



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, January 22, 2013; 7:30 PM

Town Hall Auditorium

I	CALL TO ORDER, ROLL CALL	
II	APPROVAL OF MINUTES - JANUARY 8, 2013	3
III	APPROVAL OF AGENDA	
IV	COMMUNICATIONS TO COUNCIL	
	A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)	
	B. BRECKENRIDGE RESORT CHAMBER UPDATE	
	C. BRECKENRIDGE SKI RESORT UPDATE	
	D. RED WHITE AND BLUE FIRE DISTRICT UPDATE	
V	CONTINUED BUSINESS	
	A. SECOND READING OF COUNCILS BILLS, SERIES 2012 - PUBLIC HEARINGS - NONE	
VI	NEW BUSINESS	
	A. FIRST READING OF COUNCIL BILLS, SERIES 2012	
	1. COUNCIL BILL NO. 1, SERIES 2013 - AN ORDINANCE ADOPTING CHAPTER 14 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING TOWN PROJECTS	6
	B. RESOLUTIONS, SERIES 2012	
	1. RESOLUTION NO. 1, SERIES 2013 - A RESOLUTION APPROVING A LOAN AGREEMENT WITH BRECKENRIDGE VILLAGE APARTMENTS, LLC, A COLORADO LIMITED LIABILITY COMPANY	12
	2. RESOLUTION NO. 2, SERIES 2013 - A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2012 TOWN BUDGET	32
	3. RESOLUTION NO. 3, SERIES 2013 - A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2013 TOWN BUDGET FOR PROJECTS NOT COMPLETED IN BUDGET YEAR 2012	38
	C. OTHER	
VII	PLANNING MATTERS	
	A. PLANNING COMMISSION DECISIONS	39
	B. PLANNING COMMISSION REPORT (MR. GALLAGHER)	
VIII	REPORT OF TOWN MANAGER AND STAFF	
IX	REPORT OF MAYOR AND COUNCILMEMBERS	
	A. CAST/MMC (MAYOR WARNER)	
	B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)	
	C. BRC (MR. BURKE)	
	D. MARKETING COMMITTEE (MS. WOLFE)	
	E. SUMMIT COMBINED HOUSING AUTHORITY (MR. DUDICK)	
	F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)	
	G. WATER TASK FORCE (MR. GALLAGHER)	

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

- H. LANDFILL TASK FORCE (MS. WOLFE)
- I. PUBLIC ART COMMISSION (MR. GALLAGHER)

X OTHER MATTERS

XI SCHEDULED MEETINGS

XII ADJOURNMENT

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

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, January 08, 2013
PAGE 1

1 of 3

CALL TO ORDER, ROLL CALL

APPROVAL OF MINUTES - DECEMBER 11, 2012
Minutes approved as submitted. 7:41 PM

APPROVAL OF AGENDA
No Changes. 7:37 PM

COMMUNICATIONS TO COUNCIL

- A. Citizen's Comment - (Non-Agenda Items ONLY: 3-minute limit please)
Tom Vitalone 2VS Landscaping on McCain property and renting for the last 11 years. 7:38 PM

CONTINUED BUSINESS

- A. Second Reading of Councils Bills, Series 2012 - Public Hearings
 - 1. COUNCIL BILL NO. 35, SERIES 2012- AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 9.2 (CLAIMJUMPER PARCELS - 25.633 ACRES)
Town Attorney Tim Berry presenting to council. Property owned by the town, annexed in 2012 and requires zoning within 90 days of being annexed. 7:48 PM
Motion made to Approve Motion to Approve 1. COUNCIL BILL NO. 35, SERIES 2012- AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 9.2 (CLAIMJUMPER PARCELS - 25.633 ACRES) made by Mr. Dudick and seconded by Mr Brewer
Passed For: 0; Against: 0; Abstain: 0; Absent: 1

NEW BUSINESS

- A. First Reading of Council Bills, Series 2013 - None
- B. Resolutions, Series 2013 - None
- C. Other - None

PLANNING MATTERS

- Planning Commission items stand as discussed during the worksession. 7:51 PM
- A. Planning Commission Decisions
Consent Calendar will stand as submitted. 7:24 PM
- B. Planning Commission Report (Mr. Gallagher)

REPORT OF TOWN MANAGER AND STAFF

Town Manager:

Grant funds from CDOT are being looked at for alternative transportation. Also the Highway 9 project where CDOT is taking a serious look at improving the area between the Summit High School and the medical center. CDOT is tapping into their reserve funds and this project could be a reality within the next 2 -3 years. In addition a health study presentation from Deb Crook indicated that they are moving forward with 10 winable goals. 7:50 PM

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, January 08, 2013
PAGE 2

2 of 3

REPORT OF MAYOR AND COUNCILMEMBERS

- A. Cast/MMC (Mayor Warner)
Mayor indicated that he did not have anything to report and that he would provide council with an email of the proposed trail expansion from Breckenridge via Glenwood to Vail. Additional comments by Mayor Warner were reported under the town manager. 8:04 PM
- B. Breckenridge Open Space Advisory Committee (Mr. Brewer)
Brief report - bike lane improvements were also reported to BOSAC and further information will be provided at the next worksession. 8:03 PM
- C. BRC (Mr. Burke)
No Meeting. 7:57 PM
- D. Marketing Committee (Ms. Wolfe)
No Meeting. 7:57 PM
- E. Summit Combined Housing Authority (Mr. Dudick)
- F. Breckenridge Heritage Alliance (Mr. Brewer)
20% increase visitors. Harris street campaign in final stages for marketing. Submitted a DOLA grant for \$750K and to Climax for \$125K. State Historical Fund awarded \$35K for the dredge. 7:59 PM
- G. Water Task Force (Mr. Gallagher)
Engineering study continues to move forward - scheduled in June. We are continuing to reach out to Colorado Springs. - Mohawk Lake, and Blue Lakes are being looked at as a possibility. 8:01 PM
- H. Landfill Task Force (Ms. Wolfe)
No Meeting. 8:01 PM
- I. Public Art Commission (Mr. Gallagher)
Breckenridge Theatre - looking at requests for the additional 20 x 80 ft. addition to accommodate a majority of their needs. Arts Commission felt that we might be better served by looking at alternatives to expansion. 8:02 PM

OTHER MATTERS

Work Session - BMAC selection process. Gagen mentioned that future appointments would need to occur by voice vote per C.R.S. 8:09 PM

Dudick requested that a gutter channel be installed at the exchange lot, the seams are leaking. Gagen indicated that this is being addressed.

Brewer asked that the approach to Breckenridge be enhanced perhaps with tree lights especially in the median.

Gagen reported that a Wellington Bus Station expansion is being considered by the Wellington HOA. Courtney is looking at asking the TOB and the County for a small piece of open space for a bus turnaround.

Wolfe asking about next steps on the single use bags. Warner is working with City Market. Gagen reported that staff is putting together the remainder of the information and analysis for the council to consider.

Burke indicated that the restaurant group will not support a sales tax for

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, January 08, 2013
PAGE 3

3 of 3

child care and would support a property tax for child care.

Keystone Science School - Donations are needed by 1/31/13 - for the land purchase and operating funds - Warner. Summit Foundation will collect on behalf of the KSS for the 501 3(C) tax deduction. Gagen.

8:15 PM

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:18pm. Submitted by Linda Coxen, Municipal Services.

ATTEST:

Linda Coxen, CMC, Town Clerk

John Warner, Mayor



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Current Planning Manager

DATE: January 15, 2013 (For meeting of January 22, 2013)

SUBJECT: Town Projects Ordinance (Work Session and First Reading)

The Town Council has recently expressed some concerns on the way that Town Projects are currently reviewed. In response, Town Staff and the Town Attorney propose a new ordinance to alter the way Town Projects are defined and reviewed.

As you may recall, the current Town Projects process is described in Section 9-1-27 of the Development Code. However, since Town Projects are often unique and the Development Code does not always apply, we are proposing to remove the review process from the Development Code and create a new chapter. This will make it clear that Town Projects are not required to follow the Development Code. However, the process will still require the Town Council to seek the advice of the Planning Commission (unless the project is otherwise exempt), and for the Director of Community Development to prepare a Point Analysis in order to identify how the proposed project meets or does not meet the Development Code.

The main changes proposed in this ordinance include:

- Removing Town Projects from the Development Code, and creating a new Chapter 14
- Changes to the definition of “Attainable Work Force Housing Project”. This definition will also be removed from the Development Code, which otherwise does not use this term.
- Changing the definition of “Town Project” so as to clarify that Master Plans such as McCain and the Arts District fall under the definition of “Town Project”.
- Requiring that the Town Project follow applicable Town standards, unless otherwise determined by the Town Council.

The Town Council will still make the final decision on all Town Projects.

Staff and the Town Attorney will be available to answer questions about this ordinance during the meeting on Tuesday.

1 *FOR WORKSESSION/FIRST READING – JAN. 22*

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

5
6 COUNCIL BILL NO. 1

7
8 Series 2013

9
10 AN ORDINANCE ADOPTING CHAPTER 14 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE CONCERNING TOWN PROJECTS

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

15
16 Section 1. Section 9-1-27 of the Breckenridge Town Code is repealed.

17 Section 2. The definition of “Attainable Work Force Housing Project” in Section 9-1-5
18 of the Breckenridge Town Code is repealed.

19 Section 3. Title 9 of the Breckenridge Town Code is amended by the addition of a new
20 Chapter 14, to be entitled “Town Projects”, which shall read as follows:

21 CHAPTER 14

22 TOWN PROJECTS

23
24 SECTION:

25
26 9-14-1: Definitions

27 9-14-2: Town Council Authority Over Town Projects

28 9-14-3: Town Projects To Be Designed And Constructed In

29 Accordance With Applicable Town Standards

30 9-14-4: Process For Review And Approval Of A Town Project

31 9-14-5: Town Projects Not Requiring Planning Commission Review

32 9-14-1: DEFINITIONS: As used in this Chapter, unless the context clearly requires otherwise,
33 the following words have the following meanings:

 ATTAINABLE WORK FORCE
 HOUSING PROJECT:

 A development project in which ownership,
 occupancy, and sale of the property to be
 developed, **or the lease or rental of the**
 property to be developed, is restricted in
 such a fashion as to provide on a permanent
 basis moderately priced **or affordable**
 housing to be occupied only by qualified

persons meeting specific criteria that may include income test(s) and employment requirements as described in the project documents. The purpose of an affordable or attainable work force housing project is to help establish and preserve a supply of moderately priced housing to help meet the needs of locally employed residents of the Town by providing housing to persons who, because of their income, may not otherwise be in a position to afford to purchase, own, and occupy, or to lease or rent, suitable housing.

TOWN PROJECT:

A project involving either: 1) the **planning, design, construction, erection, repair, maintenance, replacement, relocation, or improvement of any building, structure, facility, recreational field, street, road, path, public way, bridge, excavation or any other public project or work of any kind undertaken and paid for** by the Town; 2) **the planning, design, construction, erection, repair, maintenance, replacement, relocation, or improvement of any building, structure, facility, excavation or any other project or work of any kind undertaken with the consent of the Town Council on Town-owned real property by a non-profit entity** and ~~or~~ 23) the **planning, design, construction, erection, repair, maintenance, replacement, relocation or improvement of an attainable work force housing project on Town-owned, leased, or controlled real property, regardless of whether the attainable work force housing project will be operated by the Town or some other person.**

1 **9-14-2: TOWN COUNCIL AUTHORITY OVER TOWN PROJECTS: The Town**
2 **Council, in its sole discretion, shall determine whether a Town project is necessary or**
3 **advisable for the public good, and whether the project shall be undertaken. If a Town**
4 **project is to be undertaken, the Town Council, in its sole discretion, has the sole and final**
5 **authority to determine all aspects of the Town project, including, but not limited to, its**
6 **location and design. Chapter 1 of this Title and the Town of Breckenridge Land Use**

1 **Guidelines do not apply to Town projects, but Town projects shall be processed instead in**
2 **accordance with the provisions of this Chapter.**

3 **9-14-3: TOWN PROJECTS TO BE DESIGNED AND CONSTRUCTED IN**
4 **ACCORDANCE WITH APPLICABLE TOWN STANDARDS: Unless otherwise**
5 **determined by the Town Council, in its discretion all Town projects shall conform to the**
6 **Town's master plan, ordinances, and building and technical codes insofar as practical.**
7 **Prior to the Town Council's final decision with respect to a proposed Town project the**
8 **Director of the Department of Community Development shall prepare a point analysis for**
9 **the proposed Town project in the same manner as a point analysis is prepared for a final**
10 **hearing on a Class A development permit application under Chapter 1 of this Title. The**
11 **point analysis is for the Town Council's information only, and the final decision with**
12 **respect to a proposed Town project shall be made by the Town Council as provided in**
13 **Section 9-14-2.**

14 9-14-4: PROCESS FOR REVIEW AND APPROVAL OF A TOWN PROJECT: Unless a
15 particular Town project is exempt from the requirements of this Section by Section 9-14-5, the
16 following procedure shall be followed in connection with the review and approval of a Town
17 project:

- 18 1. Prior to the commencement of any Town project, the Town Council shall consult with
19 and seek the advice and recommendations of the Planning Commission.
- 20 2. In connection with its review of a proposed Town project, the Planning Commission
21 shall schedule and hold one or more public hearing, **notice of which shall be**
22 **published** at least once in a newspaper of general circulation at least three (3) days
23 **prior to the hearing on the Town's website for at least five (5) days prior to the**
24 **hearing. Because the process of reviewing and approving a Town project is**
25 **discretionary and administrative, and not quasi-judicial, any member of the**
26 **Town Council may properly attend the Planning Commissions public hearing(s)**
27 **and deliberations with respect to a proposed Town project.**
- 28 3. Following the conclusion of the public hearing(s), the Planning Commission shall
29 submit to the Town Council its recommendations and advice concerning the proposed
30 Town project.
- 31 4. Failure of the Planning Commission to submit its advice and recommendations to the
32 Town Council within sixty (60) days after the submission to it of the proposed Town
33 project shall be deemed to be a recommendation of approval of the project as
34 submitted.
- 35 5. **The final decision with respect to a proposed Town project shall be made by the**
36 **Town Council at a regular or special meeting. The proposed Town project shall**
37 **be listed on the Town Council's agenda that is posted in advance of the meeting**
38 **on the Town's website**

39 9-14-5: TOWN PROJECTS NOT REQUIRING PLANNING COMMISSION REVIEW:

1 A. Notwithstanding Section 9-14-4 the Planning Commission is not required to
2 review and provide a recommendation with respect to the following categories of
3 Town projects:

- 4 1. public road or alley improvements;
 - 5 2. the installation or replacement of the Town's public utilities and structures associated
6 with the operation of the Town's public utilities;
 - 7 3. the erection or improvement of surface public parking facilities;
 - 8 4. minor repairs to any public facility; or
 - 9 5. any work that would be classified as a Class C or Class D development under the
10 Town's Development Code;
 - 11 6. any other proposed Town project that the Town Council determines need not be
12 reviewed by the Planning Commission.
- 13 B. All exempt projects may be undertaken by the Town Council without Planning
14 Commission review, and without formal Town Council approval.
- 15 C. Nothing in this Section limits the discretionary authority of the Town Council to have
16 any of the exempted Town projects reviewed by the Planning Commission if the
17 Council determines that such review would be beneficial.

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

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

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

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

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

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this ____ day of _____, 2013. 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 _____, 2013, 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

10
11
12 By _____
13 John G. Warner, Mayor
14

15 ATTEST:

16
17
18
19 _____
20 Town Clerk
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59



MEMORANDUM

To: Mayor and Town Council
From: Tim Gagen, Town Manager
Date: January 16, 2013
Subject: *Loan Agreement with Breckenridge Village Apartments, LLC (Pinewood 1)*

Background

The Town joined in partnership with Corum Development to develop the affordable rental apartment project known as Pinewood Apartments in 1995–96 through a land lease agreement wherein Corum procured all the financing. In recent years, the financing interest rate has dropped significantly wherein Corum is now applying for a refinancing of the original debt on the project. The proposed refinancing could include the pay off of the original equity portion of the financing structure which will result in the Town receiving its land lease payments from around 2018 to 2013. After reviewing various refinancing options, the Town expressed an interest in participating in a short term bridge financing and the long term refinancing most likely through HUD.

In the case of the short term role, the Town would provide a \$7.4 million loan for up to three years at an interest rate of 3.5% while Corum completes its long term refinancing with HUD. The 3.5% interest rate is significantly higher than the current rate of returns on the Town's investments which is less than 1% and would earn the Town \$21,500 in interest earnings per month during the term of the loan. For the long term refinancing, it is anticipated the Town will provide \$1.4 million and in return will receive a monthly debt service payment at an interest rate approved by HUD. The land lease payments starting at \$61,700 per month and growing each year will go to support the Affordable Housing Fund.

The loan agreement implementing this arrangement has been prepared and reviewed by the Town Attorney and Town Manager and is now ready for Council consideration. When the final refinancing is approved, the Town Council will enter into a subsequent loan agreement when all the HUD terms are known.

Recommendation:

The Town Attorney and Town Manager recommend approval of the resolution approving the loan agreement for the bridge loan.

1 ***FOR WORKSESSION/ADOPTION – JAN. 22***

2
3 A RESOLUTION

4
5 SERIES 2013

6
7 A RESOLUTION APPROVING A LOAN AGREEMENT WITH BRECKENRIDGE
8 VILLAGE APARTMENTS, LLC, A COLORADO LIMITED LIABILITY COMPANY

9
10 WHEREAS, Section 1-9-1 of the Breckenridge Town Code provides as follows:

11 **1-9-1: DEPOSITS; INVESTMENTS:**

12 The town manager shall deposit all of the funds and monies which come into his
13 possession by virtue of his office as town manager in one or more responsible
14 banks located in the state of Colorado which have been designated by written
15 resolution of the town council. The council may also authorize the town manager,
16 by written resolution, to invest all or any part of such funds in securities which are
17 authorized for such investment by state law or in such other investments as the
18 town council may, by resolution, authorize.

19
20 ; and

21
22 WHEREAS, the Town Council desires to authorize a loan of Town funds to
23 Breckenridge Village Apartments, LLC, a Colorado limited liability company, in accordance
24 with the proposed “Loan Agreement”, a copy of which is marked Exhibit “A”, attached hereto
25 and incorporated herein by reference; and

26
27 WHEREAS, the Town Council finds and determines that the loan to Breckenridge
28 Village Apartments, LLC, a Colorado limited liability company, is an appropriate investment of
29 Town funds.

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

33
34 Section 1. The Town Manager is authorized, empowered, and directed to execute a Loan
35 Agreement with Breckenridge Village Apartments, LLC, a Colorado limited liability company,
36 in substantially the form that is attached to this resolution as Exhibit “A”.

37
38 Section 2. Minor changes to or amendments of the approved agreement may be made by
39 the Town Manager if the Town Attorney certifies in writing that the proposed changes or
40 amendments do not substantially affect the principal amount of loan to be made, the term of the
41 loan, or the interest rate to be received by the Town under the loan.

42
43 Section 3. This resolution is effective upon adoption.
44

1 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2013.

2
3 TOWN OF BRECKENRIDGE

4
5
6
7 By _____
8 John G. Warner, Mayor
9

10 ATTEST:

11
12
13
14 _____
15 Town Clerk

16 APPROVED IN FORM

17
18
19
20
21 _____
22 Town Attorney Date
23
24
25
26
27
28
29
30
31
32
33
34

LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of January ____, 2013 is by and between the Town of Breckenridge, a Colorado municipal corporation (“Lender” or the “Town”), and Breckenridge Village Apartments, LLC, a Colorado limited liability company (“Borrower” or “Breckenridge Village”).

WHEREAS, Breckenridge Village is the operator of a multifamily affordable housing project (the “Project”) and the holder of a leasehold interest (the “Land Lease”) of the real property on which the Project is located; and

WHEREAS, the Town is the fee owner of the real property on which the Project is located; and

WHEREAS, Breckenridge Village currently is the maker under a certain promissory note to the Colorado Housing and Finance Authority (the “Authority”) as lender; and

WHEREAS, the Authority’s note is secured by a deed of trust on the leasehold interest dated June 26, 1996 and granted to the Authority by Breckenridge Village, as well as a deed of trust on the Real Property dated June 26, 1996 and granted to the Authority by the Town; and

WHEREAS, Breckenridge Village has granted security interests in the leasehold estate to additional lenders; and

WHEREAS, pursuant to the Land Lease, Breckenridge Village is entitled to a distribution of a preferred return payment on Breckenridge Village’s equity in the Project, which preferred return has priority over rent payments due to the Town; and

WHEREAS, a portion of such preferred return payments have accrued unpaid to Breckenridge Village; and

WHEREAS, the Town desires to lend to Breckenridge Village, and Breckenridge Village desires to borrow from the Town, an amount sufficient to pay in full the promissory note to the Authority, satisfy the additional debts secured by liens on the leasehold interest, and satisfy the amount owed to Breckenridge Village under the preferred return provision of the Land Lease; and

NOW THEREFORE, In consideration of the mutual covenants and agreements herein contained, Breckenridge Village and the Town agree as follows:

ARTICLE I.
DEFINITIONS

SECTION 1.01 Certain Definitions. The following terms shall have the meanings indicated whenever used herein:

- (a) Accrued Preferred Return – That portion of the Preferred Return under the Land Lease that has accrued and remains unpaid as of the date of this Loan Agreement.
- (b) Amortized Repayment Period. The period that commences on the expiration of the Interest-Only Repayment Period and terminates on the Maturity Date.
- (c) Assignment of Leases and Rents – The Assignment of Leases and Rents of even date herewith from Breckenridge Village to the Town encumbering the Premises, securing the Loan and recorded in the real property records of the County of Summit, Colorado, as such document may be amended, renewed or extended at any time or from time to time.
- (d) Authority – The Colorado Housing and Finance Authority, a Colorado special purpose entity, with an address of 1981 Blake Street, Denver CO 80202.
- (e) Borrower/Breckenridge Village – Breckenridge Village Apartments, LLC, a Colorado limited liability company, with a principal street address of 600 South Cherry, Suite 625, Denver, CO 80246.
- (f) Date of Disbursement. The date that the funds are disbursed by the Town to Breckenridge Village, which date shall be the closing of the Loan, subject to the satisfaction of all of the conditions precedent set forth in Article III hereof and in the other Loan Documents.
- (g) Land Lease – That certain Lease between the Town, as landlord, and Breckenridge Village, as tenant, recorded July 21, 1995 at Reception No. 495017 in the records of the Summit County Recorder, as amended by that certain Amendment to Lease dated November 20, 1995, that certain Second Amendment to Lease dated February 28, 1996, and that certain Third Amendment to Lease dated June 3, 1996.
- (h) Improvements – The buildings and improvements located (or to be located) on the Real Property.
- (i) Interest Only Repayment Period. The period that commences on the Date of Disbursement of the Loan and terminates upon the earlier of (a) the closing of the Refinance Loan pursuant to Article IX, below or (b) the date that is three years from the Date of Disbursement.
- (j) Interest Rate. The rate defined in Section 2.02 herein.
- (k) Leasehold Deed of Trust – The Leasehold Deed of Trust to Public Trustee, Security Agreement and Financing Statement of even date herewith from Breckenridge Village to and for the benefit of the Town encumbering the Premises, securing the Loan, and

recorded in the real property records of the County of Summit, Colorado, as such document may be amended, renewed or extended at any time or from time to time.

- (l) Lender/Town – The Town of Breckenridge, a Colorado municipal corporation, with an address of 150 Ski Hill Road, Breckenridge, CO 80424.
- (m) Loan – As defined in Section 2.01 herein.
- (n) Loan Documents – This Loan Agreement, the Note, the Leasehold Deed of Trust to the Public Trustee, Security Agreement and Financing Statement, the Assignment of Leases and Rents, and any and all other instruments or documents evidencing, securing or in any way pertaining to the Loan, as such instruments and documents may be amended, renewed or extended at any time or from time to time.
- (o) Maturity Date – The date that is thirty-five (35) years from the earlier of (a) the closing of the Refinance Loan pursuant to Article IX, below, or (b) the date that is three years from the Date of Disbursement.
- (p) Note – The Promissory Note evidencing the Loan of even date herewith from Breckenridge Village payable to the order of the Town, as such note may be amended, renewed or extended at any time or from time to time.
- (q) Obligations – All obligations of Breckenridge Village to the Town, whether now existing or hereafter arising, including without limitation Breckenridge Village's obligations, covenants and agreements hereunder and under the Note, the other Loan Documents and the Land Lease.
- (r) Operations Proceeds - As defined in Section 1.30 of the Land Lease.
- (s) Operations Proceeds Loan – The Loan, as modified upon the closing of the Refinance Loan pursuant to Article IX, below.
- (t) Operations Proceeds Note – The Note, as modified upon the closing of the Refinance Loan pursuant to Section 9.02, below.
- (u) Party/Parties – Breckenridge Village and the Town may each be referred to as a Party or collectively as the Parties.
- (v) Preferred Return – As defined in Section 1.33 of the Land Lease, the return on Breckenridge Village's invested equity in the affordable rental housing project located on the Real Property, which return is required under the Land Lease to be paid to Breckenridge Village prior to the payment of any rent to the Town under the Land Lease.
- (w) Premises – The Real Property together with all Improvements (including fixtures and equipment owned by Breckenridge Village) as the same are constructed, erected and installed thereon.

- (x) Project. An affordable housing project of approximately seventy-four (74) units on the Real Property.
- (y) Real Property – The real property described on Exhibit A hereto.
- (z) Refinance Lender – That organization or other entity that refinances all or a portion of the Loan pursuant to Article IX, below.
- (aa) Refinance Loan. The portion of the Loan refinanced through the Refinance Lender.

ARTICLE II. THE LOAN

SECTION 2.01 Agreement to Borrow and Lend. Breckenridge Village hereby agrees to borrow from the Town, and the Town agrees to lend to Breckenridge Village, the sum of Seven Million Four Hundred Thousand and 00/100 Dollars (\$7,400,000.00) (the “Loan”).

SECTION 2.02 Interest Rate. The Interest Rate on the outstanding balance of the Loan from the Date of Disbursement until the Maturity Date shall be 3.5% per annum. The Note shall provide that if any default occurs, and following maturity, interest on the entire outstanding principal balance, together with any accrued interest to date, shall thereafter accrue at the default interest rate of seven percent (7%) per annum.

SECTION 2.03 Repayment During Initial Interest Only Repayment Period. During the Interest-Only Repayment Period, Breckenridge Village shall make monthly payments to the Town, which payments shall be made on the first of every month and shall be interest-only on the balance of the Loan at the Interest Rate.

SECTION 2.04 Repayment During Amortized Repayment Period. During the Amortized Repayment Period, Breckenridge Village shall pay monthly payments to the Town, which payments shall be made on the first of each month and shall be calculated by amortizing the balance of the Loan at the Interest Rate on a thirty-five (35) year repayment schedule, subject to the terms of Section 9.03, below.

SECTION 2.05 Prepayment. Breckenridge Village shall have the right at any time to prepay all or any portion of the Loan without prepayment penalty.

SECTION 2.06 Effect on Land Lease Rent Payment. The Parties Agree that repayment of the Note shall be treated as a deduction from the Operation Proceeds, as defined in Section 1.30 of the Land Lease.

SECTION 2.07 Use of Loan Proceeds. Breckenridge Village shall use the proceeds of the Loan first to satisfy all debts secured by interests in the Real Property. Any remaining proceeds of the Loan may be used for any purpose at the discretion of Breckenridge Village.

SECTION 2.08 Security. The Loan shall be secured by (a) the Leasehold Deed of Trust and (b) the Assignment of Leases and Rents.

ARTICLE III.
CONDITIONS PRECEDENT TO DISBURSEMENT OF LOAN PROCEEDS

SECTION 3.01 Conditions Precedent to Disbursement of Loan. The Town shall have no obligation to disburse the proceeds of the Loan unless Breckenridge Village shall have executed or provided to the Town all of the documents set forth on Exhibit B attached hereto and incorporated herein by this reference, and such documents shall be acceptable to the Town in the Town's discretion.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES OF BRECKENRIDGE VILLAGE

Breckenridge Village represents and warrants to the Town as follows:

SECTION 4.01 Organization and Qualification. Breckenridge Village is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Colorado.

SECTION 4.02 Authority and Enforceability. Breckenridge Village has full power to enter into and perform its obligations under this Agreement, the Note and the other Loan Documents. The execution and delivery of this Agreement, the Note and the other Loan Documents and the performance and observance of their terms, conditions and obligations have been duly authorized by all necessary action on the part of Breckenridge Village. This Agreement, the Note and the other Loan Documents constitute, and any other agreement required hereby will constitute, when executed and delivered by Breckenridge Village to the Town, valid and binding obligations of Breckenridge Village enforceable in accordance with their terms. Breckenridge Village shall certify to the Town in writing its compliance under this Section 4.02.

SECTION 4.03 No Conflict. The execution and delivery of this Agreement, the Note and the other Loan Documents and consummation of all the transactions contemplated hereby and thereby, do not and will not conflict with, or be in contravention of, any of Breckenridge Village's governing documents, any law, order, rule or regulation applicable to Breckenridge Village or any agreement or instrument to which Breckenridge Village is a party or by which the Premises are bound or affected, and will not result in the creation of any lien, charge or encumbrance of any nature upon the Premises other than that contemplated hereby.

ARTICLE V.
AFFIRMATIVE COVENANTS OF BRECKENRIDGE VILLAGE

Until payment or performance in full of all the Obligations, Breckenridge Village shall:

SECTION 5.01 Payment of Note. Make all payments of principal and interest under the Note as and when the same become due and payable, without notice or demand.

SECTION 5.02 Inspection. Permit the Town and its representatives to enter upon the Premises at all reasonable times and inspect the Premises.

SECTION 5.03 Compliance with Laws. Comply promptly with all laws, rules, regulations, resolutions, ordinances and codes (including, without limitation, all environmental laws and regulations) applicable to the business of the Breckenridge Village and to the conduct and operation of its business, the operation or the use of the Premises for its intended purpose and keep in effect all permits or approvals obtained in connection therewith.

SECTION 5.04 Payment of Expenses. Pay within ten (10) business days of receipt of written demand all expenses incurred by the Town in collecting all or any portion of the Loan following an Event of Default by Breckenridge Village, including, without limitation, the Town's attorney's fees and costs.

SECTION 5.05 Further Assurances. From time to time record, register and file all such notices, statements and other documents and take such other steps, including, without limitation, effecting the amendment of any Loan Document, as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Town with respect to all security from time to time furnished under this Agreement or intended to be so furnished, in each case in such form and at such times as shall be satisfactory to the Town.

SECTION 5.06 Affordable Housing. Breckenridge Village shall comply with the restrictive covenants and affordability requirements of all loans and grants connected with the Project.

SECTION 5.07 Loan Monitoring. During the term of the Loan, Breckenridge Village shall promptly complete upon the Town's request such periodic financial reports and shall provide such other information as the Town may reasonably request in order to properly monitor the Loan.

SECTION 5.08 Performance of Other Obligations. Promptly and strictly perform and comply with all other terms, conditions, covenants and prohibitions required by the terms of any of the Loan Documents.

ARTICLE VI.
NEGATIVE COVENANTS OF BRECKENRIDGE VILLAGE

Except as otherwise provided herein, Breckenridge Village shall not, until payment and performance in full of all of the Obligations, without the prior written consent of the Town:

SECTION 6.01 Liens. Create, assume, incur or suffer to exist any mortgage, pledge, security interest, lien or other encumbrance upon the Premises that may be senior to the Loan, except liens for taxes not delinquent, the security interests created or contemplated hereunder, or any lien or encumbrance created by the refinance pursuant to Article IX, below, through the Refinance Lender.

SECTION 6.02 Value of Premises. Do or suffer to be done any act whereby the value of any part of the Premises might be lessened.

SECTION 6.03 Assignment. Assign or attempt to assign any of its rights or delegate any of its duties hereunder or under the other Loan Documents except as may be required by the Refinance Lender as part of the refinance pursuant to Article IX, below.

SECTION 6.04 Use of Funds. Use funds advanced under this Agreement in a manner inconsistent with Section 2.07.

SECTION 6.05 Environmental Hazards. Permit the Premises to be used or operated in any manner such that the Premises may or do become contaminated by any hazardous substance or environmental pollutant in violation of any federal, state or local environmental statute or ordinances, including without limitation violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act and the Resource Conservation and Recovery Act, all as amended from time to time.

ARTICLE VII. **EVENTS OF DEFAULT AND REMEDIES**

SECTION 7.01 Events of Default. The occurrence of any one or more of the following events or existence of one or more of the following conditions shall constitute an event of default (“Event of Default”) under this Agreement:

- (a) Subject to the terms of repayment set forth in the Note, Breckenridge Village's failure to make any payment of any and all amounts required to be paid under the Note when due or declared due, which failure is not cured within ten (10) days following notice thereof from the Town to Breckenridge Village;
- (b) any representation or warranty made in writing to the Town herein or in connection with the making of the Loan shall have been incorrect or misleading in any material respect when made;
- (c) Breckenridge Village shall fail to perform or observe any covenant contained in this Agreement or observe such term or condition and such failure shall not be cured within thirty (30) days after notice thereof from the Town to Breckenridge Village; provided, however, that if such defect cannot reasonably be cured within thirty (30) days, such Event of Default shall occur if Breckenridge Village has not made reasonable progress in curing such defect within thirty (30) days from the notice thereof from the Town;
- (d) there shall occur a default or event of default (however defined) under the terms of the Land Lease, the Note, the Leasehold Deed of Trust, any other Loan Document, or the Land Lease;
- (e) Breckenridge Village shall make an assignment for the benefit of creditors; file a petition in bankruptcy; be adjudicated insolvent or bankrupt or admit in writing the inability to pay debts as they mature; petition or apply to any tribunal for the appointment of a receiver or any trustee or similar officer for Breckenridge Village or a substantial part of the assets of Breckenridge Village; or shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or if there shall have

been filed any such petition or application, or any such proceeding shall have been commenced against Breckenridge Village, that remains undismissed for a period of ninety (90) days or more;

- (f) a lien or other encumbrance shall be filed against the Premises or any other security for the Loan, except liens for taxes not delinquent, or any lien or encumbrance created by the refinance pursuant to Article IX, below, through the Refinance Lender, and the same shall not have been removed or Breckenridge Village shall not have posted security or provided title insurance protection therefor within ten days after the filing thereof in amounts and forms satisfactory to the Town; or
- (g) this Agreement, the Note, the Leasehold Deed of Trust, any other Loan Document, or the Land Lease shall at any time for any reason cease to be in full force and effect.

SECTION 7.02 Remedies.

- (a) Upon the occurrence of any Event of Default and at any time thereafter, the Town shall be under no further obligation to make payments or disbursements hereunder or take any other action with respect to this Agreement. The Loan, with all accrued interest and other amounts payable hereunder, shall, at the option of the Town, become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by Breckenridge Village. Upon the occurrence of an Event of Default under Section 7.01(e) above, the Loan, with all accrued interest and other amounts payable shall automatically be due and payable in full without the need for any action by the Town. The Town may proceed with every remedy available at law or in equity or provided for herein or in any document executed in connection herewith, and all expenses incurred by the Town in connection with any remedy shall be deemed indebtedness of Breckenridge Village to the Town and a part of the Obligations. The Town may apply the proceeds from any collateral for the Loan or from any other source against any of the Obligations as and in any order it sees fit.
- (b) The Loan shall be nonrecourse and the Town agrees that it shall proceed solely against the collateral secured by the Loan Documents and no money judgment, recourse or personal liability shall be sought or obtained against Breckenridge Village or any of its members or managers for the payment of any amounts due under, or the performance of any obligations required under this Agreement, the Loan Documents, or any other document executed in connection with the Loan.
- (c) No delay or failure of the Town in the exercise of any right or remedy provided for hereunder shall be deemed a waiver of the right by the Town, and no exercise or partial exercise or waiver of any right or remedy shall be deemed a waiver of any further exercise of such right or remedy or of any other right or remedy that the Town may have.

RIGHTS AND DUTIES OF LENDER

SECTION 8.01 No Joint Venture, Partnership, etc. Nothing herein shall be construed as establishing a relationship between the Town and any other party except the lender-borrower relationship between the Town and Breckenridge Village.

SECTION 8.02 Environmental Indemnity. Breckenridge Village hereby agrees to indemnify, defend and hold harmless the Town and its agents, affiliates, officers, directors and employees of and from any and all liability, claims, demands, actions and causes of action whatsoever (including, without limitation, reasonable attorneys' fees and expenses, and costs and expenses reasonably incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character) arising out of or related to the contamination of the Premises by any hazardous substance or environmental pollutants in violation of any federal, state or local environmental statutes or ordinances, including, without limitation, violation of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act and the Resource Conservation and Recovery Act, all as amended from time.

ARTICLE IX. **REFINANCING**

SECTION 9.01 Intent to Refinance. It is the intent of Breckenridge Village and the Town that Breckenridge Village shall obtain the Refinance Loan to replace a portion of the Loan, which Refinance Loan shall be made by the Refinance Lender. Breckenridge Village shall diligently pursue the refinancing of the Loan with the Refinance Loan and, provided that the Refinance Lender offers the Refinance Loan to Breckenridge Village upon commercially reasonable rates, terms and conditions, Breckenridge Village shall use all reasonable efforts to proceed to the closing of the Refinance Loan. The Town shall cooperate with Breckenridge Village and the Refinance Lender and perform all reasonable acts necessary to facilitate the closing of the Refinance Loan.

SECTION 9.02 Conversion to Operations Proceeds Note. Upon closing of the Refinance Loan, the Parties agree that the balance of the Loan shall remain subject to the terms of this Agreement; provided, however, that at such time the Loan shall convert to an operations proceeds loan, such that no payment of the Loan shall exceed the Operations Proceeds of the Project for the month immediately preceding the month that such payment is due. The Parties agree that they shall, at closing of the Refinance Loan, deliver a fully executed amendment to the Note to represent the modification to an operations proceeds note, and release the other Loan Documents.

SECTION 9.03 Amount of Operations Proceeds Note. Breckenridge Village and the Town agree that the proceeds of the Refinance Loan shall be used first to pay down the principal balance of the Loan to the extent that the principal amount of the Operations Proceeds Note, after such pay down, shall be One Million Four Hundred Thousand Dollars (\$1,400,000.00).

SECTION 9.04 Town's Obligations Upon Refinance. The Town agrees that it shall perform all acts reasonably necessary for the refinancing of a portion of the Loan by the

Refinance Lender, which acts shall include, but not be limited to the, (i) grant of a deed of trust and security agreement to the Refinance Lender for the Town's interest in the Real Property; (ii) amendment of the Note to represent the pay down required in Section 9.03, and the modification of the repayment terms of the Note to reflect the conversion of the Loan to an Operations Proceeds Loan; and (iii) execution of any and all other documents reasonably required by the Refinance Lender to adequately secure the Refinance Lender's loan, which may include a subordination of the Leasehold Deed of Trust, the release of the Leasehold Deed of Trust and the grant of a new leasehold deed of trust to the Town which would be subordinate to the deed of trust for the benefit of the Refinance Lender, or the full, final, complete and unconditional release of the Leasehold Deed of Trust without the grant of a new leasehold deed of trust to the Town.

SECTION 9.05 Additional Security of Operations Proceeds Note. Breckenridge Village shall use reasonable efforts to obtain the Refinance Loan with a subordination of the Leasehold Deed of Trust or the grant of a new subordinate leasehold deed of trust to the Town. In the event that the Refinance Lender requires a full, final, complete and unconditional release of the Leasehold Deed of Trust and does not allow for the grant of a new leasehold deed of trust to the Town, however, Breckenridge Village shall, upon the closing of the Refinance Loan, execute an Amendment to the Land Lease that shall provide that the Town, in the event that Breckenridge Village does not make the payments when due under the Operations Proceeds Note, provided that such failure to make payment is not cured within one (1) year from the date of written notice of such failure, shall have the right to terminate the Land Lease along with any other available remedies in an event of default by Breckenridge Village under the Land Lease. As used in this Section 9.05, "reasonable efforts" shall mean a good faith request of the Refinance Lender, and shall not require Breckenridge Village to pursue any specific type of loan or lender, nor shall it require Breckenridge Village to reject the terms of any Refinance Loan that would otherwise be acceptable.

ARTICLE X. **MISCELLANEOUS**

SECTION 10.01 Amendments. No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived or otherwise changed except by a written instrument duly executed by Breckenridge Village and the Town and designated as an amendment, supplement or waiver.

SECTION 10.02 Costs. Breckenridge Village agrees that it shall pay at the closing of the Loan all of the Town's reasonable costs in the review and negotiations of the Loan, including all reasonable attorneys fees.

SECTION 10.03 Assignment. Breckenridge Village covenants and agrees not to assign, pledge, transfer, or sublet its rights in this Agreement, in whole or in part, nor grant any license or other interest hereunder, without the prior written consent of the Town. Any attempt by Breckenridge Village to assign or in any way transfer its interest in this Agreement, in whole or in part, without such prior written consent of the Town, will at the option of the Town, constitute a default under this Agreement.

SECTION 10.04 Agreement Binding Upon Successors. This Agreement is binding upon and extends to the successors and permitted assigns of the Parties.

SECTION 10.05 Force Majeure. Neither Party is 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 disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of terrorism, 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. This section does not apply to any failure to make a monetary payment due under this Agreement.

SECTION 10.06 No Partnership. The Town is not a partner, associate, or joint venturer of Breckenridge Village in the conduct of Breckenridge Village's business. Breckenridge Village is an independent contractor without the right or authority to impose tort or contractual liability upon the Town.

SECTION 10.07 Communications. All communications (oral, written, telephonic and electronic) between Breckenridge Village and the Town related to this Agreement will be directed to the Town Manager of the Town of Breckenridge, or his designee. Breckenridge Village will not communicate directly with any member of Town Council of the Town of Breckenridge with respect to any matter related to this Agreement.

SECTION 10.08 Notices. Any notice required to be given to any party pursuant to any provision of this Agreement shall be in writing, shall be given by certified mail, return receipt requested, delivered by hand or commercial carrier delivery, addressed as follows:

If to Breckenridge Village:

Breckenridge Village Apartments
Attn: V. Michael Komppa
600 South Cherry, Suite 625
Denver, CO 80246
Facsimile number: (303) 796-2065
Telephone number: (303) 796-2000

with a copy to:

Polsinelli Shughart, PC
Attn: Steven Wright, Esq.
515 Wynkoop Street, Suite 600
Denver, CO 80202
Facsimile number: (303) 572-7883
Telephone number: (303) 572-9300

If to the Town:

Town of Breckenridge
Attn: Town Manager
150 Ski Hill Road
Breckenridge, CO 80424
Facsimile number: (970) 547-3104
Telephone number: (970) 547-3166

with a copy to:

Timothy H. Berry, Esq.
Timothy H. Berry, P.C.
P.O. Box 2
Leadville, CO 80461
Facsimile number: (719) 486-3039
Telephone number: (719) 486-1889

Any notice delivered by certified mail in accordance with this Section will be effective 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 facsimile in accordance with this Section will be effective upon receipt if concurrently with sending by facsimile 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 will be effective upon actual receipt. Either Party, by notice given as provided above, may change the address to which future notices may be sent by giving notice pursuant to this Section. E-mail is not a valid method of giving notice under this Agreement.

SECTION 10.09 Governing Law. This Agreement, the Note, and the other Loan Documents shall be governed by and construed in accordance with the laws of the State of Colorado. Breckenridge Village:

- (a) agrees that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement, the Note, and the other Loan Documents will be litigated, if at all, in and before the state courts of Summit County, Colorado; and
- (b) irrevocably submits to the non-exclusive jurisdiction of the state courts of Summit County, Colorado in any action or proceeding arising out of or relating to this Agreement, the Note, and the other Loan Documents, and irrevocably waives any objection to the laying of venue of any such action or proceeding in any such court and any claim that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

SECTION 10.10 Entire Agreement. This Agreement, the Note and the other Loan Documents constitute and incorporate the entire agreement between the Town and Breckenridge Village concerning the subject matter of this Agreement, and supersede any prior agreements between the Town and Breckenridge Village concerning the subject matter thereof.

SECTION 10.11 WAIVER OF JURY TRIAL. BRECKENRIDGE VILLAGE:

- (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND**
- (b) WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE TOWN AND BRECKENRIDGE VILLAGE MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS AND/OR ANY TRANSACTIONS, OCCURRENCES, COMMUNICATIONS OR UNDERSTANDINGS (OR THE LACK OF ANY OF THE FOREGOING) RELATING IN ANY WAY TO THE BORROWER-LENDER RELATIONSHIP BETWEEN THE PARTIES.**

IT IS UNDERSTOOD AND AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS, WHETHER INITIATED BY BRECKENRIDGE VILLAGE AGAINST THE TOWN OR INITIATED BY THE TOWN AGAINST BRECKENRIDGE VILLAGE. THIS WAIVER OF JURY TRIAL IS SEPARATELY GIVEN, KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BRECKENRIDGE VILLAGE AND BRECKENRIDGE VILLAGE AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE TOWN IS AUTHORIZED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND BRECKENRIDGE VILLAGE SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF SUCH WAIVER OF RIGHT

TO TRIAL BY JURY. BRECKENRIDGE VILLAGE REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND/OR THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

SECTION 10.12 Time of the Essence. Time is of the essence hereof with respect to the dates, terms and conditions of this Agreement, the Note and the other Loan Documents.

SECTION 10.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

SECTION 10.14 Collection Expenses. If this Agreement is placed in the hands of an attorney for collection or enforcement following the occurrence of an Event of Default hereunder, Breckenridge Village agrees to pay to the Town upon demand all costs and expenses, including, without limitation, all attorneys' fees and court costs incurred by the Town in connection with the enforcement or collection of this Agreement (whether or not any action has been commenced by the Town to enforce or collect this Agreement) or in successfully defending any counterclaim or other legal proceeding brought by Breckenridge Village contesting the Town's right to collect the outstanding principal amount (including the allocated fees and expenses of in-house counsel). All of such costs and expenses will bear interest at the default rate of interest provided in the Note from the date of payment by the Town until repaid in full.

SECTION 10.15 Headings. The section headings of this Agreement are for convenience in reference only, and do not define or limit the scope of any provision of this Agreement.

SECTION 10.16 Survivorship. All warranties and unperformed covenants, representations, agreements and guarantees contained in this Agreement will survive the expiration or earlier termination of this Agreement, and the Parties will continue to be bound by such warranties, covenants, representations and agreements until they have been fully performed or satisfied.

SECTION 10.17 Severability; Invalidity of Any Part. If any provision or part of any provision of this Agreement is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision (or any remaining part of any provision) of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained in this Agreement, but only to the extent of its invalidity, illegality or unenforceability. In any event, if any such provision pertains to the repayment of any indebtedness owed to the Town by Breckenridge Village, at the Town's option, the outstanding principal amount, together with all accrued and unpaid interest thereon, will become immediately due and payable.

SECTION 10.18 Terminology. Wherever applicable, the pronouns in this Agreement designating the masculine or neuter will equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular will include the plural, and the plural will include the singular.

SECTION 10.19 Third Parties. There are no third-party beneficiaries of this Agreement.

SECTION 10.20 Additional Instruments. Each Party will deliver or cause to be delivered upon request such additional documents and instruments as may be required to accomplish the intent of this Agreement.

SECTION 10.21 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. No course of dealing or conduct will be effective to modify, release or waive any provisions of this Agreement or any of the other Loan Documents.

SECTION 10.22 No Recording. Neither this Agreement, nor a copy or memorandum of this Agreement, will be recorded in the real property records of the Clerk and Recorder of Summit County, Colorado. The recording of this Agreement or a copy or memorandum thereof by Breckenridge Village will constitute a breach of this Agreement.

SECTION 10.23 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.

SECTION 10.24 “Day” Defined. As used in this Agreement, the term “day” means a calendar day, not a business or working day.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the _____ day of January 2013.

LENDER:

Town of Breckenridge
a Colorado municipal corporation

By: _____

Name: _____

Title: _____

BORROWER:

Breckenridge Village Apartments, LLC,
a Colorado limited liability company

By: _____

V. Michael Komppa, Manager

EXHIBIT A

Description of the Real Property

Lot 5, Block 1,
Parkway Center Subdivision Filing No. 1 Amended,
according to the plat recorded July 26, 1985, as
Reception No. 300636,

County of Summit,
State of Colorado.

Also known as 600 Airport Road.

EXHIBIT B

Documents Required Prior to Disbursement of Loan Proceeds

1. **Loan Agreement**
2. **Promissory Note** in the amount of \$7,400,000.00.
3. **Leasehold Deed of Trust to Public Trustee, Security Agreement and Financing Statement** from Breckenridge Village for the benefit of the Town, to be recorded in the Real Estate Records of the Clerk and Recorder of the County of Summit, Colorado.
4. **Assignment of Leases and Rents** from Breckenridge Village to the Town to be recorded in the Real Estate Records of the Clerk and Recorder of the County of Summit, Colorado.



MEMORANDUM

To: Mayor & Town Council
From: Finance and Municipal Services
Date: January 7, 2013
Subject: 2012 Supplemental Appropriations and Rollovers to 2013 Budget

Purpose: The two attached resolutions have been prepared for Council’s review during the January 22nd work session and subsequent action as appropriate during the Council meeting.

Description: The resolution titled “**A Resolution Making a Supplemental Appropriation to the 2012 Town Budget**” is intended to provide additional 2012 budget authority for the following purposes:

Golf Debt Service: to reflect transfers between General Fund and Golf Fund for Golf Debt Service. The tax payments for the golf debt are paid into the General Fund (001), but a portion of debt service payments are made from the Golf Fund (005):

General Fund Revenue:	\$658,480
General Fund Expense:	\$658,480
Golf Fund Revenue:	\$658,480
Golf Fund Expense:	\$658,480

General Fund Revenues and Expenses (001): to reflect revenue received and expenses paid in 2012 that were unforeseen at the time of the adoption of the 2012 budget.

General Fund

Revenue

Transit 5304 Integration Study	\$ 6,556
FTA 5309 Grant Key Card Lock Access Project	\$ 15,200
Total	\$ 21,756

Expense

Alpine Rock Purchase	\$ 86,250
Breckenridge Nordic Center Financing	\$1,121,000
Dew Tour	\$ 97,000
Breck Bike Week	\$ 23,000
Total	\$1,327,250

Capital Fund

Expense

Breckenridge Nordic Center Infrastructure	\$ 350,000
---	------------

Public Works Administration Building	\$ 550,000
Main Street Improvements	\$ 65,000
Pinewood Sidewalk	\$ 38,000
Total	\$1,003,000

Revenue

Transfers from Excise to Capital	\$1,003,000
Transfer from Conservation Trust to Capital	\$ 44,000

Marketing: the award of the USAPCC stage was uncertain at the time of the adoption of the 2012 budget. The Town commitment was \$150k but the net of expenditures less sponsorship revenue was \$106k (\$44k under budget).

Revenue

- USAPCC sponsorship revenue \$ 44,465

Expense

- USAPCC sponsorship expense \$ 150,000

Housing Fund

Claimjumper/Wedge Acquisition	\$ 343,000
-------------------------------	------------

Open Space Fund:

<i>Revenue:</i> State Forest Management Grant	\$ 33,259
<i>Expense:</i> Claimjumper/Wedge Acquisition	\$ 401,000

Excise Fund: Transfers from Excise to Capital \$1,003,000

Conservation Fund: Transfer from Conservation Trust to Capital \$ 44,000

Garage Fund:

Revenue: Transit funds: digital radio/AVL project	\$ 44,476
Expense: Accelerated bus refurbishments	\$ 327,295

Description: The resolution titled “A Resolution Making a Supplemental Appropriation to the 2013 Town Budget” requests changes to the 2013 budget authority for the following purposes:

- Green Team requests a rollover of \$10,360 to complete the single use bag project and audits for SustainableBreck business program.
- Arts District requests a rollover of \$5,569 for the purchase of a gas-fired kiln and associated supplies. Arts district revenues and contributions exceeded expenditures for 2012.

- Staff request a \$79,382 rollover in the Special Projects Fund for Breckenridge Historical Alliance's 2012 capital projects not completed in 2012. To wit; Historic District Signage (\$4,470), Barney Ford Museum Upgrade (\$20,000), Valley Brook Cemetery Monument Restoration (\$10,000), Rotary Snowplow Park (\$16,791), Oral and Written Histories (\$8,000), and Reiling Dredge Stabilization (\$20,121).
- The remaining rollover amounts (Nordic Center Improvements \$869,000 and Alpine Rock Purchase \$86,250) represent supplemental amounts appropriated in 2012 but not spent.

Recommended Action: We request that Council review the attached resolutions named above. Staff will also be present during the January 22nd Work Session to respond to any questions that Council may have. It is also requested that Council hold a public hearing and be prepared to vote on the resolutions during the January 22nd Council Meeting.

A RESOLUTION

SERIES 2013

A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2012 TOWN BUDGET

WHEREAS, the Town Council of the Town of Breckenridge desires to amend the Town's 2012 budget by making supplemental appropriations in the amount of \$2,850,916 in revenues and \$5,572,505 in expenditures; and

WHEREAS, pursuant to Section 10.12(a) of the Breckenridge Town Charter, the Finance Department, on behalf of the Town Manager, has certified that there are available for appropriation revenues in excess of those estimated in the Town's 2012 budget or revenues not previously appropriated in an amount sufficient for the proposed supplemental appropriations; and

WHEREAS, a public hearing on the proposed supplemental appropriations was held on January 22, 2013, in accordance with the requirements of Section 10.12(a) of the Breckenridge Town Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO that the 2012 budget is amended, and supplemental appropriations for the amended 2013 Town budget are made as follows:

General Fund Revenues (001):

• Golf Debt Service	\$ 658,480
• Transit 5304 Integration Study	\$ 6,556
• FTA 5309 Grant Key Card Lock Access Project	\$ 15,200
Total General Fund Revenue Increase:	\$ 680,236

General Fund Expense (001):

• Alpine Rock property purchase	\$ 86,250
• Breckenridge Nordic Center Financing	\$1,121,000
• Golf Debt Service	\$ 658,480
• Dew Tour	\$ 97,000
• Breck Bike Week	\$ 23,000
Total General Fund Expenditure Increase:	\$1,985,730

Excise Fund Expense (006):

• Transfer to Capital for Breckenridge Nordic Center Infrastructure	\$350,000
• Transfer to Capital for Public Works Admin Building	\$550,000
• Transfer to Capital for Main Street Improvements	\$ 65,000
• Transfer to Capital for Pinewood Sidewalks	\$ 38,000
Total Excise Fund Expenditure Increase:	\$1,003,000

Capital Fund Revenue (003):

• Transfer from Excise for Breckenridge Nordic Center Infrastructure	\$350,000
• Transfer from Excise for Public Works Admin Building	\$550,000
• Transfer from Excise for Main Street Improvements	\$ 65,000
• Transfer from Excise for Pinewood Sidewalks	\$ 38,000
• Transfer from Conservation Trust to Capital	\$ 44,000
Total Capital Fund Revenue Increase:	\$1,047,000

<u>Capital Fund Expense (003):</u>	
• Breckenridge Nordic Center Infrastructure	\$350,000
• Public Works Admin Building	\$550,000
• Main Street Improvements	\$ 65,000
• Pinewood Sidewalks	\$ 38,000
Capital Fund Expenditure Increase:	\$1,003,000

<u>Marketing Fund Revenue (004):</u>	
• USAPCC Sponsorships	\$ 44,465
Total Marketing Fund Revenue Increase:	\$ 44,465

<u>Marketing Fund Expense (004):</u>	
• USAPCC Expenditures	\$150,000
Total Marketing Fund Expenditure Increase:	\$150,000

<u>Golf Fund Revenue (005):</u>	
• Debt Service-transfer from General Fund	\$658,480
Total Golf Fund Revenue Increase:	\$658,480

<u>Golf Fund Expense (005):</u>	
• Debt Service	\$658,480
Total Golf Fund Expenditure Increase:	\$658,480

<u>Affordable Housing Revenue (007):</u>	
• Claimjumper/Wedge Acquisition	\$343,000
Total Affordable Housing Expenditure Increase:	\$343,000

<u>Open Space Revenue (008):</u>	
• State Forest Management Grant	\$ 33,259
Total Open Space Fund Revenue Increase:	\$ 33,259

<u>Open Space Expense (008):</u>	
• Claimjumper/Wedge Acquisition	\$401,000
Total Open Space Fund Expenditure Increase:	\$401,000

<u>Conservation Trust Fund Expenses (009):</u>	
• Transfer to Capital Fund	\$ 44,000
Total Con Trust Fund Expense Increase:	\$ 44,000

<u>Garage Fund Revenue (010):</u>	
• CDOT FASTER grant: digital radio/AVL project	\$ 44,476
Total Garage Fund Revenue Increase:	\$ 44,476

Garage Fund Expense (010):

- Expense: Accelerated bus refurbishments \$327,295
- Total Garage Fund Expense Increase: \$327,295**

This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 24th DAY OF JANUARY 2012.

ATTEST

TOWN OF BRECKENRIDGE

Linda Coxen, Town Clerk

By _____
John G. Warner, Mayor

APPROVED IN FORM

Town Attorney Date

A RESOLUTION

SERIES 2013

A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2013 TOWN BUDGET FOR PROJECTS NOT COMPLETED IN BUDGET YEAR 2012

WHEREAS, the Town Council of the Town of Breckenridge desires to amend the Town's 2013 budget by making supplemental appropriations in the amount of \$1,050,561; and

WHEREAS, pursuant to Section 10.12(a) of the Breckenridge Town Charter, the Finance Department, on behalf of the Town Manager, has certified that there are available for appropriation revenues in excess of those estimated in the Town's 2012 budget or revenues not previously appropriated in an amount sufficient for the proposed supplemental appropriation; and

WHEREAS, a public hearing on the proposed supplemental appropriation was held on January 22nd, 2013, in accordance with the requirements of Section 10.12(a) of the Breckenridge Town Charter.

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

- Section 1. A supplemental appropriation is made to the General Fund in the amount of \$971,179 to continue funding for the Breckenridge Nordic Center improvements (\$869,000), Alpine Rock Purchase (\$86,250), Green Team projects (\$10,360) and Arts District purchases (\$5,569).
- Section 2. A supplemental appropriation is made to the Special Projects Fund in the amount of \$79,382 to complete the Breckenridge Historical Association's capital projects budgeted but not completed in 2012. These projects include Historic District signage (\$4,470), Barney Ford museum upgrade (\$20,000), Valley Brook Cemetery Monument Restoration (\$10,000), Rotary Snowplow Park (\$16,791), and Oral and Written Histories (\$8,000), Reiling Dredge stabilization study (\$20,121).
- Section 3. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 22nd DAY OF JANUARY 2013.

ATTEST

TOWN OF BRECKENRIDGE

Linda Coxen, Town Clerk

By _____
John G. Warner, Mayor

APPROVED IN FORM

Town Attorney Date

MEMORANDUM

To: Town Council

From: Chris Neubecker, Current Planning Manager

Date: January 16, 2013

Re: Town Council Consent Calendar from the Planning Commission Decisions of the January 15, 2013, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF January 15, 2013:

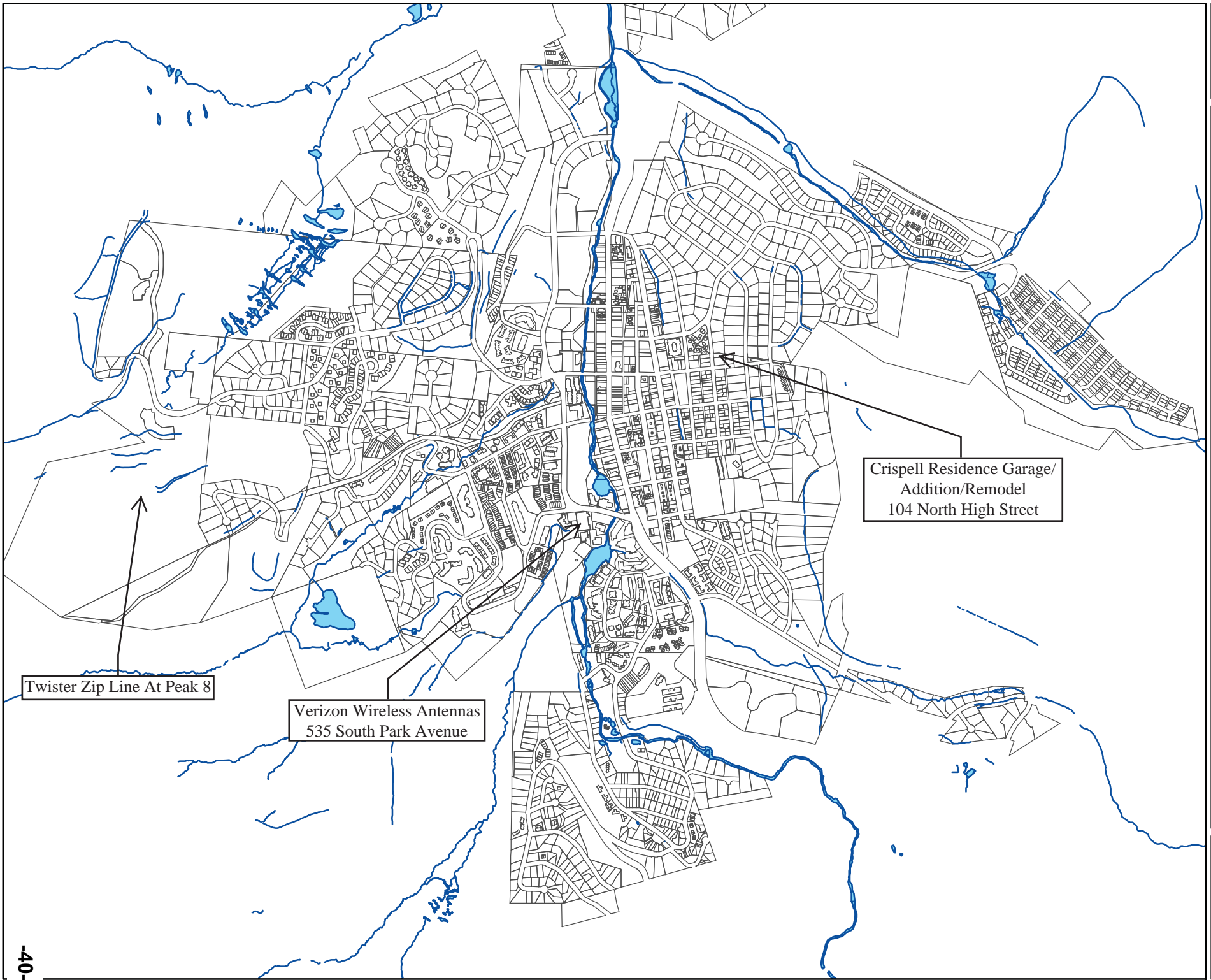
CLASS C APPLICATIONS:

1) Crispell Residence Garage/Addition/Remodel (MGT) PC#2013002; 104 North High Street
Construct a new 2 ½ car garage with storage below in the rear of the property, a new 6 ½ foot extension of the west (front of house) garage with roof deck above. The new detached garage and extension of existing front garage will total 961 square feet. Remodel of existing house to include new energy efficient windows throughout, remodeled south deck, new west and north decks. Approved.

CLASS B APPLICATIONS:

1) Verizon Wireless Antennas (CN) PC#2012101; 535 South Park Avenue
Install a wireless communications facility on the roof of the Village at Breckenridge Peak 9 Building (formerly known as the Liftside Building) to supplement existing wireless infrastructure. Approved.

CLASS A APPLICATIONS: None.



NOT TO SCALE

printed 4/12/2011

Breckenridge South

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



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher Trip Butler Dan Schroder
Gretchen Dudney Jim Lamb Eric Mamula
Dave Pringle arrived at 7:24pm
Gary Gallagher, Town Council Liaison

APPROVAL OF MINUTES

With no changes, the January 2, 2013 Planning Commission meeting minutes were approved unanimously (6-0).

APPROVAL OF AGENDA

With no changes, the January 15, 2013 Planning Commission meeting agenda was approved unanimously (6-0).

CONSENT CALENDAR:

1. Crispell Residence Garage/Addition/Remodel (MGT) PC#2013002; 104 North High Street

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

TOWN COUNCIL REPORT:

Mr. Gallagher:

1. Council would like to thank Ms. Dudney and Mr. Lamb for attending the Council meeting last week. It was good for you to hear discussion regarding the solar devices. Council is okay for placement of solar devices along the lines of recent Planning Commission conversation. Hopefully you will come back soon with your final recommendations.
2. Town Council has scheduled a public work session on the McCain Master Plan due to feedback received so far; probably around 6:00 pm in the evening for public participation, during a Town Council meeting. There was a lot of misinformation, so prior to that meeting Staff is going to provide a 'fact' sheet to dispel that misinformation and also to define specifically the Town's intention which is to identify areas and uses. Once we have the public feedback, we won't be dispelling misinformation and we can get right into their concerns; that will happen either later in January or February.
3. Several of the arts groups in Town have gotten together to collaborate and see where they can complement each other; we are delighted that they are chatting with one another. They had a request of the time to see what we could do to market on a macro level for the 'Arts Council'; so we are going to work with them so that the BRC can 'brand' the Town and get the word out that the arts is another thing that visitors can do when in town. Each one of these groups 'micro' markets themselves, but here is an opportunity to get the message out at a macro level.

Commissioner Questions / Comments:

Ms. Dudney: At the last meeting, we mentioned that if there are comments made that are of a personal opinion, that we brand them as such; at the Council meeting we were thanked for doing so because sometimes our personal opinions do not come out per the conversation even though we are taking notes. (Mr. Neubecker: As much as possible, personal opinions should be provided at a minimum. If there are concerns that are not related to the code, or that the code needs to change, we can discuss these at the end of the meeting.)

Mr. Mamula: There are times when it is subject to interpretation, so we do have that sometimes where it is not strictly code based.

Mr. Lamb: A lot of that conversation was around the definition of “visibility”. (Mr. Neubecker: In the conversation of a policy change; and it’s a perfect opportunity to provide an opinion.)

Mr. Gallagher: Keep in mind that you need to rule within the code; human nature denotes that you might drift a little but try and minimize that.

WORKSESSIONS:

1. Breckenridge Arts District Conceptual Site Plan (JC)

Ms. Cram presented and gave a historical narrative of the Arts District and walked the Commission through the details of the Site Plan. Staff has been working with Alpine Engineering, Inc. and Mary Hart Design to develop the conceptual site plan for the Arts District, which is planned and budgeted as part of the 2012-2013 Capital Improvement Plan (CIP). The site plan helps put on paper the following items:

- locate existing and proposed utilities
- design new transformer to power Arts District build-out
- locate existing and new building locations, including a possible addition to the Breckenridge Theatre
- locate walkways and plazas
- highlight view corridors and focal points
- develop site grading
- develop parking area with dual special event area (Ridge Street Art Square)

The proposed site plan is consistent with the approved Arts District Master Plan, meets the Historic District Guidelines with regard to above ground density (with the exception of the existing Breckenridge Theatre), module size, historic grid pattern and maintains of a sense of yard within the existing South End Residential Character Area. The plan also accommodates the Town’s commitment to Colorado Mountain College (CMC) regarding the Ceramic and Dance studios. A space for a possible addition to the Breckenridge Theatre is also included. The Breckenridge Public Art Commission (BPAC) reviewed and approved the plan at their December 5, 2012 meeting. The Town Council supported the location of buildings and other improvements at their January 8, 2013 meeting.

Ms. Cram also outlined the plans for a possible addition to the Breckenridge Theatre and provided some ideas on how an addition might be constructed to meet the intent of the Historic District Guidelines as a public facility.

Three questions for the Planning Commission are:

- Regarding Priority Policy 155, is the Commission comfortable with the proposed setback of the Dance studio between the existing front yard setbacks of the historic Robert Whyte House and the non-historic Breckenridge Theatre?
- Regarding Priority Policy 160, is the Commission comfortable with a possible supported overhang of the main level of the Ceramic studio over the lower level at the rear of the building?
- Regarding Priority Policy 80A, what is the Commission’s input on Staff’s approach to a possible addition to the Breckenridge Theatre?

Commissioner Questions / Comments:

Ms. Dudney: The overhang; you have a lower level and a main level. Where is the ADA access and how much does the building overhang? (Ms. Cram: It is to the lower level; the ramp provides multiple services, and easier access for deliveries and storage. It will overhang about 5 feet that is totally enclosed and only visible if you are parked behind it in the alley.)

Mr. Mamula: Can you give us some examples of where this exists historically, and is it to avoid an

elevator? (Ms. Cram: Yes. We are giving up an interior stairway and elevator to preserve precious floor area to accommodate both programs. In order to be ADA accessible we have to provide the same access opportunities to all participants. There will be a dumb waiter to get materials up and down. I don't have any knowledge of any prior upper level overhangs like this.) (Mr. Neubecker: That is why we are presenting this to you; it isn't something that we have typically seen. Mr. Neubecker shared a photo of the Balma resident as an example of an upper level overhang.)

Ms. Christopher: If we allow this, can we then say later to a homeowner that they can't do it? (Ms. Cram: This is a Town project, so yes.)

Ms. Dudney: What is the phasing of the site work near the Breckenridge Theatre? (Ms. Cram: They are approaching their 40th anniversary, and they would prefer not to be under construction while we are, so they will be a little bit behind. The Robert Whyte House may be as well, contingent upon a State Historic Fund grant. We have the architect on board now and have everything planned to move forward as efficiently as possible.)

Mr. Lamb: Is the Robert Whyte House on a foundation? (Ms. Cram: Yes; a beautiful historic stone basement exists that is not under the entire house.)

Mr. Schroder: What are the seven arts? (Ms. Cram: Listed several and noted it is architecture, literature, performance, dance, visual, music and film. It has been the vision for the master plan to include the seven arts from the beginning.) How well used is the current facility? (Ms. Cram: The Fuqua Livery Stable is used for many mediums currently: painting, printmaking, textiles, metalsmithing, etc., and with the new facilities we will have dedicated space for each medium, thus allowing the workshops to be happening within each facility simultaneously. The Arts District has been sustainable since 2010. We will continue to grow especially with the macro marketing that Mr. Gallagher mentioned earlier to get people to us.)

Mr. Gallagher: Things are really coming together now. (Ms. Cram: This is also an opportunity for us to tell the story about these buildings relate to our culture and our history.)

Mr. Pringle: Seems to be heading in the direction where we have always envisioned it. Some of our public buildings have single user tenants to them. Is there a possibility of multiple tenants some day? (Ms. Cram: There are other users in the area, multiple tenants in the Harris Community Center; many different users and tenants, existing and proposed. We are designing facilities to be flexible with great lighting and ventilation. We are really thinking ahead for these buildings to be used by many different users.)

Ms. Dudney opened the worksession to public comment. There was no public comment, and the worksession was closed

Commissioner Final Comments:

Mr. Pringle: Two thoughts: First, I don't think we should use the fire station as an example; it was built by a district that doesn't have to follow our rules. Priority policies are priority policies; I've always had a lot of indigestion when Town projects bump up against our codes and we still do what we want. We should lead by example and follow our own rules. I am looking forward to seeing architecture to see how we are meeting these policies.

Mr. Schroder: On the overhang, I wondered how that feels. You've described the ADA issue; I'm not sure that I'm comfortable with the building form. I'm okay with the setback on Ridge for the Dance studio. I'm with Mr. Pringle. Expansion is necessary for the Backstage Theatre, but I would like us to follow the code rather than absolving ourselves it just because it's our project.

Mr. Lamb: I like the compromise between the 3 houses and the front yard setback. Regarding the overhang, it seems like we have one precedent. On the third, if someone in the public asked

- for this, we would say no. Maybe there is another way to do it; I'm uncomfortable with doing something just because we are the Town.
- Ms. Dudney: Fine with the front setback with dance studio; I'm fine with the overhang as observed from the alley. Fine with the addition to the Breckenridge Theatre; as it is a commercial non historic building.
- Mr. Butler: Fine with setback of dance studio; fine with the overhang; it's undisputable that we are on a 'slippery slope' when we do an addition to the Backstage, and would like to see the architecture.
- Ms. Christopher: Comfortable with setback; number two (building overhang) and three (addition to Backstage Theatre) don't fit with the code; at least the overhang is on the alley side, and I don't know if there is any way to make it more historic.
- Mr. Mamula: I am fine with the yard; I don't like the overhang. As far as the addition; it should be historic to historic but we have definitely allowed modules that are setback; I can be swayed into an addition on if it's done like we have done prior; a connector would be ridiculous in this situation. I do think that we are pushing it with the other; if we could make the module size larger to get around it. There is a deck two doors down at Angels Hollow; that is non-historic and does not look good.
- Ms. Christopher: I think that is an important area to have parking on Washington Avenue; just for people to stop into the Welcome Center so they pull up on that road and park. (Ms Cram: Just so that you know, when we looked at taking parking away in the two existing parking lots, we built the Exchange Parking Lot to accommodate parking at build out with the anticipation of losing those parking spaces. Ms. Hart and I met this week and thought that it was important to keep the parking, also to load supplies for the art district and good place for tents. We would like to come back 2nd meeting in February to share some architectural concepts and 2nd meeting in March to review a master plan level approval of a Town project. We are also holding a public forum on Feb 19th, from 5:30 pm to 6:30 pm, which is a Planning Commission night.)

2. Twister Zip Line at Peak 8 (CN)

Mr. Neubecker presented. The Breckenridge Ski Resort is proposing to construct a zip line within the Peak 8 area on ski resort property. The zip line would be used both in winter and summer to provide another recreation amenity to guests. Access to the zip line would be from the top of the Rip's Ride Chairlift. Two zip lines would be built, with four towers. The upper portion of the zip line would run from near the top of Rip's Ride to the upper portion of the Twister ski run. The lower section would generally follow the border between Twister and the Freeway Terrain Park. The purpose of this work session is to discuss the heights of the proposed towers and to understand how these relate to the Land Use Guidelines and the Development Code.

Four tower features (26', 26', 35' and 45') are proposed as part of this project. These towers would be designed in a character similar to mining structures or forest lookout towers, using natural material accents over steel framing. The towers are designed to ensure clearance under the zip line for snow grooming activities and to ensure the proper slope for the zip line wire. The heights of the towers are determined by clearance requirements of the Colorado Division of Oil and Public Safety and the ASTM Zip Line Codes, which regulate this activity.

One of the concerns with the proposed towers is the height, which exceed recommend building height of 25' for Land Use District 1.

The Land Use Guidelines recommend maximum "building" height, but it does not mention other "structures" such as lift towers or zip line towers; however, the Development Code at times use the word "structure" as well as "building". Since another zip line has not been built in town, the next closest precedent we have is for

a ski lift tower, or gondola tower. Heights for ski lift towers and gondola towers are determined by safety issues such as road clearance, and ski cat grooming equipment. In the past, ski lifts have not been reviewed against the height policy. When the gondola was constructed, there was no discussion on the heights of the towers, since the heights were determined by the Colorado Tramway Safety Board. Staff believes that the zip line towers should follow the same precedent as lift towers, since they are not buildings.

If the Commission finds that the proposed towers should be measured against the 25' building height of District #1, then the application would receive negative fifteen (-15) points, which could be difficult to overcome for this application. Staff anticipates that positive three (+3) points could be assigned for Policy 20 (Relative) Recreation Facilities. Positive points could also be earned for Policy 24 (Relative) Social Community / Employee Housing. However, points for employee housing are based on the density of a project, and in this case, there is no density proposed, so it is not clear how this calculation would be performed to determine positive points for employee housing.

Before a formal application is submitted, Staff requested feedback from the Commission on using lift towers as precedent. If the Commission believes that the proposed zip line towers should be reviewed as buildings, please let Staff know this as well.

Commissioner Questions / Comments:

Mr. Schroder: The final fourth tower is the most in the Village base and it is the tallest. This is taller than the Kid's Castle. How tall is the Kids Castle? (Mr. Jeff Zimmerman, Vail Resorts: Maybe 2-3 stories.)

Mr. Schroder: Just up in the Google Map; is that the half pipe? How proximal is this to active skiing? (Mr. Neubecker: There would be some tree removal required so the tower itself wouldn't be in the way of skiers. It would be uphill of that connector of Twister.)

Mr. Lamb: What is the average height of a ski lift tower? (Mr. Zimmerman: Anywhere from 27' to 45' tall.)

Ms. Dudney: Clarification: it couldn't be built if we didn't approve the height? (Mr. Neubecker: Not necessarily. The negative points would be assessed if the height policy applies. I don't know if they would be able to mitigate those points.) (Mr. Zimmerman: There isn't any way to get this lower than 45'. We are as low as possible. The rope height is really the top of the structure; the people are lower than that.) (Mr. Neubecker: There might be away to take away some of the massing at the top of the tower. The design could be altered a bit.) (Mr. Zimmerman: We went to great pains to site this correctly so that it's close to the Fun Park but not in it; location is pretty critical to that tower. We could change the design; we were focused on taking in the architecture of the surrounding area; it really sings to that historical context which adds appeal. The staircase within the tower is a specific design consideration to reduce that massing. The top stage is two lines and the lower stage is four lines over 1,000 feet long.) (Mr. Neubecker: If this only had 2 lines or 3 lines; but then you're going to have issues with the lines; it's kind of a pipeline, and you want to be able to move people through.) (Mr. Zimmerman: Having four lines is really where we want to be. The Fun Park is very popular in the summer and this is one more feature that people are looking for, as our surveys have shown.) (Mr. Neubecker: Is this something unique enough that it should be treated like a lift tower? Use wise, it goes along well in this area; it's within the Town limits. There was some question about negative points and how could that be mitigated, possible with employee housing. But how would that be calculated, since it is based on density, and no density is proposed here?)

Ms. Christopher: What about the base of the structure? Any stone proposed? (Mr. Zimmerman: We have some landscaping around the base; in the realm of some minor fencing, some landscaping features, but no thick heavy stone base.)

Mr. Pringle: Is there anything in the code where we can treat this like a structure not a building? (Mr. Neubecker: This is Policy 6, the Building height code; but it doesn't call out how structures should be measured vs. how buildings should be measured.)

Ms. Dudney opened the hearing to public comment. There was no public comment and the hearing was closed

Commissioner Final Comments:

Mr. Pringle: Are you getting a lot of homeowner objection? (Mr. Zimmerman: It hasn't been submitted as application so they don't know about it yet. We have been working with Randy May and those guys at One Ski Hill Place.) When we did the Peak 8 Master Plan, we really wanted to load up with amenities, and I think this is a win/win with the ski resort, and this could be one more of those things so I do not have any objection to the issue itself. I don't know how we get around the code thing; it seems to be a little bit more than a tower so it will take some time to hear how the other Commissioners feel. I hate to see you get all of those negative points; there is an impact and it should be mitigated, although I don't know how.

Mr. Schroder: I wouldn't call this a building. In looking at the policy, I put it in its context, we have the coaster already happened, and it was suggested that there might be something else coming down the pike. It is an added benefit to the community, and I would call it a tower, although it doesn't look like the towers that we are familiar with but it does reside in this arena so like Mr. Pringle says, I would like some consideration as to how this is presented, but other than that I am not opposed to the direction in which we are headed.

Mr. Lamb: I agree that it has mass, but no density, so it's difficult to look at it like it's a building; it's consistent in height as a ski lift, the only difference is you're going down, not up.

Ms. Dudney: I'm fine with it; I don't think that it sets a precedent.

Mr. Butler: Without density I don't see that it is a building; maybe some mesh fencing would enhance it.

Mr. Mamula: Fine with it, although I would like to see us put an addendum in Development Code definition of structure that would say "not including signs, pavement, fences, lift towers and zip line towers, etc." At some point we are going to need to put it in there.

COMBINED HEARINGS:

1. Verizon Wireless Antennas (CN) PC#2012101; 535 South Park Avenue

Mr. Neubecker presented a proposal to install a wireless communications facility on the roof of the Village at Breckenridge Peak 9 Building (formerly known as the Liftside Building) to supplement existing wireless infrastructure. The facility is needed to provide additional wireless bandwidth at the south end of Breckenridge. A similar application for a Verizon Wireless temporary tower at the Breckenridge Mountain Lodge was reviewed by the Commission on October 2, 2012 (PC#2012079), but the application was opposed by many residents, and the application for a temporary tower was denied. This location is for the permanent antenna that was mentioned during the hearing on the temporary tower.

This application has been advertised as a combined preliminary and final hearing and may be approved tonight if the Planning Commission agrees that the application meets the policies of the Development Code. Staff finds that the application meets all Absolute and Relative policies and Staff recommended that Planning Commission approve this application.

Mr. Neubecker introduced the Agents, Ms. Colleen Nebel and Mr. Jeffrey Sherer with Black & Veatch. Ms. Nebel gave a brief summary. We need this site to accommodate our customers. This site is optimal to provide coverage to ski resort and downtown.

Ms. Dudney opened the hearing to public comment. There was no public comment, and the hearing was

closed.

Commissioner Questions / Comments:

Ms. Dudney: Does this require any kind of variance from the building code? (Mr. Neubecker: No.)

Ms. Christopher: Why can't we do one pole with stuff all of the way around it rather than three separate poles? (Ms. Nebel: That would have a greater visual impact with exposed antennas. Also, the single pole would need to be taller.) The structure behind the screens is just an antenna? (Ms. Nebel: Yes.)

Mr. Mamula: I would rather see the towers, but is anyone going to see these? No reason not to allow this; I personally don't like the design.

Ms. Christopher: This is the best location and I don't really like the box structure but truthfully I would screen them with the black mesh.

Mr. Butler: Did the Village HOA like that box look? (Ms. Nebel: Yes, I think that the HOA would have concerns otherwise.)

Ms. Dudney: No problem with it.

Mr. Lamb: I'm fine with it.

Mr. Schroder: I'm fine with it.

Mr. Pringle: I agree with all of the comments. On condition #13; there will be no other lighting? Right? (Ms. Nebel: Correct.)

Mr. Pringle made a motion to approve the point analysis for the Verizon Wireless Antennas, PC#2012111, 535 South Park Avenue. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

Mr. Pringle made a motion to approve the Verizon Wireless Antennas, PC#2012111, 535 South Park Avenue, with the presented Findings and Conditions. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

OTHER MATTERS:

Mr. Neubecker presented a memo listing the Class C Subdivisions approved between July 1 and December 31, 2012.

ADJOURNMENT:

The meeting was adjourned at 8:55 p.m.

Gretchen Dudney, Chair

Town of Breckenridge Executive Summary
Economic Indicators
(Published January 16, 2013)

Indicator Monitoring System

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



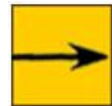
Unemployment: Local (November 2012)

Summit County's November unemployment rate of 7.1% is lower than the November 2011 rate of 7.6% and November 2010 rate of 8.3%. Summit's November rate is less than both Pitkin County (10.1%) and Eagle County (8.8%), however our rate is still considered relatively high for the time of year. (Prior to 2008, the November unemployment rate typically did not rise above 4%). (Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing up meaning that the unemployment rate has dropped and is 'getting better' and yellow indicates the condition as "fair".) (Source: BLS)



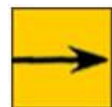
Unemployment: State (November 2012)

The Colorado State unemployment rate inched downward by two tenths of a percent in November to 7.7% continuing a general incremental trend since January. This November is also lower than the November 2011 rate of 8% (Source: State of Colorado)



Unemployment: National (Nov.-Dec. 2012)

National unemployment rate has remained constant in November and December at 7.8%. Since January, we have seen the national rate hover between 8.1 and 8.3% until September broke through that barrier. In fact, the last time unemployment rates were under 8% was in January 2009. December 2012 has seen a notable drop from last December's rate of 8.5% and December's 2010 rate of 9.4%. (Source: BLS)



Destination Lodging Reservations Activity (December 2012)

Revenue generating occupancy rates decreased 2.6% for the month of December (with a 5.8% decrease in pure occupancy -"Pure Occupancy" includes all owner, guest-of-owner, comp stays and any other non-revenue generating occupancy) over December 2011 while the Average Daily Rate saw a slight increase of 2.3% for the month. (Source: MTrip)



6 Month Projected YTD Occupancy (January-June 2013)

Future bookings for the upcoming January-June 2013 period overall continues to show an increase of 6.2% in projected occupancy rate over the corresponding period last year. The Average Daily Rate also shows an increase of 5.5%. (Source: MTrip)



Traffic Counts and Sales Trend (December 2012)

December average daily traffic count in town on Highway 9 at Tiger Road was 16,463 total vehicles. Combined with lower occupancy rates and less than typical snowfall, with the traffic count below 20,000, we expect to see lower than usual sales tax revenues for December. *(Note: There is a strong correlation between high net taxable sales and traffic once a 20,000 vehicle count has been reached. Please see detailed report on website for chart.)* (Source: CDOT and Town of Breckenridge Community Development and Finance Dept)



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

During the month of December, the traffic count at the Eisenhower tunnel (westbound) was down 3.6% over December 2011. Further, data showed December traffic coming into town on Highway 9 dropped by 20% from December 2011. Traffic flows indicate that the Town lost relative capture rate coming from the tunnel in December for the third month in a row. (Source: CDOT)



Consumer Confidence Index-CCI (December 2012)

The Consumer Confidence Index (CCI) decreased for the second month in a row by 8.9% from to November to December coming in at 65.1 (1985=100). This is considered significant but temporary as consumers showed concerns over the fiscal cliff negotiations. Based on the index level continuing to be in a state of flux, we expect that real estate transfer tax revenues will also lag over the same period until the index sees consistent improvement. (Source: CCB)



Mountain Communities Sales Tax Comparisons (October 2012*most recent available)

The amount of taxable sales in Town for October 2012 was up 4.79% from October 2011 levels. With this increase, Breckenridge was the second (out of 8) of the mountain communities tracked for sales tax collected for the month in comparison to last year's October numbers. However, Breckenridge had the greatest increase year to date at 7%. All of the communities showed increased sales with the exception of Vail, Created Butte and Winter Park. (Source: Steamboat Springs Finance Dept., Breckenridge Finance Dept.)



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

The S&P 500 average monthly adjusted closing price saw a slight increase after a relatively fluctuating year. Subsequently, lagging behind, we saw our RETT receipts increase a drastic 152% compared to Town collections in December 2011. We believe that in general the RETT will continue to lag any growth rates that the S&P 500 achieves for the near future. A prolonged positive change in RETT will likely require a long sustained recovery in the S&P 500 index, with an increase in the wealth effect. *See website for detailed chart and additional information.* (Source: S&P 500 and Town Finance)



Town of Breckenridge RETT Collection (December 2012)

December 2012 RETT collection (\$762,207) is 152% higher than December 2011 (\$301,397) collections and 87% higher compared to December 2010 (\$406,202). This increase is largely attributable to timeshare sales. RETT has shown positive gains over 2011 for the last six consecutive months. (Source: Town Finance)



Real Estate Sales for Summit County/Breckenridge (November 2012)

For the fifth month in a row, November Summit County real estate continued to climb with a 14% increase in \$ volume and 8% increase in the number of transactions compared to November 2011. Of that, Breckenridge took in 42% of the \$ volume and 31% of the transactions countywide for this month. Year to date, \$ volume in Summit County is up 10% although still well below pre-recession totals. (Source: Land Title)



Foreclosure Stressed Properties (November 2012)

Breckenridge properties (excluding timeshares) which have started the foreclosure process are at 29% (65 properties) of the total units within Summit County in 2012 YTD. These are considered distressed properties which may or may not undergo the foreclosure process. Should these properties actually undergo foreclosure, these properties may sell at an accelerated rate and lower price per square foot in the short term. (Source: Land Title)



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



Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

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

JANUARY 2013

Tuesday, January 22, 2013; 3:00/7:30 p.m.	Second Meeting of the Month
Tuesday, January 22, 2013; 6:00 p.m.	Snow Sculpture Championships Opening Night Reception

FEBRUARY 2013

Tuesday, February 12, 2013; 3:00/7:30 p.m.	First Meeting of the Month
Friday, February 22, 2013; 8:00-9:00am; Amazing Grace	Coffee Talk
Tuesday, February 26, 2013; 3:00/7:30 p.m.	Second Meeting of the Month

MARCH 2013

Tuesday, March 12, 2013; 3:00/7:30 p.m.	First Meeting of the Month
Friday, March 8, 2013; 8:00-9:00am; Park N Main	Coffee Talk
Tuesday, March 26, 2013; 3:00/7:30 p.m.	Second Meeting of the Month

OTHER MEETINGS

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

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