



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, March 11, 2008
3:00 pm
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.

3:00 – 3:15pm	I. <u>PLANNING COMMISSION DECISIONS</u>	Page 2
3:15 – 4:15pm	II. <u>LEGISLATIVE REVIEW</u> *	
	• LUD 33**	Page 36
	• Joyriding Ordinance**	Page 47
	• Water Ordinance	Page 50
	• Security Guard License Repeal	Page 53
	• Rockpile Ranch Land Exchange	Page 55
	• Xcel Franchise Renewal Agreement	Page 84
	• Bunchman Easement Agreement	Page 89
	• 2006 International Building Code Adoption	Page 115
	• Fence Policy	Page 146
	• Chihuahua Land Exchange Agreement	Page 153
	• Public Art Commission Membership**	Page 167
	• Open Fire Permit	Page 171
4:15 – 4:45pm	III. <u>MANAGERS REPORT</u>	
	• Public Projects Update	Page 8
	• Housing/Childcare Update	Verbal
	• Committee Reports	Page 9
4:45 – 5:15pm	V. <u>OTHER</u>	
	• Golf Course/Restaurant Report	Page 10
5:15 – 6:45pm	IV. <u>PLANNING MATTERS</u>	
	• Comp Plan	Page 11
	• Housing Work Plan	Page 17
	• Down Payment Assistance Program	Page 17
6:45 – 7:15pm	VI. <u>EXECUTIVE SESSION</u>	
	*ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA	Page 29

**** 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 5, 2008

Re: Town Council Consent Calendar from the Planning Commission Decisions of the March 4, 2008, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF March 4, 2008

CLASS C APPLICATIONS:

1. Timberline Spec (JS) PC#2008020; 787 Fairways Drive

Construct a new single-family residence with 5 bedrooms, 6 bathrooms, 5,780 sq. ft. of density and 6,110 sq. ft. of mass for a F.A.R. of 1:9.20. Approved.

2. Burki Residence (CK) PC#2008021; 2446 Highlands Drive

Construct a new single-family residence with 4 bedrooms, 4 bathrooms, 3,865 sq. ft. of density and 4,672 sq. ft. of mass for a F.A.R. of 1:8.38. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:06 P.M.

ROLL CALL

Michael Bertaux	John Warner	Rodney Allen
Peter Joyce	Mike Khavari	Sean McAllister (left @ 7:35)
Dave Pringle (arrived @ 7:11pm)		

APPROVAL OF MINUTES

With no changes, the minutes of the February 19, 2008 Planning Commission meeting were approved unanimously (6-0).

APPROVAL OF AGENDA

With no changes, the agenda for the March 4, 2008 Planning Commission meeting was approved unanimously (6-0).

ACTION ITEM:

1. Comprehensive Plan

Commissioner Questions/Comments:

Mr. Pringle: McCain property would be an excellent spot for an additional grocery store. Suggest striking the bullet point and adding, “With commercial retail uses preferred on the first floor.”

Mr. McAllister: Feels a sustainability plan would be sufficient and thus not sure a sustainability chapter would be necessary.

Mr. Joyce: The plan will always have data that needs to be updated, so it will never be entirely current.

Mr. Bertaux: Suggested restricting home size/floor to area ratios “in relation to the lot size”. Suggested the Comprehensive Plan encouraging retail commercial uses on the ground floor, rather than specifying a policy in the development code. The plan is a guide, not a mandate.

Dr. Warner: Regarding community facilities chapter 5 page 69: the last sentence regarding a daycare facility, do not use the singular; we may need more than one new facility. #14 regarding water reservoir, has McCain property been studied enough to commit to a reservoir there and should we have a more generic statement on increasing storage capacity, rather than a specific location? Explore option for additional water storage, period. Should community facilities seeking green standards be addressed in the plan? Maybe a sustainability chapter should be added. Struggles with small FARs recently (like 1:2 or 1:1.8). Would a neighborhood by neighborhood analysis be more practical? (Mr. Truckey explained that staff was initiating contacts with each neighborhood.) Still didn’t know enough about incentives to make ground floor retail a preferred use. Disappointed in BEDAC and would have liked for them to come up with viable incentives for maintaining retail on ground floor, instead of assuming that planning staff could accomplish this. Agreed with focus on ground floor being retail, but eliminate the bullet suggesting code amendments at this time. Chapter 16 page 63, trash is a huge problem in our snow melt; issues and should be added to the discussion. Was comfortable in recommending approval of the plan - the information provided at the open house on each chapter resonated with me.

Mr. Allen: Asked if amendments to the resolution could occur. (Mr. Truckey said he would seek clarification from Tim Berry on how to incorporate any additional changes the planning commission recommends to the February 21 plan document.) Regarding community facilities and sustainability, should we address green-technology snow-melting options to address snow storage? Regarding the land use plan, 9 units per acre may not be working for the vitality of the town. Would an incentive program be possible if retail was required on the ground floor? Public that attended open house indicated maximum square footage for home construction on smaller lots is already covered by other means, such as setbacks. Ground floor office policy is still pretty strong. Page 16 of the packet, Park Avenue Section: remove all examples of traffic management. Personally still not comfortable approving the comprehensive plan as is. Feels more time should be spent.

Mr. Pringle moved to approve the resolution that recommended to the Town Council that the “Town of Breckenridge Comprehensive Plan, Dated February 21, 2008”, with amendments as suggested tonight, be adopted as the master (comprehensive) plan for the physical development of the Town. Mr. Bertaux seconded. The motion was approved unanimously (6-0).

Amendments: Documented above and to be attached to the resolution forwarded to Town Council.

CONSENT CALENDAR:

1. Timberline Spec (JS) PC#2008020; 787 Fairways Drive
2. Burki Residence (CK) PC#2008021; 2446 Highlands Drive

Dr. Warner was happy to see the solar panels proposed on the Burki Residence. Mr. Allen wanted to confirm that the building department would confirm the solar panels were installed and in use before C.O. was issued. Staff explained both the building department and the planning department would determine this during C.O. inspection.

With no motions, the consent calendar was approved unanimously (6-0).

PRELIMINARY HEARINGS: (Presented concurrently)

1. Stan Miller Master Plan (MM) PC#2008006

Mr. Mosher presented. The applicant proposed a Master Plan for the recently annexed Stan Miller property and the adjacent Tract D-2 of The Shores at The Highlands Subdivision, (formerly the West Braddock Subdivision). The Master Plan identified density and uses for 6 development parcels (A, B, C, D, E and F), two public open space parcels (G and I) and a 60-foot right of way (ROW) for Stan Miller Drive. The proposed Master Plan was for a phased, integrated, residential neighborhood containing 100 deed restricted units and 55 market units. Subdivision of the development parcels would create 73 lots, three development Tracts and four pocket parks and connecting trails. This Master Plan included Tract D-2 of the Shores at The Highlands Subdivision.

2. Stan Miller Subdivision (MM) PC#2008007

Mr. Mosher presented. The applicant proposed to subdivide 40.41 acres known as the Stan Miller property and 2.29 acre Tract D-2, The Shores at the Highlands (Previously known as West Braddock) into seventy three (73) lots, three (3) deed restricted development Parcels and associated Rights of Way (ROW) tracts. There are two Public Open Space Parcels (G, I) and three Private Open Space Parcels. The proposal was to subdivide the property in Phases over time. The first subdivision would create the 6.12 acre Public Open Space and Blue River corridor, the parcel separating out the northerly 12 acres known as the “Sale Parcel”, which the owner intends to sell to “Braddock Holdings” (Breckenridge Lands LLC), a 60’ wide right of way for Stan Miller Drive, a deed restricted development Parcel in the location of the Stan Miller Inc. current office and the remaining property as one large Parcel. The property would then be re-subdivided over time.

This Master Plan and Subdivision has not presented any concerns to Staff. There will be further detailed review of the development on this property with each individual application for development. Any proposal will follow the density allocations and design standards established.

1. Did the Commission have any comments regarding waiver request for the smaller lot sizes and resulting reduced building setbacks?
2. Did the Commission have any comments regarding the location of the trail on the west side of the Blue River when the Blue River Restoration Master Plan suggests having trails located only on the east side?

Staff welcomed any further comments from the Commission. With any added comments, the Planning Department recommended these applications return for a second review.

Don Nilsson, Agent for Applicant: 155 total units are proposed on 36 acres or 4.2 units per acre. Proposed commercial uses ended up going away for a variety of reasons. Providing the required housing for the commercial uses is nearly 1 to 1 and does not count towards the suggested 80% requirement for annexation. That’s the main reason for not proposing commercial uses. Additionally, the Council was not supportive of having commercial in this area. An integrated neighborhood feel was sought. When driving down the street, a passerby should not notice any distinction between a deed restricted unit and a market rate unit throughout the neighborhood. The project will

take place over the next 18 years. Stan Miller Inc. has operated on this property for 30 years. Therefore, a phasing plan is being proposed so the business can continue to operate. Construction of the deed-restricted units will be phased as well so they don't all come on line at the same time, or compete with Block 11 housing. The river relocation includes public access and a soft surface trail system. Regarding the trail on the East or West side of river, the applicant is leaning towards keeping it on the east, since once a person crosses to U.S. Forest Service property just outside the Town Open Space, hunters can hunt (just across the river from the subdivision.) The river redevelopment and Stan Miller Drive will be built within the first two years after final approval. Applicant is prepared to install three bridges to access the West side if needed.

Commissioner Questions/Comments:

- Mr. Pringle: What will happen to the homes on the east side with the trail system? (Staff pointed out trails would exist through the back yards of those homes along the east side of river.). A bike path should also be included to reduce intersection conflicts between vehicles accessing Highway 9 and bike path crossings. What is the typical home size to be placed on the smaller lots? (Mr. Nilsson - pointed out the homes would be between 1,100-1,400 sq. ft., plus the garage.) The scope and the scale of single family home on lots 5,000 or less would be nice to know. (It was agreed upon by the applicant to put a maximum cap on the size of homes to be built on lots 5,000 or less.) Happy with applications. Need to address the trail system with Open Space and Trails Staff and their consultants.
- Mr. Joyce: Would there be public access to the County open space? (Staff stated no, access would exist on the west side of the river only.) Would the bridges then go away? (Staff stated yes, the bridges would go away.) Asked about water reclamation and river reconstruction. (Applicant explained that the river would be relocated onto virgin soil, but would still be subject to seasonal flows from areas up stream (McCain)). How would a bike bath on the west side be possible if the county won't grant access through their property? (Mr. Nilsson: we are hoping to eventually get a connection through this section of land. Eventually, County would have to step up to the plate.) Can the existing utility lines be buried? (Staff pointed out that the goal in the future is to bury the lines.)
- Mr. Bertaux: Stepped down due to a conflict of interest. Currently employed by Stan Miller Inc.
- Dr. Warner: Asked the applicant if they purposely avoided sinuosity in the river design? (Mr. Nilsson: seasonal flooding could ruin a winding river if and when it occurs as the channel is deeper and the flood plain is narrower.) Is looking for more sinuosity, but now understands why the applicant avoided it. Would prefer the bike path be on the west side of the river in the future due to vehicular conflicts near Highway 9. Ok with the smaller lot sizes. The proposed streets will allow for some parking and efficient snow staking. With asphalt close to the river, where would the water runoff go? (Mr. Nilsson explained the drainage plan and the series of detention ponds located in the pocket parks. The drainage wouldn't reach the river.) Was BOSAC's opinion considered regarding river trails? (Staff pointed out not yet, they would be consulted before next hearing.)
- Mr. Allen: Asked applicant why only 75% deed restricted is provided when typically annexations ask for 80%. (Staff and Agent pointed out that, when commercial was removed and units were dispersed about the subdivision, the ratio was allowed to be reduced. It is at Council's option on a case-by-case basis.) With 4.5 units per acre allowed in the Land Use Guidelines, could this preclude applicants from coming back for more density in the future? (Staff pointed out no. But a Master Plan modification would be needed.) If the annexation agreement specifies something, can an applicant still get positive or negative points when they comply? For example the applicant is getting positive points for affordable housing; should they get these when the annexation agreement required such? Sought clarification regarding lot size in relation to home size. On bike path, safety of our community members should take priority over wildlife protection. On lot size, how are we able to ok a waiver on an absolute policy? (Staff explained that code allows smaller lots on master planned developments.)
- Mr. Khavari: Agreed with all said. Proposal looks fine. Resolve trail issue prior to next hearing. This subdivision proposal is in general compliance with the Subdivision Standards with the exception of lot size and setbacks (discussed in the Master Plan). Additional data regarding the river relocation and treatment of ground and surface water is still pending.

WORK SESSIONS:

1. Landscaping Policy (JC)

Ms. Cram presented. Within the last year, three new ordinances have been adopted, one regarding Noxious Weeds (Ordinance No. 15, Series 2007) another regarding Mountain Pine Beetles (Ordinance No. 16, Series 2007) and lastly one regarding Water Features (Ordinance No. 39, Series 2007). In addition, staff has been discussing the importance of improving forest health through forest management plans, wildfire mitigation and replanting with diverse species. Staff has also discussed the possibility of adjusting the point multiplier for those developments that propose new landscaping with the Town Council.

Staff believes that updating the Town's Development Code with regard to Policy 22 - Landscaping, to include new absolute and relative policies is necessary to be consistent with the recently adopted ordinances noted above and desired forest management goals for future development. This would assist the public in knowing what requirements there are pertaining to these ordinances and provide potential opportunities to mitigate negative impacts when applying for a development permit.

Staff introduced some of the proposed changes to Policy 22 to the Planning Commission. Staff shared these with the Town Council in October and received feedback on what policies should be absolute and those that should be relative. Staff will use Planning Commission feedback to work with the Town Attorney to draft changes to Policy 22.

With the goal of trying to improve forest health, reduce wildfire risk and maintain buffers within Town, it is important to look at updating our existing landscaping policy. Staff welcomed any additional thoughts that the Planning Commission had with regard to landscaping.

During the worksession on February 19th we discussed the water features policy. In general the Commission was concerned about water features with regard to site disturbance and the loss of buffers and energy consumption. We also discussed the replacement of trees from MPB infestation and generally the Commission agreed that replanting should be required, but that it should be reasonable for property owners. Staff is continuing to draft language to incorporate the Commissions comments.

Commissioner Questions/Comments:

- Mr. Pringle: Would suggest the town begin a PR campaign to replace dead trees. Two issues at hand: landscaping plans near the building envelope versus forested areas outside the envelope. Would encourage a landscaping policy that addresses staffs concerns but considering different scenarios. Can we discuss planting trees too close to buildings, which is occurring and shouldn't be? More isn't better, better is better.
- Mr. Joyce: What type of trees would be required? (Staff pointed out that species diversity would be encouraged.) Is the landscape guide on the website? (Staff stated yes.)
- Mr. Bertaux: Planting trees all at the same time is not a healthy alternative. What about 3-4 years down the road when an owner doesn't irrigate and everything dies?
- Dr. Warner: Can't tell if a 1 to 1 replacement is required or not. Wanted to see buffers replaced. An inch and a half aspen is a big tree. Would prefer a height as opposed to a diameter as a rule of thumb. Would it make sense to have #5 read "15 ft from the structure"?
- Mr. Allen: Buffers seem site specific. Clarify what an existing buffer is.
- Mr. Khavari: Does "between homes" include the backside of the home. (Staff: yes.) How would irrigation be addressed in specific places? (Staff recommended at-grade drip irrigation systems would be allowed until trees are established.)

Don Nilsson, local developer: taller trees don't always provide a better buffer. Do not encourage cottonwood trees on a hillside as they will look out of place.

TOWN COUNCIL REPORT:

Town Council discussed solar panels in the historic district. Dr. Warner had a conversation with Mr. Joyce about single pane glass on historic windows in the historic district. Mr. Joyce asked if the state historical society had an opinion.

OTHER MATTERS:

None.

ADJOURNMENT:

The meeting was adjourned at 10:49p.m.

Mike Khavari, Chair

Memorandum

TO: Town Council

FROM: Tom Daugherty, Town Engineer

DATE: March 6, 2008

RE: Public Projects Update

Main Street

The storm sewer construction plans for Main Street (Wellington to Lincoln) were completed and advertised for bid in early February 2008. The project bids were opened on February 29, 2008. There were four local bidders on the project. Columbine Concrete was the low qualified bidder with a base cost of \$371,461.

Town Engineering staff estimates the total construction cost for the storm sewer project to be \$435,000. This total cost included the base bid from Columbine Concrete, engineering, drafting, construction testing, surveying and utility relocations. The estimated total cost of the project is within the previously 2008-budgeted amount of \$500,000 for the project.

The project is scheduled to begin on April 21, 2008.

Riverwalk Center Roof

The RWC continues on schedule. Hyder has been directed to proceed with the mechanical system upgrade. All of the equipment has been ordered, and the mechanical work is expected to be completed within the project timeline. Based on input from Council color #3 (Benjamin Moore 118) has been selected for the exterior color, and pre-stained siding has been ordered.

Valley Brook Childcare

At the direction of the Council Matt Stais has researched the solar PV panels. Based on estimated electrical usage, Matt feels that the PV panels will provide approximately 25% of the electricity for the facility if a 13.5 KW array is installed. If the operator is thrifty the percentage will go up. The cost of the 13.5 KW array is approximately \$71,000 with rebates.

Arts District Fuqua/Quandary Antiques

Work is continuing in the Arts District. Plumbing, electrical and mechanical is the current focus at Fuqua now that the structure has been dried in. The Quandary cabin and the site have been prepared for the move. We are currently waiting for Xcel to remove a gas line and will move the cabin as soon as that is done.

Overlay Project

New West Paving was the apparent low qualified bidder on our asphalt projects and will be awarded the contract. Their bid was under the project budget. The project will pave a portion of Broken Lance in Warriors Mark and the section of road in Eagle subdivision that is still dirt.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen
DATE: 3/6/2008
RE: Committee Reports

BEDAC

Julia Skurski

Guest speaker, Linda Venturoni gave a PowerPoint presentation on NWCCOG Study of Transitions in Mountain Communities-The Social and Economic Effects of Second Homes. Second Homeowners Engagement and Impacts is a topic of BEDAC's 2008 Top 5 list.

BEDAC will schedule a joint meeting with the Town Council after the new council is seated.

Please see minutes from February 20th meeting minutes for more details.

Other Meetings

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
Police Advisory Committee	Rick Holman	No Meeting
CAST	Tim Gagen	No Meeting
NWCCOG	Peter Grosshuesch	No Meeting
Public Art Commission	Jen Cram	No Meeting
Summit Stage		No Meeting

MEMO: Tim Gagen, Kate Boniface, and Breckenridge Town Council Members
FROM: Terry Perkins and Erroll Miller
DATE: March 11, 2008
SUBJECT: Golf Restaurant Operations

2007 was the second year of the clubhouse restaurant lease with Gilchrist Catering (Bill Gilchrist owner). You will recall that 2006 was a disappointing season with numerous customer complaints regarding service, food quality, and hours of operations. These issues were addressed at the start of the 2007 season. Mr. Gilchrist sat down with Town staff in the spring of 2007 and both parties reviewed the areas that needed attention and stayed in continuous communication regarding any issues that arose.

The 2007 season started out much better and customer comments reflected a positive change. However, during the course of the 2007 summer season some of the same issues occurred. Most notably in August there were staffing issues; hours of operation issues and food and beverage carts were not on the course during required hours. Mr. Gilchrist was notified of the concerns that developed both verbally and in writing on August 27. Mr. Gilchrist took corrective actions including firing his manager and making other changes.

Before the season ended, a written review of the season, penned by Erroll Miller, was presented to Mr. Gilchrist outlining the positives and negatives of the season.

The end of season letter now directs us for 2008. The action plan is to follow-up before the season starts (April 2008) to once again review the concerns and determine what action plan Mr. Gilchrist will be implementing for the third season of the lease agreement.

The current lease agreement with Gilchrist Catering will expire May 14, 2009.

Staff is recommending that we proceed with writing an RFP and start advertising for a vendor in the summer of 2008 so that other potential operators would have the opportunity to see the operations during the summer season.

Regarding winter operations, on February 14, 2008, Terry Perkins hand-delivered a letter to Bill Gilchrist from Tim Berry that addressed that the Breckenridge Sleigh Ride operation would have use of the restroom facilities and common area for the remainder of the sleigh ride season. To date, we have not been notified of any issues between these two vendors. Mr. Gilchrist, however, did notify Terry Perkins that he was left with no alternative but to sue both the Town and the Breckenridge Sleigh Ride operator.

I hope this summary has given you a picture of the past year. The goal of staff is to make the entire golf experience first class and positively memorable for the guest. We will continue to work with Mr. Gilchrist, finding positive solutions to the past issues and, hopefully, make 2008 better than 2007.

MEMORANDUM

To: Town Council
From: Mark Truckey, Assistant Director of Community Development
Re: Comprehensive Plan
Date: March 5, 2008

Since the Town Council's February 26 work session on the Comprehensive Plan, the Planning Commission hosted a public open house and meeting on the Plan on March 4. The commissioners received some public comments at the open house that they discussed at the evening's planning commission meeting. At the meeting, the planning commission unanimously approved a resolution recommending that the Town Council adopt the proposed Comprehensive Plan. The resolution, along with a list of additional Plan text changes recommended by the Planning Commission, is attached.

At the last work session, the Council asked for a redline version of the February 21, 2008 Comprehensive Plan, which would identify all changes made to the document since the Council previously reviewed each of the draft individual chapters. Staff has provided hard copies of this redline version for each of the Council members.

At our March 11 work session, staff looks for Council comments on the Plan and the Planning Commission's recommended changes. The March 25 meeting is scheduled for a public hearing, with potential adoption of the Plan by the Council.

1 ***FOR ADOPTION – MARCH 4***

2
3 BEFORE THE PLANNING COMMISSION

4
5 OF THE TOWN OF BRECKENRIDGE

6
7 RESOLUTION No. _____, SERIES 2008

8
9 A RESOLUTION RECOMMENDING THE ADOPTION OF THE “TOWN OF
10 BRECKENRIDGE COMPREHENSIVE PLAN, DATED FEBRUARY 21, 2008” AS THE
11 MASTER PLAN FOR THE PHYSICAL DEVELOPMENT OF THE TOWN
12

13 WHEREAS, pursuant to Section 9-4-1(A) of the Breckenridge Town Code it is the duty
14 of the Town Council of the Town of Breckenridge to adopt a master (comprehensive) plan for
15 the physical development of the Town; and
16

17 WHEREAS, a proposed “Town of Breckenridge Comprehensive Plan, Dated February
18 21, 2008” (“2008 Town Comprehensive Plan”) has been prepared, a copy of which is marked
19 Exhibit “A”, attached hereto and incorporated herein by reference; and
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21 WHEREAS, pursuant to Section 9-4-3 of the Breckenridge Town Code, the proposed
22 2008 Town Comprehensive Plan has been referred to the Town of Breckenridge Planning
23 Commission for its review and recommendation; and
24

25 WHEREAS, Section 9-4-3 of the Breckenridge Town Code directs the Planning
26 Commission to deliver to the Town Council, in writing, its recommendations concerning the
27 proposed 2008 Town Comprehensive Plan prior to the time when the Town Council is to hold its
28 public hearing to consider the adoption of such plan; and
29

30 WHEREAS, the Planning Commission has reviewed the proposed 2008 Town
31 Comprehensive Plan and is familiar with its contents; and
32

33 WHEREAS, the Planning Commission finds and determines that it should recommend to
34 the Town Council that the proposed 2008 Town Comprehensive Plan be adopted by the Town
35 Council as the master (comprehensive) plan for the physical development of the Town.
36

37 NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE
38 TOWN OF BRECKENRIDGE, COLORADO, as follows:
39

40 Section 1. The Planning Commission hereby recommends to the Town Council of the
41 Town of Breckenridge that the ”Town of Breckenridge Comprehensive Plan, Dated February 21,
42 2008” (Exhibit “A” hereto) be adopted as the master (comprehensive) plan for the physical
43 development of the Town.
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Section 2. This resolution shall be deemed to be the Planning Commission’s written recommendations concerning the proposed “Town of Breckenridge Comprehensive Plan, Dated February 21, 2008” as required by Section 9-4-3 of the Breckenridge Town Code.

Section 3. This resolution shall become effective upon its adoption.

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

TOWN OF BRECKENRIDGE PLANNING
COMMISSION

By _____
Chair

ATTEST:

Secretary

**Recommendations of Breckenridge Planning Commission at March 4, 2008
Planning Commission Public Meeting**

Recommended Amendments to Town of Breckenridge Comprehensive Plan, dated February 21, 2008 (new text shown in underline and deleted text shown in ~~overstrike~~):

Amend Chapter II, Natural Environment, with a new policy on p. 21:

8. Promote the use of renewable energy technologies in residential construction.

Amend Chapter IV, Transportation, p. 40 as follows:

An issue associated with maintenance is that of hauling snow after it has been plowed. Plowing of streets and sidewalks isn't the last step in dealing with snow in the Breckenridge transportation system. Snow has to be hauled away or the piles and berms created from plowing get too high and subsequent plowed snow merely rolls back down. As berms keep creeping in size, they reduce effective road surfaces and can eventually block off access altogether. The amount of snow that the Town has to haul away is tending to increase to some degree, irrespective of snowfall amounts. The Town currently uses the Stillson placer property and the McCain-Block 11 property to store hauled snow. However, there are issues pertaining to both of these sites: the former is not very large and has site constraints, while the latter will eventually be affected by implementation of the McCain-Block 11 master plan. The Town is committed to assure another adequate site is available before allowing uses on the McCain-Block 11 property that preclude the storage of hauled snow. In addition, the eventual site for snow storage should utilize best management practices that remove pollutants and trash from snowmelt prior to being released via stormwater into local streams. Options should be explored for the eventual snow storage site that include potential use of snowmelt systems utilizing sustainable green technologies.

Amend Chapter IV, Transportation, p. 42 as follows:

e. Park Avenue

This avenue is a two lane (plus turn lane) fully improved road running north/south on the west side of Breckenridge. In 2004, Park Avenue was designated as State Highway 9 and now serves as the primary route through Breckenridge, as well as being the main road to the Watson-Sawmill-Parkway Center-F Lot-Tiger Dredge parking lots located adjacent to it. The Hwy 9 study¹ recommends improvements to Park Avenue including the widening to four lanes from the north Main Street Intersection to Ski Hill Road and signaling the intersections between as needed. There is also a potential need for a signalized intersection or other forms of traffic management (~~e.g., no left turn signals from sidestreet~~) at the corner of Four O'Clock Road and Park Avenue. This road is one of the few that is anticipated to need major improvements such as adding lanes. The Town and the ski area are also working on improving the pedestrian connection from the

¹ CDOT State Highway 9 Environmental Impact Statement.

F Lot parking lot to the Quicksilver lift. Park Avenue is now under the control of CDOT and thus improvements and access control will be subject to their standards. New development along this road will need to be consistent with CDOT plans for improvements and access controls.

Amend Chapter V, Community Facilities, E. Town Government section with new text on p. 65 as follows:

The Town is committed in working towards a more sustainable future. As such, it is recommended that Town government facilities and services are provided in a sustainable manner, with a focus on providing environmental protection and maintaining our natural resources. The Town has recently established a “Green Team”, an interdepartmental advisory group that focuses on reducing the Town’s ecologic and carbon footprint through sustainable resource stewardship. The Green Team has initiated a number of sustainable measures, including: an audit of the Town’s heating/electric systems and hiring of an Energy Service Company to retrofit existing facilities to reduce energy consumption; a van pool program to provide transit options for employees in Park County; installation of recycling containers throughout Town; assessment of the Town vehicle fleet and potential purchase of cleaner and more energy-efficient vehicles; replacement of lighting ballast to more energy-efficient lighting; purchase of renewable wind power for Town electricity needs; and numerous educational programs. The Town intends to continue to incorporate sustainability practices into the decisions it makes regarding its facilities and services.

Amend Chapter V, Community Facilities, p. 68 as follows:

In response to the shortage of day care, and because of a desire by the Town to provide adequate day care for Town residents and workers, the Town initiated construction of a new day care facility on Valley Brook Road in 2007, directly across the street from the Carriage House. When completed in 2008, the new Valley Brook day care facility will accommodate 69 children. This will account for a little over half of the projected daycare need at build-out. It is therefore thought that ~~an~~ additional daycare facilities will may need to be constructed sometime between now and buildout to accommodate the remaining projected daycare needs.

Amend Chapter V, Community Facilities, p. 70, Water Service policy 14 as follows:

14. Pursue ~~Explore~~ the establishment of a new water reservoir or expanded reservoir to hold Town water ~~at the McCain property.~~

Amend Chapter XII, Land Use, p. 132 , policy 4 as follows:

3. Encourage a mix of uses in the downtown business district, with commercial retail uses preferred on the first floor and offices and residential uses on upper floors.
 - ~~Consider an amendment to the Development Code to identify retail commercial uses as a preferred use on the ground floor of commercial structures in the downtown core and to focus offices and residential uses on the second floor.~~

Amend Chapter XII, Land Use, p. 133, policy 14 as follows:

14. Pursue amendments to the Development Code to establish a maximum square footage limitation for single-family residential development and consider establishing Floor-to-Area ratios for single-family residential development in relationship to a single-family residence's lot size.

MEMO

TO: Breckenridge Town Council
FROM: Laurie Best-Community Development Department
DATE: March 3, 2008 (for March 11th work session)
RE: Affordable Housing Action Plan and Down Payment Assistance Program

2008 Housing Work Plan

In late 2007 staff began evaluating the Town's housing programs including the impact fee/sale tax revenue, other strategies that might be necessary to address the housing need, and how all the tools could be implemented strategically. Rees Consulting and RRC Consulting assisted staff and the Housing/Childcare sub-committee through this process. We considered the 2006 Housing Needs Assessment, the projected buildout and job growth, the increasing gap between wages and real estate prices, limited available land, and escalating construction costs. We also evaluated the current relative policy in the Development Code and we created a mathematical model to project the number of units that could be achieved with modifications to the code. Based on this work we have created an Action Plan, which includes goals and policies, and the tasks that we believe are most reasonable to pursue. In addition to the construction of units on Town-owned land and continue public private partnerships, the most significant recommendations include:

- Consider a modification to the current relative policy that will incentivize new commercial, multi-family, and lodging development produce more workforce housing proportional to the number of jobs generated. The employee generation associated with certain uses such as restaurants and lodging is considerable higher per square foot than other uses such as single family residential or office. Since neither the impact fee or the current relative policy account for the different employee generation the committee felt it was reasonable to encourage those uses that generate more employees to produce more workforce housing (or fee in lieu) through a modification to the relative policy.
- Consider a modification to the development code to incentivize accessory dwelling units in second homes. The committee felt that this would be an effective and necessary strategy if the Town is to meet the needs.
- Update the Town's Administrative Guidelines/Deed Restriction. The Guidelines have not been updated since 2000 and should be revisited to insure that the restrictions (income testing, capital improvements, employment requirement, etc) are still relevant, consistent, and effective.
- Preserve market units that are now occupied by employees but are at risk. Approximately 1,000 unrestricted units are currently occupied by employees but will be lost as workforce housing when the current occupants/employees and owners sell, retire, relocate, etc.
- Work with the business community to create employer-assisted programs
- At this time, an absolute (mandatory) linkage requirement or inclusionary zoning is not recommended because the amount of new development that could be subjected to the new requirement is fairly small given our eminent buildout.

This is a summary of key elements of the Action Plan. We will review the plan with the Council during the work session on March 11 and will ask Council to endorse the plan.

SCHA Down Payment Assistance Funding Request

The Summit Combined Housing Authority is requesting the Town participate and contribute \$40,000 to a down payment assistance program directed at 81-161% AMI households. Enclosed in your packets is a complete description of the request. The program has been discussed by the Summit Combined Housing Authority Board and some of the key elements of the program include:

- Borrowers cannot own other real estate and must earn their living working 30 hours per week for a business operating in and serving Summit County
- Property must be within the service area of SCHA and loans can be restricted to service areas of the contributing SCHA member
- Maximum loan is \$10,000 or 5% of purchase price, whichever is less
- Maximum term is 7 years
- The loans will be serviced by the SCHA

Staff supports the request for funding because it will help renters convert to ownership, possibly freeing up rental units, while also helping families stay in the community. We would like to discuss the request with Council during your work session on March 11th to determine if the Council supports the request and to also consider whether the Town's \$40,000 contribution should be further restricted to:

- employees living and working in the Upper Blue
- deed restricted units.

We look forward to your comments. Thank you.

Town of Breckenridge

Workforce Housing Action Plan – 2008 (DRAFT to TC-March 11, 2008)

This document is intended to guide efforts to achieve a sufficient amount of workforce housing to preserve the town's character and support its economy. It incorporates and builds upon key elements of the Town of Breckenridge Vision Plan adopted August 28, 2002 and the Affordable Housing Strategy adopted May 23, 2000. It is a work in progress that will continue to evolve over time as specific work elements are completed and additional opportunities arise.

Vision

To have a diversity of permanently-affordable housing integrated throughout the community, which provides a variety of housing options to sustain the local economy and preserve the character of the community.

Policies

- Assure that workforce housing is comprised of a variety of densities and styles, and is accessible to all members of the community, both dispersed throughout the town and concentrated in neighborhoods of primary residences.
- Seek a balance between population growth and housing for employees who work in the community, with an emphasis on reducing the impacts of in commuting and providing the labor force needed for local businesses to succeed.
- Strive to ensure that ownership and rental housing for the workforce is provided for a wide diversity of income levels that support the local economy and preserves a vibrant middle class.
- Place priority on housing for employees who work in the Upper Blue providing products and services within the local economy. It is not the intent to utilize limited resources to provide housing for telecommuters, location-neutral remote workers, or residents who are unemployed.
- Utilize strategies that place top priority on development of units by the private sector, followed by acquisition of land for housing; payment of fees to the Town is third in terms of the options through which the responsibility for workforce housing will be shared.

Goals and Objectives

The primary goal of the Breckenridge Town Council is to insure that 900 additional workforce housing units are approved and/or constructed in the Upper Blue by the time the community reaches full build out. This goal is to be achieved through a combination of Town resources, impact fee and sales tax revenue, incentives, policies placed on new development, and partnerships. Approximately 60% of these units will address existing needs while 40% or 360 units will partially keep up with the demand for workforce housing as the community grows.

The Breckenridge Town Council also seeks to insure that key characteristics of the community are preserved or enhanced through the adoption of these specific objectives:

- The proportion of employees who work in Breckenridge and also live there will not drop below the current level of 47%.

- The relationship between primary homes and second homes/vacation accommodations will not significantly change; at least 25% of all units will be occupied as primary residences at build out.
- Renters will be provided increased opportunities for ownership with the homeownership rate moving upward from its current level of 41%.
- Housing will be provided for all income levels up to 180% AMI with intent to preserve the middle class (80%-180%) based roughly on the income distribution as follows:

Income Distribution to be Targeted by Workforce Housing Initiatives

AMI	% of Total Need	% of Households 2000	Targeted Distribution	Number of Units
<50% AMI	30.1%	21.1%	25.60%	231
50.1 to 60% AMI	4.3%	2.6%	3.40%	31
60.1 - 80% AMI	6.0%	17.3%	11.70%	109
80.1 - 100% AMI	29.0%	19.3%	24.20%	216
100.1 - 120% AMI	6.9%	8.2%	7.60%	69
120.1% -140% AMI	14.9%	7.5%	11.30%	99
140%-180%	8.8%	24.0%	16.40%	145
Total	100.0%	100.0%	100.0%	900

2008 Work Plan

1. Annex the Stan Miller parcel to provide approximately 100 workforce housing units.
2. Amend relative requirements for new commercial development to partially address the keep-up demand it generates; remove the exemption for projects of less than 5,000 square feet and consider incentives to provide workforce housing on site though negotiated parking requirements, fee waivers, residential density and public subsidies/partnerships.
3. Amend the relative requirement for multi-family development removing the exemption for projects of less than 5,000 square feet to partially address the keep up demand it generates and consider incentives to provide workforce housing on site though negotiated parking requirements, fee waivers, residential density and public subsidies/partnerships.
4. Create a new relative requirement for single-family homes that encourages the construction of accessory dwelling units (ADU's) in units of 3,500 square feet or larger, possibility through -10 points if not provided and +10 points if provided. Minimum and maximum sizes for the ADU's should be established (400 to 800 sq ft) with covenants restricting occupancy to employees and an administrative system with enforcement procedures. Target – 50% of all units ≥ 3,500 sq ft, or 150 units by build out.
5. Amend the relative requirements for lodging (condo hotels, timeshare, hotels, etc,) so that development of accommodations is required to produce workforce housing more proportional to the number of jobs it generates.
6. Preserve market units that are now occupied by employees for occupancy as workforce housing in the future through buy downs, acquisition and resale/rental, buying the right to impose deed restrictions or other methods that might be identified. Evaluate the cost of this strategy and implement a program to evaluate the rate of loss by monitoring rental vacancies/availability, use

of second homes, retirement trends, etc. Develop an annual target considering the projected loss and cost of the preservation program.

7. Create a partnership with a private developer for development of at least 40 workforce housing units on the Valley Brook parcel to partially address existing (catch-up) demand for workforce housing; amend LUGS to be consistent with the recently completed Valley Brook Master Plan.
8. Develop a concept, phasing plan, schedule and approximate budget for future development of the Block 11 parcel with at least 325 workforce housing units.
9. Pursue the acquisition of the Claimjumper parcel.
10. Negotiate with developers for construction of Phase 2 of Pinewood Village to add approximately 30 apartments.
11. Formalize incentives such as fee waivers, funding assistance, density transfers, supplying land and utility taps, tax rebates, and other methods for new construction and conversion of existing free market to affordable units.
12. Continue to work with the School District on partnerships for production of employee housing.
13. Continue to respond to opportunities for annexation with application of guidelines calling for 80% of the units to be workforce housing.
14. Consider expanded down payment assistance programs to increase home ownership opportunities such as the Funding Partners program proposed by the Summit County Housing Authority.
15. Utilize the Summit County Housing Authority for administration of deed restrictions, sale and rental of workforce housing units, homebuyer education and other specific tasks associated with managing the growing inventory of units. Work with the SCHA to develop a manual/procedural guide for use by the SCHA.
16. Revisit and update the standard deed restriction template and the Administrative Guidelines/Procedures to insure that deed restrictions and the guidelines are current, are standardized, and that they insure permanent affordability for local employees.
17. Track progress annually – number of units produced and preserved, age groups served, incomes served and number of units lost annually; modify strategies as appropriate.

Future Actions

1. Identify and land bank sites appropriate for workforce housing.
2. Evaluate opportunities for other Town-owned parcels that have been identified as potential sites for housing including the Ice Rink, Stillson and McCain sites.
3. Evaluate the effectiveness of the housing assistance offered to Town employees.
4. Work with the business community to create programs through which employers can help provide housing for their employees, known as employer-assisted housing (EAU).
5. Explore options for housing members of the workforce as they age and retire.

6. Expand efforts to acquire existing free-market units and convert them to permanently affordable workforce housing.
7. Explore other mechanisms for no net loss of units that function as workforce housing.
8. Work with the Housing Authority to make sure that renters who want to buy have adequate homebuyer education and resources to qualify for mortgages.

Accomplishments

The following table is an inventory of the employee housing units that have been produced through 2007 as a result of the implementation of strategies used alone or in combination including:

- The relative development code;
- Fee waivers;
- Density for employee units;
- Land banking;
- Annexation policy;
- Out of town water service.

This information should serve as a baseline for measuring the effectiveness of future programs.

Property	Price Cap	Avg AMI	pre-1999	2000	2001	2002	2003	2004	2005	2006	2007	Subtotal	Future	Total
Dispersed in Town	No	none	99	2	6		1	1		6	1	116		116
Wellington 1	Yes	99%		14	20	17	15	17	8	7		98		98
Wellington 2	Yes	110%								7	16	23	105	128
GibsonHeights	Yes	71%			1	34	5					40		40
Vista Point	Yes	113%				9	5	5				19		19
Kennington	No	none	36									36		36
Farmers Grove*	No	none				2	4	7	2			15		15
Monarch Townhomes	Yes	90%		3	4		1	4	1			13		13
Breck Terrace	Both	90%		20		11	5			15		51	129	180
Pinewood Village	Yes	83%			74							74		74
Vic Landing	Yes	86%										0	24	24
Maggie Placer	Yes	106%										0	18	18
Stan Miller	Yes	117%										0	100	100
Pinewood #2	Yes	TBD										0	30	30
Valley Brook	Yes	TBD										0	40	40
Block 11	Yes	TBD										0	325	325
Annual Increase			135	39	105	73	36	34	11	35	17	485	771	1,256

* Farmers Grove includes 35 additional units that are restricted for no short-term rental.

Other Options - The following options have been considered and are not recommended at this time:

1. Inclusionary Zoning, which would require a percentage of the units in new subdivisions to be deed restricted as workforce housing. This was not included in the work plan because all developable land within the Town is already subdivided. Therefore, inclusionary zoning is not viewed as a viable effective strategy at this time.
2. Commercial and Residential Linkage, which would have required new development to provide housing for a portion of the demand generated by new employees, was eliminated since the

amount of new development is limited and the number of units that could be produced given legal constraints would be low relative to the amount of effort required to create and administer the requirements.

2008 Housing Budget

Revenue		Expenses	
Interest	\$10,000	Acquisition of Block 11 parcel	\$960,000
Rental Income	\$28,000	Town Down Payment Assistance	\$60,000
Mortgage Payments	\$20,000	Town Rental Assistance	\$12,500
Impact Fee	\$800,000	Claimjumper parcel acquisition	TBD
Sales tax	\$285,600	Valley Brook development subsidy	TBD
Capital Funds	\$1,500,000	Buy Down Program	TBD
Transfers	\$462,441	County-wide Down Payment	TBD
Total	\$3,106,041		

The Town has budgeted \$1.5m from Capital funds through 2012 for a total of \$7.5m for capital housing development; the Impact Fee is effective for 10 years and will generate an estimated \$10m for housing projects.

REQUEST FOR FUNDING DOWN PAYMENT ASSISTANCE PROGRAM

INTRODUCTION AND PURPOSE

The Summit Combined Housing Authority (SCHA) as a regular course of business provides down payment assistance loans through four different programs for qualified applicants. Three of these programs are targeted for applicants making less than 100% of AMI; the fourth one targets the 100-160% range. Funds for the lower AMI programs come from state sources, and currently the SCHA is awaiting grant approval for continued funding. Funds for the higher AMI program were initiated through a federal grant and as of the end of 2007 those funds are exhausted. We do not anticipate any payoffs from these loans in the next few years as the majority of them were originated within the past 24 months.

The rising cost of housing in Summit County is creating a need for an additional loan program that goes from 81-160% AMI. In order for the SCHA to continue in this facet of its regular course of business, it is necessary for us to expand our loan program portfolio to meet this demand.

The SCHA hereby proposes creating a down payment assistance program that would utilize funds contributed by each of the SCHA Board Members for this purpose. Our initial request from the Town of Breckenridge is for \$40,000. Our goal is to fund this program and launch its use by April 30, 2008. We would like to reserve the opportunity to approach each Member once again in 2009 should we ascertain appropriate demand still exists. We anticipate that the fund can become self-revolving after this point based on loan structure.

BACKGROUND DETAILING OUR NEED

We would like to identify the previous utilization of the higher AMI loan program for your review. The total funds allocated to the SCHA from 2003 to 2007 (when the SCHA share of the fund was "borrowed out") was \$220,000; of that \$53,800 was repaid and loaned out again. The average loan size was \$9,301 and the AMI level breakdown was as follows:

2003	\$0	zero loans	0-60 %	0 loans
2004	\$61,850	7 loans	61-80 %	2 loans
2005	\$18,150	2 loans	80-100 %	18 loans
2006	\$53,722	6 loans	101-160 %	10 loans
2007	\$145,310	15 loans		

With this information, it is evident that the demand for funds at the higher AMI levels has risen dramatically over the past two years; indicative of the increased escalation of housing prices in our locale. Considering that not all new developments are likely to offer housing at the 80 – 100% AMI level, particularly from the private sector, and that the SCHA already has access to federal and state funds that meet that target, the need for funds reaching the higher AMIs is clear.

GOALS AND OBJECTIVES OF THE LOAN PROGRAM

Goal # 1

To establish a down payment assistance loan fund in the approximate amount of \$160,000.

Objective #1 – Obtain funding from each SCHA Board Member in an amount sufficient to meet the needs of the County-wide residential demand.

Goal # 2

To pioneer a down payment assistance loan program that will eventually become self-revolving.

Objective #1– Structure the loans such that early payoffs are encouraged

Objective #2 – Reserve the opportunity to request additional funding in future year(s) from each Member.

Goal #3

Target qualified homebuyers at the 81 – 160% AMI levels

Objective #1 – Reach out to all qualified Summit County residents by allowing them to access the residential location best suited to their needs and desires.

Objective #2 – Provide program accountability to Members to ensure qualification requirements are met.

METHOD OF LOAN PROGRAM IMPLEMENTATION

Each participating member would contribute their funds directly to the SCHA, who will then deposit those funds into the Summit Combined Housing Authority's combined operating checking account. The SCHA will provide monthly loan summary reports to each Member detailing fund usage.

Loan Program Guidelines

Eligible Borrowers: Borrowers purchasing a home in who do not own other real estate or a mobile home at time of closing, and who earn their living from a business operating in and serving Summit County by working at such business an average of at least 30 hours per week on an annual basis.

Eligible Property: *Non-Restricted Loan:* Permanently affixed real property located within the established geographic service area of the SCHA governing documents.

Restricted Loan: Permanently affixed real property located within the established geographic service area of the Member jurisdiction.

Income Threshold: Between 81% to 160% of the most recently published HUD Area Median Income, adjusted for actual household size, as published for Summit County. Income is established by the currently demonstrated income, excluding overtime, shift bonus, commission and bonus income that have not been earned consistently for the most previous 2-year period with a strong likelihood of continuance.

Loan Amount: 5% of the contract purchase price or \$10,000, whichever is less.

Max. Purchase Price: None.

Loan to Value: Maximum Combined Loan to Value is 105% of purchase price.

Debt Ratio: Recommended back ratio of 41%, with a maximum of 50% supported by verified compensating factors.

Minimum Investment: Borrower must have a minimum direct transaction investment source acceptable to the primary lender. In no case may the Seller or premium pricing of the mortgage interest rate satisfy this minimum requirement. Minimum direct transaction investment amount shall not be less than \$1000.

Assets: Limitations on borrower's verified assets.. Maximum allowable liquid assets not to exceed \$15,00 after closing.

Repayment: Periodic payments are not required during the first 24 months of the loan. Beginning at month 25, monthly payments of principal and interest will be due. Payments will be calculated on a 20 year amortization.

Interest Rate: Interest shall begin accruing at month 25 at the rate of 3% per annum. Default interest rate shall be 6%.

Use of Funds: Down payment, closing costs and pre-paid items related to the primary loan.

Homebuyer Training: Required on all loans, as evidenced by a Fannie Mae, Freddie Mac, HUD or CHFA-approved provider.

Term: Maximum term is 7 years.

Application Fees: *Non-Restricted Loan* \$350. Fee shall be collected at the time of application and is non-refundable.
Restricted Loan \$200. Fee shall be collected at the time of application and is non-refundable.

Collateral: Subordinate lien priority on subject real property.

Exceptions Policy: All aspects of the Summit Combined Housing Authority eligibility and underwriting criteria are subject to Staff-level exception authority.

Origination Procedures

Application: Applicants shall submit their loan application and all substantiating documentation directly to Staff at Summit Combined Housing Authority.

Processing: SCHA will establish income and employment eligibility

Closing: SCHA will deliver closing instructions and loan proceeds direct to title. Funds in a form acceptable to title are sent 24 hours prior to the scheduled closing date.

Fees Collected: The Application Fee collected at application will appear as a prepaid item by the borrower on the HUD1 Settlement Statement. Fees necessary to record the Deed of Trust will be collected directly from the borrower at closing and be reflected on the HUD Settlement Statement.

Requirements: Loan funds shall be disbursed to title upon proper execution of the Loan Reservation Approval form.

Settlement: Borrower may NOT receive any proceeds at the time of settlement regardless of total contribution. Title will be instructed to show any excess proceeds as a principal reduction to SCHA on the Settlement Statement and return such funds for proper credit. No changes to the Summit Combined

Housing Authority loan documents or loan amount shown on the HUD1 are permitted as a result of excess proceeds.

Servicing Procedures

SCHA will service all loans originated from this fund. Monthly performance reports will be provided to each jurisdiction at Board meetings. The Collection Policies of the SCHA will apply to all loans. Loans originated under the Restricted Loan guidelines will incur a \$200/year servicing fee, billed to each jurisdiction annually in December. No service fee will be incurred for loans originated under the Non-Restricted guidelines.

SUMMARY

The Summit Combined Housing Authority has a vision that *everyone deserves a place to call Home*. We hereby appeal to The Town of Breckenridge to assist us in making this a reality by contributing an initial amount of \$40,000 to help establish this down payment assistance program.

Respectfully submitted,

Jennifer Kermodé
Executive Director
Summit Combined Housing Authority



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, March 11, 2008 (Regular Meeting); 7:30 p.m.

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES** – February 26, 2008 Regular Meeting *Page 31*
- III APPROVAL OF AGENDA**
- IV COMMUNICATIONS TO COUNCIL**
- A. Citizens Comment - (Non-Agenda Items ONLY; 3 minute limit please)
- B. BRC Director's Report
- V CONTINUED BUSINESS**
- A. **SECOND READING OF COUNCIL BILL, SERIES 2008 – PUBLIC HEARINGS****
- 1. Council Bill No. 6, Series 2008-** AN ORDINANCE ADOPTING AMENDED GUIDELINES FOR LAND USE DISTRICT 33 *Page 36*
- 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” *Page 47*
- VI NEW BUSINESS**
- A. **FIRST READING OF COUNCIL BILL, 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 *Page 50*
- 2. Council Bill No. 11, Series 2008-** AN ORDINANCE REPEALING CHAPTER 6 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING SECURITY GUARDS *Page 53*
- 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 55*
- 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 84*
- 5. Council Bill No. 14, Series 2008-** AN ORDINANCE APPROVING AN AGREEMENT WITH STILES PARTNERSHIP LLP AND STILES II PARTNERSHIP LLP *Page 89*
- 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 115*
- 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 146*
- B. **RESOLUTIONS, SERIES 2008-**
- 1. A RESOLUTION APPROVING AN AGREEMENT WITH CHIHUAHUA, LLC, A COLORADO LIMITED LIABILITY COMPANY, CONCERNING THE PROPOSED SNAKE RIVER LAND EXCHANGE** *Page 153*
- 2. A RESOLUTION RESTRUCTURING AND REESTABLISHING THE TOWN OF BRECKENRIDGE PUBLIC ARTS COMMISSION** *Page 167*

C. OTHER

1. Request for Fire Permit

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VII PLANNING MATTERS

- A. Planning Commission Decisions of March 4, 2008
- B. Town Council Representative Report (Dr. Warner)

Page 2

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

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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 February 26, 2008 Town Council Meeting to order at 7:30 p.m. The following members answered roll call: Mr. Bergeron, Ms. McAtamney, Mr. Rossi, Mr. Millisor, Dr. Warner and Mayor Blake. Mr. Mamula was absent.

APPROVAL OF MINUTES – February 12, 2008 Regular Meeting

There were 2 changes to the minutes. Mayor Blake commented that under “Citizens Comments” Marty Twissler’s statement was not completed. Jen McAtamney commented that under “Citizens Comments” the new childcare facilitator is Leslie Davis not Davidson. . They were approved with those two changes.

APPROVAL OF AGENDA

Town Manager, Tim Gagen, had no changes to the agenda.

COMMUNICATIONS TO COUNCIL

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

B. BRC Director’s Report – Corry Mihm- Corry reported that on average about 45-50% of visitors to Welcome Center are using the restrooms. International visits are up to 17% as compared to 12% last year. What are people doing while they are here??- Alpine skiing declined slightly, 45% of skiers are alpine skiing as compared to 50% last year. Snowboarding increased 33% this season as compared to 30% last year. Shopping is at 68% as compared to 61% last year. Museums & Historical sites are at 19% and Arts and Cultural activities are at 12% as compared to 10% last year. The estimated expenditures per person per day have increased to \$241/person/day. Mr. Bergeron questioned whether we could do human surveying instead of using computers.

CONTINUED BUSINESS

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

1. Council Bill No. 5, Series 2008- AN ORDINANCE AUTHORIZING A SECOND AMENDED GRANT OF EASEMENTS TO B & D LIMITED PARTNERSHIP

Tim Berry commented that this ordinance would grant an access Easement to the buildings located off Highway 9. \$126,000 was the estimated cost that the BBC would have paid for the road. The town has agreed to reimburse the access amount over that amount.

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

Mr. Bergeron moved to approve Council Bill No. 5, Series 2008 on second reading with the easement agreement in the form in the packet. Ms. McAtamney made the second. The motion passed 6-0.

2. Council Bill No. 7, Series 2008- AN ORDINANCE AMENDING SECTION 1-7-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE COMPENSATION OF THE MAYOR AND COUNCILMEMBERS ELECTED OR APPOINTED ON OR AFTER APRIL 1, 2008

Tim Berry commented that the ordinance would amend the portion of the Town Code that sets the salaries of the Mayor and the Councilmembers. If adopted, the ordinance will raise the monthly salaries of the Mayor and the Councilmembers to \$1,200 and \$800, respectively.

Because an elected official’s salary can neither be increased nor decreased during his or her term of office, if this ordinance is adopted the change will apply only to persons elected at the regular Town election this April and thereafter.

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

Ms. McAtamney moved to approve Council Bill No. 7, Series 2008 on second reading. Mr. Millisor made the second. The motion passed 5-1 with Mr. Rossi objecting.

3. Council Bill No. 8, Series 2008- AN ORDINANCE AMENDING SECTION 1205 OF THE MODEL TRAFFIC CODE FOR COLORADO, 2003 EDITION

Tim Berry commented that the ordinance would amend the Model Traffic Code to allow for angle parking within the Town. The Model Traffic Code contemplates that angle parking may properly be used within a municipality, but the Code requires that it be authorized by ordinance. As you know, we have several locations within Town where angle parking is required.

The ordinance would amend Section 1205 of the Model Traffic Code to authorize angle parking within the Town where determined to be appropriate by the Town Engineer. As you will note, once a street is designated for angle parking the Town will have to make or sign the street to indicate that angle parking is permitted and at angle at which vehicles shall be parked.

Any person who parks improperly in a designated angle parking slot will be guilty of a civil traffic violation. The Municipal Judge will establish the appropriate fine.

This ordinance will not be applicable to Colorado Highway 9, so it will not be necessary to get CDOT's approval before this ordinance can become effective.

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

Mr. Bergeron moved to approve Council Bill No. 8, Series 2008 on second reading. Dr. Warner made the second. The motion passed 6-0.

B. FIRST READING OF COUNCIL BILLS, SERIES 2008-

1. 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 municipal ordinances may only regulate conduct that constitutes a "misdemeanor" under state law (misdemeanors are less serious crimes than felonies). Simply stated, the Town cannot make a municipal offense out of what would otherwise be a felony under state law.

Section 6-3B-10 of the Town Code defines the 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.

State law provides several classifications of motor vehicle theft ranging from a misdemeanor offense to the more serious felony crime of "aggravated motor vehicle theft in the first degree." Both classifications of state law violations require the culprit to knowingly obtain control or exercise control over the motor vehicle of another person. However, what changes the misdemeanor violation into the felony crime is if the person also does one of a series of other bad things while in possession of the stolen vehicle. The list of aggravating factors that can turn the misdemeanor violation into the felony includes causing \$500 or more of property damage while in possession of the stolen vehicle. Thus, a person who steals a car and causes \$500 or more of property damage may be prosecuted in the state court for the felony crime of motor vehicle theft.

In order to make it clear that the Town's Joyriding Ordinance does not apply to felony auto theft 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.

However, as noted, the state's first degree aggravated motor vehicle theft statute contains a list of bad conduct which, if combined with the simple act of stealing a vehicle, can turn a lesser crime into the more serious crime of first degree aggravated motor vehicle theft. One of those aggravating factors is causing \$500 or more of property damage while in unlawful possession of someone else's vehicle. The list of aggravating factors, however, includes more than the property damage provision, and refers to such other bad conduct as causing bodily injury to another person while in possession of the other person's vehicle, or using the vehicle in the commission of a crime other than a traffic offense.

When the Town's Joyriding Ordinance was enacted many years ago it adopted verbatim the list of aggravating factors that were present in the state motor vehicle theft law at that time. However, subsequent to the adoption of the Town's ordinance the state's list of aggravating factors has changed in a number of respects, and the Town ordinance was not updated. As a result, the list of state law aggravating factors in the Town's ordinance is out of date and requires revision.

Instead of updating the ordinance by once again adopting verbatim the list of aggravating factors from the revised state law (and running the risk of the updated list itself becoming outdated at some point in the future), I have instead just eliminated the list entirely and replaced it with generic language providing that the Town's Joyriding Ordinance does not apply to a felony violation of the state motor vehicle theft law. That approach will keep our ordinance from becoming outdated the next time the state motor vehicle theft law is updated by the legislature.

Dr. Warner moved to approve Council Bill No. 9, Series 2008 on first reading. Mr. Rossi made the second. The motion passed 6-0.

C. RESOLUTIONS, SERIES 2008

1. A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2008 TOWN BUDGET FOR PROJECTS NOT COMPLETED IN BUDGET YEAR 2007

Tim Gagen commented that the resolution would make changes to the 2008 budget to authorize a roll-over amount of \$191,167 of 2007 General Fund budget authority from 2007 to 2008 to fund ongoing projects and programs budgeted and/or initiated in 2007, but not completed by year end, to authorize \$167,687 of additional Affordable Housing Fund spending authority be rolled over from 2007 to 2008 for childcare scholarships and supplements, to authorize \$37,000 of additional Marketing Fund authority be rolled over to offset expenses related to relocation of Spring Massive.

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

Mr. Bergeron moved to approve the Resolution, Series 2008. Dr. Warner made the second. The motion passed 6-0.

2. A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2007 TOWN BUDGET

Tim Gagen commented that the resolution would make changes to the 2007 budget by authorizing an increase of \$150,000 in additional budget authority within the Water Utility Fund for water line repairs.

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

Mr. Bergeron moved to approve the Resolution, Series 2008. Dr. Warner made the second. The motion passed 6-0.

D. OTHER

PLANNING MATTERS

• Planning Commission Decisions of February 19, 2008.

With no requests for call up, Mayor Blake stated the Planning Commission decisions of the February 19, 2008 meeting will stand as presented.

• Town Council Representative Report.

Dr. Warner commented that the fun park is going to move to the gondola parking lot and will butt up against the gondola building. Base of Peak 8 will be closed for construction. The Planning Commission called it up to see what kind of fencing there will be, etc. They asked for more substantial fencing. They also talked a lot about solar panels in and out of the conservation district. They would like to review solar panels on historic structures. Mr. Bergeron asked where people will park for the fun park. Dr. Warner commented that they will park on the Northside. He also questioned what they will have for food and if there may be potential for liter problems.

REPORT OF TOWN MANAGER AND STAFF

Tim Gagen, Town Manager, had nothing to report.

REPORT OF MAYOR AND COUNCILMEMBERS

A. Report of Mayor (CAST)

Mayor Blake commented that the next meeting is next week.

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

Mr. Bergeron had nothing to report.

- 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 commented that EDA out of Estes Park will be doing the restoration project for Carter Museum.
- F. Liquor Licensing Authority (Mr. Bergeron)**
Mr. Bergeron commented that the Chief gave a report and they are busy at work with the bar owners. Dr. Warner commented that he has gotten complaints about how dirty it is outside of the Salt Creek.

OTHER MATTERS

Mr. Millisor commented that Dave Newkirk came to see him about the ball fields. He is concerned that the ball fields will not be maintained for the kids in the community. Tim helped to clarify the history for Mr. Millisor. Mr. Millisor understands that the school district will not maintain the fields. He wants to look at who has the resources to maintain them and if the Town can help then maybe we should. Tim commented that we maintained the fields for 15 years. The School District said they wanted to take over the maintenance of the fields so the Town let them. Mayor Blake commented that he wants to hear directly from the School District and they need to come directly to council and fess up that they need help with the fields instead of sending a middleman. Dr. Warner commented that he wants the end result to be that the kids have a field but he does want to talk directly with the School Board.

Mayor Blake passed out a sheet of information on the late night bars and what Jeffrey and himself have been working on. This document is a part of the record contained at the end of these minutes. On March 6th the Chief and Assistant Chief have set a meeting with bar owners. They will try to get them all in one room to sign up for what he passed out. They would like them to abide by what was presented by Mayor Blake and Mr. Bergeron. The main points were for the bar staff to 1) try to stop the problem at the door, 2) don't over-serve, 3) no shot specials offered for less than \$3, 4) don't offer drink specials after 11pm, 5) utilize responsible marketing as to not promote getting liquored up. It would be voluntary to sign up. They feel this is a starting point. Mr. Bergeron commented that even if this doesn't do anything they have gotten some face time and bar owners know now that the Council is taking this seriously. Several of the bars would welcome stiffer enforcement. Mr. Rossi asked whether there was any discussion on what got us to this point. Mayor Blake commented that we seem to be dealing with a young age group (young 20's), and there seems to be some anger. Mr. Bergeron commented that it is very different than it used to be. There are more fights, more violence, it is a different crowd these days than what we used to see 20 years ago. Mr. Rossi asked if we could put an ad in the paper thanking the people for signing the agreement. Dr. Warner really appreciated Mayor Blake and Mr. Bergeron doing the work they have thus far.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss the regular meeting was adjourned at 8:31 pm.

Submitted by Alison Kellermann, Administrative Services Coordinator

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

Ernie Blake, Mayor

**WE, THE OWNERS AND MANAGERS OF LATE NIGHT UCENSED
ALCOHOL PREMISES IN THE TOWN OF BRECKENRIDGE:**

- Recognize that Breckenridge is a resort community and that a positive, collective image as servers of alcohol in the Town, improves all of our business opportunities;
- Strive for a vibrant, restaurant and bar business community;
- Agree that a favorable guest experience by our patrons is good business;
- Agree that over service of alcohol to intoxicated persons is not only illegal but creates a negative guest experience for our other patrons,

Therefore:

We the undersigned bar manager/owners voluntarily support the following five initiatives to improve the guest experience in our licensed liquor establishments and minimize negative patron behaviors:

1. Stop trouble at the door; emphasize with our employees the early recognition of intoxicated persons and persons exhibiting aggressive behavior and preventing their admission into our businesses. Don't allow patrons who have caused problems on more than one occasion back into our establishments.
2. Don't overserve: do not serve alcoholic beverages to visibly intoxicated persons.
3. No "shot specials" will be offered for less than \$3.00.
4. Don't offer any drink specials after 11 :00 pm.
5. Utilize only responsible advertising without the promotion of the excessive consumption of alcohol.

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 6 (Amended Land Use District 33 Guidelines)

DATE: March 3, 2008 (for March 11th meeting)

The second reading of the ordinance to amend the Land Use District 33 Guidelines is scheduled for your meeting on March 11th. You will recall that this ordinance is required by the Stan Miller Annexation Agreement.

At the time of first reading of the ordinance staff believed that Land Use District 33 encompassed only the Stan Miller property. Subsequent to first reading, however, it was discovered that Land Use District 33 also includes a small area south of the Stan Miller property. The small parcel is not contiguous with the Stan Miller property, and its development should not be governed by the amendments to the LUD 33 Guidelines that apply to the Stan Miller property. Instead, the “old” LUD Guidelines (i.e., the LUD 33 Guidelines that are currently in effect) should continue to apply to this small portion of LUD 33. As a result, it is necessary to amend the ordinance.

The enclosed version of the ordinance has been blacklined to show the proposed changes from first reading. The most important amendment is the division of Land Use District 33 into two parts—District #33-North (which is the Stan Miller property), and District #33-South (which is the small non-contiguous area comprising the remainder of the land use district). A map showing the proposed Land Use District #33-North and Land Use District #33-South is also enclosed with this memo.

This would not be the only Land Use District Guideline that applies to non-contiguous parcels. Land Use District 10 already does that. Dividing Land Use District #33 into two parts resolves the current problem and allows for the amendment of the Land Use District Guidelines to deal with the Stan Miller development without delay. The other course of action that was considered—starting over to create an entirely new land use district for the Stan Miller property—would delay the process by several months, and Breckenridge Lands and staff were concerned about getting the amendments to the Land Use District completed in time to allow Planning Commission to approve the proposed Master Plan, which cannot be approved under the current LUD language. In addition, there was concern about the possibility that the LUD amendment might carry over until after the election, which could slow down the process as new Council members get up to speed.

The bulk of the changes to the ordinance relate to division of Land Use District #33 into #33-North and #33-South. Because #33-South is not to be subject to the amended Guidelines governing the development of the Stan Miller property, we simply amended the ordinance so as

to put back in to the ordinance the “old” (current) District 33 Guidelines as the governing rules for District #33-South. In other words, under the revised ordinance the Land Use Guidelines for District #33-South will not change at all; this area will continue to be governed by the same Land Use Guidelines that existed before the adoption of the proposed new ordinance. Only the Stan Miller property will be subject to the revised Guidelines.

As indicated in the ordinance, staff has proposed several other minor amendments to the proposed new Guidelines for District #33-North. These primarily relate to the parts of the Guidelines dealing with “Vehicular Circulation” and “Public Transit Accommodation.”

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

1 **FOR WORKSESSION/SECOND READING – MARCH 11**

2
3 Additions To The Ordinance As Approved on First Reading Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. 6

7
8 Series 2008

9
10 AN ORDINANCE ADOPTING AMENDED GUIDELINES FOR LAND USE DISTRICT 33

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

14
15 Section 1. Findings. The Town Council has heard and considered the evidence presented
16 in support of and in opposition to the adoption of this ordinance. Based upon the evidence
17 presented to the Town Council in connection with its consideration of this ordinance, as more
18 fully set forth in the record of the proceedings in this matter, the Town Council of the Town of
19 Breckenridge, Colorado hereby finds and determines as follows:

20
21 1. By Ordinance No. 3, Series 1987, the Town adopted the Breckenridge Land Use
22 Guidelines ("Land Use Guidelines").

23
24 2. The Land Use Guidelines contain provisions governing the development of real
25 property located within the various Land Use Districts of the Town, including, but not limited to,
26 Land Use District 33, and represent the Town's general zoning restrictions with respect to real
27 property located within the Town.

28
29 3. By Ordinance No. 18, Series 1997, and Ordinance No. 12, Series 2001, the
30 Town Council adopted certain procedures to be followed to amend the Land Use Guidelines.

31
32 4. The amendments to the Land Use Guidelines made by this ordinance are quasi-
33 judicial in nature.

34
35 5. The procedural requirements of Ordinance No. 18, Series 1997, with respect to a
36 proposed quasi-judicial amendment to the Land Use Guidelines have been fully satisfied.
37 Without limiting the generality of the foregoing, the Town Council finds that a public hearing
38 was held by the Town Council of the Town of Breckenridge on March 11, 2008 to consider the
39 adoption of this ordinance. Notice of such hearing was published twice in The Summit County
40 Journal, a newspaper of general circulation in the Town, the first publication occurring at least
41 twelve (12) days prior to the hearing and the second occurring at least four (4) days prior to the
42 hearing, all as required by Ordinance No. 18, Series 1997. The Proof of Publication of such
43 notice was admitted into evidence and made a part of the record in connection with the adoption
44 of this ordinance. In addition to the newspaper notice, not less than twelve days prior to the date
45 of the public hearing the Director of the Department of Community Development mailed a copy
46 of the text of the newspaper notice by first class mail to all owners of real property located within

1 Land Use District 33 which would be affected by the proposed Land Use Guidelines amendment
2 as shown by the records of the Summit County Clerk and Recorder. The Director's Certificate of
3 Mailing was admitted into evidence and made a part of the record in connection with the
4 adoption of this ordinance.

5
6 6. The amendments to the Land Use Guidelines made by this ordinance are
7 consistent with the Town's Master Plan, and all parts thereof, and bear a reasonable relationship
8 to the welfare of the community.

9
10 Section 2. Amended District 33 Guidelines Adopted. The Land Use District 33
11 Guidelines are hereby amended so as to read in their entirety as follows:

12
13

Breckenridge Land Use Guidelines

14
15

District #33

16 **Introduction**

17
18 **Land Use District 33 is divided into two geographic areas, a northerly portion**
19 **referred to in these guidelines as "District 33-North", and a southerly portion referred to in**
20 **these guidelines as "District 33-South."**

21
22 **DISTRICT 33-North**

23
24 **Desired Character and Function**

25
26 District 33-North is located west of Highway 9 and approximately one mile north of County
27 Road 3 along the Blue River. It includes land that was annexed to the Town in 2008 as part
28 of the "Stan Miller" property annexation (see Ordinance No. 4, Series 2008), and involves
29 approximately 24 acres. It consists mostly of tailings left by dredge mining of the late 19th or
30 early 20th centuries, which have been leveled by mining and other similar activities. With the
31 increased demand for housing, especially for local employees and with the development of the
32 property to the east for residential purposes, the large privately held portion of District 33-North
33 represents one of the few remaining opportunities for privately developed housing.

34
35 **Acceptable Land Uses and Intensities**

36
37 Land Use Type: Residential

38
39 Intensity of Use: 4.5 UPA if with not less than 75% of units ~~are~~ encumbered with a Town
40 approved employee housing covenant

41
42 Structural Type: Single Family, Duplex, and Multi-Family

1 **General Design Criteria**

2
3 *ARCHITECTURAL TREATMENT*

4
5 Contemporary architectural design compatible with surrounding uses is preferred. The
6 form of that architecture will depend upon whether the district develops in a single, duplex or
7 multi-family residential manner.

8
9 *BUILDING HEIGHTS*

10
11 Generally, structures in excess of two stories above grade are discouraged. Building
12 heights will be determined through the development review process of the governing
13 jurisdiction.

14
15 *BUILDING SETBACKS*

16
17 Required building setbacks shall be as provided for in the Development Code or in any
18 approved master plan. Determination of appropriate setbacks will be made during the
19 development review process.

20
21 *PEDESTRIAN CIRCULATION*

22
23 An improved and expanded system, including internal and external links, is desirable to
24 accommodate anticipated pedestrian activity in connection with the residential uses.

25
26 *VEHICULAR CIRCULATION/BUFFER*

27
28 Access to the district is ~~from Highway 9 and should be supplemented by a road through~~
29 ~~the District~~ a frontage road (Stan Miller Drive) which connects to Highway 9. In order to
30 limit the number of intersections ~~with Highway 9.~~ along Highway 9, the existing curb cut that
31 is within District 33-North should be eliminated and there should be no direct access from
32 Highway 9 to District 33-North.

33
34 A substantial buffer and landscaping area is required to screen development from
35 Highway 9 for that portion of District 33-North that is within 350 feet of District 4.

36
37 *PUBLIC TRANSIT ACCOMMODATION*

38
39 No public transit accommodation exists within the district at this time, but the Summit
40 Stage provides regularly scheduled public transit along Highway 9. Development in the district
41 shall anticipate that public transit may be provided in the future.

42
43 **DISTRICT IMPROVEMENTS**

44
45 *UTILITY IMPROVEMENTS*

1 Water Facilities: Distribution lines do not exist within ~~the~~ District 33-North at this time.
2 Provision of distribution lines is required prior to development within ~~the~~ District 33-North.
3 Town water supply and treatment capabilities exist which can support the full development of
4 the district.

5
6 Sanitation Facilities: System collectors do not exist within the district at this time. Provision of
7 sewer lines is required prior to development within the district. Adequate treatment capacity
8 currently exists to accommodate full development.

9
10 Natural Gas, Electricity, Telephone, Cable Television: Distribution lines for natural gas,
11 electricity, telephone and cable television all exist in or adjacent to Highway 9. Utilities will be
12 adequate to serve the entire district at its full development. Installation of any new distribution
13 lines must be underground and meet specifications of individual utility companies. Appropriate
14 easements shall be provided for all new lines.

15 16 *CAPITAL IMPROVEMENTS*

17
18 Capital Improvement Projects: None of the projects described in the Capital Improvements
19 Program are associated with this district.

20 21 *DRAINAGE IMPROVEMENTS*

22
23 Given the district's acceptable uses and intensities, a surface drainage plan should be
24 prepared prior to development. This district drains into the Blue River, and the provision of
25 phosphorous control measures should be anticipated as a condition of development.

26 27 **Relationship To Other Districts**

28
29 Portions of this district directly abut Land Use Districts 1, 4, 6, and ~~6.43~~. Based on the existing
30 and future uses of these districts, compatibility conflicts are not expected.

31 32 **Land Exchange Potential**

33
34 No land under Federal jurisdiction was identified within this district.

35 36 **DISTRICT 33-South**

37 38 **Desired Character and Function**

39
40 **District 33-South is located on the west side of Highway 9 southwest of the intersection of**
41 **Fairview Boulevard and Highway 9. It consists mostly of tailings left by dredge mining of**
42 **the late 19th and early 20th centuries.**

43
44 **Service commercial uses are the district's desired uses, but the density has been kept low to**
45 **encourage the use and infill of similarly designated properties closer to the populated areas**

1 of Town. It is anticipated that this density will remain low until other service commercial
2 areas have developed closer to Town.

3
4 Acceptable Land Uses and Intensities

5
6 Land Use Type: Service Commercial

7
8 Intensity of Use: 1:75 FAR (see below)

9
10 Structural Type: Special Review

11
12 In those areas close to District 4, the Town has determined that an increase in density may
13 be allowed up to a 1:25 FAR if the property owners are willing and able to provide a dense
14 landscaping buffer in District 4 to screen adjacent service commercial uses. That portion
15 of District 33-South lying within 350 feet of the west boundary of District 4 may have a
16 density of up to 1:25 FAR if the landowners provide a substantial buffer and landscaping
17 area within District 4 adjacent to their site.

18
19 That area lying within 360 feet of the west boundary of District 4 may be granted an
20 increased density up to a floor area ratio of 1:25 utilizing the following formulas:

21
22 Improvements within District 4 adjacent to District 33:

23
24 1. If the applicant provides a substantial earthen berm of at least 6 feet in height
25 maximum and 3 feet in height minimum (above the elevation of the adjacent bike
26 path) over 50 percent of District 4, plus provides a minimum of one tree per every
27 500 square feet of land area in District 4 (minimum tree height: 6 feet), plus
28 provides a suitable ground cover over the entire District 4 area, the applicant will be
29 granted a density of 1:50 FAR.

30
31 2. If the applicant provides a substantial earthen berm of at least 10 feet in height
32 maximum and 5 feet minimum (above the elevation of the adjacent bike path) over
33 75 percent of the entire area of District 4, plus provide one tree for every 200 square
34 feet of land area in District 4 (minimum tree heights: 50 percent – 6 feet, 50 percent
35 – 8 feet), plus provides a suitable land cover over the entire District 4 area, the
36 applicant will be allowed a density of 1:25 FAR.

37
38 General Design Criteria

39
40 ARCHITECTURAL TREATMENT

41
42 Contemporary architectural design compatible with the intended use and
43 surrounding uses is preferred. Due to the high visibility of the district, architectural design
44 will be of great importance.

45
46 BUILDING HEIGHTS

1
2 Acceptable building heights will vary depending upon the proposed land uses and
3 their arrangement on the site. Building heights will be determined through the
4 development review process of the governing jurisdiction, but generally buildings in excess
5 of two stories will be discouraged.

6
7 **BUILDING SETBACKS**

8
9 Required building setbacks shall be as outlined in the Development Code. Greater
10 setbacks than those required are encouraged, and determination of appropriate setbacks
11 will be made during the development review process of the governing jurisdiction.
12 Adequate setbacks from the Blue River should be anticipated as a component of
13 phosphorous pollution control.

14
15 **PEDESTRIAN CIRCULATION**

16
17 No generators of pedestrian movement exist within the district.

18
19 **VEHICULAR CIRCULATION**

20
21 Access to the district is not fully developed and would be from Highway 9 or County
22 Road 3 in the future. Those roads currently serve as the primary accesses.

23
24 **PUBLIC TRANSIT ACCOMMODATION**

25
26 No public transit accommodations exist within the district at this time. Development
27 in the district shall anticipate that public transit may be provided in the future.

28
29 **District 33-South Improvements**

30
31 **UTILITY IMPROVEMENTS**

32
33 Water Facilities: Distribution lines do not exist within the District 33-South at this time.
34 Provision of lines is required prior to development within the District 33-South. Town
35 water supply and treatment capabilities exist which can support the full development of the
36 district.

37
38 Sanitation Facilities: System collectors do not exist within the district at this time.
39 Provision of these will be expected for the development of the district. Adequate treatment
40 capacity currently exists to accommodate full development.

41
42 Natural Gas, Electricity, Telephone, Cable Television: Distribution lines are nearby, but
43 will require extension to serve the district. Utilities will be adequate to serve the district at
44 full development. Appropriate easements shall be provided for all new lines.

45
46 **CAPITAL IMPROVEMENTS**

1
2 **Capital Improvement Projects: None of the projects described in the Capital**
3 **Improvements Program are associated with this district, which is located in the County.**

4
5 **DRAINAGE IMPROVEMENTS**
6

7 **Given the district’s acceptable uses and intensities, a surface drainage plan should**
8 **be prepared prior to development. This district drains into the Blue River, and the**
9 **provision of phosphorous control measures should be anticipated as a condition of**
10 **development.**

11
12 **Relationship To Other Districts**
13

14 **Portions of this district directly abut Land Use District 1, 4, 6, and 43. Given the existing**
15 **and future uses of these districts, compatibility conflicts could occur with the service**
16 **commercial uses of this district.**

17
18 **Land Exchange Potential**
19

20 **No land under Federal jurisdiction was identified within this district**
21

22 **Annexation Potential**
23

24 **Annexation of the district would have to occur in phases, due to lack of sufficient contiguity**
25 **with existing municipal limits. The final determination of eligibility for specific parcels**
26 **cannot be made until a proposal for specific lands is made. The area is seen as service**
27 **commercial reserve, and is not expected to be developed for some time.**
28

29 **The district is a low priority for annexation.**
30

31 Section 3. Continued Effect of Land Use Guidelines. Except as specifically amended
32 hereby, the Breckenridge Land Use Guidelines, as adopted by Ordinance No. 3, Series 1987,
33 shall continue in full force and effect.
34

35 Section 4. Police Power Finding. The Town Council hereby finds, determines and
36 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,
37 promote the prosperity, and improve the order, comfort and convenience of the Town of
38 Breckenridge and the inhabitants thereof.
39

40 Section 5. Authority. The Town Council hereby finds, determines and declares that it
41 has the power to adopt this ordinance pursuant to the authority granted to home rule
42 municipalities by Article XX of the Colorado Constitution and the powers contained in the
43 Breckenridge Town Charter.
44

45 Section 6. Effective Date. This ordinance shall be published and become effective as
46 provided by Section 5.9 of the Breckenridge Town Charter.

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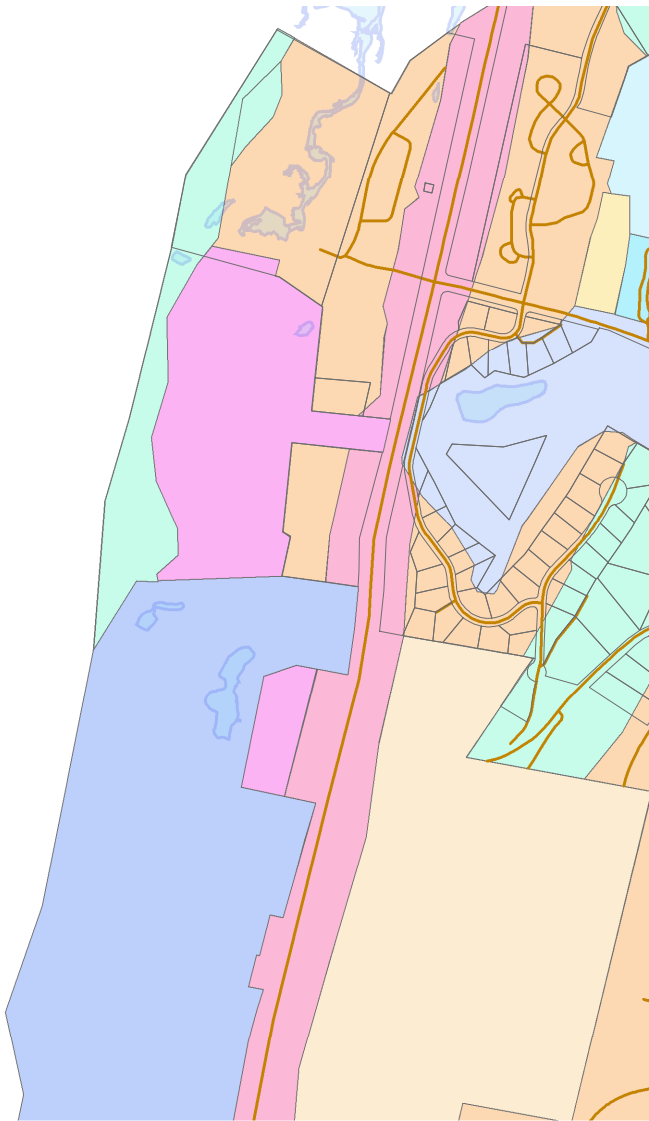
INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be
held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the
____ day of _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the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

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Ernie Blake, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk



MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 9 (Joyriding Ordinance)
DATE: March 3, 2008 (for March 11th meeting)

The second reading of the ordinance to amend the Town's Joyriding Ordinance is scheduled for your meeting on March 11th. 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 11**

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. 9

9
10 Series 2008

11
12 AN ORDINANCE AMENDING SECTION 6-3B-10 OF THE BRECKENRIDGE TOWN
13 CODE CONCERNING THE MUNICIPAL OFFENSE OF “JOYRIDING”

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

17
18 Section 1. Section 6-3B-10 of the Breckenridge Town Code, entitled “Joyriding”, is
19 hereby amended so as to read in its entirety as follows:

20
21 6-3B-10: JOYRIDING:

22
23 Any person who drives or takes any motor vehicle without the consent of the
24 owner or lawful possessor thereof, with the intent of temporarily depriving the
25 owner or possessor of the use of the same, or temporarily making use thereof,
26 commits joyriding, which is unlawful. **This section shall not apply if the**
27 **person’s conduct constitutes the offense of aggravated motor vehicle theft in**
28 **the first degree as defined by section 18-4-409(2), C.R.S., or a felony violation**
29 **of the offense of aggravated motor vehicle theft in the second degree as**
30 **defined by section 18-4-409(4), C.R.S.**

31
32 ~~If the person who in the course of so driving or taking the motor vehicle does one~~
33 ~~or more of the following, joyriding has not occurred:~~

- 34
35 A. ~~Retains possession or control of the motor vehicle for more than~~
36 ~~seventy two (72) hours; or~~
37 B. ~~Attempts to alter or disguise or alters or disguises the appearance~~
38 ~~of the motor vehicle; or~~
39 C. ~~Attempts to alter or remove or alters or removes the vehicle~~
40 ~~identification number; or~~
41 D. ~~Uses the motor vehicle in the commission of a crime other than a~~
42 ~~traffic offense; or~~
43 E. ~~Causes five hundred dollars (\$500.00) or more of property damage~~
44 ~~in the exercise of control of the motor vehicle; or~~

- F. ~~Causes bodily injury to another person while in the exercise of control of the motor vehicle; or~~
- G. ~~Removes the motor vehicle from the State of Colorado for a period of time in excess of forty eight (48) hours; or~~
- H. ~~Unlawfully attaches or otherwise displays in or upon the motor vehicle license plates other than those officially issued for the motor vehicle.~~

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

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

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

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

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

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Ernie Blake, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Amendment to Water Ordinance To Enforce County Cease and Desist Ordinance For Dangerous Septic System

DATE: March 4, 2008 (for March 11th meeting)

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.

Summit County recently inquired whether the Town would discontinue water service to an out-of-town water customer if a "Cease and Desist Order" was put into effect requiring the water customer to stop using his or her septic system because it the septic system is unsafe. Such an order is authorized by both state law and the Summit County Individual Sewage Disposal System Regulations when a person's septic system is not functioning properly and the continued use of the septic system presents a threat to public health.

Under applicable law, a Cease and Desist Order cannot be issued unless an administrative hearing is held meeting minimum due process requirements. At the hearing, the property owner is given an opportunity to contest the County's contention that the continued use of the septic system presents a public health threat. If a Cease and Desist Order is entered by the administrative hearing officer, the property owner is given the right to appeal such order to the District Court. After reviewing the statutes, I am satisfied that an affected landowner is given fair opportunity to contest the issuance of a Cease and Desist Order before the Order becomes effective.

The Town's current Water Ordinance does not authorize the discontinuance of Town water service to an out-of-town water customer when a valid Cease and Desist Order prohibits the water customer from using a private septic system. Because by law an improperly functioning septic system is a public nuisance, I think that it is appropriate for the Town to discontinue water service when required to help enforce a Cease and Desist Ordinance issued by the County. In order to authorize the discontinuation of Town water in that circumstance, it is necessary for the Town's Water Ordinance to be amended.

Enclosed is a proposed ordinance that would authorize the Town to discontinue water service when a final, nonappealable order has been issued directing an out-of-town water customer¹ to stop using his or her septic system. Except in the case of a bona fide public health threat, the Town would be required to give the customer at least 10 days' advance written notice that the water service will be discontinued. I will be happy to discuss this ordinance with you next Tuesday.

¹ Since all in-Town water customers must connect to the Sanitation District, the ordinance will apply only to those out-of-town water customers who have individual septic systems.

1 ***FOR WORKSESSION/FIRST READING – MARCH 11***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2008

9
10 AN ORDINANCE AMENDING SECTION 12-6-4 OF THE BRECKENRIDGE TOWN CODE
11 CONCERNING THE DISCONTINUANCE OF WATER SERVICE TO OUT OF TOWN
12 WATER CUSTOMERS WHEN NECESSARY TO COMPLY WITH A CEASE AND DESIST
13 ORDER

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

17
18 Section 1. Section 12-6-4 of the Breckenridge Town Code is hereby amended by the
19 addition of a new subsection I, which shall read in its entirety as follows:

20
21 **I. Because an individual sewage system or sewage treatment works that does**
22 **not comply with applicable legal requirements constitutes a nuisance**
23 **pursuant to state law, the town shall terminate water service to any out-of-**
24 **Town water service customer when a final, nonappealable order has been**
25 **issued pursuant to the Individual Sewage Disposal Systems Act, Article 10 of**
26 **Title 25, C.R.S., and the Summit County Individual Sewage Disposal System**
27 **Regulations, directing the out-of-Town water customer to cease and desist**
28 **from using the customer’s individual sewage disposal system. The notice and**
29 **dispute resolution provisions of this section shall not apply to the**
30 **discontinuance of water service to an out-of-Town water customer pursuant**
31 **to this subsection and the Town may immediately discontinue such water**
32 **service when necessary to comply with the cease and desist order; provided,**
33 **however, that except in the case of a bona fide public health threat requiring**
34 **immediate discontinuance of the water service, the Town shall provide the**
35 **out-of-Town water service customer with not less than 10 days’ advance**
36 **written notice that the water service will be discontinued.**

37
38 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
39 various secondary codes adopted by reference therein, shall continue in full force and effect.

40
41 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
42 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
43 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
44 thereof.
45

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

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

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

13
14 TOWN OF BRECKENRIDGE, a Colorado
15 municipal corporation
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18
19 By _____
20 Ernie Blake, Mayor
21

22 ATTEST:

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26 _____
27 Mary Jean Loufek, CMC,
28 Town Clerk
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MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Chief of Police
Date: March 11, 2008
Subject: Repeal of Town Code – Security Guards

Staff recommends that Council repeal the Town's Security Guard Licensing Ordinance (Chapter 6, Section 4-6 of the Town Code).

Under this 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. In summary, the Town should not be in the position of regulating the application and hiring process for security guards retained by local employers.

1 **FOR WORKSESSION/FIRST READING – MARCH. 11**

2
3 COUNCIL BILL NO. ____

4
5 Series 2008

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

9
10 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
11 COLORADO:

12
13 Section 1. Chapter 6 of Title 4 of the Breckenridge Town Code, entitled “Security
14 Guards”, is repealed.

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

18
19 Section 3. The Town Council hereby finds, determines and declares that it has the power
20 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
21 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

22
23 Section 4. This ordinance shall be published and become effective as provided by
24 Section 5.9 of the Breckenridge Town Charter.

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

31
32 TOWN OF BRECKENRIDGE, a Colorado
33 municipal corporation

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36
37 By _____
38 Ernie Blake, Mayor

39
40 ATTEST:

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

MEMO

TO: Town Council

FROM: Town Attorney

RE: Rock Pile Ranch Land Exchange

DATE: March 4, 2008 (for March 11th meeting)

As Council is aware, staff has been working for several months on 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.

Enclosed with this memo is the proposed Agreement to Exchange Real Estate (Without Valuations), and the ordinance that needs to be adopted to approve the agreement. An ordinance (instead of the usual resolution) is required in this instance because the Town's Charter requires that the conveyance or exchange of Town-owned land must either be approved by ordinance duly adopted by the Council, or by the voters, at the Town Council's option. Staff understands that the Council does not intend to submit this proposed contract to an election.

The property owned by the Association is classified as a "common element" of the Rock Pile Ranch Condominium under Colorado law. As such, the law requires that the conveyance of the property to the Town be approved by at least 67% of the members of the Association. For this reason, you will see that I have added an exhibit to the contract (Exhibit "C") which contains signature blocks for each of the unit owners at Rock Pile Ranch. Even if the contract is approved by the Town and the Association, we will not have a deal until the required percentage of the unit owners also approve the contract. Staff has been advised that a sufficient number of the unit owners at Rock Pile Ranch approve of the proposed exchange, and that the required number of signatures can be obtained.

There are a list of contingencies that must be met if this exchange is to close. The contingencies are set forth in Section 7 of the contract. The most important of the contingencies are as follows:

1. The Association must resubdivide its property in order to legally create the parcel of common element that is to be conveyed to the Town. The Association will pay to prepare and file the required plat, but the Town has agreed to waive the development permit and review fees for the Association's subdivision application.

2. The Town must re-subdivide its Block 11 parcel in order to legally create the parcel of land that is to be conveyed to the Association. The Town will pay all costs of preparing and filing the required plat.
3. The Land Use District 31 Guidelines will have to be amended so that any future use of the Block 11 parcel by the Association will not violate the Development Code's absolute density policy, or receive any negative points under the relative density policy. Currently, Block 11 has no density on it (it is zoned primarily as "airport/open space" and allowed governmental uses). The amendment to the LUD 31 Guidelines would anticipate that at some point in the future the Association may acquire and place density on the parcel it is acquiring as part of the exchange. However, there is no contractual obligation on the part of the Town to provide any density for the Association's parcel. In fact, as currently drafted the contract requires the Town's consent before any density can be transferred to the Association's Block 11 parcel (see Section 8 of the agreement).

Closing of the exchange will not occur unless and until all of the enumerated contingencies are satisfied.

Section 9 of the Agreement provides that the Association will not make any improvements to its Block 11 parcel until the first to occur of the Town's completion of its Block 11 Master Plan, or two years from the date of the closing of the exchange. If the Block 11 Master Plan has been completed when the Association proposes to improve the Block 11 parcel, the improvements must be compatible with the Master Plan. Also, the Association cannot make any improvements to the Block 11 parcel until the Town reviews and approves the proposed improvements. Because of the sensitive location where the improvements will be made, this particular review is discretionary with the Town (i.e., the Association must obtain a development permit and meet all Development Code requirements, but the Town also gets a second, purely discretionary review to determine whether the proposed improvements fit with the Town's vision for the property).

This is somewhat of a unique land exchange, but the bulk of the agreement is a standard land exchange contract. I think the most unique provisions are those that I have highlighted above.

I look forward to discussing this agreement with you on Tuesday.

1 ***FOR WORKSESSION/FIRST READING – MARCH 11***

2
3 COUNCIL BILL NO. ____

4
5 Series 2008

6
7 AN ORDINANCE APPROVING AN AGREEMENT TO EXCHANGE REAL ESTATE WITH
8 THE ROCK PILE RANCH OWNERS ASSOCIATION, INC., A COLORADO NONPROFIT
9 CORPORATION

10
11 WHEREAS, the Town of Breckenridge desires to enter into an Agreement To Exchange
12 Real Estate (Without Valuations) with Rock Pile Ranch Owners Association, Inc., a Colorado
13 nonprofit corporation, a copy of which is marked Exhibit "A", attached hereto and incorporated
14 herein by reference ("Agreement"); and

15
16 WHEREAS, the Town Council of the Town of Breckenridge has reviewed the
17 Agreement, and finds and determines that it would be in the best interests of the Town and its
18 residents for the Town to enter into the Agreement; and

19
20 WHEREAS, the Agreement requires the Town to convey to Rock Pile Ranch Owners
21 Association, Inc., a Colorado nonprofit corporation, certain Town-owned real property described
22 therein; and

23
24 WHEREAS, Section 15.3 of the Breckenridge Town Charter requires that the sale or
25 exchange of Town-owned real property be approved by ordinance or majority vote of electors at
26 the option of the Town Council; and

27
28 WHEREAS, the Town Council hereby finds and determines that the Agreement should
29 be approved by ordinance and not referred to the electors of the Town.

30
31 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
32 BRECKENRIDGE, COLORADO:

33
34 Section 1. The proposed Agreement between the Town of Breckenridge and the Rock
35 Pile Ranch Owners Association, Inc., a Colorado nonprofit corporation, is approved in
36 substantially the form attached hereto as Exhibit "A", and the Town Manager and Town Clerk
37 are hereby authorized, empowered and directed to execute such Agreement for and on behalf of
38 the Town of Breckenridge.

39
40 Section 2. Prior to closing of the transaction described in the approved agreement minor
41 changes to or amendments of the approved agreement may be made by the Town Manager if the
42 Town Attorney certifies in writing that the proposed changes or amendments do not substantially
43 affect the consideration to be received or paid by the Town pursuant to the approved agreement,
44 or the essential elements of the approved agreement.

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

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

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

13
14 TOWN OF BRECKENRIDGE, a Colorado
15 municipal corporation
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19 By _____
20 Ernie Blake, Mayor
21

22 ATTEST:
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26 _____

27 Mary Jean Loufek, CMC,
28 Town Clerk
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**AGREEMENT TO EXCHANGE REAL ESTATE
(Without Valuations)**

THIS AGREEMENT ("Agreement") dated _____, 2008, is between the ROCK PILE RANCH OWNERS ASSOCIATION, INC., a Colorado nonprofit corporation ("Association"), and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

The parties agree as follows:

1. Conveyance of Land To Town By Association.

Association agrees to convey to Town by a good and sufficient special warranty deed the following described real estate situate in the Town of Breckenridge, Summit County, Colorado, to wit:

That portion of Lot 2A, Block 10, Breckenridge Airport Subdivision, designated as "Lot 2C, Block 10" on the proposed Resubdivision Plat of The Common Area of Rock Pile Ranch Condominiums, a copy of which is attached as Exhibit "A". Such parcel of land contains 25,364 square feet, more or less

with all easements and rights of way appurtenant thereto, all improvements thereon, and all fixtures of a permanent nature currently on the premises, in their present condition, ordinary wear and tear excepted. Such parcel is hereafter referred to in this Agreement as the "Block 2A Parcel." The Block 2A Parcel shall be conveyed by appropriate reference to the new lot to be created pursuant to the subdivision plat described in Paragraph 7(B).

2. Conveyance of Land To Association By Town.

Town agrees to convey to Association by a good and sufficient special warranty deed the following described real estate situate in the Town of Breckenridge, Summit County Colorado, to wit:

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 No. 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 No. 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;

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

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

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
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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 My commission expires: _____.

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18 Notary Public
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Exhibit "A"

Depiction of Block 2A Parcel

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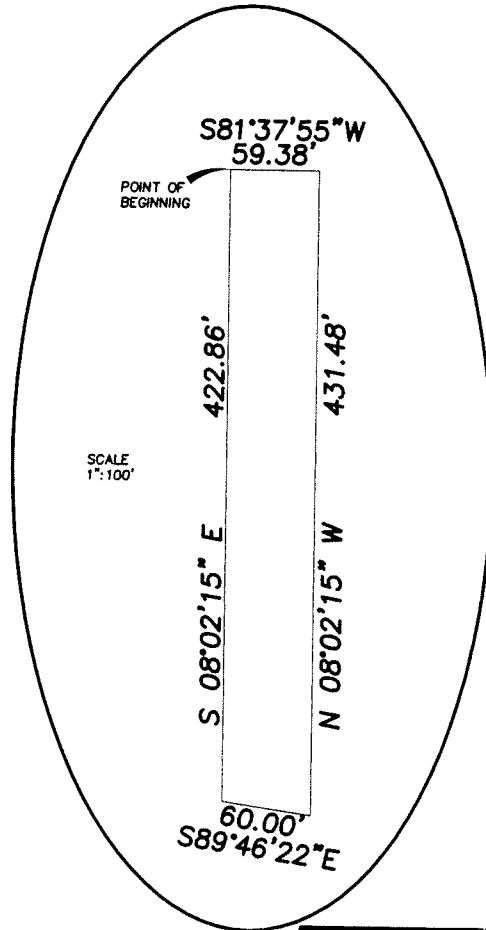
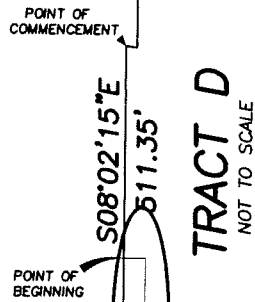
Exhibit "B"

Depiction of Block 11 Parcel

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



SCALE
1"=100'

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

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Exhibit "C"

Approval of Agreement By Unit Owners

THE UNDERSIGNED OWNERS OF UNITS IN ROCK PILE RANCH CONDOMINIUMS,
TOWN OF BRECKENRIDGE, SUMMIT COUNTY, COLORADO, APPROVE THIS
AGREEMENT:

UNIT A-1:

Anne L. Aronson
Owner: Unit A-1

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Anne L. Aronson.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

9

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

1

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

2

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

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

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

UNIT D-1:

AIRPORT MINI-STORAGE OF BRECKENRIDGE, LLC,
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 Airport Mini-Storage of Breckenridge, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

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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/FIRST READING – MARCH 11**

2
3 COUNCIL BILL NO. ____

4
5 Series 2008

6
7 AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF
8 BRECKENRIDGE AND PUBLIC SERVICE COMPANY OF COLORADO
9

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

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

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

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

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

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

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

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

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

43 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
44 BRECKENRIDGE, COLORADO:
45

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

5
6 Section 2. Upon the execution of the new Franchise Agreement (Exhibit "A") by both
7 the Town and Public Service Company of Colorado the previous Franchise Agreement approved
8 by People's Ordinance No. 38, Series 1987 shall terminate.

9
10 Section 3. The Town Council hereby finds, determines and declares that it has the power
11 to adopt this ordinance pursuant to: (i) the provisions of Article XIII of the Breckenridge Town
12 Charter; (ii) Chapter 12 of Title 4 of the Breckenridge Town Code; and (iii), and the powers
13 possessed by home rule municipalities in Colorado.

14
15 Section 4. This ordinance shall be published and become effective as provided by
16 Section 5.9 of the Breckenridge Town Charter.

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

23
24 TOWN OF BRECKENRIDGE, a Colorado
25 municipal corporation

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29 By: _____
30 Ernie Blake, Mayor

31
32 ATTEST:

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36 _____
37 Mary Jean Loufek, CMC,
38 Town Clerk

Memorandum

To: Town Council
From: Jennifer Cram, Planner III
Date: March 4, 2008
Re: Bunchman Agreement and Easement

In December of 07 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.

Attached is the proposed agreement that outlines the easement for your review. Staff is comfortable with the documents and believes that they reflect the intent for the proposed improvements and future use of the easement.

In summary 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.

Staff will be available during the worksession to answer any questions.

1 **FOR WORKSESSION/FIRST READING – MARCH 11**

2
3 COUNCIL BILL NO. ____

4
5 Series 2008

6
7 AN ORDINANCE APPROVING AN AGREEMENT WITH STILES PARTNERSHIP LLP
8 AND STILES II PARTNERSHIP LLP
9

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

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

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

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

26 WHEREAS, the Town Attorney has informed the Town Council that, in his opinion,
27 Section 15.3 of the Breckenridge Town Charter requires that granting of such easement be
28 authorized by ordinance.
29

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

33 Section 1. The proposed Agreement with Stiles Partnership LLP, a Colorado limited
34 liability partnership, and Stiles II Partnership LLP, a Colorado limited liability company (Exhibit
35 "A" hereto) is approved; and the Town Manager and Town Clerk are hereby authorized,
36 empowered and directed to execute such Agreement for and on behalf of the Town of
37 Breckenridge.
38

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

43 Section 3. This ordinance shall be published and become effective as provided by
44 Section 5.9 of the Breckenridge Town Charter.
45

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this ____ day of _____, 2008. A Public Hearing shall be held at the
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
4 _____, 2008, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
5 Town.

6
7 TOWN OF BRECKENRIDGE, a Colorado
8 municipal corporation
9

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12 By _____
13 Ernie Blake, Mayor
14

15 ATTEST:

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19 _____
20 Mary Jean Loufek, CMC,
21 Town Clerk
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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 Facade 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

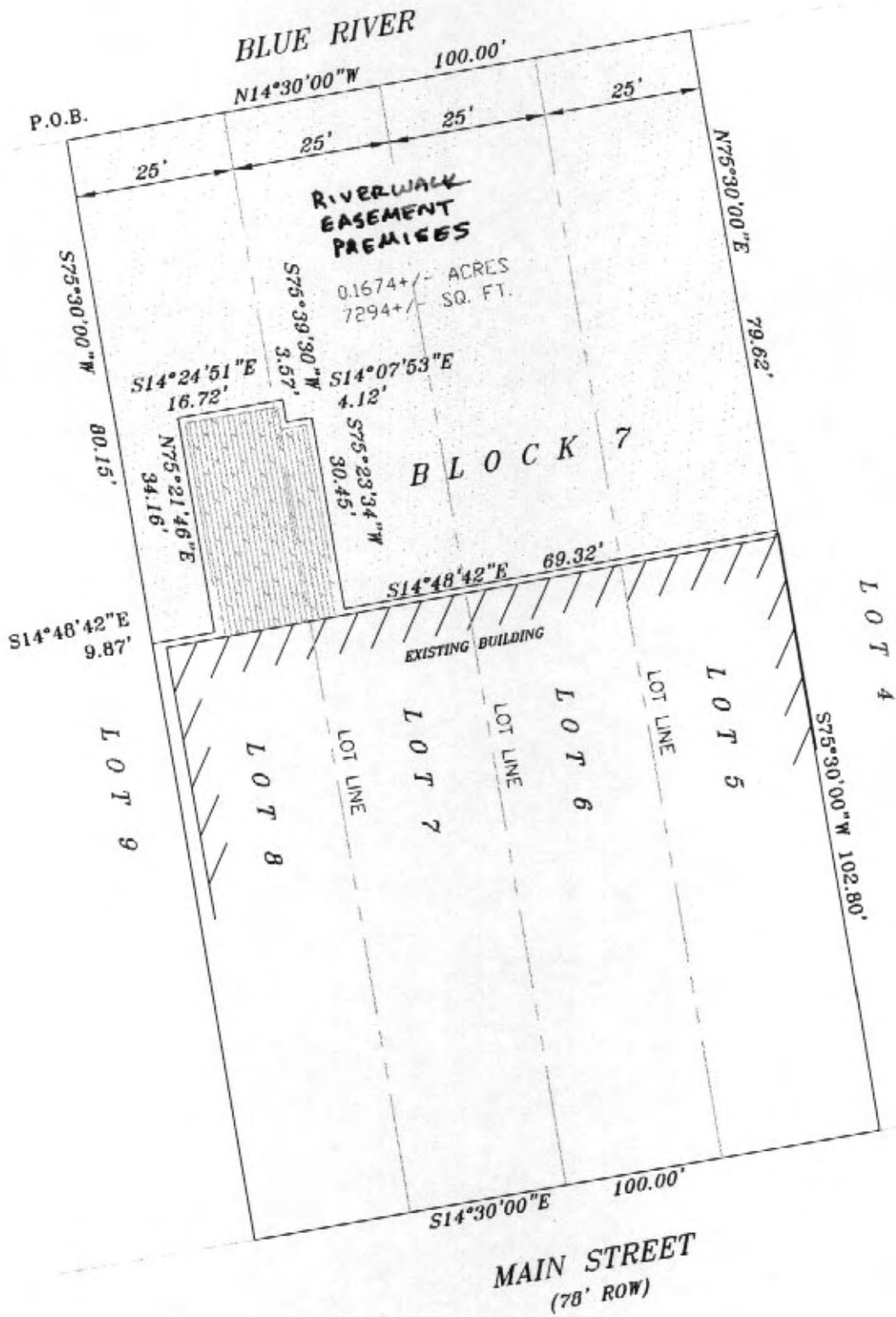
THENCE: S 14°24 '51" E, A DISTANCE OF 16.72 FEET

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'

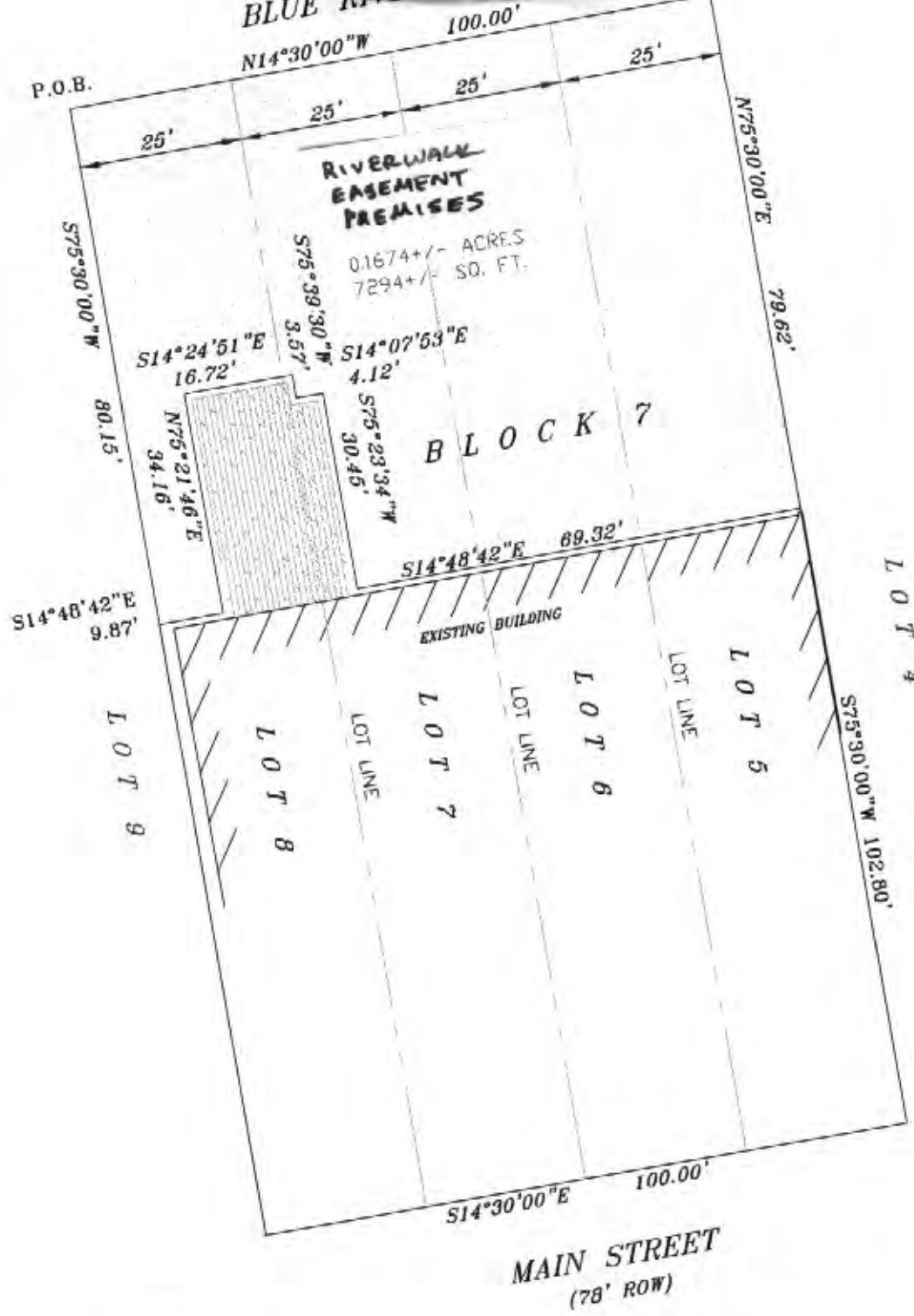
NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown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



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 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.

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

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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..

Baseline Surveys Inc. P.O. Box 7578, Breckenridge CO 80424
3471/3471LEGAL.doc



MEMORANDUM

TO: Town Council

FROM: Glen Morgan, Chief Building Official

DATE: March 5, 2008 for meeting of March 11, 2008

SUBJECT: First Reading of Ordinance to update existing Building Codes to the 2006 Editions and new 2006 International Energy Conservation Code

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.

FOR WORKSESSION/FIRST READING – MARCH 11

COUNCIL BILL NO. ____

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

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

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

CHAPTER 1

BUILDING CODES

SECTION:

- 8-1-1: Title
- 8-1-2: Findings
- 8-1-3: Standard Codes Adopted By Reference
- 8-1-4: Amendments To The International Building Code
- 8-1-5: Amendments To The International Residential Code
- 8-1-6: Amendments To The International Mechanical Code
- 8-1-7: Amendments To The International Plumbing Code

BUILDING CODES ORDINANCE

ii .

- 1 8-1-8: Amendments To The International Energy Conservation Code
- 2 8-1-9: Amendments To The National Electrical Code
- 3 8-1-10: Amendments To The ICC Electrical Code—Administrative Provisions
- 4 8-1-11: Amendments To The International Fuel Gas Code
- 5 8-1-12: Amendments To The Uniform Code For Building Conservation
- 6 8-1-13: Amendments To The Uniform Code For The Abatement Of
- 7 Dangerous Buildings
- 8 8-1-14: Repeal Of Previous Ordinances
- 9 8-1-15: Enforcement
- 10 8-1-16: Penalties
- 11 8-1-17: Code Copies
- 12 8-1-18: Liability

13
14 8-1-1: TITLE:

15 This Chapter shall be known and may be cited as the “*TOWN OF BRECKENRIDGE BUILDING*
16 *CODES ORDINANCE*”.

17
18 8-1-2: FINDINGS:

19 The Town Council finds and determines as follows:

20
21 A. The Town is authorized by law to set fees for permits issued under the Town's building and
22 other technical codes.

23
24 B. The Building Inspection Division of the Department of Community Development is the
25 primary Town department charged with the duty to process permit applications under the Town's
26 building and other technical codes, but other Town departments and personnel, such as the
27 Engineering Department, expend time in connection with the review of such applications. The
28 time expended by all Town personnel in reviewing such applications are part of the present
29 operational cost and future expansion of the Building Inspection Division of the Department of
30 Community Development. Such costs are part of the overall costs required to operate such
31 Department.

32
33 C. On occasion the Town incurs additional out-of-pocket expenses in connection with the review
34 of an application for a permit under the Town's building and other technical codes. Such
35 expenses may include, without limitation, fees paid by the Town to the Town Attorney and/or
36 fees paid by the Town to special counsel or special consultants. Such fees are part of the overall
37 costs required to process the permit application for which they were incurred.

38
39 D. Pursuant to Bainbridge, Inc. v. The Board of County Commissioners of Douglas County, 964
40 P.2d 575 (Colo. App. 1998) the application fees which may lawfully be charged by the Town for
41 permits under the Town's building and other technical codes may include both the direct and
42 indirect costs of operating the Building Inspection Division of the Town's Department of

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1 Community Development, as well as the other Town departments and personnel which assist in
2 the review of permit applications.

3
4 E. The permit fees established in this Chapter are approximately required to offset the direct and
5 indirect costs of operating the Building Inspection Division of the Department of Community
6 Development and the cost to the Town of actually processing building permit applications.

7
8 F. The application fees for development permits and subdivision permits established by this
9 Chapter do not exceed the direct and indirect costs of operating the Department of Community
10 Development and the cost to the Town of actually processing development and subdivision
11 permit applications.

12
13 8-1-3: STANDARD CODES ADOPTED BY REFERENCE: The following standard codes, as
14 hereinafter amended, are hereby adopted by reference as part of the Town of Breckenridge
15 Building Code:

- 16
17 A. International Building Code, 2006 Edition, published by the International Code
18 Council, Inc.
19
20 B. International Residential Code, 2006 Edition including Appendix Chapters G and K,
21 Published by the International Code Council, Inc.
22
23 C. International Mechanical Code, 2006 Edition, including Appendix A, published by
24 the International Code Council, Inc.
25
26 D. International Plumbing Code, 2006 Edition, including Appendices C, E, F and G,
27 published by the International Code Council, Inc.
28
29 E. International Energy Conservation Code, 2006 Edition, published by the
30 International Code Council, Inc.
31
32 F. National Electrical Code, 2008 Edition, published by the National Fire Protection
33 Association.
34
35 G. ICC Electrical Code - Administrative Provisions, 2006 Edition, published by the
36 International Code Council, Inc.
37
38 H. International Fuel Gas Code, 2006 Edition, including Appendices A and B,
39 published by the International Code Council, Inc.
40
41 I. Uniform Code for Building Conservation, 1997 Edition, including Appendix
42 Chapter 3, published by the International Conference of Building Officials.

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2 J. Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published
3 by the International Conference of Building Officials.
4

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

- 7 1. Section 101.1 is amended to read as follows:
8 101.1 Title. These regulations shall be known as the “THE TOWN OF
9 BRECKENRIDGE BUILDING CODES ORDINANCE” herein after referred to
10 as “this Code”.
11 2. Section 101.4.4 is amended by deleting the last sentence that references the
12 International Private Sewage Disposal Code.
13 3. Section 101.4.5 is amended to read as follows::
14 101.4.5 Existing Buildings. The provisions of Chapter 34 and the Uniform Code
15 for Building Conservation shall apply to change of occupancy, alteration or repair
16 of existing buildings and structures.
17 4. Section 102.6 is amended by replacing the reference to the International Property
18 Maintenance Code with the Uniform Code for Building Conservation.
19 5. Section 103.2 is amended to read as follows:
20 103.2 Building Official. The Building Official is hereby authorized and directed to
21 enforce all of the provisions of this code; however, a guaranty that all buildings
22 and structures have been constructed in accordance with all of the provisions of
23 this code is neither intended nor implied.
24 6. Section 103.3 is amended to read as follows:
25 103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction,
26 the building official shall have the authority to appoint a deputy building official,
27 the related technical officers, inspectors, plan examiners and other employees.
28 Such employees shall have powers as delegated by the building official.
29 7. Section 104.8 is amended by adding the following additional first paragraph
30 The adoption of this code, and any previous Building Construction and Housing
31 Standards adopted by the Town of Breckenridge, shall not be deemed to give rise
32 to a duty of care on the part of any public entity, public employee or agent, nor
33 shall this code or any previous Building Construction and Housing Standards be
34 deemed to create any civil remedy against a public entity, public employee or
35 agent.
36 8. Sections 105.1.1 and 105.1.2 are hereby deleted in their entirety.
37 9. Section 105.2 (9) is amended to read as follows:
38 (9) Swings and other playground equipment.
39 10. Section 105.5 is amended to read as follows:
40 105.5 Expiration. Every permit issued by the building official under the
41 provisions of this code shall expire 18 months after the date of issue. Every permit

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

8 11. Section 106.1 is amended to read as follows:

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

14 12. Section 108.2 is amended to read as follows:

15 108.2 Schedule of permit fees. On buildings, structures, electrical, gas,
16 mechanical, and plumbing systems or alterations requiring a permit, a fee for each
17 permit shall be paid as required, in accordance with the Town of Breckenridge Fee
18 Schedule.

19 The applicant shall provide valuation for new construction at time of application.
20 If in the opinion of the Building Official the valuation is underestimated on the
21 application, the valuation may be determined using the current "Building
22 Standards" magazine published by the International Conference of Building
23 Officials. A regional modifier of 1.35 (one and thirty-five-one-hundredths) is
24 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
\$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
<p>Other Inspections and Fees:</p> <ol style="list-style-type: none"> 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 	

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- 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

1 portion of work for which inspection is called is not complete or when corrections
2 called for are not made. Reinspection fees may be assessed when the inspection
3 record card is not posted or otherwise available on the work site, the approved
4 plans are not readily available to the inspector, for failing to provide access on the
5 date for which the inspection is requested, or for deviating from plans requiring
6 the approval of the building official. In instances where reinspection fees have
7 been assessed, no additional inspection of the work will be performed until the
8 reinspection fees have been paid.

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

1503.6 Snow-shed Barriers. Roofs shall be designed to prevent accumulations of snow from shedding onto exterior balconies, decks, pedestrian and vehicular exits from buildings, stairways, sidewalks, streets, alleys, areas directly above or in front of gas utility or electric utility meters, or adjacent properties.

Exception: Roof areas with a horizontal dimension of no more than 48 inches (1219mm) that will not receive snow shedding from a higher roof.

23. Section 1507.1 is amended by inserting a new subsection to read as follows:

1507.1.1 Ice dam protection. An ice dam protection underlayment that consists of an approved self-adhering polymer modified bitumen sheet shall be used with all roof coverings described in Sections 1507.2 through 1507.9. This ice dam protection underlayment shall extend up the slope of the roof from the drip-edge of the roof or eave and cover the entire roof decking surface.

24. Section 1507.5.3 is hereby deleted in its entirety.

25. Section 1507.6.3 is hereby deleted in its entirety

26. Section 1507.7.3 is hereby deleted in its entirety.

27. Section 1507.8.3 is hereby deleted in its entirety.

28. Section 1507.9.3 is hereby deleted in its entirety.

29. Section 1608.1 is hereby deleted in its entirety.

30. Section 1608.2 is amended to read as follows:

1608.2 Snow loads. The loads to be used in determining the design snow loads for roofs shall be 90 psf below 10000 ft elevation, 100 psf 10000 ft elevation or greater. There shall be no reduction in snow load for pitch or duration. Snow load for decks and exterior balconies shall be 125 psf.

31. Section 1612.3 is amended to read as follows:

1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for the Town of Breckenridge," dated June 20 2001, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

32. Section 1703.1 is amended to read as follows:

1703.1 Approved agency. An approved agency shall provide all information as necessary for the building official to determine that the agency meets the applicable requirements. The fire department shall be an approved agency for special inspection of fire protection systems required by this code.

33. Section 1704.1.1 is amended by adding an Exception number (3) to read as follows:

3.Special inspection by the fire department of fire protection systems.

34. Section 1704.1.2 is amended by adding an Exception to read as follows:

- 1 Exception: Special inspection by the fire department of fire protection
2 systems.
- 3 35. Section 1704 is amended by adding a new section and subsection to read as
4 follows:
5 1704.15 Fire protection systems. Fire protection systems shall have the design
6 plans approved by a special inspector and the systems inspected and tested by a
7 special inspector for compliance with the requirements of this code and the
8 International Fire Code.
9 1704.15.1 Qualifications. Special inspectors for fire protection systems shall have
10 expertise in fire-protection. Special inspectors for fire suppression systems shall
11 be fire suppression systems inspectors certified by the State of Colorado Division
12 of Fire Safety.
- 13 36. Section 1805.2.1 is amended to read as follows:
14 1805.2.1 Frost protection. Except where erected on solid rock or otherwise
15 protected from frost, foundation walls, piers and other permanent supports of
16 buildings and structures shall extend to at least 40 inches (1016 mm) below finish
17 grade, and spread footings of adequate size shall be provided where necessary to
18 properly distribute the load within the allowable load-bearing value of the soil.
19 Alternatively, such structures shall be supported on piles where solid earth or rock
20 is not available. Footings shall not bear on frozen soils. Frost reports shall be
21 required before placement of concrete from Nov.1 through May 1 or if freezing
22 temperatures occur prior to Nov. 1 or after May 1.
- 23 37. Section 2113 is amended by adding the following subsections to read as follows:
24 Section 2113.21 Limitation on the type and number of devices. Solid fuel burning
25 devices that are not certified are prohibited in new construction. The number of
26 certified solid fuel burning devices that may be installed in newly constructed
27 buildings shall be approved by the Breckenridge Community Development
28 Department.
- 29 38. Section 2113.22 The points of termination of a factory built chimney shall not be
30 within 10 inches vertically of the point of termination of any adjacent chimney or
31 appliance vent within 24 inches horizontally. No factory built chimney shall
32 terminate closer than 24 inches to combustible finish materials.
- 33 39. Section 2301.2 The first paragraph is amended to read as follows:
34 2301.2 General design requirements. The design of structural elements or systems,
35 constructed partially or wholly of wood or wood-based products shall be based on
36 one of the following methods. The use of load duration factors for snow load
37 shall not be permitted in any of these design methods.
- 38 40. Section 2901.1 is amended by deleting the reference to the International Private
39 Sewage Disposal Code.
- 40 41. Section 3109.4 is amended to read as follows:

- 1 Section 3109.4 Residential Swimming Pools. Residential Swimming Pools, Spas
2 and Hot tubs intended for common use by all occupants of the building shall be
3 completely enclosed by a barrier complying with section 3109.4 through 3109.4.3.
4 Exception: A private use spa or hot tub with a safety cover complying with ASTM
5 F 1346
- 6 42. Section 3309 is amended to read as follows:
7 Section 3309.1 Where required. All structures under construction, alteration or
8 demolition shall be provided with approved portable fire extinguishers as required
9 by the Red White and Blue fire department.
- 10 43. Section 3311.1 is amended to read as follows:
11 Section 3311.1 Where required. Buildings four stories or more in height shall be
12 provided with standpipes as required by the Red White and Blue Fire Department.
- 13 44. Section 3311.4 is amended to read as follows:
14 Section 3311.4 Water supply. Water supply for fire protection, either temporary or
15 permanent shall be made available as required by the Red White and Blue Fire
16 Department.
- 17 45. Section 3401.3 is amended to read as follows:
18 Section 3401.3 Compliance with other codes. Alterations, repairs, additions and
19 changes of occupancy to existing structures shall comply with the provisions for
20 alterations, repairs, additions and changes of occupancy in the adopted
21 International Fire Code, International Fuel Gas Code, International Plumbing
22 Code, Uniform Code for Building Conservation, International Mechanical Code,
23 International Residential Code, the National Electrical Code and the International
24 Energy Conservation Code.
- 25 46. Section 3410.2 is amended to read as follows:
26 Section 3410.2 Applicability. Structures existing prior September 18, 1972 in
27 which there is work involving additions, alterations or changes of occupancy shall
28 be made to conform to the requirements of this section or the provisions of
29 Sections 3403 through 3407.
30 The provisions in Sections 3410.2.1 through 3410.2.5 shall apply to existing
31 occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F,
32 M, R, S and U. These provisions shall not apply to buildings with occupancies in
33 Group H or I.
- 34 47. Section 3410.3.2 is amended by deleting the reference to the International
35 Property Maintenance Code.
- 36 48. Section 3410.4 is amended to read as follows:
37 Section 3410.4 Investigation and evaluation. For proposed work covered by this
38 section, the building owner shall cause the existing building to be investigated and
39 evaluated in accordance with the provisions of this section by a design
40 professional licensed to practice in the State of Colorado.
- 41 49. Section 3410.6 is amended by adding the following first paragraph.

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1 3410.6 Evaluation process. The building owner shall cause the existing building to
2 be evaluated in accordance with the provisions of this section by a design
3 professional(s) licensed to practice in the State of Colorado.
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5 8-1-5 AMENDMENTS TO THE INTERNATIONAL RESIDENTIAL CODE: The following
6 sections of the International Residential Code, 2006 Edition, are amended to read as follows:
7

- 8 1. Section R101.1 is amended by adding the name, “Town of Breckenridge”.
- 9 2. Section R102.7 is amended by deleting the reference to the Property Maintenance
10 Code.
- 11 3. Section R103.2 is amended to read as follows:
12 R103.2 Building Official. The building official is hereby authorized and directed
13 to enforce all of the provisions of this code; however, a guaranty that all buildings
14 and structures have been constructed in accordance with all of the provisions of
15 this code is neither intended nor implied.
- 16 4. Section R103.3 is amended by deleting the words: “with the concurrence of the
17 appointing authority.”
- 18 5. Section R104.8 is amended by adding the following additional paragraph to the
19 beginning of the section:
20 The adoption of this code, and any previous Building Construction and Housing
21 Standards adopted by the Town of Breckenridge, shall not be deemed to give rise
22 to a duty of care on the part of any public entity, public employee or agent, nor
23 shall this code or any previous Building Construction and Housing Standards be
24 deemed to create any civil remedy against a public entity, public employee or
25 agent.
- 26 6. Section R105.5 is amended to read as follows:
27 R105.5 Expiration. Every permit issued by the code official under the provisions
28 of this code shall expire 18 months after the date of issue. Every permit issued
29 shall become invalid unless the work on the site authorized by such permit is
30 commenced within 180 days after its issuance, or if the work authorized on the site
31 by such permit is suspended or abandoned for a period of 180 days after the time
32 the work is commenced. The code official is authorized to grant extensions of
33 time, for periods of 6 months. An extension shall be requested in writing, and the
34 request shall demonstrate justifiable cause for the extension.
- 35 7. Section R106.1 is amended to read as IBC Sec 106.1 Amended.
- 36 8. Section R108.2 is amended by replacing the words: “by the applicable government
37 authority” with the following:
38 “...in accordance with the Town of Breckenridge Building Department Fee
39 Schedule. Refer to the International Building Code Amendment Section 108.2.”
- 40 9. Section R108 is amended by adding a new subsections to read as follows:
41 108.6 Work commencing before permit issuance. Any person who commences
42 any work on a building, structure, electrical, gas, mechanical or plumbing system

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before obtaining the necessary permits shall be subject to an investigation fee that shall be in addition to the required permit fees. The investigation fee shall be as set forth in the Town of Breckenridge Building Department Fee Schedule.

10. Section R109.1.6 is amended to read as follows:

Final inspection. To be made only after the finished grading and the building or structure is completed in accordance with the provisions of the International Residential Code and Technical Codes, the Development Code, including cleaning, flooring, tile, wallpaper, paint, trim, finish, and final painting and paving. A security deposit may be posted for incomplete items required by planning i.e. landscaping, exterior painting, paving, "weather prohibiting".

11. Section R109 is amended by adding a new subsection to read as follows:

R109.5 Reinspections. A reinspection fee, as specified in the Town of Breckenridge Building Department 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 also be assessed when the inspection record card is not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, for failing to provide access on the date for which the inspection is requested, or for deviating from plans requiring the approval of the building official. In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the reinspection fees have been paid.

12. Section R110.1 is amended by deleting exception number (2)

13. Section R110.4 is hereby deleted in its entirety.

14. Section 110 is amended by adding a new subsection to read as follows:

R110.6 A Certificate of Completion shall be issued for work not directly related to occupancy when such work complies with the provisions of this code and all other relevant laws, which are enforced by the Town.

15. Section R113 is hereby deleted in its entirety.

16. Section R202 is amended by inserting the following definitions within the alphabetical order of the existing definitions:

LOFT. A habitable room or floor in a building that is open to the room or floor directly below, which may or may not qualify as a mezzanine. Lofts may be either habitable space or non-habitable space. A loft provided with a closet or where a bathroom on the same level can be directly accessed without passing through sleeping room, will be considered a sleeping room for the purposes of Sec R310 and R313.

17. Table R301.2(1) is amended to read as follows:

Table R301.2(1)

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA					
ROOF	WIND	SEISMIC	SUBJECT TO DAMAGE FROM	WINTER	FLOOD

BUILDING CODES ORDINANCE

SNOW LOAD	Speed ^d (mph)	DESIGN CATEGORY ^f	Weathering ^a	Frost line depth ^b	Termite ^c	Decay ^c	DESIGN TEMP ^e	HAZARDS
Footnote h	90	Footnote b	Severe	40 in.	Slight	Slight	-13	Footnote g

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

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

**TABLE R302.1
EXTERIOR WALLS**

EXTERIOR WALL ELEMENT	MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
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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

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20. Section R321.1 is amended to read as follows:
R325.1 Premises identification. Approved numbers or addresses shall be provided for all new and altered buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Address characters shall be at least five inches (127 mm) in height and shall be of a color that contrasts with the background on which they are mounted.
21. Section R602.3 is amended by adding the following sentence:
The use of load duration factors for snow load shall be prohibited.
22. Section R802.2 is amended by adding the following sentence:
There shall be no reduction in snow load for pitch or duration.
23. Section R905.1 is amended by adding a new subsection to read as follows:
R905.1.1 Ice Barrier Underlayment. An ice barrier that consists of an approved self-adhering polymer modified bitumen sheet shall be used in lieu of normal underlayment at all sloped roofs. This ice dam protection underlayment shall extend up the slope of the roof from the drip-edge of the roof or eave and cover the entire roof deck surface.
24. Section R905.2.7.1 is hereby deleted in its entirety.
25. Section R905.4.3 is hereby deleted in its entirety.
26. Section R905.5.3 is hereby deleted in its entirety.
27. Section R905.6.3 is hereby deleted in its entirety.
28. Section R905.7.3 is hereby deleted in its entirety.
29. Section R905.8.3 is hereby deleted in its entirety.
30. Section R1002 is amended by adding a new subsection to read as follows:
R1002.6 The points of termination of a factory built chimney shall not be within 10 inches vertically of the point of termination of any adjacent chimney or appliance vent within 24 inches horizontally. No factory built chimney shall terminate closer than 24 inches to combustible finish materials.
31. Section R1004.4 is amended to read as follows:
R1004.4 Unvented gas log heaters. Installation of unvented gas log heaters is prohibited.
32. Section 1005 Factory Built Chimneys is amended by adding the following new subsections to read as follows:

1 Section R1005.7 Solid fuel burning devices that are not certified are prohibited in
2 new construction. The number of certified solid fuel burning devices that may be
3 installed in newly constructed buildings shall be approved by the Breckenridge
4 Community Development Department.

5 Section R1005.8 CERTIFIED SOLID FUEL BURNING DEVICE is a solid fuel
6 burning device which is certified by the Air Pollution Control Division of the
7 Colorado Department of health or approved by the Building Official as meeting
8 the emission standards set forth in Section IV of Regulation No. 4 of Volume I of
9 the Colorado Air Quality Control Commission (EPA Phase II or III).

10 Section R1005.9 NEW CONSTRUCTION, for the purpose of this section, is
11 construction of a residential, commercial, industrial, agricultural or accessory
12 building. This shall include any modifications, replacement or relocation of
13 existing solid fuel burning devices. However, modifications to solid fuel burning
14 devices shall not include repair, replacement or relocation of flue pipe.

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

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

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

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

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

29 35. Section M1804.2.1 is amended to read as follows:
30 M1804.2.1 Through the roof. Vents passing through a roof shall extend through
31 flashing and terminate in accordance with the manufacturer's installation
32 requirements. All vents shall terminate within 5 feet of a ridgeline.

33 36. Section 1804.2.6 #4 is amended to read as follows:
34 1804.2.6 #4 The bottom of the vent terminal shall be located at least 36 inches
35 above grade.

36 37. Section M2002.4 is amended by adding the following sentence.
37 All boiler rooms are to be provided with a floor drain.

38 38. Section G2417.4.1 is amended to read as follows:
39 G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be not less
40 than one and one-half times the proposed maximum working pressure, but not less
41 than 30 psig (**69 kPa** gauge), irrespective of design pressure. Where the test
42 pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a

- 1 value that produces a hoop stress in the piping greater than 50 percent of the
2 specified minimum yield strength of the pipe.
- 3 39. Section G2425.8 is amended by deleting item #7:
4 Room heaters listed for unvented use.
- 5 40. Section G2432 is amended by adding a new subsection to read as follows:
6 G2432.4 (602.4) Gas logs. Gas logs may be installed in solid-fuel-burning
7 fireplaces provided:
8 1) The gas log is installed in accordance with the manufacturer's installation
9 instructions.
10 2) If the fireplace is equipped with a damper it shall either be removed or
11 permanently secured in an open position.
12 3) The flue passageway shall be not less than 1 square inch per 2,000 Btu/h input
13 and not more than 4 square inches per 2,000 Btu/h input.
14 4) Gas logs shall be equipped with a pilot and shall have a listed safety shutoff
15 valve.
16 5) Gas logs shall be vented with a Class 'A' Chimney, that is protected in
17 accordance with Sec R1005.11 as amended.
18 6) Gas logs may be installed in factory-built fireplaces only when (a) the fireplace
19 and gas logs are listed for use together as an individual unit (b) the fireplace is
20 approved for use with any listed gas log or (c) the fireplace manufacturer provides
21 prior written approval for the installation.
22 Exception: The installation of gas logs in factory built fireplace units for which
23 the manufacturer cannot be identified or located may be approved by the building
24 official in his or her discretion. Any approval shall be based at a minimum, on
25 written evidence submitted by the gas log manufacturer that the installation of
26 their product will not compromise the integrity of the existing fireplace.
- 27 41. Section G2433.1 (603.1) is amended to read as follows:
28 General. Log lighters are prohibited
- 29 42. Section G2445 (621) is amended to read as follows:
30 Prohibited installation. Installation of unvented room heaters is prohibited.
- 31 43. Section P2501.1 is amended to read as follows:
32 P2501.1 Scope. The provisions of this chapter shall establish the general
33 administrative requirements applicable to plumbing systems and inspection
34 requirements of this code. The intent of this code is to meet or exceed the
35 requirements of the State of Colorado Plumbing Code. When technical
36 requirements, specifications or standards in the Colorado Plumbing Code conflict
37 with this code, the more restrictive shall apply.
- 38 44. Section P2801.5.2 is amended to read as follows:
39 P2801.5.2 Pan drain termination. The pan drain shall extend full-size and
40 terminate over a suitably located indirect waste receptor or floor drain and
41 terminate not less than 6 inches and not more than 24 inches above the adjacent
42 ground surface.

ii.

- 1 45. Section P2803.6.1 Item 5 is amended by deleting the reference allowing the
2 discharge from the relief valve to terminate at the outside of the building.
- 3 46. Section P3103.1 is amended to read as follows:
4 P3103.1 Roof extension. All open vent pipes which extend through a roof shall be
5 terminated at least 12 inches (306 mm) above the roof and shall terminate within 5
6 feet of a ridgeline, except that where a roof is to be used for any purpose other
7 than weather protection, the vent extensions shall be run at least 7 feet (2134 mm)
8 above the roof.
- 9 47. Chapters 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 are repealed in their entirety.

10
11 8-1-6: AMENDMENTS TO THE INTERNATIONAL MECHANICAL CODE: The following
12 sections of the International Mechanical Code, 2006 Edition, are amended to read as follows:
13

- 14 1. Section 101.1 is amended to read as follows:
15 101.1 Title. These regulations shall be known as the Mechanical Code of the
16 Town of Breckenridge herein after referred to as “this Code.”
- 17 2. Section 103.2 is amended to read as IBC 103.2 as Amended
- 18 3. Section 103.3 is amended to read as IBC 103.3.as amended
- 19 4. Section 103.4 is amended by adding a paragraph to read as IBC Amendment
20 104.8.
- 21 5. Section 106.4.3 is amended to read as IBC 105.5 as amended.
- 22 6. Section 106.4.4 is hereby deleted in its entirety in entirety.
- 23 7. Section 106.5.2 is amended to read as follows:
24 106.5.2 Fee schedule. The fees for mechanical work shall be in accordance with
25 the Town of Breckenridge Building Department Fee Schedule.
- 26 8. Section 106.5.3 is amended to read as follows:
27 106.5.3 The Building Official is authorized to establish a fee refund policy.
- 28 9. Section 106.5 is amended by adding a new subsection 106.5.4 to read as IBC
29 109.7 as amended.
- 30 10. Section 108.1 is hereby deleted in its entirety.
- 31 11. Section 108.2 is hereby deleted in its entirety.
- 32 12. Section 108.3 is hereby deleted in its entirety.
- 33 13. Section 108.4 is hereby deleted in its entirety.
- 34 14. Section 108.5 is hereby deleted in its entirety.
- 35 15. Section 108.6 is hereby deleted in its entirety.
- 36 16. Section 109 is hereby deleted in its entirety.
- 37 17. Section 202 is amended by adding the following definition within the alphabetical
38 order of the existing definitions.
39 “Certified Solid Fuel Burning Device”, “New Construction”, and “Solid Fuel
40 Burning Devices” shall be defined as per IBC Amendments Chapter 2.
- 41 18. Section 509.1 is amended to add the subsequent paragraph at the end:

ii.

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

8-1-7: AMENDMENTS TO THE INTERNATIONAL PLUMBING CODE: The following sections of the International Plumbing 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 Plumbing Code of the Town of Breckenridge, herein after referred to as “this Code”.
2. Section 101.3 is amended to add the following:
The intent of this code is to meet or exceed the requirements of the State of Colorado Plumbing Code. When technical requirements, specifications or standards in the Colorado Plumbing Code conflict with this code, the more restrictive shall apply.
3. Section 103.2 is amended to read as IBC Amendment 103.2.
4. Section 103.3 is amended to read as IBC Amendment 103.3.
5. Section 103.4 is amended to add a paragraph as written in IBC Amendment 104.8.
6. Section 106.5.3 is amended to read as IBC amendment 105.5.
7. Section 106.5.4 is hereby deleted in its entirety in its entirety.
8. Section 106.6.2 is amended to read as follows:
106.6.2 Fee schedule. The fees for plumbing work shall be in accordance with the Town of Breckenridge Building Inspection Department Fee Schedule.
9. Section 106.6.3 is amended to read as follows:
106.6.3 Fee refunds. The Building official is authorized to establish a refund policy.
10. Section 106.6 is amended by adding a new subsection 106.6.4 to read as IBC Amendment 109.7.
11. Section 108.1 is hereby deleted in its entirety.

ii.

- 1 12. Section 108.2 is hereby deleted in its entirety.
- 2 13. Section 108.3 is hereby deleted in its entirety.
- 3 14. Section 108.4 is hereby deleted in its entirety.
- 4 15. Section 108.5 is hereby deleted in its entirety.
- 5 16. Section 108.6 is hereby deleted in its entirety.
- 6 17. Section 109 is hereby deleted in its entirety.
- 7 18. Section 305.6.1 is amended to read as follows:
8 305.6.1 Sewer depth. Building sewers shall be installed in accordance with the
9 standards and approval of the governing Sanitation District.
- 10 19. Section 312.6 is amended to read as follows:
11 Section 312.6 Gravity sewer test. Testing of the building sewer shall be in
12 accordance with the standards and approval of the governing Sanitation District.
- 13 20. Section 312.7 is amended to read as follows:
14 312.7 Forced sewer test. Testing of the building sewer shall be in accordance with
15 the standards and approval of the governing Sanitation District.
- 16 21. Section 312.9.1 is hereby deleted in its entirety in its entirety.
- 17 22. Section 504.6 is amended to delete reference to the out doors in item #5
- 18 23. Section 504.7.2 is amended to read as follows:
19 504.7.2 Pan drain termination. The pan drain shall extend full-size and terminate
20 over a suitably located indirect waste receptor or floor drain and terminate not less
21 than 6 inches and not more than 24 inches above the adjacent floor surface.
- 22 24. Section 608.17 through 608.17.8 are deleted.
- 23 25. Section 610.1 is amended to read as follows:
24 610.1 General. New or repaired potable water systems shall be purged of
25 deleterious matter and disinfected prior to utilization. The method to be followed
26 shall be that prescribed by the Town of Breckenridge Water Department.
- 27 26. Section 701.2 is amended to read as follows:
28 701.2 Sewer required. Every building in which plumbing fixtures are installed and
29 all premises having drainage piping shall be connected to a public sewer.
- 30 27. Section 904.1 is amended to read as IRC Amendment P3103.1.
- 31 28. Section 1106.1 is amended to read as follows:
32 1106.1 General. The size of the vertical conductors and leaders, building storm
33 drains, building storm sewers, and any horizontal branches of such drains or
34 sewers shall be based on the 100-year hourly rainfall rate of two (2) inches (50.8
35 mm) per hour.
- 36 29. Section 1108.1 is amended to read as follows:
37 1108.1 Combination drains and sewers. Combination sanitary and storm drains or
38 sewers are prohibited.

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

BUILDING CODES ORDINANCE

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

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

8-1-10: AMENDMENTS TO THE ICC ELECTRICAL CODE – ADMINISTRATIVE PROVISIONS: The following sections of the ICC Electrical Code—Administrative Provisions, 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 ICC Electrical Code™- Administrative Provisions of Town of Breckenridge and shall be cited as such. The ICC Electrical Code™ - Administrative Provisions in combination with the separately adopted National Electrical Code will be referred to herein as “this code” The ICC Electrical Code™ - Administrative Provisions in combination with the separately adopted National Electrical Code will be referred to throughout all other building construction and housing standards adopted by the Town of Breckenridge as the ICC Electrical Code.
2. Section 201.3 is amended to read as follows:
201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Residential Code, International Energy Conservation Code or NAPA 70, such terms shall have meanings ascribed to them as in those codes.
3. Section 301.2 is amended to read as IBC Amendment 103.2.
4. Section 301.3 is amended to read as IBC Amendment 103.3.
5. Section 302.9 is amended to read as IBC Amendment 104.8.
7. Section 403.2 is amended to read as IBC Amendment 105.5.
8. Section 403.3 is hereby deleted in its entirety.
9. Section 403.6 is be amended to read as follows:
403.6 Information on the permit. The code official shall issue all permits required by this code on an approved form furnished for that purpose. The permit shall contain a general description of the operation or occupancy and its location and any other information required by the code official.
10. Section 404.2 is amended to read as IBC Amendment 108.2.

ii.

- 1 11. Section 404.3 is amended to read as follows:
2 404.3 Work commencing before permit issuance. Any person who commences
3 any work before obtaining the necessary permits shall be subject to an
4 investigation fee established by the code official, which shall be in addition to the
5 required permit fee. The investigation fee shall be as set forth in the Town of
6 Breckenridge Construction Permit Fee Schedule.
- 7 12. Section 404 is amended by inserting a two new subsections to read as
8 follows:
9 404.6 Reinspections. Shall read as per IBC Amendment 109.7.
10 404.7 Plan Review Fees. The plan review fees for electrical work shall be in
11 accordance with the Town of Breckenridge Permit Fee Schedule.
- 12 13. Section 1001 is hereby deleted in its entirety.
- 13 14. Sections 1002.1 through 1002.6, inclusive, are hereby deleted in their entirety.
- 14 15. Section 1003 is hereby deleted in its entirety.
- 15 16. Section 1004 is hereby deleted in its entirety.
- 16 17. Sections 1101, 1102 and 1103 are hereby deleted in their entirety and Section
17 1101 is reenacted to read as IBC Section 112.
- 18 18. Section 1202 and all subsections therein are hereby deleted in their entirety.
- 19 19. Section 1203 and all subsections therein are hereby deleted in their entirety.

20
21 8-1-11: AMENDMENTS TO THE INTERNATIONAL FUEL GAS CODE: The following
22 sections of the International Fuel Gas Code, 2006 Edition, are amended to read as follows:
23

- 24 1. Section 101.1 is amended to read as follows:
25 101.1 Title. These regulations shall be known as the Fuel Gas Code of the
26 Town of Breckenridge herein after referred to as “this Code.”
- 27 2. Section 103.2 is amended to read as IBC Amendment 103.2.
- 28 3. Section 103.3 is amended to read as IBC Amendment 103.3.
- 29 4. Section 103.4 is amended to add a paragraph to read as IBC Amendment 104.8.
- 30 5. Section 106.4.3 is amended to read as IBC amendment 105.5.
- 31 6. Section 106.4.4 is hereby deleted in its entirety in its entirety.
- 32 7. Section 106.5.2 is amended to read as follows:
33 106.5.2 Fee schedule. The fees for work shall be in accordance with the
34 Town of Breckenridge Inspection Department Fee Schedule.
- 35 8. Section 106.5.3 is amended to read as follows:
36 106.5.3 Fee refunds. The Building official is authorized to establish a
37 refund policy.
- 38 9. Section 106.5 is amended by adding a new subsection 106.5.4 Reinspections, to
39 read as IBC Amendment 109.7.
- 40 10. Section 108.1 is hereby deleted in its entirety.
- 41 11. Section 108.2 is hereby deleted in its entirety.
- 42 12. Section 108.3 is hereby deleted in its entirety.

ii.

- 1 13. Section 108.4 is hereby deleted in its entirety.
- 2 14. Section 108.5 is hereby deleted in its entirety.
- 3 15. Section 108.6 is hereby deleted in its entirety.
- 4 16. Section 109 is hereby deleted in its entirety.
- 5 17. Section 303.3 Prohibited Locations is amended to eliminate exceptions 3 and 4
- 6 18. Section 304.6.1 is amended to add a new subsection as follows:
7 304.6.1.1 Combustion air duct terminations. Combustion air duct
8 terminations to the exterior shall be a minimum of 36 inches above grade.
- 9 19. Section 304.6.2 is amended to add a new subsection as follows:
10 304.6.2.1 Combustion air duct terminations. Combustion air duct
11 terminations to the exterior shall be a minimum of 36 inches above grade.
- 12 20. Section 406.4.1 is amended to read as IRC Amendment G2416.4.1
- 13 21. Section 501.8 is amended by deleting items 8,9 &10
- 14 22. Section 503.8 Venting system termination location.
15 #2. is amended to add a sentence to read as follows:
16 The bottom of all vent terminations shall be located at least 36 inches above
17 grade.
- 18 23. Section 503.8 Venting system termination location.
19 #3. is amended to add a sentence to read as follows:
20 The bottom of the vent terminal and the air intake shall be located at least 36
21 inches above grade.
- 22 24. Section 602.1 is amended to read as follows:
23 602.1 General. Decorative appliances for installation in approved solid
24 fuel-burning fireplaces shall be tested in accordance with ANSI Z21.60
25 and shall be installed in accordance with the manufacturer's installation
26 instructions.
- 27 25. Section 602 is amended by adding a new subsection 602.4 to read as IRC
28 Amendment G2432.4.
- 29 26. Section 603.1 is amended to read as follows:
30 603.1 General. Log lighters are prohibited.
- 31 27. Section 618.5 is amended to add a subsection as follows:
32 Section 618.5.1 Outside air sources. Outside air shall not be obtained from
33 an exterior opening within 36-inches of finished grade.
- 34 28. Section 621 is amended to read as follows. Unvented room heaters are prohibited.
- 35 29. Section 634.1 is amended to read as follows:
36 632.1 Free opening area of chimney dampers. Where an unlisted
37 decorative appliance for installation in a vented fireplace is installed, the
38 fireplace damper shall have a permanent free opening not less than 1
39 square inch per 2,000 Btu/h input and not more that 4 square inches per
40 2,000 Btu/h input.
- 41

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

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

- 4
- 5 1. Section 301 is amended by amending the definition of Building Code to read as
6 follows:
7 BUILDING CODE is the International Building Code or the International
8 Residential Code, which ever is applicable, published by the International Code
9 Council, Inc., Inc., as adopted by this jurisdiction.

10

11 8-1-13: AMENDMENTS TO THE UNIFORM CODE FOR THE ABATEMENT OF
12 DANGEROUS BUILDINGS: The following sections of the Uniform Code For the Abatement of
13 Dangerous Buildings, 1997 Edition, are amended to read as follows:

- 14
- 15 1. Section 203 is hereby deleted in its entirety.
 - 16 2. Section 205 is hereby deleted in its entirety.
 - 17 3. Section 301 is amended by amending the definition of
18 Building Code to read as follows:
19 BUILDING CODE is the International Building Code or the International
20 Residential Code, which ever is applicable, published by the International Code
21 Council, Inc., as adopted by this jurisdiction.
 - 22 4. Section 501.2 is amended to add the following sentence at the end of the section:
23 The board of appeals with the jurisdiction to hear and decide appeals under this
24 code is the board of appeals created pursuant to Chapter 3 of Title 2 of the
25 Breckenridge Town Code.

26

27 8-1-14: REPEAL OF PREVIOUS ORDINANCES: Existing ordinances or parts of ordinances
28 covering the same matters as embraced in this Chapter are hereby deleted, and all ordinances
29 inconsistent with the provisions of this Chapter are hereby deleted; provided, however, that this
30 repeal shall not affect or prevent the prosecution or punishment of any person for any act done or
31 committed in violation of any ordinance hereby deleted prior to this chapter taking effect.

32

33 8-1-15: ENFORCEMENT: The following portions apply to the enforcement of all of the codes
34 adopted by reference in this Chapter. If there is a conflict between these provisions and any
35 enforcement provision of a code adopted by reference in this Chapter, the provisions of this
36 Section shall control. As used in this Section, the term “adopted code” means a code adopted by
37 reference in this Chapter;

- 38
- 39 A. Authority of Building Official: The Building Official is hereby authorized and directed to
40 enforce the provisions of this code, however, a guaranty that all buildings and structures
41 have been constructed in accordance with all of the provisions of this code is neither
42 intended nor implied. The building official shall have the power to render interpretations

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1 of this code and to adopt and enforce rules and regulations supplemental to this code as
2 deemed necessary in order to clarify the application of the provisions of this code. Such
3 interpretations, rules and regulations shall be in conformity with the intent and purpose of
4 this code.
5

6 B. Notice of Violation. The Building Official shall serve a notice of violation or order to the
7 person responsible for the erection, installation, alteration, extension, repair, removal or
8 demolition of work in violation of the portions of an adopted code, or in violation of a
9 detail statement or the approved construction documents thereunder, or in violation of a
10 permit or certificate issued under the provisions of any such adopted code. Such order
11 shall direct the discontinuance of the illegal action or condition and the abatement of the
12 violation. The notice or order shall be served upon the responsible person by personal
13 delivery or by mailing a copy of such notice or order by certified mail, postage prepaid,
14 return receipt requested, to the intended recipient at their address as it appears in the
15 records of the Summit County Assessor, or to such other address as may be known to the
16 Building Official. If no address for the intended recipient appears in the records of the
17 Summit County Assessor or is known to the Building Official, then the notice or order
18 shall be mailed to address of the property involved in the proceedings. The failure of any
19 person to receive the notice or order shall not affect the validity of any proceedings taken
20 under this Section. Service by certified mail in the manner herein provided shall be
21 effective upon the date of mailing. Proof of service of the notice and order shall be
22 certified to at the time of service by a written declaration under penalty of perjury
23 executed by the person effecting service, declaring the time, date, and manner in which
24 service was made. The declaration, together with any receipt card returned in
25 acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice
26 and order retained by the Building Official.
27

28 C. Prosecution of Violation. If the notice of violation is not complied with promptly, the
29 Building Official shall request the Town Attorney to institute the appropriate proceedings
30 at law or in equity to restrain, correct, or abate such violation, or to require the removal or
31 termination of the unlawful occupancy of the structure in violation of an adopted code or
32 the order or direction of the Building Official made pursuant thereto.
33

34 D. Stop Work Orders. Upon notice (sometimes referred to as a “stop work order”) from the
35 Building Official, any work being done contrary to the provisions of an adopted code or
36 in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing
37 and shall be given to the owner of the property, or to the owner’s agent, or to the person
38 doing the work; however, if neither the property owner, the owner’s agent nor the person
39 doing the work is present at the time the Building Official goes to serve the notice, the
40 notice may be served by posting the notice in a conspicuous place on the property for
41 which the permit was issued. The notice shall state the conditions under which work is
42 authorized to resume. Where an emergency exists, the Building Official shall not be

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1 required to a written notice prior to stopping the work. Any person who shall continue to
2 work in or about the structure after having been served with a stop work order, except
3 such work as that person is directed by the Building Official to perform to remove a
4 violation or unsafe condition, shall be pay an administrative fine equal to three time the
5 normal permit fee.
6

7 E. Abatement of Violation. The imposition of penalties as provided in this Chapter shall not
8 preclude the Town Attorney from instituting appropriate action to prevent the unlawful
9 construction or to restrain, correct or abate a violation of an adopted code, or to prevent
10 the illegal occupancy of a building, structure, or premises, or to stop an illegal act,
11 conduct, business or utilization of the improvements constructed upon any premises.
12

13 F. Building Code Board of Appeals. The Board of Appeals created pursuant to Chapter 3 of
14 Title 2 of this Code shall provide for the final interpretation of the provisions of the
15 adopted codes and hear appeals concerning the interpretation of the adopted codes. The
16 procedures for the holding of hearings on appeals concerning the interpretation of the
17 adopted codes shall be as provided in Chapter 3 of Title 2 of this Code.
18

19 G. Code Provisions Unaffected. The following provisions of the adopted codes are not
20 affected by this Section and shall be enforceable according to their terms as provided in
21 the adopted codes:
22

- 23 1. Section 108.7, including subsections 108.7.1, 108.7.2, and 108.7 of the International
24 Mechanical Code;
- 25 2. Section 108.7, including subsections 108.7.1, 108.7.2, and 108.7.3 of the International
26 Plumbing Code;
- 27 3. Section 1002.7 of the ICC Electrical Code—Administrative Provisions;
- 28 4. Section 108.7, including subsections 108.7.1, 108.7.2, and 108.7 of the International
29 Fuel Gas Code; and
- 30 5. Section 401 and Chapter 5 of the Uniform Code for the Abatement of Dangerous
31 Buildings. The provisions of Chapter 19 of Title 1 of the Breckenridge Town Code
32 shall not apply to appeals held under the Uniform Code for the Abatement of
33 Dangerous Buildings.
34

35 8-1-16; PENALTIES:

36
37 A. General: It is unlawful and an "infraction", as defined in section 1-3-2 of this code, for any
38 person to violate any of the provisions of this chapter, or any provision of a code adopted by
39 reference by this chapter. Any person who violates any provision of this chapter or any provision
40 of a code adopted by reference by the chapter shall, upon a determination of liability, be
41 punished as provided in title 1, chapter 4 of this code. Each such person shall be liable for a
42 separate offense for each and every day during any portion of which any violation of any of the

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1 provisions of this chapter or a code adopted by reference by the chapter is committed, continued
2 or permitted by such person, and such person shall be punished accordingly.

3
4 B. Injunctive Relief: In addition to other remedies available to the town, the town may
5 commence an action pursuant to section 1-8-10 of this code to enjoin the alleged violation of any
6 provision of this chapter, or to authorize and compel the removal, termination or abatement of
7 such violation.

8
9 C. Additional Remedies: Any remedies provided for in this chapter shall be cumulative and not
10 exclusive, and shall be in addition to any other remedies provided by law.

11
12 8-1-17: CODE COPIES: At least one copy of the codes adopted by reference in this chapter,
13 each certified to be a true copy, has been and is now on file in the office of the town clerk, and
14 may be inspected by any interested person between the hours of nine o'clock (9:00) A.M. and
15 five o'clock (5:00) P.M., Monday through Friday, holidays excepted.

16
17 8-1-18: LIABILITY: The adoption of this chapter and the codes provided for herein shall not
18 create any duty to any person with regard to the enforcement or nonenforcement of this chapter
19 or said codes. No person shall have any civil liability remedy against the town or its officers,
20 employees or agents, for any damage arising out of or in any way connected with the adoption,
21 enforcement or nonenforcement of this chapter of said codes. Nothing in this chapter or in said
22 codes shall be construed to create any liability or to waive any of the immunities, limitations on
23 liability or other provisions of the Colorado governmental immunity act, section 24-10-101 et
24 seq., C.R.S, or to waive any immunities or limitations on liability otherwise available to the
25 town, or its officers, employees or agents.

26
27 Section 2. Subsection E of Section 2-3-8 of the Breckenridge Town Code is hereby
28 amended so as to read in its entirety as follows:

29
30 G. Staying Of Order Under Appeal: Except for vacation orders made pursuant to
31 ~~section 403 of the Uniform Code for the Abatement of Dangerous Buildings,~~
32 ~~1994 Edition, or section 1103 of the Uniform Housing Code, 1994 Edition,~~ **any**
33 **code adopted by reference in Chapter 1 of Title 8 of this Code,** enforcement of
34 any notice and order of the Building Official issued under this Code shall be
35 stayed during the pendency of an appeal therefrom which is properly and timely
36 filed.

37
38 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
39 various secondary codes adopted by reference therein, shall continue in full force and effect.

40
41 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
42 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and

BUILDING CODES ORDINANCE

ii.

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

3
4 Section 5. 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 6. This ordinance shall be published and become effective as provided by Section
9 5.9 of the Breckenridge Town Charter; provided, however, that the portions of this ordinance
10 providing for the adoption of the National Electrical Code, 2008 Edition, shall not become
11 effective unless and until the National Electrical Code, 2008 Edition, has been adopted by the
12 State of Colorado. The portions of this ordinance providing for the adoption of the National
13 Electrical Code, 2008 Edition, shall become effective within the Town of Breckenridge on the
14 same date that the adoption of the National Electrical Code, 2008 Edition, by the State of
15 Colorado becomes effective. Until such time as the adoption of the National Electrical Code,
16 2008, edition becomes effective, the National Electrical Code, 2002 Edition, as adopted by
17 Ordinance No. 2, Series 2002, shall continue in full force and effect.

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

24
25
BUILDING CODES ORDINANCE

ii.

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.

1 *ii.*
February 28, 2008

BUILDING CODES ORDINANCE



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Senior Planner

DATE: March 4, 2008 (for meeting of March 11, 2008)

SUBJECT: Fence Ordinance (First Reading)

The Town Council directed staff to develop a fence policy that would address fencing and privacy gates. We have been working on this proposed policy over the past few months, and are ready to submit this version for first reading. We have received comments from the Town Council during the work sessions on October 9, 2007, and January 2, 2008, and from the Planning Commission on December 4, 2007.

The attached draft ordinance includes several changes from the versions shown to the Town Council on January 2, 2008, based on input from the Town Council. These include:

- We 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.
- We 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.
- We 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. We did not feel there was clear direction on this issue at the January 2, 2008 meeting.
- We have proposed to allow fenced in children’s play areas, with design criteria similar to pet fences.
- We 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.

One recommendation of the Planning Commission, which has not been incorporated into this version of the ordinance, is to allow fences that would prevent trespass, such as along a public trail easement. We will be happy to discuss any aspect of the proposed ordinance this with you on Tuesday.

1
2 ***For Work Session / First Reading-March 11, 2008***
3

4
5
6 Additions To The January 2, 2008 Version Are
7 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~
8

9 COUNCIL BILL NO. ____

10
11 Series 2007
12

13 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
14 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY
15 ADOPTING POLICY 4 ~~76~~(ABSOLUTE) CONCERNING FENCES AND GATES
16

17 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
18 COLORADO:
19

20 Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
21 the following definitions:
22

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 ~~frequently~~ includes ~~a~~ vertical structures ~~on both sides~~ and/or ~~arching over the road~~ **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 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. (~~A fence with a ratio of 1:4 is more open than a fence with a ratio of 1:3~~**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 ~~76~~(Absolute)(Fences and Gates), which shall read in its entirety as
4 follows:
5

6 ~~46.47.~~(ABSOLUTE) FENCES AND GATES:
7

8 A. General Statement: The welfare of the Town is based to a great extent on the
9 character of the community, which includes natural terrain, open spaces, wildlife
10 corridors and wooded hillsides. The installation of fences can erode this character
11 by impeding views, hindering wildlife movement and creating the image of a
12 closed, unwelcoming community. It is the intent of the Town to prohibit fences in
13 areas outside of the Conservation District in order to maintain the open, natural
14 and wooded alpine character of the community; to establish mandatory
15 requirements for the erection of allowed fences in other parts of the Town; **to**
16 **allow for fences on small lots in master planned communities;** and to prohibit
17 privacy gates and entrance monuments anywhere within the Town.
18

19 B. Within the Conservation District: Fences within the Conservation District
20 shall be reviewed under the criteria of the “Handbook of Design Standards for the
21 Historic and Conservation District”.
22

23 C. Outside the Conservation District: Fences, **gateway** entrance monuments and
24 landscape walls are prohibited outside the Conservation District, except the
25 following fences are permitted when constructed in accordance with the design
26 standards described in section D of this policy:
27

- 28 1. pet fences;
- 29 **2. fences around children’s play areas;**
- 30 ~~2.3.~~fences around ball fields, tennis courts, swimming pools or other
31 outdoor recreation areas;
- 32 ~~3.4.~~construction fences;
- 33 ~~4.5.~~temporary fences used for crowd control or to limit access or egress to
34 or from a short-term special event;
- 35 ~~5.6.~~fencing required by law; ~~and~~
- 36 ~~6.7.~~privacy fencing to screen hot tubs;:-
- 37 **8. fencing around cemeteries; and.**
- 38 **9. fences specifically authorized in a vested master plan containing**
39 **specific fence design standards;**
40

41 D. Design Standards: Fencing shall comply with the following design standards:
42

- 43 1. Fences in residential areas shall be constructed of natural
44 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 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
26 have a maximum solid to void ratio of 1:3.

27 **4. Fences around children's play areas shall be located in a rear or**
28 **side yard where possible, or where the fence is not visible from a**
29 **public right-of-way, which in most instances will require the fence**
30 **to be located behind or to the side of a structure. The fence may**
31 **incorporate a wire mesh material to enclose the yard. The**
32 **maximum area of a fenced children's play area on private**
33 **property shall be 400 square feet. Fences around children's play**
34 **areas are limited to fifty-four (54) inches in height, and shall have**
35 **a maximum solid to void ratio of 1:3.**

36 **4.5.**Fences around ball fields, tennis courts, swimming pools or other
37 outdoor recreation areas [SHALL] use black or dark green vinyl
38 coated chain link fencing. Uncoated or galvanized chain link fencing is
39 prohibited. This standard applies to fencing of both public and private
40 recreation areas. Wind privacy screens may be incorporated into the
41 fence.

42 **5.6.**Construction fencing may be constructed of plastic, chain link or other
43 material, as approved by the Town. Wind privacy screens may be
44 incorporated into the construction fence. ~~temporary~~**Temporary**
45 construction fencing shall be removed upon completion of the project

1 or upon issuance of a Certificate of Occupancy or Certificate of
2 Compliance, where applicable.

3 ~~6.7.~~ Privacy fencing around hot tubs may only be used where the fence will
4 not be nearer than fifty (50) feet from a public right of way.

5 **8. Fencing around cemeteries is exempt from this ordinance. The**
6 **design of cemetery fencing is encouraged to emulate historic**
7 **fencing from local cemeteries and follow the fence policy in the**
8 **“Handbook of Design Standards for the Historic and**
9 **Conservations Districts”.** **These fences were generally constructed**
10 **of wrought iron, cast iron, or wood pickets, and were generally**
11 **about three feet (3’) tall.**

12 **9. Where fences are specifically authorized in a vested master plan**
13 **containing specific fence design standards, the design standards of**
14 **the master plan shall govern the fence design.**

15
16 E. Site Plan; Survey: A site plan showing the location of existing structures,
17 property lines, and the location of the proposed fence may be required by
18 the Director as part of the submittal requirements for a fence. A survey
19 from a Colorado licensed surveyor may also be required by the Director to
20 verify property lines.

21
22 F. Architectural Specifications: Architectural elevations showing the design,
23 material, color, and size of the proposed fence may be required by the
24 Director as part of the submittal requirements for a fence.

25
26 G. Privacy gates: Privacy gates are prohibited anywhere within the Town.

27
28 H. This policy shall not apply to any fence to be constructed upon land that is
29 subject to a vested master plan containing specific fence design standards
30 and criteria if the master plan was approved prior to the effective date of
31 this policy. The construction of such fence shall be governed by the
32 applicable design standards and criteria contained in the master plan.

33
34 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
35 various secondary codes adopted by reference therein, shall continue in full force and effect.

36
37 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
38 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
39 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
40 thereof.

41
42 Section 5. The Town Council hereby finds, determines and declares that it has the power
43 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
44 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
45 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
46 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to

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

3
4 Section 6. 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 7. 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 _____, 2007~~8~~. 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 _____, 2007~~8~~, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
15 Town.

16 TOWN OF BRECKENRIDGE, a Colorado
17 municipal corporation

18
19
20
21 By _____
22 Ernie Blake, Mayor

23
24 ATTEST:

25
26
27
28 _____
29 Mary Jean Loufek, CMC,
30 Town Clerk

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47
48 ~~Brk Misc Ords Fence Policy Ordinance~~
49 ~~September 25, 2007~~

MEMO

TO: MAYOR & TOWN COUNCIL

FROM: TIM GAGEN AND TIM BERRY

RE: LAND EXCHANGE AGREEMENT

DATE: FEBRUARY 28, 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-imbursement of our cost if for some reason the exchange is modified or does not proceed. Town Attorney, Tim Berry and Town Manager, Tim Gagen have worked with the Chihuahua group to develop the form of the agreement for Council consideration.

Recommended Action:

Staff recommends approval of the Land Exchange Agreement

1 ***FOR WORKSESSION/ADOPTION – MARCH 11***

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

AGREEMENT

This Agreement ("Agreement") is entered into this ____ day of _____, 2008, by and between **Chihuahua, LLC**, a Colorado limited liability company ("Chihuahua") and the **Town of Breckenridge**, a Colorado municipal corporation (the "Town"). Chihuahua and the Town may be collectively referred to herein as the "Parties" and individually as a "Party."

Recitals

A. The Parties are parties to an Agreement to Initiate (the "ATI") with the Forest Service, United States Department of Agriculture ("USFS") to conduct a land exchange involving various properties in Summit County, Colorado (the "Exchange").

B. Chihuahua has engaged Western Land Group, Inc. ("WLG") to conduct the Exchange.

C. Chihuahua is the owner of the privately owned property which is subject to the Exchange. Such property is commonly known as the Chihuahua town-site parcel and is more particularly described on Exhibit A hereto (the "Chihuahua Parcel").

D. The USFS properties involved in the Exchange are: (1) the Dercum Dash parcel (the "Dercum Dash Parcel"), (2) the Claimjumper parcel (the "Claimjumper Parcel"), and (3) the Cucumber Gulch Wedge parcel (the "Wedge Parcel"), all of which are more particularly described on Exhibit B hereto

E. The Chihuahua Parcel, Dercum Dash Parcel, Claimjumper Parcel and Wedge Parcel may be collectively referred to herein as the "Parcels."

F. The Town wishes to acquire the Claimjumper Parcel and Wedge Parcel from the Exchange, and Chihuahua wishes to acquire the Dercum Dash Parcel.

G. The Parties desire to agree upon their respective rights and obligations under the ATI and with respect to the Exchange, as more fully set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

1. Conduct of Exchange. The Parties agree to proceed with the Exchange substantially in accordance with the terms of the ATI and under the management of WLG, subject to the following:

(a) Role of Chihuahua. The Town acknowledges that Chihuahua was the instigator of the Exchange and has made a significant investment of both time and money prior to the Town's involvement. In recognition of Chihuahua's primary role in the Exchange, the Town agrees that, as between the Parties, Chihuahua shall act as manager of the Exchange and, except

as stated herein, the Town shall defer to and join in Chihuahua's actions and decisions regarding the Exchange, provided that such actions and decisions are not in breach of this Agreement or in violation of applicable law.

(b) Town Cooperation. Provided that Chihuahua is not in breach of this Agreement: (i) the Town agrees to cooperate with and support the Exchange and not to, directly or indirectly, interfere with or impede in any material respect Chihuahua's efforts to conclude the Exchange; (ii) the Town agrees not to contact or communicate with the USFS regarding the Exchange except in the presence or with the prior approval of Chihuahua or WLG; (iii) at the request of Chihuahua or WLG, the Town agrees to publicly state its support of the Exchange and to send representatives to meetings with the USFS to voice such support; and (iv) the Town shall promptly execute such documents as may be required by the USFS or the ATI or are otherwise necessary or convenient for Chihuahua to conduct the Exchange in accordance with the terms of this Agreement.

(c) Exchange of Information. Chihuahua or WLG shall keep the Town reasonably informed of the progress of the Exchange and communications in connection therewith. Chihuahua agrees that the Town may communicate directly with WLG regarding the Exchange, and hereby directs WLG to freely share information regarding the Exchange with the Town.

(d) Costs and Expenses. Chihuahua shall pay the reasonable costs and expenses incurred in the Exchange, subject to the payment or reimbursement of certain expenses by the Town pursuant to Section 4 of this Agreement.

(e) Amendment of ATI. Except as provided in Section 1(g), Chihuahua shall not seek to materially amend the ATI without the prior written consent of the Town, which shall not unreasonably be withheld. Chihuahua shall promptly provide the Town with a copy of any drafts of modifications of the ATI. Subject to the terms of this Agreement, the Town shall execute modifications of the ATI within ten days of its receipt of a written request from Chihuahua.

(f) Subsequent Agreements. Chihuahua agrees that any subsequent agreement entered into with the USFS regarding the Exchange (the "Exchange Agreement") will be consistent with the terms of the ATI and this Agreement, subject to the provisions of Section 1(g). Chihuahua shall reasonably consult with the Town regarding the terms of the Exchange Agreement and shall promptly provide the Town with a copy of any drafts of the Exchange Agreement. Subject to compliance with the foregoing, the Town agrees to execute and deliver a copy of the Exchange Agreement upon request by Chihuahua.

(g) Force Majeure. The Parties acknowledge that a land exchange with the United States is a dynamic process and that, during the pendency of the Exchange, circumstances may arise that are beyond the reasonable control of Chihuahua and which materially affect the timing, cost or viability of the Exchange (each, a "Force Majeure Event"). If a Force Majeure Event occurs, Chihuahua agrees to advise the Town of such event and to reasonably consult with the Town on how to mitigate the impact of such event on the Exchange and any resulting modifications of the ATI or Exchange Agreement. Subject only to the foregoing obligation and the provisions of Section 5 of this Agreement, however, in response to a Force Majeure Event, Chihuahua shall have the right to delay, modify or abandon the Exchange and/or the ATI or Ex-

change Agreement as it deems appropriate based solely upon Chihuahua's individual business objectives. Subject to the terms of this Agreement, the Town agrees to promptly execute and deliver documents reasonably requested by Chihuahua to implement its decisions regarding the Exchange pursuant to the provisions of this Section.

2. Appraisals.

(a) Chihuahua Obligations. Chihuahua agrees, at its sole expense, to obtain any appraisals of the Chihuahua Parcel or Dercum Dash Parcel that may be required to complete the Exchange.

(b) Town Obligations. The Town agrees, at its sole expense, to obtain any appraisals of the Claimjumper Parcel or Wedge Parcel that may be required subsequent to the date of this Agreement to complete the Exchange.

(c) Joint Obligations. Each Party shall utilize an appraiser designated by WLG and shall fully cooperate with the appraiser to expedite the appraisal process. The USFS shall provide instructions to the appraiser and direct and supervise the appraiser's work. All fees and expenses charged by the appraiser shall be paid by the responsible party before the due date of such payment.

(d) Objections to Valuation. Except as provided in Section 2(e), it is not a condition precedent to the Parties' performance under this Agreement that the appraisals determine certain values for the Parcels, and (except as provided in Section 2(e)) neither Party may terminate this Agreement or fail to perform under this Agreement as a result of the respective values of the Parcels as shown in the appraisals. In the event that a Party is dissatisfied with the valuation of a Parcel, the objecting Party shall give notice to the other Party within seven days after its receipt of the appraisal report, and the Parties shall thereupon reasonably confer to determine whether the objectionable appraisal can be revised in a time and cost efficient manner. Notwithstanding the foregoing, however, Chihuahua shall have the sole right to determine whether or how to address the objection, based solely upon Chihuahua's individual business objectives (subject, however, to the provisions of Section 2(e)). Any re-appraisal of a Parcel as a result of an objection shall be conducted at the expense of the objecting Party.

(e) Insufficient Value.

(i) In the event that, after the resolution of any objections to valuations pursuant to Section 2(d), the appraisals of the Parcels show that the value of the Chihuahua Parcel is less than the combined values of the Dercum Dash Parcel, Claimjumper Parcel and Wedge Parcel, the Wedge Parcel shall be deleted from the Exchange. If the value of the Chihuahua Parcel does not then equal or exceed the combined values of the remaining Parcels, this Agreement shall terminate pursuant to Section 5.

(ii) If the deletion of the Wedge Parcel from the Exchange is sufficient to make the value of the Chihuahua Parcel equal or exceed the combined values of the other Parcels, the Town may, at its sole discretion, give notice to Chihuahua (a "Continuation Notice") that it desires to continue with the Exchange notwithstanding the deletion of the Wedge Parcel and to acquire only the Claimjumper Parcel. The Continuation Notice shall be given, if at all,

within ten days after the later to occur of the following: (A) the date that that last of the appraisal reports for the Parcels has been received by the Town; or (B) the date that Chihuahua gives notice to the Town of its decision not to change an appraisal report after an objection pursuant to Section 2(d) of this Agreement. If the Town fails to give a timely Continuation Notice, this Agreement shall terminate, in which event Chihuahua shall promptly refund to the Town the cost of the appraisals of the Wedge Parcel and the Claimjumper Parcels paid by the Town and all processing fees paid to WLG in connection with the Exchange. If the Town gives a timely Continuation Notice, then this Agreement shall remain in effect (except for the deletion of the Wedge Parcel); provided, however, that: (X) Chihuahua shall promptly refund to the Town the cost of the appraisal of the Wedge Parcel paid by the Town pursuant to Section 2(b); (Y) the Town's contribution toward WLG processing fees pursuant to Section 4(b) (including the maximum amount of such fees) shall be reduced in the same proportion as the reduction in the Town's payment at the Exchange Closing pursuant to Section 3(c); and (Z) Chihuahua shall promptly refund to the Town the amount of any overpayment of WLG processing fees by the Town resulting from the recalculation of such fees pursuant to Subsection (Y).

(f) Excess Value. If the appraised value of the Chihuahua Parcel exceeds the combined values of the Dercum Dash Parcel, Claimjumper Parcel and Wedge Parcel, by notice to the Town on or before the date of the Exchange Closing, Chihuahua, in its sole discretion, may either: (i) extend the date of the Exchange Closing so that it can include other parcels in the Exchange to absorb the excess value of the Chihuahua Parcel; or (ii) donate such remaining value to the USFS or the Town, at Chihuahua's sole discretion. If Chihuahua elects to delay the Exchange Closing pursuant to Subsection (i), this Agreement shall remain in full force and effect, except that (notwithstanding the provisions of Section 4 of this Agreement) the Town shall not be obligated to contribute to any additional processing fees charged by either WLG or the USFS as a result of the inclusion of additional parcels in the Exchange. If Chihuahua elects to donate the excess value pursuant to Subsection (ii), the Town shall reasonably cooperate with Chihuahua to provide confirmation of such donation. If Chihuahua fails to give an election notice, it shall be deemed to have elected to donate the excess value of the Chihuahua Parcel to the Town, and the Town agrees to provide confirmation of such gift as Chihuahua may reasonably request. Any tax benefit derived from the donation of the excess value of the Chihuahua Parcel shall accrue solely to the benefit of Chihuahua.

3. Exchange Closing.

(a) Date. Subject to the provisions of Section 2(f)(i), the date for the consummation of the Exchange (the "Exchange Closing") shall be established by Chihuahua in concert with the USFS. Chihuahua shall keep the Town reasonably advised of the closing date and shall give reasonable notice to the Town of the date set for the Exchange Closing.

(b) Conditions Precedent. Each of the following shall be a condition precedent to the obligation of a Party at the Exchange Closing: (i) this Agreement has not been terminated pursuant to Section 5; (ii) the other party is not in material breach under this Agreement; and (iii) the USFS is not in material breach under the ATI or the Exchange Agreement, as applicable. A Party benefiting from a condition may waive it by notice to the other Party before or at the Exchange Closing, and a Party shall be deemed to have waived all conditions precedent by participating in the Exchange Closing.

(c) Consideration. At the Exchange Closing, the Town shall pay Chihuahua the amount of \$2,500,000.00 (USD) in immediately available good funds; provided, however, that if the Wedge Parcel has been deleted from the Exchange pursuant to Section 2(e), such amount shall be reduced to \$2,160,000.00 (USD).

(d) Direct Deeding. Chihuahua shall request that the USFS issue patents to the Claimjumper Parcel and (except as provided in Section 2(e)) the Wedge Parcel directly to the Town as indicated in the ATI. Under no circumstances shall Chihuahua be required to take title to either such parcel.

(e) Title Insurance. Any Party may, in its sole discretion and at its sole expense, acquire title insurance upon the Parcel(s) acquired by it in the Exchange.

4. Reimbursement of Expenses. In addition to other amounts payable by the Town under this Agreement:

(a) Preliminary Appraisal Expense. Within ten business days after the date of this Agreement, the Town shall pay to Chihuahua the amount of \$8,252.37 (USD), representing one-half of the cost of preliminary appraisals of the Claimjumper Parcel and Wedge Parcel incurred by Chihuahua prior to the date of this Agreement.

(b) WLG Charges. Within ten business days after receiving an invoice therefor, the Town shall pay to Chihuahua (or, if so directed by Chihuahua, to WLG) one-half of the processing fees charged to Chihuahua by WLG in connection with the Exchange for services rendered subsequent to January 1, 2008; provided, however, that: (i) the amounts paid by the Town pursuant to this Section 4(b) shall not exceed \$15,000.00; and (ii) such amounts are subject to adjustment or refund in accordance with Section 2(e).

(c) USFS Charges. Within ten business days after receiving an invoice therefor, the Town shall pay to Chihuahua (or, if so directed by Chihuahua, to the USFS) one-half of the processing fees charged to Chihuahua by the USFS pursuant to the ATI or Exchange Agreement, as applicable; provided, however, that the Town shall not be required to pay any amount allocable to the processing of a special use permit for the Town of Montezuma, currently estimated to be in the amount of \$1,600.00.

(d) Other Expenses. Each Party shall pay any costs and expenses, including but not limited to attorneys' fees, incurred by such Party in connection with the Exchange and the transaction contemplated by this Agreement not adjusted as set forth in this Section and not otherwise provided for in this Agreement.

5. Termination Rights.

(a) Automatic Termination. Without further notice, this Agreement shall terminate upon the occurrence of either of the following: (i) Chihuahua gives notice to the Town of the abandonment of the Exchange pursuant to Section 1(g) of this Agreement; or (ii) a termination pursuant to Section 2(e).

(b) Termination by Town.

(i) Within ten business days after its receipt of a notice from Chihuahua of a modification of the Exchange pursuant to Section 1(g) that materially impairs the rights of the Town under this Agreement, the Town may give a notice of the termination of this Agreement to Chihuahua. Such termination shall be effective if Chihuahua has failed to mitigate the effect of such modification to the Town's satisfaction within ten business days after the date of the Town's termination notice.

(ii) The Town may terminate this Agreement by giving notice to Chihuahua if the Exchange has not been consummated within one year after the date of this Agreement for any reason other than a default by the Town.

(iii) The Town may terminate this Agreement due to a default by Chihuahua pursuant to Section 6 of this Agreement.

(iv) The Town may terminate this Agreement pursuant to Section 8.

(c) Termination by Chihuahua.

(i) By notice to the Town, Chihuahua may terminate this Agreement due to the occurrence of a Force Majeure Event as described in Section 1(g).

(ii) Chihuahua may terminate this Agreement due to a default by the Town pursuant to Section 6 of this Agreement.

(iii) Chihuahua may terminate this Agreement pursuant to Section 8.

(d) Effect of Termination. Upon a termination of this Agreement pursuant to this Section 5, the parties shall be released from any obligations under this Agreement; provided, however, that: (i) Chihuahua's obligation to refund amounts to the Town pursuant to Section 2(e)(ii) shall survive termination; and (ii) termination shall not affect a Party's liability for a default which has occurred prior to the effective date of such termination. Following a termination of this Agreement for reasons other than the abandonment of the Exchange pursuant to Section 1(g), Chihuahua, in its sole discretion, may continue the Exchange upon such terms as Chihuahua and the USFS may mutually agree, including but not limited to the acquisition by Chihuahua of the Wedge Parcel or Claimjumper Parcel. In such event, the Town agrees that it will not object to the inclusion of the Wedge Parcel or Claimjumper Parcels in the Exchange; provided, however, that, in the event that Chihuahua acquires either or both of such parcels, nothing in this Agreement shall be construed as affecting the subsequent exercise by the Town of its municipal jurisdiction over such parcels.

6. Default and Remedies. If a Party fails to cure a breach of this Agreement within ten days after its receipt of notice from the other Party, such party shall be in default; provided, however, that if a non-monetary breach by a Party cannot reasonably be cured within such ten day period, the breaching Party shall not be in default provided that such Party: (a) commences a cure of the breach during such ten day period; and (b) diligently pursues such cure to completion no later than thirty days after its receipt of a notice of default. Upon the occurrence of a default

by a Party, the other Party shall have all remedies permitted by the laws of the State of Colorado, including but not limited to injunctive relief and specific performance. Notwithstanding the provisions of this Section, no grace period shall apply to a Party's failure to perform its obligations at the Exchange Closing.

7. Notices. All notices, demands or other communications required or permitted to be given under this Agreement shall be in writing and any and will be deemed to have been duly delivered upon (a) personal delivery, (b) as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, (c) as of 12:00 p.m. on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, next business day delivery charges prepaid, or (d) if sent via facsimile, as of the date and time sent as evidenced by a facsimile transmission receipt. All such notices, demands or other communications shall be addressed as follows:

If intended for Chihuahua:

Chihuahua, LLC
Attn: Gary J. Miller
56 River Run Road, #204
PO Box 1884
Dillon, CO 80435
Facsimile: (970) 468-6403

With a copy to:

Holme Roberts & Owen LLP
Attn: John B. Wood
1801 Thirteenth St., Suite 300
Boulder, CO 80302
Facsimile: (303) 866-0200

If intended for the Town:

Town of Breckenridge
Attn: Town Manager
150 Ski Hill Road
PO Box 168
Breckenridge, CO 80424
Facsimile: (970) 547-3104

With a copy to:

Timothy H. Berry
Timothy H. Berry, PC
131 W. Fifth St.
PO Box 2

Leadville, CO 461
Facsimile: (719) 486-3039

8. Annual Appropriation. Financial obligations of the Town under this Agreement payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the Town Council of the Town of Breckenridge, Colorado. In the event sufficient funds shall not be made available, this Agreement may be terminated by either party without penalty. The Town's obligations hereunder shall not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

9. Miscellaneous.

(a) Assignment; Binding Effect. Neither Party may assign its rights under this Agreement without the prior written consent of the other Party, which shall not unreasonably be withheld. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and approved assigns.

(b) Entire Agreement. This Agreement, together with the exhibits attached hereto, contains the entire agreement between the Parties and may not be modified in any manner except by an instrument in writing signed by both Parties. There are no other understandings, oral or written, which in any manner alter or enlarge its terms. The exhibits attached to this Agreement are hereby incorporated herein and made a part of this Agreement. The Recitals to this Agreement are hereby incorporated herein and made a part hereof.

(c) Attorneys Fees. In the event it becomes necessary for Chihuahua or the Town to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party in such suit will be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

(d) Governing Law. This Agreement shall be construed under and governed by the laws of the State of Colorado.

(e) Severability. If any term, section, paragraph or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section, paragraph or other provision shall not affect any of the remaining provisions of this Agreement.

(f) Relationship of the Parties. Nothing in this Agreement, the ATI or the Exchange Agreement shall be construed as creating a partnership between the Parties or as imposing a fiduciary duty upon either Party with regard to its dealings with the other Party.

(g) Counterparts; Facsimile. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

[Signatures on following page]

[Signature Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

Chihuahua, LLC,
a Colorado limited liability company

By: _____
Name: Gary J. Miller
Title: Manager

The Town of Breckenridge,
a Colorado municipal corporation

By: _____
Name:
Title:

Attest: _____
Name:
Title:

Approved as to Form: _____
Name: Timothy H. Berry
Title: Town Attorney

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: Jennifer Cram, Planner III

Date: March 4, 2008

Re: Resolution to Restructure the Public Art Commission from Nine Members to Seven Members

Attached to this memo is a resolution to 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 we 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 we believe that it is appropriate to go back to a seven member Commission.

The BPAC believes that seven Commissioners is appropriate to accomplish all of the projects that the Commission proposes and in future years it will be easier to find qualified applicants to fill seven positions rather than nine.

Staff will be available during the worksession to answer any questions.

1 ***FOR WORKSESSION/ADOPTION – MARCH 11***

2

3 A RESOLUTION

4

5 SERIES 2008

6

7 A RESOLUTION RESTRUCTURING AND REESTABLISHING THE TOWN OF

8 BRECKENRIDGE PUBLIC ARTS COMMISSION

9

10 WHEREAS, by Resolution No. 10, Series 2004, the Town Council of the Town of

11 Breckenridge created a nine-member temporary advisory committee, known as the "Town of

12 Breckenridge Public Arts Commission", to provide guidance to the Town by recommending

13 components of the Town's Public Arts Program; to perform such other functions and duties as

14 are provided in the Town's Art In Public Place Master Plan; and to perform such other duties as

15 may be delegated to the Commission in the future by the Town Council; and

16

17 WHEREAS, the Town Council finds and determines that the Public Arts Commission

18 created pursuant to Resolution No. 10, Series 2004, should be abolished, and the Public Arts

19 Commission reestablished as a temporary advisory board consisting of seven members.

20

21 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF

22 BRECKENRIDGE, COLORADO, as follows:

23

24 Section 1. Repeal of Prior Resolution; Dissolution of Prior Public Arts Commission.

25 Resolution No. 10, Series 2004, is hereby repealed. The Public Arts Commission created

26 pursuant to Resolution No. 10, Series 2004, is hereby abolished, and the terms of office of all

27 members of the Public Arts Commission appointed prior to the adoption of this resolution are

28 hereby terminated.

29

30 Section 2. Public Arts Commission Reestablished. The “Town of Breckenridge Public

31 Arts Commission” is hereby reestablished as a temporary advisory committee of the Town

32 (“Commission”). The Commission shall operate in accordance with and subject to the

33 provisions, duties and limitations of this resolution.

34

35 Section 3. Appointment; Qualification. The Commission shall consist of seven

36 members who shall be appointed by the Town Council based upon such member's knowledge,

37 experience, interest and involvement in art in Breckenridge. Members of the Commission need

38 not be residents or electors of the Town. Members shall serve at the pleasure of the Town

39 Council. Any member of the Commission may be removed at the pleasure of the Town Council.

40

41 Section 4. Term of Office; Vacancies.

42

43 A. The term of office of the members of the Commission shall be three years, or until the

44 functions and duties of the Commission have been completed and the Commission has been

45 dissolved and terminated by action of the Town Council, whichever shall first occur; except that

46 in order to obtain staggered terms the term of office of four of the members initially appointed to

1 the Commission following the adoption of this resolution shall be three years; and the term of
2 office of the remaining three members initially appointed to the Commission following the
3 adoption of this resolution shall be only two years.

4
5 B. A vacancy on the Commission shall exist upon the occurrence of any of the following
6 events:

- 7
- 8 (1) a member's term expires;
- 9 (2) a member resigns;
- 10 (3) a member is removed by the Town Council pursuant to Section
11 3 of this resolution;
- 12 (4) a member dies; or
- 13 (5) a member misses three consecutive meetings of the Commission,
14 or five meetings of the Commission in any twelve month period,
15 regardless of whether such meetings are regular or special
16 meetings. However, within 15 days of missing the meeting which
17 causes the vacancy to occur the member may submit to the Town
18 Council a written request to be retained on the Commission. The
19 Town Council shall have the authority to retain a member who
20 demonstrates good and sufficient cause for retention. Upon receipt
21 of the member's timely written request, the Town Council, at its
22 next regular meeting, shall determine whether retain the member
23 on the Commission.
- 24

25 C. In the event that a vacancy shall occur during the term of any appointed member, a
26 successor shall be appointed by the Town Council to serve the unexpired portion of the term.

27
28 Section 5. Compensation. Members of the Commission shall serve without
29 compensation.

30
31 Section 6. Duties and Responsibilities. The Commission shall have the following duties
32 and responsibilities:

- 33
- 34 (1) To provide guidance to the Town by recommending
35 components of the Town's Public Arts Program.
- 36
- 37 (2) To perform such other functions and duties as are provided
38 in the Town's Art In Public Place Master Plan.
- 39
- 40 (3) To perform such other functions and duties regarding
41 the Town's Public Arts Program as may, from time to time,
42 be delegated by the Town Council, or which are provided
43 for by Town ordinance or resolution.
- 44

45 Section 7. Operation. The Commission shall elect a chair and a vice-chair from its
46 members, together with such other officers as the Commission shall deem appropriate. The

1 Commission shall keep an electronic record of its meetings and shall further keep written
2 minutes thereof as required by the Colorado Open Meetings law. Four members of the
3 Commission shall constitute a quorum for the transaction of business.
4

5 Section 8. Meetings. The Commission shall meet at Town Hall, or such other location
6 within the Town as the Commission shall determine. The Commission shall meet on such dates
7 as the Commission may determine. All meetings of the Commission shall be subject to the same
8 open meeting laws and requirements as are applicable to the meetings of the Town Council.
9

10 Section 9. Rules and Regulations. The Commission may adopt rules and regulations
11 governing its operation; provided, however, that no such rule or regulation, or any amendment
12 thereto, shall become effective until such rule, regulation or amendment has been approved by
13 the Town Council.
14

15 Section 10. Effective Date. This resolution shall become effective upon its adoption.
16

17 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2008.
18

19 TOWN OF BRECKENRIDGE
20
21

22
23 By _____
24 Ernie Blake, Mayor
25

26 ATTEST:
27
28
29

30 _____
31 Mary Jean Loufek, CMC,
32 Town Clerk
33

34 APPROVED IN FORM
35
36
37

38 _____
39 Town Attorney date
40
41
42



MEMORANDUM

TO: Town Council
FROM: Carin Faust, Supervisor for Outdoor Recreation & Education
Lynn Zwaagstra, Director of Recreation
DATE: February 20, 2008
SUBJECT: Request for Fire Permit

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 sleds, 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.

The current Town Code (Section 5-5-3) prohibits open burning and bonfires within town limits. Specifically:

Open Fires and Burning Prohibited: *Except as authorized by this chapter, it shall be unlawful for any person to conduct open burning anywhere within the town. (Ord 21, 1994).*

However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning and bonfires. Specifically, Section 5-5-5 states:

Notwithstanding the provisions of section 5-5-3 of this chapter, the town council shall have the authority to issue a special permit for the purpose of authorizing open burning within the town. An application for such a permit shall be made in writing to the town council and shall state the date, time, location and purpose of such fire, and a description of all safety and precautionary measures planned. The town council shall act upon such request at its next regularly scheduled meeting following receipt of the completed application. The town council may grant such application if it finds that there are special and unique circumstances which justify granting the application. All open burning conducted within the town pursuant to a special permit issued pursuant to this section shall be conducted in accordance with the rules pertaining to open burning contained in the town's fire code. The town council may impose such other reasonable conditions upon a special permit as it shall determine to be necessary to adequately protect the health, safety and welfare of the town and its inhabitants. It shall be unlawful for any person to conduct any open burning within the town in violation of the terms and conditions of a special permit issued pursuant to this section. (Ord. 21, Series 1994)

Fuel for the proposed bonfire will consist of pre-bundled firewood, most likely lodgepole pine in two-foot (2') sections.

The campfire will be attended at all times by Town Staff. The Outdoor Recreation and Education staff will take safety precautions such as obtaining a "2A 10BC" fire extinguisher if one is required by the Red, White, and Blue Fire Protection District, clearing the area of any flammable debris, and having a bucket of water nearby to extinguish the fire. If there is snow around the fire, it will be packed down. The likelihood of snow in the area, the distance from any other fuel sources, and the fact that the fire will be contained in a metal fire pit, means that the fire will not present the threat of spreading. TOB Outdoor Recreation and Education staff will be on hand to monitor and fuel the fire.

The applicants have already discussed this proposal with the Red, White & Blue Fire Department and a permit will be issued. A special permit from the Town Council is the only outstanding issue.

Following is a motion that the Town Council may like to use to approve the special permit:

"I motion 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."



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 11	First Meeting of the Month
Tuesday, March 25	Second Meeting of the Month
Tuesday, March 25	Blake/Millisor Farewell

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