER SERVICE TO OUT OF TOWN WATER CUSTOMERS WHEN NECESSARY TO COMPLY WITH A CEASE AND DESIST ORDER

Tim Berry commented that the Town’s Water Ordinance authorizes the Town to discontinue water service to customers under certain circumstances, the most common being non-payment of water charges.

The ordinance would authorize the Town to discontinue water service when a final, nonappealable order has been issued directing an out-of-town water customer to stop using his or her septic system.

Mr. Mamula moved to approve Council Bill No. 10, Series 2008 on first reading. Mr. Bergeron made the second. The motion passed 7-0.

2. Council Bill No. 11, Series 2008- AN ORDINANCE REPEALING CHAPTER 6 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING SECURITY GUARDS

Tim Berry commented that this ordinance would repeal the Town’s Security Guard Licensing Ordinance. Under the current ordinance, the Town has the duty and responsibility to provide a license for security guard applicants of all employers in Breckenridge. By providing this license, this ordinance also requires the Town to review and evaluate the application, and ensure that applicants are “...of good character and reputation”. In addition, the Town must review evidence that demonstrates that the applicant’s “mental and physical conditions are such as to warrant confidence that his performance will not jeopardize the health, safety or welfare of any person.”

By assuming responsibility for the above, the Town is in a position of being required to conduct thorough background reviews of all local security guard applicants. In the past, this has not proven too difficult, as generally only one security guard was hired by a local establishment. There has recently been an addition of ten (10) new Breckenridge Emergency Services staff members hired by Vail Resorts, and we anticipate further use of security guard services by local employers.

As such, placing the burden on the Town to make certain that the backgrounds of these individual security applicants is appropriate is no longer feasible. This appears to be a responsibility of any employer when hiring an employee, and can now be obtained through a variety of service providers who verify backgrounds of applicants. The Chief does not feel the Town should be in the position of regulating the application and hiring process for security guards retained by local employers.

Mr. Millisor moved to approve Council Bill No. 11, Series 2008 on first reading. Ms. McAtamney made the second. The motion passed 7-0.

3. Council Bill No. 12, Series 2008- AN ORDINANCE APPROVING AN AGREEMENT TO EXCHANGE REAL ESTATE WITH THE ROCK PILE RANCH OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION

Tim Berry commented that the ordinance would approve a proposed land exchange with the Rock Pile Ranch Owners Association. The purpose of the exchange from the Town's perspective is to acquire 25,364 square feet of land owned by the association located just north of the Rock Pile Ranch Condominium on Airport Road and west of the Town's Block 11 property. In exchange, the Town would convey to the Association a parcel of equal size to be carved out of the Town's Block 11 property adjacent to (and easterly of) the Rock Pile Ranch Condominium.

Dr. Warner moved to approve Council Bill No. 12, Series 2008 on first reading. Mr. Rossi made the second. The motion passed 7-0.

4. Council Bill No. 13, Series 2008- AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND PUBLIC SERVICE COMPANY OF COLORADO

Tim Berry commented that the ordinance would approve a 20-year franchise agreement. Both Mr. Fellman and a representative from the PSCo will be here for second reading.

Mr. Mamula didn't feel right about it. He felt like the Town just had to say "yes". It would be nice to have some leverage. Their level of customer service is not great up here. The Town does not get much except electricity from this and a small franchise fee.

Tim Berry commented that Franchise Agreements do not vary much from municipality to municipality and he feels they have done a good job with this agreement. He will indicate to Todd Anderson that the Council was not completely happy with the franchise agreement.

Dr. Warner moved to approve Council Bill No. 13, Series 2008 on first reading. Ms. McAtamney made the second. The motion passed 4-3 with Mr. Bergeron, Mr. Mamula and Mr. Rossi opposing.

5. Council Bill No. 14, Series 2008- AN ORDINANCE APPROVING AN AGREEMENT WITH STILES PARTNERSHIP LLP AND STILES II PARTNERSHIP LLP

Tim Berry commented that In December of 2007 the Council supported the proposed cost for exterior façade improvements to the back of the Bunchman building (215 S. Main St.) in exchange for a perpetual easement for the remaining property (less the existing outdoor seating area for the Crown) to allow for riverwalk improvements and staging of special events.

The agreement and easement would commit the Town to pay up to \$127,182 for the proposed facade improvements. Any cost savings would be a savings for both parties. The Town in turn will be able to construct walkways, landscaping improvements, locate street furniture and lighting and stage special events within the easement area. The proposed facade improvements and landscaping will receive the appropriate development permit prior to any construction.

Mr. Bergeron moved to approve Council Bill No. 14, Series 2008 on first reading. Dr. Warner made the second. The motion passed 7-0.

6. Council Bill No. 15, Series 2008- AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODES OF THE TOWN OF BRECKENRIDGE; ADOPTING BY REFERENCE AND

AMENDING THE INTERNATIONAL BUILDING CODE, 2006 EDITION; THE INTERNATIONAL RESIDENTIAL CODE, 2006 EDITION, INCLUDING APPENDIX CHAPTERS G AND K; THE INTERNATIONAL MECHANICAL CODE, 2006 EDITION, INCLUDING APPENDIX A; THE INTERNATIONAL PLUMBING CODE, 2006 EDITION; INCLUDING APPENDICES C, E, F AND G; THE INTERNATIONAL ENERGY CONSERVATION CODE, 2006 EDITION; THE NATIONAL ELECTRICAL CODE, 2008 EDITION; THE ICC ELECTRICAL CODE—ADMINISTRATIVE PROVISIONS, 2006 EDITION; THE INTERNATIONAL FUEL GAS CODE, 2006 EDITION, INCLUDING APPENDICES A AND B; THE UNIFORM CODE FOR BUILDING CONSERVATION, 1997 EDITION, INCLUDING APPENDIX CHAPTER 3; AND THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1997 EDITION; AND PROVIDING PENALTIES FOR THE ENFORCEMENT OF SAID CODES

Tim Berry commented that the Building Codes currently adopted by the Town are the 2000 International Code series and the 2002 National Electric Code. The International Code series is published and updated by the International Code Council on a three-year basis. The 2006 series of codes are the most updated published codes. The Electrical Code is published by the National Fire Protection Agency and the 2008 Code is the latest published edition. To enforce the provisions of the latest published codes, Council must adopt those codes by reference along with local amendments as deemed appropriate.

In conjunction with the code update, an additional code the 2006 International Energy Conservation Code has been included for adoption. Colorado House Bill 07-1146 effective July 1, 2007, requires that any Municipality that has adopted a Building Code must adopt an energy code by July 1, 2008. An energy code means, at a minimum, the 2003 International Energy Conservation Code, or any successor (such as the 2006 Code). Breckenridge does not currently have an adopted energy code. The State legislation applies to all buildings, including mixed use, commercial and residential. Adoption of the 2006 International Energy Conservation Code will satisfy the state legislation.

Mr. Bergeron moved to approve Council Bill No. 15, Series 2008 on first reading. Mr. Mamula made the second. The motion passed 7-0.

7. Council Bill No.16, Series 2008- AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING POLICY 4 7(ABSOLUTE) CONCERNING FENCES AND GATES

Tim Berry commented that the version of the ordinance has changes from the last time the Council saw it on January 2, 2008 which include the following: They have modified the definition of “solid to void ratio” to indicate that the measurement is at each section of the fence, rather than an average along the entire length of the fence. They have added a definition of “landscape wall” and “gateway entrance monument”. Landscape walls and entrance monuments would be prohibited similarly as fences. The definition of “gateway entrance monument” has been modified from the January 2, 2008 version. They did not make any changes to the proposal to allow non-natural and recycled materials (“Trex”), where an applicant can demonstrate to the Town that the alternate material would be indistinguishable from natural materials. They did not feel there was clear direction on this issue at the January 2, 2008 meeting. They have proposed to allow fenced in children’s play areas, with design criteria similar to pet fences. They propose an exemption to developments subject to vested master plans containing design criteria for fences written into the plan, where the master plan was approved prior to the adoption of this ordinance. This would include Vista Point and the new Block 11 development (if fence design standards are incorporated into the final master plan.) The Wellington Neighborhood does not currently include fence criteria in the master plan. The master plan would need to be modified via a Class C minor development permit in order to include the fence criteria. Exempt cemetery fences, but we have encouraged designs similar to fences in the historic district.

Mr. Mamula moved to approve Council Bill No. 16, Series 2008 on first reading. M made the second. The motion passed 7-0.

C. RESOLUTIONS, SERIES 2008

1. A RESOLUTION RESTRUCTURING AND REESTABLISHING THE TOWN OF BRECKENRIDGE PUBLIC ARTS COMMISSION

Tim Berry commented that the resolution would restructure the Breckenridge Public Art Commission (BPAC) from nine members back to seven.

When the Town Council Representative was added to the BPAC several years ago they added an additional Commission member to keep an uneven number of Commissioners, while still allowing the existing Commission to fulfill their terms. Since the BPAC no longer has a Town Council representative they believe that it is appropriate to go back to a seven member Commission.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Dr. Warner moved to approve the Resolution, Series 2008. Ms. McAtamney made the second. The motion passed 7-0.

D. OTHER

1. Recreation Center Campfires- The Town of Breckenridge Recreation Department would like to hold two Family Campfires as part of its 2008 program schedule. The events are scheduled for Tuesday, March 18, and Tuesday November 25, 2008, from 7:00 pm to 8:00 pm at Carter Park, and will be open to the public. This program is a donation-based program with proceeds going towards Outdoor Recreation and Education programs and events (formally known as the "Nature Series"). The fire itself would take place in a portable metal fire pit, most likely on a layer of snow. The location of the fire would be in the open field/space east of Carter Park Pavilion at the bottom of the sledding hill. The area would be clear of sledders, since the sledding hill is closed after dark. In keeping with fire regulations from the Red, White, and Blue Fire Protection District, the campfire will be at least 20 feet from the Carter Park Pavilion or any other structure. The fire will not be a bonfire, but a small family campfire complete with an educational component, songs, skits, stories, and marshmallow roasting.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Millisor moved to approve a special permit to allow the Breckenridge Recreation Department (specifically Outdoor Recreation and Education) to present a family campfire to the public, on Tuesday March 18, and Tuesday, November 25, 2008, from 7:00 pm to 8:00 pm at Carter Park. All burning at the family campfire shall comply with the "Open Burning" requirements of Section 307 of the International Fire Code, 2003 Edition. Ms. McAtamney made the second. The motion passed 7-0.

PLANNING MATTERS

• Planning Commission Decisions of March 4, 2008.

With no requests for call up, Mayor Blake stated the Planning Commission decisions of the March 4, 2008 meeting will stand as presented.

• Town Council Representative Report.

Dr. John Warner commented that he believes he had an ex-parte contact with Don Nilson at a social gathering. They were talking about the value of the bike path and that he felt the bike path on the west side of Blue River would be a great idea. It is pending application with the planning commission right now.

REPORT OF TOWN MANAGER AND STAFF

Tim Gagen, Town Manager, commented on Marty's comments on Highway 9 and that we have made a commitment to CDOT to not make crosswalks. Mr. Mamula commented that we will have to push the ski area to do something and this is the ski areas problem and they need to solve it. Mr. Gagen commented that it would be tough to go back on our word. Chief Holman commented that he would prefer to go after the ski area to do something than create a crosswalk because we'll have the same problem we do at the village. Dr. Warner felt we have some responsibility to make this right and create a good guest experience. Mr. Mamula commented that because the ski area charges for parking in the other lots that is what is creating the problem because people have to park in the Gold Rush lot to get free parking. Mr. Rossi wants there to be a crosswalk because he doesn't care about upsetting CDOT and going back on our word..

REPORT OF MAYOR AND COUNCILMEMBERS

A. Report of Mayor (CAST)

Mayor Blake commented that Mr. Gagen commented on CAST earlier.

- B. Breckenridge Open Space Advisory Commission (Mr. Bergeron)**
Mr. Bergeron commented that they talked about Cucumber Gulch Signage and Erin McGinnis created some great signs. It will cost \$11,000. Heide Anderson presented pictures of what the signs will look like. There will be a site visit on Monday 3/31 at 4:00 pm at the Peabody Trailhead. The agenda item is to discuss the proposed Golden Horseshoe Nordic expansion.
- C. BRC (Mr. Rossi)**
Mr. Rossi had nothing to report.
- D. Multi-Jurisdictional Housing Authority (Mr. Millisor)**
Mr. Millisor had nothing to report.
- E. Breckenridge Heritage Alliance (Ms. McAtamney)**
Ms. McAtamney had nothing to report.
- F. Liquor Licensing Authority (Mr. Bergeron)**
Mr. Bergeron had nothing to report.

OTHER MATTERS

They met with the bar owners and they heard from many bar owners that they feel that lack of late night transit service is a cause for altercations. He told them about the problems we are already having with employing bus drivers.

Dr. Warner commented that he called the City Market Manager about Single Use Bags. She is in favor of the canvas bags. Corporately they are aware of the problem and they are selling canvas bags. Mr. Mamula asked if there was a way of linking the cards to whether someone uses a reusable bag.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss the regular meeting was adjourned at 9:10 pm.

Submitted by Alison Kellermann, Administrative Services Coordinator

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

Ernie Blake, Mayor

EXECUTIVE SESSION CERTIFICATE

Town of Breckenridge)
County of Summit)
State of Colorado)

Ernie Blake, the duly elected, qualified and acting Mayor of the Town of Breckenridge, hereby certifies as follows:

As part of the Town Council meeting on Tuesday, March 11, 2008 at 6:40 p.m., Mr. Bergeron moved to convene in Executive Session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for the purposes of receiving legal advice on specific legal questions; and Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations, and instructing negotiators.

Ms. McAtamney made the second. A roll call vote was taken. All were in favor of the motion.

Mr. Mamula moved to adjourn the Executive Session at 7:25 pm. Ms. McAtamney made the second. All were in favor of the motion.

This certificate shall be included after the minutes of the regular Town Council meeting of Tuesday, March 11, 2008.

Ernie Blake, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 10 (Amending Water Ordinance to Enforce Cease & Desist Order)

DATE: March 13, 2008 (for March 25th meeting)

The second reading of the ordinance amending the Town's Water Ordinance to authorize the discontinuance of water service to an out of Town water customer if the County Health Department issues a Cease & Desist Order prohibiting the use of the customer's septic system is scheduled for your meeting on March 25th. There are no changes proposed to ordinance from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – MARCH 25***

2
3 ***NO CHANGES FROM FIRST READING***

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

7
8 COUNCIL BILL NO. 10

9
10 Series 2008

11
12 AN ORDINANCE AMENDING SECTION 12-6-4 OF THE BRECKENRIDGE TOWN CODE
13 CONCERNING THE DISCONTINUANCE OF WATER SERVICE TO OUT OF TOWN
14 WATER CUSTOMERS WHEN NECESSARY TO COMPLY WITH A CEASE AND DESIST
15 ORDER

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

19
20 Section 1. Section 12-6-4 of the Breckenridge Town Code is hereby amended by the
21 addition of a new subsection I, which shall read in its entirety as follows:

22
23 **I. Because an individual sewage system or sewage treatment works that does**
24 **not comply with applicable legal requirements constitutes a nuisance**
25 **pursuant to state law, the town shall terminate water service to any out-of-**
26 **Town water service customer when a final, nonappealable order has been**
27 **issued pursuant to the Individual Sewage Disposal Systems Act, Article 10 of**
28 **Title 25, C.R.S., and the Summit County Individual Sewage Disposal System**
29 **Regulations, directing the out-of-Town water customer to cease and desist**
30 **from using the customer’s individual sewage disposal system. The notice and**
31 **dispute resolution provisions of this section shall not apply to the**
32 **discontinuance of water service to an out-of-Town water customer pursuant**
33 **to this subsection and the Town may immediately discontinue such water**
34 **service when necessary to comply with the cease and desist order; provided,**
35 **however, that except in the case of a bona fide public health threat requiring**
36 **immediate discontinuance of the water service, the Town shall provide the**
37 **out-of-Town water service customer with not less than 10 days’ advance**
38 **written notice that the water service will be discontinued.**

39
40 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
41 various secondary codes adopted by reference therein, shall continue in full force and effect.

42
43 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
44 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and

1 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
2 thereof.

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

7
8 Section 5. This ordinance shall be published and become effective as provided by
9 Section 5.9 of the Breckenridge Town Charter.

10
11 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
12 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
13 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
14 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
15 Town.

16
17 TOWN OF BRECKENRIDGE, a Colorado
18 municipal corporation

19
20
21
22 By _____
23 Ernie Blake, Mayor

24
25 ATTEST:

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

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 11 (Ordinance Repealing Security Guard Regulations)

DATE: March 13, 2008 (for March 25th meeting)

The second reading of the ordinance repealing the Town's security guard regulations is scheduled for your meeting on March 25th. There are no changes proposed to ordinance from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – MARCH 25***

2
3 ***NO CHANGES FROM FIRST READING***

4
5 COUNCIL BILL NO. 11

6
7 Series 2008

8
9 AN ORDINANCE REPEALING CHAPTER 6 OF TITLE 4 OF THE BRECKENRIDGE
10 TOWN CODE CONCERNING SECURITY GUARDS

11
12 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
13 COLORADO:

14
15 Section 1. Chapter 6 of Title 4 of the Breckenridge Town Code, entitled “Security
16 Guards”, is repealed.

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

20
21 Section 3. The Town Council hereby finds, determines and declares that it has the power
22 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
23 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

24
25 Section 4. This ordinance shall be published and become effective as provided by
26 Section 5.9 of the Breckenridge Town Charter.

27
28 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
29 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
30 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
31 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
32 Town.

33
34 TOWN OF BRECKENRIDGE, a Colorado
35 municipal corporation

36
37
38
39 By _____
40 Ernie Blake, Mayor

1 ATTEST:

2

3

4

5

6 _____
Mary Jean Loufek, CMC,

7 Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 12 (Approving Rock Pile Ranch Land Exchange Contract)

DATE: March 13, 2008 (for March 25th meeting)

The second reading of the ordinance approving the Rock Pile Ranch Land Exchange Contract is scheduled for your meeting on March 25th. There are no changes proposed to either the ordinance or the agreement itself.

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

1 ***FOR WORKSESSION/SECOND READING – MARCH 25***

2
3 ***NO CHANGES FROM FIRST READING***

4
5 COUNCIL BILL NO. 12

6
7 Series 2008

8
9 AN ORDINANCE APPROVING AN AGREEMENT TO EXCHANGE REAL ESTATE WITH
10 THE ROCK PILE RANCH OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT
11 CORPORATION

12
13 WHEREAS, the Town of Breckenridge desires to enter into an Agreement To Exchange
14 Real Estate (Without Valuations) with Rock Pile Ranch Owners Association, Inc., a Colorado
15 nonprofit corporation, a copy of which is marked Exhibit "A", attached hereto and incorporated
16 herein by reference ("Agreement"); and

17
18 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the
19 Agreement, and finds and determines that it would be in the best interests of the Town and its
20 residents for the Town to enter into the Agreement; and

21
22 WHEREAS, the Agreement requires the Town to convey to Rock Pile Ranch Owners
23 Association, Inc., a Colorado nonprofit corporation, certain Town-owned real property described
24 therein; and

25
26 WHEREAS, Section 15.3 of the Breckenridge Town Charter requires that the sale or
27 exchange of Town-owned real property be approved by ordinance or majority vote of electors at
28 the option of the Town Council; and

29
30 WHEREAS, the Town Council hereby finds and determines that the Agreement should
31 be approved by ordinance and not referred to the electors of the Town.

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

35
36 Section 1. The proposed Agreement between the Town of Breckenridge and the Rock
37 Pile Ranch Owners Association, Inc., a Colorado nonprofit corporation, is approved in
38 substantially the form attached hereto as Exhibit "A", and the Town Manager and Town Clerk
39 are hereby authorized, empowered and directed to execute such Agreement for and on behalf of
40 the Town of Breckenridge.

41
42 Section 2. Prior to closing of the transaction described in the approved agreement minor
43 changes to or amendments of the approved agreement may be made by the Town Manager if the
44 Town Attorney certifies in writing that the proposed changes or amendments do not substantially

1 affect the consideration to be received or paid by the Town pursuant to the approved agreement,
2 or the essential elements of the approved agreement.

3
4 Section 3. The Town Council hereby finds, determines and declares that it has the power
5 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
6 XX of the Colorado Constitution and Section 15.3 of in the Breckenridge Town Charter.

7
8 Section 4. This ordinance shall be published and become effective as provided by
9 Section 5.9 of the Breckenridge Town Charter.

10
11 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
12 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
13 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
14 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
15 Town.

16
17 TOWN OF BRECKENRIDGE, a Colorado
18 municipal corporation

19
20
21
22 By _____
23 Ernie Blake, Mayor

24
25 ATTEST:

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

1 Thence continuing along the westerly line of Tract D, common with the easterly
2 line of said Block 10, S 8°02'15" E, 422.86 feet to a point on the westerly line of
3 Tract D, which is also the southeast corner of Rockpile Ranch Condominium as
4 depicted on the plat thereof recorded July 6, 1999 under Reception No. 599816,
5 Summit County, Colorado;

6
7 Thence S 89°46'22" E, 60.00 feet;

8
9 Thence N 8°02'15" W, 431.48 feet;

10
11 Thence S 81°37'55" W, 59.38 feet to the point of beginning

12
13 Such parcel of land contains 25,364 square feet, more or less, and is depicted on
14 the attached Exhibit "B".

15
16 with all easements and rights of way appurtenant thereto, all improvements thereon, and all
17 fixtures of a permanent nature currently on the premises, in their present condition, ordinary
18 wear and tear excepted. Such property is hereafter referred to in this Agreement as the "Block
19 11 Parcel." The Block 11 Parcel shall be conveyed by appropriate reference to the new lot to be
20 created pursuant to the subdivision plat described in Paragraph 7(C).

21
22 3. Evidence Of Title. Title shall be merchantable in each of the parties as to the parcels to
23 be conveyed pursuant to this Agreement. Not later than April 15, 2008 ("Title Deadline"), each
24 party shall furnish to the other party a current commitment for owner's title insurance from Ten
25 Mile Title & Lawyer's Title Company, Breckenridge, Colorado ("Title Company"). The Block
26 2A Parcel to be conveyed to the Town shall be insured for an amount determined by Town; and
27 the Block 11 Parcel to be conveyed to Association shall be insured for an amount determined by
28 Association. Each such commitment shall contain copies (or abstracts of instruments) listed in
29 the schedule of exceptions ("Exceptions") in the title insurance commitment. This requirement
30 shall pertain only to instruments shown of record in the office of the Summit County Clerk and
31 Recorder. The title insurance commitment, together with the copies or abstracts of documents
32 furnished pursuant to this Paragraph 3 and the subdivision plats to be filed pursuant to
33 Subparagraphs 7(B) and 7(C) shall constitute the title documents for each property ("Title
34 Documents"). Each party shall pay the cost of the title insurance policy for the real property
35 which it is receiving pursuant to this Agreement, and the parties shall have the title insurance
36 policies delivered as soon as practicable after Closing. The cost of obtaining owner's extended
37 title insurance coverage shall be paid for by the party requesting such additional coverage.

38
39 4. Title Review and Inspection By Town.

40
41 4.1 Title Review. Town shall have the right to inspect the Title Documents with
42 respect to the Block 2A Parcel. Written notice by Town of unmerchantability of title or of other
43 unsatisfactory title conditions shown by the Title Documents for the Block 2A Parcel shall be
44 signed by or on behalf of the Town and given to Association on or before 20 calendar days after
45 the Title Deadline, or within 20 calendar days after receipt by Town of any Title Document(s) or
46 endorsement(s) adding new Exception(s) to the title commitment. If Association does not

1 receive Town's notice by the date(s) specified above, Town accepts as satisfactory the condition
2 of the title to the Block 2A Parcel disclosed by the Title Documents. If such notice is received by
3 Association as set forth above, the "Right To Cure" provisions of Subparagraph 4.4, below, shall
4 apply.
5

6 4.2 Matters Not Shown By Public Record. Association shall deliver to Town, on or
7 before the Title Deadline as set forth in Paragraph 3, true copies of all lease(s) and survey(s) in
8 Association's possession pertaining to the Block 2A Parcel and shall disclose to Town all
9 easements, liens or other title matters not shown by public record of which Association has
10 actual knowledge. Town shall have the right to inspect the Block 2A Parcel as provided in
11 Subparagraph 4.3, below, to determine, among other things, if any third party(s) has any right in
12 the Block 2A Parcel not shown by the public record (such as an unrecorded easement,
13 unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory
14 condition(s) disclosed by Association or revealed by such inspection shall be signed by or on
15 behalf of Town and given to Association on or before April 15, 2008. If Association does not
16 receive the Town's notice by said date, Town agrees to accept title to the Block 2A Parcel subject
17 to such rights, if any, of third parties of which Town has actual knowledge. If the Town's notice
18 is received by Association as set forth above, the "Right To Cure" provisions of Subparagraph
19 4.4, below, shall apply.
20

21 4.3 Inspection. Town shall have the right to have inspection(s) of the physical condition
22 of the Block 2A Parcel at Town's expense. Written notice of any unsatisfactory physical
23 condition(s) disclosed by such inspection shall be signed by or on behalf of Town and given to
24 Association on or before April 15, 2008. If such notice is not received by Association on or
25 before April 15, 2008, the physical condition of the Block 2A Parcel shall be deemed to be
26 satisfactory to Town. If such notice is received by Association as set forth above, the "Right To
27 Cure" provisions of Subparagraph 4.4, below, shall apply. Town is responsible for and shall pay
28 for any damage which occurs to the Block 2A Parcel as a result of such inspections.
29

30 4.4 Right To Cure. If Association receives timely notice from Town under
31 Subparagraphs 4.1, 4.2 or 4.3, above, Association shall use reasonable effort to correct the
32 matter(s) described in the Town's notice not later than two days before the date of Closing. If
33 Association fails to correct the matter(s) described in the Town's notice at least two days before
34 the date of Closing, this Agreement shall then terminate; provided, however, Town may, by
35 written notice received by Association on or prior to the day before Closing, waive its objection
36 to the matter(s) set forth in its notice and proceed with the Closing.
37

38 5. Title Review And Inspection By Association.
39

40 5.1 Title Review. Association shall have the right to inspect the Title Documents with
41 respect to the Block 11 Parcel. Written notice by Association of unmerchantability of title or of
42 other unsatisfactory title condition shown by the Title Documents for the Block 11 Parcel shall
43 be signed by or on behalf of the Association and given to Town on or before 20 calendar days
44 after the Title Deadline, or within 20 calendar days after receipt by Association of any Title
45 Document(s) or endorsement(s) adding new Exception(s) to the title commitment. If Town does
46 not receive Association's notice by the date(s) specified above, Association accepts as

1 satisfactory the condition of the title to such property disclosed by the Title Documents. If such
2 notice is received by Town as set forth above, the "Right To Cure" provisions of Subparagraph
3 5.4, below, shall apply.
4

5 5.2 Matters Not Shown By Public Record. Upon Association's request, Town shall
6 deliver to Association, on or before the Title Deadline as set forth in Paragraph 3, true copies of
7 all relevant lease(s) and survey(s) in Town's possession pertaining to the Block 11 Parcel and
8 shall disclose to Association all easements, liens or other title matters not shown by public record
9 of which Town has actual knowledge. Association shall have the right to inspect the Block 11
10 Parcel as provided in Subparagraph 5.3, below, to determine, among other things, if any third
11 party(s) has any right in the Block 11 Parcel not shown by the public record (such as an
12 unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any
13 unsatisfactory condition(s) disclosed by Town or revealed by such inspection shall be signed by
14 or on behalf of Association and given to Town on or before April 15, 2008. If Town does not
15 receive Association's notice by said date, Association agrees to accept title to the Block 11 Parcel
16 subject to such rights, if any, of third parties of which Association has actual knowledge. If such
17 notice is received by Town as set forth above, the "Right To Cure" provisions of Subparagraph
18 5.4, below, shall apply.
19

20 5.3 Inspection. Association shall have the right to have inspection(s) of the physical
21 condition of the Block 11 Parcel at Association's expense. Written notice of any unsatisfactory
22 physical condition(s) disclosed by such inspection shall be signed by or on behalf of Association
23 and given to Town on or before April 15, 2008. If such notice is not received by Town on or
24 before April 15, 2008, the physical condition of the Block 11 Parcel shall be deemed to be
25 satisfactory to Association. If such notice is received by Town as set forth above, the "Right To
26 Cure" provisions of Subparagraph 5.4, below, shall apply. Association is responsible for and
27 shall pay for any damage which occurs to the Block 11 Parcel as a result of such inspections.
28

29 5.4 Right To Cure. If Town receives timely notice under Subparagraphs 5.1, 5.2 or 5.3,
30 above, Town shall use reasonable effort to correct the matter(s) described in Association's notice
31 not later than two days before the date of Closing. If Town fails to correct the matter(s)
32 described in Association's notice at least two days before the date of Closing, this Agreement
33 shall then terminate; provided, however, Association may, by written notice received by Town
34 on or prior to the day before Closing, waive its objection to the matter(s) set forth in its notice
35 and proceed with the Closing.
36

37 6. Representations by Association. Association represents to Town as follows:

- 38 A. Association is a nonprofit corporation organized and existing under the laws of the
39 State of Colorado. At Closing, Association will be in good standing with the office of
40 the Colorado Secretary of State.
- 41 B. Association is the owners' association for the Rock Pile Ranch Condominiums in
42 Breckenridge, Summit County, Colorado.
- 43 C. The Rock Pile Ranch Condominiums are subject to the Declaration of Covenants,
44 Conditions and Restrictions of Rock Pile Ranch Condominiums recorded July 6, 1999
45 under Reception No. 599817 of the records of the Clerk and Recorder of Summit
46

1 County, Colorado, and the First Amendment to the Declaration of Rock Pile Ranch
2 Condominiums dated March 21, 2007 and recorded April 4, 2007 under Reception
3 No. 851137 of the records of the Clerk and Recorder of Summit County Colorado.

- 4 D. This Contract is entered into by Association pursuant to Section 38-33.3-312, C.R.S.
5 E. The Block 2A Parcel is a common element of the Rock Pile Ranch Condominiums.
6 F. This Agreement has been approved by not less than sixty seven percent (67%) of the
7 votes in the Association as evidenced by the attached Exhibit "C". Such approval
8 shall be deemed to satisfy the requirement of to Section 38-33.3-312(3), C.R.S.,
9 requiring that a contract by an association to convey an interest in common elements
10 of a planned community must specify a date after which the agreement will be void
11 unless approved by the requisite percentage of the owners.
12 G. All of the approvals necessary to make this Agreement enforceable against the
13 Association have been obtained as required by to Section 38-33.3-312, C.R.S., and
14 this Agreement when fully executed will be enforceable against the Association in
15 accordance with its terms.
16 H. Association will provide such other and further documentation to Town and to the
17 title insurance company as may be required to evidence full compliance with the
18 requirements of to Section 38-33.3-312, C.R.S., or other applicable law.
19

20 7. Contingencies. The obligations of the parties to consummate the transaction
21 contemplated by this Agreement are expressly contingent upon the occurrence of all of the
22 following:
23

24 A. The Town determining, through soil tests, environmental assessment, or such other
25 means as Town shall, in its discretion, select that the Block 2A Parcel is not contaminated by any
26 hazardous waste, underground storage tank, petroleum, regulated substance or similar material.
27

28 B. Association filing a subdivision plat to legally subdivide and create the Block 2A
29 Parcel. Association covenants and agrees to proceed diligently and in good faith to attempt to
30 obtain all required governmental approvals in order to be permitted to file such plat. Association
31 shall pay all costs of preparing and filing the required subdivision plat for the Block 2A Parcel.
32 Town agrees to waive all development permit application and review fees for Association's
33 subdivision application.
34

35 C. Town filing a subdivision plat to legally subdivide and create the Block 11 Parcel.
36 Town covenants and agrees to proceed diligently and in good faith to attempt to obtain all
37 required governmental approvals in order to be permitted to file such plat. Town shall pay all
38 costs of preparing and filing the required subdivision plat for the Block 11 Parcel.
39

40 D. Town amending the Town of Breckenridge Land Use District 31 Guidelines so that:
41 (i) Association's use of the Block 11 Parcel for parking purposes will not violate Policy 2
42 (Absolute)(Land Use Guidelines) of the Town's Development Code; and (ii) Association's
43 application for a development permit to install paving, lighting and/or landscaping on the Block
44 11 Parcel will not receive an assessment of negative points under Policy 2 (Relative)(Land Use
45 Guidelines) of the Town's Development Code.
46

1 E. Town receiving an opinion letter from the Association's attorney, in form and
2 substance acceptable to the Town Attorney, confirming that: (i) the Association is duly organized
3 and existing under Colorado law, and is in good standing with the office of the Colorado
4 Secretary of State; (ii) the conveyance to the Town of the Association's interest in the Block 2A
5 Parcel pursuant to this Agreement has been properly authorized under the applicable governing
6 documents of the Rock Pile Ranch Condominiums and other applicable law; and (iii) there is no
7 litigation threatened or pending against the Association challenging the authority of the
8 Association to convey the Block 2A Parcel to the Town pursuant to this Agreement.

9
10 Subparagraphs A and E of this Paragraph are for the sole benefit of the Town and may
11 be waived in writing by the Town prior to Closing. Subparagraph D of this Paragraph is for the
12 sole benefit of the Town and may be waived in writing by the Town prior to Closing. Paragraph
13 B and C of this Paragraph may not be waived except by mutual agreement of the parties.

14
15 In the event any of such contingencies shall failed to be satisfied prior to Closing (unless
16 waived as provided above), this Agreement shall terminate, and each party shall be released from
17 any further obligation hereunder.

18
19 8. Density; Future Density on the Block 11 Parcel. Association understands and
20 acknowledges that the Block 11 Parcel has no density on it. The Town requires as a condition of
21 the transaction described in this Agreement that Association agree that the Block 11 Parcel will
22 never have any density transferred to it. Accordingly, Association agrees that at Closing it will
23 execute and record a restrictive covenant, in form and substance acceptable to the Town
24 Attorney, providing that no density shall ever be transferred to the Block 11 Parcel without the
25 prior written consent of the Town, which consent may be granted, withheld or conditionally
26 granted in the Town's sole and absolute discretion. Such approval is in addition to (and not part
27 of) the Town's normal governmental process for reviewing and approving subdivision and
28 development requests. The approval described in this Paragraph is a purely discretionary review
29 and approval by the Town.

30
31 9. Future Improvements of the Block 11 Parcel. Association understands that because of
32 the proximity of the Block 11 Parcel to other Town properties and its visibility from Colorado
33 Highway 9, the Town is concerned about the improvements to be made by Association to the
34 Block 11 Parcel, including, but not limited to, paving, lighting and landscaping (improvements
35 that do not require density under the Town's land use codes). Association and the Town agree
36 that Association will not make any improvements to the Block 11 Parcel until the first to occur
37 of: (i) the Town's completion of its Block 11 Master Plan, or (ii) two years from the date of
38 Closing. If the Town's Block 11 Master Plan has been completed at the time Association
39 proposes to make the improvements to the Block 11 Parcel, such improvements shall be
40 compatible with the Block 11 Master Plan. Additionally, Association will not make any
41 improvements to the Block 11 Parcel until the proposed improvements have been approved by
42 the Town, in its sole and absolute discretion. Such approval is in addition to (and not part of) the
43 Town's normal governmental process for reviewing and approving subdivision and development
44 requests. The approval described in this Paragraph is a purely discretionary review and approval
45 by the Town. Town may require Association to execute and record a restrictive covenant, in
46 form and substance acceptable to the Town Attorney, obligating Association to maintain the

1 approved landscaping in perpetuity. Any such restrictive covenant shall be subordinate only to
2 the lien of the general property taxes for the Block 11 Parcel.

3
4 10. Environmental Representations. To the best of each party's actual knowledge, as of the
5 date of this Agreement and as of the Closing date, the real property owned by such party and to
6 be conveyed to the other party pursuant to this Agreement (including land, surface water, ground
7 water and improvements) is now and will then be free of all contamination, including: (i) any
8 "hazardous water", "underground storage tanks", "petroleum", "regulated substance", or "used
9 oil" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §9601, et
10 seq.), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance"
11 as defined by the Comprehensive Environmental Response, Compensation and Liability Act of
12 1980 (42 U.S.C. §9601, et seq.), as amended, or by any regulations promulgated thereunder
13 (including, but not limited to, asbestos and radon); (iii) any "oil, petroleum products, and their
14 by-products", as defined by Section 25-17-101 et seq., C.R.S., as amended, or by any regulations
15 promulgated thereunder; (iv) any "hazardous waste" as defined by the Colorado Waste Act,
16 Section 25-15-101, et seq., C.R.S., or by any regulations promulgated thereunder; (v) any
17 substance the presence of which on, in or under the property is prohibited by any law similar to
18 those set forth above; and (vi) any other substance which by law, regulation or ordinance
19 requires special handling in its collection, storage, treatment or disposal. Each party understands
20 and acknowledges that the representations contained in this Paragraph are based on the other
21 party's actual knowledge derived from such party's ownership of the subject property. The
22 representations and warranties in this Paragraph shall be deemed automatically reaffirmed by
23 each of the parties on the Closing date as true and correct without the necessity of any further
24 writing or affirmation, and shall survive the Closing and delivery of the deeds for the properties.
25 Each party understands and acknowledges that the other party shall be entitled to act in reliance
26 upon these representations, and each party shall indemnify and hold the other party harmless
27 with respect to any and all liability incurred by such other party as result of any intentional
28 misrepresentation contained in this Paragraph. However, each party releases the other party
29 from any obligation to have inquired into the environmental condition of the property owned by
30 such party at the time of the signing of this Agreement .

31
32 11. Prorations and Closing Adjustments.

33
34 11.1 General Property Taxes. The Block 11 Parcel is tax exempt by virtue of the Town's
35 ownership, and no proration of real property taxes for such parcel is required. Real property
36 taxes for the year of Closing for the Block 2A Parcel shall be pro rated as of Closing on the basis
37 of the most recent information, and shall be considered a final settlement.

38
39 11.2 Real Estate Transfer Tax. The conveyance of the Block 2A Parcel to the Town is
40 exempt from the Town's Real Estate Transfer Tax Ordinance pursuant to Section 3-3-6(B) of the
41 Breckenridge Town Code. However, the conveyance of the Block 11 Parcel to Association is
42 not exempt, and Association shall pay the appropriate Real Estate Transfer Tax on such
43 conveyance based upon the title insurance value of such parcel as described in Paragraph 3.
44 However, Association shall receive a credit at Closing for the full real estate transfer tax paid
45 with respect to the Block 11 Parcel.

1 11.3 Other Closing Costs. Other usual and customary items shall be apportioned to date of
2 delivery of the deed with respect to each property.
3

4 12. Transfer Of Title. Subject to tender or payment at Closing as required herein and
5 compliance by each of the parties with the terms and provisions of this Agreement, each party
6 agrees to execute and deliver its deed to the other party at Closing. Title shall be conveyed free
7 and clear of all liens for special improvements installed as of the date of this Agreement, whether
8 assessed or not, except: (i) distribution utility easements (including cable TV); (ii) those matters
9 reflected by the Title Documents accepted by the parties in accordance with Subparagraphs 4.1
10 and 5.1 of this Agreement; (iii) those rights, if any, of third parties in the properties not shown by
11 the public records but accepted by the parties in accordance with Subparagraphs 4.2 and 5.2 of
12 this Agreement; (iv) inclusion of such properties within any special taxing district; and (v)
13 subject to applicable building, zoning and development regulations. At Closing the parties shall
14 execute appropriate documentation to terminate the two Reciprocal Usage Agreements between
15 them dated November, 2005.
16

17 13. Date of Closing. The date of Closing shall be within twenty days of the satisfaction of
18 the last of the contingencies described in Paragraph 7 of this Agreement. The date, hour and
19 place of Closing shall be designated by mutual agreement of the parties or, in the absence of such
20 agreement, by the Title Company.
21

22 14. Closing Costs, Documents and Services. Each party shall pay with Good Funds their
23 respective closing costs and all other items required to be paid at Closing, except as otherwise
24 provided herein. Each party shall sign and complete all customary or required documents at or
25 before Closing. The fee for real estate closing services shall be paid at Closing equally by Town
26 and Association.
27

28 15. Possession. Possession of the Block 2A Parcel shall be delivered to Town concurrently
29 with the transfer of title for the Block 2A Parcel from Association to the Town. Possession of
30 the Block 11 Parcel shall be delivered to Association concurrently with the transfer of title for
31 the Block 11 Parcel from the Town to Association.
32

33 16. Risk of Loss. Each of the properties shall be held at the risk of the current owner of such
34 property until legal title has passed and possession has been delivered to the other party.
35

36 17. Foreclosure Disclosure and Protection. Each party acknowledges that, to its current
37 actual knowledge, the property to be conveyed by it pursuant to this Agreement is NOT in
38 foreclosure. In the event that this transaction is subject to the provisions of the Colorado
39 Foreclosure Protection Act (the "Act") (i.e., generally the Act requires that the property is
40 residential, in foreclosure, and buyer does not reside in it for at least one year), a different
41 contract that complies with the provision of the Act is required, and this Agreement shall be null
42 and void and of no effect unless the Foreclosure Property Addendum is executed by all parties
43 concurrent with the signing of this Agreement. The parties are further advised to consult with
44 their own attorney.
45

1 18. Real Estate Commission. Association and Town each warrant and represent to the other
2 that they have not used the services of any broker, agent or finder who would be entitled to a
3 commission on account of this Agreement or the consummation of the transaction contemplated
4 hereby. Each party agrees to defend, indemnify and save the other harmless from any
5 commission or fee which may be payable to any broker, agent or finder with whom the
6 indemnifying party has dealt in connection with this Agreement.
7

8 19. Time of Essence; Remedies. Time is of the essence hereof, and if any payment or other
9 condition hereof is not made, tendered or performed by either of the parties hereto as herein
10 provided, then this Agreement, at the option of the party who is not in default, may be
11 terminated. In the event of such termination, the non-defaulting party may recover such damages
12 as may be proper. In the event, however, the non-defaulting party elects to treat this Agreement
13 as being in full force and effect, the non-defaulting party shall have the right to an action for
14 specific performance and damages.
15

16 20. Attorney's Fees. If any action is brought in a court of law by either party to this
17 Agreement concerning the enforcement, interpretation or construction of this Agreement, the
18 prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as
19 well as costs, including expert witness' fees, incurred in the prosecution or defense of such
20 action. At Closing, Association agrees to reimburse the Town for the attorneys' fees incurred by
21 the Town in connection with the transaction described in this Agreement.
22

23 21. Notices. All notices required or permitted under this Agreement shall be given by
24 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
25 carrier delivery, or by telecopies, directed as follows:
26

27 If intended for Town, to:

28
29 Town of Breckenridge
30 P.O. Box 168
31 150 Ski Hill Road
32 Breckenridge, Colorado 80424
33 Attn: Town Manager
34 Telecopier number: (970)547-3104
35 Telephone number: (970)453-2251
36

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

38
39 Timothy H. Berry, Esq.
40 Timothy H. Berry, P.C.
41 131 West 5th Street
42 P. O. Box 2
43 Leadville, Colorado 80461
44 Telecopier number: (719)486-3039
45 Telephone number: (719)486-1889
46

1 If intended for Association, to:

2
3 Rock Pile Ranch Owners Association, Inc.

4 P.O. Box 388

5 Breckenridge, Colorado 80424

6
7 Telecopier number: (970)453-0841

8 Telephone number: (970)453-2199

9
10 Any notice delivered by mail in accordance with this Paragraph shall be deemed to have been
11 duly given and received on the third business day after the same is deposited, postage prepaid, in
12 any post office or postal box regularly maintained by the United States postal service. Any
13 notice delivered by telecopier in accordance with this Paragraph shall be deemed to have been
14 duly given and received upon receipt if concurrently with sending by telecopier receipt is
15 confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt
16 requested, on the same day to the intended recipient. Any notice delivered by hand or
17 commercial carrier shall be deemed to have been duly given and received upon actual receipt.
18 Either party, by notice given as provided above, may change the address or telecopier number to
19 which future notices may be sent, or their telephone number.
20

21 22. Entire Agreement. This Agreement constitutes the entire agreement and understanding
22 between the parties and supersedes any prior agreement or understanding relating to the subject
23 matter of this Agreement.
24

25 23. Modification. This Agreement may be modified or amended only by a duly authorized
26 written instrument executed by the parties hereto. Oral amendments to this Agreement are not
27 permitted.
28

29 24. Counterparts. This Agreement may be executed in several counterparts and/or signature
30 pages and all counterparts and signature pages so executed shall constitute one agreement
31 binding on all parties hereto, notwithstanding that all the parties are not signatories to the original
32 or the same counterpart or signature page.
33

34 25. Paragraph Headings. Paragraph headings are inserted for convenience only and in no
35 way limit or define the interpretation to be placed upon this Agreement.
36

37 26. Incorporation of Exhibits. The attached Exhibits "A" "B" and "C" are incorporated into
38 this Agreement by reference.
39

40 27. Survivorship. All warranties, covenants, representations, agreements and guarantees
41 contained in this Agreement shall survive the Closing, execution and delivery of the documents
42 contemplated by this Agreement; and all parties shall continue to be bound by this Agreement
43 until all of their respective obligations hereunder have been performed or satisfied.
44

45 28. No Assignment. This Agreement may not be assigned by either party without the prior
46 written consent of the other party.

1
2 29. Fax Copy Sufficient. For all purposes contemplated in this Agreement, including
3 execution of this Agreement, facsimile signatures shall be as valid as the original. All parties
4 waive any claim or defense that a facsimile signature is not valid, or is not the best evidence of
5 signature.
6

7 30. No Adverse Construction. Each party acknowledges having had the opportunity to
8 participate in the drafting of this Agreement. This Agreement shall not be construed against
9 either party based upon authorship.
10

11 31. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of
12 the parties, and their respective successors and permitted assigns.
13

14 32. Advice To Obtain Counsel. Association has been advised to seek legal counsel as to
15 this Agreement. The law firm of Timothy H. Berry, P.C. represents only the Town in
16 connection with this Agreement.
17

18 33. Approval By Town. This Agreement has been approved by Ordinance No. _____, Series
19 2008, adopted by the Town Council of the Town of Breckenridge on _____, 2008.
20

21 IN WITNESS WHEREOF the parties hereto have set their hands and seals.
22

23 TOWN OF BRECKENRIDGE, a Colorado
24 municipal corporation
25

26
27
28 By: _____
29 Timothy J. Gagen, Town Manager
30

31
32 (AFFIX TOWN SEAL HERE)
33

34 ATTEST:
35

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

ROCK PILE RANCH OWNERS
ASSOCIATION, INC., a Colorado
nonprofit corporation

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

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

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public



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

5 The foregoing instrument was acknowledged before me this ____ day of
6 _____, 2008, by _____, as
7 _____, of Rock Pile Ranch Owners Association, Inc., a
8 Colorado nonprofit corporation.
9

10 WITNESS my hand and official seal.

11
12 My commission expires: _____.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Notary Public

44 600-182/Rock Pile Ranch Exchange Contract_3
45 March 4, 2008
46

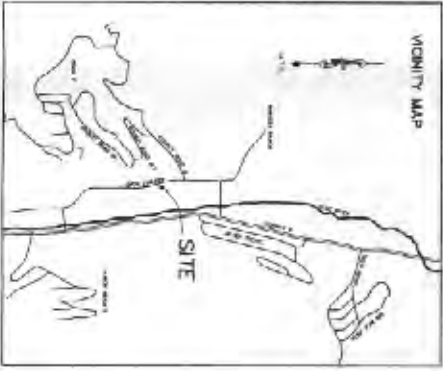
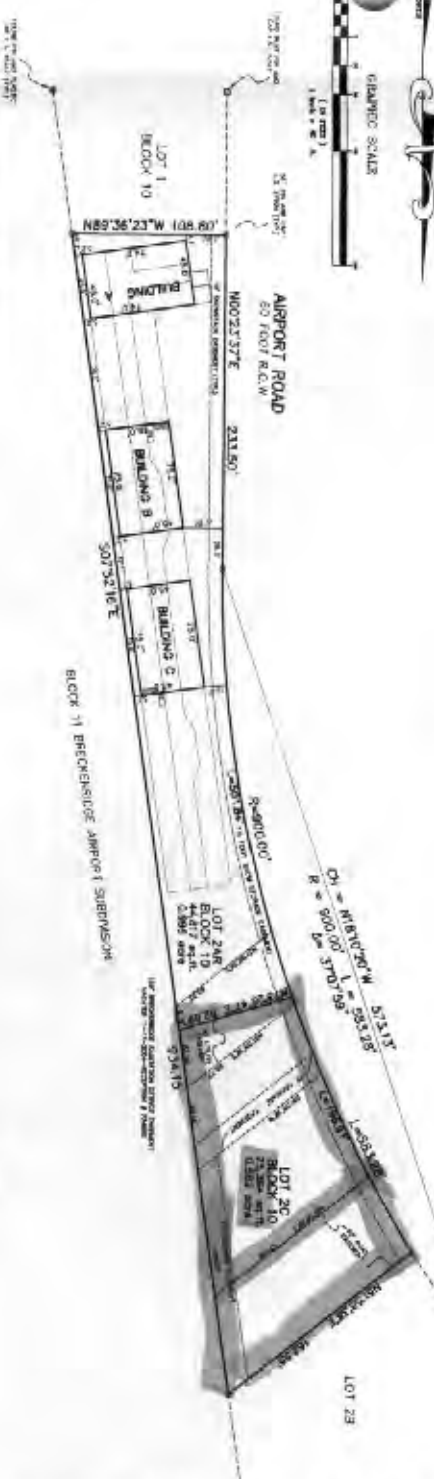
Exhibit "A"

Depiction of Block 2A Parcel



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45

A RESUBDIVISION PLAT OF
 THE COMMON AREA OF
 ROCK PILE RANCH CONDOMINIUMS
 A RESUBDIVISION OF LOT 2A BLOCK 10
 AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION
 TOWN OF BRECKENRIDGE, SUMMIT COUNTY, COLORADO
 SHEET 1 OF 1



THIS PLAT AND THE MAPS AND RECORDS OF THE COMMON AREA OF ROCK PILE RANCH CONDOMINIUMS, A RESUBDIVISION OF LOT 2A BLOCK 10, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION, TOWN OF BRECKENRIDGE, SUMMIT COUNTY, COLORADO, ARE HEREBY FILED FOR RECORD IN THE PUBLIC RECORDS OF THE COUNTY OF SUMMIT, COLORADO, IN ACCORDANCE WITH SECTION 38-10-101, C.R.S. 1973, AS AMENDED.

THE SIGNATURES OF THE SURVEYOR AND THE SIGNATURES OF THE BOARD OF DIRECTORS OF THE ROCK PILE RANCH CONDOMINIUMS, A RESUBDIVISION OF LOT 2A BLOCK 10, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION, TOWN OF BRECKENRIDGE, SUMMIT COUNTY, COLORADO, ARE HEREBY FILED FOR RECORD IN THE PUBLIC RECORDS OF THE COUNTY OF SUMMIT, COLORADO, IN ACCORDANCE WITH SECTION 38-10-101, C.R.S. 1973, AS AMENDED.

DEED OF BONDING:
 DEED OF BONDING TO BE FILED WITH THE COUNTY CLERK OF SUMMIT COUNTY, COLORADO, IN ACCORDANCE WITH SECTION 38-10-101, C.R.S. 1973, AS AMENDED, AND THE RECORDS OF THE COUNTY OF SUMMIT, COLORADO, IN ACCORDANCE WITH SECTION 38-10-101, C.R.S. 1973, AS AMENDED.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

RECORDING TOWN CLERK APPROVAL:
 I, _____, Town Clerk of the Town of Breckenridge, Colorado, do hereby certify that this plat has been recorded in the public records of the County of Summit, Colorado, in accordance with the provisions of Section 38-10-101, C.R.S. 1973, as amended.

ROB ANDREWS LAND SURVEYING	
1000 N. 10TH ST. BRECKENRIDGE, CO 80424	
PHONE: (303) 461-1111	
FAX: (303) 461-1112	
WWW: www.robandrews.com	
ROB ANDREWS, LICENSED SURVEYOR NO. 10001 STATE OF COLORADO	
ROB ANDREWS LAND SURVEYING 1000 N. 10TH ST. BRECKENRIDGE, CO 80424 PHONE: (303) 461-1111	

LEGAL DESCRIPTION

A PORTION OF TRACT D OF "A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION" ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 3, 2005 UNDER RECEPTION NUMBER 797050, SUMMIT COUNTY, COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN ANGLE POINT ON THE WESTERLY LINE OF TRACT D WHICH POINT IS ALSO THE NORTHEAST CORNER OF BLOCK 10 AS DEPICTED ON "AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION" ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 12, 1990 UNDER RECEPTION NUMBER 397666, SUMMIT COUNTY, COLORADO:

THENCE S 8°02'15" E, 511.35 FEET ALONG THE WESTERLY LINE OF TRACT D, BLOCK 11, COMMON WITH THE EASTERLY LINE OF SAID BLOCK 10 TO THE POINT OF BEGINNING;

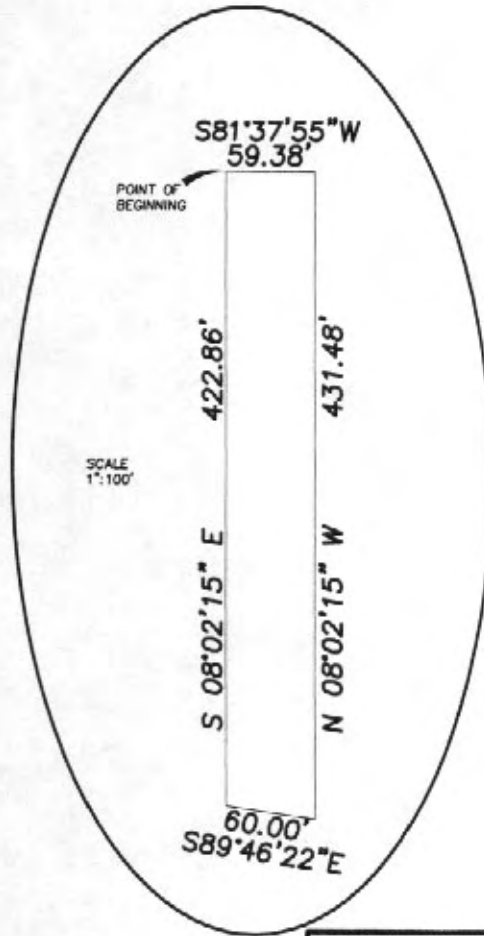
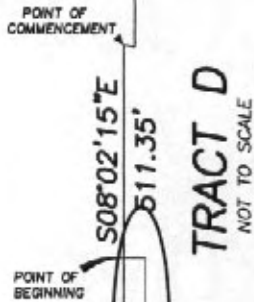
THENCE CONTINUING ALONG THE WESTERLY LINE OF TRACT D, COMMON WITH THE EASTERLY LINE OF SAID BLOCK 10, S 8°02'15" E, 422.86 FEET TO A POINT ON THE WESTERLY LINE OF TRACT D WHICH IS ALSO THE SOUTHEAST CORNER OF ROCKPILE RANCH CONDOMINIUM AS DEPICTED ON THE PLAT THEREOF RECORDED JULY 6, 1999 UNDER RECEPTION NUMBER 599816, SUMMIT COUNTY, COLORADO;

THENCE S 89°46'22" E, 60.00 FEET;

THENCE N 8°02'15" W, 431.48 FEET;

THENCE S 81°37'55" W, 59.38 FEET TO THE POINT OF BEGINNING.

CONTAINING 25,364 square feet or 0.582 acre more or less



I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND EXHIBIT DRAWING WAS PREPARED BY ME. THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY.

NOTICE: UNDER COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION ATTACHED HEREON.

ROB ANDREWS LAND SURVEYING
P. O. BOX 1351, BRECKENRIDGE, CO 80424
(970) 453-1860

LEGAL DESCRIPTION AND EXHIBIT DRAWING

A PORTION OF TRACT D,
A REPLAT OF BLOCK 11,
AN AMENDED REPLAT OF
BRECKENRIDGE AIRPORT SUBDIVISION
TOWN OF BRECKENRIDGE
SUMMIT COUNTY, COLORADO

DRAWN BY REA PROJECT NUMBER: 971473

SCALE 1"=100' DATE: 1-7-2008

UNITS A-2 AND A-3:

GEORGE ALBERT ENYEART LIVING TRUST, dated July 22, 2003

By: _____

Title: Trustee

VERNA ISABELLE ENYEART LIVING TRUST, dated July 22, 2003

By: _____

Title: Trustee

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, as Trustee of the George Albert Enyeart Living Trust, dated July 22, 2003.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, as Trustee of the Verna Isabelle Enyeart Living Trust, dated July 22, 2003.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

UNIT A-4:

Matthew J. Wentz

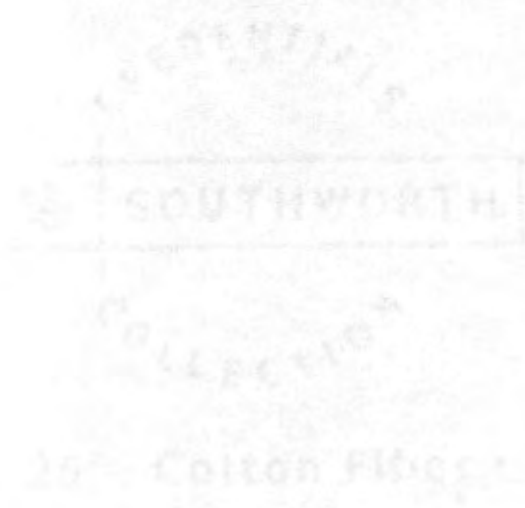
STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Matthew J. Wentz.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public



UNITS B-1 AND B-2:

F. Darrell Taylor

Sarah Sue Taylor

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by F. Darrell Taylor and Sarah Sue Taylor.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

1

UNIT B-3:

Paul Baumgardner

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Paul Baumgardner.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

2

UNIT C-1:

F.B.B. LAND CO., L.L.C., a Colorado limited liability Company

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008, by _____, as _____ of F.B.B. Land Co., L.L.C., a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 13 (Approving Franchise Agreement with Public Service Company of Colorado)

DATE: March 13, 2008 (for March 25th meeting)

The second reading of the ordinance approving the new Franchise Agreement with Public Service Company of Colorado is scheduled for your meeting on March 25th. There are no changes proposed to either the ordinance or the Franchise Agreement.

I advised Public Service Company that the ordinance passed 4-3 on first reading and that there were Council concerns primarily about PSCo's customer service. I anticipate that Todd Anderson, the Area Manager for PSCo, will be present at the worksession on the 25th to address the concerns that were expressed at the time of the first reading of the ordinance. I also anticipate that the Town's special counsel, Ken Fellman, will be present at the worksession too..

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

KISSINGER & FELLMAN, P.C.

ATTORNEYS AT LAW
PTARMIGAN PLACE, SUITE 900
3773 CHERRY CREEK NORTH DRIVE
DENVER, COLORADO 80209
TELEPHONE: (303) 320-6100
TOLL FREE : 1-877-342-3677
FAX: (303) 320-6613
www.kandf.com

RICHARD P. KISSINGER
KENNETH S. FELLMAN
JONATHAN M. ABRAMSON
BOBBY G. RILEY
NANCY E. CORNISH

ROBERT E. JAROS
1941 - 2002

ATTORNEY-CLIENT PRIVILEGED M E M O R A N D U M

TO: Mayor Blake and Members of Town Council
Town of Breckenridge, Colorado

FROM: Ken Fellman, Esq.

DATE: March 6, 2008

RE: Xcel Energy Franchise Agreement

In preparation for first reading of the ordinance to adopt the new franchise agreement with Xcel Energy on March 11th, this memo will describe the background of Staff's negotiations with Xcel, and the agreements we are recommending for your consideration.

I. BACKGROUND

In 2005 and 2006, seventeen Colorado municipalities participated in a Public Utilities Commission ("PUC") proceeding addressing Xcel's Quality of Service Plan (the "QSP"). Prior to that time, Xcel had been intransigent in its franchise renewal negotiations with multiple municipalities, by refusing to negotiate certain items in a franchise agreement. Xcel claimed that those items were within the exclusive regulatory authority of the PUC, and were governed solely by the tariffs that Xcel had on file at the PUC. The QSP was settled in 2006 with Xcel agreeing that a number of the items the municipalities claimed were appropriate for franchise negotiations were indeed subject to negotiation in those agreements. The municipalities agreed that some items were appropriately addressed by tariff. At about the same time that the QSP settlement was entered, Xcel completed franchise renewal negotiations with Denver. One of the reasons Xcel felt comfortable in making the QSP settlement was a result of its decision to agree to many of those same items in its Denver negotiations. Subsequently, Xcel entered into a new franchise with the Cities of Glendale and Louisville and the City and County of Broomfield, with further clarifications and revisions made to the agreement.

We commenced negotiations with Xcel with the understanding and expectation that with limited exceptions, Xcel would be willing to offer to Breckenridge (and all the other Colorado municipalities) provisions that were similar to those it had agreed to with Denver, Glendale, Louisville and Broomfield. We attempted to focus additionally on improving the mechanisms for maintenance of the street lights in Town, which has been a problem for staff. We also intended to insure that the new Breckenridge agreement would not limit the Town's ability to undertake renewable energy projects.

II. THE BRECKENRIDGE NEGOTIATIONS

Because Xcel has an obligation under its PUC authority to plan for and invest in its distribution plant in order to be able to provide energy to growing communities over an extended period of time, Xcel ordinarily seeks a twenty (20) year term for its franchises. Therefore, it was important that we negotiate a comprehensive document addressing Town issues in a reasonable manner. For most of the franchise provisions the negotiations were relatively smooth. Xcel had tried to roll back some of the Denver benefits in its Glendale, Louisville and Broomfield negotiations, and those cities were able to fight back effectively, maintaining fairly strong agreements. With Breckenridge coming on the heels of those other negotiations, we were able to take advantage of the fact that Xcel had now agreed to a variety of provisions with multiple municipalities, and could not expect to do anything differently here. Major issues in the new franchise include:

A. Xcel's acknowledgement that its right to use Town streets is subject to the Town's police powers.

B. Xcel's obligations to relocate its facilities in Town streets at its expense in connection with any Town project, and most other government projects (see Section IV of this Memorandum for additional information on this topic).

C. Xcel will pay the Town a franchise fee (compensation for the use of public rights of way) in the amount of 3% of its gross revenues. The Town has the right to audit Xcel's compliance with its obligation to pay for franchise fees.

D. Xcel will set aside an undergrounding fund equal to 1% of its electric revenues generated within the Town, which the Town may use for projects that place existing overhead utility lines underground. The Town may audit the undergrounding projects that are paid for with these funds.

E. Xcel is required to respond timely to Town requests for installations of new service for traffic signals, and the work must be completed and approved by the Town before the Town has an obligation to pay.

F. Provisions are included that obligate Xcel to provide clear billing statements with adequate backup materials to address any Town concerns regarding billed amounts. This was a major issue of contention in the QSP.

G. Provisions are included for addressing violations, including a provision that states if the Town initiates legal action to address any Xcel violation, if the Town prevails, Xcel must reimburse all of the Town's costs and attorneys fees.

H. There are extensive provisions governing the Town's work in the right of way, coordinating with the Town on inspections, mapping, bonds, etc., and obligations to repair any damaged property.

I. The Town's rights to purchase or condemn the Xcel facilities and the right to municipally produce power are preserved.

J. There are provisions regarding energy conservation, use of renewable resources and energy efficiency. We have insured in separate correspondence with Xcel that the projects currently under consideration by the Town will not be negatively impacted by anything in the franchise agreement.

K. The Town is granted certain rights for review in the event that Xcel ever seeks to transfer the franchise.

L. Xcel indemnifies the Town and holds the Town harmless from any damages that may be caused to the Town as a result of Xcel's operations.

M. The Town has the right to review any Xcel records that are reasonably related to the franchise obligations, including any information that might otherwise be confidential or proprietary.

III. STREET LIGHTING ISSUES

The issue that took the most time (as we waited inordinate amounts of time for Xcel to get back to us) related to the street lighting. Unlike most municipalities, the Town owns the majority of the streetlights within the municipal boundaries. That means that the Town maintains its lights, and pays a lower tariff rate to Xcel. For the lights owned by Xcel, the tariff rate is higher, because Xcel is required to do the maintenance. Problematically, Xcel does not maintain its lights in a timely manner, which can be both an inconvenience as well as a public safety matter. Since the Town maintains most of the street lights, we have negotiated an agreement whereby Xcel will retain the Town as its contractor to maintain the Xcel-owned lights, and will pay the Town to do so. Xcel does not have this arrangement with any other municipality. We are still negotiating the final details of this agreement, and expect to have it complete so that you can approve the franchise on second reading and approve the maintenance agreement on March 25th. Town staff believes that the contract compensating the Town for maintaining those lights owned by Xcel will result in better service, and at a minimum, be revenue neutral to the Town's budget.

Should you have any questions regarding any matters relating to the franchise or the street lighting maintenance agreement, we can address them for you at the March 11th Council meeting.

1 **FOR WORKSESSION/SECOND READING – MARCH 25**

2
3 **NO CHANGES FROM FIRST READING**

4
5 COUNCIL BILL NO.13

6
7 Series 2008

8
9 AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF
10 BRECKENRIDGE AND PUBLIC SERVICE COMPANY OF COLORADO

11
12 WHEREAS, the Town of Breckenridge has the power to grant utility franchises by
13 Article XIII of the Breckenridge Town Charter; and

14
15 WHEREAS, Section 13.1 of the Breckenridge Town Charter provides that all powers
16 concerning the granting of franchises shall be exercised by the Town Council without any
17 requirement of voter approval; and

18
19 WHEREAS, Section 4-12-7 of the Breckenridge Town Code provides that a franchise
20 may only be granted by the Town by an ordinance approved by the Town Council in the manner
21 set forth in Section 5.10 of the Breckenridge Town Charter; and

22
23 WHEREAS, by People’s Ordinance No. 38, Series 1987, the Town Council granted to
24 Public Service Company of Colorado a franchise to distribute gas and electricity within the
25 Town upon certain terms and conditions; and

26
27 WHEREAS, the franchise granted to Public Service Company of Colorado in 1987
28 provided that it would expire on November 30, 2007; and

29
30 WHEREAS, by Ordinance No. 33, Series 2007, the Town Council extended the term of
31 the 1987 Public Service Company of Colorado franchise to March 29, 2008; and

32
33 WHEREAS, a proposed new Franchise Agreement between the Town and Public Service
34 Company of Colorado has been negotiated, a copy of which is marked Exhibit “A”, attached
35 hereto and incorporated herein by reference; and

36
37 WHEREAS, the Town Council has reviewed the proposed new Franchise Agreement,
38 and finds and determines that its approval would be in the best interest of the Town and its
39 citizens; and

40
41 WHEREAS, the Town Council finds and determines that the procedural requirements
42 contained in Chapter 12 of Title 4 of the Breckenridge Town Code have been satisfied in
43 connection with the adoption of this ordinance.
44

1 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
2 BRECKENRIDGE, COLORADO:
3

4 Section 1. The “Franchise Agreement Between The Town Of Breckenridge And Public
5 Service Company of Colorado” (Exhibit “A” hereto) is approved; and the Mayor is hereby
6 authorized, empowered, and directed to execute such agreement for and on behalf of the Town of
7 Breckenridge.
8

9 Section 2. Upon the execution of the new Franchise Agreement (Exhibit “A”) by both
10 the Town and Public Service Company of Colorado the previous Franchise Agreement approved
11 by People’s Ordinance No. 38, Series 1987 shall terminate.
12

13 Section 3. The Town Council hereby finds, determines and declares that it has the power
14 to adopt this ordinance pursuant to: (i) the provisions of Article XIII of the Breckenridge Town
15 Charter; (ii) Chapter 12 of Title 4 of the Breckenridge Town Code; and (iii), and the powers
16 possessed by home rule municipalities in Colorado.
17

18 Section 4. This ordinance shall be published and become effective as provided by
19 Section 5.9 of the Breckenridge Town Charter.
20

21 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
22 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
23 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
24 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
25 Town.
26

27 TOWN OF BRECKENRIDGE, a Colorado
28 municipal corporation
29
30

31
32 By: _____
33 Ernie Blake, Mayor
34

35 ATTEST:
36
37
38
39

40 _____
41 Mary Jean Loufek, CMC,
42 Town Clerk
43
44
45
46
47
48

**FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE,
COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO**

ARTICLE 1	DEFINITIONS
ARTICLE 2	GRANT OF FRANCHISE
ARTICLE 3	TOWN POLICE POWERS
ARTICLE 4	FRANCHISE FEE
ARTICLE 5	ADMINISTRATION OF FRANCHISE
ARTICLE 6	SUPPLY, CONSTRUCTION, AND DESIGN
ARTICLE 7	RELIABILITY
ARTICLE 8	COMPANY PERFORMANCE OBLIGATIONS
ARTICLE 9	BILLING AND PAYMENT
ARTICLE 10	STREET LIGHTING
ARTICLE 11	INSTALLATION, OPERATION AND MAINTENANCE OF TRAFFIC SIGNAL LIGHTING SERVICE
ARTICLE 12	USE OF COMPANY FACILITIES
ARTICLE 13	UNDERGROUNDING OF OVERHEAD FACILITIES
ARTICLE 14	PURCHASE OR CONDEMNATION
ARTICLE 15	MUNICIPALLY-PRODUCED UTILITY SERVICE
ARTICLE 16	ENVIRONMENT AND CONSERVATION
ARTICLE 17	TRANSFER OF FRANCHISE
ARTICLE 18	CONTINUATION OF UTILITY SERVICE
ARTICLE 19	INDEMNIFICATION AND IMMUNITY
ARTICLE 20	BREACH
ARTICLE 21	AMENDMENTS
ARTICLE 22	EQUAL OPPORTUNITY
ARTICLE 23	MISCELLANEOUS

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS.....	1
§1.1	Company	1
§1.2	Company Facilities	1
§1.3	Electric Gross Revenues	1
§1.4	Energy Conservation.....	1
§1.5	Energy Efficiency	1
§1.6	Gross Revenues.....	1
§1.7	Other Town Property	2
§1.8	Private Project.....	2
§1.9	Public Project.....	2
§1.10	Public Utilities Commission	2
§1.11	Public Utility Easement	2
§1.12	Renewable Resource	2
§1.13	Residents.....	2
§1.14	Streets or Town Streets	2
§1.15	Street Lighting Facilities.....	2
§1.16	Street Lighting Service	2
§1.17	Supporting Documentation	3
§1.18	Tariffs.....	3
§1.19	Town	3
§1.20	Town Council.....	3
§1.21	Traffic Facilities.....	3
§1.22	Utility Service	3
ARTICLE 2	GRANT OF FRANCHISE	3
§2.1	Grant Of Franchise.....	3
§2.2	Conditions And Limitations.....	4
§2.3	Effective Date and Term.....	4
ARTICLE 3	TOWN POLICE POWERS	4
§3.1	Police Powers.....	4
§3.2	Regulation Of Streets Or Other Town Property	4
§3.3	Compliance With Laws.....	5
ARTICLE 4	FRANCHISE FEE	5
§4.1	Franchise Fee	5
§4.2	Remittance Of Franchise Fee.....	5
§4.3	Franchise Fee Payment Not In Lieu Of Permit Or Other Fees	7
ARTICLE 5	ADMINISTRATION OF FRANCHISE	7
§5.1	Town Designee	7
§5.2	Company Designee	7
§5.3	Coordination Of Work	7
ARTICLE 6	SUPPLY, CONSTRUCTION, AND DESIGN	8
§6.1	Purpose.....	8
§6.2	Supply	8

§6.3	Service To Town Facilities	8
§6.4	Restoration Of Service	8
§6.5	Obligations Regarding Company Facilities	9
§6.6	Excavation And Construction	10
§6.7	Restoration	10
§6.8	Relocation Of Company Facilities.....	10
§6.9	New Or Modified Service Requested By Town	12
§6.10	Service To New Areas	12
§6.11	Town Not Required To Advance Funds	12
§6.12	Technological Improvements.....	12
ARTICLE 7	RELIABILITY	13
§7.1	Reliability.....	13
§7.2	Franchise Performance Obligations.....	13
§7.3	Reliability Reports	13
ARTICLE 8	COMPANY PERFORMANCE OBLIGATIONS	13
§8.1	New or Modified Service To Town Facilities	13
§8.2	Adjustments To Company Facilities.....	14
§8.3	Third Party Damage Recovery.....	14
ARTICLE 9	BILLING AND PAYMENT.....	15
§9.1	Billing for other Utility Services.....	15
§9.2	Payment To Town.....	15
ARTICLE 10	STREET LIGHTING.....	15
§10.1	Ownership.....	15
§10.2	New Street Lights	16
§10.3	Information on Street Lights.....	16
ARTICLE 11	INSTALLATION, OPERATION AND MAINTENANCE OF TRAFFIC SIGNAL LIGHTING SERVICE	16
§11.1	Installation Of Company Facilities	16
§11.2	Repair, Replacement, And Maintenance	17
§11.3	Painting	17
§11.4	Improvements	17
§11.5	Performance Measures.....	17
§11.6	Payment To Company For Services Performed.....	18
ARTICLE 12	USE OF COMPANY FACILITIES.....	19
§12.1	Town Use Of Company Facilities.....	19
§12.2	Third Party Use Of Company Facilities.....	19
§12.3	Town Use Of Company Transmission Rights-Of-Way.....	20
§12.4	Emergencies.....	20
ARTICLE 13	UNDERGROUNDING OF OVERHEAD FACILITIES	20
§13.1	Underground Electrical Lines In New Areas.....	20
§13.2	Underground Conversion At Expense Of Company	20
§13.3	Undergrounding Performance.....	21
§13.4	Audit Of Underground Fund.....	22
§13.5	Cooperation With Other Utilities.....	22
§13.6	Planning And Coordination Of Undergrounding Projects.....	22

ARTICLE 14	PURCHASE OR CONDEMNATION	23
§14.1	Municipal Right To Purchase Or Condemn.....	23
ARTICLE 15	MUNICIPALLY-PRODUCED UTILITY SERVICE.....	23
§15.1	Municipally-Produced Utility Service	23
ARTICLE 16	ENVIRONMENT AND CONSERVATION	23
§16.1	Environmental Leadership	23
§16.2	Energy Conservation and Efficiency	24
§16.3	Continuing Commitment	25
§16.4	PUC Approval.....	25
ARTICLE 17	TRANSFER OF FRANCHISE.....	25
§17.1	Consent Of Town Required	25
§17.2	Transfer Fee	25
ARTICLE 18	CONTINUATION OF UTILITY SERVICE.....	26
§18.1	Continuation of Utility Service.....	26
ARTICLE 19	INDEMNIFICATION AND IMMUNITY.....	26
§19.1	Town Held Harmless	26
§19.2	Immunity.....	26
ARTICLE 20	BREACH	27
§20.1	Non-Contestability	27
§20.2	Breach	27
ARTICLE 21	AMENDMENTS	28
§21.1	Proposed Amendments	28
§21.2	Effective Amendments.....	28
ARTICLE 22	EQUAL OPPORTUNITY	28
§22.1	Economic Development.....	28
§22.2	Employment.....	28
§22.3	Contracting.....	29
§22.4	Coordination	30
ARTICLE 23	MISCELLANEOUS	30
§23.1	No Waiver.....	30
§23.2	Successors And Assigns	30
§23.3	Third Parties.....	30
§23.4	Notice.....	30
§23.5	Examination Of Records.....	31
§23.6	Payment Of Taxes And Fees.....	33
§23.7	Conflict Of Interest	33
§23.8	Certificate of Convenience and Necessity	33
§23.9	Authority	34
§23.10	Severability	34
§23.11	Force Majeure	34
§23.12	Earlier Franchises Superseded	34
§23.13	Titles Not Controlling.....	34
§23.14	Applicable Law	34
§23.15	Payment Of Expenses Incurred By Town In Relation To Franchise Agreement.....	34

ARTICLE 1 DEFINITIONS

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 “Company” refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.2 “Company Facilities” refer to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.
- §1.3 “Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the Town, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue for the sale or delivery of electricity to the Town.
- §1.4 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, with end-use services of such customers held constant.
- §1.5 “Energy Efficiency” means increases in Energy Conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility. Energy Efficiency measures can include fuel switching.
- §1.6 “Gross Revenues” refers to those amounts of money which the Company receives from the sale of gas and electricity within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town and from the use of Company facilities in Streets and Other Town Property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the Town or the transportation of gas to the Town.

- §1.7 “Other Town Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town or hereafter held by the Town, that would not otherwise fall under the definition of “Streets.”
- §1.8 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.9 “Public Project” refers to (1) any public work or improvement within the Town that is wholly owned or wholly funded by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, but excluding all other entities established under Title 32 of the Colorado Revised Statutes, or any Colorado county.
- §1.10 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.11 “Public Utility Easement” refers to any easement over, under, or above public or private property, lawfully acquired by or dedicated to the use of the Company, its predecessors in interest, or other public utility companies for the placement of public utility facilities, including but not limited to Company Facilities. Public Utility Easement shall not include any easement for the use of the Company that is located within the Streets.
- §1.12 “Renewable Resource” refers to any facility, technology, measure, plan or action utilizing a renewable “fuel” source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste, or hydroelectric generation of twenty megawatts or less, including any eligible renewable energy resource as defined in § 40-2-124(i)(a), C.R.S., as the same shall be amended from time to time.
- §1.13 “Residents” refer to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.
- §1.14 “Streets” or “Town Streets” refers to the surface, the air space above the surface and the area below the surface of any Town dedicated streets, alleys, bridges, roads, lanes, public easements, and other public rights-of-way within the Town. Streets shall not include Public Utility Easements.
- §1.15 “Street Lighting Facilities” refer to all Company Facilities necessary to provide Street Lighting Service.
- §1.16 “Street Lighting Service” refers to the illumination of Streets and Other Town Property by means of Town or Company-owned non-ornamental street lights and Town or Company-owned ornamental street lights located in the Town or along the streets adjacent

to the Town limits thereof, supplied from Company's overhead or underground electric distribution system.

- §1.17 "Supporting Documentation" refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.
- §1.18 "Tariffs" refer to those tariffs of the Company on file and in effect with the PUC.
- §1.19 "Town" refers to the Town of Breckenridge, a municipal corporation of the State of Colorado.
- §1.20 "Town Council" or "Council" refers to the legislative body of the Town.
- §1.21 "Traffic Facilities" refers to any Town-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any Streets or Other Town Property.
- §1.22 "Utility Service" refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant Of Franchise.

A. Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of Town Streets:

(1) to provide Utility Service to Residents under tariffs on file with the PUC;
and

(2) to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the Town all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the Town.

B. Street Lighting And Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the Town, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the Town shall be governed by tariffs on file with the

Colorado PUC, and pursuant to the terms set forth in a separate Street Lighting and Traffic Signal Agreement entered into between the parties concurrently with this franchise.

§2.2 Conditions And Limitations.

A. Scope Of Franchise. The grant of this franchise shall extend to all areas of the Town as it is now or hereafter constituted; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject To Town Usage. The right to make reasonable use of Town Streets to provide Utility Service to Residents under the franchise is subject to and subordinate to any Town usage of said Streets.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.

D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

A. Term. This franchise shall take effect on March, __, 2008, and shall supersede any prior franchise grants to the Company by the Town. This franchise shall terminate on March __, 2028, unless extended by mutual consent.

**ARTICLE 3
TOWN POLICE POWERS**

§3.1 Police Powers. The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's Streets and Other Town Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation Of Streets Or Other Town Property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the Streets, including requirements for permits.

§3.3 Compliance With Laws. The Company shall promptly and fully comply with all laws, regulations, permits, and orders enacted by the Town.

ARTICLE 4 FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company's use of Town Streets, which are valuable public properties acquired and maintained by the Town at great expense to its Residents, and in recognition that the grant to the Company of the use of Town Streets is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon Town residents who are customers of the Company.

B. Obligation In Lieu Of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the Town Streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Town Residents.

C. Changes In Utility Service Industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in modifying this franchise to assure that the Town receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the Town as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the Town. No franchise fee shall be charged to the Town for Utility Service provided to the Town for its own consumption, including street lighting service and traffic signal lighting service.

§4.2 Remittance Of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the Town as directed by the Town in monthly installments not more than thirty (30) days following the close of each month.

B. Correction Of Franchise Fee Payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the Town, and said overpayment is in excess of Two Thousand Five Hundred Dollars (\$2,500.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit Of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Manager containing the audit findings regarding the franchise fee paid to the Town for the previous three (3) calendar years.

(2) If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the Town's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a Town audit conducted pursuant to subsection C(2) conclude that the Company has underpaid the Town by two percent (2%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all costs of the audit

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error. If efforts at resolution are unsuccessful, the parties agree to submit the dispute to binding arbitration, under the commercial arbitration rules of the American Arbitration Association ("AAA"). Notwithstanding reference to the AAA rules, the parties agree that discovery shall be permitted in order to make available for consideration all information reasonably necessary to address the financial issues in

dispute. The prevailing party shall be awarded recovery of all of its attorneys fees and costs incurred in pursuing such arbitration.

E. Reports. Upon written request by the Town, but not more than once per year, the Company shall supply the Town with reports, in such formats and providing such details as reasonably requested by the Town, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§4.3 Franchise Fee Payment Not In Lieu Of Permit Or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the Town, except that the franchise fee provided for herein shall be in lieu of any occupation or similar tax for the use of Town Streets.

ARTICLE 5 ADMINISTRATION OF FRANCHISE

§5.1 Town Designee. The Town shall designate in writing to the Company an official having full power and authority to administer the franchise. The Town may also designate one or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said Town representatives. —The Town may change these designations by providing written notice to the Company. -The Town’s designee shall have the right, at all reasonable times, to inspect any Company Facilities in Town Streets.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for the Company’s representative under this franchise. The Company may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with the Company regarding Utility Service and related service needs for Town Facilities.

§5.3 Coordination Of Work.

A. The Company agrees to meet with the Town’s designee upon written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.

B. The Company agrees to coordinate its activities in Town Streets with the Town. The Town and the Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets. The Town and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all

provisions of this franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for Town Facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the Town in order to facilitate and enhance the operation of Town Facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the Town.
- §6.2 Supply. The Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.
- §6.3 Service To Town Facilities.
- A. Transport Gas. To the extent the Town is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the Town for use in Town Facilities pursuant to separate contracts with the Town.
- B. Charges To The Town. No charges to the Town by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated intrastate electric and gas rates.
- §6.4 Restoration Of Service.
- A. Notification. The Company shall provide to the Town daytime and nighttime telephone numbers of a designated Company representative from whom the Town designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the Town.
- B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within Town Streets shall be maintained in good repair and condition.

B. Company Work Within the Town. All work within Town Streets performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner;
- (2) in a timely and expeditious manner;
- (3) in a manner which minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, and regulations.

C. No Interference With Town Facilities. Company Facilities shall not interfere with any Town Facilities, including water facilities or storm sewer facilities, communications facilities, or other Town uses of the Streets or Other Town Property. Company Facilities shall be installed and maintained in Town Streets and Other Town Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets.

D. Permit And Inspection. The installation, renovation, and replacement of any Company Facilities in the Town Streets or Other Town Property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of Town Streets or Other Town Property. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in Town Streets or Other Town Property hold the necessary licenses and permits required by law.

F. Increase In Voltage. The Company shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town building or Town Facility that uses Utility Service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy.

G. As-Built Drawings. Upon reasonable written request of the Town designee, the Company shall provide within 14 days of the request, as-built drawings of any Company Facility installed within the Town Streets or contiguous to the Town Streets. As used in this section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.6 Excavation And Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Section 6.8 of this franchise and undergrounding requested by the Town under Article 10 of this franchise, the Town will not require the Company to pay the fees charged for such permits.

§6.7 Restoration. When the Company does any work in or affecting the Town Streets, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Town Streets or Other Town Property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the Town, temporarily restore the affected Town Streets or Other Town Property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. —Upon the request of the Town, the Company shall restore the Streets or Other Town Property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such restoration. If the Company fails to promptly restore the Town Streets or Other Town Property as required by this Section, and if, in the reasonable discretion of the Town immediate action is required for the protection of public health and safety, the Town may, upon giving fourteen (14) days' written notice to the Company, restore such Town Streets or Other Town Property or remove the obstruction therefrom; provided however, Town actions do not unreasonably interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets or Other Town Property under this Section, the Town shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation Of Company Facilities.

A. Relocation Obligation. The Company shall at its sole cost and expense temporarily or permanently remove, relocate, change or alter the position of any Company Facility in Town Streets or in Other Town Property whenever the Town shall determine that such removal, relocation, change or alteration is necessary for the completion of any Public Project. For all relocations, the Company and the Town agree to cooperate on the location

and relocation of the Company Facilities in the Town Streets or Other Town Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the Town's direction, if the Town requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by the Town's direct or indirect assistance for Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation Performance. The relocations set forth in Section 6.8.A of this franchise shall be completed within a reasonable time, not to exceed 90 days from the later of the date on which the Town designee requests in writing that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall be entitled to an extension of time to complete a relocation where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including without limitation fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

D. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

E. Completion. Each such relocation shall be deemed complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in Town Streets. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or Public Utility Easements, unless such Public Utility Easements are on or in Town owned property.

G. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of

relocation, or the Town requests that such additional incremental cost be paid out of available funds under Article 10 of this franchise.

H. Coordination. When requested in writing by the Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in Town Streets or Other Town Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the Town for any Public Project.

I. Proposed Alternatives Or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The Town shall in good faith review the proposed alternative or modification. The Town's acceptance of the proposed alternative or modification shall be at the sole discretion of the Town, provided however that such acceptance shall not be unreasonably withheld. In the event the Town designee accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

- §6.9 New Or Modified Service Requested By Town. The conditions under which the Company shall install new or modified Utility Service to the Town as a customer shall be governed by this franchise and the Company's PUC tariffs.
- §6.10 Service To New Areas. If the territorial boundaries of the Town are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.
- §6.11 Town Not Required To Advance Funds. Upon receipt of the Town's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.
- §6.12 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its Residents-

**ARTICLE 7
RELIABILITY**

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the Town with a report regarding the reliability of Company Facilities and Utility Service.

**ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS**

- §8.1 New or Modified Service To Town Facilities. In providing new or modified Utility Service to Town Facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the Town within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request and provides the required Supporting Documentation for all Company Facilities as described in this section. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.
- B. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to Town Facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.
- C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

§8.2 Adjustments To Company Facilities. The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other Town Property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the Town operations in accordance with Town instructions and, if required, readjusts, following Town paving operations.

C. Coordination. As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets or Other Town Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage To Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, to the extent permitted by law the Town will notify the Company of any such incident and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage To Town Interests. If any individual or entity damages any Company Facilities for which the Town is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law the Company will notify the Town of any such incident and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the Town agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving

and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9 BILLING AND PAYMENT

§9.1 Billing for other Utility Services.

A. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or applicable public utility law, the Company shall render bills monthly to the offices of the Town for Utility Service and other related services for which the Company is entitled to payment and for which the Town has authorized payment.

B. Billings for service rendered during the preceding month, except for billings pursuant to this Agreement, shall be sent to the person(s) designated by the Town and payment for same shall be made as prescribed in this Agreement and the applicable tariff on file and in effect from time to time with the PUC.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the Town and in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

D. The Company agrees to meet with the Town designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

§9.2 Payment To Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the Town Manager to discuss such determination. As an alternative to such deduction, the Town may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the Town determination of liability, the Town shall make such payments pursuant to the Company's tariffs until the challenge has been finally resolved.

ARTICLE 10 STREET LIGHTING

§10.1 Ownership. The majority of the street lights located within the Town are owned by the Town. The Company owns street lights in a limited number of developments within the

Town. The Company shall not install any new, Company-owned street lights without the prior written request of the Town, or unless otherwise required by applicable law.

§10.2 New Street Lights. Any new Company-owned street lights and Company-owned street light pole installations shall comply with the American Association of State Highway and Transportation Officials (“AASHTO”) requirements for roadway setbacks. The Company will obtain easements for its street lighting units in those instances where the distance between the curb line and the property line along the Street is less than three (3) feet. If the Company is unable to obtain the necessary easements, it shall notify the Town and the Town may attempt to obtain the necessary easements. If the Town is unable to obtain the easements, the Parties will work together to find alternate locations for pole installations.

§10.3 Information on Street Lights. The Company shall annually provide the Town a record of all Company-owned street lights, which shall clearly specify the location, type and lumen rating of each light, and shall provide with each monthly bill a list of all additions and deletions, specifying like information. The Company shall provide such information in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

**ARTICLE 11
INSTALLATION, OPERATION AND MAINTENANCE OF
TRAFFIC SIGNAL LIGHTING SERVICE**

§11.1 Installation Of Company Facilities. Company Facilities supporting Traffic Facilities will be installed when requested and authorized by the Town in accordance with the terms of this Agreement:

A. The Company shall furnish and install ornamental facilities supplied by underground feed from underground distribution circuits, in accordance with applicable Tariffs on file from time to time with the PUC and any applicable rules and regulations of the PUC, provided that the Town shall install any conduit and foundation for such facilities on new bridges, viaducts, underpasses and other similar structures where such facilities are an integral part of the structures, to support Traffic Facilities as requested by the Town. The Company will furnish and install special standards when requested by the Town in order to accommodate Traffic Facilities, provided the Town will bear any cost in excess of a standard installation. The Town shall install any foundations necessary for such special purpose standards.

B. The Company shall install, at the request of the Town, temporary facilities in support of Traffic Facility installations, provided that the Town shall bear the cost of installing and removing all facilities necessary to supply the service requested, less the salvage value of the materials used. Temporary installations shall be for periods not to exceed eighteen (18) months, unless otherwise agreed.

C. The type and quality of all equipment supporting Traffic Facilities shall not be less than the standard of the equipment most recently installed in the Town and comparable to that currently accepted in the industry, provided that the type and quality of special

ornamental standards to accommodate Traffic Facilities shall be subject to mutual agreement by the Town and the Company.

D. The Company shall have the right to make excavations and parking and paving cuts necessary for the installation, repair, replacement and maintenance of such facilities, including the installation of new or the relocation of existing facilities as provided herein, subject to all pertinent Ordinances and Rules and Regulations of the Town.

E. All new non-ornamental and ornamental pole installations shall comply with the American Association of State Highway and Transportation Officials ("AASHTO") requirements for roadway setbacks. The Company will use its commercially reasonable efforts to obtain easements for its units in those instances where the distance between the curb line and the property line along the Street is less than three (3) feet. If the Company is unable to obtain the easements, it shall notify the Town and the Town may attempt to obtain the necessary easements. If the Town is unable to obtain the easements, the Parties will work together to find alternate locations for pole installations.

F. The Company shall annually provide the Town a record of all poles used to support Traffic Facilities, which shall clearly specify the location and type and shall provide with each monthly bill a list of all additions and deletions, specifying like information. The Company shall provide such information in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

§11.2 Repair, Replacement, And Maintenance. The Company shall maintain, repair and, if necessary, replace all Company Facilities utilized in supporting Traffic Facilities, in accordance with applicable Tariffs on file with the PUC.

§11.3 Painting. The Company shall periodically paint all initially painted standards and brackets, accommodating Traffic Facilities, including any special ornamental standards, but shall not be required to do so more than once every five (5) years.

§11.4 Improvements. The Company agrees to investigate and, if economically and technically feasible, to develop, in cooperation with the Town, new, alternative Traffic Signal Facilities and to support before the PUC applicable tariffs which are consistent with and reflect the purchase, installation and/or maintenance of such facilities by the Company.

§11.5 Performance Measures. In providing Utility Service to Traffic Facilities and in performing all services relating to the provision of such Utility Service to Traffic Facilities, the Company agrees as follows:

A. The Company shall meet its obligations hereunder efficiently and economically and in accordance with the high standards and best systems, methods, and skills then commercially reasonable and available for the provision of Utility Service.

B. The Company shall maintain its facilities servicing Traffic Facilities in good repair and condition.

C. The Company shall perform or cause to be performed by the Company all services related to Town Facilities:

- (1) in a high-quality manner;
- (2) in a timely and expeditious manner;
- (3) in a manner which minimizes interference with the operation or use of Traffic Facilities or inconvenience to the Town or the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, and regulations.

D. The Company's Tariffs contain Performance Measures and provide for bill credits as liquidated damages for certain failures to meet these Performance Measures. The Company agrees that it will not seek to modify the Tariff provisions agreed to as part of the Stipulation in PUC docket number 05A-288E, adopted by the PUC September 27, 2006, anytime prior to December 31, 2010 without the Town's consent, which shall not be unreasonably withheld. The current Company Tariffs with respect to Traffic Signal Lighting Service are attached.

§11.6 Payment To Company For Services Performed. As provided for in Company Tariffs or as otherwise authorized by the Town in accordance with the terms and procedures set forth herein, the Town shall authorize and make payment to the Company for services rendered under this Article 11 as follows:

A. The Town shall request performance of a service or project, such as installation or modification of service, in writing to the Company's local representative and provide all required Supporting Documentation required to design and perform the requested work (the "Work Request").

B. Promptly upon receipt of the Work Request and all required Supporting Documentation, the Company shall provide the Town with a detailed estimate of the actual costs associated with the performance (the "Cost Estimate"). The Town will review the Cost Estimate and discuss any modifications or clarifications with the Company and either authorize the performance of the requested work on terms agreed upon by the Parties, or reject the Cost Estimate.

C. A fully executed work order for a specific Work Request will authorize the work to be performed under the terms and conditions set forth therein, upon the appropriation and encumbrance of the full amount of funds required to compensate the Company for the work identified in the work order. The Company agrees to perform and complete each

issued work order within the period of performance agreed upon in the work order, plus such extensions of time as may be granted by the Town Manager.

D. The Town agrees to pay the Company for the performance of all of the work required under each authorized work order. In no event, however, shall the Town be liable to or pay the Company for the work performed until the work on each Work Request is completed and accepted by the Town.

E. If additions, deletions or other modifications to the scope of work defined in the work order are required or desired by the Town on a particular authorized project, a Work Request change will be issued to authorize the performance of and provide funding for the additional work or delete or modify the work described in the Work Request. The Company shall promptly notify the Town if it accepts the Work Request change or if additional information is required.

F. The Company shall notify the Town when it believes that the Work Request is completed. The Town shall inspect work within fifteen (15) days of receiving notice and if the Work Request is complete, issue a written acceptance within five (5) days.

G. Upon acceptance, the Company may invoice the Town for the full amount of the Work Request and any authorized changes. Payment of the amount specified in the Work Request shall be made by the Town in accordance with the applicable sections of the Breckenridge Municipal Code and the Company's PUC tariffs..

ARTICLE 12 USE OF COMPANY FACILITIES

§12.1 Town Use Of Company Facilities. The Town shall be permitted to make use of Company Facilities in the Town at no cost to the Town for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose, or for any other purpose consistent with the Town's police powers. The Town will notify the Company in writing in advance of its intent to use Company facilities and the nature of such use. The Town shall be responsible for costs associated with modifications to Company Facilities to accommodate the Town's use of such Company Facilities and for any electricity used. No such use of Company Facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§12.2 Third Party Use Of Company Facilities. If requested in writing by the Town, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the Streets, to utilize Company Facilities for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to permit the use of Company Facilities for the provision of utility service except as otherwise required by law.

§12.3 Town Use Of Company Transmission Rights-Of-Way. The Company shall offer to grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town for parks and open space; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way.

§12.4 Emergencies. Upon written request, the Company shall assist the Town in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the Town, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE 13 UNDERGROUNDING OF OVERHEAD FACILITIES

§13.1 Underground Electrical Lines In New Areas. The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas underground in accordance with applicable laws, regulations and orders.

§13.2 Underground Conversion At Expense Of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the Town, as may be requested by the Town. Except as provided in §6.8.F, no relocation expenses which the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this allocation.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the Town designee, the Company agrees to expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any funds accumulated under any prior franchise shall be carried over to this Fund balance. The Town shall have no vested interest in the Fund and any monies in the Fund not expended at the expiration or termination of this Agreement shall remain the property of the Company.

C. Systemwide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a systemwide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the Town such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. Town Requirement To Underground. In addition to the provisions of this Article, the Town may require any above ground Company Facilities to be moved underground at the Town's expense.

§13.3 Undergrounding Performance. Upon receipt of a written request from the Town, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company Facilities in accordance with the procedures set forth in this Section.

A. Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the Town designee makes a written request and the date the Town provides to the Company all Supporting Documentation. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

C. Completion/Restoration. Each such undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

D. Estimates. Promptly upon receipt of an undergrounding request from the Town and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable, issue a project authorization. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company estimate.

E. Report Of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the Town a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate.

F. Audit Of Underground Projects. The Town may require that the Company undertake an independent audit of any undergrounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the Town and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the Fund.

§13.4 Audit Of Underground Fund. Upon written request of the Town, but no more frequently than once every three (3) years, the Company shall audit the Fund for the Town. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the Town and shall reconcile the Fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town's reasonable satisfaction, the Company shall, at its expense cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. The independent auditor shall provide a written report containing its findings to the Town and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report.

§13.5 Cooperation With Other Utilities. When the Company is undertaking an undergrounding project the Town and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the Town.

§13.6 Planning And Coordination Of Undergrounding Projects. The Town and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other Town and Company construction projects. In addition, the Town and the Company agree to meet, as required, to review the progress of then-current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and the Company to achieve the orderly undergrounding of Company Facilities. At such meetings, the parties shall review:

A. Undergrounding, including conversions, Public Projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

- B. Public Projects anticipated by the Town.

ARTICLE 14 PURCHASE OR CONDEMNATION

§14.1 Municipal Right To Purchase Or Condemn.

A. Right And Privilege Of Town. The right and privilege of the Town to construct, purchase or condemn any Company Facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the Constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and using the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice Of Intent To Purchase or Condemn. The Town shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this section shall be deemed or construed to constitute a consent by the Company to the Town's purchase or condemnation of Company Facilities.

ARTICLE 15 MUNICIPALLY-PRODUCED UTILITY SERVICE

§15.1 Municipally-Produced Utility Service.

A. Town Reservation. The Town expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase Town-generated power made available for sale, consistent with PUC requirements.

B. Franchise Not To Limit Town's Rights. Nothing in this franchise prohibits the Town from becoming an aggregator of Utility Service or from selling Utility Service to customers should it be permissible under law.

ARTICLE 16 ENVIRONMENT AND CONSERVATION

§16.1 Environmental Leadership. The Company is committed to sustainable development and energy conservation for the term of this Agreement by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs. The Company shall strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to the ongoing regulatory oversight of the Colorado PUC. In doing so, the Company shall consider environmental issues in its planning and decision-making, and shall invest in

environmentally sound technologies when such technologies are deemed prudent and feasible. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, clean energy measures, and promoting and implementing the use of renewable energy resources on both a distributed and centralized basis. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines.

§16.2 Energy Conservation and Efficiency.

A. Energy Efficiency Programs. The Town and the Company recognize and agree that Energy Conservation and Efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. The Company recognizes and shares the Town's desire to advance the implementation of cost-effective Energy Conservation and Efficiency programs, which direct opportunities to the Company's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs, and impact on the environment. The Company shall seek authority from the PUC to develop and offer energy efficiency programs to its customers. Subject to PUC approval, the Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy. Subject to PUC approval, the Company commits to offer Demand Side Management (DSM) programs and succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion and (ii) developing cost-effective energy management programs for the various classes of the Company's customers. The Company shall advise the Town and the Company's customers of the availability of assistance that the Company makes available for investments in energy conservation through its Account Managers, Area Manager, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on the Company's Website. Further, the Company's area manager will act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town Facilities and how the Town may participate in energy conservation and energy efficiency programs sponsored by the Company.

B. Renewable Resource Programs. The Company agrees to consider Renewable Resource programs as an integral part of the Company's provision of Utility Service to its customers. The Company agrees to comply with the mandates of United States and Colorado law concerning energy efficiency and clean energy technologies. Unless otherwise provided by law or PUC order, the Company will obtain electricity from

renewable sources equivalent to at least 20% of retail sales by 2020. The Company will promote a significant role for Renewable Resources in its future resource acquisitions, consistent with acceptable rate impacts, legislative requirements, and applicable provisions of law.

C. The Company will continue to promote existing or new programs in its service territory to comply with applicable provisions of law relating to renewable resources. The Town actively supports the Company's compliance with the renewable resource standards required by law. The Company agrees that, in complying with this provision, it shall take the following steps to encourage participation by the Town and the Company's customers in available renewable resource programs:

- (1) Notify the Town regarding all eligible renewable resource programs;
- (2) Provide the Town with support regarding how the Town may participate in eligible renewable resource programs; and
- (3) Advise customers regarding participation in eligible renewable resource programs.

§16.3 Continuing Commitment. The Company agrees to maintain its commitment to sustainable development and energy conservation for the term of this franchise by continuing to provide leadership, support and assistance to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise.

§16.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 17 TRANSFER OF FRANCHISE

§17.1 Consent Of Town Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, unless the Town approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

§17.2 Transfer Fee. In order that the Town may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 18
CONTINUATION OF UTILITY SERVICE

§18.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the Town until the Town arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The Town agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town's Streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the Town and its Residents.

ARTICLE 19
INDEMNIFICATION AND IMMUNITY

§19.1 Town Held Harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder and (b) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees.

§19.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the Town by law.

ARTICLE 20 BREACH

§20.1 Non-Contestability. The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed and neither will take any legal action to secure modification of this franchise. However, the Company reserves the right to seek a change in its rates, charges, terms, and conditions imposed upon customers in the provision of Utility Service to Residents.

§20.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the “breaching party”) to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (1) specific performance of the applicable term or condition; and
- (2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination Of Franchise By Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a “material breach”), the Town may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this franchise. This remedy shall be in addition to the Town’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the Town and its Residents until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town Streets.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

E. Costs and Attorneys Fees. If the Town initiates any legal action seeking damages for any alleged violation of this franchise, or to seek enforcement of any of the provisions hereof, then the prevailing party in any such action shall recover from the other party all of its reasonable costs and attorneys fees incurred in connection with the matter, regardless of whether such costs and/or fees were incurred prior to, during or subsequent to the legal action filed by the Town.

ARTICLE 21 AMENDMENTS

§21.1 Proposed Amendments. At any time during the term of this franchise, the Town or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this section shall be deemed to require either Party to consent to any amendment proposed by the other Party.

§21.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 22 EQUAL OPPORTUNITY

§22.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§22.2 Employment.

A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. The Company recognizes that the Town and the business community in the Town, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under represented communities into management positions, and agrees to keep the Town regularly advised of the Company's progress by providing the Town a copy of the Company's annual affirmative action report upon the Town's written request.

C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity specific expertise.

D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

F. The Company shall identify and consider women, persons of color and other under represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§22.3 Contracting.

A. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the Town regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§22.4 Coordination. Town agencies provide collaborative leadership and mutual opportunities on programs relating to Town based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 23 MISCELLANEOUS

§23.1 No Waiver. Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§23.2 Successors And Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 17~~3~~ of this franchise.

§23.3 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

§23.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:

Mayor of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

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

With a copy to:

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

To the Company:

Regional Vice President
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§23.5 Examination Of Records.

A. The parties agree that a duly authorized representative of the Town shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the Town, that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. —In no case shall any privileged communication be subject to examination by the Town pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product

privilege shall include information developed by the Company in preparation for PUC proceedings.

B. With respect to any information requested by the Town which the Company identifies as “Confidential” or “Proprietary”:

(1) The Town will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;

(2) The information shall be used solely for the purpose of determining the Company’s compliance with the terms and conditions of this franchise;

(3) The information shall only be made available to Town employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;

(4) The information shall be held by the Town for such time as is reasonably necessary for the Town to address the franchise issue(s) that generated the request, and shall be returned to the Company when the Town has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the Town may maintain the information until such issues are fully and finally concluded.

C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the Town pursuant to this franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third party confidential information provided by the Company pursuant to this franchise without first conferring with the Company. The Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Unless otherwise agreed between the Parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company’s customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

E. The Company shall provide the Town, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the Town. All such records must be kept for a minimum of four (4) years.

F. PUC Filings. Upon written request, the Company shall provide the Town copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission.

G. Information. Upon written request, the Company shall provide the Town Manager or the Town Manager's designee with:

(1) a copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

(2) maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request; and

(3) a copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§23.6 Payment Of Taxes And Fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such Impositions and shall not be in breach of this section so long as it is actively contesting such Impositions.

B. The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.

§23.7 Conflict Of Interest. The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

§23.8 Certificate of Convenience and Necessity. The Town agrees to support any application the Company may file with the PUC to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this franchise.

§23.9 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The person(s) executing this agreement on behalf of each of the parties warrants that they have full authorization to execute this agreement. The Town acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

§23.10 Severability. Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§23.11 Force Majeure. Neither the Town nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to uncontrollable forces, which shall include, but not be limited to: accidents, breakdown of equipment, shortage of materials, shortage of labor, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government, and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided.

§23.12 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the Town and the Company for the furnishing of Utility Service, street lighting service, and traffic signal lighting service, and it supersedes and cancels all former franchises between the parties hereto.

§23.13 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.

§23.14 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Summit County, State of Colorado.

§23.15 Payment Of Expenses Incurred By Town In Relation To Franchise Agreement. The Company shall pay for expenses incurred for the ordinance approving this franchise, including the publication of notices, publication of ordinances, and photocopying of documents.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

TOWN OF BRECKENRIDGE

ATTEST:

Clerk and Recorder,
Ex-Officio Clerk of the Town of Breckenridge

MAYOR

RECOMMENDED AND APPROVED:

Town Manager

APPROVED AS TO FORM:

Attorney for the Town of Breckenridge

“TOWN”

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: _____
Riley Hill
Regional Vice President

Attest: _____
Asst. Secretary

“COMPANY”



FOR WORKSESSION/ADOPTION – MARCH 25

A RESOLUTION

SERIES 2008

A RESOLUTION APPROVING A STREET LIGHT MAINTENANCE AGREEMENT WITH PUBLIC SERVICE COMPANY OF COLORADO

WHEREAS, the Town of Breckenridge desires to enter into a Street Light Maintenance Agreement with Public Service Company of Colorado, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"); and

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

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

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

Section 1. The proposed Agreement with Public Service Company of Colorado (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

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

RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2008.

TOWN OF BRECKENRIDGE

By _____
Ernie Blake, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 14 (Approving Agreement With Stiles Partnerships—Bunchman Building)

DATE: March 13, 2008 (for March 25th meeting)

The second reading of the ordinance approving the agreement with the Stiles Partnerships concerning the Bunchman Building is scheduled for your meeting on March 25th. There are no changes proposed to either the ordinance or the agreement.

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

1 **FOR WORKSESSION/SECOND READING – MARCH 25**

2
3 **NO CHANGES FROM FIRST READING**

4
5 COUNCIL BILL NO. 14

6
7 Series 2008

8
9 AN ORDINANCE APPROVING AN AGREEMENT WITH STILES PARTNERSHIP LLP
10 AND STILES II PARTNERSHIP LLP
11

12 WHEREAS, the Town of Breckenridge desires to enter into an agreement with Stiles
13 Partnership LLP, a Colorado limited liability partnership, and Stiles II Partnership LLP, a
14 Colorado limited liability company, a copy of which is marked Exhibit "A", attached hereto and
15 incorporated herein by reference ("Agreement"); and
16

17 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed
18 Agreement, and finds and determines that it would be in the best interests of the Town and its
19 residents for the Town to enter into the proposed Agreement; and
20

21 WHEREAS, as part of the proposed Agreement the Town will grant to Partnership LLP,
22 a Colorado limited liability partnership, and Stiles II Partnership LLP, a Colorado limited
23 liability company, an easement over, across and through certain Town property; and
24

25 WHEREAS, the Town Council of the Town of Breckenridge has determined that it
26 should grant the requested easement; and
27

28 WHEREAS, the Town Attorney has informed the Town Council that, in his opinion,
29 Section 15.3 of the Breckenridge Town Charter requires that granting of such easement be
30 authorized 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 Agreement with Stiles Partnership LLP, a Colorado limited
36 liability partnership, and Stiles II Partnership LLP, a Colorado limited liability company (Exhibit
37 "A" hereto) is approved; and the Town Manager and Town Clerk are hereby authorized,
38 empowered and directed to execute such Agreement for and on behalf of the Town of
39 Breckenridge.
40

41 Section 2. The Town Council hereby finds, determines and declares that it has the power
42 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
43 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
44

AGREEMENT

This Agreement ("**Agreement**") dated _____, 2008 is between STILES PARTNERSHIP LLP, a Colorado limited liability partnership ("Stiles I"), and STILES II PARTNERSHIP LLP, a Colorado limited liability partnership ("Stiles II") (collectively "Stiles Partnerships"), and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

WHEREAS, Stiles I owns the real property described as follows:

Lots 5 and 6, Block 7, Edmund G. Stiles Addition to the Town of Breckenridge, County of Summit and State of Colorado

(**Parcel 1A**)

; and

WHEREAS, Stiles II owns the real property described as follows:

Lots 7 and 8, Block 7, Edmund G. Stiles Addition to the Town of Breckenridge, County of Summit and State of Colorado

(**Parcel 1B**)

; and

WHEREAS, the Town has developed the "Riverwalk", a public pedestrian access way generally bounded as of the date of this Agreement by Ski Hill Road on the north, South Park Avenue on the south, the westerly bank of the Blue River on the west, and Main Street or approximately the westerly property lines of the privately owned properties (including both of the parcel owned by Stiles Partnerships) on the east; and

WHEREAS, within the Riverwalk the Town has constructed public improvements to make the area more attractive for use by the residents of, and the visitors to, the Town of Breckenridge; and

WHEREAS, the Town desires to obtain from Stiles Partnerships an easement for use in connection with the Riverwalk; and

WHEREAS, the parties have come to an agreement whereby Stiles Partnerships will convey an easement to the Town for the Town's use in connection with the Riverwalk, all as more fully set forth in this Agreement.

Now, therefore, the parties agree as follows:

1. Easement To Be Granted. Stiles Partnerships will execute, acknowledge and deliver to the Town the Easement Agreement that is attached as Exhibit "A" ("**Easement Agreement**") within 20 days after the Town has fully paid the amount due to Stiles Partnerships pursuant to Section 2 of this Agreement.
2. Town's Consideration; Construction of Façade Improvements By Stiles Partnerships.
 - 2.1 Town's Consideration. As consideration for this Agreement Town will pay Stiles Partnerships the amount actually spent by Stiles Partnerships to design and construct improvements to the westerly façade of their buildings located on Parcels 1A and 1B, substantially as described and depicted on the attached Exhibit "B" (the "Façade Improvements"), up to a maximum amount of \$127,182. The consideration will be paid by the Town to Stiles Partnerships incrementally, as soon as reasonably possible, upon presentation of invoices for the architectural, engineering, and construction costs actually incurred by Stiles Partnerships in constructing the Façade Improvements.
 - 2.2 Stiles Partnerships To Construct Façade Improvements. Stiles Partnerships will construct the Façade Improvements. The Town acknowledges that the Façade Improvements will include display windows that will protrude not more than 4' beyond the existing west walls of the buildings currently located on Parcels 1A and 1B.
 - (a) Time For Construction of Façade Improvements. Stiles Partnership will begin constructing the Façade Improvements as soon as possible (weather permitting) after the Development Permit is issued, and will diligently prosecute the construction of the Façade Improvements. The Façade Improvements will be completed by Stiles Partnerships as soon as possible after the issuance of the Development Permit, but in any event not later than August 31, 2008. Time is of the essence of this Agreement.
 - (b) Excess Costs. Stiles Partnerships are responsible for any cost of constructing the Façade Improvements in excess of \$127,182.
 - (c) Cost Savings. If the actual cost of constructing the Façade Improvements is less than \$127,182, Town shall only be obligated to pay Stiles Partnerships an amount equal to the actual cost of constructing the Façade Improvements.
 - (d) Development Permit; Right To Terminate. The parties acknowledge that Stiles Partnerships will have to obtain a development permit from Town (acting in its governmental capacity) to authorize the construction of the Façade Improvements ("**Development Permit**"). Stiles Partnerships will promptly apply for the Development Permit, and will accept the Development Permit if the terms and conditions of the Development Permit are reasonably acceptable. If the Development Permit is denied after good faith efforts by Stiles Partnerships to obtain such permit, or if

the terms and conditions of the Development Permit are unacceptable to Stiles Partnerships, Stiles Partnerships may terminate this Agreement by giving the Town written notice of termination within 20 days after the Town Council's final decision concerning the Development Permit application. Upon such termination, each party shall be released from any further obligations under this Agreement. Town agrees to waive the application fee for the Development Permit.

3. Indemnification. Stiles Partnerships will indemnify and defend the Town, its officers, employees, insurers, and self-insurance pool against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, Town's reasonable attorneys' fees and costs of defense, which arise out of or are in any manner connected with the construction of the Façade Improvements; except to the extent such liability, claim or demand arises through the negligence or intentional wrongful act of the Town, its officers, employees, or agents, or Town's breach of this Agreement. To the extent indemnification is required under this Agreement, Stiles Partnerships will investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.
4. Town Representation Concerning Available Funds. Town represents to Stiles Partnerships that sufficient legal authority exists and sufficient funds have been budgeted and are available to pay Stiles Partnerships the amount set forth in Section 2 of this Agreement.
5. Independent Contractor. In constructing the Façade Improvements Stiles Partnerships shall act as an independent contractor and not as agent or employee of Town.
6. Default; Remedies. If either party materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, then the non-defaulting party may notify the defaulting party in writing of the nature of such default. Within five days following receipt of such notice the defaulting party shall correct such default; or, in the event of a default not capable of being corrected within five days, the defaulting party shall commence correcting the default within five days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting party fails to correct the default as provided above, then the non-defaulting party, without further notice, shall have the right to declare that this Agreement is terminated effective upon such date as the non-defaulting party shall designate and the non-defaulting party shall have the right to recover such damages as it shall be entitled to by law or as provided in this Agreement. The rights and remedies provided for herein may be exercised singly or in combination. In addition to any other remedy available to the Town for Stiles Partnership's breach of this Agreement, the obligation of Stiles Partnerships to execute, acknowledge and deliver the Easement Agreement to the Town as required by this Agreement is specifically enforceable by the Town.

7. Attorney's Fees. If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.
8. Notices. All notices required or permitted under this Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Town to:

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

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

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

If intended for Stiles Partnerships to:

Stiles Partnership, LLP
Stiles II Partnership, LLP
Attn: Richard J. Bunchman
P.O. Box 476
Breckenridge, Colorado 80424

Telecopier number: (970) 453-0439
Telephone number: (970) 453-0401

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

Stephen C. West, Esq.
West, Brown, Huntley & Thompson, P.C.
P.O. Box 588
Breckenridge, Colorado 80424

Telecopier number: (970)453-0192
Telephone number: (970)453-2901

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

9. Governmental Immunity. The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S. as from time to time amended, or any other limitation, right, immunity or protection otherwise available to Town, its officers, or its employees.
10. Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving such rights.
11. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted.
12. Governing Law. This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado, without regard to principles of conflicts of laws.
13. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.
14. Section Headings. Section headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
15. Incorporation Of Exhibits. Exhibits "A" and "B" are incorporated into this Agreement.
16. Third Parties. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party any right to claim damages or to bring suit, action or other proceeding against either Stiles Partnerships or the Town because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

17. No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement shall not be construed against either party based upon authorship.
18. Force Majeure. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including, without limitation, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control.
19. Authority. The individuals executing this Agreement on behalf of each of the parties have all requisite powers and authority to cause the party for whom they have signed to enter into this Agreement and to bind such party to fully perform its obligations as set forth in this Agreement.
20. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties, and their successors and assigns.

STILES I PARTNERSHIP LLP, a Colorado
limited liability partnership

By _____
Richard J. Bunchman, General Partner

STILES II PARTNERSHIP LLP, a Colorado
limited liability partnership

By _____
Richard J. Bunchman, General Partner

TOWN:

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

Exhibit "A"

Easement Agreement

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") dated _____, 2008 is between STILES PARTNERSHIP LLP, a Colorado limited liability partnership, ("**Stiles I**"), and STILES II PARTNERSHIP LLP, a Colorado limited liability partnership, ("**Stiles II**") the address of both of which is P.O. Box 476, Breckenridge, CO 80424 (collectively "**Stiles Partnerships**"), and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation, whose address is P. O. Box 168, Breckenridge, CO 80424 ("**Town**").

For the consideration described in this Agreement, the sufficiency of which is acknowledged by the Stiles Partnerships and the Town, the following grants, agreements, covenants and restrictions are made:

1. **Recitals**. The following recitals of fact are a material part of this instrument:

A. Stiles I owns the real property described as follows and hereafter referred to as "**Parcel 1A**":

Lots 5 and 6, Block 7, Edmund G. Stiles Addition to the Town of Breckenridge, County of Summit and State of Colorado

B. Stiles II owns the real property described as follows and hereafter referred to as "**Parcel 1B**":

Lots 7 and 8, Block 7, Edmund G. Stiles Addition to the Town of Breckenridge, County of Summit and State of Colorado

C. The Town has developed the "**Riverwalk**", a public pedestrian access way generally bounded as of the date of this Agreement by Ski Hill Road on the north, South Park Avenue on the south, the westerly bank of the Blue River on the west, and Main Street or approximately the westerly property lines of the privately owned properties (including Parcels 1A and 1B) on the east. Within the Riverwalk the Town has constructed public improvements to make the area more attractive for use by the residents of, and the visitors to the Town of Breckenridge. The Riverwalk is hereafter referred to as "**Parcel 2**".

D. In connection with the Town's development of the Riverwalk, Stiles I and Stiles II provided an easement as set forth in the Grant of Easement dated May 28, 1993 and recorded in the Summit County, Colorado real estate records on June 4, 1993 at Reception No. 444276 ("**Old Easement**"), and there will be no need for the Old Easement upon the execution and recording of this Agreement.

E. Stiles Partnerships and the Town intend to grant and to receive the easements described in this Agreement.

F. Parcels 1A and 1B are collectively referred to herein as "**Parcel 1**" and are the real properties burdened by the Riverwalk easement granted in this Agreement and Parcel 2 is the real property benefited by the Riverwalk easement granted in this Agreement.

2. Grant Of Riverwalk Easement. Subject to the reservations in Paragraph 3 and the possible addition in Paragraph 4, Stiles Partnerships hereby grant to the Town, as an easement appurtenant to Parcel 2, a perpetual, non-exclusive easement for the purposes stated in Paragraph 5 over, under, upon, in, across and through the following portion of Parcel 1:

A tract of land being a portion of Lots 5, 6, 7 and 8, Block 7, Edmund G. Stiles Addition to the Town of Breckenridge, a subdivision as filed for record in the office of the Clerk and Recorder of Summit County, Colorado in Plat Book 1, said tract being more particularly described and depicted in Exhibit "1" attached hereto ("**Riverwalk Easement Premises**").

3. Reservations from Grant of Riverwalk Easement.

3.1. Boiler. Stiles Partnerships hereby reserve from the grant to the Town provided for in Paragraph 2 an area approximately 10' square at the southeast corner of the Riverwalk Easement Premises, adjacent to the southwest corner of the building located on Parcel 1B, for the possible placement of a boiler and associated equipment, including such structure as the Town (acting in its governmental capacity) may approve to enclose such boiler and equipment, to provide a snowmelt system for plaza areas, stairs and decking on Parcel 1A and Parcel 1B.

3.2. Drainage. Stiles Partnerships hereby reserve from the grant to the Town provided for in Paragraph 2 such areas as are necessary to accommodate three downspouts and subsurface piping to accommodate drainage from the roofs of the structures located on Parcel 1 and to carry such drainage to the drywell or drywells the Town will construct in accordance with Paragraph 11 below, provided, however, that Stiles Partnerships will be responsible for installing heating elements for the scuppers, downspouts and pipes from the roof to the drywell or drywells, for maintaining the scuppers, downspouts, piping and heating elements in good condition and repair, and for replacing the scuppers, downspouts, piping and heating elements as necessary.

3.3. Sign. Stiles Partnerships hereby reserve from the Grant to the Town provided for in Paragraph 2 an area for installation and maintenance of an underground electric line, a post, or other structure for the display of one sign that includes the names of all of the businesses located in the buildings now existing or hereafter constructed on Parcel 1, with such sign to be located in such location as the Town and Stiles Partnerships will agree in connection with the review and approval of the plans for improvements as provided in Paragraph 11. Stiles Partnerships will obtain a permit from the Town (acting in its governmental capacity) to authorize the construction of such sign structure and the installation of the business signage permitted as a part thereof.

3.4. Facade Improvements. Stiles Partnerships hereby reserve from the grant to the Town provided for in Paragraph 2 an area not to exceed 4' beyond the existing west walls of the buildings currently located on Parcel 1 for the construction of the certain improvements to the westerly facade of the buildings located on Parcel 1 as described in that certain Agreement between the parties of even date herewith ("**Facade Improvements**").

4. Addition to Riverwalk Easement. If the area currently used for a patio on Parcel 1B is no longer to be used for such patio, Stiles II agrees to notify the Town in writing that such patio area is available to add to the Riverwalk Easement Premises. If the Town desires to add such patio area to the Riverwalk Easement Premises, it may give Stiles II written notice of such desire within thirty (30) days of the date of notice from Stiles II that the patio area is available and Stiles II and the Town agree to enter into an amendment of this Agreement to add such patio area to the Riverwalk Easement Premises and to provide for such additional terms and conditions as Stiles II and the Town may deem necessary or appropriate.

5. Use Of Riverwalk Easement Premises. Town may use the easement granted in Paragraph 2 for the following purposes:

- i. the construction and use of such amenities or facilities as the Town may determine, in its discretion, to be appropriate for use in connection with the Riverwalk project, including, without limitation, the construction of paved sidewalks, lighting, parks, bicycle paths, public benches, landscaping, open spaces and other uses determined by the Town to be appropriate for inclusion in the Riverwalk project, but any amenity or facility proposed to be constructed by the Town after the date of this Agreement is subject to the terms of Paragraph 11. All amenities or facilities constructed by the Town prior to the date of this Agreement are considered permitted improvements and are not subject to the terms of Paragraph 11;
- ii. the installation, repair, maintenance and replacement of the Town's improvements to the Riverwalk Easement Premises as described in and in accordance with the terms of Paragraph 11;
- iii. the holding of such special public events as the Town shall authorize, to be held within the Riverwalk Easement Premises by the Town, the Breckenridge Resort Chamber, or any other person authorized by Town; and
- iv. temporary construction access in connection with the construction of any temporary facilities as may be required in connection with the holding of the special public events described in (iii), above.

No other use of the Riverwalk Easement Premises may be made or permitted by Town without Stiles Partnerships' prior permission.

6. Additions To Dominant Tenement. The easement granted by Stiles Partnerships to the Town is appurtenant to any land that may hereafter come into ownership by the Town and that is contiguous to Parcel 2. An area physically separated from Parcel 2, but having access thereto by means of public ways or private easements, rights or licenses is deemed to be contiguous to Parcel 2.

7. Warranties Of Title. Stiles I warrants that it has good and indefeasible fee simple absolute title to that portion of the Riverwalk Easement Premises located within Parcel 1A, subject only to taxes for 2008 and subsequent years. Stiles II warrants that it has good and indefeasible fee simple absolute title to that portion of the Riverwalk Easement Premises located within Parcel 1B, subject only to taxes for 2008 and subsequent years.

8. Title Insurance. The Town may apply for a title insurance policy insuring the easement granted by this Agreement, and Stiles Partnerships will make available for inspection by the title company any and all evidence of title in its possession.

9. Stiles Partnerships' Use of Riverwalk Easement Premises. Stiles Partnerships have the right to use and occupy the Riverwalk Easement Premises for any purpose not inconsistent with Town's (or the general public's) full and complete enjoyment of the rights granted by this Grant. Without limiting the generality of the foregoing, no buildings, structures, signs, or other improvements, except as provided herein and in Paragraph 3 will be erected, placed or permitted to remain on, under or over the Riverwalk Easement Premises, nor will objects be erected, placed or permitted to remain on, under or over the Riverwalk Easement Premises which will or may be an interference with the complete use of the granted easement by the Town or the general public for the stated purposes, except as provided herein and in Paragraph 3 Town is not responsible for any such building, structure, sign, or object erected, placed or permitted to remain on, under or over the Riverwalk Easement Premises except as provided herein and in Paragraph 3. The foregoing notwithstanding, Stiles Partnerships specifically reserve the rights of ingress and egress over, upon, across and through Parcel 1 for the limited purposes of: the construction of the Façade Improvements; the maintenance of and repairs to the improvements now existing or hereafter constructed on Parcel 1, or the replacement of such improvements; the construction, maintenance and repair of the sign provided for in Paragraph 3 and the delivery of goods to the improvements located on Parcel 1.

10. Town Grant of Easement. The Town grants to Stiles Partnerships, their successors and assigns, as an easement appurtenant to Parcel 1, a perpetual, non-exclusive easement, over, upon, across and through the portions of Parcel 2 improved with pavement, concrete or other similar hard surface from the Town's Adams Avenue right of way to the northerly property line of Parcel 1A, for the limited purposes of ingress and egress for Stiles I and Stiles II, their licensees, lessees, contractors, employees, and agents in connection with the construction of the Façade Improvements as provided for in Paragraph 3 the maintenance of and repairs to the improvements now existing or hereafter constructed on Parcel 1, or the replacement of such improvements; and the delivery of goods to the improvements located on Parcel 1. Stiles Partnerships' use of the easement is subject to the Town's rules and regulations governing the use of the Riverwalk in effect from time to time.

11. Improvements To Be Constructed On Easement Premises By Town. Town will construct upon the Easement Premises, at its sole cost, the following improvements:

- i. landscaping;

- ii. drainage, including a drywell or drywells to accommodate the drainage from the roofs of the existing buildings on Parcel 1 as provided for in Paragraph 3.2, as well as other drainage required for the Riverwalk Easement Premises;
- iii. walkways, including walkways to provide access to the existing patio area on Parcel 1B and the existing doorways on the west side of the buildings currently located on Parcel 1;
- iv. lighting;
- v. appropriate outdoor furniture; and
- vi. such other improvements to the Riverwalk Easement Premises as Town determines to be necessary or appropriate for its full use and enjoyment of the granted easement.

Town will indemnify and defend Stiles Partnerships from all costs (including Stiles' reasonable attorney's fees) arising out of the construction of its improvements to the Riverwalk Easement Premises.

At least 15 days before beginning construction of any improvements on or to the Riverwalk Easement Premises, the Town shall submit plans for such improvements to the Stiles Partnerships for written review and approval, which approval will not unreasonably delayed or withheld by Stiles Partnerships. The scope of Stiles Partnerships' right of review and approval is limited to determining that the proposed Town improvements to the Riverwalk Easement Premises do not unreasonably interfere with the functioning of Stiles Partnerships' improvements located on Parcel 1. Stiles Partnerships' approval shall be deemed to have been given if written disapproval, including identification of objectionable aspects of the improvements, is not given within 10 days after plans are delivered to Stiles Partnerships by the Town. If notice of disapproval is given by Stiles Partnerships to the Town, then the Town shall submit revised plans for Stiles Partnerships written review and approval in accordance with the foregoing process.

In order to avoid conflicts during construction of the Town's improvements and the Façade Improvements and in order to avoid damage to the Town's improvements, Stiles Partnerships and Town agree that the Façade Improvements shall be substantially completed by Stiles Partnerships prior to the construction or installation by the Town of plant materials, furniture, lighting fixtures or other above ground improvements susceptible to damage.

12. Maintenance, Repair and Replacement Of Easement Premises. Town shall keep all improvements it makes to the Riverwalk Easement Premises in good condition and repair and shall maintain the Riverwalk Easement Premises in a neat, clean and safe condition, including specifically, but not limited to, cleaning up trash on a regular basis and promptly following any special events and maintaining all landscaping to limit weed growth and to cause dead or dying landscaping to be removed and replaced promptly. Town will pay for and provide any required maintenance, upkeep, repair and replacement of the improvements it makes to the Riverwalk Easement Premises. Further, Town will pay for and provide snow and ice removal from the concrete walkways within the Riverwalk Easement Premises, plus such additional snow and ice removal as may be required for the Town's use of other areas of the Riverwalk Easement Premises, provided that the Town's snow and ice removal from the concrete walkways within the Riverwalk Easement Premises will be performed by the Town based on priorities established

by it from time to time for snow and ice removal from sidewalks and other areas for which the Town provides such service. The Town shall remove snow and ice from the Riverwalk Easement Premises at the same that it performs snow and ice removal from the Riverwalk.

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

14. Duty Of Care. Town and Stiles Partnerships each will exercise the rights herein granted to them with due care.

15. Indemnification.

15.1. Indemnification By Town. To the extent of the limits of liability established from time to time by the Act, the Town will indemnify and hold Stiles Partnerships harmless from and against all liability, claims, and demands:

- i. on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the Town's use of the Riverwalk Easement Premises pursuant to this Agreement, to the extent that such injury, loss, or damage is caused by, the negligence or intentional act or omission of Town, any contractor or subcontractor of the Town, or any officer, employee, representative, or agent of the Town or of any subcontractor of the Town;
- ii. arising from Town's breach of its obligations under this Agreement; or
- iii. arising from any worker's compensation claim of any employee of the Town, or of any employee of any contractor or subcontractor of the Town.

Town is not required to provide indemnification to Stiles Partnerships to the extent such liability, claim or demand is caused by:

- i. the negligence or intentional act or omission of Stiles Partnerships, its partners, employees, agents, tenants or its or their business invitees or customers; or
- ii. Stiles Partnerships' breach of its obligations under this Agreement.

Town will investigate, handle, respond to, and to provide defense for and defend against, any liability, claim or demand for which indemnification is required under this paragraph at its sole expense, and will pay all other related costs and expenses, including court costs and attorney's fees. The Town's liability under this section may never exceed the monetary limits of the Act.

15.2. Indemnification By Stiles Partnerships. Stiles Partnerships will indemnify and hold the Town harmless from and against all liability, claims, and demands:

- iv. on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with Stiles Partnerships' use of the easement granted to it pursuant to Paragraph 10 of this Agreement, to the extent that such injury, loss, or damage is caused by, the negligence or intentional act or omission of Stiles Partnerships, any contractor or subcontractor of Stiles Partnerships, or any officer, employee, representative, or agent of Stiles Partnerships or of any subcontractor of Stiles Partnerships;
- v. arising from Stiles Partnerships' breach of its obligations under this Agreement; or
- vi. arising from any worker's compensation claim of any employee of Stiles Partnerships, or of any employee of any contractor or subcontractor of Stiles Partnerships.

Stiles Partnerships are not required to provide indemnification to Town to the extent such liability, claim or demand is caused by:

- i. the negligence or intentional act or omission of the Town, its officers, employees, or agents; or
- ii. the Town's breach of its obligations under this Agreement.

Stiles Partnerships will investigate, handle, respond to, and to provide defense for and defend against, any liability, claim or demand for which indemnification is required under this paragraph at their sole expense, and will pay all other related costs and expenses, including court costs and attorney's fees.

16. Density. Nothing in this Agreement shall be construed to reduce, limit, restrict or otherwise affect the allowed density, square footage, floor area ratio or other rights to construct improvements or otherwise develop or improve Parcels 1.

17. Exemption from Property Tax Levy. The Town agrees to cooperate in connection with such applications, petition or other proceeding as may be provided for under the laws of the State of Colorado for Stiles Partnerships to exempt the Riverwalk Easement Premises from the levy and collection of property tax based on the use thereof by the Town.

18. Old Easement Termination. Stiles Partnerships and the Town agree that the Old Easement hereby is terminated.

19. Insurance. Town will at all times maintain comprehensive general liability insurance with limits of liability not less than the limits of liability for local government entities established from time to time by the Act. Copies of such insurance shall be available for inspection by Stiles Partnerships at the Town's offices during normal business hours.

20. Default; Right To Cure. If either party materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, the non-defaulting party may notify the defaulting party in writing of the nature of such default. Within 20 days following receipt of such notice the defaulting party shall correct such default; or, in the event of a default not capable of being corrected within 20 days, the defaulting party shall commence correcting the default within 20 days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting party fails to correct the default as provided above, the non-defaulting party, without further notice, may obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction and permanent injunction to obtain such performance. Any equitable relief provided for in this paragraph may be sought singly or in combination with such legal remedies as the non-defaulting party may be entitled to under the laws of the State of Colorado.

21. Notice. Stiles Partnerships' and Town's initial addresses are as set forth in the introductory paragraph of this Agreement. Either party may lodge written notice of change of address with the other. All notices shall be sent by U.S. mail, certified, return receipt requested, to the addresses provide for in this paragraph or, if Stiles I no longer owns Parcel 1A or if Stiles II no longer owns Parcel 1B, then a notice intended for the subsequent owner(s) of Parcel 1 may be sent to the address to which tax bills for such parcel are sent by the Summit County, Colorado Treasurer. Any notice will be deemed given and received when placed in the mail. The affidavit of the person depositing the notice in the U.S. Post Office receptacle is evidence of such mailing.

22. Non-Use Of Easement Premises. Non-use or limited use of the easements herein granted will not prevent Town or Stiles Partnerships from thereafter making use of such easements to the full extent authorized by this Agreement.

23. Construction. The rule of strict construction does not apply to this Agreement. This Agreement is to be given a reasonable construction so that the intention of the parties to confer to Town an easement for the holding of special public events is carried out. No extrinsic evidence may be admitted in any action to interpret or construe this Agreement.

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

25. Termination Of Covenant Liability. Whenever a transfer of ownership of either parcel takes place, liability of the transferor for breach of covenant occurring thereafter automatically terminates, except that Stiles Partnerships will always remain liable for any breach of its covenants of title set forth in Paragraph 7.

26. Release Of Easement. The Town may terminate this instrument by recording a release in recordable form with directions for delivery of same to Stiles Partnerships at its last address given in accordance with this Agreement. Upon such recording all rights, duties, and liabilities of this Agreement will terminate. For convenience, such instrument may run to "the owner or owners and parties interested" in Parcel 1.

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

28. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto. Oral amendments to this Agreement are not permitted. In the event of the division of the servient estate and/or the dominate estate only the approving signature of the owners of the portions of the parcels affected by such modification is required.

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

30. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, relating to the subject matter of this Agreement.

31. Third Parties. This Agreement does not and is not intended to confer any rights or remedies upon any person other than Stiles Partnerships and the Town.

32. Incorporation of Exhibit. The attached Exhibit "1" is incorporated into this Agreement.

33. Running Of Benefits And Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the successors, assigns, and tenants of the parties hereto.

STILES I PARTNERSHIP LLP, a Colorado
limited liability partnership

By _____
Richard J. Bunchman, General Partner

STILES II PARTNERSHIP LLP, a Colorado
limited liability partnership

By _____
Richard J. Bunchman, General Partner

TOWN:

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

ATTEST:

Mary Jean Loufek, CMC
Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008,
by Richard J. Bunchman, as General Partner of Stiles Partnership LLP, a Colorado limited
liability partnership.

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

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ___ day of _____, 2008,
by Richard J. Bunchman, as General Partner of Stiles II Partnership LLP, a Colorado limited
liability partnership.

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

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

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

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

Notary Public

1332.01 Stiles Easement. 8. 03-03-08 (FINAL)

Exhibit "1"

TO GRANT OF EASEMENT
BETWEEN STILES PARTNERSHIP, A COLORADO GENERAL PARTNERSHIP, STILES II
PARTNERSHIP, A COLORADO GENERAL PARTNERSHIP, AND THE TOWN OF
BRECKENRIDGE, A COLORADO MUNICIPAL CORPORATION

Description and Depiction of Easement Premises

EXHIBIT A
LEGAL DESCRIPTION

A TRACT OF LAND BEING A PORTION OF LOTS 5, 6, 7 & 8, BLOCK 7, EDMUND G. STILES ADDITION TO BRECKENRIDGE, A SUBDIVISION AS FILED FOR RECORD IN THE OFFICE OF THE CLERK AND RECORDER FOR SUMMIT COUNTY IN PLAT BOOK No.1. SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 8 THENCE; N 14°30'00" W, A DISTANCE OF 100.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 5.

THENCE; N 75°30'00" E, ALONG THE NORTH LINE OF SAID LOT 5 A DISTANCE OF 79.62 FEET.

THENCE; S 14°48'42" E, A DISTANCE OF 69.32 FEET

THENCE: S 75°23 '34" W, A DISTANCE OF 30.45 FEET

THENCE: S 14°07 '53" E, A DISTANCE OF 4.12 FEET

THENCE: S 75°39 '30" W, A DISTANCE OF 3.57 FEET

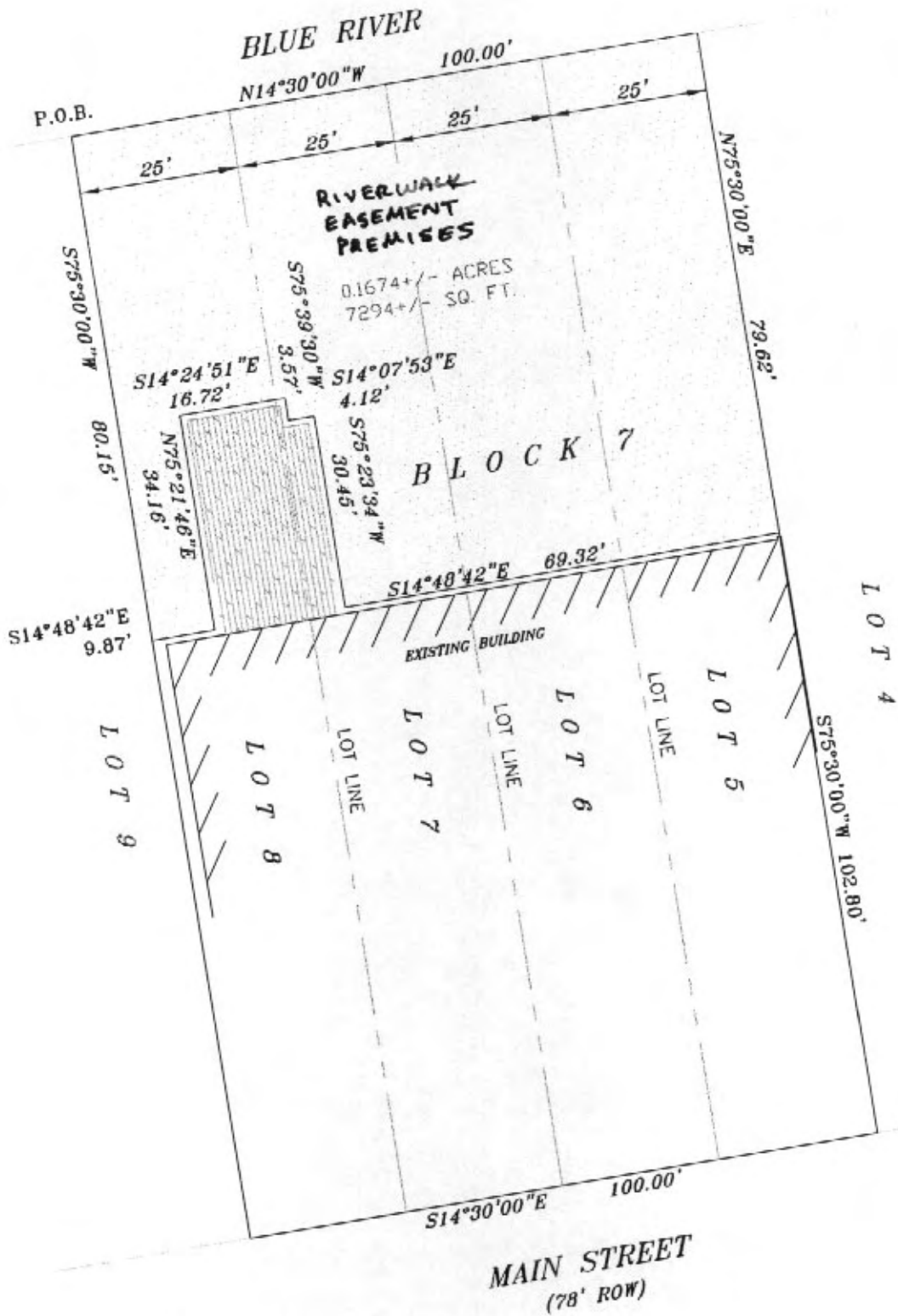
THENCE: S 14°24 '51" E, A DISTANCE OF 16.72 FEET

THENCE: N75°21'46" E, A DISTANCE OF 34.16 FEET

THENCE: S 14°48'42" E, A DISTANCE OF 9.87 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 8.

THENCE; S 75°30'00" W ALONG THE SOUTH LINE OF SAID LOT 8, A DISTANCE OF 80.15 FEET
TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINING 7,294 SQ.FT. OR 0.1674 ACRES MORE OR LESS..



SCALE: 1" = 20'

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

BASELINE SURVEYS, INC.

P.O. BOX 7578 BRECKENRIDGE COLO. 80424

SCALE: 1" = 20'	DATE: 08/11/2005	JOB NO. 3471
DRAWN BY: RD	CHECKED BY: D.E.O.	DRAWING NO. 3471 EXHIBIT B

Exhibit "B"

Description/Depiction of Façade Improvements

Exhibit "B"

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 15 (Building Codes Ordinance)
DATE: March 13, 2008 (for March 25th meeting)

The second reading of the Building Codes Ordinance is scheduled for your meeting on March 25th. There are no changes proposed to ordinance from first reading.

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



MEMORANDUM

TO: Town Council

FROM: Glen Morgan, Chief Building Official

DATE: March 17, 2008 for meeting of March 25, 2008

SUBJECT: Second Reading of Ordinance to update existing Building Codes to the 2006 Editions and new 2006 International Energy Conservation Code. (Same Memo)

The Building Codes currently adopted by the Town are the 2000 International Code series and the 2002 National Electric Code. The International Code series is published and updated by the International Code Council on a three-year basis. The 2006 series of codes are the most updated published codes. The Electrical Code is published by the National Fire Protection Agency and the 2008 Code is the latest published edition. To enforce the provisions of the latest published codes, Council must adopt those codes by reference along with local amendments as deemed appropriate.

In conjunction with the code update, an additional code the 2006 International Energy Conservation Code has been included for adoption. Colorado House Bill 07-1146 effective July 1, 2007, requires that any Municipality that has adopted a Building Code must adopt an energy code by July 1, 2008. An energy code means, at a minimum, the 2003 International Energy Conservation Code, or any successor (such as the 2006 Code). Breckenridge does not currently have an adopted energy code. The State legislation applies to all buildings, including mixed use, commercial and residential. Adoption of the 2006 International Energy Conservation Code will satisfy the state legislation.

The Sustainable Building Code has not been included in the attached building code adoption ordinance. As discussed at Council's work session on February 26th the Efficient Building Code Advisory Group is addressing the Home Builders Associations comments and concerns. Staff anticipates that the proposed Sustainable Building Code Ordinance will be forwarded to Council for consideration as a separate ordinance in April/ May.

Staff has attached an ordinance that adopts the updated Codes with amendments, and the 2006 International Energy Conservation Code. The Council is asked to review the attached draft

ordinance and provide any suggestions to staff regarding the document. If the Council approves the ordinance at this first reading, a second reading will be scheduled for March 25.

1 **FOR WORKSESSION/SECOND READING – MARCH 25**

2
3 **NO CHANGES FROM FIRST READING**

4
5 COUNCIL BILL NO. 15

6
7 Series 2008

8
9 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 1 OF
10 TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING
11 CODES OF THE TOWN OF BRECKENRIDGE; ADOPTING BY REFERENCE AND
12 AMENDING THE INTERNATIONAL BUILDING CODE, 2006 EDITION; THE
13 INTERNATIONAL RESIDENTIAL CODE, 2006 EDITION, INCLUDING APPENDIX
14 CHAPTERS G AND K; THE INTERNATIONAL MECHANICAL CODE, 2006 EDITION,
15 INCLUDING APPENDIX A; THE INTERNATIONAL PLUMBING CODE, 2006 EDITION;
16 INCLUDING APPENDICES C, E, F AND G; THE INTERNATIONAL ENERGY
17 CONSERVATION CODE, 2006 EDITION; THE NATIONAL ELECTRICAL CODE, 2008
18 EDITION; THE ICC ELECTRICAL CODE—ADMINISTRATIVE PROVISIONS, 2006
19 EDITION; THE INTERNATIONAL FUEL GAS CODE, 2006 EDITION, INCLUDING
20 APPENDICES A AND B; THE UNIFORM CODE FOR BUILDING CONSERVATION, 1997
21 EDITION, INCLUDING APPENDIX CHAPTER 3; AND THE UNIFORM CODE FOR THE
22 ABATEMENT OF DANGEROUS BUILDINGS, 1997 EDITION; AND PROVIDING
23 PENALTIES FOR THE ENFORCEMENT OF SAID CODES

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

27
28 Section 1. Chapter 1 of Title 8 of the Breckenridge Town Code is hereby repealed and
29 readopted with changes so as to read in its entirety as follows:

30
31 **CHAPTER 1**

32
33 **BUILDING CODES**

34
35 SECTION:

- 36
37 8-1-1: Title
38 8-1-2: Findings
39 8-1-3: Standard Codes Adopted By Reference
40 8-1-4: Amendments To The International Building Code
41 8-1-5: Amendments To The International Residential Code

BUILDING CODES ORDINANCE

- 1 8-1-6: Amendments To The International Mechanical Code
- 2 8-1-7: Amendments To The International Plumbing Code
- 3 8-1-8: Amendments To The International Energy Conservation Code
- 4 8-1-9: Amendments To The National Electrical Code
- 5 8-1-10: Amendments To The ICC Electrical Code—Administrative Provisions
- 6 8-1-11: Amendments To The International Fuel Gas Code
- 7 8-1-12: Amendments To The Uniform Code For Building Conservation
- 8 8-1-13: Amendments To The Uniform Code For The Abatement Of
- 9 Dangerous Buildings
- 10 8-1-14: Repeal Of Previous Ordinances
- 11 8-1-15: Enforcement
- 12 8-1-16: Penalties
- 13 8-1-17: Code Copies
- 14 8-1-18: Liability
- 15
- 16 8-1-1: TITLE:
- 17 This Chapter shall be known and may be cited as the “*TOWN OF BRECKENRIDGE BUILDING*
- 18 *CODES ORDINANCE*”.
- 19
- 20 8-1-2: FINDINGS:
- 21 The Town Council finds and determines as follows:
- 22
- 23 A. The Town is authorized by law to set fees for permits issued under the Town's building and
- 24 other technical codes.
- 25
- 26 B. The Building Inspection Division of the Department of Community Development is the
- 27 primary Town department charged with the duty to process permit applications under the Town's
- 28 building and other technical codes, but other Town departments and personnel, such as the
- 29 Engineering Department, expend time in connection with the review of such applications. The
- 30 time expended by all Town personnel in reviewing such applications are part of the present
- 31 operational cost and future expansion of the Building Inspection Division of the Department of
- 32 Community Development. Such costs are part of the overall costs required to operate such
- 33 Department.
- 34
- 35 C. On occasion the Town incurs additional out-of-pocket expenses in connection with the review
- 36 of an application for a permit under the Town's building and other technical codes. Such
- 37 expenses may include, without limitation, fees paid by the Town to the Town Attorney and/or
- 38 fees paid by the Town to special counsel or special consultants. Such fees are part of the overall
- 39 costs required to process the permit application for which they were incurred.
- 40
- 41 D. Pursuant to Bainbridge, Inc. v. The Board of County Commissioners of Douglas County, 964
- 42 P.2d 575 (Colo. App. 1998) the application fees which may lawfully be charged by the Town for
- 43 permits under the Town's building and other technical codes may include both the direct and

BUILDING CODES ORDINANCE

1 indirect costs of operating the Building Inspection Division of the Town's Department of
2 Community Development, as well as the other Town departments and personnel which assist in
3 the review of permit applications.
4

5 E. The permit fees established in this Chapter are approximately required to offset the direct and
6 indirect costs of operating the Building Inspection Division of the Department of Community
7 Development and the cost to the Town of actually processing building permit applications.
8

9 F. The application fees for development permits and subdivision permits established by this
10 Chapter do not exceed the direct and indirect costs of operating the Department of Community
11 Development and the cost to the Town of actually processing development and subdivision
12 permit applications.
13

14 8-1-3: STANDARD CODES ADOPTED BY REFERENCE: The following standard codes, as
15 hereinafter amended, are hereby adopted by reference as part of the Town of Breckenridge
16 Building Code:
17

- 18 A. International Building Code, 2006 Edition, published by the International Code
19 Council, Inc.
20
- 21 B. International Residential Code, 2006 Edition including Appendix Chapters G and K,
22 Published by the International Code Council, Inc.
23
- 24 C. International Mechanical Code, 2006 Edition, including Appendix A, published by
25 the International Code Council, Inc.
26
- 27 D. International Plumbing Code, 2006 Edition, including Appendices C, E, F and G,
28 published by the International Code Council, Inc.
29
- 30 E. International Energy Conservation Code, 2006 Edition, published by the
31 International Code Council, Inc.
32
- 33 F. National Electrical Code, 2008 Edition, published by the National Fire Protection
34 Association.
35
- 36 G. ICC Electrical Code - Administrative Provisions, 2006 Edition, published by the
37 International Code Council, Inc.
38
- 39 H. International Fuel Gas Code, 2006 Edition, including Appendices A and B,
40 published by the International Code Council, Inc.
41
- 42 I. Uniform Code for Building Conservation, 1997 Edition, including Appendix
43 Chapter 3, published by the International Conference of Building Officials.

BUILDING CODES ORDINANCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

J. Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials.

8-1-4: AMENDMENTS TO THE INTERNATIONAL BUILDING CODE: The following sections of the International Building Code, 2006 Edition, are amended to read as follows:

1. Section 101.1 is amended to read as follows:
101.1 Title. These regulations shall be known as the “THE TOWN OF BRECKENRIDGE BUILDING CODES ORDINANCE” herein after referred to as “this Code”.
2. Section 101.4.4 is amended by deleting the last sentence that references the International Private Sewage Disposal Code.
3. Section 101.4.5 is amended to read as follows:
101.4.5 Existing Buildings. The provisions of Chapter 34 and the Uniform Code for Building Conservation shall apply to change of occupancy, alteration or repair of existing buildings and structures.
4. Section 102.6 is amended by replacing the reference to the International Property Maintenance Code with the Uniform Code for Building Conservation.
5. Section 103.2 is amended to read as follows:
103.2 Building Official. The Building Official is hereby authorized and directed to enforce all of the provisions of this code; however, a guaranty that all buildings and structures have been constructed in accordance with all of the provisions of this code is neither intended nor implied.
6. Section 103.3 is amended to read as follows:
103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction, the building official shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.
7. Section 104.8 is amended by adding the following additional first paragraph
The adoption of this code, and any previous Building Construction and Housing Standards adopted by the Town of Breckenridge, shall not be deemed to give rise to a duty of care on the part of any public entity, public employee or agent, nor shall this code or any previous Building Construction and Housing Standards be deemed to create any civil remedy against a public entity, public employee or agent.
8. Sections 105.1.1 and 105.1.2 are hereby deleted in their entirety.
9. Section 105.2 (9) is amended to read as follows:
(9) Swings and other playground equipment.
10. Section 105.5 is amended to read as follows:
105.5 Expiration. Every permit issued by the building official under the provisions of this code shall expire 18 months after the date of issue. Every permit issued shall become invalid unless the work on the site authorized by such permit

is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, extensions of time, for periods of not more than 6 months. An extension shall be requested in writing and shall demonstrate justifiable cause for the extension.

11. Section 106.1 is amended to read as follows:

Construction documents, special inspection and structural observation programs and other data shall be submitted in two sets with each application for a permit. A Colorado Licensed Design Professional shall prepare the construction documents. Where special conditions exist the Building Official is authorized to require additional construction documents.

12. Section 108.2 is amended to read as follows:

108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the Town of Breckenridge Fee Schedule.

The applicant shall provide valuation for new construction at time of application. If in the opinion of the Building Official the valuation is underestimated on the application, the valuation may be determined using the current “Building Standards” magazine published by the International Conference of Building Officials. A regional modifier of 1.35 (one and thirty-five-one-hundredths) is hereby created for use in connection with the Building Valuation Data.

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00. or fraction thereof, to and including \$2,000.00
\$2001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00

BUILDING CODES ORDINANCE

	\$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00 or fraction thereof
Other Inspections and Fees:	
1. Inspections outside of normal business hours.....	\$50.00 per hour (minimum charge – two hours)
2. Re-inspections fees assessed under provision of Section 305.8.....	\$50.00 per hour
3. Inspections for which no fee is specifically indicated.....	\$50.00 per hour (minimum charge – one hour)
4. Additional plan review required by changes, additions or revisions to plans.	\$50.00 per hour (minimum charge – one hour)
5. For use of outside consultants for plan checking and inspections, or both...	Actual cost

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

All permits have a plan review fee of 65%.
Hot tub permits fees are \$125.25.
Work commencing before issuance of a building permit is subject to three times the permit fee.
Electrical Permit Fees will be based on the State Electrical Fee Schedule plus 15% and a plan review fee of 65%.

- 13. Section 109.3.5 is amended by deleting the exception.
- 14. Section 109.3.10 is amended to read as follows:
109.3.10 Final inspection. To be made only after the finished grading and the building or structure is completed in accordance with the provisions on the International Building Code and Technical Codes, the Development Code, including flooring, tile, wallpaper, paint, trim, finish, and final cleaning. A security deposit may be posted for incomplete items required by planning i.e. landscaping, exterior painting and paving “weather prohibiting”.
- 15. Section 109.7 a new subsection to read as follows:
109.7 Reinspections. A reinspection fee, as specified in the Town of Breckenridge Fee Schedule, may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when corrections called for are not made. Reinspection fees may be assessed when the inspection record card is not posted or otherwise available on the work site, the approved

1 plans are not readily available to the inspector, for failing to provide access on the
2 date for which the inspection is requested, or for deviating from plans requiring
3 the approval of the building official. In instances where reinspection fees have
4 been assessed, no additional inspection of the work will be performed until the
5 reinspection fees have been paid.

- 6 16. Section 110 is amended by adding a new subsection to read as follows:
7 110.5 A Certificate of Completion shall be issued for work not directly related to
8 occupancy when such work complies with the provisions of this code and all other
9 relevant laws, which are enforced by the Town.
- 10 17. Section 113 is hereby deleted in its entirety.
- 11 18. Section 202 is amended by adding the following definitions within the
12 alphabetical order of the existing definitions:
13 LOFT. A habitable room or floor in a building that is open to the room or floor
14 directly below, which may or may not qualify as a mezzanine. Lofts may be either
15 habitable space or non-habitable space.
16 CERTIFIED SOLID FUEL BURNING DEVICE is a solid fuel burning device
17 which is certified by the Air Pollution Control Division of the Colorado
18 Department of Health or approved by the Building Official as meeting the
19 emission standards set forth in Section IV of Regulation No. 4 of Volume I of the
20 Colorado Air Quality Control Commission (EPA Phase II or III).
21 NEW CONSTRUCTION, for the purpose of section 2113, is construction of a
22 residential, commercial, industrial, agricultural or accessory building. This shall
23 include any modifications, replacement or relocation of existing solid fuel burning
24 devices. However, modifications to solid fuel burning devices shall not include
25 repair, replacement or relocation of flue pipe.
26 SOLID FUEL BURNING DEVICES are any fireplace, stove, firebox, or other
27 device intended and or used for the purpose of burning wood, coal, pulp, paper,
28 pellets or other non-liquid or non-gaseous fuel.
- 29 19. Section 501.2 is amended by changing 4” to 5”
- 30 20. Section 716 is amended by adding a new subsection 716.8 to read as set forth in
31 IRC amendment R1005.11
- 32 21. Section 901.5 is amended by adding a new subsection to read as follows:
33 901.5.1 Special inspector required. All fire protection systems required by this
34 code shall be inspected and approved by a special inspector. The special inspector
35 shall be an authorized representative of the fire department or another qualified
36 individual with prior approval of the building official. Approvals of special
37 inspectors and inspections, approvals and reports by special inspectors shall be in
38 accordance with Chapter 17 of this code.
- 39 22. Section 1503 is amended by inserting a new subsection to read as follows:
40 1503.6 Snow-shed Barriers. Roofs shall be designed to prevent accumulations of
41 snow from shedding onto exterior balconies, decks, pedestrian and vehicular exits
42 from buildings, stairways, sidewalks, streets, alleys, areas directly above or in
43 front of gas utility or electric utility meters, or adjacent properties.

- 1 Exception: Roof areas with a horizontal dimension of no more than 48 inches
2 (1219mm) that will not receive snow shedding from a higher roof.
- 3 23. Section 1507.1 is amended by inserting a new subsection to read as follows:
4 1507.1.1 Ice dam protection. An ice dam protection underlayment that consists of
5 an approved self-adhering polymer modified bitumen sheet shall be used with all
6 roof coverings described in Sections 1507.2 through 1507.9. This ice dam
7 protection underlayment shall extend up the slope of the roof from the drip-edge of
8 the roof or eave and cover the entire roof decking surface.
- 9 24. Section 1507.5.3 is hereby deleted in its entirety.
- 10 25. Section 1507.6.3 is hereby deleted in its entirety
- 11 26. Section 1507.7.3 is hereby deleted in its entirety.
- 12 27. Section 1507.8.3 is hereby deleted in its entirety.
- 13 28. Section 1507.9.3 is hereby deleted in its entirety.
- 14 29. Section 1608.1 is hereby deleted in its entirety.
- 15 30. Section 1608.2 is amended to read as follows:
16 1608.2 Snow loads. The loads to be used in determining the design snow loads for
17 roofs shall be 90 psf below 10000 ft elevation, 100 psf 10000 ft elevation or
18 greater. There shall be no reduction in snow load for pitch or duration. Snow load
19 for decks and exterior balconies shall be 125 psf.
- 20 31. Section 1612.3 is amended to read as follows:
21 1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the
22 governing body shall adopt a flood hazard map and supporting data. The flood
23 hazard map shall include, at a minimum, areas of special flood hazard as identified
24 by the Federal Emergency Management Agency in an engineering report entitled
25 "The Flood Insurance Study for the Town of Breckenridge," dated June 20 2001,
26 as amended or revised with the accompanying Flood Insurance Rate Map (FIRM)
27 and Flood Boundary and Floodway Map (FBFM) and related supporting data
28 along with any revisions thereto. The adopted flood hazard map and supporting
29 data are hereby adopted by reference and declared to be part of this section.
- 30 32. Section 1703.1 is amended to read as follows:
31 1703.1 Approved agency. An approved agency shall provide all information as
32 necessary for the building official to determine that the agency meets the
33 applicable requirements. The fire department shall be an approved agency for
34 special inspection of fire protection systems required by this code.
- 35 33. Section 1704.1.1 is amended by adding an Exception number (3) to read as
36 follows:
37 3.Special inspection by the fire department of fire protection systems.
- 38 34. Section 1704.1.2 is amended by adding an Exception to read as follows:
39 Exception: Special inspection by the fire department of fire protection
40 systems.
- 41 35. Section 1704 is amended by adding a new section and subsection to read as
42 follows:

1 1704.15 Fire protection systems. Fire protection systems shall have the design
2 plans approved by a special inspector and the systems inspected and tested by a
3 special inspector for compliance with the requirements of this code and the
4 International Fire Code.

5 1704.15.1 Qualifications. Special inspectors for fire protection systems shall have
6 expertise in fire-protection. Special inspectors for fire suppression systems shall
7 be fire suppression systems inspectors certified by the State of Colorado Division
8 of Fire Safety.

9 36. Section 1805.2.1 is amended to read as follows:

10 1805.2.1 Frost protection. Except where erected on solid rock or otherwise
11 protected from frost, foundation walls, piers and other permanent supports of
12 buildings and structures shall extend to at least 40 inches (1016 mm) below finish
13 grade, and spread footings of adequate size shall be provided where necessary to
14 properly distribute the load within the allowable load-bearing value of the soil.
15 Alternatively, such structures shall be supported on piles where solid earth or rock
16 is not available. Footings shall not bear on frozen soils. Frost reports shall be
17 required before placement of concrete from Nov.1 through May 1 or if freezing
18 temperatures occur prior to Nov. 1 or after May 1.

19 37. Section 2113 is amended by adding the following subsections to read as follows:

20 Section 2113.21 Limitation on the type and number of devices. Solid fuel burning
21 devices that are not certified are prohibited in new construction. The number of
22 certified solid fuel burning devices that may be installed in newly constructed
23 buildings shall be approved by the Breckenridge Community Development
24 Department.

25 38. Section 2113.22 The points of termination of a factory built chimney shall not be
26 within 10 inches vertically of the point of termination of any adjacent chimney or
27 appliance vent within 24 inches horizontally. No factory built chimney shall
28 terminate closer than 24 inches to combustible finish materials.

29 39. Section 2301.2 The first paragraph is amended to read as follows:

30 2301.2 General design requirements. The design of structural elements or systems,
31 constructed partially or wholly of wood or wood-based products shall be based on
32 one of the following methods. The use of load duration factors for snow load
33 shall not be permitted in any of these design methods.

34 40. Section 2901.1 is amended by deleting the reference to the International Private
35 Sewage Disposal Code.

36 41. Section 3109.4 is amended to read as follows:

37 Section 3109.4 Residential Swimming Pools. Residential Swimming Pools, Spas
38 and Hot tubs intended for common use by all occupants of the building shall be
39 completely enclosed by a barrier complying with section 3109.4 through 3109.4.3.
40 Exception: A private use spa or hot tub with a safety cover complying with ASTM
41 F 1346

42 42. Section 3309 is amended to read as follows:

- 1 Section 3309.1 Where required. All structures under construction, alteration or
 2 demolition shall be provided with approved portable fire extinguishers as required
 3 by the Red White and Blue fire department.
- 4 43. Section 3311.1 is amended to read as follows:
 5 Section 3311.1 Where required. Buildings four stories or more in height shall be
 6 provided with standpipes as required by the Red White and Blue Fire Department.
- 7 44. Section 3311.4 is amended to read as follows:
 8 Section 3311.4 Water supply. Water supply for fire protection, either temporary or
 9 permanent shall be made available as required by the Red White and Blue Fire
 10 Department.
- 11 45. Section 3401.3 is amended to read as follows:
 12 Section 3401.3 Compliance with other codes. Alterations, repairs, additions and
 13 changes of occupancy to existing structures shall comply with the provisions for
 14 alterations, repairs, additions and changes of occupancy in the adopted
 15 International Fire Code, International Fuel Gas Code, International Plumbing
 16 Code, Uniform Code for Building Conservation, International Mechanical Code,
 17 International Residential Code, the National Electrical Code and the International
 18 Energy Conservation Code.
- 19 46. Section 3410.2 is amended to read as follows:
 20 Section 3410.2 Applicability. Structures existing prior September 18, 1972 in
 21 which there is work involving additions, alterations or changes of occupancy shall
 22 be made to conform to the requirements of this section or the provisions of
 23 Sections 3403 through 3407.
 24 The provisions in Sections 3410.2.1 through 3410.2.5 shall apply to existing
 25 occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F,
 26 M, R, S and U. These provisions shall not apply to buildings with occupancies in
 27 Group H or I.
- 28 47. Section 3410.3.2 is amended by deleting the reference to the International
 29 Property Maintenance Code.
- 30 48. Section 3410.4 is amended to read as follows:
 31 Section 3410.4 Investigation and evaluation. For proposed work covered by this
 32 section, the building owner shall cause the existing building to be investigated and
 33 evaluated in accordance with the provisions of this section by a design
 34 professional licensed to practice in the State of Colorado.
- 35 49. Section 3410.6 is amended by adding the following first paragraph.
 36 3410.6 Evaluation process. The building owner shall cause the existing building to
 37 be evaluated in accordance with the provisions of this section by a design
 38 professional(s) licensed to practice in the State of Colorado.

39
 40 8-1-5 AMENDMENTS TO THE INTERNATIONAL RESIDENTIAL CODE: The following
 41 sections of the International Residential Code, 2006 Edition, are amended to read as follows:
 42

- 43 1. Section R101.1 is amended by adding the name, “Town of Breckenridge”.

- 1 2. Section R102.7 is amended by deleting the reference to the Property Maintenance
2 Code.
- 3 3. Section R103.2 is amended to read as follows:
4 R103.2 Building Official. The building official is hereby authorized and directed
5 to enforce all of the provisions of this code; however, a guaranty that all buildings
6 and structures have been constructed in accordance with all of the provisions of
7 this code is neither intended nor implied.
- 8 4. Section R103.3 is amended by deleting the words: “with the concurrence of the
9 appointing authority.”
- 10 5. Section R104.8 is amended by adding the following additional paragraph to the
11 beginning of the section:
12 The adoption of this code, and any previous Building Construction and Housing
13 Standards adopted by the Town of Breckenridge, shall not be deemed to give rise
14 to a duty of care on the part of any public entity, public employee or agent, nor
15 shall this code or any previous Building Construction and Housing Standards be
16 deemed to create any civil remedy against a public entity, public employee or
17 agent.
- 18 6. Section R105.5 is amended to read as follows:
19 R105.5 Expiration. Every permit issued by the code official under the provisions
20 of this code shall expire 18 months after the date of issue. Every permit issued
21 shall become invalid unless the work on the site authorized by such permit is
22 commenced within 180 days after its issuance, or if the work authorized on the site
23 by such permit is suspended or abandoned for a period of 180 days after the time
24 the work is commenced. The code official is authorized to grant extensions of
25 time, for periods of 6 months. An extension shall be requested in writing, and the
26 request shall demonstrate justifiable cause for the extension.
- 27 7. Section R106.1 is amended to read as IBC Sec 106.1 Amended.
- 28 8. Section R108.2 is amended by replacing the words: “by the applicable government
29 authority” with the following:
30 “...in accordance with the Town of Breckenridge Building Department Fee
31 Schedule. Refer to the International Building Code Amendment Section 108.2.”
- 32 9. Section R108 is amended by adding a new subsections to read as follows:
33 108.6 Work commencing before permit issuance. Any person who commences
34 any work on a building, structure, electrical, gas, mechanical or plumbing system
35 before obtaining the necessary permits shall be subject to an investigation fee that
36 shall be in addition to the required permit fees. The investigation fee shall be as
37 set forth in the Town of Breckenridge Building Department Fee Schedule.
- 38 10. Section R109.1.6 is amended to read as follows:
39 Final inspection. To be made only after the finished grading and the building or
40 structure is completed in accordance with the provisions of the International
41 Residential Code and Technical Codes, the Development Code, including
42 cleaning, flooring, tile, wallpaper, paint, trim, finish, and final painting and

- 1 paving. A security deposit may be posted for incomplete items required by
 2 planning i.e. landscaping, exterior painting, paving, “weather prohibiting”.
- 3 11. Section R109 is amended by adding a new subsection to read as follows:
 4 R109.5 Reinspections. A reinspection fee, as specified in the Town of
 5 Breckenridge Building Department Fee Schedule, may be assessed for each
 6 inspection or reinspection when such portion of work for which inspection is
 7 called is not complete or when corrections called for are not made. Reinspection
 8 fees may also be assessed when the inspection record card is not posted or
 9 otherwise available on the work site, the approved plans are not readily available
 10 to the inspector, for failing to provide access on the date for which the inspection
 11 is requested, or for deviating from plans requiring the approval of the building
 12 official. In instances where reinspection fees have been assessed, no additional
 13 inspection of the work will be performed until the reinspection fees have been
 14 paid.
- 15 12. Section R110.1 is amended by deleting exception number (2)
- 16 13. Section R110.4 is hereby deleted in its entirety.
- 17 14. Section 110 is amended by adding a new subsection to read as follows:
 18 R110.6 A Certificate of Completion shall be issued for work not directly related to
 19 occupancy when such work complies with the provisions of this code and all other
 20 relevant laws, which are enforced by the Town.
- 21 15. Section R113 is hereby deleted in its entirety.
- 22 16. Section R202 is amended by inserting the following definitions within the
 23 alphabetical order of the existing definitions:
 24 LOFT. A habitable room or floor in a building that is open to the room or floor
 25 directly below, which may or may not qualify as a mezzanine. Lofts may be either
 26 habitable space or non-habitable space. A loft provided with a closet or where a
 27 bathroom on the same level can be directly accessed without passing through
 28 sleeping room, will be considered a sleeping room for the purposes of Sec R310
 29 and R313.
- 30 17. Table R301.2(1) is amended to read as follows:

31 Table R301.2(1)

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA								
ROOF SNOW LOAD	WIND	SEISMIC DESIGN CATEGORY ^f	SUBJECT TO DAMAGE FROM				WINTER DESIGN TEMP ^e	FLOOD HAZARDS
	Speed ^d (mph)		Weathering ^a	Frost line depth ^b	Termite ^c	Decay ^c		
Footnote h	90	Footnote b	Severe	40 in.	Slight	Slight	-13	Footnote g

32
 33 For SI: 1 pound per square foot = 0.0479 kN/m.0 2, 1 mile per hour = 1.609 km/h.

- 1 (a) Weathering may require a higher strength concrete or grade of
2 masonry than necessary to satisfy the structural requirements
3 of this code. The grade of masonry units shall be determined
4 from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C
5 216 or C 652.
- 6 (b) The frost line depth may require deeper footings than
7 indicated in Figure R403.1 (1). This part of the table is filled
8 in depending on whether there has been a history of local
9 damage.
- 10 (c) This part of the table is filled in depending on whether there
11 has been a history of local damage.
- 12 (d) Wind exposure category shall be determined on a site-specific
13 basis in accordance with Section R301.2.1.4.
- 14 (e) Reflects local climates or local weather experience as
15 determined by the building official.
- 16 (f) Seismic Design Category determined from Section
17 R301.2.2.2.
- 18 (g) See Amendment 1612.3 IBC
- 19 (h) Snow-loads of 90 lbs. per square foot are required for
20 construction sites below an elevation of 10,000 feet. For
21 construction site at an elevation of 10,000 feet or greater, the
22 snow-load shall be one-hundred pounds (100) lbs.) per square
23 foot. There shall be no reduction in snow-load for pitch or
24 duration. See Building Official.
- 25 18. Table R301.5 is amended by deleting exterior balconies, decks and fire escapes
26 from the table and by adding footnote (j) to read as follows:
27 (j) The minimum uniformly distributed live loads for exterior balconies
28 and decks shall be 125 psf.
- 29 19. Table R302.1 Exterior Walls is amended to read as follows:
30

**TABLE R302.1
EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	(Fire-resistance rated)	1 hour with exposure from both sides	<3 feet
	(Not fire-resistance rated)	0 hours	3 feet
Projections	(Fire-resistance rated)	1 hour on the underside	<3 feet
	(Not fire-resistance rated)	0 hours	3 feet
Openings	Not allowed	N/A	< 3 feet
	Unlimited	0 hours	3 feet
Penetrations	All	Comply with Section R317.3	< 3 feet
		None required	3 feet

31

- 1 20. Section R321.1 is amended to read as follows:
2 R325.1 Premises identification. Approved numbers or addresses shall be provided
3 for all new and altered buildings in such a position as to be plainly visible and
4 legible from the street or road fronting the property. Address characters shall be at
5 least five inches (127 mm) in height and shall be of a color that contrasts with the
6 background on which they are mounted.
- 7 21. Section R602.3 is amended by adding the following sentence:
8 The use of load duration factors for snow load shall be prohibited.
- 9 22. Section R802.2 is amended by adding the following sentence:
10 There shall be no reduction in snow load for pitch or duration.
- 11 23. Section R905.1 is amended by adding a new subsection to read as follows:
12 R905.1.1 Ice Barrier Underlayment. An ice barrier that consists of an approved
13 self-adhering polymer modified bitumen sheet shall be used in lieu of normal
14 underlayment at all sloped roofs. This ice dam protection underlayment shall
15 extend up the slope of the roof from the drip-edge of the roof or eave and cover
16 the entire roof deck surface.
- 17 24. Section R905.2.7.1 is hereby deleted in its entirety.
- 18 25. Section R905.4.3 is hereby deleted in its entirety.
- 19 26. Section R905.5.3 is hereby deleted in its entirety.
- 20 27. Section R905.6.3 is hereby deleted in its entirety.
- 21 28. Section R905.7.3 is hereby deleted in its entirety.
- 22 29. Section R905.8.3 is hereby deleted in its entirety.
- 23 30. Section R1002 is a amended by adding a new subsection to read as follows:
24 R1002.6 The points of termination of a factory built chimney shall not be within
25 10 inches vertically of the point of termination of any adjacent chimney or
26 appliance vent within 24 inches horizontally. No factory built chimney shall
27 terminate closer than 24 inches to combustible finish materials.
- 28 31. Section R1004.4 is amended to read as follows:
29 R1004.4 Unvented gas log heaters. Installation of unvented gas log heaters is
30 prohibited.
- 31 32. Section 1005 Factory Built Chimneys is amended by adding the following new
32 subsections to read as follows:
33 Section R1005.7 Solid fuel burning devices that are not certified are prohibited in
34 new construction. The number of certified solid fuel burning devices that may be
35 installed in newly constructed buildings shall be approved by the Breckenridge
36 Community Development Department.
37 Section R1005.8 CERTIFIED SOLID FUEL BURNING DEVICE is a solid fuel
38 burning device which is certified by the Air Pollution Control Division of the
39 Colorado Department of health or approved by the Building Official as meeting
40 the emission standards set forth in Section IV of Regulation No. 4 of Volume I of
41 the Colorado Air Quality Control Commission (EPA Phase II or III).
42 Section R1005.9 NEW CONSTRUCTION, for the purpose of this section, is
43 construction of a residential, commercial, industrial, agricultural or accessory

1 building. This shall include any modifications, replacement or relocation of
2 existing solid fuel burning devices. However, modifications to solid fuel burning
3 devices shall not include repair, replacement or relocation of flue pipe.

4 Section R1005.10 SOLID FUEL BURNING DEVICES are any fireplace, stove,
5 firebox, or other device intended and/or used for the purpose of burning wood,
6 coal, pulp, paper, pellets or other non-liquid or non-gaseous fuel.

7 Section R1005.11 Factory Built Class A Chimneys shall be enclosed within a
8 continuous enclosure protected on the interior (flue) side by not less than one-hour
9 fire resistive construction.

10 Exception: The portion of the chimney located in the same room as the appliance
11 and the portion of the chimney above the finished roofs are not required to be
12 enclosed. However if they are enclosed, the interior of the shaft shall be protected
13 by one-hour fire resistive construction.

14 33. Chapter 11, Energy Efficiency is hereby deleted in its entirety.

15 34. Section M1703 is amended by adding the following subsection to read as follows:
16 M1703.6 All exterior openings for combustion air shall terminate a minimum 36"
17 above finished grade.

18 35. Section M1804.2.1 is amended to read as follows:

19 M1804.2.1 Through the roof. Vents passing through a roof shall extend through
20 flashing and terminate in accordance with the manufacturer's installation
21 requirements. All vents shall terminate within 5 feet of a ridgeline.

22 36. Section 1804.2.6 #4 is amended to read as follows:

23 1804.2.6 #4 The bottom of the vent terminal shall be located at least 36 inches
24 above grade.

25 37. Section M2002.4 is amended by adding the following sentence.

26 All boiler rooms are to be provided with a floor drain.

27 38. Section G2417.4.1 is amended to read as follows:

28 G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be not less
29 than one and one-half times the proposed maximum working pressure, but not less
30 than 30 psig (**69 kPa** gauge), irrespective of design pressure. Where the test
31 pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a
32 value that produces a hoop stress in the piping greater than 50 percent of the
33 specified minimum yield strength of the pipe.

34 39. Section G2425.8 is amended by deleting item #7:

35 Room heaters listed for unvented use.

36 40. Section G2432 is amended by adding a new subsection to read as follows:

37 G2432.4 (602.4) Gas logs. Gas logs may be installed in solid-fuel-burning
38 fireplaces provided:

39 1) The gas log is installed in accordance with the manufacturer's installation
40 instructions.

41 2) If the fireplace is equipped with a damper it shall either be removed or
42 permanently secured in an open position.

1 3) The flue passageway shall be not less than 1 square inch per 2,000 Btu/h input
2 and not more than 4 square inches per 2,000 Btu/h input.

3 4) Gas logs shall be equipped with a pilot and shall have a listed safety shutoff
4 valve.

5 5) Gas logs shall be vented with a Class 'A' Chimney, that is protected in
6 accordance with Sec R1005.11 as amended.

7 6) Gas logs may be installed in factory-built fireplaces only when (a) the fireplace
8 and gas logs are listed for use together as an individual unit (b) the fireplace is
9 approved for use with any listed gas log or (c) the fireplace manufacturer provides
10 prior written approval for the installation.

11 Exception: The installation of gas logs in factory built fireplace units for which
12 the manufacturer cannot be identified or located may be approved by the building
13 official in his or her discretion. Any approval shall be based at a minimum, on
14 written evidence submitted by the gas log manufacturer that the installation of
15 their product will not compromise the integrity of the existing fireplace.

16 41. Section G2433.1 (603.1) is amended to read as follows:

17 General. Log lighters are prohibited

18 42. Section G2445 (621) is amended to read as follows:

19 Prohibited installation. Installation of unvented room heaters is prohibited.

20 43. Section P2501.1 is amended to read as follows:

21 P2501.1 Scope. The provisions of this chapter shall establish the general
22 administrative requirements applicable to plumbing systems and inspection
23 requirements of this code. The intent of this code is to meet or exceed the
24 requirements of the State of Colorado Plumbing Code. When technical
25 requirements, specifications or standards in the Colorado Plumbing Code conflict
26 with this code, the more restrictive shall apply.

27 44. Section P2801.5.2 is amended to read as follows:

28 P2801.5.2 Pan drain termination. The pan drain shall extend full-size and
29 terminate over a suitably located indirect waste receptor or floor drain and
30 terminate not less than 6 inches and not more than 24 inches above the adjacent
31 ground surface.

32 45. Section P2803.6.1 Item 5 is amended by deleting the reference allowing the
33 discharge from the relief valve to terminate at the outside of the building.

34 46. Section P3103.1 is amended to read as follows:

35 P3103.1 Roof extension. All open vent pipes which extend through a roof shall be
36 terminated at least 12 inches (306 mm) above the roof and shall terminate within 5
37 feet of a ridgeline, except that where a roof is to be used for any purpose other
38 than weather protection, the vent extensions shall be run at least 7 feet (2134 mm)
39 above the roof.

40 47. Chapters 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 are repealed in their entirety.

41
42 8-1-6: AMENDMENTS TO THE INTERNATIONAL MECHANICAL CODE: The following
43 sections of the International Mechanical Code, 2006 Edition, are amended to read as follows:

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
 - 27
 - 28
 - 29
 - 30
 - 31
 - 32
 - 33
 - 34
 - 35
 - 36
 - 37
 - 38
 - 39
 - 40
 - 41
 - 42
 - 43
1. Section 101.1 is amended to read as follows:
101.1 Title. These regulations shall be known as the Mechanical Code of the Town of Breckenridge herein after referred to as “this Code.”
 2. Section 103.2 is amended to read as IBC 103.2 as Amended
 3. Section 103.3 is amended to read as IBC 103.3.as amended
 4. Section 103.4 is amended by adding a paragraph to read as IBC Amendment 104.8.
 5. Section 106.4.3 is amended to read as IBC 105.5 as amended.
 6. Section 106.4.4 is hereby deleted in its entirety in entirety.
 7. Section 106.5.2 is amended to read as follows:
106.5.2 Fee schedule. The fees for mechanical work shall be in accordance with the Town of Breckenridge Building Department Fee Schedule.
 8. Section 106.5.3 is amended to read as follows:
106.5.3 The Building Official is authorized to establish a fee refund policy.
 9. Section 106.5 is amended by adding a new subsection 106.5.4 to read as IBC 109.7 as amended.
 10. Section 108.1 is hereby deleted in its entirety.
 11. Section 108.2 is hereby deleted in its entirety.
 12. Section 108.3 is hereby deleted in its entirety.
 13. Section 108.4 is hereby deleted in its entirety.
 14. Section 108.5 is hereby deleted in its entirety.
 15. Section 108.6 is hereby deleted in its entirety.
 16. Section 109 is hereby deleted in its entirety.
 17. Section 202 is amended by adding the following definition within the alphabetical order of the existing definitions.
“Certified Solid Fuel Burning Device”, “New Construction”, and “Solid Fuel Burning Devices” shall be defined as per IBC Amendments Chapter 2.
 18. Section 509.1 is amended to add the subsequent paragraph at the end:
All fire suppression systems required by this code shall be inspected and approved by a special inspector. The special inspector shall be an authorized representative of the Red White and Blue Fire Department or another qualified individual with prior approval of the building official. Approvals of special inspectors and inspections, approvals and reports by special inspectors shall be in accordance with Chapter 17 of the International Building Code.
 19. Section 708.1 General is amended by adding a new subsection to read as follows:
#9. Combustion air ducts must terminate a minimum of 36” above finished grade.
 20. Section 804.3.4 Horizontal terminations.
#6. is amended to read as follows:
The bottom of the vent termination shall be located at least 36 inches above finished grade.
 21. Section 805 is amended by adding a new section 805.7 to read as IRC Amendment R1002.6

- 1 22. Section 903.3 is amended to read as follows:
2 903.3 Unvented gas log heaters. Unvented gas log heaters are prohibited.
3

4 8-1-7: AMENDMENTS TO THE INTERNATIONAL PLUMBING CODE: The following
5 sections of the International Plumbing Code, 2006 Edition, are amended to read as follows:
6

- 7 1. Section 101.1 is amended to read as follows:
8 101.1 Title. These regulations shall be known as the Plumbing Code of the Town
9 of Breckenridge, herein after referred to as “this Code”.
10 2. Section 101.3 is amended to add the following:
11 The intent of this code is to meet or exceed the requirements of the State of
12 Colorado Plumbing Code. When technical requirements, specifications or
13 standards in the Colorado Plumbing Code conflict with this code, the more
14 restrictive shall apply.
15 3. Section 103.2 is amended to read as IBC Amendment 103.2.
16 4. Section 103.3 is amended to read as IBC Amendment 103.3.
17 5. Section 103.4 is amended to add a paragraph as written in IBC Amendment 104.8.
18 6. Section 106.5.3 is amended to read as IBC amendment 105.5.
19 7. Section 106.5.4 is hereby deleted in its entirety in its entirety.
20 8. Section 106.6.2 is amended to read as follows:
21 106.6.2 Fee schedule. The fees for plumbing work shall be in accordance with the
22 Town of Breckenridge Building Inspection Department Fee Schedule.
23 9. Section 106.6.3 is amended to read as follows:
24 106.6.3 Fee refunds. The Building official is authorized to establish a refund
25 policy.
26 10. Section 106.6 is amended by adding a new subsection 106.6.4 to read as IBC
27 Amendment 109.7.
28 11. Section 108.1 is hereby deleted in its entirety.
29 12. Section 108.2 is hereby deleted in its entirety.
30 13. Section 108.3 is hereby deleted in its entirety.
31 14. Section 108.4 is hereby deleted in its entirety.
32 15. Section 108.5 is hereby deleted in its entirety.
33 16. Section 108.6 is hereby deleted in its entirety.
34 17. Section 109 is hereby deleted in its entirety.
35 18. Section 305.6.1 is amended to read as follows:
36 305.6.1 Sewer depth. Building sewers shall be installed in accordance with the
37 standards and approval of the governing Sanitation District.
38 19. Section 312.6 is amended to read as follows:
39 Section 312.6 Gravity sewer test. Testing of the building sewer shall be in
40 accordance with the standards and approval of the governing Sanitation District.
41 20. Section 312.7 is amended to read as follows:
42 312.7 Forced sewer test. Testing of the building sewer shall be in accordance with
43 the standards and approval of the governing Sanitation District.

- 1 21. Section 312.9.1 is hereby deleted in its entirety in its entirety.
2 22. Section 504.6 is amended to delete reference to the out doors in item #5
3 23. Section 504.7.2 is amended to read as follows:
4 504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate
5 over a suitably located indirect waste receptor or floor drain and terminate not less
6 than 6 inches and not more than 24 inches above the adjacent floor surface.
7 24. Section 608.17 through 608.17.8 are deleted.
8 25. Section 610.1 is amended to read as follows:
9 610.1 General. New or repaired potable water systems shall be purged of
10 deleterious matter and disinfected prior to utilization. The method to be followed
11 shall be that prescribed by the Town of Breckenridge Water Department.
12 26. Section 701.2 is amended to read as follows:
13 701.2 Sewer required. Every building in which plumbing fixtures are installed and
14 all premises having drainage piping shall be connected to a public sewer.
15 27. Section 904.1 is amended to read as IRC Amendment P3103.1.
16 28. Section 1106.1 is amended to read as follows:
17 1106.1 General. The size of the vertical conductors and leaders, building storm
18 drains, building storm sewers, and any horizontal branches of such drains or
19 sewers shall be based on the 100-year hourly rainfall rate of two (2) inches (50.8
20 mm) per hour.
21 29. Section 1108.1 is amended to read as follows:
22 1108.1 Combination drains and sewers. Combination sanitary and storm drains or
23 sewers are prohibited.
24

25 8-1-8: AMENDMENTS TO THE INTERNATIONAL ENERGY CONSERVATION CODE:
26 The following sections of the International Energy Conservation Code, 2006 Edition, are
27 amended to read as follows:
28

- 29 1. Section 101.1 is amended by adding the name “Town of Breckenridge”.
30 2. Section 101.2 is amended by adding an additional sentence to read as follows:
31 For residential buildings this code is to be used in conjunction with any
32 Sustainable Building Ordinance that may subsequently be adopted by the Town
33 of Breckenridge. Where there are conflicting requirements between the two
34 codes, the most restrictive requirement shall be met.
35

36 8-1-9: AMENDMENTS TO THE NATIONAL ELECTRICAL CODE: There are no
37 amendments to the National Electrical Code, 2008 Edition.
38

39 8-1-10: AMENDMENTS TO THE ICC ELECTRICAL CODE – ADMINISTRATIVE
40 PROVISIONS: The following sections of the ICC Electrical Code—Administrative Provisions,
41 2006 Edition, are amended to read as follows:
42

- 43 1. Section 101.1 is amended to read as follows:

BUILDING CODES ORDINANCE

1 101.1 Title. These regulations shall be known as the ICC Electrical Code™-
2 Administrative Provisions of Town of Breckenridge and shall be cited as such.
3 The ICC Electrical Code™ - Administrative Provisions in combination with the
4 separately adopted National Electrical Code will be referred to herein as “this
5 code” The ICC Electrical Code™ - Administrative Provisions in combination with
6 the separately adopted National Electrical Code will be referred to throughout all
7 other building construction and housing standards adopted by the Town of
8 Breckenridge as the ICC Electrical Code.

- 9 2. Section 201.3 is amended to read as follows:
10 201.3 Terms defined in other codes. Where terms are not defined in this code and
11 are defined in the International Building Code, International Fire Code,
12 International Fuel Gas Code, International Mechanical Code, International
13 Plumbing Code, International Residential Code, International Energy
14 Conservation Code or NAPA 70, such terms shall have meanings ascribed to
15 them as in those codes.
- 16 3. Section 301.2 is amended to read as IBC Amendment 103.2.
- 17 4. Section 301.3 is amended to read as IBC Amendment 103.3.
- 18 5. Section 302.9 is amended to read as IBC Amendment 104.8.
- 19 7. Section 403.2 is amended to read as IBC Amendment 105.5.
- 20 8. Section 403.3 is hereby deleted in its entirety.
- 21 9. Section 403.6 is be amended to read as follows:
22 403.6 Information on the permit. The code official shall issue all permits required
23 by this code on an approved form furnished for that purpose. The permit shall
24 contain a general description of the operation or occupancy and its location and
25 any other information required by the code official.
- 26 10. Section 404.2 is amended to read as IBC Amendment 108.2.
- 27 11. Section 404.3 is amended to read as follows:
28 404.3 Work commencing before permit issuance. Any person who commences
29 any work before obtaining the necessary permits shall be subject to an
30 investigation fee established by the code official, which shall be in addition to the
31 required permit fee. The investigation fee shall be as set forth in the Town of
32 Breckenridge Construction Permit Fee Schedule.
- 33 12. Section 404 is amended by inserting a two new subsections to read as
34 follows:
35 404.6 Reinspections. Shall read as per IBC Amendment 109.7.
36 404.7 Plan Review Fees. The plan review fees for electrical work shall be in
37 accordance with the Town of Breckenridge Permit Fee Schedule.
- 38 13. Section 1001 is hereby deleted in its entirety.
- 39 14. Sections 1002.1 through 1002.6, inclusive, are hereby deleted in their entirety.
- 40 15. Section 1003 is hereby deleted in its entirety.
- 41 16. Section 1004 is hereby deleted in its entirety.
- 42 17. Sections 1101, 1102 and 1103 are hereby deleted in their entirety and Section
43 1101 is reenacted to read as IBC Section 112.

- 1 18. Section 1202 and all subsections therein are hereby deleted in their entirety.
- 2 19. Section 1203 and all subsections therein are hereby deleted in their entirety.

3
4 8-1-11: AMENDMENTS TO THE INTERNATIONAL FUEL GAS CODE: The following
5 sections of the International Fuel Gas Code, 2006 Edition, are amended to read as follows:
6

- 7 1. Section 101.1 is amended to read as follows:
8 101.1 Title. These regulations shall be known as the Fuel Gas Code of the
9 Town of Breckenridge herein after referred to as “this Code.”
- 10 2. Section 103.2 is amended to read as IBC Amendment 103.2.
- 11 3. Section 103.3 is amended to read as IBC Amendment 103.3.
- 12 4. Section 103.4 is amended to add a paragraph to read as IBC Amendment 104.8.
- 13 5. Section 106.4.3 is amended to read as IBC amendment 105.5.
- 14 6. Section 106.4.4 is hereby deleted in its entirety in its entirety.
- 15 7. Section 106.5.2 is amended to read as follows:
16 106.5.2 Fee schedule. The fees for work shall be in accordance with the
17 Town of Breckenridge Inspection Department Fee Schedule.
- 18 8. Section 106.5.3 is amended to read as follows:
19 106.5.3 Fee refunds. The Building official is authorized to establish a
20 refund policy.
- 21 9. Section 106.5 is amended by adding a new subsection 106.5.4 Reinspections, to
22 read as IBC Amendment 109.7.
- 23 10. Section 108.1 is hereby deleted in its entirety.
- 24 11. Section 108.2 is hereby deleted in its entirety.
- 25 12. Section 108.3 is hereby deleted in its entirety.
- 26 13. Section 108.4 is hereby deleted in its entirety.
- 27 14. Section 108.5 is hereby deleted in its entirety.
- 28 15. Section 108.6 is hereby deleted in its entirety.
- 29 16. Section 109 is hereby deleted in its entirety.
- 30 17. Section 303.3 Prohibited Locations is amended to eliminate exceptions 3 and 4
- 31 18. Section 304.6.1 is amended to add a new subsection as follows:
32 304.6.1.1 Combustion air duct terminations. Combustion air duct
33 terminations to the exterior shall be a minimum of 36 inches above grade.
- 34 19. Section 304.6.2 is amended to add a new subsection as follows:
35 304.6.2.1 Combustion air duct terminations. Combustion air duct
36 terminations to the exterior shall be a minimum of 36 inches above grade.
- 37 20. Section 406.4.1 is amended to read as IRC Amendment G2416.4.1
- 38 21. Section 501.8 is amended by deleting items 8,9 &10
- 39 22. Section 503.8 Venting system termination location.
40 #2. is amended to add a sentence to read as follows:
41 The bottom of all vent terminations shall be located at least 36 inches above
42 grade.
- 43 23. Section 503.8 Venting system termination location.

1 #3. is amended to add a sentence to read as follows:
2 The bottom of the vent terminal and the air intake shall be located at least 36
3 inches above grade.

4 24. Section 602.1 is amended to read as follows:

5 602.1 General. Decorative appliances for installation in approved solid
6 fuel-burning fireplaces shall be tested in accordance with ANSI Z21.60
7 and shall be installed in accordance with the manufacturer's installation
8 instructions.

9 25. Section 602 is amended by adding a new subsection 602.4 to read as IRC
10 Amendment G2432.4.

11 26. Section 603.1 is amended to read as follows:

12 603.1 General. Log lighters are prohibited.

13 27. Section 618.5 is amended to add a subsection as follows:

14 Section 618.5.1 Outside air sources. Outside air shall not be obtained from
15 an exterior opening within 36-inches of finished grade.

16 28. Section 621 is amended to read as follows. Unvented room heaters are prohibited.

17 29. Section 634.1 is amended to read as follows:

18 632.1 Free opening area of chimney dampers. Where an unlisted
19 decorative appliance for installation in a vented fireplace is installed, the
20 fireplace damper shall have a permanent free opening not less than 1
21 square inch per 2,000 Btu/h input and not more than 4 square inches per
22 2,000 Btu/h input.

23
24 8-1-12: AMENDMENTS TO THE UNIFORM CODE FOR BUILDING CONSERVATION:

25 The following section of the Uniform Code For Building Conservation, 1997 Edition, are
26 amended to read as follows:

27
28 1. Section 301 is amended by amending the definition of Building Code to read as
29 follows:

30 BUILDING CODE is the International Building Code or the International
31 Residential Code, whichever is applicable, published by the International Code
32 Council, Inc., Inc., as adopted by this jurisdiction.

33
34 8-1-13: AMENDMENTS TO THE UNIFORM CODE FOR THE ABATEMENT OF

35 DANGEROUS BUILDINGS: The following sections of the Uniform Code For the Abatement of
36 Dangerous Buildings, 1997 Edition, are amended to read as follows:

37
38 1. Section 203 is hereby deleted in its entirety.

39 2. Section 205 is hereby deleted in its entirety.

40 3. Section 301 is amended by amending the definition of
41 Building Code to read as follows:

1 BUILDING CODE is the International Building Code or the International
2 Residential Code, which ever is applicable, published by the International Code
3 Council, Inc., as adopted by this jurisdiction.

- 4 4. Section 501.2 is amended to add the following sentence at the end of the section:
5 The board of appeals with the jurisdiction to hear and decide appeals under this
6 code is the board of appeals created pursuant to Chapter 3 of Title 2 of the
7 Breckenridge Town Code.
8

9 8-1-14: REPEAL OF PREVIOUS ORDINANCES: Existing ordinances or parts of ordinances
10 covering the same matters as embraced in this Chapter are hereby deleted, and all ordinances
11 inconsistent with the provisions of this Chapter are hereby deleted; provided, however, that this
12 repeal shall not affect or prevent the prosecution or punishment of any person for any act done or
13 committed in violation of any ordinance hereby deleted prior to this chapter taking effect.
14

15 8-1-15: ENFORCEMENT: The following portions apply to the enforcement of all of the codes
16 adopted by reference in this Chapter. If there is a conflict between these provisions and any
17 enforcement provision of a code adopted by reference in this Chapter, the provisions of this
18 Section shall control. As used in this Section, the term “adopted code” means a code adopted by
19 reference in this Chapter;
20

21 A. Authority of Building Official: The Building Official is hereby authorized and directed to
22 enforce the provisions of this code, however, a guaranty that all buildings and structures
23 have been constructed in accordance with all of the provisions of this code is neither
24 intended nor implied. The building official shall have the power to render interpretations
25 of this code and to adopt and enforce rules and regulations supplemental to this code as
26 deemed necessary in order to clarify the application of the provisions of this code. Such
27 interpretations, rules and regulations shall be in conformity with the intent and purpose of
28 this code.
29

30 B. Notice of Violation. The Building Official shall serve a notice of violation or order to the
31 person responsible for the erection, installation, alteration, extension, repair, removal or
32 demolition of work in violation of the portions of an adopted code, or in violation of a
33 detail statement or the approved construction documents thereunder, or in violation of a
34 permit or certificate issued under the provisions of any such adopted code. Such order
35 shall direct the discontinuance of the illegal action or condition and the abatement of the
36 violation. The notice or order shall be served upon the responsible person by personal
37 delivery or by mailing a copy of such notice or order by certified mail, postage prepaid,
38 return receipt requested, to the intended recipient at their address as it appears in the
39 records of the Summit County Assessor, or to such other address as may be known to the
40 Building Official. If no address for the intended recipient appears in the records of the
41 Summit County Assessor or is known to the Building Official, then the notice or order
42 shall be mailed to address of the property involved in the proceedings. The failure of any
43 person to receive the notice or order shall not affect the validity of any proceedings taken

1 under this Section. Service by certified mail in the manner herein provided shall be
2 effective upon the date of mailing. Proof of service of the notice and order shall be
3 certified to at the time of service by a written declaration under penalty of perjury
4 executed by the person effecting service, declaring the time, date, and manner in which
5 service was made. The declaration, together with any receipt card returned in
6 acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice
7 and order retained by the Building Official.
8

9 C. Prosecution of Violation. If the notice of violation is not complied with promptly, the
10 Building Official shall request the Town Attorney to institute the appropriate proceedings
11 at law or in equity to restrain, correct, or abate such violation, or to require the removal or
12 termination of the unlawful occupancy of the structure in violation of an adopted code or
13 the order or direction of the Building Official made pursuant thereto.
14

15 D. Stop Work Orders. Upon notice (sometimes referred to as a “stop work order”) from the
16 Building Official, any work being done contrary to the provisions of an adopted code or
17 in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing
18 and shall be given to the owner of the property, or to the owner’s agent, or to the person
19 doing the work; however, if neither the property owner, the owner’s agent nor the person
20 doing the work is present at the time the Building Official goes to serve the notice, the
21 notice may be served by posting the notice in a conspicuous place on the property for
22 which the permit was issued. The notice shall state the conditions under which work is
23 authorized to resume. Where an emergency exists, the Building Official shall not be
24 required to a written notice prior to stopping the work. Any person who shall continue to
25 work in or about the structure after having been served with a stop work order, except
26 such work as that person is directed by the Building Official to perform to remove a
27 violation or unsafe condition, shall be pay an administrative fine equal to three time the
28 normal permit fee.
29

30 E. Abatement of Violation. The imposition of penalties as provided in this Chapter shall not
31 preclude the Town Attorney from instituting appropriate action to prevent the unlawful
32 construction or to restrain, correct or abate a violation of an adopted code, or to prevent
33 the illegal occupancy of a building, structure, or premises, or to stop an illegal act,
34 conduct, business or utilization of the improvements constructed upon any premises.
35

36 F. Building Code Board of Appeals. The Board of Appeals created pursuant to Chapter 3 of
37 Title 2 of this Code shall provide for the final interpretation of the provisions of the
38 adopted codes and hear appeals concerning the interpretation of the adopted codes. The
39 procedures for the holding of hearings on appeals concerning the interpretation of the
40 adopted codes shall be as provided in Chapter 3 of Title 2 of this Code.
41

1 G. Code Provisions Unaffected. The following provisions of the adopted codes are not
2 affected by this Section and shall be enforceable according to their terms as provided in
3 the adopted codes:

- 4
- 5 1. Section 108.7, including subsections 108.7.1, 108.7.2, and 108.7 of the International
6 Mechanical Code;
- 7 2. Section 108.7, including subsections 108.7.1, 108.7.2, and 108.7.3 of the International
8 Plumbing Code;
- 9 3. Section 1002.7 of the ICC Electrical Code—Administrative Provisions;
- 10 4. Section 108.7, including subsections 108.7.1, 108.7.2, and 108.7 of the International
11 Fuel Gas Code; and
- 12 5. Section 401 and Chapter 5 of the Uniform Code for the Abatement of Dangerous
13 Buildings. The provisions of Chapter 19 of Title 1 of the Breckenridge Town Code
14 shall not apply to appeals held under the Uniform Code for the Abatement of
15 Dangerous Buildings.
- 16

17 8-1-16; PENALTIES:

18

19 A. General: It is unlawful and an "infraction", as defined in section 1-3-2 of this code, for any
20 person to violate any of the provisions of this chapter, or any provision of a code adopted by
21 reference by this chapter. Any person who violates any provision of this chapter or any provision
22 of a code adopted by reference by the chapter shall, upon a determination of liability, be
23 punished as provided in title 1, chapter 4 of this code. Each such person shall be liable for a
24 separate offense for each and every day during any portion of which any violation of any of the
25 provisions of this chapter or a code adopted by reference by the chapter is committed, continued
26 or permitted by such person, and such person shall be punished accordingly.

27

28 B. Injunctive Relief: In addition to other remedies available to the town, the town may
29 commence an action pursuant to section 1-8-10 of this code to enjoin the alleged violation of any
30 provision of this chapter, or to authorize and compel the removal, termination or abatement of
31 such violation.

32

33 C. Additional Remedies: Any remedies provided for in this chapter shall be cumulative and not
34 exclusive, and shall be in addition to any other remedies provided by law.

35

36 8-1-17: CODE COPIES: At least one copy of the codes adopted by reference in this chapter,
37 each certified to be a true copy, has been and is now on file in the office of the town clerk, and
38 may be inspected by any interested person between the hours of nine o'clock (9:00) A.M. and
39 five o'clock (5:00) P.M., Monday through Friday, holidays excepted.

40

41 8-1-18: LIABILITY: The adoption of this chapter and the codes provided for herein shall not
42 create any duty to any person with regard to the enforcement or nonenforcement of this chapter
43 or said codes. No person shall have any civil liability remedy against the town or its officers,

1 employees or agents, for any damage arising out of or in any way connected with the adoption,
2 enforcement or nonenforcement of this chapter of said codes. Nothing in this chapter or in said
3 codes shall be construed to create any liability or to waive any of the immunities, limitations on
4 liability or other provisions of the Colorado governmental immunity act, section 24-10-101 et
5 seq., C.R.S, or to waive any immunities or limitations on liability otherwise available to the
6 town, or its officers, employees or agents.

7
8 Section 2. Subsection E of Section 2-3-8 of the Breckenridge Town Code is hereby
9 amended so as to read in its entirety as follows:

10
11 G. Staying Of Order Under Appeal: Except for vacation orders made pursuant to
12 ~~section 403 of the Uniform Code for the Abatement of Dangerous Buildings,~~
13 ~~1994 Edition, or section 1103 of the Uniform Housing Code, 1994 Edition,~~ **any**
14 **code adopted by reference in Chapter 1 of Title 8 of this Code,** enforcement of
15 any notice and order of the Building Official issued under this Code shall be
16 stayed during the pendency of an appeal therefrom which is properly and timely
17 filed.

18
19 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
20 various secondary codes adopted by reference therein, shall continue in full force and effect.

21
22 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
23 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
24 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
25 thereof.

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

30
31 Section 6. This ordinance shall be published and become effective as provided by Section
32 5.9 of the Breckenridge Town Charter; provided, however, that the portions of this ordinance
33 providing for the adoption of the National Electrical Code, 2008 Edition, shall not become
34 effective unless and until the National Electrical Code, 2008 Edition, has been adopted by the
35 State of Colorado. The portions of this ordinance providing for the adoption of the National
36 Electrical Code, 2008 Edition, shall become effective within the Town of Breckenridge on the
37 same date that the adoption of the National Electrical Code, 2008 Edition, by the State of
38 Colorado becomes effective. Until such time as the adoption of the National Electrical Code,
39 2008, edition becomes effective, the National Electrical Code, 2002 Edition, as adopted by
40 Ordinance No. 2, Series 2002, shall continue in full force and effect.

41
42 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
43 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the

BUILDING CODES ORDINANCE

1 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
2 ____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
3 Town.

4
5

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Ernie Blake, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

COPIES OF THE CODES TO BE ADOPTED BY REFERENCE PURSUANT TO THIS
ORDINANCES AND AMENDMENTS ARE AVAILABLE FOR INSPECTION AT THE
OFFICE OF THE TOWN CLERK.

5



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Senior Planner

DATE: March 19, 2008 (for meeting of March 25, 2008)

SUBJECT: Fence Ordinance (Second Reading)

Attached for second reading is the proposed new policy on fences, privacy gates and entrance monuments. We have received comments from the Town Council during the work sessions on October 9, 2007, and January 2, 2008, and March 11, 2008 and from the Planning Commission on December 4, 2007.

The attached ordinance includes several changes from the March 11th version, based on input from the Town Council. These include:

- The definition of “gateway entrance monument” has been modified to delete the reference to “overhead structures and arches”. These overhead structures and arches, however, will still be prohibited. Criteria for gateway entrance monuments at large projects (e.g. subdivisions, condominiums, hotels) and private residences are also proposed. We have attempted to delineate large projects from private residences; as a result, different criteria are proposed for each.
- We have proposed to allow fences to delineate public trails or protect open space values. These fences would generally be constructed of natural materials, and would likely be split rail, buck and rail, or log fences, and should be designed to accommodate wildlife.
- We have added design criteria for privacy fences, where allowed.
- We have added language on easements, prohibiting fencing that would prevent lawful use of an easement.
- We propose to change the exemption for fencing at subdivisions or developments subject to recorded master plans containing design criteria for fences. This change is proposed to allow future subdivisions and developments (e.g. Block 11) to incorporate fence criteria into the master plan, rather than only those approved prior to the effective date of this policy.
- We have discussed with the Town Attorney the possible amortization of existing privacy gates, and he recommended against such action. As a result, no such requirement is proposed.

- We have not proposed any changes to the duration of pet fences or kid fences. We feel that this will create problematic enforcement issues if fences were required to be removed if there is no longer a pet or child living at the property.
- We have added an exemption for fences at public projects, which would include a special “art fence” at the new Valley Brook child care center.

We would be happy to discuss an aspect of this proposed ordinance with you at the meeting on Tuesday.

1
2 ***For Work Session / Second Reading-March 25, 2008***

3
4 Additions To The March 11, 2008 Version Are
5 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

6
7 COUNCIL BILL NO. ____

8
9 Series 2007

10
11 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
12 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY
13 ADOPTING POLICY 4-7(ABSOLUTE) CONCERNING FENCES, ~~AND~~ GATES AND
14 GATEWAY ENTRANCE MONUMENTS

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

18
19 Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
20 the following definitions:
21

BUCK-AND-RAIL FENCE:

A fence constructed with log posts in an upside down “v” shape with rails spanning from post to post.

CONSTRUCTION FENCE:

A temporary fence used to define the limits of construction, prohibit trespassers, and control access to an active construction site for which a building permit has been issued.

GATEWAY ENTRANCE
MONUMENT:

A manmade structure, usually at the vehicular or pedestrian entrance to the site, which defines the entrance, and includes vertical structures ~~and/or an overhead structure or arch~~ at the access point.

FENCE:

A manmade barrier erected primarily to prevent escape or entry, or to mark a boundary.

LANDSCAPE WALL:

A vertical structure extending

	from the ground, constructed of rock, wood, stone, brick or other solid material, which is used to mark a boundary, provide screening, or separate outdoor uses.
LOG FENCE:	A fence constructed of natural, whole logs, which may or may not have the bark removed.
PET FENCE:	A fence the primary purpose of which is to control a pet (such as a dog run).
PRIVACY FENCE:	A <u>solid or</u> mostly solid fence, the primary purpose of which is to provide privacy or to screen visibility.
PRIVACY GATE:	A gate across the entrance to a road, driveway or parking area, which blocks, or appears to block, access. Also known as a driveway gate.
SOLID TO VOID RATIO:	A measurement of the amount of solid material in relation to the amount of empty space, usually expressed as a ratio. A solid to void ratio of 1:3 contains one unit of solid material for every three units of opening. (Example: One-inch of solid fence with three inches of spacing.) The solid to void ratio is measured at every section of fence, and is not merely an average over the length of the fence.
SPLIT RAIL:	A fence rail split from a whole log.

1
2 Section 2. Section 9-1-19 of the Breckenridge Town Code is hereby amended by the
3 addition of a new Policy 4 **7**(Absolute)(Fences and Gates), which shall read in its entirety as
4 follows:

1
2 47. (ABSOLUTE) FENCES, ~~AND GATES~~ AND GATEWAY ENTRANCE
3 MONUMENTS;

4
5 A. General Statement: The welfare of the Town is based to a great extent on the
6 character of the community, which includes natural terrain, open spaces, wildlife
7 corridors and wooded hillsides. The installation of fences and privacy gates can
8 erode this character by impeding views, hindering wildlife movement and
9 creating the image of a closed, unwelcoming community. It is the intent of the
10 Town to prohibit fences in areas outside of the Conservation District in order to
11 maintain the open, natural and wooded alpine character of the community; to
12 establish mandatory requirements for the erection of allowed fences in other parts
13 of the Town; to allow for fences on small lots in master planned communities; to
14 regulate the design of gateway entrance monuments; and to prohibit privacy gates
15 ~~and entrance monuments~~ anywhere within the Town.
16

17 B. Within the Conservation District: Fences within the Conservation District
18 shall be reviewed under the criteria of the “Handbook of Design Standards for the
19 Historic and Conservation District”.

20
21 C. Outside the Conservation District: Fences, ~~gateway entrance monuments~~ and
22 landscape walls are prohibited outside the Conservation District, except the
23 following fences are permitted when constructed in accordance with the design
24 standards described in section D of this policy:

- 25
26 1. pet fences;
27 2. fences around children’s play areas;
28 3. fences around ball fields, tennis courts, swimming pools or other
29 outdoor recreation areas;
30 4. construction fences;
31 5. temporary fences used for crowd control or to limit access or egress to
32 or from a short-term special event;
33 6. fencing required by law;
34 7. privacy fencing to screen hot tubs;
35 8. fencing around cemeteries; and.
36 9. fences specifically authorized in a vested master plan containing
37 specific fence design standards;
38 10. Town approved fences to delineate public trails or protect open space
39 values;
40 11. fencing at public improvement projects proposed by the town.
41

42 D. Design Standards for fences: All Fencing outside the Conservation District
43 shall comply with the following design standards:

- 44
45 1. Fences in residential areas shall be constructed of natural
46 materials, and shall be either a split rail, buck-and-rail, or

1 log fence design because such designs have a natural
2 appearance, blend well into the natural terrain, and have an
3 open character. Fences of other materials or designs are
4 prohibited. (Exception: Where an applicant can
5 demonstrate to the satisfaction of the Town that an
6 alternative material would be indistinguishable from natural
7 materials, the Town may authorize such materials.) Fences
8 in residential areas shall have a maximum solid to void
9 ratio of 1:3 (example: one inch of solid material for every
10 four inches of opening.) Solid privacy fences are
11 prohibited, except for short lengths of fencing used to
12 screen hot tubs, if they comply with Section ~~D6~~D7 of this
13 policy.

- 14 2. Smooth, cut timbers are prohibited. PVC, vinyl and plastic
15 fences are prohibited. Rough sawn timbers or natural logs
16 are allowed.
- 17 3. Pet fences shall be located in a rear or side yard or where the fence is
18 not visible from a public right-of-way. Pet fences shall be located to
19 minimize their visibility to the greatest extent possible, which in most
20 instances will require the fence to be located behind or to the side of a
21 structure. Pet fences may incorporate a wire mesh material to control
22 pets. The wire mesh may be on the vertical portions of the fence, or
23 may extend horizontally over the top of the enclosed pet area, or both.
24 The maximum area of a fenced pet enclosure shall be 400 square feet.
25 Pet fences are limited to fifty-four (54) inches in height, and shall have
26 a maximum solid to void ratio of 1:3.
- 27 4. Fences around children's play areas shall be located in a rear or side
28 yard where possible, or where the fence is not visible from a public
29 right-of-way, which in most instances will require the fence to be
30 located behind or to the side of a structure. The fence may incorporate
31 a wire mesh material to enclose the yard. The maximum area of a
32 fenced children's play area on private property shall be 400 square
33 feet. Fences around children's play areas are limited to fifty-four (54)
34 inches in height, and shall have a maximum solid to void ratio of 1:3.
- 35 5. Fences around ball fields, tennis courts, swimming pools or other
36 outdoor recreation areas shall use black or dark green vinyl coated
37 chain link fencing. Uncoated or galvanized chain link fencing is
38 prohibited. This standard applies to fencing of both public and private
39 recreation areas. Wind privacy screens may be incorporated into the
40 fence.
- 41 6. Construction fencing may be constructed of plastic, chain link or other
42 material, as approved by the Town. Wind privacy screens may be
43 incorporated into the construction fence. Temporary construction
44 fencing shall be removed upon completion of the project or upon
45 issuance of a Certificate of Occupancy or Certificate of Compliance,
46 where applicable.

- 1 7. Privacy fencing around hot tubs may only be used where the fence will
2 not be nearer than fifty (50) feet from a public right of way. Privacy
3 fences shall not exceed six feet (6') in height and not exceed fifteen
4 feet (15') in length.
- 5 8. Fencing around cemeteries is exempt from this ordinance. The design
6 of cemetery fencing is encouraged to emulate historic fencing from
7 local cemeteries and follow the fence policy in the "Handbook of
8 Design Standards for the Historic and Conservations Districts". These
9 fences were generally constructed of wrought iron, cast iron, or wood
10 pickets, and were generally about three feet (3') tall.
- 11 9. Where fences are specifically authorized in a vested master plan
12 containing specific fence design standards, the design standards of the
13 master plan shall govern the fence design.
- 14 10. Fences approved by the Town to delineate public trails or protect open
15 spaces shall be constructed of natural materials, and shall be either a
16 split rail, buck-and-rail, or log fence design because such designs have
17 a natural appearance, blend well into the natural terrain, and have an
18 open character. These fences should be designed to accommodate
19 wildlife, and may be substantially different from fences on residential
20 or commercial properties, due to the unique needs and goals of public
21 trails and open spaces.
- 22 11. Fences at public improvement projects proposed by the town are
23 exempt from these regulations. However, every attempt shall be made
24 to incorporate the criteria listed above, where practical.

25
26 E. Site Plan; Survey: A site plan showing the location of existing structures,
27 property lines, and the location of the proposed fence may be required by
28 the Director as part of the submittal requirements for a fence. A survey
29 from a Colorado licensed surveyor may also be required by the Director to
30 verify property lines.

31
32 F. Architectural Specifications: Architectural elevations showing the design,
33 material, color, and size of the proposed fence may be required by the
34 Director as part of the submittal requirements for a fence.

35
36 G. Fences on Easements: If a fence crosses an easement, the fence shall not
37 interfere with the use of the easement.

38
39 ~~G.~~ Privacy gates: Privacy gates are prohibited anywhere within the Town.

40
41 H. This policy shall not apply to any fence to be constructed upon land that is
42 subject to a vested master plan containing specific fence design standards
43 and criteria ~~if the master plan was approved prior to the effective date of~~
44 ~~this policy~~. The construction of such fence shall be governed by the
45 applicable design standards and criteria contained in the master plan.
46

1 I. Gateway Entrance Monuments: Gateway entrance monuments within the
2 Conservation District are prohibited. Outside the Conservation District,
3 gateway entrance monuments may be allowed only when they meet the
4 following criteria:
5

6 1. Gateway entrance monuments for a subdivision, hotel or condominium
7 shall not exceed eight feet (8') in height, and shall not exceed twenty feet
8 (20') in length. One (1) monument is allowed to either side of the road at
9 the entrance to the subdivision, with up to two (2) monuments total at each
10 entrance to the subdivision. Entry monuments shall not be constructed in
11 the public right-of-way. Such entrance monuments shall be constructed of
12 natural materials, such as stone and/or wood, and may incorporate the
13 subdivision entrance sign, under a separate permit. Gateway entrance
14 monuments shall not incorporate an arch or other structure over the road.
15 Privacy gates shall not be incorporated into the gateway entrance
16 monument.

17 2. Gateway entrance monuments at private residences shall not exceed five
18 feet (5') in height, and shall not exceed a footprint of ten (10) square feet
19 in ground area. One (1) monument is allowed on either side of the
20 driveway at the entrance to the property, with up to two (2) monuments
21 total at the entrance. Entry monuments shall not be constructed in the
22 public right-of-way. Such entrance monuments shall be constructed of
23 natural materials, such as stone and/or wood, and may incorporate the
24 residence name or street address. Gateway entrance monuments shall not
25 incorporate an arch or other structure over the road. Privacy gates shall not
26 be incorporated into the gateway entrance monument.
27
28

29 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
30 various secondary codes adopted by reference therein, shall continue in full force and effect.
31

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

37 Section 5. The Town Council hereby finds, determines and declares that it has the power
38 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
39 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
40 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
41 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
42 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
43 contained in the Breckenridge Town Charter.
44

MEMO

TO: Mayor & Town Council

FROM: Tim Gagen And Tim Berry

RE: Land Exchange Agreement

DATE: March 19, 2008

Issue:

Consideration of an agreement related to a land exchange involving The Town of Breckenridge, Chihuahua, LLC, and the Forest Service.

Background:

The US Forest Service is in the formal process of consideration of a potential land exchange involving the privately held Chihuahua Town site and the Forest Service owned Dercum Dash parcel, Claimjumper parcel and Wedge parcel. The Town of Breckenridge has expressed interest in acquiring the Claimjumper and Wedge parcels for the purposes of affordable housing and open space. With the start of the formal exchange process, there is a need for an agreement between Chihuahua, LLC and the Town of Breckenridge to formalize their roles, relationships and financial responsibilities as the exchange moves forward. The agreement defines who will take the lead role in the exchange and how Chihuahua and the Town of Breckenridge will work together throughout the exchange including if the framework of the exchange is modified. Further, the agreement defines the financial responsibility of each party related to acquisition cost and sharing of direct expenses of the exchange. From the Town's point of view, it sets clear limits on our financial outlay and provides for re-imburement of our cost if for some reason the exchange is modified or does not proceed. Based on the feedback at the 3/11 work session language has been added to allow the Town to work with Chihuahua regarding the Wedge if for some reason the valuation process does not proceed as expected. Also, language has been deleted that would have allowed Chihuahua LLC to acquire the Wedge if the Town did not proceed with the exchange.

Recommended Action:

Staff recommends approval of the Land Exchange Agreement

1 **FOR WORKSESSION/ADOPTION – MARCH 25**

2
3 A RESOLUTION

4
5 SERIES 2008

6
7 A RESOLUTION APPROVING AN AGREEMENT WITH CHIHUAHUA, LLC, A
8 COLORADO LIMITED LIABILITY COMPANY, CONCERNING THE PROPOSED SNAKE
9 RIVER LAND EXCHANGE

10
11 WHEREAS, the Town and Chihuahua, LLC, a Colorado limited liability company
12 (“Chihuahua”) are parties to an Agreement to Initiate (the “ATI”) with the Forest Service, United
13 States Department of Agriculture (“USFS”) to conduct a land exchange (commonly known as
14 the “Snake River Land Exchange”) involving various properties in Summit County, Colorado
15 (the “Exchange”); and

16 WHEREAS, Chihuahua is the owner of the privately owned property which is subject to
17 the Exchange, which property is commonly known as the Chihuahua town-site parcel
18 (“Chihuahua Parcel”); and

19 WHEREAS, the USFS properties involved in the Exchange are: (i) the Dercum Dash
20 parcel (the “Dercum Dash Parcel”); (ii) the Claimjumper parcel (the “Claimjumper Parcel”), and
21 (iii) the Cucumber Gulch Wedge parcel (the “Wedge Parcel”); and

22 WHEREAS, through the Exchange the Town wishes to acquire the Claimjumper Parcel
23 and Wedge Parcel; Chihuahua wishes to acquire the Dercum Dash Parcel; and the USFS wishes
24 to acquire the Chihuahua Parcel; and

25 WHEREAS, Chihuahua and the Town desire to agree upon their respective rights and
26 obligations under the ATI and concerning the Exchange; and

27 WHEREAS, a proposed Agreement between the Town and Chihuahua concerning the
28 Exchange has been prepared, a copy of which is marked Exhibit “A”, attached hereto and
29 incorporated herein by reference; and

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

33
34 WHEREAS, Rule 6.1(b) of the Council Procedures and Rules of Order provides that a
35 resolution may be used to approve a contract.

36
37 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
38 BRECKENRIDGE, COLORADO, as follows:

39
40 Section 1. The proposed Agreement with Chihuahua, LLC, a Colorado limited liability
41 company (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized,

1 empowered and directed to execute such Agreement for and on behalf of the Town of
2 Breckenridge.

3
4 Section 2. This resolution shall become effective upon its adoption.

5
6 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2008.

7
8 TOWN OF BRECKENRIDGE

9
10
11
12 By: _____
13 Ernie Blake, Mayor

14
15 ATTEST:

16
17
18
19 _____
20 Mary Jean Loufek,
21 CMC, Town Clerk

22
23 APPROVED IN FORM

24
25
26
27 _____
28 Town Attorney

Date

1 Additions To The Draft Contained in the March 11, 2008 Agenda Packet Are
2 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~
3

4 **AGREEMENT**

5 This Agreement (“Agreement”) is entered into this ____ day of _____, 2008, by
6 and between **Chihuahua, LLC**, a Colorado limited liability company (“Chihuahua”) and the
7 **Town of Breckenridge**, a Colorado municipal corporation (the “Town”). Chihuahua and the
8 Town may be collectively referred to herein as the “Parties” and individually as a “Party.”

9 **Recitals**

10 A. The Parties are parties to an Agreement to Initiate (the “ATI”) with the Forest
11 Service, United States Department of Agriculture (“USFS”) to conduct a land exchange
12 involving various properties in Summit County, Colorado (the “Exchange”).

13 B. Chihuahua has engaged Western Land Group, Inc. (“WLG”) to conduct the
14 Exchange.

15 C. Chihuahua is the owner of the privately owned property which is subject to the
16 Exchange. Such property is commonly known as the Chihuahua town-site parcel and is more
17 particularly described on Exhibit A hereto (the “Chihuahua Parcel”).

18 D. The USFS properties involved in the Exchange are: (1) the Dercum Dash parcel
19 (the “Dercum Dash Parcel”), (2) the Claimjumper parcel (the “Claimjumper Parcel”), and (3) the
20 Cucumber Gulch Wedge parcel (the “Wedge Parcel”), all of which are more particularly
21 described on Exhibit B hereto.

22 E. The Chihuahua Parcel, Dercum Dash Parcel, Claimjumper Parcel and Wedge
23 Parcel may be collectively referred to herein as the “Parcels.”

24 F. The Town wishes to acquire the Claimjumper Parcel and Wedge Parcel from the
25 Exchange, and Chihuahua wishes to acquire the Dercum Dash Parcel.

26 G. The Parties desire to agree upon their respective rights and obligations under the
27 ATI and with respect to the Exchange, as more fully set forth in this Agreement.

28 NOW, THEREFORE, in consideration of the above recitals and for other good and
29 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the
30 Parties agree as follows:

31 **Agreement**

32 1. Conduct of Exchange. The Parties agree to proceed with the Exchange
33 substantially in accordance with the terms of the ATI and under the management of WLG,
34 subject to the following:

1 (a) Role of Chihuahua. The Town acknowledges that Chihuahua was the
2 instigator of the Exchange and has made a significant investment of both time and money prior
3 to the Town's involvement. In recognition of Chihuahua's primary role in the Exchange, the
4 Town agrees that, as between the Parties, Chihuahua shall act as manager of the Exchange and,
5 except as stated herein, the Town shall defer to and join in Chihuahua's actions and decisions
6 regarding the Exchange, provided that such actions and decisions are not in breach of this
7 Agreement or in violation of applicable law.

8 (b) Town Cooperation. Provided that Chihuahua is not in breach of this
9 Agreement: (i) the Town agrees to cooperate with and support the Exchange and not to, directly
10 or indirectly, interfere with or impede in any material respect Chihuahua's efforts to conclude the
11 Exchange; (ii) the Town agrees not to contact or communicate with the USFS regarding the
12 Exchange except in the presence or with the prior approval of Chihuahua or WLG; (iii) at the
13 request of Chihuahua or WLG, the Town agrees to publicly state its support of the Exchange and
14 to send representatives to meetings with the USFS to voice such support; and (iv) the Town shall
15 promptly execute such documents as may be required by the USFS or the ATI or are otherwise
16 necessary or convenient for Chihuahua to conduct the Exchange in accordance with the terms of
17 this Agreement.

18 (c) Exchange of Information. Chihuahua or WLG shall keep the Town
19 reasonably informed of the progress of the Exchange and communications in connection
20 therewith. Chihuahua agrees that the Town may communicate directly with WLG regarding the
21 Exchange, and hereby directs WLG to freely share information regarding the Exchange with the
22 Town.

23 (d) Costs and Expenses. Chihuahua shall pay the reasonable costs and
24 expenses incurred in the Exchange, subject to the payment or reimbursement of certain expenses
25 by the Town pursuant to Section 4 of this Agreement.

26 (e) Amendment of ATI. Except as provided in Section 1(g), Chihuahua shall
27 not seek to materially amend the ATI without the prior written consent of the Town, which shall
28 not unreasonably be withheld. Chihuahua shall promptly provide the Town with a copy of any
29 drafts of modifications of the ATI. Subject to the terms of this Agreement, the Town shall
30 execute modifications of the ATI within ten days of its receipt of a written request from
31 Chihuahua.

32 (f) Subsequent Agreements. Chihuahua agrees that any subsequent
33 agreement entered into with the USFS regarding the Exchange (the "Exchange Agreement") will
34 be consistent with the terms of the ATI and this Agreement, subject to the provisions of Section
35 1(g). Chihuahua shall reasonably consult with the Town regarding the terms of the Exchange
36 Agreement and shall promptly provide the Town with a copy of any drafts of the Exchange
37 Agreement. Subject to compliance with the foregoing, the Town agrees to execute and deliver a
38 copy of the Exchange Agreement upon request by Chihuahua.

39 (g) Force Majeure. The Parties acknowledge that a land exchange with the
40 United States is a dynamic process and that, during the pendency of the Exchange, circumstances
41 may arise that are beyond the reasonable control of Chihuahua and which materially affect the

1 timing, cost or viability of the Exchange (each, a “Force Majeure Event”). If a Force Majeure
2 Event occurs, Chihuahua agrees to advise the Town of such event and to reasonably consult with
3 the Town on how to mitigate the impact of such event on the Exchange and any resulting
4 modifications of the ATI or Exchange Agreement. Subject only to the foregoing obligation and
5 the provisions of Section 5 of this Agreement, however, in response to a Force Majeure Event,
6 Chihuahua shall have the right to delay, modify or abandon the Exchange and/or the ATI or
7 Exchange Agreement as it deems appropriate based solely upon Chihuahua’s individual business
8 objectives. Subject to the terms of this Agreement, the Town agrees to promptly execute and
9 deliver documents reasonably requested by Chihuahua to implement its decisions regarding the
10 Exchange pursuant to the provisions of this Section.

11 2. Appraisals.

12 (a) Chihuahua Obligations. Chihuahua agrees, at its sole expense, to obtain
13 any appraisals of the Chihuahua Parcel or Dercum Dash Parcel that may be required to complete
14 the Exchange.

15 (b) Town Obligations. The Town agrees, at its sole expense, to obtain any
16 appraisals of the Claimjumper Parcel or Wedge Parcel that may be required subsequent to the
17 date of this Agreement to complete the Exchange.

18 (c) Joint Obligations. Each Party shall utilize an appraiser designated by
19 WLG and shall fully cooperate with the appraiser to expedite the appraisal process. The USFS
20 shall provide instructions to the appraiser and direct and supervise the appraiser’s work. All fees
21 and expenses charged by the appraiser shall be paid by the responsible party before the due date
22 of such payment.

23 (d) Objections to Valuation. Except as provided in Section 2(e), it is not a
24 condition precedent to the Parties’ performance under this Agreement that the appraisals
25 determine certain values for the Parcels, and (except as provided in Section 2(e)) neither Party
26 may terminate this Agreement or fail to perform under this Agreement as a result of the
27 respective values of the Parcels as shown in the appraisals. In the event that a Party is
28 dissatisfied with the valuation of a Parcel, the objecting Party shall give notice to the other Party
29 within seven days after its receipt of the appraisal report, and the Parties shall thereupon
30 reasonably confer to determine whether the objectionable appraisal can be revised in a time and
31 cost efficient manner. Notwithstanding the foregoing, however, Chihuahua shall have the sole
32 right to determine whether or how to address the objection, based solely upon Chihuahua’s
33 individual business objectives (subject, however, to the provisions of Section 2(e)). Any re-
34 appraisal of a Parcel as a result of an objection shall be conducted at the expense of the objecting
35 Party.

36 (e) ~~Insufficient Value.~~

37 (e) ~~(i)~~ Insufficient Value. In the event that, after the resolution of any
38 objections to valuations pursuant to Section 2(d), the appraisals of the Parcels show that the
39 value of the Chihuahua Parcel is less than the combined values of the Dercum Dash Parcel,
40 Claimjumper Parcel and Wedge Parcel, the ~~Wedge Parcel shall be deleted from the Exchange. If~~

1 the value of the Chihuahua Parcel does not then equal or exceed the combined values of the
2 remaining Parcels, this Agreement shall terminate pursuant to Section 5. parties shall proceed as
3 follows:

4 (i) For a period of ten days after the later of: (A) the date that the
5 last of the appraisal reports for the Parcels has been received by the parties, or (B) the date
6 that Chihuahua gives notice to the Town of its decision not to change an appraisal report
7 after an objection pursuant to Section 2(d) of this Agreement (the “Consultation Period”),
8 the parties shall consult in good faith to discuss methods to continue the Exchange
9 notwithstanding such insufficient valuation (for example, by the payment of money by the
10 Town to the United States to make up the deficiency). If the parties are not able to reach
11 agreement by the end of the Consultation Period, the provisions of Subsections (ii) and (iii)
12 below, as appropriate, shall apply.

13 (ii) If the deletion of the Wedge Parcel from the Exchange is sufficient
14 to make the value of the Chihuahua Parcel equal or exceed the combined values of the other
15 Parcels, the Wedge Parcel shall be deleted from the Exchange. Within five days after the
16 end of the Consultation Period, the Town may, at its sole discretion, give notice to Chihuahua
17 (a “Continuation Notice”) that it desires to continue with the Exchange notwithstanding the
18 deletion of the Wedge Parcel and to acquire only the Claimjumper Parcel. ~~The Continuation~~
19 ~~Notice shall be given, if at all, within ten days after the later to occur of the following: (A) the~~
20 ~~date that that last of the appraisal reports for the Parcels has been received by the Town; or (B)~~
21 ~~the date that Chihuahua gives notice to the Town of its decision not to change an appraisal report~~
22 ~~after an objection pursuant to Section 2(d) of this Agreement. If the Town fails to give a timely~~
23 ~~Continuation Notice, this Agreement shall terminate, in which event Chihuahua shall~~
24 promptly refund to the Town the cost of the appraisals of the Wedge Parcel and the
25 Claimjumper Parcels paid by the Town and all processing fees paid to WLG in connection
26 with the Exchange. If the Town gives a timely Continuation Notice, then this Agreement shall
27 remain in effect (except for the deletion of the Wedge Parcel); provided, however, that: (X)
28 Chihuahua shall promptly refund to the Town the cost of the appraisal of the Wedge Parcel paid
29 by the Town pursuant to Section 2(b); (Y) the Town’s contribution toward WLG processing fees
30 pursuant to Section 4(b) (including the maximum amount of such fees) shall be reduced in the
31 same proportion as the reduction in the Town’s payment at the Exchange Closing pursuant to
32 Section 3(c); and (Z) Chihuahua shall promptly refund to the Town the amount of any
33 overpayment of WLG processing fees by the Town resulting from the recalculation of such fees
34 pursuant to Subsection (Y).

35 (iii) If the deletion of the Wedge Parcel from the Exchange is not
36 sufficient to make the value of the Chihuahua Parcel equal or exceed the combined values
37 of the other Parcels, this Agreement shall terminate pursuant to Section 5.

38 (f) Excess Value. If the appraised value of the Chihuahua Parcel exceeds the
39 combined values of the Dercum Dash Parcel, Claimjumper Parcel and Wedge Parcel, by notice
40 to the Town on or before the date of the Exchange Closing, Chihuahua, in its sole discretion,
41 may either: (i) extend the date of the Exchange Closing so that it can include other parcels in the
42 Exchange to absorb the excess value of the Chihuahua Parcel; or (ii) donate such remaining
43 value to the USFS or the Town, at Chihuahua’s sole discretion. If Chihuahua elects to delay the

1 Exchange Closing pursuant to Subsection (i), this Agreement shall remain in full force and
2 effect, except that (notwithstanding the provisions of Section 4 of this Agreement) the Town
3 shall not be obligated to contribute to any additional processing fees charged by either WLG or
4 the USFS as a result of the inclusion of additional parcels in the Exchange. If Chihuahua elects
5 to donate the excess value pursuant to Subsection (ii), the Town shall reasonably cooperate with
6 Chihuahua to provide confirmation of such donation. If Chihuahua fails to give an election
7 notice, it shall be deemed to have elected to donate the excess value of the Chihuahua Parcel to
8 the Town, and the Town agrees to provide confirmation of such gift as Chihuahua may
9 reasonably request. Any tax benefit derived from the donation of the excess value of the
10 Chihuahua Parcel shall accrue solely to the benefit of Chihuahua.

11 3. Exchange Closing.

12 (a) Date. Subject to the provisions of Section 2(f)(i), the date for the
13 consummation of the Exchange (the “Exchange Closing”) shall be established by Chihuahua in
14 concert with the USFS. Chihuahua shall keep the Town reasonably advised of the closing date
15 and shall give reasonable notice to the Town of the date set for the Exchange Closing.

16 (b) Conditions Precedent. Each of the following shall be a condition
17 precedent to the obligation of a Party at the Exchange Closing: (i) this Agreement has not been
18 terminated pursuant to Section 5; (ii) the other party is not in material breach under this
19 Agreement; and (iii) the USFS is not in material breach under the ATI or the Exchange
20 Agreement, as applicable. A Party benefiting from a condition may waive it by notice to the
21 other Party before or at the Exchange Closing, and a Party shall be deemed to have waived all
22 conditions precedent by participating in the Exchange Closing.

23 (c) Consideration. At the Exchange Closing, the Town shall pay Chihuahua
24 the amount of \$2,500,000.00 (USD) in immediately available good funds; provided, however,
25 that if the Wedge Parcel has been deleted from the Exchange pursuant to Section 2(e), such
26 amount shall be reduced to \$2,160,000.00 (USD).

27 (d) Direct Deeding. Chihuahua shall request that the USFS issue patents to
28 the Claimjumper Parcel and (except as provided in Section 2(e)) the Wedge Parcel directly to the
29 Town as indicated in the ATI. Under no circumstances shall Chihuahua be required to take title
30 to either such parcel.

31 (e) Title Insurance. Any Party may, in its sole discretion and at its sole
32 expense, acquire title insurance upon the Parcel(s) acquired by it in the Exchange.

33 4. Reimbursement of Expenses. In addition to other amounts payable by the Town
34 under this Agreement:

35 (a) Preliminary Appraisal Expense. Within ten business days after the date of
36 this Agreement, the Town shall pay to Chihuahua the amount of \$8,252.37 (USD), representing
37 one-half of the cost of preliminary appraisals of the Claimjumper Parcel and Wedge Parcel
38 incurred by Chihuahua prior to the date of this Agreement.

1 (b) WLG Charges. Within ten business days after receiving an invoice
2 therefor, the Town shall pay to Chihuahua (or, if so directed by Chihuahua, to WLG) one-half of
3 the processing fees charged to Chihuahua by WLG in connection with the Exchange for services
4 rendered subsequent to January 1, 2008; provided, however, that: (i) the amounts paid by the
5 Town pursuant to this Section 4(b) shall not exceed \$15,000.00; and (ii) such amounts are
6 subject to adjustment or refund in accordance with Section 2(e).

7 (c) USFS Charges. Within ten business days after receiving an invoice
8 therefor, the Town shall pay to Chihuahua (or, if so directed by Chihuahua, to the USFS) one-
9 half of the processing fees charged to Chihuahua by the USFS pursuant to the ATI or Exchange
10 Agreement, as applicable; provided, however, that the Town shall not be required to pay any
11 amount allocable to the processing of a special use permit for the Town of Montezuma, currently
12 estimated to be in the amount of \$1,600.00.

13 (d) Other Expenses. Each Party shall pay any costs and expenses, including
14 but not limited to attorneys' fees, incurred by such Party in connection with the Exchange and
15 the transaction contemplated by this Agreement not adjusted as set forth in this Section and not
16 otherwise provided for in this Agreement.

17 5. Termination Rights.

18 (a) Automatic Termination. Without further notice, this Agreement shall
19 terminate upon the occurrence of either of the following: (i) Chihuahua gives notice to the Town
20 of the abandonment of the Exchange pursuant to Section 1(g) of this Agreement; or (ii) a
21 termination pursuant to Section 2(e).

22 (b) Termination by Town.

23 (i) Within ten business days after its receipt of a notice from
24 Chihuahua of a modification of the Exchange pursuant to Section 1(g) that materially impairs the
25 rights of the Town under this Agreement, the Town may give a notice of the termination of this
26 Agreement to Chihuahua. Such termination shall be effective if Chihuahua has failed to mitigate
27 the effect of such modification to the Town's satisfaction within ten business days after the date
28 of the Town's termination notice.

29 (ii) The Town may terminate this Agreement by giving notice to
30 Chihuahua if the Exchange has not been consummated within one year after the date of this
31 Agreement for any reason other than a default by the Town.

32 (iii) The Town may terminate this Agreement due to a default by
33 Chihuahua pursuant to Section 6 of this Agreement.

34 (iv) The Town may terminate this Agreement pursuant to Section 8.

35 (c) Termination by Chihuahua.

36 (i) By notice to the Town, Chihuahua may terminate this Agreement
37 due to the occurrence of a Force Majeure Event as described in Section 1(g).

1 (ii) Chihuahua may terminate this Agreement due to a default by the
2 Town pursuant to Section 6 of this Agreement.

3 (iii) Chihuahua may terminate this Agreement pursuant to Section 8.

4 (d) Effect of Termination. Upon a termination of this Agreement pursuant to
5 this Section 5, the parties shall be released from any obligations under this Agreement; provided,
6 however, that: (i) Chihuahua's obligation to refund amounts to the Town pursuant to Section
7 2(e)(ii) shall survive termination; and (ii) termination shall not affect a Party's liability for a
8 default which has occurred prior to the effective date of such termination. Following a
9 termination of this Agreement for reasons other than the abandonment of the Exchange pursuant
10 to Section 1(g), Chihuahua, in its sole discretion, may continue the Exchange upon such terms as
11 Chihuahua and the USFS may mutually agree, including but not limited to the acquisition by
12 Chihuahua of the ~~Wedge Parcel or Claimjumper Parcel~~. In such event, the Town agrees that it
13 will not object to the inclusion of the ~~Wedge Parcel or Claimjumper Parcels~~ (but not the Wedge
14 Parcel) in the Exchange; provided, however, that, in the event that Chihuahua acquires ~~either or~~
15 ~~both of~~ such parcels, nothing in this Agreement shall be construed as affecting the subsequent
16 exercise by the Town of its municipal jurisdiction over such parcels.

17 6. Default and Remedies. If a Party fails to cure a breach of this Agreement within
18 ten days after its receipt of notice from the other Party, such party shall be in default; provided,
19 however, that if a non-monetary breach by a Party cannot reasonably be cured within such ten
20 day period, the breaching Party shall not be in default provided that such Party: (a) commences a
21 cure of the breach during such ten day period; and (b) diligently pursues such cure to completion
22 no later than thirty days after its receipt of a notice of default. Upon the occurrence of a default
23 by a Party, the other Party shall have all remedies permitted by the laws of the State of Colorado,
24 including but not limited to injunctive relief and specific performance. Notwithstanding the
25 provisions of this Section, no grace period shall apply to a Party's failure to perform its
26 obligations at the Exchange Closing.

27 7. Notices. All notices, demands or other communications required or permitted to
28 be given under this Agreement shall be in writing and any and will be deemed to have been duly
29 delivered upon (a) personal delivery, (b) as of the third business day after mailing by United
30 States mail, certified, return receipt requested, postage prepaid, (c) as of 12:00 p.m. on the
31 immediately following business day after deposit with Federal Express or a similar overnight
32 courier service that provides evidence of receipt, next business day delivery charges prepaid, or
33 (d) if sent via facsimile, as of the date and time sent as evidenced by a facsimile transmission
34 receipt. All such notices, demands or other communications shall be addressed as follows:

35 If intended for Chihuahua:

36
37 Chihuahua, LLC
38 Attn: Gary J. Miller
39 56 River Run Road, #204
40 PO Box 1884
41 Dillon, CO 80435
42 Facsimile: (970) 468-6403

1 With a copy to:
2

3 Holme Roberts & Owen LLP
4 Attn: John B. Wood
5 1801 Thirteenth St., Suite 300
6 Boulder, CO 80302
7 Facsimile: (303) 866-0200

8 If intended for the Town:
9

10 Town of Breckenridge
11 Attn: Town Manager
12 150 Ski Hill Road
13 PO Box 168
14 Breckenridge, CO 80424
15 Facsimile: (970) 547-3104

16 With a copy to:
17

18 Timothy H. Berry
19 Timothy H. Berry, PC
20 131 W. Fifth St.
21 PO Box 2
22 Leadville, CO 461
23 Facsimile: (719) 486-3039

24 8. Annual Appropriation. Financial obligations of the Town under this Agreement
25 payable after the current fiscal year are contingent upon funds for that purpose being
26 appropriated, budgeted and otherwise made available by the Town Council of the Town of
27 Breckenridge, Colorado. In the event sufficient funds shall not be made available, this
28 Agreement may be terminated by either party without penalty. The Town's obligations
29 hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect
30 debt or other financial obligation whatsoever within the meaning of the Constitution or laws of
31 the State of Colorado.

32 9. Miscellaneous.

33 (a) Assignment; Binding Effect. Neither Party may assign its rights under this
34 Agreement without the prior written consent of the other Party, which shall not unreasonably be
35 withheld. This Agreement shall be binding upon and inure to the benefit of the Parties and their
36 respective successors and approved assigns.

37 (b) Entire Agreement. This Agreement, together with the exhibits attached
38 hereto, contains the entire agreement between the Parties and may not be modified in any manner
39 except by an instrument in writing signed by both Parties. There are no other understandings,
40 oral or written, which in any manner alter or enlarge its terms. The exhibits attached to this

1 Agreement are hereby incorporated herein and made a part of this Agreement. The Recitals to
2 this Agreement are hereby incorporated herein and made a part hereof.

3 (c) Attorneys Fees. In the event it becomes necessary for Chihuahua or the
4 Town to file a suit to enforce this Agreement or any provisions contained herein, the prevailing
5 party in such suit will be entitled to recover, in addition to all other remedies or damages,
6 reasonable attorneys' fees and court costs incurred in such suit.

7 (d) Governing Law. This Agreement shall be construed under and governed
8 by the laws of the State of Colorado.

9 (e) Severability. If any term, section, paragraph or other provision of this
10 Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or
11 unenforceability of such term, section, paragraph or other provision shall not affect any of the
12 remaining provisions of this Agreement.

13 (f) Relationship of the Parties. Nothing in this Agreement, the ATI or the
14 Exchange Agreement shall be construed as creating a partnership between the Parties or as
15 imposing a fiduciary duty upon either Party with regard to its dealings with the other Party.

16 (g) Counterparts; Facsimile. This Agreement may be executed in two or more
17 counterparts, using manual or facsimile signature, each of which shall be deemed an original and
18 all of which together shall constitute one and the same document.

19 ~~{Signatures on following page}~~

20 ~~{Signature Page}~~

21 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date
22 first written above.

23 **Chihuahua, LLC,**
24 a Colorado limited liability company

25

26 By: _____
27 Name: Gary J. Miller
28 Title: Manager

29 **The Town of Breckenridge,**
30 a Colorado municipal corporation

31 By: _____
32 Name:
33 Title:

1 Attest: _____

2 Name:

3 Title:

4 Approved as to Form: _____

5 Name: Timothy H. Berry

6 Title: Town Attorney

7

EXHIBIT A

Chihuahua Parcel

The Foster Millsite (M.S. No. 954) according to Mineral Entry Patent Number 17650, recorded in Book 285 at Page 820,

The Chihuahua Placer (M.S. No. 952) according to Mineral Entry Patent Number 4361, recorded in Book 23 at Page 519;

The Aldrich Millsite (M.S. No. 951) according to Mineral Entry Patent Number 4785, recorded in Book 285 at Page 815,

The Fifth of July Millsite (M.S. No. 1069B) according to Mineral Entry Patent Number 5530, recorded in Book 242 at Page 380, and

The Ruby Silver Millsite (M.S. No. 960B) according to Mineral Entry Patent Number 101285, recorded at Reception No. 501348,

all located in Section 24, Township 5 South, Range 76 West and Section 19, Township 5 South, Range 75 West of the Sixth Principal Meridian, Summit County, Colorado.

EXHIBIT B

USFS Parcels

1. Dercum Dash Parcel: Lots 34 and 35 and the N1/2 SW1/4 SW1/4 NE1/4; Section 19, T. 5 S., R. 76 W., 6th PM;
2. Claimjumper Parcel: Lots 45 and 46, Section 30 and Lot 27, Section 31, T. 6 S., R. 77 W., 6th PM; Lots 8, 17 and 18, Section 25 and Lot 10, Section 36, T. 6 S., R. 78 W., 6th PM;
3. Wedge Parcel: Lots 36, 37 and 38, Section 36, T. 6 S., R. 78 W., 6th PM.

MEMORANDUM

To: Town Council
From: Mark Truckey, Assistant Director of Community Development
Re: Comprehensive Plan
Date: March 19, 2008

The Town Council held two work sessions on the entire Comprehensive Plan draft on February 26 and March 11. On March 25, the Council will hold a public hearing on the Plan and consider approving a resolution adopting the new Plan.

Staff has provided hard copies of the March 25 version of the Comprehensive Plan for Council review. The March 25 Plan version includes the following:

- Changes to the Plan as requested by Council at previous work sessions
- The final recommended changes to the Plan suggested by the Planning Commission at their March 4 meeting (the Council reviewed and commented on these recommendations at its March 11 meeting)
- Relatively minor changes submitted to staff by individual Council members
- Grammatical corrections and updates to tables/data in the Plan prepared by staff

The March 25 version is a clean document, without any redline changes. For the Council's assistance, staff has attached a redline specific to the changes suggested by Council at its March 11 meeting. A copy of the resolution adopting the Comprehensive Plan has also been attached.

**Changes to February 21, 2008 Comprehensive Plan Draft
As Suggested by Town Council 3/11/08**

Chapter I Introduction

Add a new policy as follows (corresponding with page 4 in the 3/25/08 draft):

8. Regularly maintain and update the data in the tables in this Plan.

Chapter II Natural Environment

Amend the Resource/Energy Consumption and Sustainability section text as follows (corresponding with page 20 in the 3/25/08 draft):

Regardless of global warming issues, the Town feels it is the responsibility of the Town and its residents to treat the environment with respect and to take steps to reduce our carbon footprint. The Town of Breckenridge intends to take a leadership role in striving for ways to reduce overall energy consumption in the Town, thus lessening our contributions to greenhouse gasses. The Town has already initiated a number of programs to accomplish this, including an audit and retrofit of more efficient heating systems in its public buildings, increased transit opportunities as an alternative to automobile use, and sustainable “green” building code requirements to ensure more energy-efficient homes are being built. The Town will be ~~taking on~~ exploring more initiatives in upcoming years, such as enhanced recycling programs, more efficient fleet vehicles with less emissions, van pool programs for commuters living in Park County and other programs to promote alternative transportation modes. The goal is for the Town to become a more environmentally sustainable community, lessening our ecologic footprint.

Chapter III Population & Demographics

Add the following text in the Existing Population section (corresponding with page 27 in the 3/25/08 draft):

Another segment of the population that is not well-documented or understood is the seasonal work force. During the busiest seasons in the winter and summer, hundreds of temporary residents are employed at the ski resort and at other Breckenridge businesses. These workers typically only stay for the winter or summer season and then leave Town. Data collected through employer surveys indicates that there were about 3,700 winter seasonal employees and 2,400 summer seasonal employees in 2006. Of these seasonal workers, the majority of them do not return the following season and thus new employees had to be recruited. Without seasonal workers, the Town would not have enough workers to support the service industry during the winter and summer seasons. This seasonal work force places its own demands on the Town’s infrastructure, including on the Town’s housing supply. Because the seasonal work force has not been as thoroughly documented or analyzed as other segments of the population (e.g., permanent population), this Plan suggests that the Town take steps to further evaluate this segment of the population, to understand better their impacts on the community and what needs to be done to best accommodate them.

Chapter IV Transportation

Amend the gondola section text as follows (corresponding with page 52 in the 3/25/08 draft):

The gondola currently operates only during the ski season and from approximately 8 am to 5 pm. As developments are finalized at Shock Hill and Peak 7 and 8 there may be a need to consider expanding the hours of operation into the evening and at other times of year. The gondola crosses over Cucumber Gulch, an environmentally sensitive area with ~~frequent~~ wildlife use. Consideration of extended hours for gondola operation should include an evaluation of potential impacts to wildlife, while also considering the benefits of reduced automobile traffic on Ski Hill Road.

Amend the Alleys policy as follows (corresponding with page 55 in the 3/25/08 draft):

17. Improve and use alleyways in commercial areas, where appropriate, in the Town as a means of diversifying the Town's transportation network.

Chapter V Community Facilities

Amend the Sewerage section text as follows (corresponding with page 62 in the 3/25/08 draft):

The District ~~has discussed~~ is considering a pump-back of discharged water from the Farmer's Korner treatment plant back upstream to near the Iowa Hill treatment plant outfall. The water that would be pumped back would be treated and not harmful. This would allow greater dilution of pollutants and also benefit natural resources by providing for an additional 17 cfs of flow in the Blue River. This increased flow would eliminate the drying up of the river during low water periods. The District has not committed to pursuing this pumpback project. If the project is implemented, the Town is considering may evaluate the benefits of paying to have the line extended two more miles back to the Maggie Pond to increase flows through the heart of Town.

Add the following bullet under policy 6 (corresponding with page 72 in the 3/25/08 draft):

- Monitor infrastructure capacity on an ongoing basis to understand capacity limitations on accommodating new development.

Amend the following policy (corresponding with page 73 in the 3/25/08 draft):

14. Explore the establishment of a new water reservoir or expanded reservoir to hold Town water (e.g., McCain property).

Chapter VII Housing

Add the following new text under the Strategies section (corresponding with page 91 in the 3/25/08 draft):

One of the recommendations of the 2000 Affordable Housing Strategy includes waiving density requirements for deed-restricted affordable housing projects. This waiver is consistent with policies contained in the Joint Upper Blue Master Plan. While this policy has helped incentivize construction of affordable housing, it has also resulted in an increase in the number of actual units built in the community, thus increasing the ultimate buildout in the basin, traffic and activity levels, etc. The Town recognizes that as new affordable units are built, these activity levels will

likely increase and there are concerns about maintaining our quality of life and staying within the capacity of the community's infrastructure. To mitigate these potential impacts, the Town is evaluating whether to transfer some level of density to all affordable housing projects, either from town-owned properties or other locations. By doing this, the overall density in the basin will not be increased and additional impacts can be avoided.

Amend policy 6, bullet 5 as follows (corresponding with page 92 in the 3/25/08 draft):

- Waive density requirements for workforce housing or consider transferring density to the housing projects from density held on vacant Town-owned properties or other properties.

Chapter VIII Recreation & Tourism

Amend the text in the Nordic discussion as follows (corresponding with page 95 in the 3/25/08 draft):

There are two developed centers for cross country skiing in the Breckenridge area. The Breckenridge Nordic Center is one of the oldest nordic centers in Colorado, originating in 1975. It contains over ~~16~~ ~~32~~ kilometers of regularly groomed trails for skiing and ~~13~~ ~~46~~ kilometers for snowshoeing. The ski trails are regularly groomed for both classic and skating skiing. ~~Many of its~~ The Nordic center's regularly groomed trails are on land leased from the Town in or near the ecologically sensitive resources of Cucumber Gulch. The Open Space Division oversees the monitoring of impacts to the Gulch from the Nordic Center operation, while the Recreation Department oversees the concession contract for operating the Nordic center. The Breckenridge Nordic Center also offers an additional 11 kilometers of Nordic skiing trails on national forest lands to the west. These trails are groomed less frequently (once or more weekly).

Amend the text in the Nordic discussion as follows (corresponding with page 96 in the 3/25/08 draft):

Finally, there are many skiers, snowboarders and snowshoers who prefer to venture out on their own away from any organized alpine or Nordic ski area, instead using the roads, trails and mountains during the winter, seeking more solitude and/or a backcountry experience. The multitude of trails and surrounding public lands provide easy access for these undeveloped recreational pursuits. Easily accessed on these backcountry routes are two huts (Francie's Cabin and the Section House) which are utilized for overnight use by backcountry skiers. These huts host about 4,500 overnight users annually.

Reinstate the following text under the Parks discussion (corresponding with page 98 in the 3/25/08 draft):

iii. Upper Blue Elementary Park

The Upper Blue Elementary School has a park site adjacent to the school on 6.8 acres. The park's outdoor facilities include a little league ballfield, an open play field, a basketball court and children's play equipment. The school district manages the fields for its varied recreational activities.

Add new text in the open space discussion as follows (corresponding with page 101 in the 3/25/08 draft):

In 1997 the Town Council established the Breckenridge Open Space Advisory Commission (the BOSAC), which advises the Council on the appropriate goals and objectives of the Town's Open Space Program, such as the acquisition, stewardship and preservation of open space. The BOSAC helps define the types of open space to be protected, the criteria used to select parcels for acquisition, and the priorities for stewardship practices. The BOSAC is also the public forum for discussion on open space issues.

Chapter IX Cultural Resources

Replace text on the Riverwalk Center with the following (corresponding with page 107 in the 3/25/08 draft):

The Riverwalk Center was built and funded by the Town of Breckenridge in 1992/1993 to host the National Repertory Orchestra and the Breckenridge Music Festival Orchestra. It contains an amphitheatre with seating for about 750 people, rehearsal rooms, changing rooms, storage areas, a conference room and offices. The amphitheatre is used for music, dance, receptions, theatre productions, lectures and other events, and was covered with a tent from Spring to Autumn for fifteen seasons. Over the years, this facility also met the increasing needs of other community nonprofits and special events. In the process of reviewing the replacement of the tent (which was slated for 2007/08), the Town committed to continue subsidizing the operational and maintenance costs of this community facility but wanted to gauge the level of commitment from the private sector on a hard shell vs. a tent replacement. In response, the community raised over \$1.1 million towards constructing a permanent roof and sides. This public/private collaborative partnership was unprecedented in Breckenridge and should serve as a model for future public/private projects.

This renovation will greatly enhance the patron and performer experience by improving the acoustics, temperature control and lighting within the facility. The design also includes elements that maintain vital links to the unique outside environment of Breckenridge with six large clear doors that open to the Riverwalk Center Lawn. While the Riverwalk Center will mainly remain a seasonal facility, the design is flexible enough to allow for winter use, which will provide an opportunity to host the growing number of winter events. Completion is scheduled for June 2008. The two major tenants of the Riverwalk Center are the Breckenridge Music Festival and the National Reparatory Orchestra, which are discussed below.

Chapter XII Land Use

Amend the bulleted item under policy 17 to delete the following (corresponding with page 137 in the 3/25/08 draft):

17. Continue to support the Upper Blue Transfer of Development Rights program, thereby directing development to areas that can best accommodate it.
 - Additional density should not be created (e.g., upzoned) in the Town, unless a corresponding transfer of development rights from another location in the basin occurs to account for the additional density, thus resulting in no net increase in density basin-wide. An exception may be provided for deed-restricted affordable

housing projects, ~~but will be based on a site specific analysis where some or all of the density may be required to be transferred to the housing site.~~

Amend the following Annexation policy (corresponding with page 143 in the 3/25/08 draft):

2. The Town should only consider annexation of lands that promote an orderly compact growth pattern within the town's service capabilities.

1
2 ***FOR WORKSESSION/ADOPTION – MARCH 25***

3
4 A RESOLUTION

5
6 SERIES 2008

7
8 A RESOLUTION ADOPTING THE “TOWN OF BRECKENRIDGE COMPREHENSIVE
9 PLAN, DATED MARCH 25, 2008”, AS THE MASTER PLAN FOR THE PHYSICAL
10 DEVELOPMENT OF THE TOWN

11
12 WHEREAS, Section 9-4-1(A) of the Breckenridge Town Code provides that it is the
13 duty of the Town Council to make and adopt a master plan for the physical development of the
14 Town; and

15
16 WHEREAS, the terms “master plan” and “comprehensive plan” are synonymous; and

17
18 WHEREAS, a proposed new “Town of Breckenridge Comprehensive Plan, Dated March
19 25, 2008” has been prepared (“Comprehensive Plan”), a copy of which is marked Exhibit “A”,
20 attached hereto and incorporated herein by reference; and

21
22 WHEREAS, the Town Council has reviewed the proposed new Comprehensive Plan and
23 is familiar with its contents; and

24
25 WHEREAS, pursuant to Section 9-4-3 of the Breckenridge Town Code, the proposed
26 new Comprehensive Plan was referred to the Town of Breckenridge Planning Commission; and

27
28 WHEREAS, the Town Council has received the favorable written recommendation of the
29 Planning Commission with respect to the proposed new Comprehensive Plan; and

30
31 WHEREAS, Section 9-4-4 of the Breckenridge Town Code requires that a public hearing
32 be held by the Town Council prior to its consideration of a resolution to adopt the new
33 Comprehensive Plan; and

34
35 WHEREAS, a public hearing on this resolution and the new Comprehensive Plan was
36 held on March 25, 2008, notice of which was published one time in a newspaper of general
37 circulation in the Town as required by Section 9-4-4 of the Breckenridge Town Code; and

38
39 WHEREAS, notice of the public hearing on this resolution and the proposed new
40 Comprehensive Plan was further provided to neighboring jurisdictions as required by Section 9-
41 4-4-1 of the Breckenridge Town Code; and

42
43 WHEREAS, at the public hearing the Town Council received public comment
44 concerning this resolution, and the proposed new Comprehensive Plan; and

1 WHEREAS, the Town Council has considered the public comment concerning this
2 resolution and the proposed new Comprehensive Plan, as well as any comment thereon which
3 was timely submitted by a neighboring jurisdiction; and
4

5 WHEREAS, the Town Council finds and determines that new Comprehensive Plan
6 should be adopted as the master plan for the physical development of the Town.
7

8 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
9 BRECKENRIDGE, COLORADO, as follows:
10

11 Section 1. The “Town of Breckenridge Comprehensive Plan, dated March 25, 2008”,
12 including all tables, charts, and appendices thereto (Exhibit “A” hereto) is adopted as the master
13 plan for the physical development of the Town.
14

15 Section 2. Pursuant to Section 9-4-4 of the Breckenridge Town Code an attested copy of
16 this resolution shall be certified by the Town Clerk to the Board of County Commissioners of
17 Summit County.
18

19 Section 3. This resolution shall become effective upon its adoption.
20

21 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF MARCH, 2008.
22

23 TOWN OF BRECKENRIDGE
24

25
26
27 By _____
28 Ernie Blake, Mayor
29

30 ATTEST:
31

32
33 _____
34 Mary Jean Loufek, CMC,
35 Town Clerk
36

37 APPROVED IN FORM
38

39
40 _____
41 Town Attorney date
42
43
44

Memorandum

To: Town Council
From: Open Space and Trails Staff
Re: Cobb and Ebert Management Plan
Date: March 25th, 2008

When the Town and the County purchased the B&B property in 2005, we received a GOCO Open Space Grant for \$500,000 for the Cobb & Ebert Placer. A stipulation for this grant was that a third party hold a conservation easement on the property and that a management plan be developed and approved. The Continental Divide Land Trust now holds the conservation easement and a draft management plan has been developed by County and Town staff. In your packet you will find a more descriptive memo that was written for the presentation of this management plan to BOSAC and OSAC last fall, the management plan itself, and the resolution to approve the plan. At this point, OSAC and BOSAC have reviewed the plan and made recommendations that it go to BOCC and Town Council. BOCC reviewed it last month and is waiting for approval from Town Council to make their final approval. At this point, there are no outstanding issues.



OPEN SPACE & TRAILS DEPARTMENT

970-668-4060
fax 970-668-4225

Post Office Box 5660
0037 Peak One Drive, SCR 1005
Frisco, Colorado 80443

MEMO

TO: Open Space Advisory Council (OSAC) and Breckenridge Open Space Advisory Commission (BOSAC)

FROM: Brian Lorch and Heide Andersen

FOR: October, 2007 Meetings

SUBJECT: Upper French Gulch Management Plan

REQUEST: Recommendations from the OSAC and BOSAC on management issues identified by Staff, as an initial step in creating a draft management plan for the Upper French Gulch Open Space (the "Property").

BACKGROUND AND PURPOSE

The Upper French Gulch Open Space (a.k.a. Cobb and Ebert Placer) is a 156-acre parcel located in the Upper Blue Basin of Summit County two miles east of the Breckenridge town limits. The Property straddles French Gulch and includes one of the last intact montane riparian willow carr wetlands in the Upper Blue Basin of Summit County. The intact natural ecosystem on the Property provides habitat for the Colorado River cutthroat trout, a state special concern species.

Summit County Government and the Town of Breckenridge jointly acquired the property in October 2005, with assistance from Great Outdoors Colorado (GOCO), which awarded a \$500,000 open space grant to assist with the acquisition. The GOCO grant agreement for the Property required the County and Town to place a use restriction in the form of a conservation easement on the property. In December of 2005, the Town and County dedicated a conservation easement covering the Property to the Continental Divide Land Trust (CDLT) to ensure the open space values of the Property are protected in perpetuity. Also as a condition of the grant agreement with GOCO, Summit County Government is required to develop a management plan for this property.

The County and Town are initiating the process to create a land management plan to address GOCO requirements. This plan will identify allowed uses and management direction for the Property. The plan will provide guidelines for sustainable activities and aesthetic enjoyment of the Property by residents and visitors of Summit County, while protecting the open space and conservation values for which the Property was acquired.

The management plan will provide an overview of the Property's natural resources and provide specific steps to preserve the Property's open space values. Special attention will be placed on coordinating with the Colorado Division of Wildlife to manage the Property to protect and enhance habitat for the Colorado River cutthroat trout.

The purpose of this memo is to outline issues associated with the Property to the OSAC and BOSAC, in order to obtain input for staff to create a Draft management plan for the Property. Input on the Draft Management Plan will be requested at future meetings of the OSAC and the BOSAC. This input will be incorporated into a final management plan. Once the final management plan has been drafted and recommended for approval by the OSAC and BOSAC, it will be reviewed and approved through a public hearing process by the County and Town's elected officials (BOCC and Town Council). Each meeting will be publicly noticed, allowing multiple opportunities for the public to provide input/comments on the management plan prior to adoption.

This management plan will be reviewed and amended as necessary, and at a minimum every five years per the agreements with GOCO and CDLT. Therefore, management directions outlined in this plan should not be viewed as closing off future options if they are identified.

AREAS OF FOCUS (GOALS/OBJECTIVES, ISSUES):

It is the intent of Summit County and the Town of Breckenridge to preserve the open space character, wildlife habitat and scenic qualities of the Property. It is envisioned that the Property will be managed as undeveloped open space, with an emphasis on protecting/improving the natural habitat.

Goals/Objectives:

Key goals/objectives for management of the Property include the following:

- ***Protection of Sensitive Areas:*** Protect the integrity of the montane riparian willow carr found along French Gulch and the habitat it provides for the Colorado River cutthroat trout, as well as the adjacent forested uplands.
- ***Protection of Conservation Values and conformance with conservation easement:*** The conservation easement granted to CDLT specifically restricts the following uses on the Property (except as specifically provided in the easement) to protect the identified conservation values; construction of structures, timber harvesting, subdivision, mining, paving and road construction, waste dumping, storage of vehicles and equipment, disturbance of soil and water, signage, grazing, motorized vehicles, and commercial activities.
- ***Public Use and Travel Management:*** Manage recreational uses in the valley to minimize impacts to the willow wetlands. Public access onto or through the property will need to be closely monitored by Summit County and the Town of Breckenridge to ensure protection of the open space values associated with the property.

Initial Management Issues for OSAC and BOSAC Consideration:

Name:

The original plat for the Property was titled the Cobb and Ebert Placer. To avoid over-emphasizing mining impacts, Staff utilized the name Upper French Gulch Open Space in the GOCO Grant and conservation easement. This name was derived from the Upper French Gulch Conservation Area identified by the Colorado Natural Heritage Program. Staff requests input if another name would be preferable to OSAC and BOSAC.

Public Road Uses:

Current human use on the Property is focused on two well-established county roads that cross the Property: French Gulch Rd. and Sallie Barber Rd. In order to address GOCO requirements, a Right-of-Way Plat was created in December of 2005 dedicating 25 feet on either side of the existing road centerlines as public Rights of Way. As such, public uses of these two roads will not be addressed as part of this management plan.

Public Trail Uses:

To protect the conservation values associated with the Property, it is anticipated that public access on the Property will be limited to the two existing County roads. Only one additional trail on the Property has been recommended. The conservation easement provides for potential development a trail in the forest along French Gulch road for non-motorized winter users to connect the winter trailhead at Lincoln Townsite to the upper reaches of French Gulch. This trail could allow users to avoid plowed sections of French Gulch Road. This trail was proposed as part of the Golden Horseshoe travel plan. Staff is requesting OSAC and BOSAC input to determine if continued investigation of such a trail is warranted and consistent with the management intent for the Property.

Signage:

Signage currently on the Property is limited to seasonal closure signs to limit snowmobile impacts to the willow wetlands and a carsonite sign prohibiting camping next to French Gulch at Sally Barber Road. The County and Town will continue to monitor the property and install interpretive or regulatory signage to protect the resources on the Property. Such signage will focus on education or protection of the Property. At a minimum Staff recommends that signs continue to be utilized to discourage public entry into the willow wetlands, as deemed necessary based on monitoring.

Open Space Zoning/Transferable Development Rights:

The conservation easement for the Upper French Gulch Open Space does not allow any limited development or reserved development rights. Moreover, the conservation easement indicates that all development rights associated with the Property are extinguished, and may not be used on or transferred off of the property.

It is generally Summit County's policy to rezone open space properties to the County's Open Space Zoning District following adoption of open space management plans. This zoning district is highly prohibitive and requires the property to remain as open space with no development potential. Staff requests an OSAC and BOSAC recommendation on whether to pursue such a rezoning for the Property during the period of the management plan.

Noxious Weed Management:

In consultation with the Summit County Weed Control Department, a section on noxious weed management will be included in the draft management plan for review by the OSAC and BOSAC.

Habitat Management:

Staff has requested input from the Colorado Division of Wildlife to assist in managing wildlife and aquatic resources on the Property. These recommendations from the will be incorporated into draft management plan

RECOMMENDATION

Staff recommends that the OSAC and BOSAC provide input on the initial management issues identified in this memo, as well as any other issues that should be explored and/or addressed when drafting the Upper French Gulch Management Plan.

COBB AND EBERT PLACER OPEN SPACE MANAGEMENT PLAN

DRAFT 2/8/08



Management Plan adopted _____

**Prepared by: Brian Lorch, Kate Berg and Heide Anderson
Summit County and Breckenridge Open Space and Trails Departments**

TABLE OF CONTENTS

- **Introduction.....1**
- **Background Information.....1**
 - A. Property Location.....1
 - B. History of Property Ownership.....2
 - C. Conservation Easement.....2
- **Description of the Property.....3**
 - A. Legal Description and Surrounding Land Ownership.....3
 - B. Open Space Values.....4
 - C. Environmental Conditions Assessment.....5
 - D. Health and Safety Concerns.....6
 - E. Buildings and Structures.....6
 - F. Existing Public Uses.....6
 - G. Access and Parking.....7
 - H. Signage.....8
 - I. Fences.....8
 - J. Zoning.....8
 - K. Easements and Encroachments.....8
 - L. Mineral Rights.....8
 - M. Water Rights.....9
- **Natural, Ecological and Historic Features.....9**
 - A. Vegetation and Wetlands.....9
 - B. Noxious Weeds.....10
 - C. Wildlife.....11
 - D. Historic Features.....12
- **Vision for the Property.....12**
- **Natural and Cultural Resource Management.....13**
 - A. Protection of Sensitive Areas.....13
 - B. Protection/Enhancement of Wildlife Habitat.....13
 - C. Forest Management/Stewardship.....14
 - D. Noxious Weed Management.....15
 - E. Zoning15
 - F. Subdivision.....16
- **Public Uses and Travel Management.....16**
 - A. Public Roads and Trails.....16
 - B. Motorized Vehicles, ATV's and Snowmobiles.....16
 - C. Mechanized Vehicles.....17

D. Non-motorized Over-snow Travel.....	17
E. Horses, Livestock, and Pack Animals.....	17
F. Pets.....	17
G. Fishing.....	17
H. Special Events.....	17
I. Signage.....	17
J. Fences.....	18
K. Parking.....	18
▪ Management Guidelines.....	18
A. Ongoing Management Provisions.....	19
B. Anticipated Management Actions.....	19
C. Monitoring.....	20
▪ Management Plan Approval and Amendment Process.....	20
▪ List of Figures:	
Figure 1: Vicinity Map	
Figure 2: Aerial Photograph	
▪ List of Exhibits:	
Exhibit A - Deed of Conservation Easement	
Exhibit B - Vegetation and Wetlands Information	
Exhibit C - Golden Horseshoe Backcountry Protection Strategy Report Table 4	
Exhibit D - Wildlife Habitat Information and Recommendations	

INTRODUCTION

This land management plan was created to identify allowed uses and management direction for the Cobb and Ebert Placer Open Space (the "Property"). The intent of this document is to provide guidelines for sustainable activities and aesthetic enjoyment of the Property by residents and visitors of Summit County while protecting the open space and conservation values for which the Property was acquired. The management plan provides an overview of the Property's natural resources and outlines specific steps to preserve the Property's open space and habitat values.

BACKGROUND INFORMATION

A. Property Location

The Cobb and Ebert Placer Open Space is a 156-acre parcel located in the Upper Blue Basin of Summit County, two miles east of the Breckenridge town limits (see Figure 1). The Property straddles French Gulch and includes one of the last intact montane riparian willow carr wetlands in the Upper Blue Basin of Summit County. This property was identified as one of the most ecologically significant portions of the Golden Horseshoe, an 8,600-acre backcountry area immediately northeast of Breckenridge valued for its open space character, wildlife habitat, and recreational trail system.



Overview of French Gulch valley from north side of valley looking west toward Breckenridge. Cobb and Ebert Placer is visible in lower left quarter of picture. French Gulch Road on and off the Property is also visible.

The Property lies in the southeast portion of the Golden Horseshoe area. French Gulch Road delineates much of the northern property boundary and Sallie Barber Road traverses the Property. Management of these roads is not included in this management plan because 50-foot right-of-ways for both of these roads were dedicated in 2005.

B. History of Property Ownership

The Property was originally patented as the Cobb and Ebert Placer by the federal government in the 1880s. Summit County Government and the Town of Breckenridge (the County and Town) jointly acquired the property in October 2005 as part of an approximately 1,840-acre land acquisition from B&B Mines, Inc. Great Outdoors Colorado (GOCO) awarded a \$500,000 open space grant to assist with the acquisition of the Property.

C. Conservation Easement

The GOCO grant agreement required the County and Town to place a use restriction in the form of a conservation easement on the Property. In accordance with the funding agreement, in December 2005, the Town and County dedicated a conservation easement covering the Property to the Continental Divide Land Trust (CDLT) to ensure the open space values of the Property are protected in perpetuity. The Deed of Conservation Easement is recorded at Reception No. 810115 of the Summit County records (see Exhibit A). The purpose of the conservation easement is to "preserve the Property in its scenic, open space and natural condition and to preserve the open space character, wildlife habitat, and scenic qualities of the Property."

The conservation easement prohibits any activity on or use of the Property inconsistent with the purpose of the easement and lists the following activities as expressly prohibited except as specifically permitted within the conservation easement document:

- a. Construction of Buildings and other Structures;
- b. Subdivision;
- c. Commercial Timber Harvesting;
- d. Mining;
- e. Paving and Road Construction;
- f. Trash and Waste;
- g. Storage of Vehicles and Equipment;
- h. Disturbance of Soil and Water;
- i. Motorized Vehicles, except at trailhead facilities as defined in the conservation easement;
- j. Commercial or Industrial Activity;
- k. Signage or Billboards, except for appropriate signs informing the public of property boundaries, ownership, contributions made by Great Outdoors Colorado, rules, regulations, and management governing the Property, and the area's historical and ecological significance;
- l. Grazing;
- m. Commercial Feedlots;
- n. Transfer of Development Rights; and,
- o. Other actions or activities in violation of the Easement.

Nothing in the Easement is intended to compel a specific use of the Property, other than the protection of the Property's conservation values.

DESCRIPTION OF THE PROPERTY

A. Legal Description and Surrounding Land Ownership

The Cobb and Ebert Placer Open Space is legally described as Cobb and Ebert Placer, M.S. No. 340, located in Section 34, Township 6 South, Range 77 West of the 6th Principal Meridian, County of Summit, State of Colorado. Figure 2 indicates the approximate boundaries of the Property on a digital aerial photograph. The elevation of the Property ranges from approximately 10,200 to 10,720 feet above sea level, according to USGS mapping.

The Property abuts the White River National Forest on its north and south sides. With the exception of disturbances associated with historic mining activities, these National Forest System lands are predominantly in an undeveloped, natural condition. The White River National Forest Plan has placed the national forest lands to the south of the Property in a "backcountry recreation - non-motorized" management prescription. National forest lands to the north of the Property are in a "deer and elk winter range" management prescription. National Forest lands that abut the northwest corner of the Property are in an "intermix" management prescription. This management prescription, which is used only in select areas of the national forest near residential development, calls for cooperative management with other public and private lands to protect natural resources.



Overview of Cobb and Ebert Placer Property from north side of valley looking west. From left to right, exploratory mine hole in scree slope, willow carr along French Gulch, and historic hydraulic mine area are visible. Dredge rock cobbles piles down valley off the Property are visible in the upper right corner.

Improvements on the surrounding national forest lands include dilapidated buildings/structures on an unpatented mining claim at the Lincoln Townsite area, the Lincoln Townsite trailhead parking

area off French Gulch Road, and several popular recreational routes that provide a connection from French Gulch Road to the upland interior of the Golden Horseshoe backcountry area. Forest Service Staff has stated that the buildings/structures at the Lincoln Townsite will be removed, as they are in ruins and have minimal historic value. Portions of the existing Lincoln Townsite trailhead are located within the Property boundaries.

French Gulch Road skirts the majority of the northern edge of the property. Approximately 1,000 feet of the northern property line along French Gulch road abuts four privately-owned mining claims. Three of these are approximately 5 acres in size, and contain single family residences with driveway access via French Gulch Road.

The fourth is a vacant private parcel located at Rich Gulch. To the northeast of the Property is the abandoned Wire Patch Mine, located on the Wire Patch Placer, an adjacent open space property owned by the County and Town of Breckenridge. To the east of the Property is the first lot of the Mountain Meadows subdivision, a small seventeen-lot subdivision platted in 1967. Private residences have been built on about two-thirds of the lots in this subdivision. To the west of the Property is a forty-acre private lot with one residence built on it. This residence is located north of French Gulch Road, far from French Gulch's riparian corridor and wetlands. Private inholdings exist south of the Property on the mountainside above the Property, but are steep and may be difficult to develop. In summary, most of the lands surrounding the Property will be managed by the U.S. Forest Service, Summit County and/or the Town of Breckenridge to protect natural resources.

B. Open Space Values

The Property meets five of the seven open space selection criteria in the *Summit County Open Space Protection Plan*.

- 1) Access - Two county roads that pass through the Property - French Gulch Road and Sallie Barber Road - provide public access to miles of backcountry trails on the adjacent National Forest.
- 2) Buffers - The Property is an undeveloped buffer between residential areas and other protected lands, including National Forest System lands and County/Town open space properties in the French Gulch valley and Golden Horseshoe area. Protection of the Property, along with other B&B Mines property, has preserved the open space and natural values of the French Gulch valley, preventing small acreage residential development from continuing to spread up the French Gulch valley, as has happened in the Swan River Valley to the north.
- 3) Extensions - The Property acts as an extension to other publicly held property, including National Forest System lands and County/Town open space properties in the French Gulch valley and Golden Horseshoe area.
- 4) Recreational - French Gulch is heavily visited by residents and visitors seeking an accessible, scenic backcountry recreation opportunity near the Town of Breckenridge. The two County roads that pass through the Property are popular with recreationists in both winter and summer.
- 5) Unique Lands - The Property contains one of the last intact montane riparian willow carr wetlands along a valley bottom in the Upper Blue Basin of Summit County. The Property illustrates what the valley bottoms of the Upper Blue Basin looked like - and the habitat/ecological functions they possessed - prior to the dredge boat mining of the first half of the twentieth century. This habitat can be easily viewed and enjoyed from French Gulch Road by the public. The Colorado National Heritage Program has recognized the biological significance of the Property by including it in the Upper French Gulch

Conservation Site and identifying the site with B3 (high significance) biodiversity ranking due to its Colorado River cutthroat trout population and habitat.

The Property also exhibits First Priority Land Conservation Values identified in the *Town of Breckenridge Open Space Plan*. The two most notable conservation values found on the Property are: 1) environmentally sensitive areas (i.e. wetlands, a riparian zone, unique landforms and threatened or unique plant communities); and, 2) critical wildlife habitat.

C. Environmental Conditions Assessment

An environmental hazards assessment completed by Summit County Government at the time of acquisition identified no significant health or safety concerns associated with the Property. The Colorado Department of Public Health and the Environment, as part of its review of all 1,840 acres of the B&B Mines property in 2002, also identified no environmental hazards on the Property.



Hydraulic mine area west of Sallie Barber Road.

The placer mining claims downstream of the Cobb and Ebert on French Gulch, as well as the valley bottoms of the Blue River to the west and the Swan River to the north, were dramatically altered by dredge boat mining. This type of mining turned the valley bottoms upside-down, destroying the natural riparian corridor and leaving huge piles of dredge rock cobbles. While unsightly and damaging to natural ecosystems, this type of mining creates little potential for environmental liability. Dredge boats worked their way up French Gulch from its confluence with the Blue River. However, they stopped downstream of the Cobb and Ebert Placer Open Space, leaving the extensive montane riparian willow carr on the Property intact.

Portions of the Property have been impacted by historic mining. Hydraulic mining occurred along portions of the valley bottom and the north facing slopes west of Sallie Barber Road. This type of mining washed away the soil and left exposed rock, but resulted in no identified environmental hazards. A small mining site includes an exploratory hole located on a talus slope on the hillside south of the valley bottom. A small mine waste rock pile, like thousands that exist in the backcountry of Summit County, is all that remains of this activity. No access remains to this site and reclamation is unnecessary.

D. Health and Safety Concerns

No public health or safety concerns have been identified on the Property.

E. Buildings and Structures

No buildings or permanent structures are located on the Property.



French Gulch Road along the northern edge of the Cobb and Ebert Placer Open Space Property.

F. Existing Public Uses

Current human use on the Property generally occurs on the two well-established county roads that cross the Property. French Gulch Road (Summit County Road 2), a rough two-wheel drive road, skirts the northern edge of the Property and provides access to the seventeen-lot Mountain Meadows subdivision, which was platted in the 1960s. A turn-around/informal parking area is located partially on the Property at the entrance to the Mountain Meadows subdivision. Sallie Barber Road (Summit County Road 559), a four-wheel drive road, splits off French Gulch Road

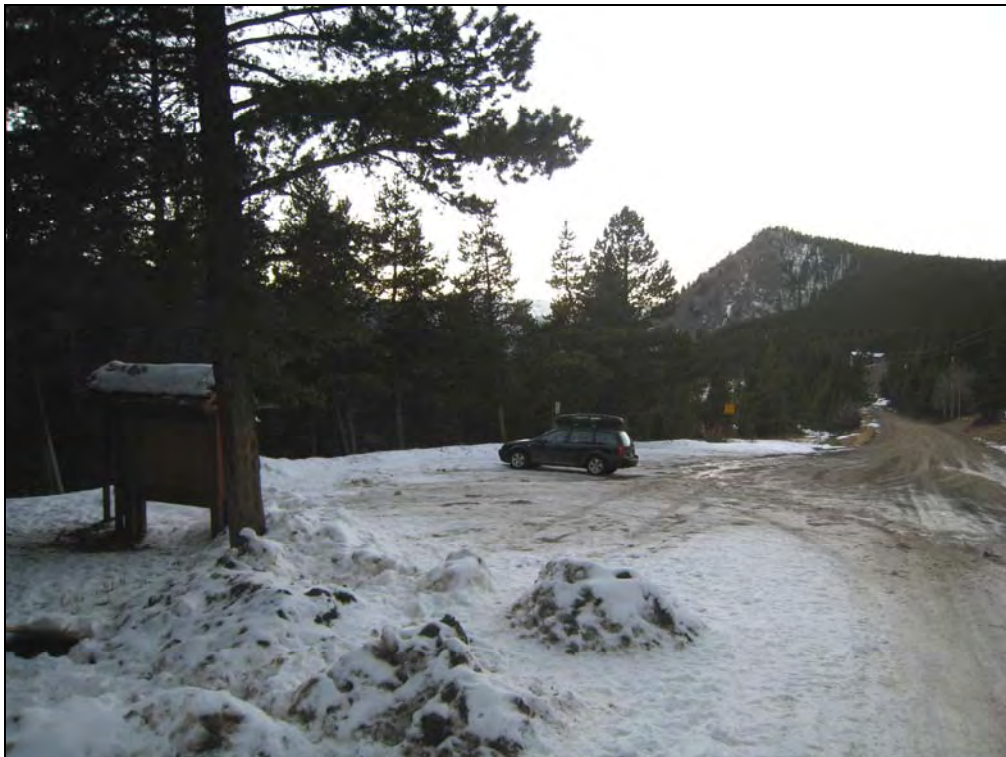
and crosses the northwest portion of the Property, providing access to the historic Sallie Barber mine site. Both roads also provide public access to miles of backcountry trails on the national forest. Today the public enjoys views of the Property as they ski, hike, bicycle, snowshoe, walk, and drive along these two unimproved County roads.

A right-of-way dedication plat was recorded, platting a 50-foot right-of-way along the segments of French Gulch and Sallie Barber Roads that cross the Property. The right-of-way dedication plat was recorded on December 14, 2005 under Reception Number 809225. Therefore, these roads are outside the area identified as the Property.

Recreational uses on the Property are generally limited to through travel along French Gulch and Sallie Barber Roads. There are currently no additional established public trails on the Property. Snowmobiles and backcountry skiers have historically dispersed across numerous areas of the Property for over-snow travel and recreation.

G. Access and Parking

Physical and legal access to the Property exists via French Gulch Road and Sallie Barber Road. Legal access to the Property is via French Gulch Road from the eastern town limits of Breckenridge. The Lincoln Townsite Trailhead parking area is located along the northern boundary of the Property, on the south side of French Gulch Road. This trailhead represents the end of winter County road maintenance. The majority of summer visitors do not drive beyond this point due to the “Narrow Road” signs on French Gulch Road. A turnaround/ informal trailhead also exists at the Wirepatch Mine, near the northeastern corner of the Property, along French Gulch Road near the entrance to the Mountain Meadows residential subdivision.



Lincoln Townsite Trailhead along the south side of French Gulch Road.

H. Signage

Signage on the Property is currently limited to seasonal closure signs to limit snowmobile impacts to the willow wetlands, Carsonite® signs prohibiting camping next to French Gulch and Sallie Barber Roads, a sign identifying the Property and recognizing GOCO funding, and a newly installed trailhead kiosk located at the Lincoln Townsite trailhead.



I. Fences

Fences identified on the Property are limited to dispersed short sections of degraded wire fencing and a recently installed fence and gate on French Gulch Road near the eastern boundary of Mountain Meadows Subdivision. Two sections of the old wire fencing were removed in November of 2007. However, a full inventory of fragmented fences has not been completed.

J. Zoning

The Property currently lies in two zoning districts in unincorporated Summit County. The northwest 25 acres of the Property is zoned Agricultural (A-1). The remainder of the Property is zoned Backcountry (BC). Both of these zoning districts allow one residential unit per 20 acres, however the Backcountry zoning district limits the size of structures. The private parcels to the west, north, and east of the Property are zoned A-1. The private parcels to the south of the Property are zoned Backcountry.

K. Easements and Encroachments

There is an overhead power line that crosses the northwestern corner of the Property, providing utility service to the private residences located north of the Lincoln Townsite trailhead. However, there does not appear to be a utility easement covering this utility line. The above mentioned conservation easement also limits uses of the Property. No encroachments have been identified on the Property. In 2001, a property survey along a portion of the northern boundary of the Property was completed, reestablishing mineral survey corners.

L. Mineral Rights

Mineral rights have not been severed from fee title in the Property. Summit County and the Town of Breckenridge retain these rights and prohibited severability in the conservation easement.

M. Water Rights

When Summit County and the Town of Breckenridge purchased the Property, the seller owned no water rights associated with the Property and the purchase of water rights was not included in the acquisition. The only known use/diversion of water upstream of the Property are wells to service the residences in the Mountain Meadows subdivision and the three residences north of the Lincoln Townsite trailhead. Use of these wells is governed by permits administered by the State Engineer's Office.

NATURAL, ECOLOGICAL, and HISTORIC FEATURES

A. Vegetation and Wetlands

The Property straddles French Gulch and includes an extensive montane riparian willow carr (*Salix planifolia/Carex aquatilis*) that supports several beaver ponds. The Property is within the Upper French Gulch Conservation Site identified by the Colorado Natural Heritage Program (CNHP) as part of the Summit County Conservation Inventory in 1997. The Colorado Natural Heritage Program identified the Property as potentially the most significant ecological area in the Golden Horseshoe. As stated in CNHP's Wetland Functional Evaluation for the Upper French Gulch site, the portion of the property adjacent to French Gulch contains riverine wetlands with some springs with permanent to seasonal saturation. The section of the Summit County Conservation Inventory that addresses the Upper French Gulch site is attached as Exhibit B.



Willow carr along French Gulch on the Cobb and Ebert Placer Open Space Property, looking east (upstream) toward Mount Guyot.

A mixture of lodgepole pine forest and subalpine forest (Englemann spruce and subalpine fir) dominate the uplands on the Property. These forests provide a buffer to protect water quality reaching the willow carr as well as providing cover for wildlife utilizing the riparian area. Although detailed surveys of species occurrences have not been completed, the Golden Horseshoe Backcountry Protection Strategy (a GOCO-funded open space protection strategy for the area) identified suitable habitat for three sensitive plant species on or near the Property. These plant species include Colorado false needle grass (*Ptilagrostris mongholica*), Clustered lady-slipper (*Cypripedium fasciculatum*), and Harrington beardtongue (*Penstemon harringtonii*).

B. Noxious Weeds

The Summit County Weed Control Program has completed a brief inspection for noxious weeds on the Cobb & Ebert Placer Open Space. The weed control program coordinator indicated that the Old Lincoln Townsite has a substantial infestation of Scentless Chamomile due to recent disturbances. The weed control program undertook weed treatments on the Property in this area south of French Gulch Road in the fall of 2007.

The primary areas of concern that will need regular monitoring are along the roads. Because of constant disturbance along the roads, the conditions are perfect for weed infestations, in particular Scentless Chamomile. The weed control program coordinator also indicated that Oxeye Daisy has been identified where Sallie Barber Road crosses French Gulch in the past. Recent disturbance in this area has increased the potential for weed infestations. In addition, the weed control program coordinator noted that Yellow Toadflax may be present within the hydraulic mining area adjacent to, and north of Sallie Barber Road, as this species tends to thrive in these types of disturbed rocky landscapes. However, a comprehensive weed survey of this area has not been completed to date.



Sallie Barber Road on the Cobb and Ebert Placer Open Space Property.

C. Wildlife

As previously discussed, dredge and hardrock mining downstream of the Property in French Gulch has drastically altered the natural landscape. A highly unusual beneficial affect of the historic mining is that it has created a unique physical and chemical barrier that has prevented the upstream migration of introduced brown and rainbow trout species into the aquatic habitat on the Property. Consequently, today the Property supports an excellent example of a pure Colorado River cutthroat trout population, as the native cutthroat trout have not been out-competed or genetically altered by introduced non-native species.

As stated earlier, the Property is within the Upper French Gulch Conservation Site identified by the Colorado Natural Heritage Program (CNHP) as part of its countywide conservation inventory in 1997. This site has a biodiversity rank of B3 (high significance). CNHP's biodiversity rank justification for this site states:

The Upper French Gulch site supports an A-purity rank for a 1993 occurrence of the Colorado River cutthroat trout (*Oncorhynchus clarki pleuriticus*). The Colorado River cutthroat trout is a U.S. Forest Service sensitive and state special concern species. The introduction of non-native trout species, dating to 1872 in Colorado, is considered a primary cause for the decline in numbers and genetic purity of the Colorado River cutthroat trout. The population in Upper French Gulch in 1993 was determined to be genetically intact. (*Summit County Conservation Inventory, page 130*).

CNHP also noted signs of abundant beaver and some elk on the site. Although detailed surveys of species occurrences have not been completed, the Golden Horseshoe Backcountry Protection Strategy identified suitable habitat for 22 sensitive or threatened animal species on or near the Property. In addition to Colorado River cutthroat trout, these animal species include osprey, bald eagle, flammulated owl, boreal owl, three-toed woodpecker, and North American lynx. (See the Golden Horseshoe Backcountry Protection Strategy report Table 4, attached as Exhibit C.)

The Colorado Division of Wildlife (CDOW) provided wildlife information identifying habitat and wildlife concerns on the Property, which is attached as Exhibit D. CDOW data identifies the following habitat associated with the Property, based on Wildlife Resource Information System (WRIS) data:

- Elk summer range and migration area
- Overall range for moose
- Black bear/human conflict area

Additionally, the CDOW report identifies the following special status species, which may utilize the parcel based on habitat characteristics:

- Colorado River Cutthroat Trout, a USFS Sensitive Species and State Special Concern Species (historically known to occur on the Property)
- Great Horned Owl, a USFS Indicator Species (known to occur on the Property)
- Canada Lynx, a Federal Threatened Species and State Endangered Species (suitable habitat on the Property)

According to the information provided by the CDOW, other birds and mammals known to use the Property include: pine marten, mule deer, mountain lion, bobcat, striped skunk, red fox, coyote, porcupine, least chipmunk, snowshoe hare, and various ducks and birds. No past amphibian

surveys have been identified by CDOW or U S Forest Service staff to date. However, CDOW and US Fish and Wildlife Service staff have indicated that the Property may provide habitat for boreal toads and chorus frogs. Future discussion is anticipated with CDOW about appropriate management to protect or enhance potential amphibian habitat found on the Property.

The CDOW stated that the Upper French Gulch has been designated as an area of “High Significance” with regard to biodiversity, noting that the Property has significant riparian value for wildlife, which use riparian areas for resting, nesting, feeding and movement. The CDOW further emphasized that the Colorado River Cutthroat Trout in French Gulch are believed to be a historic and pure population. Due to the significant wildlife habitat values found on the Property, the CDOW recommends that pets should be controlled on the parcel, and fences should be minimized. Where necessary, the CDOW recommends that fences should be wildlife friendly. Lastly, the CDOW indicated that uncontrolled human activity that impacts riparian vegetation would have the greatest potential to adversely impact local wildlife.

D. Historic Features

Evidence of historic mining is evident throughout many areas of the Property. A comprehensive inventory of historic features has not been completed on the Property. However, recent inventories completed by the Town of Breckenridge have not identified any remaining historically significant historic structures or sites on the Property.

VISION FOR THE PROPERTY

Summit County and the Town of Breckenridge intend to manage the Property as undeveloped open space, with an emphasis on protecting and improving the natural habitat. With the exception of dispersed non-motorized over-snow travel and a potential trail through the forest on the north side of French Gulch Road, human use on the Property will be restricted to the two established County roads, in order to minimize impacts to the Property's wetlands and upland habitats. Special attention will be placed on coordinating with the Colorado Division of Wildlife to manage the Property to protect and enhance habitat for the Colorado River cutthroat trout.

Key goals/objectives for management of the Property include the following:

- ***Protection of Sensitive Areas:*** Protect the integrity of the montane riparian willow carr found along French Gulch and the habitat it provides for the Colorado River cutthroat trout and other species. Also, protect the quality and integrity of the adjacent forested uplands.
- ***Protection of Conservation Values in conformance with the conservation easement:*** Restrict the following uses on the Property, in accordance with the conservation easement granted to CDLT, to protect the identified conservation values: construction of structures, timber harvesting, subdivision, mining, paving and road construction, waste dumping, storage of vehicles and equipment, disturbance of soil and water, signage, grazing, motorized vehicles, and commercial activities.
- ***Public Use and Travel Management:*** Manage recreational uses in the valley to minimize impacts to the willow wetlands. Public access onto or through the property will need to be closely monitored by the County and Town to ensure protection of the open space values associated with the Property.

The following management guidelines are designed to be consistent with, and promote the intent of the conservation easement. Should a discrepancy between these two documents arise, the conservation easement shall take precedence.

NATURAL AND CULTURAL RESOURCE MANAGEMENT

A. Protection of Sensitive Areas

All management actions and uses of the Property shall avoid negative impacts to sensitive areas on the Property to the greatest degree practicable, including, but not limited to the areas identified as important wildlife habitat and as priorities by the Colorado Natural Heritage Program. The County and Town will monitor the Property and make efforts to minimize degradation of sensitive areas from recreational activities or other causes. In addition, active management will be undertaken as necessary to preclude uses inconsistent with the protection of the ecological and wildlife habitat values of the Property. Motorized administrative access to the Property will be minimized to reduce vegetation impacts.



Willow carr along French Gulch on the Cobb and Ebert Placer Open Space Property, looking west toward the Ten Mile Range.

B. Protection/Enhancement of Wildlife Habitat

The hydrology and vegetation within the riparian and wetland areas creates a very high level of biodiversity. Plants in wetland soils are especially vulnerable to trampling, which can cause

erosion and damage soil by reducing aeration, decreasing soil water absorption, and destroying soil structure (Golden Horseshoe Draft Management Recommendations and Guidelines, 14). To protect the sensitive wetland areas, recreational activities will be excluded from these areas. As discussed in the section on Public Uses and Travel Management below, fishing will be prohibited on the Property, and recreational uses on the Property will be managed to encourage users to stay on French Gulch and Sallie Barber Roads, to prevent trampling and soil disturbance within the sensitive riparian and wetland ecosystems. Prohibiting recreational activities within the wetland areas will also reduce the potential for erosion and sedimentation in the wetlands, and the spread of invasive plant species. Also, specifically prohibiting fishing on the Property may reduce the risk of recreational fishermen introducing non-native fish species into the Property's intact ecosystem.

The Summit County Conservation Inventory also states that the hydrology of the site is important to the ecological processes that support the trout and the riparian communities. Therefore, the CNHP recommends that water quality, quantity, and timing should be maintained at its current status. While these actions are outside the scope of this management plan, the Town and County have an obligation to monitor and maintain the physical and chemical barriers to fish migration as part of reclamation and clean-up activities in French Gulch.

Erosion and Sedimentation:

Loss of vegetation along roads and due to recreational uses often increases erosion and sediment loads reaching streams and aquatic resources, degrading water quality and habitat. Erosion and maintenance practices on French Gulch and Sallie Barber Roads (especially where Sallie Barber Road crosses French Gulch) will be monitored, and best management practices will be utilized to avoid erosion, sedimentation and other impacts to water quality or aquatic resources. Restricting the establishment of trails will also reduce the potential for sediment degradation of wetlands and aquatic habitats.

Restoration Opportunities:

The conservation easement for the Property states that the County and Town may undertake restoration and environmental remediation activities to improve the conservation values of the Property in accordance with an approved Management Plan.

Future restoration activities may be implemented in the northeastern portion of the Property, in the area below the Wirepatch Mine and below the portion of French Gulch Road that has recently been used as a turnaround and parking area. Staff will review the need for the lower portion of this loop and the potential to reestablish vegetation on this portion of the Property. Potential restoration activities may include removal of mine wastes from the riparian corridor, and/or regrading and revegetating the turnaround below the Wirepatch Mine.

C. Forest Management/Stewardship

A mixture of lodgepole pine forest and subalpine forest (Englemann spruce and subalpine fir) dominate the uplands on the Property. These forests provide a buffer to protect water quality reaching the willow carr as well as providing cover for wildlife utilizing the riparian area. Sallie Barber Road is the only public access through the forested uplands on the Property. Thus, human impacts to the forest are most likely to occur along these road edges.

Forest health will be monitored, and forest management activities will be undertaken if deemed necessary to protect public safety, reduce disease or insect infestations, or improve the diversity, health, and vigor of the forest, in accordance with the conservation easement.

The County and Town will consult with the Colorado State Forest Service to protect and enhance forest health on the Property through adaptive management. Since the Property is dominated by Spruce/Fir forest, with relatively small populations of pines, it is anticipated that management will primarily focus on supporting natural succession processes. Secondary management tools may include removal of infested or dead trees, selective timber cutting, and/or preventative spraying. The primary goal of this forest management is to enhance forest health, including age and species diversity, over the long-term.

D. Noxious Weed Management

Noxious weed management is essential to protect the resource values of the Property and surrounding areas. An integrated weed management program for the Property will utilize Best Management Practices to control noxious weeds while minimizing impacts to native vegetation, wetlands, and water resources. Weed treatments along French Gulch and Sallie Barber Roads may be completed using a truck-mounted sprayer or off-highway vehicle (OHV). Additionally, small amounts of seeding may be warranted along road edges to reduce the potential for weed infestation. Elsewhere on the Property, a backpack sprayer will be employed where feasible to minimize disturbances while applying herbicide. Weed treatments within all wetland areas will be limited to a backpack sprayer or similar handheld device to limit disturbance to the wetlands and utilize chemicals specifically labeled and identified for use in wetland areas. Due to the sensitive wetland resources located on the Property, grazing is not recommended to control weeds as this may result in trampling of vegetation and subsequent erosion.

Sources of disturbances will be monitored and avoided as practical throughout the Property to reduce the potential for the spread of invasive plants.

Avoiding new roads and trails, and off-road vehicle traffic and recreational uses will aid in curtailing the spreading of invasive plants. Ongoing monitoring will be necessary to insure the success of the weed management program, and management activities will be adapted as necessary.

E. Zoning

It is generally Summit County's policy to rezone open space properties to the County's Open Space Zoning District following adoption of open space management plans. This zoning district is highly prohibitive and requires the property to remain as open space with no development potential. Summit County and the Town of Breckenridge have determined that any development of the Property would impact its open space values. Therefore, an application to rezone the Property to the Open Space Zoning District (OS) will be submitted to the County Planning Department for consideration by the Upper Blue Planning Commission and BOCC following the adoption of this management plan.

Transferable Development Rights:

The conservation easement for the Cobb and Ebert Placer Open Space does not allow any limited development or reserved development rights. Moreover, the conservation easement indicates that all development rights associated with the Property have been extinguished, and may not be used on or transferred off of the property.

F. Subdivision

The conservation easement for the Property prohibits any division or subdivision of title to the Property, whether by physical or legal process.

PUBLIC USES AND TRAVEL MANAGEMENT

All public uses shall conform to the Rules and Regulations for Open Space Properties, amended and approved by the Summit County Board of County Commissioners as Resolution #2007-___, and the conservation easement. Restrictions on public uses shall not be interpreted to limit administrative access, facility installation, or maintenance functions by representatives of the County, Town, or easement grantees. As stated previously, this management plan does not in any way restrict or dictate public uses of French Gulch Road or Sallie Barber Road, as these roads lie within platted County right-of-ways and are not included within the Property.

A. Public Roads and Trails

To protect the conservation values associated with the Property, public road and trail access on the Property is currently limited to the two existing County roads crossing the Property (French Gulch and Sallie Barber Roads). The only trail that may be deemed appropriate and constructed on the Property during the period of this management plan is a non-motorized, soft surface recreational trail to be located just north of French Gulch Road (outside of the riparian/wetland area). County and Town Staff will evaluate the need and feasibility to identify and construct a legal and sustainable route for this proposed trail. Portions of the trail would be located on the Property, but the trail may also need to cross adjacent private properties and National Forest administered lands. Therefore, prior to constructing such a trail, public access easements from affected private property owners may be necessary. Staff will also need to work with the U.S. Forest Service to address issues associated with constructing this trail on National Forest Land (i.e. NEPA review). Legal access and resource impacts associated with any proposed trail alignment will be evaluated and discussed with OSAC, BOSAC and the holder of the Conservation Easement (Continental Divide Land Trust) prior to initiating trail construction.

The proposed non-motorized, soft surface recreational trail north of French Gulch Road would be consistent with the conservation easement, as the conservation easement provides for potential development of a trail in the forest along French Gulch Road for non-motorized users to connect the winter trailhead at Lincoln Townsite to the upper reaches of French Gulch. It should be noted that this trail was also recommended as part of the Golden Horseshoe travel plan. In addition, OSAC and BOSAC have expressed support for the creation of this trail.

Public access onto or through the Property will be closely monitored by Summit County and the Town of Breckenridge to ensure protection of the open space values associated with the Property. Social trails degrade vegetation and may increase soil erosion. To protect the Property from these impacts, the Property will be monitored to detect social trails early and the County and Town will take aggressive action to close unauthorized trails, and rehabilitate the disturbed areas.

B. Motorized Vehicles, ATV's, and Snowmobiles

The conservation easement for the Property specifically states that "The use of motorized vehicles including but not limited to snowmobiles, all-terrain vehicles and motorcycles is prohibited, except at trailhead facilities...identified in an approved Management Plan." In accordance with the conservation easement, public use or parking of motorized vehicles

including, but not limited to, four-wheel-drive vehicles, ATV's, dirt bikes, and snowmobiles shall not be permitted off designated County roads crossing the Property and the Lincoln Townsite trailhead.

C. Mechanized Vehicles

In order to protect the native vegetation and reduce the potential for the spread of noxious weeds, mechanized vehicles, including mountain bikes, shall be prohibited off the roads crossing the Property, with the potential exception of the proposed trail north of French Gulch Road, in the event it is created. The use of mechanized vehicles elsewhere on the Property is inconsistent with the protection of wetlands and the associated wildlife habitat, and is therefore prohibited.

D. Non-motorized Over-snow Travel

Dispersed non-motorized over-snow travel (i.e. backcountry skiing and snowshoeing) will be allowed to the extent that it does not negatively impact the resource values associated with the Property. In the event that monitoring identifies negative impacts to the terrestrial, wetland, or aquatic habitat associated with the Property, the need for restrictions on this use will be evaluated by the OSAC and BOSAC.

E. Horses, Livestock, and Pack Animals

In order to protect the native vegetation and reduce the potential for the spread of noxious weeds, horses, livestock and pack animals shall be prohibited off the roads crossing the Property, with the potential exception of the proposed trail north of French Gulch Road, in the event it is created. These uses elsewhere on the Property are inconsistent with the protection of wetlands and the associated wildlife habitat, and are therefore prohibited.

F. Pets

All pet usage of the Property shall be in conformance with Summit County Animal Control Regulations. Pet impacts to resources on the Property (e.g. pet wastes and harassment of wildlife) will be monitored. In the event that this monitoring identifies significant resource impacts, County and Town Staff will provide specific recommendations to the OSAC and BOSAC to mitigate these impacts.

G. Fishing

Fishing shall be prohibited on the Property, in order to prevent trampling, soil disturbance and the spread of invasive plant species within the sensitive riparian and wetland ecosystems. Also, prohibiting fishing on the Property will reduce the risk of recreational fishermen introducing non-native fish species into the Property's intact ecosystem.

H. Special Events

No Special Events or Special Uses shall be permitted on the Property with the exception of appropriate uses of the proposed trail north of French Gulch Road, in the event it is created. Again, this does not prohibit uses of French Gulch Road or Sallie Barber Road, as these travel ways are not included within the Property.

I. Signage

The conservation easement for the Property states that no signs shall be displayed or placed on the Property, except for appropriate signs informing the public of property boundaries, ownership, contributions made by Great Outdoors Colorado, rules, regulations, and management governing the Property, and the area's historical and ecological significance.

The County and Town will continue to monitor the Property and install interpretive or regulatory signage to protect the resources on the Property. Such signage will focus on education and protection of the Property. At a minimum, signs will continue to be utilized to discourage public entry into the willow wetlands, unauthorized motorized uses, and camping, as deemed necessary based on monitoring. Additional information and regulatory signage may be placed along French Gulch and Sallie Barber Roads to educate the public, reduce resource impacts, and allow for enforcement of regulations if necessary. The primary purpose of the signage on the Property is to promote protection of the willow carr by discouraging public entry.

Because the Property contains one of the few remaining undisturbed montane willow carrs in the French Gulch, Blue River, and Swan River drainages, the County and Town may elect to install interpretive signage along French Gulch Road and Sallie Barber Road in the future. Such signage would focus on interpreting resources and/or mining features on the Property.

J. Fences

The conservation easement for the Property allows fences and barricades to be built on the Property for the purposes of reasonable and customary management to control public access, or to separate ownership and uses. It is anticipated that small sections of buck and rail fencing may be needed along French Gulch and Sallie Barber Roads to control access into the wetlands. Summit County and the Town of Breckenridge will monitor the need for such fencing over time, and install fencing on an "as needed" basis.

K. Parking

The potential need for additional parking at the Lincoln Park trailhead or another location along French Gulch Road was discussed as part the conservation easement dedication, and was also discussed on several occasions during the Golden Horseshoe travel management process. In the conservation easement, the County and Town retained the right "to construct and maintain public trailhead facilities not to exceed three acres, if identified in an approved Management Plan." The Conservation Easement also states that "any trails and public trailhead facilities shall not substantially diminish or impair the Conservation Values." Town and County Staff have had initial discussions on how to configure or expand the existing area to accommodate increasing usage. During the period of this Management Plan, County and Town Staff will review the need and feasibility of expanding the existing parking or identifying a substitute/additional parking area on the Property to accommodate the public. Prior to additional parking being constructed, a specific plan will be forwarded to the OSAC, BOSAC, and CDLT for review.

MANAGEMENT GUIDELINES

The Property will be managed by the Summit County and Town of Breckenridge Open Space and Trails Departments in cooperation with the Summit County Sheriff's Department and other County and Town Departments in accordance with this management plan, the conservation easement, and other relevant documents. The Office of the Summit County Sheriff has the authority to enforce any and all laws on the Property, including, but not limited to, the Rules and Regulations for Open Space Properties.

Any substantial plans for improvements or changes in management shall be discussed with the holders of the Conservation Easement prior to implementation.

A. Ongoing Management Provisions

The Vision Statement and individual sections of this Management Plan state that the Property will generally be managed to maintain existing conditions and avoid activities that require intensive management. This will minimize the ongoing management costs on the Property. The County and Town Open Space and Trails Departments also plan to utilize volunteer efforts to minimize costs to the greatest extent practical. Beginning in 2006, the Continental Divide Land Trust (CDLT) has also been monitoring the Property according to the Stewardship Monitoring Plan outlined below. The County and Town Open Space Programs plan to continue to develop partnerships to efficiently manage the Property.

B. Anticipated Management Actions

Management actions contemplated by this plan that may require County and Town resources include:

- Treatment and monitoring of noxious weed infestations;
- Ongoing monitoring of the Property, including working with Continental Divide Land Trust;
- Ongoing removal of litter, neglected fences, and other debris on the Property as required; and,
- Rezoning of the Property to Open Space Zoning District.

Management actions, not currently designed, but that may be undertaken during the period of this management plan include:

- Additional fencing or other barriers deemed necessary to protect resources;
- Installation of additional signage as deemed appropriate;
- Evaluation of a route and possible trail improvements to provide a sustainable non-motorized soft surface trail on the north side of French Gulch Road;
- Evaluation, design and construction of additional parking in the proximity of French Gulch Road;
- Best management practices for maintenance of French Gulch and Sallie Barber Roads to avoid erosion, sedimentation, and other impacts to water quality and aquatic resources;
- Evaluation of reclamation opportunities near the Wirepatch Mine; and,
- Forest management activities to address pine beetle infestation and other forest health concerns.

Improvements not deemed appropriate for the Property include:

- New buildings or structures;
- New access roads;
- Public facilities or improvements to encourage public use, such as developed picnic, restroom or other facilities including benches, tables, shelters, and viewing stands; and,
- Other improvements not consistent with the Open Space Zoning District or the conservation easement.

The County and Town Open Space and Trails Departments will also undertake other management activities to protect ownership interests, or protect the natural resource or conservation values of the Property, as deemed necessary. No additional facilities or permanent improvements are proposed for the Property as part of this management plan.

C. Monitoring

Adaptive management through the use of monitoring is critical to exemplary management of the Property. Goals of this monitoring will include:

1. Insuring that all uses are consistent with the goals of this management plan;
2. Insuring that management actions are consistent with the goals of this plan;
3. Evaluating whether the provisions of this management plan adequately protect the resources identified in this plan;
4. Evaluating the necessity for modifications or amendments to this plan.

The County and Town Open Space and Trails Departments will monitor the Property throughout the life of this plan to insure that the conservation values of the Property are being protected. The Continental Divide Land Trust will also assist in monitoring of the Property, as outlined in the Stewardship Monitoring Plan provided to GOCO and outlined below:

Cobb & Ebert Placer Open Space Stewardship Monitoring Plan

The Continental Divide Land Trust (CDLT) Stewardship Committee, made up of the executive director and/or trained volunteers, will formally monitor the Cobb and Ebert Placer Open Space parcel annually, to insure that the terms of the Conservation Easement are being met. Annual monitoring will take place from the adjacent county roads and on foot ensuring that the Property is fully viewed. The Stewardship Committee will compare the current conditions to conditions documented by text and with photos in the Baseline Condition Report, Management Plan, and previous monitoring reports. Photographs of the Property will be taken during each monitoring visit from designated photo points representative of the Property as a whole. A written monitoring report will be filed in the offices of the CDLT, with the original stored in the safe deposit box, and a copy provided to the owner of the Property.

Any violations of the terms of the conservation easement found in site visits will be documented in writing and by photograph, copies of which will be sent to the landowner. Landowner contacts and a follow-up visit will be made to ensure any violations have been corrected.

MANAGEMENT PLAN APPROVAL AND AMENDMENT PROCESS

The Cobb and Ebert Placer Open Space Management Plan has been reviewed and approved by the Breckenridge Town Council as Resolution # ___ and by the Summit County Board of County Commissioners (BOCC) as Resolution # ___. The Summit County Open Space Advisory Council (OSAC) and the Breckenridge Open Space Advisory Commission (BOSAC) made recommendations to the BOCC and the Town Council to adopt a draft of this management plan at their respective meetings on October 4 and December 10, 2007. These meetings were noticed through newspaper display ads, and public posting of the OSAC and BOSAC, Town Council, and BOCC agendas. This management plan was also reviewed by CDLT, the holder of the conservation easement.

The adopted Cobb and Ebert Placer Open Space Management Plan will be reviewed every five years in accordance with the conservation easement, or sooner if deemed necessary. The OSAC and BOSAC will evaluate proposed amendments and make recommendations for review by the BOCC and Town Council. Amendments to the management plan shall continue to preserve or strengthen the open space and conservation values associated with the Property.

1 ***FOR WORKSESSION/ADOPTION – MARCH 25***

2
3 A RESOLUTION

4
5 SERIES 2008

6
7 A RESOLUTION CONCERNING THE COBB AND EBERT PLACER OPEN SPACE
8 MANAGEMENT PLAN
9

10 WHEREAS, in 1997 the electors of the Town approved the collection of the funds that
11 now comprise the Town of Breckenridge Open Space Fund; and
12

13 WHEREAS, in accordance with the requirements of Section 3-5-3 of the Breckenridge
14 Town Code the Town Council has previously adopted the Town of Breckenridge Open Space
15 Plan providing for the acquisition, improvement, and maintenance of public open space for the
16 use and benefit of the citizens of and the visitors to the Town; and
17

18 WHEREAS, the Town, together with Summit County government, recently acquired the
19 Cobb and Ebert Placer in order to provide access to adjacent Federal lands; extend public
20 ownership of adjacent open space lands; promote recreation; and protect view corridors,
21 undeveloped community buffers, and lands of unique cultural and ecological importance; and
22

23 WHEREAS, the Town places high importance on managing its open space properties to allow and
24 facilitate public uses, while protecting and enhancing the resource values for which these properties were
25 acquired; and
26

27 WHEREAS, a proposed Management Plan for the Cobb and Ebert Placer open space
28 property has been prepared, a copy of which is marked Exhibit “A”, attached hereto and
29 incorporated herein by reference; and
30

31 WHEREAS, both the Town of Breckenridge Open Space Advisory Commission and the
32 Summit County Open Space Advisory Council have held public meetings on the proposed
33 Management Plan for the Cobb and Ebert Placer, and have unanimously recommended its
34 adoption to the Town Council and the Board of County Commissioners of Summit County; and
35

36 WHEREAS, the Town Council has reviewed the proposed Cobb and Ebert Placer
37 Management Plan, and is familiar with its contents; and
38

39 WHEREAS, the Town Council has been advised that the proposed Cobb and Ebert
40 Management Plan is acceptable to the Board of County Commissioners of Summit County; and
41

42 WHEREAS, the Town Council finds that the proposed Management Plan provides a
43 comprehensive management strategy for the Cobb and Ebert Placer Open Space Property and is
44 reasonable and necessary for the management of such property.
45

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

3
4 Section 1. The proposed Management Plan For the Cobb and Ebert Placer (Exhibit "A"
5 hereto) is hereby approved by the Town of Breckenridge.

6
7 Section 2. This resolution shall become effective upon its adoption.

8
9 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2008.

10
11 TOWN OF BRECKENRIDGE

12
13
14 By _____
15 Ernie Blake, Mayor

16
17 ATTEST:

18
19
20
21 _____
22 Mary Jean Loufek,
23 CMC, Town Clerk

24
25 APPROVED IN FORM

26
27
28
29 _____
30 Town Attorney Date



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.

MARCH 2008

Tuesday, March 25	Second Meeting of the Month
Tuesday, March 25	Blake/Millisor Farewell
Monday, March 31	GH Nordic Expansion Site Visit

APRIL 2008

Tuesday, April 8	First Meeting of the Month
Tuesday, April 8	New Council Oath of Office
Tuesday, April 22	Second Meeting of the Month