



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, April 09, 2013; 3:00 PM
Town Hall Auditorium

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

3:00-3:10pm	I	<u>PLANNING COMMISSION DECISIONS</u>	2
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		Housing/Childcare Update	
		Committee Reports	119
4:20-5:30pm	IV	<u>PLANNING MATTERS</u>	
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5:30-6:30pm	V	<u>OTHER</u>	
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6:30pm	VI	<u>EXECUTIVE SESSION</u>	
		Acquisition Strategies	

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

MEMORANDUM

To: Town Council

From: Peter Grosshuesch, Director of Community Development

Date: April 3, 2013

Re: Planning Commission Decisions of the April 2, 2013, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF April 2, 2013:

CLASS C APPLICATIONS:

1) Edwards Grid Tied Solar PV System (MGT) PC#2013022, 103 North High Street
Install an 8.16 kilowatt photovoltaic solar electric energy system on the south facing roof of the Edwards Residence. Approved.

CLASS B APPLICATIONS:

1) Harris Street Community/Library Building (MM) PC#2012096, 103 South Harris Street
Restore, repair, renovate and adaptively reuse the historic building as a library and Community Center. The existing non-compliant additions (roof additions, handicapped ramp, windows, etc.) will be removed. The existing wood-framed garage at the northwest corner will be removed and a new compliant masonry addition will be created for entrance to a planned lower level theater and multi-purpose rooms. Local landmarking of the property. Approved.

2) Stillson Placer Solar Garden (JP) PC#2013020, 710 Wellington Road
Install a 475-kilowatt photovoltaic (PV) solar garden on a 3-acre portion of the Stillson Patch Placer property. The proposed solar garden would consist of approximately 1,814 panels in 8 rows, 20 feet apart to produce approximately 498,340 kWh of energy per year. Approved.

CLASS A APPLICATIONS:

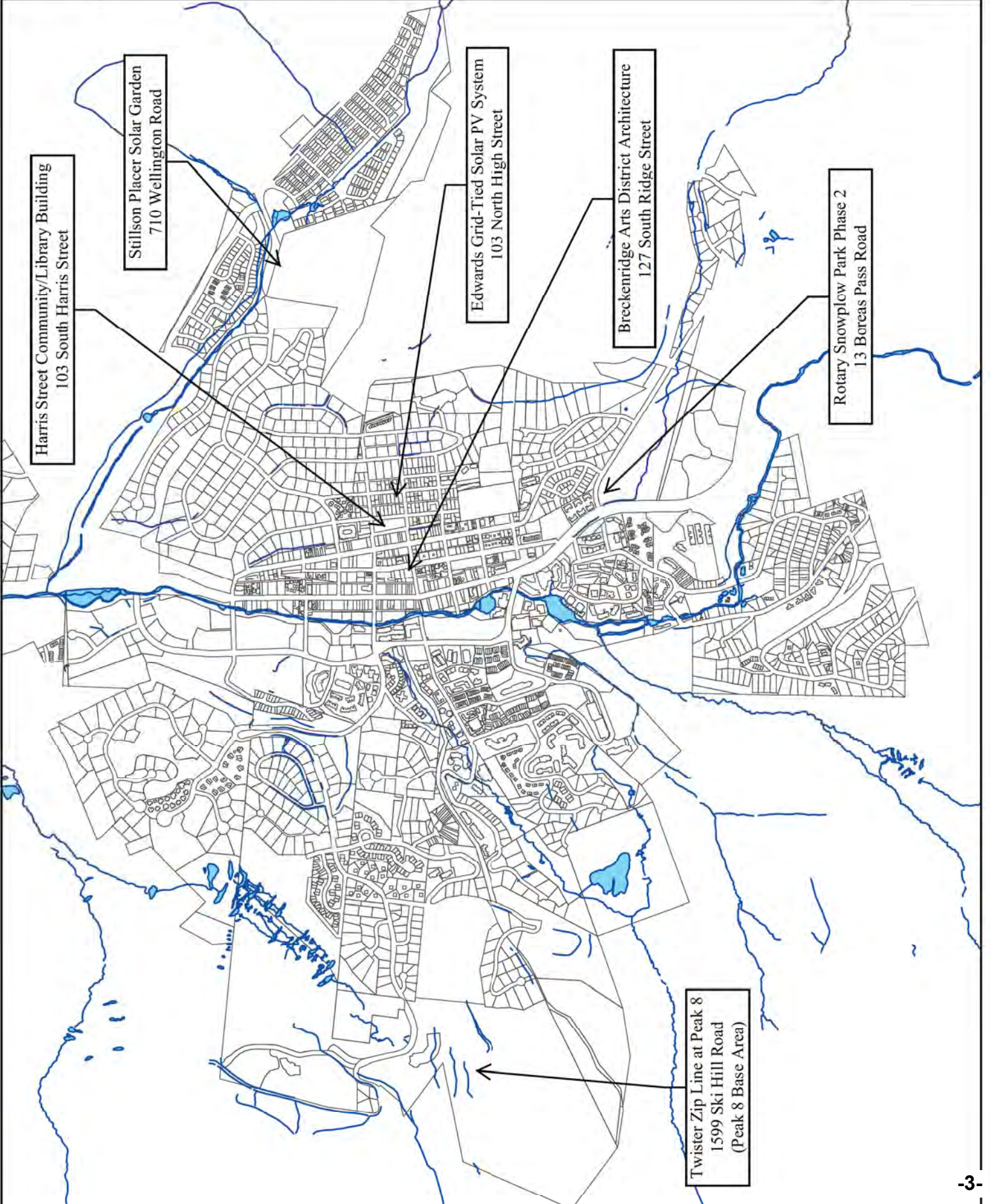
1) Twister Zip Line at Peak 8 (CN) PC#2013020, 1599 Ski Hill Road (Peak 8 Base Area)
Construct a recreational zip line at the Peak 8 ski area, with 2 stages on 4 lines. The zip line is proposed from near the top of the Chair 7 (Rip's Ride), along a portion of Twister ski run and the Freeway Terrain Park. The zip line would end at the base of Peak 8 near the existing Gold Runner Coaster ticket office. Approved.

PUBLIC IMPROVEMENT PROJECT HEARINGS:

1) Rotary Snowplow Park Phase 2 (CN), 13 Boreas Pass Road
Construct a railroad themed playground behind the existing rotary snowplow park, expand railroad exhibits with three new railroad cars on new railroad track, install soft surface pedestrian pathways, install porch on rear of existing cabin, and install trestle ramp from corner of Boreas Pass Road and Highway 9. This phase will encompass the playground and pedestrian walkways, and a future phase will include the trestle walkway, future event space, a porch on the Leuthe cabin, new railroad car exhibits and track. Approved.

Breckenridge South

printed 4/12/2011



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher Trip Butler Gretchen Dudney
Eric Mamula Dave Pringle
Gary Gallagher, Town Council Liaison
Dan Schroder arrived at 7:04 pm
Mr. Lamb was absent

APPROVAL OF AGENDA

Mr. Neubecker announced that the “Other Items” (including discussion of dates and topics for a joint meeting with Town Council) would move to immediately after the Town Council Report. With no other changes, the April 2, 2013 Planning Commission meeting agenda was approved unanimously (5-0).

APPROVAL OF MINUTES

With no changes, the March 19, 2013 Planning Commission meeting minutes were approved unanimously (6-0).

CONSENT CALENDAR:

1. Edwards Grid-Tied Solar PV System (MGT) PC#2013022; 103 North High Street

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

TOWN COUNCIL REPORT

Mr. Gallagher: I have two items:

1. Last week staff presented to the Council the Pinewood Village Apartments, Phase II. Council was asked 3 questions on the preliminary plan, and feels the project is moving in right direction. Ok with clustering? Yes. Ok with the density? Yes. Could the project be done as a master plan or public improvement project? It is ok as public improvement project.
2. Mr. Michael Cavanaugh proposed a development agreement for the Brown Hotel, and Council was asked if this was an appropriate balance between the public benefit (the restoration of the hotel and stable plus the removal of the non historic building) and the private benefits to Mr. Cavanaugh (additional density, subdividing of vacant lot). Council said ok; Town will be entering into a development agreement with Mr. Cavanaugh. Everyone felt to incentivize and encourage doing something to the building is beneficial; focusing on exterior so things will look much better and hopefully complement our historic district.

Commissioner Questions / Comments:

Mr. Mamula: Can you make sure during the development agreement that the Town gets what it wants before Mr. Cavanaugh gets what he wants, so we have some sort of mechanism that the restoration is done before his benefit happens? (Mr. Gallagher: The money for rest of building will come from sale of the lot; so the money will be held in escrow make sure proceeds from sale are sufficient for the restoration.)

Mr. Mamula: What about plastic bags? (Mr. Gallagher: Council approved on 1st reading the plastic bags ordinance, with bags that are less than 2.25 mils will be subject to 10 cent fee. Restaurants are exempted, so we need to sit down with them to see how they can support this. Retailer charging 10 cents would keep half the fee for administrative purposes. There will be a dollar cap in terms of how much a business (i.e. City Market) can earn on a monthly basis. The Town is prepared to recognize a significant amount of money for education and to make reusable bags available to distribute around the county and to guests. Effective date is

October 1, 2013, as long as we have the reusable bags ready. If we don't have our act together by then, we would change the date.

Ms. Dudney: The result of this will be retailers will charge 10 cents or buy bags larger than 2.25 mil? (Mr. Gallagher: There are exemptions in there for meats, fruits, fresh vegetables, jewelry, pharmacy items, go through the list and the restaurants haven't been addressed yet. At the end of day, the major or revenues will be the grocers.) You don't want to have retailers to just change to a thicker bag. People would take that home and throw that away. Make sure it is written so you discourage the plastic bags period not just go to the thicker bags. (Mr. Gallagher: I hear you. I don't think you are going to see that. It's been a tug and a pull to get where we are. Retailers would spend a lot more for thicker bag. The incentive is not for the retailer to go to a thicker bag because they are much more expensive.)

Ms. Christopher: This is just on plastic? (Ms. Puester: Any less than 2.25 mils). (Mr. Gallagher: At the end of the day, everyone wants to do the right thing.)

OTHER MATTERS:

Mr. Neubecker presented a memo concerning the joint meeting with Town Council, proposed topics and proposed dates. Some suggested topics were: wireless communications towers, demolition by neglect, condo-hotel policy, air lock entry, setback policy, wildlife policy, review of the Top 10 List.

Commissioner Questions / Comments:

Mr. Gallagher: What are the topics? (Mr. Neubecker read the above list.)

Ms. Dudney: Does anyone want to add anything to the list?

Mr. Pringle: Town projects should follow the town code, setting an example. Show the private community that we do adhere to codes.

Mr. Gallagher: The train has left the station on that one. Council requires public input at Town Council meetings and property improvement to come before the Planning Commission with a point analysis for Planning Commission input. Yes, we have taken that away from Planning Commission a little bit, but policies and procedures give Town Council prerogative. If we are not adhering, you will point that out in point analysis.

Mr. Schroder: I want to discuss cell towers.

Mr. Mamula: Most important are airlock entries (allowing extra mass so you can do a double door) so merchants are not having doors proposed open. Also, setbacks have annoyed me for a long time but we treat everything the same. 15 feet for five story building is ridiculous. (Mr. Neubecker: You could address that in the code, land use districts, maybe a function of height.)

Mr. Schroder: I would like to discuss water resources in the Tarn and future water availability in the Town.

Mr. Gallagher: I have spoken with Mayor Warner, who has asked Mr. Truckey, Chair of the Sustainable Task Force, to make that a top priority and top ten for Town Council for the next year now that plastic bags have been looked at. Mr. Mamula is on the task force I sit on also. If you look at our history of water management it is about supply side. Time has come to also introduce the demand side into the equation.

Ms. Dudney: In the development code?

Mr. Gallagher: Possibly. Talking about getting it highlighted enough.

Mr. Neubecker: What about condo hotels?

Mr. Mamula: Yes, eventually.

Ms. Dudney: Lower priority.

Mr. Neubecker: Any dates?

Mr. Schroder: I am gone for the spring break week later in April, but around other than that.

Mr. Neubecker: I will pick 2-3 dates and shoot email to all of you to confirm.

WORKSESSIONS:

1. Breckenridge Arts District Architecture (JC); 127 South Ridge Street

Ms. Cram presented an update to the site plan and architecture for the Arts District project. (Mr. Gallagher noted that the Town closed on purchase of Abby Hall and that the lease with the Church will be in effect until the end of the year. CIP for 2014 will address any changes to the building, nothing before then.) The changes to the site plan include: replacing the proposed Dance Studio along Ridge Street with the Metalsmithing / Hot Arts Studio, as Abby Hall will be a good dance studio; The Little Red Shed moves south to where the original Metalsmithing Studio was proposed; a new sculpture garden / green space is proposed south of the Little Red Shed; three parking spaces were removed to make a larger green space south of the Robert Whyte House, but one was re-added as a result of shifting the parking to the south. The Breckenridge Theatre addition will no longer be part of this Town Project approval process, but will proceed separately at a later date.

Ms. Dudney: What is the connection to Abby Hall, by the sidewalk? (Ms. Cram: We are making connections both along Washington Ave. and across the alley. Accessibility is an issue that will need to be addressed creatively.)

Mr. Gallagher: Can you explain the ceramics studio, that it was originally at the back side, but accessibility created issues, comments from last time, has that been addressed? (Ms. Cram: Yes, we were originally looking at an overhang to allow the needed footprint on the upper level and to allow an ADA accessible ramp to the lower level. A lift inside the structure has helped the issue.)

Ms. Dudney: What about expansion of the theatre? (Ms. Cram: It will be a separate application due to the timing, as Council is still considering whether there will be an addition or demolition with a new facility. There are also building code issues related to occupancy, where we want the rest of the Arts District Campus to be rated differently than the theatre.)

Mr. Schroder: Outdoor theatre programming for the amphitheater? Drum circles, anything you want? (Ms. Cram: It is intended to be very informal with some programmed events. Obviously, has to respect Town Code.)

Mr. Schroder: I am interested in the snow stacking, is that on grass? (Ms. Cram: Yes, on the grass, we will show that detail to you on the 16th.) What about the Bikeffel Tower? (Ms. Cram: It was temporarily in the Arts District, and because we have start and finish for the USAPCC this summer, it will be temporarily relocated for those events, and then we will be looking for a permanent location. The Public Art Commission will find thoughtful location, likely outside the Arts District.)

Mr. Mamula: How about the roundabout? (Ms. Cram: It may be near the Four O’Clock Road roundabout, nothing has been confirmed.)

Mr. Pringle: The Little Red Shed is coming from North French Street? (Ms. Cram: Yes, that property is now under contract. We have to move the shed by September 1. It is not in its historic location, so we can move it and have planned to put the gas kiln in it for ceramics programming. It will maintain its historic relation to the alley as a secondary structure.) Where was it located historically? (Mr. Truckey: Hoosier Pass.)

The Robert Whyte House will be rehabilitated to its historic look within our historic period of significance.

The proposed overhang on the west façade of the Ceramic Studio has been removed. The scale of the building is consistent with historic structures that survive today. The building form is simple, similar to the historic Fuqua Livery Stable. The primary roof forms proposed are simple, a steep-pitched gabled form with a shed addition on the east side. The monitor on the gabled roof was based on the historic dipping station on Ridge Street. The façade is 1 ½ stories on the east side and 2 stories on the west side. We are asking about the monitor because it is something you have not seen before. We wanted to pay homage to some of the historic structures.

- Mr. Schroder: If this is Town Project, could an individual use this as precedent? (Ms. Cram: We could include a finding that states clearly that is appropriate on a secondary structure within the Arts District. We wanted to be sympathetic to our historic district guidelines but also be creative in that the structure is part of the Arts District. If Planning Commission is concerned, we can address it.)
- Mr. Mamula: Monitors were used on considerably larger buildings. They let light into a warehouse. Historically you would have built a pitch roof. (Ms. Cram: This is definitely a larger secondary structure.) The buildings on the south end of town were enormous. (Mr. Neubecker: It is a relative policy; it could be assigned negative points. This building is at the back, it has a little bit more flexibility. We definitely want your input on that. We will take it into consideration in the points.) (Ms. Cram: The Arts District will help maintain two periods of significance. Before the big fire, this area was more industrial/commercial. After big fire we lost everything. Robert Whyte was built after the fire. Back of site more industrial feel.)
- Ms. Dudney: Isn't this like embellishment we approved on the distillery? So this would not be precedent for residence? (Mr. Neubecker: This is not a residence.) (Mr. Mosher: Best way is to assign points as necessary, observe the code.)
- Mr. Pringle: Concerns about the size of the clearstory you are going to have here. Could you do something smaller? (Ms. Cram: We actually did if you look at the historic photo, historically it goes all the way to the end; we shortened and made it narrower.) Shapes of the windows are very historically accurate.
- Ms. Christopher: If you follow the historic guidelines, it would not be very good for a studio, which needs the natural light.
- Mr. Mamula: I like the way it is; however, we should talk about negative points to set ourselves up for future precedent.

The Metalsmithing Studio has the character of a primary residential structure, with a 640 square foot module size. It will also be 1 ½ stories. Materials proposed are wood siding with 4" reveal on the Ridge Street side, with board and batten siding on the sides and rear of the building. Front façade will be painted and finished. Side elevation is more rustic. Tin Shop also has a more finished front and rustic sides with double doors that can be covered with barn doors, so we are taking cues from Tin Shop in representation for the Metalsmithing Studio.

- Mr. Pringle: Is this building in its location, will it complicate the addition to the Backstage Theatre? (Ms. Cram: No. We are still accommodating a potential 20' addition, or scraping and rebuilding. Few windows on the north side, south side is the side that you see. We have been careful to finalize the site plan leaving room for Breckenridge Theatre.) What kind of space? (Ms. Cram: Distance from addition to north side will be greater in site plan you will see on the 16th. 15' between Metalsmithing studio and possible addition to Theatre.)

Staff believes the direction of the site plan and architecture are appropriate for the Historic District and will create a vibrant arts campus. Staff requested the Commissions comments on the following:

- Did the Commission believe that the module size of the Ceramic Studio met the intent of Priority Policy 158?
- Was the Commission comfortable with the proposed Monitor on the Ceramic Studio?
- Did the Commission support the use of stained board and batten siding on the sides and rear of the Metalsmithing Studio?

- Ms. Dudney: Are we ok with the materials and the monitor? (The majority was ok.) Possibility of negative

points. Only thing left was the module size. Any issues? (None heard from the Commission.)

Ms. Dudney opened the hearing to public comment.

Mr. Lee Edwards: What is the scheduling and phasing on the program? (Ms. Cram: Mobilization by the end of May 2013, and construction starting in early June. We will be starting with the rehab of the Mikolitis Barn, and the Robert Whyte House then utilities, site grading and new structures. Full completion by the fall of 2014. We will use excavation from site for parking lot fill. I have been meeting with Ridge Street merchants as often as possible to alert them of the schedule.) One more quick question: 12' between Robert Whyte and Metalsmithing studio? (Ms. Cram: Yes.) Absolutely wonderful; we lost CMC, and this is going to help replace its energy in town. You are moving rather quickly. Parking lot on Ridge and Washington; we like the 13 spaces now, please look at that really hard. How often are we going to be using that? What is value of bringing cars along that? Pass along to Council to put 6 to 7 spaces along Washington and move the other 6-7 to Harris Street building. Don't need the spaces that badly here, people will get over walking a block and a half more. Circulation Breckenridge Theatre: Council said we like this; we are going to see it here. Theatre needs access off the alley, need to plan for access off the alley; should be included in master plan. Now is the time to address it. 12' is all coming together in my mind, it is a tight space. I know the Town does not want to shift a historic building, but it is our property, we get to look at it, we have to pick up the historic building for drainage, just move it a little bit more to the south, and give us more room here. Could we at least address it and look at it and not shove all this stuff in here? I love the look, no problem with the sizes, but you are really putting a lot in here. Thank you very much.

There was no further public comment, and the hearing was closed.

Ms. Dudney: Staff will take Mr. Edwards comments under advisement.

Ms. Christopher: We addressed the parking at the last meeting. (Ms. Cram: Some paving is necessary for the shared special event space; it won't read as a parking lot. Because we are shifting the site to the south, we will lose those spaces along Washington. The rest of Mr. Edward's concerns, I can discuss with him.)

Ms. Dudney: Access from the rear of the theatre, parking, moving of historic structure? (Ms. Cram: Correct, thank you.)

PUBLIC IMPROVEMENT PROJECT HEARINGS:

1. Rotary Snowplow Park Phase 2 (CN); 13 Boreas Pass Road

Mr. Neubecker introduced the applicants, Ms. Larissa O'Neil of the Breckenridge Heritage Alliance, and Ms. Mary Hart of Mary Hart Design. Mr. Neubecker presented a proposal to construct a railroad themed playground behind the existing rotary snowplow park, expand railroad exhibits with three new railroad cars on new railroad track, install soft surface pedestrian pathways, install porch on rear of existing cabin, and install trestle ramp from corner of Boreas Pass Road and Highway 9. This phase would encompass the playground and pedestrian walkways, and a porch on the Leuthe cabin. Future phase would include the trestle walkway, future event space, new railroad car exhibits and tracks. Staff finds no reason to assign any negative points to this project, and recommended positive three (+3) points under Policy 20/R-Recreation. Staff found that the application met all Absolute policies, with the exception of the wetlands setback, for which a variance or waiver will be sought from the Town Engineer. Staff recommended the Planning Commission approve this project with the presented findings and conditions.

Mr. Schroder: Town doesn't really have parks. Given that this is our first real park, would love to see more open space to it. (Mr. Neubecker: The Town is looking into other park spaces in town core. This would not be the only park. We are limited in the budget we have.) (Ms. O'Neil: The

pieces are very specific for this park.) I am very glad to hear we are looking at other park spaces.

Ms. Dudney: Age target market? (Ms. O’Neil: From 3-4 years old up to 10-11.)

Ms. O’Neil: We went through pretty long public process. Hope to someday purchase a caboose and do diorama. New entryway from existing parking lot proposed. Would open up box car. We did present council with idea of trestle walkway as a future element.

Ms. Dudney: Timing? (Ms. O’Neil: Tony Harris, our general contractor, to do a lot of site work; we hope to have installation by 1st of September.)

Ms. Christopher: I see you have viewing deck; that would be great. (Ms. O’Neil: This would be a little more interactive. The site is pretty static just now.) A small viewing deck over by the engine would be great too.

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

Commissioner Questions / Comments:

Mr. Mamula: The wetlands thing worries me. Seems like a relative disregard to the wetlands. We need to be really careful. This is a big deal. We have hammered people for countless years about wetlands. It is not just getting Dale (Mr. Stein, Town of Breckenridge Engineer) to sign off. (Ms. Hart showed an aerial photo of the site. We are aiming for using the clearing area to minimize impacts to the trees. There is an exemption in the Town’s water quality policy for recreation features that are re-vegetated within a ten day period. We felt we can easily comply with the town code. The plan is to get the wetland delineation, get it surveyed, and pull the fill as far away as we can.)

Ms. Dudney: What kind of language were you going to add? (Mr. Neubecker: On Condition #12, We are thinking about adding language at end of second sentence stating “or alternatively the applicant shall obtain approval of any appropriate Army Corps of Engineers permits to address the wetlands” or something to that effect, so that would be another possibility. We will work with Town Engineers’ office. They are studying the issue and want to see a detailed delineation plan before they sign off. It is stated in the Engineering Code. They will include a letter when they are comfortable with the application.) This is not setting a precedent. (Mr. Neubecker: This is a Town Project, so we are asking the Planning Commission to make a recommendation to the Town Council).

Mr. Mamula: Did you get my recommendation? (Mr. Gallagher: Yes.) From the outside, it looks like we are going to start and then have a delineation done. If an application came in for a similar project, we would have them do the delineation first. That is how it looks to me, and that is my concern.

Ms. Christopher: Other than that, I like the design.

Ms. Dudney: Council should tread carefully here.

Mr. Schroder: It is great.

Mr. Butler: Agree.

Mr. Pringle: I think it looks fine. I share Mr. Mamula’s concerns. I want us to be on top of that.

Mr. Pringle made a motion to approve the point analysis for the Rotary Snowplow Park Phase 2 at 13 Boreas Pass Road. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

Mr. Pringle made a motion to recommend the Town Council approve the Rotary Snowplow Park Phase 2 at 13 Boreas Pass Road with the presented findings and conditions, with a change to condition #12 which Mr. Neubecker will craft to address our concerns regarding the wetlands. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

FINAL HEARINGS:

1. Harris Street Community / Library Building (MM) PC#2012096; 103 South Harris Street
Mr. Mosher presented a proposal to restore, repair, renovate and adaptively reuse the historic building as a library and Community Center. The existing non-compliant additions (roof additions, handicapped ramp, windows, etc.) will be removed. The existing wood-framed garage at the northwest corner will be removed and a new compliant masonry addition will be created for entrance to a planned lower level theater and multi-purpose rooms. The property also will be locally landmarked.

Changes since the December 4th, 2012, Planning Commission Meeting:

- The design of the north addition for entry to the theater and multi-purpose rooms has been finalized.
- The dumpster enclosure has been relocated to aid in vehicular circulation and to add privacy to neighbors.
- Per Commission input, all of the existing / damages parge coating will be re-covered rather than spot-patched.

The previous Staff Report on December 4, 2012 described in detail the planned restoration, rehabilitation, addition, and landmarking. At that meeting, the Commission acknowledged that the proposal met the following policies from the *Development Code, Handbook of Design Standards for the Historic and Conservation Districts, the Design Standards for the Historic District, Character Area #1: East Side Residential and policies of the Development Code.*

1. All associated Policies of the Handbooks of Design Standards are being met with the restoration, addition and renovation.
2. Building Height (6/A & 6/R) - No change
3. Land Use (Policies 2/A & 2/R) - Existing non-conforming, but compliant
4. Density/Intensity (3/A & 3/R)/Mass (4/R) - slight reduction in density and mass
5. Access / Circulation (16/A & 16/R; 17/A & 17/R) - Pedestrian Access
6. Parking (18/A & 18/R) - No parking being added or lost
7. Social Community (24/R) - Landmarking criteria – Restoration

At this final review we are recommending positive fifteen (+15) points. The proposal has not incurred any negative points.

- Policy 24/R (+6 points) for fulfilling a community need established by the Town Council. One of Council Goals of 2012 - Project to include a new community library, assembly/meeting rooms, and Movie Theater.
- Policy 24/R (+9 points) for an on-site historic preservation/restoration effort of above average public benefit.

The proposal passes with a score of positive fifteen (+15) points.

Staff believes that the restoration of this historic building is an excellent public benefit for the community. The agent has responded to all concerns and direction provided at the last meeting. Staff welcomed any additional comments, and had three motions recommending approval for this application:

1. Approval of the Point Analysis for the Harris Street Community Building, Restoration, Rehabilitation, Addition and Landmarking, PC# 2012096, 103 South Harris Street.
2. Approval of the Harris Street Community Building, Restoration, Rehabilitation, Addition and Landmarking, PC# 2012096, 103 South Harris Street, with the presented Findings and Conditions.
3. Recommendation that the Town Council adopt an ordinance to Landmark the historic structure for the Harris Street Community Building, Restoration, Rehabilitation, Addition and Landmarking, PC# 2012096, 103 South Harris Street, based on proposed restoration efforts and the fulfillment of criteria for architectural significance as stated in Section 9-11-4 of the Landmarking Ordinance.

Ms. Liz Hallas, Anderson Halls Architects: We are very excited about this project. I will try to go through this quickly. Site plan, elevation details, north addition, next steps.

Mr. Mark Christiansen, DHM Design: Preserve historic sense of the site and some of the landscaping. Relocating the sculpture bench from the other library to the main entry. Annual plantings and benches on other sides. Removing old brick planters; replacing with long planters. Cleaner and easier to maintain and plow. (Mr. Mosher: Staff is working closely with design team on plantings.) (Mr. Butler: Did you respond to Ms. Girvin's concerns?) (Mr. Mosher: Yes.) (Ms. Christopher: Are the long planters raised?) No, they are at grade.

Ms. Hallas: The cupola is being restored back to what it was historically. The floor plans have not changed significantly. We are just working with the engineers and making sure everything works structurally. Re-roofing with high quality asphalt shingle to appear as close as possible to the wood shingles. Also doing some additional insulation at roof level. Cleaning and repairing the brick. Entry canopies will be structurally reworked to remove the non-historic columns. On the south inside corner of the two buildings, we are switching door and window that were reversed earlier on. Restructuring the reading deck. Repair work and skim coating of all of the parging materials. Replacing the windows with more historic ones on north elevation. Taking clues for north addition from the building itself. Brick dimension on new addition will be crisper to delineate the addition, but still be sensitive to the color of the original building. Cast stone will be similar to the real stone on the existing building. Construction start is scheduled for mid July 2013.

Ms. Dudney opened the hearing to public comment.

Mr. Lee Edwards: Neighbor in the Community. Can we look at the site plan? A couple of quick observations. The dumpster building. If we are going to build a dumpster building, let's build it big enough to contain all the recyclables that will be generated from this building. The front yard on Harris Street, I would encourage us to not fill it up too much with landscaping. There is a lot of good landscaping already on site. I see a future walk connecting to the French Street parking lot, excellent. There will probably be a social path connecting from the south parking lot to the French Street lot. The area where there used to be a door on the southwest corner, there will be a lot of snow on it. You didn't want to walk there in the winter. South stairs, couldn't the deck be extended to cover those steps to save on maintenance? On the Clerk and Records annex at County, the brick difference is garish. If scale and color is closer on the north addition, it will be more agreeable. Historic fabric. We are gutting the building. Are we reusing some of the interior items for the Arts District or somewhere else? (Ms. Hallas: Example of one of the dance floors, we are talking about salvaging that. That communication is happening. We are committed to salvaging as much historic fabric as we can. There is very little remaining fabric inside the building) Glad to hear it. As a taxpayer, let's reuse it. Ceiling in library, it is vaulted, why are we doing that? A lot of volume we are going to be heating. (Ms. Hallas: Expose the trusses of gymnasium, they're very interesting. Original gymnasium did have volume. We are installing fans to assist with heat movement plus additional insulation. This along with exposing all the south facing glass will help with heating.)

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

Commissioner Questions / Comments:

Ms. Dudney: How about the dumpster? (Ms. Hallas: We will go back and look at that as a team.)

Mr. Pringle: You have done a wonderful job. I just feel disappointed that we could not have a better addition. Taking off a non historic addition and adding a new one. If we were here years from now and saying this is the addition done in 2013, couldn't we have done something more sympathetic? We are lucky to get this building back, if there is ever a time to do a

positive 15 point preservation, this would be the time to do it - without any addition. Different entrance on north elevation.

Mr. Schroder: Addition is ok. Why not celebrate that it is different and this is the year we put it on? Pleased with effort, support the project.

Ms. Dudney: I support the project.

Mr. Butler : I like the whole package.

Ms. Christopher: I agree with Mr. Pringle’s concerns; however, if we have to have an addition, it is great.

Mr. Mamula: I think it is a great project, but I agree with Mr. Pringle as well. I think it is a shame we are doing the addition for a private company in a public space. There are so few brick buildings in the core, to add a tiny little brick building doesn’t make sense. I agree with Mr. Edwards, I don’t like this at all, I don’t like the addition, I don’t like the materials. I looked through the Code today to try to find something. There is one tiny bit of code respecting entry patterns, but for residential structures only. There is no way to change any points. We are making a mistake with the addition. Some day we are going to have to take it down.

Mr. Butler: Maybe different material. Material argument is best argument for having it look different. Maybe something relating back to Ms. Cram’s Arts District project.

Mr. Pringle: Put on the addition back to 1940.

Ms. Dudney: I agree with Mr. Schroder, I like the 2013 date on the addition. It needs to look like it was put on in 2013. I understand why the addition is necessary; I am in agreement on it.

Mr. Mamula: Brick can clash very easily with other brick. It can clash drastically. I would rather use something like what we used on the police station; almost downplay it into a different tone. It will read oddly. (Mr. Neubecker: Would it be better if they could match it exactly? Does it need to be closer or further away but not a half a shade off?) Yes. (Ms. Hallas: We are not going to have brick against brick. The link is covered in the parge material. Not finding any Code direction, we went back to the Secretary of the Interior’s guidelines for this addition; those talk about keeping the tone similar. There could be a buff color brick similar to the parge color. I am hesitant to do other materials. The scale of the material is important to maintain.) (Mr. Neubecker: Are the bricks the same size?) (Ms. Hallas: Yes. Tone would be similar, but crisper edge would read as new.)

Ms. Christopher: Did you bring a sample of the parge? (Ms. Hallas: No. The chemical composition is currently being tested by our scientists.)

Mr. Pringle: What is in the connector? (Ms. Hallas: A walkway and sound buffer.) I understand the link; my problem is it may not work well in a large industrial kind of building. Could you envision bringing the whole thing right up tight to the building, keeping the parge material? I don’t like the idea of the parge material. (Ms. Neubecker - too all: There has been a lot of consideration on this addition. The entire team has had many discussions about the process with many professionals. It is not going to be confused with the historic portion. Are there other comments? Do we need to discuss the point analysis? Other comments on the Code?)

Ms. Dudney: Mr. Pringle’s point is very clear. Do we have any other comments?

Ms. Christopher made a motion to approve the Point Analysis for the Harris Street Community Building, Restoration, Rehabilitation, Addition and Landmarking, PC# 2012096, 103 South Harris Street. Mr. Butler seconded, and the motion was carried unanimously (6-0).

Ms. Christopher made a motion to approve the Harris Street Community Building, Restoration, Rehabilitation, Addition and Landmarking, PC#2012096, 103 South Harris Street, with the presented findings and conditions. Mr. Butler seconded, and the motion was carried unanimously (6-0).

Ms. Christopher made a motion to recommend that the Town Council adopt an ordinance to Landmark the historic structure for the Harris Street Community Building, Restoration, Rehabilitation, Addition and

Landmarking, PC# 2012096, 103 South Harris Street, based on proposed restoration efforts and the fulfillment of criteria for architectural significance as stated in Section 9-11-4 of the Landmarking Ordinance. Mr. Mamula seconded, and the motion was carried unanimously (6-0).

COMBINED HEARINGS:

1. Twister Zip Line at Peak 8 (CN) PC#2013021; 1599 Ski Hill Road (Peak 8 Base Area)

Mr. Neubecker presented a proposal to construct a recreational zip line at the Peak 8 ski area, with 2 stages: two lines between Tower 1 & 2 and 4 lines between Towers 3 & 4. The zip line is proposed from near the top of the Chair 7 (Rip's Ride), along a portion of Twister ski run and the Freeway Terrain Park. The zip line would end at the base of Peak 8 near the existing Gold Runner Coaster ticket office. A new condition of approval was added, condition #13, added by the Town Engineering department, a berm or a ditch, to find a way to get the water to go around where the disturbed area is. We will do an inspection of the site to be sure all the requirements are in place. Revegetation and reseeding will occur on disturbed areas.

Since the work session on January 15th, the applicant has redesigned the towers to use a mesh material (hog wire) along the railings at the top of the towers to reduce the perceived height and mass. In addition, more information has been provided on the landscaping walkways around the towers and base area. Also, a small shelter is proposed at the top of the towers for the zip line attendant.

Staff found that the proposed Twister Zip Line warranted positive three (+3) points under policy 20/R-Recreation. Staff found no reason to warrant any negative points at this time. Staff found that the application met all Relative policies, and the Policy 6 (Building Height) is not applicable to this application. As a result, Staff believes this project warrants a net score of positive three (+3) points.

Staff recommended approval of the Twister Zip Line, PC#2013021, with the presented findings and conditions.

Mr. Jeff Zimmerman, Director of Mountain Planning for Breckenridge and Keystone Resorts: We may want to run into the dusk hours; that is also what the lighting is for. This is our first foray into this, hard to say. 11:00 at night? Pretty unlikely. Too cold, we have to be realistic. Change in condition in erosion control, no issue whatsoever for us. Cable height is based on Colorado Oil and Public Safety commission. It is also so we can run cat operations and ski operations below. It is a taught cable, much tighter than a lift cable. Canopy tour is more of a sag in the wire to help slow you down, whereas this will have a braking system. You will come into the towers pretty hot, pretty exciting. Stations will be manned. Projections are about 50 miles per hour. We have taken the height of the cable as low as possible to increase the thrill but also accommodate for cat operations. 25' to grade. Landscaping to the tower stations; we worked on the landscaping plan on the base of Peak 8 around the coaster. We plan to continue those elements around the area this summer as well. Lots of planter boxes, we have taken the plan and master planned it for the base area. Change from our normal scoured area. (Mr. Neubecker: Mr. Zimmerman requested positive points for landscaping; Staff did not feel it was appropriate.) The other design feature we worked on was heavy timbers to coordinate as best we can with the other mining structures around. Even steel lattice work towers are historical. Heavy beaming and dark coloration speaks to our mining.

Mr. Schroder: Points for landscaping, what in your mind is exemplary? (Mr. Zimmerman: Not too concerned about it since we don't need the points. But we have taken the landscaping to a level that we have not done before. We recognize we will extend it down into the entire base area. It adds vertical element to the area, shading, and color. Many will be relocated during winter operations.)

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

Mr. Neubecker read the new condition #13: “Applicant shall submit revised plans to the Town of Breckenridge indicating that all areas shown on the erosion control plans as “wattles or stone check dams” to be installed with only stone check dams. In addition, in all areas where wattles are otherwise proposed or required, the wattles shall be installed parallel to the grading contours, and not crossing contour lines, to avoid channelizing water.”

Commissioner Questions / Comments:

Mr. Mamula: I think it is awesome.

Mr. Butler: Agree.

Ms. Dudney: Agree.

Mr. Pringle: It is part of the whole vision for that area.

Ms. Christopher: Thank you for listening to our suggestion about the change of material at the top of the towers. It is a great improvement.

Mr. Pringle made a motion to approve the point analysis for the Twister Zip Line, PC#2013021, 1599 Ski Hill Road (Peak 8 Base Area). Ms. Christopher seconded, and the motion was carried unanimously (6-0).

Mr. Pringle made a motion to approve the Twister Zip Line, PC#2013021, 1599 Ski Hill Road (Peak 8 Base Area) with the presented findings and conditions with the addition of condition #13 as read into the minutes earlier. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

2. Stillson Placer Solar Garden (JP) PC#2013020; 710 Wellington Road

Ms. Puester presented a proposal to install a 475-kilowatt photovoltaic (PV) solar garden on a 3-acre portion of the Stillson Patch Placer property. The applicants are Clean Energy Collective. The proposed solar garden would consist of approximately 1,814 panels in 8 rows, 20 feet apart to produce approximately 498,340 kWh of energy per year. The proposed solar panels would be managed by Clean Energy Collective. The parcel is 3 acres on the lower portion of the Town owned 38 acre parcel.

Changes from the Planning Commission Worksession on November 1, 2011:

- Removal of 316 panels and one row of panels resulting in 32,490 kWh less energy generation;
- Detail on inverter and switch gear equipment size and shed structure;
- Fence detail;
- Inverter equipment and shed structure detail;
- New site visibility photos;
- Grading information.

This project does not include the construction of any buildings, and hence does not affect the allowed density, mass or parking. It also does not create additional paved surfaces, and will not affect drainage. It also has no impact on the need for employee housing. There is one small open air shed structure to cover the mechanical equipment. The applicant has agreed to lower the fence from 10’ to 6’ to adhere to the exemption to the fence policy allowing utility areas to be fenced. (The Applicants brought a sample of the fence and showed it to the Commission.)

Staff had one specific question for the Planning Commission: Did the Commission believe that landscaping is needed on the berm or elsewhere on site to provide buffering to the site?

Staff recommended the Planning Commission approve the final point analysis for the Stillson Placer Solar Garden, PC#2013020. Staff also recommended the Planning Commission approve the Stillson Placer Solar

Garden, PC#2013020, with the presented findings and conditions.

Ms. Dudney opened the hearing to public comment.

Mr. Lee Edwards: Just a general comment. This is going to be the precedent for what is going to go out on McCain. Are we looking at the same height as the ones out at Valley Brook? (Ms. Puester: Those are 16'; these will be 11' including mounting structure.) Now is the perfect time to do what has been done behind the Town shops with the eclectic landscaping; sloped berm landscaping. I would like to see the Town take the additional step. We as a community do care. Will the fence you showed be at the top of the berm or the slope? (Ms. Puester: It is on the inside of the berm.) I would encourage the Commission to mention to the Town Council and staff to put some landscaping out there.

Mr. Drew Goldsmith: We own a house north and east of this site. We would be able to see every single panel in the project. I think there is a significant visual impact to us. That said; I am in full support of the project. Visual impacts of some solar panels are the least of our problems. There is some landscaping on the berm. Being a landscape contractor myself, the trees out there on town berm are looking worse and worse, so please don't do it half-assed if you do add any.

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

Mr. Richard Miller, Land Manager for Clean Energy Collective: Very excited to be working with the Town on this project and on the McCain site. I do have handouts on our company if you would like them (passed out to Commissioners). If you have any questions, Mr. Chad Roach, project manager, is here, as well as folks from Innovative Energy.

Mr. Butler: We see solar companies in the news going out of business. I looked at Martifer panels. What is your response to that? (Mr. Miller: We stick with companies we have analyzed and that have produced other items. We do try to go with companies that have a good track record, have been around a while, and are diversified. That is something we check out.)

Ms. Dudney: I was at Council when you commented on using specific panels. (Mr. Chad Roach: Chinese manufactured panel, the company we are using is Hanwha; they are fully large diversified multi-million dollar company. They are going to be around 25 years plus. We look to add 50 years. You see degradation over 25 years; we will go in and replace panels as needed. The panels will produce, then drop to about 8% and then we will replace.) (Mr. Jared Marchand, Innovative Energy: Hanwha also manufactured the panels we used for other Town of Breckenridge projects on Town facilities.)

Mr. Mamula: Why is the fence only 6' in height? Seems like it should be taller if you are trying to keep people out. Not much of a deterrent. (Ms. Puester: The exemption in the Policy sets out guidelines for utility related fences which includes a 6 foot maximum height.) (Mr. Neubecker: It's how we wrote the policy. At that time, we just didn't see why you would need a fence higher than that.) (Ms. Puester: If it helps, the Town does not have any fencing around our detached arrays and we have not had a problem to date.)

Commissioner Questions / Comments:

Mr. Schroder: I don't see need for landscaping. Location is great for project this size. Test for our next solar project.

Ms. Dudney: In support, perfect location.

Mr. Butler: Also in support, landscaping if it would be cared for and have water out there.

Ms. Christopher: In support.

Mr. Mamula: That is my neighborhood. There is some irrigation out there. Would like to see some such as

some grasses. Some grass seed would make it look better. Something long that can cover the patchy berm.

Mr. Pringle: In support of project. Perfect location for it. Can't be invisible from everyone, everywhere from above the site. This is as good a place as any. Town or Applicant needs to provide some level of landscaping, some effort to improve the site. Six foot fence screened by berm; if someone is inclined to go over the fence, they will. Is it required? (Mr. Richard Miller: It is an insurance / electrical requirement.)

Ms. Christopher made a motion to approve the point analysis for the Stillson Placer Solar Garden, PC#2013020, 710 Wellington Road. Mr. Mamula seconded, and the motion was carried unanimously (6-0).

Mr. Mamula: When will this be available? (Mr. Brian Waldes, Town of Breckenridge Financial Services Manager: Go to the HC3 (High Country Conservation Center) website; you can do a letter of intent on their website.)

Ms. Christopher made a motion to approve the Stillson Placer Solar Garden, PC#2013020, 710 Wellington Road. Mr. Mamula seconded, and the motion was carried unanimously (6-0).

OTHER MATTERS:

Mr. Neubecker: Stated he will be moving to the Front Range to take a Senior Planner position at the City of Englewood. April 16, 2013, will be his final Planning Commission meeting, as he leaves the end of April.

ADJOURNMENT:

The meeting was adjourned at 10:22pm.

Gretchen Dudney, Chair

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 4 (Authorizing Sale of 308 N. French Street Property)

DATE: April 1, 2013 (for April 9th meeting)

The second reading of the ordinance authorizing the sale of the Town's real property at 308 N. French Street is scheduled for your meeting on April 9th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – APRIL 9**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 4

6
7 Series 2013

8
9 AN ORDINANCE AUTHORIZING THE SALE OF TOWN-OWNED REAL PROPERTY
10 (308 North French Street – Humphrey)

11
12 WHEREAS, the Town of Breckenridge is the owner of the following described real
13 property:

14
15 Lots 1, 2, & 3, Block 1, Abbett Addition to the Town of Breckenridge, as shown on
16 the plat thereof, County of Summit and State of Colorado; also known as 308 North
17 French Street, Breckenridge, Colorado 80424

18
19 (**“Property”**)

20 ; and

21
22 WHEREAS, the Town desires to sell the Property to Christopher L. Humphrey; and

23
24 WHEREAS, a proposed contract to sell the property to Christopher L. Humphrey has been
25 prepared, a copy of which is marked **Exhibit “A”**, attached hereto, and incorporated herein by
26 reference (**“Agreement”**); and

27
28 WHEREAS, the Town Council has reviewed the proposed Agreement, and finds and
29 determines that the sale price is fair, and that it would be in the best interest of the Town and its
30 residents for the Town to sell the Property to Christopher L. Humphrey pursuant to the Agreement;
31 and

32
33 WHEREAS, Section 15.3 of the Breckenridge Town Charter provides that the Town
34 Council may lawfully authorize the sale of Town-owned real property by ordinance; and

35
36 WHEREAS, the Agreement has previously been executed by the Town Manager on
37 behalf of the Town, and it necessary and appropriate for the Town Council to ratify the previous
38 execution of the Agreement by the Town Manager.

39
40 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
41 BRECKENRIDGE, COLORADO:

42
43 Section 1. The Agreement between the Town and Christopher L. Humphrey (**Exhibit “A”**
44 hereto) is approved; and the Town Manager’s previous execution of such Option Agreement for
45 and on behalf of the Town of Breckenridge is ratified, confirmed and approved.

1 .
2
3 Section 2. The Town Manager is further authorized, empowered, and directed to take all
4 necessary and appropriate action to close the sale of the Property contemplated by the Agreement.
5 In connection therewith, the Town Manager shall have full power and authority to do and perform
6 all matters and things necessary to the sale of the Property pursuant to the Agreement, including, but
7 not limited to, the following:
8

- 9 1. The making, execution, and acknowledgement of settlement
10 statements, closing agreements, and other usual and customary
11 closing documents;
12
- 13 2. The execution, acknowledgement, and delivery to the buyer of the
14 deed of conveyance for the Property; and
15
- 16 3. The performance of all other things necessary to the sale of the
17 Property by the Town pursuant to the Agreement.
18

19 Section 3. The Town Council finds, determines, and declares that it has the power to adopt
20 this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the
21 Colorado Constitution and Section 15.3 of the Breckenridge Town Charter.
22

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

26 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
27 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
28 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
29 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
30 Town.
31

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

37 By _____
38 John G. Warner, Mayor
39

40 ATTEST:
41
42
43

44 _____
45 Town Clerk
46
47



Breckenridge Associates Real Estate
PO Box 768/229 South Main Street Breckenridge, CO 80424
Dan Corwin Broker/Partner
Ph: 800-774-7970 Fax: 970-797-1896

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS4-9-12) (Mandatory 1-13)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE
(LAND)**

Property with No Residences
 Property with Residences-Residential Addendum Attached

Date: 3/15/2013

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, **Christopher L. Humphrey**, will take title to the Property described below as Joint Tenants Tenants In Common Other n/a

2.2. Assignability and Inurement. This Contract Shall Shall Not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, **Town of Breckenridge**, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Summit, Colorado:

LOT 1,2,3 BLOCK 1 ABBETTS ADDITION SUB

known as No. **308 N French St. Breckenridge CO 80424**, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Fixtures. All fixtures attached to the Property on the date of this Contract.

Other Fixtures: n/a

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property whether attached or not on the date of this Contract, the following items are included: n/a

Other Personal Property:

n/a

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except

n/a. Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.3. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

n/a

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except

n/a

Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.4. Water Rights, Water and Sewer Taps.

2.5.4.1. Deeded Water Rights. The following legally described water rights:

n/a

Any water rights shall be conveyed by n/a Deed Other applicable legal instrument.

2.5.4.2. Well Rights. If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing. The Well Permit # is n/a.

2.5.4.3. Water Stock Certificates:
n/a

2.5.4.4. Water Tap Sewer Tap

Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the tap.

2.5.4.5. Other Rights:
n/a

2.5.5. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:
n/a

2.6. Exclusions. The following items are excluded (Exclusions):
n/a

3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline	
1	§ 4.3	Alternative Earnest Money Deadline	3/21/2013	Thursday
Title and Association				
2	§ 7.1	Record Title Deadline	3/28/2013	Thursday
3	§ 7.5	Exceptions Request Deadline	3/28/2013	Thursday
4	§ 8.1	Record Title Objection Deadline	4/4/2013	Thursday
5	§ 8.2	Off-Record Title Deadline	3/28/2013	Thursday
6	§ 8.2	Off-Record Title Objection Deadline	4/4/2013	Thursday
7	§ 8.3	Title Resolution Deadline	4/11/2013	Thursday
8	§ 7.6	Association Documents Deadline	n/a	
9	§ 7.6	Association Documents Objection Deadline	n/a	
10	§ 8.5	Right of First Refusal Deadline	n/a	
Seller's Property Disclosure				
11	§ 10.1	Seller's Property Disclosure Deadline	3/28/2013	Thursday
Loan and Credit				
12	§ 5.1	Loan Application Deadline	3/28/2013	Thursday
13	§ 5.2	Loan Objection Deadline	4/25/2013	Thursday
14	§ 5.3	Buyer's Credit Information Deadline	n/a	
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	n/a	
16	§ 5.4	Existing Loan Documents Deadline	n/a	
17	§ 5.4	Existing Loan Documents Objection Deadline	n/a	
18	§ 5.4	Loan Transfer Approval Deadline	n/a	
Appraisal				
19	§ 6.2	Appraisal Deadline	4/18/2013	Thursday
20	§ 6.2	Appraisal Objection Deadline	4/25/2013	Thursday
Survey				
21	§ 9.1	Current Survey Deadline	4/11/2013	Thursday
22	§ 9.2	Current Survey Objection Deadline	4/18/2013	Thursday
Inspection and Due Diligence				
23	§ 10.2	Inspection Objection Deadline	5/9/2013	Thursday
24	§ 10.3	Inspection Resolution Deadline	5/16/2013	Thursday

158	25	§ 10.5	Property Insurance Objection Deadline	4/4/2013	Thursday
159	26	§ 10.6	Due Diligence Documents Delivery Deadline	4/4/2013	Thursday
160	27	§ 10.7	Due Diligence Documents Objection Deadline	4/11/2013	Thursday
161	28	§ 10.8	Environmental Inspection Objection Deadline	05/09/2013	Thursday
162	29	§ 10.8	ADA Evaluation Objection Deadline	05/09/2013	Thursday
163	30	§ 11.1	Tenant Estoppel Statements Deadline	n/a	
164	31	§ 11.2	Tenant Estoppel Statements Objection Deadline		
165			Closing and Possession		
166					
167					
168	32	§ 12.3	Closing Date	5/23/2013	Thursday
169	33	§ 17	Possession Date	5/23/2013	Thursday
170	34	§ 17	Possession Time	Delivery of Deed	
171	35	§ 28	Acceptance Deadline Date	3/21/2013	Thursday
172	36	§ 28	Acceptance Deadline Time	1:00 PM MDT	
173	37	n/a	n/a	n/a	
174	38	n/a	n/a	n/a	
175					
176					
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178					
179					

Note: Applicability of Terms.

Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision in **Dates and Deadlines** (§ 3), including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$455,000.00	
2	§ 4.2	Earnest Money		\$5,000.00
3	§ 4.5	New Loan		\$364,000.00
4	§ 4.6	Assumption Balance		
5	§ 4.7	Seller or Private Financing		
6	n/a	n/a		
7	n/a	n/a		
8	§ 4.3	Cash at Closing		\$86,000.00
9		TOTAL	\$455,000.00	\$455,000.00

4.2. Seller Concession. Seller, at Closing, shall credit, as directed by Buyer, an amount of \$ n/a to assist with any and all of the following: Buyer's closing costs, (Seller Concession). Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession will be reduced to the extent it exceeds the aggregate of what is allowed by Buyer's lender as set forth in the Closing Statement, Closing Disclosure or HUD-1, at Closing.

4.3. Earnest Money. The Earnest Money set forth in this section, in the form of Personal Check, shall be payable to and held by Land Title

(Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 3) for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.3.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract is as set forth as the **Alternative Earnest Money Deadline** (§ 3).

4.3.2. Return of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer shall be entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written

mutual instructions, i.e., Earnest Money Release form, within three days of Seller's receipt of such form.

4.4. Form of Funds; Time of Payment; Funds Available.

4.4.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.4.2. Available Funds. All funds required to be paid at Closing or as otherwise agreed in writing between the parties shall be timely paid to allow disbursement by Closing Company at Closing **OR SUCH PARTY SHALL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, Does Does **Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.5. New Loan.

4.5.1. Buyer to Pay Loan Costs. Buyer, except as provided in § 4.4, if applicable, shall timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

4.5.2. Buyer May Select Financing. Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).

4.5.3. Loan Limitations. Buyer may purchase the Property using either of the following types of loans: **Conventional** **Other** *Loan acceptable to Buyer.*

4.6. Assumption. (Omitted as inapplicable)

4.7. Seller or Private Financing. (Omitted as inapplicable)

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS.

5.1. Loan Application. If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, shall make an application verifiable by such lender, on or before **Loan Application Deadline** (§ 3) and exercise reasonable efforts to obtain such loan or approval.

5.2. Loan Objection. If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before **Loan Objection Deadline** (§ 3), if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. **IF SELLER DOES NOT TIMELY RECEIVE WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY SHALL BE NONREFUNDABLE,** except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

5.3. Credit Information and Buyer's New Senior Loan. (Omitted as inapplicable)

5.4. Existing Loan Review. (Omitted as inapplicable)

6. APPRAISAL PROVISIONS.

6.1. Lender Property Requirements. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller has the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the Requirements, based on any unsatisfactory Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this § 6.1 shall not apply if, on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements have been completed; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition. The applicable Appraisal provision set forth below shall apply to the respective loan type set forth in § 4.5.3, or if a cash transaction, i.e. no financing, § 6.2.1 shall apply.

6.2.1. Conventional/Other. Buyer has the sole option and election to terminate this Contract if the Property's valuation, determined by an appraiser engaged on behalf of Buyers Lender is less than the Purchase Price. The appraisal shall be received by Buyer or Buyer's lender on or before **Appraisal Deadline** (§ 3). Buyer has the Right to Terminate under § 25.1, on or before **Appraisal Objection Deadline** (§ 3), if the Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price. This § 6.2.1 is for the sole benefit of Buyer.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by **Buyer** **Seller.** The cost of the appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

314 **7. EVIDENCE OF TITLE AND ASSOCIATION DOCUMENTS.**

315 **7.1. Seller Selects Title Insurance Company** If this box is checked, Seller shall select the title
 316 insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title**
 317 **Deadline** (§ 3), Seller shall furnish to Buyer a current commitment for owner's title insurance policy (Title
 318 Commitment), in an amount equal to the Purchase Price, or if this box is checked an **Abstract** of title certified to
 319 a current date. Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as
 320 practicable at or after Closing.
 321

322 **7.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer shall select the title
 323 insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title**
 324 **Deadline** (§ 3), Buyer shall furnish to Seller, a current commitment for owner's title insurance policy (Title
 325 Commitment), in an amount equal to the Purchase Price.
 326 If neither box in § 7.1 or § 7.2 is checked, § 7.1 applies.
 327

328 **7.3. Owner's Extended Coverage (OEC).** The Title Commitment **Shall** **Shall Not** commit to
 329 delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements,
 330 (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is
 331 recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing (OEC).
 332 **Note:** The title insurance company may not agree to delete or insure over any or all of the standard exceptions.
 333

334 **7.3.1. Premium for OEC.** If the title insurance company agrees to provide an endorsement for
 335 OEC, any additional premium expense to obtain an endorsement for OEC shall be paid by Buyer Seller
 336 **One-Half by Buyer and One-Half by Seller** **Other** n/a.
 337

338 **7.4. Buyer's Right to Review Title Commitment and Title Documents.** Buyer has the right to
 339 review the Title Commitment, its provisions and Title Documents (defined in § 7.5), and if not satisfactory to Buyer,
 340 Buyer may exercise Buyer's rights pursuant to § 8.1.
 341

342 **7.5. Copies of Exceptions.** Unless the box in § 7.2 is checked (Buyer Selects Title Insurance
 343 Company) on or before **Record Title Deadline** (§ 3), Seller, at Seller's expense, shall furnish to Buyer and
 344 n/a, (1) copies of any plats,
 345

346 declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title Commitment is
 347 required to be furnished, and if this box is checked **Copies of any Other Documents** (or, if illegible, summaries
 348 of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall
 349 have the obligation to furnish these documents pursuant to this section if requested by Buyer any time on or before
 350 **Exceptions Request Deadline** (§ 3). This requirement shall pertain only to documents as shown of record in the
 351 office of the clerk and recorder in the county where the Property is located. The Abstract or Title Commitment,
 352 together with any copies or summaries of such documents furnished pursuant to this section, constitute the title
 353 documents (collectively, Title Documents).
 354

355 **7.5.1 Existing Abstracts of Title.** Seller shall deliver to Buyer copies of any abstracts of title
 356 covering all or any portion of the Property (Abstract) in Seller's possession on or before **Record Title Deadline** (§
 357 3).
 358

359 **7.6. Homeowners' Association Documents.** Homeowners' Association Documents (Association
 360 Documents) consist of the following:

361 **7.6.1.** All Homeowners' Association declarations, bylaws, operating agreements, rules and
 362 regulations, party wall agreements.
 363

364 **7.6.2.** Minutes of most recent annual owners' meeting.

365 **7.6.3.** Minutes of any directors' or managers' meetings during the six-month period immediately
 366 preceding the date of this Contract. If none of the preceding minutes exist, then the most recent minutes, if any (§§
 367 7.6.1, 7.6.2 and 7.6.3, collectively, Governing Documents).
 368

369 **7.6.4.** The most recent financial documents which consist of: (1) annual and most balance sheet,
 370 (2) annual and most recent income and expenditures statement, (3) annual budget, and (4) reserve study, if any
 371 (collectively, Financial Documents).
 372

373 **7.6.5. Common Interest Community Disclosure.** **THE PROPERTY IS LOCATED WITHIN A**
 374 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY.**
 375 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S**
 376 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**
 377 **REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS**
 378 **WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN**
 379 **OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE**
 380 **ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT**
 381 **TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY**
 382 **MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN**
 383 **ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE**
 384 **APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST**
 385 **COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE**
 386 **ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY**
 387 **AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**
 388

389 **7.6.6. Association Documents to Buyer.**
 390

7.6.6.1. Seller to Provide Association Documents. Seller shall cause the Association Documents to be provided to Buyer, at Seller's expense, on or before **Association Documents Deadline** (§ 3).

7.6.6.2. Seller Authorizes Association. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense.

7.6.6.3. Seller's Obligation. Seller's obligation to provide the Association Documents shall be fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

Note: If neither box in this § 7.6.6 is checked, the provisions of § 7.6.6.1 shall apply.

7.6.7. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline** (§ 3), based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline** (§ 3), Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date** (§ 3), Buyer's Notice to Terminate shall be received by Seller on or before **Closing** (§ 12.3). If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.5.

8. RECORD TITLE AND OFF—RECORD TITLE.

8.1. Record Title. Buyer has the right to review and object to any of the Title Documents (Right to Object to Title, Resolution) as set forth in § 8.3. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If Buyer objects to any of the Title Documents, Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before **Record Title Objection Deadline** (§ 3). If Title Documents are not received by Buyer, on or before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment shall be delivered to Buyer. Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before ten days after receipt by Buyer of the following documents: (1) any required Title Document not timely received by Buyer, (2) any change to the Title Documents, or (3) endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.1 (Record Title), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

8.2. Off—Record Title. Seller shall deliver to Buyer, on or before **Off—Record Title Deadline** (§ 3), true copies of all existing surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 13), in Buyer's sole subjective discretion, shall be received by Seller on or before **Off—Record Title Objection Deadline** (§ 3). If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.2 (Off—Record Title), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection on or before **Off—Record Title Objection Deadline** (§ 3), Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge. Unless disclosed in writing, Seller represents and warrants that there are no Off-Record Matters.

8.3. Right to Object to Title, Resolution. Buyer's Right to Object to Title shall include, but not be limited to those matters set forth in §§ 8.1 (Record Title), 8.2 (Off—Record Title) and 13 (Transfer of Title), in Buyer's sole subjective discretion (collectively, Right to Object to Title). If Buyer objects to any title matter, on or before the applicable deadline, Buyer shall have the option to either (1) object to the condition of title, or (2) terminate this Contract.

8.3.1. Title Resolution. If Seller receives Buyer's Notice of Title Objection, as provided in § 8.1 (Record Title) or § 8.2 (Off—Record Title), on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline** (§ 3), this Contract shall terminate on the expiration of **Title Resolution Deadline** (§ 3) unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection, (i.e., Buyer's written notice to waive objection to such items and waives the right to terminate for that reason), on or before expiration of **Title Resolution Deadline** (§ 3).

8.3.2. Right to Terminate — Title Objection. Buyer has the Right to Terminate under § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON

THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Buyer has the Right to Terminate under § 25.1, on or before **Off—Record Title Objection Deadline** (§ 3), based on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

8.5. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not occurred on or before **Right of First Refusal Deadline** (§ 3), this Contract shall then terminate.

8.6. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., **Record Title Objection Deadline** (§ 3) and **Off—Record Objection Deadline** (§ 3)].

9. CURRENT SURVEY REVIEW.

9.1. Current Survey Conditions. If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title Commitment or the provider of the opinion of title if an Abstract, and n/a shall receive a Current Survey, i.e., Improvement Location Certificate, Improvement Survey Plat or other form of survey set forth in § 9.1.2 (collectively, Current Survey), on or before **Current Survey Deadline** (§ 3). The Current Survey shall be certified by the surveyor to all those who are to receive the Current Survey.

9.1.1. Improvement Location Certificate. If the box in this § 9.1.1 is checked, Seller Buyer shall order or provide, and pay, on or before Closing, the cost of an Improvement Location Certificate.

9.1.2. Other Survey. If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement Location Certificate, shall be an Improvement Survey Plat **Land Survey Plat**. The parties agree that payment of the cost of the Current Survey and obligation to order or provide the Current Survey shall be as

Seller shall order and pay for a current Land Survey Plat, having all the corners follows: Pinned and Staked.

9.2. Current Objection. Buyer has the right to review and object to the Current Survey. Buyer has the Right to Terminate under § 25.1, on or before the **Current Survey Objection Deadline** (§ 3), if the Current Survey is not timely received by Buyer or based on any unsatisfactory matter with the Current Survey, notwithstanding § 8.2 or § 13.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before **Seller's Property Disclosure Deadline** (§ 3), Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

10.2. Inspection Objection. Unless otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "as is" condition, "where is" and "with all faults". Seller shall disclose to Buyer, in writing, any latent defects actually known by Seller. Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property, e.g. heating and plumbing, (4) any proposed or existing transportation project,

road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 3):

10.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

10.2.2. Inspection Objection. Deliver to Seller a written description of any unsatisfactory physical condition that Buyer requires Seller to correct.

Buyer has the Right to Terminate under § 25.1, on or before **Inspection Objection Deadline** (§ 3) if the Property or Inclusions are unsatisfactory, in Buyer's sole subjective discretion.

10.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline** (§ 3), this Contract shall terminate on **Inspection Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline** (§ 3).

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this section shall survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence Documents. Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**(§ 3):

10.6.1. All contracts relating to the operation, maintenance and management of the Property;

10.6.2. Property tax bills for the last ___ years;

10.6.3. As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

10.6.4. A list of all Inclusions to be conveyed to Buyer;

10.6.5. Operating statements for the past ___ years;

10.6.6. A rent roll accurate and correct to the date of this Contract;

10.6.7. All current leases, including any amendments or other occupancy agreements, pertaining to the Property (Leases);

10.6.8. A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

10.6.9. All insurance policies pertaining to the Property and copies of any claims which have been made for the past 3 years;

10.6.10. Soils reports, Surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.2);

10.6.11. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

10.6.12. Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

10.6.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

10.6.14. Other Documents:

n/a

10.7. Due Diligence Documents Conditions. Buyer has the right to review and object to Due Diligence Documents, zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property (Zoning), in Buyer's sole subjective discretion, and has the right to object if Seller fails to deliver to Buyer all Due Diligence Documents. Buyer shall also have the unilateral right to waive any condition herein.

10.7.1. Due Diligence Documents Objection. Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline** (§ 3), based on any unsatisfactory matter with the Due

Diligence Documents, in Buyer's sole subjective discretion. If all Due Diligence Documents under § 10.6 are not received by Buyer on or before **Due Diligence Documents Delivery Deadline** (§ 3), then Buyer has the Right to Terminate under § 25.1 on or before the earlier of ten days after **Due Diligence Documents Objection Deadline** (§ 3) or Closing.

10.7.2. Zoning. Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline** (§ 3), based on any unsatisfactory zoning, in Buyer's sole subjective discretion.

10.7.3. Source of Potable Water (Residential Land and Residential Improvements Only).

Buyer Does Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. Buyer Does Does Not acknowledge receipt of a copy of the current well permit.

There is No Well.

Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

10.8. Due Diligence — Environmental, ADA. Buyer shall have the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.

Seller Buyer shall order or provide Phase I Environmental Site Assessment. Phase II Environmental Site Assessment. (compliant with ASTM E1527-05 standard practices for Environmental Site Assessments) and/or n/a, at the expense of Seller Buyer (Environmental Inspection). In addition, Buyer may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations shall be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Objection Deadline** (§ 3) shall be extended by **21** days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date** (§ 3), the **Closing Date** (§ 3) shall be extended a like period of time.

Buyer shall have the Right to Terminate under § 25.1, on or before **Environmental Inspection Objection Deadline** (§ 3), or if applicable the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion. Buyer shall have the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline** (§ 3), based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller shall not amend, alter, modify, extend or cancel any of the Leases nor shall Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

11. TENANT ESTOPPEL STATEMENTS.

11.1. Tenant Estoppel Statements Conditions. Buyer has the right to review and object to any Estoppel Statements. Seller shall obtain and deliver to Buyer on or before **Tenant Estoppel Statements Deadline** (§ 3), statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of such occupant's or tenant's lease and any amendments (Lease) stating:

11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Tenant Estoppel Statements Objection Buyer has the Right to Terminate under § 25.1, on or before **Tenant Estoppel Statements Objection Deadline** (§ 3), based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel Statements Deadline** (§ 3). Buyer shall also have the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer shall cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and

Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender shall be required to provide the Closing Company in a timely manner all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Colorado Real Estate Commission's Closing Instructions. Such Closing Instructions Are Are Not executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by n/a.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient **Special Warranty** deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Record Title** (§ 8.1),

13.2. Distribution utility easements (including cable TV),

13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title** (§ 8.2) and **Current Survey Review** (§ 9),

13.4. Inclusion of the Property within any special taxing district, and

13.5. Other n/a

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

15.1. Closing Costs. Buyer and Seller shall pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services shall be paid at Closing by

Buyer Seller One-Half by Buyer and One-Half by Seller

Other n/a

15.3. Status Letter and Record Change Fees. Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by Buyer Seller One-Half by Buyer and One-Half by Seller None. Any record change fee assessed by the Association including, but not limited to, ownership record transfer fees regardless of name or title of such fee (Association's Record Change Fee) shall be paid by Buyer Seller One-Half by Buyer and One-Half by Seller None.

15.4. Local Transfer Tax. The Local Transfer Tax of 1 % of the Purchase Price shall be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller None.

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, shall be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller None. The Private Transfer fee, whether one or more, is for the following association(s): n/a in the total amount of % of the Purchase Price or \$.

15.6. Water Transfer Fees. The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed:

\$ n/a for Water Stock/ Certificates Water District

\$ for Augmentation Membership Small Domestic Water Company n/a

and must be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller None.

15.7. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction shall be paid when due by Buyer Seller One-Half by Buyer and One-Half by Seller None.

16. PRORATIONS. The following shall be prorated to **Closing Date** (§ 3), except as otherwise provided:

783 16.1. **Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general
784 real estate taxes for the year of Closing, based on Taxes for the Calendar Year Immediately Preceding
785 Closing

786 Most Recent Mill Levy and Most Recent Assessed Valuation, or Other
787
788 **No Tax Apportionment. Pursuant to Section 39-3-105,**
789 **C.R.S., all real or personal property owned by the Seller**
790 **is exempt from taxation, and the Property has been tax-**
791 **exempt while owned by the Seller. Accordingly, no**
792 **apportionment of real property taxes will be made at**
793 **Closing.**
794
795

796 16.2. **Rents.** Rents based on Rents Actually Received Accrued. At Closing, Seller shall
797 transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions,
798 and notify all tenants in writing of such transfer and of the transferee's name and address. Seller shall assign to
799 Buyer all Leases in effect at Closing and Buyer shall assume Seller's obligations under such Leases.
800

801 16.3. **Association Assessments.** Current regular Association assessments and dues (Association
802 Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular
803 Association Assessments for deferred maintenance by the Association shall not be credited to Seller except as
804 may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay
805 the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to
806 Closing Date (§ 3) by the Association shall be the obligation of Buyer Seller. Except however, any special
807 assessment by the Association for improvements that have been installed as of the date of Buyer's signature
808 hereon, whether assessed prior to or after Closing, shall be the obligation of Seller. Seller represents that the
809 Association Assessments are currently payable at \$ n/a per n/a and that there are no unpaid
810 regular or special assessments against the Property except the current regular assessments and n/a Such
811 assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request
812 the Association to deliver to Buyer before Closing Date (§ 3) a current Status Letter.
813

814 16.4. **Other Prorations.** Water and sewer charges, propane, interest on continuing loan, and n/a.
815

816 16.5. **Final Settlement.** Unless otherwise agreed in writing, these prorations shall be final.
817
818

819 17. **POSSESSION.** Possession of the Property shall be delivered to Buyer on Possession Date (§ 3) at
820 Possession Time (§ 3), subject to the following leases or tenancies:
821 n/a
822

823 If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be
824 additionally liable to Buyer for payment of \$ 200 per day (or any part of a day notwithstanding § 18.1.) from
825 Possession Date (§ 3) and Possession Time (§ 3) until possession is delivered.
826
827

GENERAL PROVISIONS

828
829
830
831
832 18. **DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

833 18.1. **Day.** As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United
834 States Mountain Time (Standard or Daylight Savings as applicable).
835

836 18.2. **Computation of Period of Days, Deadline.** In computing a period of days, when the ending date is
837 not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls
838 on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline Shall Shall Not be
839 extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline
840 shall not be extended.
841
842

843 19. **CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION;**
844 **AND WALK—THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both shall be
845 delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.
846

847 19.1. **Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other
848 perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price
849 (Property Damage), Seller shall be obligated to repair the same before Closing Date (§ 3). Buyer has the Right to
850 Terminate under § 25.1, on or before Closing Date (§ 3), if the Property Damage is not repaired before Closing
851 Date (§ 3) or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property
852 Damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that were received by Seller (but
853 not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any
854 deductible provided for in such insurance policy. Such credit will not exceed the Purchase Price. In the event Seller
855 has not received such insurance proceeds prior to Closing, the parties may agree to extend the Closing Date (§ 3)
856 or, at the option of Buyer, Seller shall assign such proceeds at Closing, plus credit Buyer the amount of any
857 deductible provided for in such insurance policy, but not to exceed the total Purchase Price.
858
859

860 19.2. **Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and

862 communication services), system, component or fixture of the Property (collectively Service), e.g., heating or
 863 plumbing, fail or be damaged between the date of this Contract and Closing or possession, whichever shall be
 864 earlier, then Seller shall be liable for the repair or replacement of such Inclusion or Service with a unit of similar
 865 size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such
 866 Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by
 867 Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or
 868 replaced on or before Closing or possession, whichever shall be earlier, Buyer has the Right to Terminate under §
 869 25.1, on or before **Closing Date** (§ 3), or, at the option of Buyer, Buyer will be entitled to a credit at Closing for the
 870 repair or replacement of such Inclusion or Service. Such credit shall not exceed the Purchase Price. If Buyer
 871 receives such a credit, Seller's right for any claim against the Association, if any, shall survive Closing. Seller and
 872 Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover
 873 the repair or replacement of such Inclusions.
 874

875 **19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending
 876 condemnation action may result in a taking of all or part of the Property or Inclusions, Seller shall promptly notify
 877 Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before
 878 **Closing Date** (§ 3), based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect
 879 to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer shall be
 880 entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the
 881 Property or Inclusions but such credit shall not include relocation benefits or expenses, or exceed the Purchase
 882 Price.
 883

884 **19.4. Walk—Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to
 885 walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions
 886 complies with this Contract.
 887

888 **19.5. Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other
 889 casualty shall be borne by the party entitled to the growing crops as provided in § 2.5.5 and such party shall be
 890 entitled to such insurance proceeds or benefits for the growing crops
 891

892 **20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller
 893 acknowledge that the respective broker has advised that this Contract has important legal consequences and has
 894 recommended the examination of title and consultation with legal and tax or other counsel before signing this
 895 Contract.
 896

897 **21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any note or check
 898 received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when
 899 due, or if any obligation hereunder is not performed or waived as herein provided, the non-defaulting party has the
 900 following remedies:
 901

902 **21.1. If Buyer is in Default:**

903 **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case
 904 all Earnest Money (whether or not paid by Buyer) shall be paid to Seller and retained by Seller; and Seller may
 905 recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect
 906 and Seller has the right to specific performance or damages, or both.
 907

908 **21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 shall apply unless the box in § 21.1.1.
 909 is checked. All Earnest Money (whether or not paid by Buyer) shall be paid to Seller, and retained by Seller. Both
 910 parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in
 911 § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and
 912 (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money shall be SELLER'S ONLY
 913 REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of
 914 specific performance and additional damages.
 915

916 **21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest
 917 Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer
 918 may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or
 919 damages, or both.
 920

921 **22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of
 922 any arbitration or litigation relating to this Contract, prior to or after **Closing Date** (§ 3), the arbitrator or court shall
 923 award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.
 924

925 **23. MEDIATION.** If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the
 926 parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the
 927 parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators
 928 cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is
 929 binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation.
 930 The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty
 931 days of the date written notice requesting mediation is delivered by one party to the other at the party's last known
 932 address. This section shall not alter any date in this Contract, unless otherwise agreed.
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24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its sole subjective discretion, has several options: (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interplead the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 23).

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination shall be effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate shall have accepted the specified matter, document or condition as satisfactory and waived the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing shall survive the same.

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery. All notices must be in writing, except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Seller, and delivered to Buyer shall be effective when physically received by Buyer, any signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Buyer, and delivered to Seller shall be effective when physically received by Seller, any signatory on behalf of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2.

27.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed document or written notice, may be delivered in electronic form only by the following indicated methods:
 Facsimile E-mail Internet No Electronic Delivery. If the box "No Electronic Delivery" is checked, this § 27.2 shall not be applicable and § 27.1 shall govern notice and delivery. Documents with original signatures shall be provided upon request of any party.

27.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** (§ 3) and **Acceptance Deadline Time** (§ 3). If accepted, this document shall become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not limited to exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5), **Record Title and Off-Record Title** (§ 8), **Current Survey Review** (§ 9) and **Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, Buyer Disclosure and Source of Water** (§ 10).



ADDITIONAL PROVISIONS AND ATTACHMENTS

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30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

1. Any and all Due Diligence Documents referred to in this Contract, shall only be what the Seller has in their possession.

2. All Dates and Deadlines may be extended an additional FIVE (5) business days by Buyer, due to document or monetary delivery delays.

3. Should the Buyer decide that the property is not suitable to build a home, in his sole subjective discretion, he may terminate this contract on or before the Inspection Objection Deadline.

4. Seller shall remove the shed located on the northwest corner of the property, but shall not be responsible for removing the concrete pad underneath the shed. The shed shall be removed no later than September 1, 2013, or within 21 days after receiving written notice after Closing from Buyer requesting that the shed be removed.

5. All existing Water & Sewer Taps shall be transfered with the property at time of Closing.

31. ATTACHMENTS.

31.1. The following attachments are a part of this Contract: *n/a*

31.2. The following disclosure forms are attached but are not a part of this Contract: *n/a*

SIGNATURES

Christopher L. Humphrey

Date: 3/18/2013

Buyer: **Christopher L. Humphrey**

Address:

Phone:

Fax:

Electronic Address: *chris@chrishumphrey.com*

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Seller: 

Date: 3/19/13

Town of Breckenridge

By

Address:

Phone:

Fax:

Electronic Address:

32. COUNTER; REJECTION. This offer is Countered Rejected. (clear selection)

Initials only of party (Buyer or Seller) who countered or rejected offer

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker Does Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if

1096 Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not
 1097 already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest
 1098 Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of
 1099 Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual
 1100 instructions, provided the Earnest Money check has cleared.
 1101

1102
 1103 Broker is working with Buyer as a Buyer's Agent Seller's Agent Transaction-Broker in this
 1104 transaction. This is a Change of Status.
 1105

1106
 1107 Brokerage Firm's compensation or commission is to be paid by Listing Brokerage Firm
 1108 Buyer Other n/a
 1109

1110
 1111 Brokerage Firm's Name: **Breckenridge Associates Real Estate**
 1112

1113
 1114
 1115
 1116
 1117
 1118

Date: 3/15/2013

1119 Broker's Name: **Dan Corwin**

1120 Address: **PO Box 768/229 South Main Street Breckenridge, CO 80424**

1121 Ph: **800-774-7970** Fax: **970-797-1896** Email: **dan@breckenridgeassociates.com**
 1122
 1123
 1124
 1125

1126 **34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

1127 (To be completed by Broker working with Seller)
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 1129

1130 Broker Does Does Not (n/a) acknowledge receipt of Earnest Money deposit and, while not a party to
 1131 the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if
 1132 Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not
 1133 already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest
 1134 Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of
 1135 Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual
 1136 instructions, provided the Earnest Money check has cleared.
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 1139

1140 Broker is working with the Seller as a Seller's Agent Buyer's Agent Transaction-Broker (n/a) in
 1141 this transaction. This is a Change of Status.
 1142
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 1144

1145 Brokerage Firm's compensation or commission is to be paid by Seller Buyer Other n/a

1146 Brokerage Firm's Name: **Coldwell Banker Rounds Porter**

1147 Broker _____ Date: _____
 1148
 1149
 1150

1151 Address: **PO Box 1598 Breckenridge, CO 80424**

1152 Ph: **970-453-0401** Fax: **n/a** Email: **turkm@breckrealestate.com**

1153 **CBS4-9-12. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)**
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MEMORANDUM

TO: Town Council

FROM: Mark Truckey, Assistant Director of Community Development

SUBJECT: Disposable (Single Use) Bag Fee Ordinance Second Reading

DATE: April 2, 2013 for April 9 Council Meeting

Staff has attached a copy of the Disposable Bag Fee Ordinance for Council's review and potential adoption at the April 9 evening meeting. A few modifications (shown in underline and overstruck text) have been made to the version the Council last saw at its evening meeting on March 26. A summary of those modifications follows:

Ordinance Text Revisions

Fee Revenues Retained by Retail Stores

At the March 26 work session, Council indicated that the ordinance should include a maximum amount of revenues that Retail Stores should be allowed to keep. The ordinance as written for first reading allowed Retail Stores to keep 50 percent of the Disposable Bag Fee revenues (the "Retained Percent"). Because the ordinance clearly limits the types of activities that Retail Stores may fund with the Retained Percent, it was questioned whether a full 50 percent retention was necessary, particularly for stores with large sales volumes such as the grocers. The Council also suggested that costs for Retail Stores should decrease after the initial implementation period and that the Retained Percent could be scaled back in subsequent years.

Both the Aspen and Carbondale disposable bag ordinances set maximums on the amount of the paper bag fee that stores may retain. Grocers (the retailers subject to the Aspen and Carbondale ordinances) are allowed to retain up to 25% of the total fee collected, but are further limited to a maximum of \$1,000 per month in the first year of the fee. In subsequent years, only a maximum of \$100 per month is allowed to be kept by grocers.

Staff has had some initial discussions with City Market corporate officials regarding the potential costs to the Breckenridge City Market of implementing the Disposable Bag Fee. City Market officials have not yet provided cost estimates. However, they have indicated that the two largest costs are attributable to staff training and additional time required at the cash register for transactions (i.e., informing customers of fee, entering fee at register). City Market officials indicated that there are about 150 persons employed at the Breckenridge store. Staff has included maximum dollar amounts in the attached ordinance, using the Aspen/Carbondale model. We look for Council input on these proposed maximum amounts.

A final point regarding the fee is that in reviewing possible fee amounts and amounts imposed by other jurisdictions, staff evaluated information such as the Disposable Bag Fee Nexus Study prepared for the City of Boulder. That nexus study documented the lifecycle costs of paper and plastic bags and estimated the costs to implement a public education and outreach campaign. Many of the costs identified in the study are relevant to the Town of Breckenridge.

Reusable Bag Definition

At the March 26 Council meeting, there was a desire to shorten the definition of Reusable Bags to eliminate discussions of washability and multiple use. The Reusable Bag definition essentially indicates the type of bags that are not subject to the Disposable Bag Fee. The resulting definition as presented at the March 26 night meeting was “A bag that is at least 2.25 mil thick”. In discussing this amendment further, staff noted that paper bags are usually thicker than 2.25 mils and thus the amended definition would exclude most paper bags from the fee. Staff has proposed an amendment to address this with the following text change:

“A plastic bag that is at least 2.25 mil thick or a bag made of canvas, woven polypropylene, or similar types of durable materials.”

Retail Store Definition

Staff recently met with the Restaurant Association and the restaurants noted that many town restaurants have some minor retail component where they sell t-shirts, pint glasses, etc. There was concern whether the ordinance would apply to these activities. In staff’s opinion, these limited retail sales are clearly incidental to the primary business activity occurring within the restaurant. Based on this feedback, staff has included an additional exemption from the definition of Retail Stores for “restaurants or other businesses (e.g., service providers such as salons and spas) where retail sales are clearly secondary and incidental to the primary activity occurring within the business”.

Exemptions from Bag Fee

Staff has added one additional exemption to Section 5-12-11. This exemption is for “A bag that was previously used and made available to customers at a Retail Store”. In talking with the FIRC Breckenridge store, their manager noted that they distribute donated used plastic bags to customers, as opposed to buying plastic bags. Allowing this re-use would be consistent with exemption A under this section, which was added at the March 26 meeting. Staff is also aware of at least one retail shop on Main Street that also distributes “used” bags. In another addition to the exemptions, we added the word “fresh” to the exemption for food, meat, and fish bags to clarify that it did not only apply to frozen items.

Amendments Provided by Finance Department

Another few amendments, somewhat technical in nature, have been suggested by the Finance Department and are included in the attached ordinance. For example, Section 5-12-9 C was amended to clarify that the Disposable Bag Fee is exempt from Breckenridge sales tax. However, other taxes such as state and county taxes would still apply.

Council Direction

At the April 9 regular meeting, the Council will be holding a public hearing taking action on the proposed ordinance. Staff requests the following feedback from the Council:

- Is the Council comfortable with the adjustments staff has made to the fee revenues for Retail Stores, particularly the maximum monthly amounts that have been added?
- Is Council comfortable with the other amendments proposed to the ordinance?
- Are there other amendments that Council would like to make to the ordinance?

1 | **FOR SECOND READING---APRIL 9**

2
3 COUNCIL BILL NO. 5

4
5 Series 2013

6
7 AN ORDINANCE ADOPTING CHAPTER 12 OF TITLE 5 OF THE BRECKENRIDGE
8 TOWN CODE; ESTABLISHING A “DISPOSABLE BAG FEE”; PROVIDING FOR THE
9 PAYMENT AND COLLECTION OF SUCH FEE; AND PROVIDING OTHER DETAILS
10 RELATED TO THE DISPOSABLE BAG FEE

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

14
15 Section 1. Title 5 of the Breckenridge Town Code is amended by the addition of a new
16 Chapter 12, to be entitled “ Disposable Bag Fee”, which shall read in its entirety as follows:

17
18 CHAPTER 12

19
20 DISPOSABLE BAG FEE

21
22 SECTION:

- 23
- 24 5-12-1: Short Title
- 25 5-12-2: Authority
- 26 5-12-3: Intent
- 27 5-12-4: Purpose
- 28 5-12-5: Legislative Findings
- 29 5-12-6: Definitions
- 30 5-12-7: Disposable Bag Fee Established
- 31 5-12-8: Disposable Bag Fee Requirements
- 32 5-12-9: Retention, Remittance, and Transfer of the Disposable Bag Fee
- 33 5-12-10: Required Signage
- 34 5-12-11: Exemption
- 35 5-12-12: Audits and Collection of the Disposable Bag Fee
- 36 5-12-13: Hearings
- 37 5-12-14: Penalties

38
39 5-12-1: SHORT TITLE: This Chapter is to be known and may be cited as the “Town Of
40 Breckenridge Disposable Bag Fee Ordinance.”

41
42 5-12-2: AUTHORITY: This Chapter is adopted by the Town Council pursuant to the following
43 authority:

DISPOSABLE BAG FEE ORDINANCE

- 1
- 2 A. Section 31-15-103, C.R.S. (concerning municipal police powers).
- 3 B. The authority granted to home rule municipalities by Article XX of the Colorado
- 4 Constitution.
- 5 C. The powers contained in the Breckenridge Town Charter.

6 5-12-3: INTENT:

- 7
- 8 A. The Disposable Bag Fee adopted by this Chapter is necessary to address the
- 9 environmental problems associated with Disposable Bags and to relieve Town
- 10 taxpayers of the costs imposed upon the Town associated with the use of
- 11 Disposable Bags. The Town Council intends that the requirements of this
- 12 Chapter will assist in offsetting the costs associated with using Disposable Bags
- 13 by paying for the mitigation, educational, replacement, and administrative efforts
- 14 of the Town.
- 15 B. The Disposable Bag Fee established by this Chapter is not designed to raise
- 16 revenues to defray the general expenses of Town government, but rather is a
- 17 charge imposed for the purpose of defraying the cost of the particular Town
- 18 services and programs described in this Chapter.

19 5-12-4: PURPOSE: It is the purpose of this Chapter to protect the public health, safety, and

20 welfare, and to implement both the Town’s SustainableBreck Plan and the Town’s

21 Comprehensive Plan.

22

23 5-12-5: LEGISLATIVE FINDINGS: The Town Council finds and determines as follows:

- 24
- 25 A. The use of all disposable shopping bags (plastic and paper) has significant
- 26 environmental impacts on a local and global scale, including greenhouse gas
- 27 emissions, litter, harm to wildlife, water consumption, and solid waste
- 28 generation.
- 29 B. After several years of public involvement the Town Council adopted the
- 30 “SustainableBreck Plan” in 2011, which sets forth a series of sustainability
- 31 initiatives that the Town should undertake. One such initiative is to “(e)ncourage
- 32 reduction in the use of Disposable Bags.”
- 33 C. Despite recycling and voluntary efforts to control pollution from Disposable
- 34 Bags, relatively few Disposable Bags are recycled, and these bags last decades in
- 35 the landfill or end up as litter.
- 36 D. Numerous studies have documented the prevalence of Disposable Bags littering
- 37 the environment, blocking storm drains, and endangering wildlife.

- 1 E. Approximately two billion Disposable Bags are used annually in Colorado, but
2 less than five percent are recycled.
- 3 F. The best alternative to Disposable Bags is to shift to Reusable Bags for shopping.
- 4 G. The Town Council aims to conserve resources, reduce greenhouse gas emissions,
5 waste, and litter, and to protect the public health, safety, and welfare, including
6 wildlife, all of which increase the quality of life for the Town’s residents and
7 visitors.
- 8 H. Studies document that charging a mandatory fee on Disposable Bags can
9 dramatically reduce the use of these bags.
- 10 I. The Town of Breckenridge believes that residents and visitors should use
11 Reusable Bags and that a fee on the distribution of Disposable Bags is
12 appropriate to dissuade the use of Disposable Bags and fund the Town’s efforts
13 to educate residents, businesses, and visitors about the impact of Disposable
14 Bags on the regional environmental health and to fund the use of Reusable Bags,
15 Town cleanup events, and infrastructure and programs that reduce waste in the
16 community.
- 17 J. Based on the information that has been provided to the Town Council by the
18 Town staff, the Disposable Bag Fee imposed by this Chapter bears a reasonable
19 relationship to the anticipated cost of providing the Town programs and services
20 described in this Chapter.

21 5-12-6: DEFINITIONS: As used in this Chapter, the following words shall have the following
22 meanings. Where terms are not defined, they shall have their ordinarily accepted meanings
23 within the context that they are used.
24

- CUSTOMER: Any person who makes a retail purchase from a Retail Store.
- DISPOSABLE BAG: Except as provided in Section 5-12-11, any bag, other than a Reusable Bag, that is provided to a customer by a retailer at the point of sale for the purpose of transporting goods.
- DISPOSABLE BAG FEE: The Town fee imposed by this Chapter that is required to be paid by each consumer making a purchase from a Retail Store for each Disposable Bag used during the purchase, and imposed for the purpose of mitigating the impacts of Disposable Bags.

DISPOSABLE BAG FEE ORDINANCE

DISPOSABLE BAG FEE PUBLIC
OUTREACH PLAN:

A program to be put in place by the Town to raise awareness and educate both residents and visitors on the Disposable Bag Fee. The program shall at a minimum include: the development of informational signage for all Retail Stores; informational sessions and communications with Retail Stores to explain the Disposable Bag Fee and the Retail Store's obligations; and the production of a "Breckenridge Reusable Bag" and distribution of such bags to lodging companies and Retail Stores.

FINANCIAL SERVICES MANAGER:

The Financial Services Manager of the Town, or such person's designee.

RETAIL STORE:

Any public commercial business engaged in the sale of personal consumer goods, household items, or groceries to customers who use or consume such items.

"Retail Store" does not include temporary vendors at farmer's markets or other temporary events; or restaurants or other businesses (e.g., service providers such as salons and spas) where retail sales are clearly secondary and incidental to the primary activity occurring within the business.

REUSABLE BAG:

A plastic bag that is at least 2.25 mil thick or a bag made of canvas, woven polypropylene, or similar types of durable materials.

1
2 5-12-7: DISPOSABLE BAG ESTABLISHED: For each Disposable Bag provided to a
3 customer, each Retail Store shall collect from customers, and customers shall pay, at the time of
4 purchase a Disposable Bag Fee of \$0.10. The Disposable Bag Fee shall be remitted by the Retail
5 Store to the Town in accordance with Section 5-12-9 of this Chapter.

6
7 5-12-8: DISPOSABLE BAG FEE REQUIREMENTS.

8

DISPOSABLE BAG FEE ORDINANCE

- 1 A. Retail Stores shall record the number of Disposable Bags provided and the total
2 amount of Disposable Bag Fees charged on the customer transaction receipt as a
3 separate and distinct item.
- 4 B. A Retail Store shall not refund to the customer any part of the Disposable Bag
5 Fee, either directly or indirectly, nor shall the Retail Store advertise or state to
6 customers that any part of the Disposable Bag Fee will be refunded to the
7 customer.
- 8 C. A Retail Store shall not exempt any customer from any part of the Disposable
9 Bag Fee for any reason except as stated in Section 5-12-11.

10 5-12-9: RETENTION, REMITTANCE, AND TRANSFER OF THE DISPOSABLE BAG FEE:

- 11 A. A Retail Store may retain 50 percent of each Disposable Bag Fee collected,
12 which is the “Retained Percent.” up to a maximum amount of \$1,000 per month
13 within the first 12 months of the effective date of this ordinance and \$100 per
14 month maximum for all months thereafter.
- 15 B. The Retained Percent may only be used by the Retail Store to:
 - 16 1. Provide educational information about the Disposable Bag Fee to
17 customers;
 - 18 2. Provide the signage required by Section 5-12-10, “Required Signage”;
 - 19 3. Train staff in the implementation and administration of the fee;
 - 20 4. Improve or alter infrastructure to allow for the implementation,
21 collection, administration of the fee;
 - 22 5. Collect, account for, and remit the fee to the Town;
 - 23 6. Develop and display informational signage to inform consumers about
24 the fee
 - 25 7. Encourage the use of Reusable Bags or promote recycling of ~~plastic~~
26 disposable bags; and
 - 27 8. Improve infrastructure to increase ~~plastic-disposable~~ bag recycling.
- 28 C. ~~The Retained Percent shall not be classified as revenue for the purposes of~~
29 ~~calculating sales tax~~ Disposable Bag Fee shall be exempt from the Town of
30 Breckenridge sales tax.
31

1 D. The amount of the Disposable Bag Fee collected by a Retail Store in excess of
2 the Retained Percent shall be paid to the Town and shall be used only as set forth
3 in Subsection G to mitigate the effects of Disposable Bags in Breckenridge.

4 E. Every Retail Store providing Disposable Bags subject to the Disposable Bag Fee
5 shall be liable and responsible for the payment of the amount outlined in
6 Subsection D. above to the Town, and shall file a report each month on forms
7 prescribed by the Financial Services Manager before the twentieth day of each
8 month for the preceding month. A Retail Store shall pay and the Town shall
9 collect all Disposable Bag Fees. The Town shall provide the necessary forms for
10 Retail Stores to file with the Town in order to demonstrate compliance with the
11 provisions of this ordinance.

12 1. All sums of money collected by Retail Stores for the Disposable Bag Fee
13 imposed by this chapter minus the “Retained Percent” are intended
14 exclusively for use as outlined in Subsection G. Each Retail Store
15 required to collect and remit the Disposable Bag Fee shall hold such
16 monies in trust until paying them to the town.

17 F. The Disposable Bag Fee shall be administered by the Financial Services
18 Manager. The Financial Services Manager is authorized to adopt administrative
19 rules pursuant to Chapter 18 of Title 1 of this Code to implement this Chapter,
20 prescribe forms and provide methods of payment and collection, and otherwise
21 implement requirements of this Chapter.

22 G. Funds from the Disposable Bag Fee paid to the Town shall be used only for the
23 expenditures that are intended to mitigate the effects of Disposable Bags,
24 including without limitation the following:

25 1. Administrative costs associated with developing and implementing the
26 Disposable Bag Fee.

27 2. Activities of the Town to:

28 a. Provide Reusable Bags to residents and visitors;

29 b. Educate residents, businesses, and visitors about the impact of
30 Disposable Bags on the Town’s environmental health, the
31 importance of reducing the number of Disposable Bags entering
32 the waste stream, and the impacts of Disposable Bags on wildlife
33 and the environment;

34 c. Fund programs and infrastructure that allow the Breckenridge
35 community to reduce waste associated with Disposable Bags;

DISPOSABLE BAG FEE ORDINANCE

- 1 d. Purchase and install equipment designed to minimize bag
- 2 pollution, including, recycling containers, and waste receptacles
- 3 associated with Disposable Bags;
- 4 e. Fund community cleanup events and other activities that reduce
- 5 litter associated with Disposable Bags;
- 6 f. Maintain a public website that educates residents on the progress
- 7 of waste reduction efforts associated with Disposable Bags; and
- 8 g. Fund the administration of the Disposable Bag Fee program.
- 9 H. No Disposable Bag Fees collected in accordance with this Chapter shall be used
- 10 only for general municipal or governmental purposes or spending.
- 11 I. Disposable Bag Fees collected in accordance with this Chapter shall be
- 12 continually available for the uses and purposes set forth in subsection (g) of this
- 13 section without regard to fiscal year limitation. No Disposable Bag Fee funds
- 14 shall be used for any purpose not authorized in this Chapter.

15 5-12-10: REQUIRED SIGNAGE: Every retail store required to collect the Disposable Bag fee
 16 shall Display a sign in a location outside or inside of the store, viewable by customers, alerting
 17 customers to the Town of Breckenridge’s Disposable Bag Fee.

18
 19 5-12-11: EXEMPTION: The Disposable Bag Fee imposed by this Chapter does not apply to:

- 20
- 21 A. A bag brought into a Retail Store by a customer and used to transport goods from
- 22 the Retail Store.
- 23 B. A bag that was previously used and made available to customers at a Retail
- 24 Store.
- 25 ~~B.C.~~ A bag provided to a customer at no charge if the customer provides evidence that
- 26 he or she is a participant in a federal or state Food Assistance Program.
- 27 ~~C.D.~~ Bags used by consumers inside Retail Stores to:
 - 28 a. Package bulk items, such as fruit, vegetables, nuts, grains, candy
 - 29 or small hardware items like nails, nuts, and screws;
 - 30 b. Contain or wrap frozen or fresh foods, meat, or fish;
 - 31 c. Contain or wrap flowers, potted plants, or other items where
 - 32 dampness may be a problem; and
 - 33 d. Contain unwrapped prepared foods or bakery goods;

DISPOSABLE BAG FEE ORDINANCE

1 | ~~D.E.~~ A non-handled bag used to protect purchased items from damaging or
2 | contaminating other purchased items when placed in a Disposable Bag or a
3 | Reusable Bag.

4 | ~~E.F.~~ Bags used for loose small retail items, including, but not limited to, jewelry,
5 | buttons, beads, ribbon, herbs and spices, medical marijuana or adult-use
6 | marijuana if sold by the holder of a permit issued pursuant to applicable law, and
7 | similar items.

8 | ~~F.G.~~ Bags provided by pharmacists to contain prescription drugs.

9 | ~~G.H.~~ Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, and
10 | bags sold in packages containing multiple bags for uses such as food storage,
11 | garbage, pet waste, or yard waste.

12 | 5-12-12: AUDITS AND COLLECTION OF THE DISPOSABLE BAG FEE:
13 |

14 | A. Each Retail Store shall maintain accurate and complete records of the Disposable
15 | Bag Fees collected, the number of Disposable Bags provided to customers, the
16 | form and recipients of any notice required pursuant to this Chapter, and any
17 | underlying records, including any books, accounts, invoices, or other records
18 | necessary to verify the accuracy and completeness of such records. It shall be the
19 | duty of each Retail Store to keep and preserve all such documents and records,
20 | including any electronic information, for a period of three years from the end of
21 | the calendar year of such records.

22 | B. If requested, each Retail Store shall make its records available for audit by the
23 | Financial Services Manager during regular business hours for the Town to verify
24 | compliance with the provisions of this Chapter. All such information shall be
25 | treated as confidential commercial documents.

26 | C. If any person fails, neglects, or refuses to collect or pay the Disposable Bag Fee,
27 | or underpays the Disposable Bag Fee, the Financial Services Manager shall make
28 | an estimate of the fees due, based on available information, and shall add thereto
29 | penalties, interest, and any additions to the fees. The Financial Services Manager
30 | shall serve upon the delinquent Retail Store personally, by electronic mail or by
31 | first class mail directed to the last address of the Retail Store on file with the
32 | Town, written notice of such estimated fees, penalties, and interest, constituting a
33 | Notice of Final Determination, Assessment, and Demand for Payment, (also
34 | referred to as "Notice of Final Determination") due and payable within ~~20~~30
35 | calendar days after the date of the notice. The Retail Store may request a hearing
36 | on the assessment as provided in Section 5-12-13 of this Chapter.

DISPOSABLE BAG FEE ORDINANCE

1 D. If payment of any amount of the Disposable Bag Fee due to the Town is not
2 received on or before the applicable due date, penalty and interest charges shall
3 be added to the amount due in the amount of:

4 1. A penalty of ten percent of total due;

5 2. Interest charge of one percent of total penalty per month.

6 5-12-13: HEARINGS:
7

8 A. A Retail Store may request a hearing on any proposed fee imposed under this
9 Chapter after receiving a Notice of Final Determination, by filing a written
10 request for hearing within ~~20~~30 calendar days of the date of mailing of the
11 Notice of Final Determination. The request for hearing shall set forth the reasons
12 for and amount of changes in the Notice of Final Determination that the Retail
13 Store seeks and such other information as the Financial Services Manager may
14 prescribe.

15 B. The Financial Services Manager shall conduct the hearing under the procedures
16 prescribed by Chapter 19 of Title 1 of this Code , except that the Financial
17 Services Manager shall notify the Retail Store in writing of the time and place of
18 the hearing at least ten days before it is scheduled, unless the Retail Store agrees
19 to a shorter time. The hearing shall be held within 60 days of the date of receipt
20 of the request for a hearing, unless the Retail Store agrees to a later date.

21 5-12-14: PENALTIES:
22

23 A. It is unlawful for any person to violate any provision of this Chapter.

24 B. The first or second violation of this Chapter within two years, based on the date
25 of the violation, shall be an infraction. Every person found liable for such a
26 violation shall be punished as provided in Section 1-4-1-1 of this Code;
27 provided, however, the maximum penalty for each such violation shall be a fine
28 of \$500.00.

29 C. A third and each subsequent violation of this Chapter within two years, based on
30 the date of violation, shall be a misdemeanor offense. Any person convicted of
31 such a violation shall be punished as provided in Chapter 4 of Title 1 of this
32 Code.

33 Section 2. The Financial Services Manager shall develop and implement the
34 administrative and financial processes for the collection of the Disposable Bag Fee imposed by
35 this ordinance.
36

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

4 Section 4. The Town Council finds, determines and declares that this ordinance is
5 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
6 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
7 thereof.
8

9 Section 5. This ordinance shall be published and become effective October 1, 2013;
10 provided, however, that the Disposable Bag Public Outreach Plan has been approved by the
11 Town Council and implemented not later than October 1, 2013. If the Disposable Bag Public
12 Outreach Plan has not been approved and implemented prior to October 1, 2013, then the
13 collection of the Disposable Bag Fee and required store signage provisions of this ordinance
14 shall not take effect until the Town Manager certifies that Disposable Bag Public Outreach Plan
15 has been approved and implemented by the Town.:-
16

17 Section 6. The Council may annually evaluate the Disposable Bag Fee as set in 5-12-7
18 and the Retained Percent as set in 5-12-9 A and adjust these amounts by resolution of the
19 Council.
20
21

22 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
23 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
24 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
25 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
26 Town.
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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

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ATTEST:

Town Clerk

| 500-340\Disposable Bag Fee Ordinance (As Revised After Worksession 03-1926-13)

DISPOSABLE BAG FEE ORDINANCE

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 6 (Call Up Hearing Procedure Ordinance)

DATE: April 1, 2013 (for April 9th meeting)

You will recall that Council Bill No. 6 amends the Development Code by clarifying that a Town Council member is not disqualified from participating in a call up hearing because he or she read the Planning Commission minutes concerning the development permit application that is the subject of the call up hearing. The ordinance is scheduled for second reading on April 9th.

One change is proposed to ordinance from first reading. The Subdivision Ordinance has its own call up provisions, and the new Development Code call up language has been added to the call up provisions of the Subdivision Ordinance.

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

1 ***FOR WORKSESSION/SECOND READING – APRIL 9***

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

5
6 COUNCIL BILL NO. 6

7
8 Series 2013

9
10 AN ORDINANCE AMENDING SECTION 9-1-18-5 OF THE BRECKENRIDGE TOWN
11 CODE, KNOWN AS THE TOWN OF BRECKENRIDGE “DEVELOPMENT CODE”, AND
12 SECTION 9-2-3-4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE TOWN OF
13 BRECKENRIDGE “SUBDIVISION STANDARDS, CONCERNING CALL UP HEARINGS
14 HELD BY THE TOWN COUNCIL

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

18
19 Section 1. Section 9-1-18-5(A)(1) of the Breckenridge Town Code is amended by the
20 addition of a new subsection (g), which shall read in its entirety as follows:

21
22 **g. It is not a ground for disqualification that a Town Councilmember read or**
23 **reviewed the minutes of the Planning Commission with respect to the**
24 **application that is the subject of the call up hearing if the Councilmember**
25 **states on the record prior to the commencement of the call up hearing that he**
26 **or she will decide the call up based solely upon the evidence that is presented**
27 **at the call up hearing.**

28
29 Section 2. Section 9-2-3-4(b) of the Breckenridge Town Code is amended by the
30 addition of a new subsection (6), which shall read in its entirety as follows:

31
32 **6. It is not a ground for disqualification that a Town Councilmember read or**
33 **reviewed the minutes of the Planning Commission with respect to the**
34 **application that is the subject of the call up hearing if the Councilmember**
35 **states on the record prior to the commencement of the call up hearing that he**
36 **or she will decide the call up based solely upon the evidence that is presented**
37 **at the call up hearing.**

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

41
42 Section 4. The Town Council hereby finds, determines and declares that it has the power
43 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
44 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
45 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)

1 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
2 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
3 contained in the Breckenridge Town Charter.
4

5 Section 5. The Town Council hereby finds, determines and declares that it has the power
6 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
7 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
8

9 Section 6. This ordinance shall be published and become effective as provided by
10 Section 5.9 of the Breckenridge Town Charter.
11

12 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
13 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
14 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
15 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
16 Town.
17

18 TOWN OF BRECKENRIDGE, a Colorado
19 municipal corporation
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21
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23 By _____
24 John G. Warner, Mayor
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26 ATTEST:
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31 _____
32 Town Clerk
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2 MEMOS

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 7 (Miscellaneous Land Use Code Amendments)
DATE: April 1, 2013 (for April 9th meeting)

The second reading of the ordinance making miscellaneous amendments to the Town's various land use codes is scheduled for your meeting on April 9th.

As requested by the Council, I have added a new Section 9 to the ordinance dealing with the amount of the "In Lieu Fee" under the Town's Off-Street Parking Ordinance. As you will see, I have removed the current language that contemplates an annual review of the In Lieu Fee, and have added an automatic cost-of-living adjustment to the fee instead. I have also left a blank in the ordinance for the amount of the In Lieu Fee in case the Council determines to raise the current \$13,000 per space fee as part of this ordinance.

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

To: Town Council
From: Peter Grosshuesch, Director of Community Development
RE: Parking In Lieu Fee

The \$13,000 amount established in the original ordinance in 1996 has not been adjusted since its adoption. At that time, the Council felt a need to weight the fee price for several reasons.

- Consideration of the cost to develop both surface parking as well as structured parking was one factor (in 1996, the Town had not yet constructed any structured parking).
- It was also thought that the in lieu funds would be mostly spent on land acquisition for additional parking locations.
- Keep the fee low enough as to not discourage development and redevelopment. (Presently we are seeing conversions from retail and other commercial uses to restaurants as the single biggest source of revenue collection from parking fees).
- Urban design considerations suggested a need to find a balance that would not drive historic district property owners to create surface parking lots that would detract from the Historic District goals of the Town.

Town engineering staff estimates that it now costs approximately \$3,000 to \$4,000 to develop a surface parking space, (net of the land cost), and roughly \$25,000 per space for structured parking (again, net of land costs). These figures would be affected by the scale and complexity of the project.

Applying an annualized cost adjustment based on the Denver-Boulder Consumer Price Index back to the inception of the fee would yield a per parking space fee in lieu of \$19,236.

1 **FOR WORKSESSION/SECOND READING – APRIL 9**

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2013

9
10 AN ORDINANCE MAKING MISCELLANEOUS AMENDMENTS TO CHAPTER 1 OF
11 TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE
12 DEVELOPMENT CODE”, CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN
13 CODE, KNOWN AS THE “BRECKENRIDGE SUBDIVISION STANDARDS, AND
14 CHAPTER 3 OF TITLE 9 “ OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE
15 “TOWN OF BRECKENRIDGE OFF-STREET PARKING ORDINANCE”

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

19
20 Section 1. Section 9-1-17-11(I) of the Breckenridge Town Code is amended to read in its
21 entirety as follows:

22
23 I. Extension Of Vested Property Rights: An approved development permit and the
24 vested property rights for such project may be extended by the planning
25 commission. An application for an extension shall be made in writing to the
26 director and shall include such submittal information as the director may require.
27 Such application must be received at least thirty (30) days prior to the expiration
28 of the development permit. An application for an extension which is received
29 within the specified time period shall extend the development permit and the
30 vested property rights for such project until such application is finally determined,
31 and an application for extension shall be considered even though, at the time of
32 such consideration, the development permit would have otherwise expired.
33 Failure to submit a written request for extension within the specified time period
34 shall cause the development permit and the vested property rights for such project
35 to expire at the end of the time period provided in subsection D of this section. An
36 extension application shall be classified and processed one classification lower
37 than the classification of the development permit which gave rise to the vested
38 property rights for the project. No extension of a vested property right may be
39 approved unless the approved project complies with all Town land use laws in
40 effect at the time of the extension request. The planning commission may approve
41 the requested extension, deny the requested extension, or approve the requested
42 extension with conditions. If an extension is granted, the planning commission
43 shall fix the period of extension which may be up to and including a period of
44 three (3) years.
45

1 Section 2. Section 9-1-18-1(E)(6) of the Breckenridge Town Code is amended to read in
2 its entirety as follows:

3
4 6. Notice And Council Call Up: The director shall notify the council of all
5 planning commission decisions on class A applications at the council's next
6 regular meeting after the decision. At that meeting, the council may, by an
7 affirmative vote of the members present call up any decision of the planning
8 commission for their own review under section 9-1-18-5 of this chapter. In lieu of
9 calling up a planning commission decision the council may, with the consent of
10 the applicant, modify or eliminate any condition of approval imposed on the
11 application by the planning commission, or add any condition of approval. All
12 planning commission decisions on class A applications shall stand as presented
13 unless called up or modified by the town council.
14

15 Section 3. Section 9-1-18-2(E)(6) of the Breckenridge Town Code is amended to read in
16 its entirety as follows:

17
18 6. Notice And Council Call Up: The director shall notify the council of all
19 planning commission decisions on class B applications at the council's next
20 regular meeting after the decision. At that meeting, the council may, by an
21 affirmative vote of the members present, call up any decision of the planning
22 commission for their own review under section 9-1-18-5 of this chapter. In lieu of
23 calling up a planning commission decision the council may, with the consent of
24 the applicant, modify or eliminate any condition of approval imposed on the
25 application by the planning commission or add any condition of approval. All
26 planning commission decisions on a class B application shall stand as presented
27 unless called up or modified by the town council.
28

29 Section 4. Section 9-1-18-3(C)(2) of the Breckenridge Town Code is amended to read in
30 its entirety as follows:

31
32 2. The director shall forward his decision to the planning commission at their next
33 regularly scheduled meeting. At that meeting the planning commission may, by
34 an affirmative vote of the members present, call up any decision of the director
35 for their own review. In lieu of calling up a director's decision the planning
36 commission may, with the consent of the applicant, modify or eliminate any
37 condition of approval imposed on the application by the director or add any
38 condition of approval.
39

40 Section 5. Section 9-1-18-3(C)(3) of the Breckenridge Town Code is amended to read in
41 its entirety as follows:

42
43 3. The director shall then forward the decision to the town council at their next
44 regularly scheduled meeting. At that meeting, the town council may, by an
45 affirmative vote of the members present, call up any decision for their own
46 review. In lieu of calling up a planning commission decision the council may,

1 with the consent of the applicant, modify or eliminate any condition of approval
2 imposed on the application by the planning commission or add any condition of
3 approval.
4

5 a. If called up, the town council shall review the application at their next regularly
6 scheduled meeting. The town council after review may grant or deny the
7 application as they deem appropriate, with or without conditions.
8

9 b. If the decision forwarded to the town council is not called up or modified, it
10 shall stand as presented.
11

12 Section 6. Section 9-1-6(B) of the Breckenridge Town Code is amended to read in its
13 entirety as follows:

14 B. Violations:

15 1. As used in this section, the term “development permit” shall include, without
16 limitation, any specific condition of approval contained in a development permit
17 issued by the town pursuant to this chapter which has been signed by both the
18 director and the holder of such development permit.

19 2. It shall be unlawful and a misdemeanor offense for any person to do any of the
20 following:

21 a. To engage in “development” as defined in section 9-1-5 of this chapter without
22 a valid development permit issued pursuant to this chapter authorizing such
23 development. This is a strict liability offense.

24 b. To use or occupy any real property without a valid development permit issued
25 pursuant to this chapter authorizing such use or occupancy. This is a strict liability
26 offense.

27 c. To engage in any development, use, construction, remodeling, or other activity
28 of any nature which is materially inconsistent with the terms and conditions of a
29 development permit issued pursuant to this chapter, including, but not limited to,
30 any site plan approved by the town as part of the approval of a development
31 permit. As used in this subsection the term “materially inconsistent” means any
32 development, use, construction, remodeling, or other activity of any nature that is
33 inconsistent with at least one of the following provisions of an approved
34 development permit:

35 (1) The site plan (including, without limitation, parking, grading, drainage,
36 utilities and the location on the site of the approved improvements);

37 (2) The landscape plan;

- 1 (3) The floor plans, but only as to:
2 (a) Density;
3 (b) Mass;
4 (c) The parking requirement for the project; or
5 (d) The project's plant investment fees;
6 (4) The building elevations (including, but without limitation, existing and
7 proposed grades, finished floor elevations, ridge elevations, and exterior material
8 specifications);
9 (5) The building roof plan;
10 (6) The exterior building details;
11 (7) The project's density, mass, aboveground density (if located in the historic
12 district), and the site area calculations (including, without limitation, building
13 footprint, hard surface and open space); and
14 (8) The project's land uses.
15 d. To violate the terms of any restrictive covenant required by the town to be
16 recorded with the clerk and recorder of Summit County, Colorado, in connection
17 with the issuance of a development permit pursuant to this chapter.
18 e. To violate any other provision of this chapter.
19 f. To remove, deface, obscure or otherwise interfere with any notice required to be
20 given or posted pursuant to this chapter. This is a strict liability offense.

21 Section 7. Section 9-2-3-1(D)(3)(f) of the Breckenridge Town Code is amended to read
22 in its entirety as follows:
23

24 f. Notice And Council Call Up: The director shall notify the council of all
25 planning commission decisions on class A subdivision applications at the
26 council's next regular meeting after the decision. At that meeting, the council
27 may, by an affirmative vote of a majority of the members present, call up any
28 decision of the planning commission for their own review under authority granted
29 in section 9-2-3-5 of this chapter. In lieu of calling up a planning commission
30 decision the council may, with the consent of the applicant, modify or eliminate
31 any condition of approval imposed on the application by the planning commission
32 or add any condition of approval. All planning commission decisions on class A

1 subdivision applications shall stand as made unless called up or modified by the
2 town council.

3
4 Section 8. Section 9-2-3-2(D)(3)(f) of the Breckenridge Town Code is amended to read
5 in its entirety as follows:

6
7 f. Notice And Council Call Up: The director shall notify the council of all
8 planning commission decisions on class B subdivision applications at the
9 council's next regular meeting after the decision. At that meeting, the council
10 may, by an affirmative vote of the members present, call up any decision of the
11 planning commission for their own review under authority granted in section 9-2-
12 3-4 of this chapter. In lieu of calling up a planning commission decision the
13 council may, with the consent of the applicant, modify or eliminate any condition
14 of approval imposed on the application by the planning commission or add any
15 condition of approval. All planning commission decisions on class B subdivision
16 applications shall stand as made unless called up or modified by the town council.

17
18 Section 9. Section 9-3-12 of the Breckenridge Town Code is amended to read in its
19 entirety as follows:

20
21 9-3-12: AUTHORITY OF TOWN TO ACCEPT PAYMENT OF FEE IN LIEU OF
22 THE PROVISION OF OFF-STREET PARKING: An applicant to develop property
23 for a commercial use within the Service Area (and only within such area) may be
24 permitted to pay a fee to the Town in lieu of providing all or part of the off-street
25 parking required by Section 9-3-8 of this Chapter. The right of an applicant to make
26 such payment, and the authority of the Town to accept such payment, shall be
27 subject to the following limitations:

28
29 A. The amount of the in lieu fee shall be \$13,000.00 per space, or
30 fraction thereof, for each required off-street parking space. **The amount of the in**
31 **lieu fee shall be adjusted annually, beginning in 2013, to reflect the**
32 **percentage increase, if any, in the Consumer Price Index (CPI-U) for All**
33 **Items for the Denver-Boulder, Colorado area produced by the Bureau of**
34 **Labor Statistics, or any successor index.** ~~The amount of this fee shall be~~
35 ~~reviewed annually by the Town Council, and shall be adjusted if required.~~

36
37 B. No in lieu fee shall be imposed by the Town or paid by the applicant without the
38 consent of the applicant. Such consent may be evidenced by the applicant's
39 signature on the Development Permit.

40
41 C. An in lieu fee shall be collected prior to or at the time of the issuance of a
42 building permit for the development.

43
44 D. Except as provided in Section 9-3-14(D), in lieu fees once paid are non-
45 transferable and non-refundable. Any in lieu fee paid in connection with the

1 development of a particular lot, tract or parcel shall run with the land for which is
2 paid and is non-transferable to any other lot, tract or parcel.

3
4 E. If the development permit for which an in lieu fee has been paid has expired, and
5 a new application for a development permit is thereafter filed for the same
6 development, the Town shall credit any previous payment of in lieu fees against any
7 in lieu fees due for the new application.

8
9 F. If a change in use of a property results in a reduced requirement for off-street
10 parking under the provisions of this Chapter, no compensation shall be paid or
11 provided by the Town with respect to off-street parking spaces which are no longer
12 required.

13
14 Section 10. Section 9-3-16 of the Breckenridge Town Code is amended to read in its
15 entirety as follows:

16
17 9-3-16: RELIEF PROCEDURES:

18
19 A. The Planning Commission, or the Town Council if the decision of the
20 Planning Commission is called up, may grant a variance, exception or waiver of
21 condition from any requirement of this Chapter, upon written request by a developer
22 or owner of property subject to this Chapter, following a public hearing, and only
23 upon finding that (i) a strict application of such requirement would, when regarded
24 as a whole, result in confiscation of the property or (ii) that extraordinary hardships
25 or practical difficulties may result from strict compliance with these regulations
26 and/or the purposes of these regulations may be served to a greater extent by an
27 alternative proposal or requirement. No variance, exception or waiver of condition
28 shall have the effect of nullifying the intent and purpose of these regulations. The
29 Planning Commission or Town Council shall not approve a variance, exception or
30 waiver of condition unless it makes findings based upon the evidence presented to it
31 in each specific case that:

- 32
33 1. The granting of the variance, exception or waiver of condition will not be
34 detrimental to the public health, safety, or welfare or injurious to other
35 property;
36
37 2. The conditions upon which the request is based are unique to the property
38 for which the relief is sought and are not applicable generally to other
39 property;
40
41 3. Because of the particular physical surroundings, shape or topographical
42 conditions of the specific property involved, a particular hardship to the
43 owner would result, distinguished from a mere inconvenience, if the strict
44 letter of these regulations is carried out; and
45

1 4. The relief sought will not in any manner vary the provisions of the
2 Development Code, Town Master Plan or other Town law, except that those
3 documents may be amended in the manner prescribed by law.
4

5 B. The variance criteria set forth in this Section shall control over the variance criteria
6 set forth in Section 9-1-11 of this Title.
7

8 Section 11. Except as specifically amended hereby, the Breckenridge Town
9 Code, and the various secondary codes adopted by reference therein, shall continue in full
10 force and effect.
11

12 Section 12. The Town Council hereby finds, determines, and declares that it has the
13 power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling
14 Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning
15 municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers);
16 (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
17 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
18 contained in the Breckenridge Town Charter.
19

20 Section 13. This ordinance shall be published and become effective as provided by
21 Section 5.9 of the Breckenridge Town Charter.
22

23 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
24 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
25 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
26 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
27 Town.
28

29 TOWN OF BRECKENRIDGE, a Colorado
30 municipal corporation
31

32
33
34 By _____
35 John G. Warner, Mayor
36

37 ATTEST:
38
39
40
41

42 _____
43 Town Clerk
44
45
46
47
48

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 8 (Skiwatch Drive Vacation Ordinance)
DATE: April 1, 2013 (for April 9th meeting)

The second reading of the ordinance vacating a portion of Skiwatch Drive is scheduled for your meeting on April 9th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING –APRIL 9**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 8

6
7 Series 2013

8
9 AN ORDINANCE PROVIDING FOR THE VACATION OF A RIGHT OF WAY
10 (Portion of Skiwatch Drive)

11
12 WHEREAS, the portion of right of way described in **Exhibit “A”** hereto will no longer
13 be necessary for the use and benefit of the public; and

14
15 WHEREAS, a request has been submitted by the owner of the abutting property
16 requesting the vacation of such public way; and

17
18 WHEREAS, the owner of the abutting property requesting the vacation of such public
19 way has provided a slightly larger parcel of land to accommodate the relocation of a portion of
20 Skiwatch Drive, which relocation will make the right of way described in **Exhibit “A”**
21 unnecessary; and

22
23 WHEREAS, after a public hearing and notice to any adjoining property owners and to
24 utility companies, the Town Council has determined that the vacation of such public way would
25 be in the public interest; and

26
27 WHEREAS, the Town Council finds and determines that the provisions of Chapter 4 of
28 Title 11 of the Breckenridge Town Code have been satisfied.

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

31
32 Section 1. The portion of right of way commonly known as Skiwatch Drive, which is
33 described in **Exhibit “A”** attached hereto and incorporated herein by reference, is hereby vacated
34 as a public way.

35
36 Section 2. The Town Council finds and determines that due regard has been given to the
37 rights and necessities of the public, and the Town Council hereby further finds that, when the
38 vacation becomes effective as herein provided, said portion of right of way will not be necessary
39 to the inhabitants of the Town as an avenue of travel.

40
41 Section 3. The Town Council hereby finds, determines and declares that it has the power
42 to adopt this Ordinance pursuant to the provisions of Section 43-2-301, et seq., C.R.S., and the
43 powers possessed by home rule municipalities in Colorado.

1 Section 4. The vacation of said right of way shall not become effective until the
2 relocated portion of Skiwatch Drive, to be constructed in accordance with Town standards and
3 pursuant to the terms of Development Permit No. 2013009 has been accepted for maintenance by
4 the Town and a certificate executed on behalf of the Town certifying that such new road has
5 been accepted for maintenance is executed and recorded with the Summit County, Colorado
6 Clerk and Recorder. If such certificate has not been recorded before the end of three years from
7 the date this Ordinance is recorded with the Summit County, Colorado Clerk and Recorder, this
8 Ordinance shall be null, void and of no further force or effect.

9
10 Section 5. This ordinance shall be published and become effective as provided by
11 Section 5.9 of the Breckenridge Town Charter, and a certified copy of this Ordinance shall be
12 recorded with the Summit County, Colorado Clerk and Recorder after this Ordinance has
13 become effective.

14
15 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
16 PUBLISHED IN FULL this ___ day of _____, 2013. A Public hearing shall be held at the
17 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
18 _____, 2013, at 7:30 P.M. or as soon thereafter as possible in the Breckenridge Town
19 Hall.

20
21 TOWN OF BRECKENRIDGE, a Colorado
22 municipal corporation

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

28
29 ATTEST:
30
31
32
33 _____
34 Town Clerk

1 EXHIBIT "A"

2
3 LEGAL DESCRIPTION OF PORTION OF
4 SKIWATCH DRIVE
5

6 A TRACT OF LAND BEING A PORTION OF THE RIGHT-OF-WAY FOR SKIWATCH
7 DRIVE ALONG THE NORTH BOUNDARY FOR THE REMAINDER OF TRACT C, PEAK
8 8 SUBDIVISION, FILING NO. 1, ACCORDING TO THE PLAT ENTITLED AMENDMENT
9 TO PEAK 8 SUBDIVISION FILING NO. 1 AND RECORDED MARCH 24, 2010 AT
10 RECEPTION NUMBER 936240 IN THE COUNTY RECORDS, AND LOCATED IN THE
11 TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, AND DESCRIBED AS FOLLOWS:
12

13 COMMENCING AT AN ANGLE POINT ON SAID NORTH BOUNDARY FOR THE
14 REMAINDER OF TRACT C BEING AT THE INTERSECTION OF THE WEST RIGHT-OF-
15 WAY LINE FOR SKI HILL ROAD AND THE SOUTH RIGHT-OF-WAY LINE FOR SAID
16 SKIWATCH DRIVE, WHENCE CORNER NO. 5 OF THE SAW MILL PATCH PLACER,
17 M.S. 2533, BEARS S47°43'53"W 834.83 FEET DISTANT; THENCE NORTHWESTERLY
18 1.12 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 120.00
19 FEET, A CENTRAL ANGLE OF 00°32'12", AND A CHORD WHICH BEARS N61°32'56"W
20 1.12 FEET DISTANT TO THE POINT OF BEGINNING; THENCE CONTINUING
21 WESTERLY ALONG THE NORTH BOUNDARY OF SAID REMAINDER OF TRACT C,
22 ALSO BEING THE SOUTH RIGHT-OF-WAY LINE FOR SKIWATCH DRIVE FOR THE
23 FOLLOWING THREE (3) COURSES:

- 24 1.) 78.86 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS
25 OF 120.00 FEET, A CENTRAL ANGLE OF 37°39'09", AND A CHORD WHICH
26 BEARS N80°38'37"W 77.45 FEET DISTANT;
27 2.) S80°31'49"W A DISTANCE OF 9.72 FEET;
28 3.) 12.83 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A
29 RADIUS OF 70.00 FEET, A CENTRAL ANGLE OF 10°30'00", AND A CHORD
30 WHICH BEARS S75°16'49"W 12.81 FEET DISTANT;

31 THENCE N39°33'58"E A DISTANCE OF 85.66 FEET TO A POINT ON THE NORTHERLY
32 RIGHT-OF-WAY LINE FOR SKIWATCH DRIVE, ALSO BEING THE SOUTH LINE OF
33 THE REMAINDER OF TRACT B-2, PEAK 7 SUBDIVISION, ACCORDING TO THE PLAT
34 RECORDED AT RECEPTION NUMBER 841906; THENCE EASTERLY ALONG SAID
35 LINE 33.28 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT
36 HAVING A CENTRAL ANGLE OF 10°35'34", A RADIUS OF 180.00 FEET, AND A
37 CHORD WHICH BEARS S80°36'48"E 33.23 FEET DISTANT TO A POINT ON THE WEST
38 RIGHT-OF-WAY LINE FOR SKI HILL ROAD; THENCE SOUTHERLY 28.15 FEET
39 ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL
40 ANGLE OF 05°28'10", A RADIUS OF 294.87 FEET, AND A CHORD WHICH BEARS
41 S02°12'22"W 28.14 FEET DISTANT; THENCE S16°46'51"E A DISTANCE OF 42.02 FEET
42 TO THE POINT OF BEGINNING, CONTAINING 3,703 SQUARE FEET OR 0.085 ACRES,
43 MORE OR LESS.
44
45

Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: April 4, 2013
RE: Alpine Rock Lease

The attached lease is for the second reading for the Alpine Rock Lease ordinance. Some minor corrections and changes have been made to properly reference the exhibit and section 6 was modified to clarify the language. Staff will be available if you have questions.

1 ***FOR WORKSESSION/FIRST READING – MARCH 26***

2
3 COUNCIL BILL NO. _____

4
5 Series 2013

6
7 AN ORDINANCE APPROVING A LEASE WITH ALPINE ROCK COMPANY, A
8 COLORADO CORPORATION d/b/a APC CONCRETE

9
10 WHEREAS, the Town of Breckenridge intends to acquire certain real property from
11 Alpine Rock Company, a Colorado corporation d/b/a APC Concrete (“**Alpine Rock**”); and

12
13 WHEREAS, as part of the acquisition the Town has agreed to lease back to Alpine Rock
14 a portion of the land to be acquired by the Town; and

15
16 WHEREAS, a proposed Lease between the Town and Alpine Rock has been prepared by
17 the Town Attorney and reviewed by the Town Council; and

18
19 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

20
21 The council may lease, for such time as council shall determine, any real or
22 personal property to or from any person, firm, corporation, public and private,
23 governmental or otherwise.

24
25 and;

26
27 WHEREAS, the term of the proposed Lease with Alpine Rock exceeds one year in
28 length; and

29
30 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
31 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

35
36 Section 1. The proposed Lease between the Town and Alpine Rock Company, a
37 Colorado corporation d/b/a APC Concrete, a copy of which is marked **Exhibit “A”**, attached
38 hereto and incorporated herein by reference, is approved, and the Town Manager is authorized,
39 empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

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

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

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

8 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
9 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
10 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
11 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal
12 Building of the Town.
13

14 TOWN OF BRECKENRIDGE, a Colorado
15 municipal corporation
16
17

18
19 By: _____
20 John G. Warner, Mayor
21

22 ATTEST:
23
24
25

26 _____
27 Town Clerk
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1 ***DRAFT April 1, 2013 DRAFT***

2
3 **LEASE**

4
5 THIS LEASE (“Lease”) is dated _____, 2013, and is between the
6 TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“Landlord”) and ALPINE
7 ROCK COMPANY, a Colorado corporation d/b/a APC CONCRETE (“Tenant”).
8

9 **ARTICLE 1– DEFINITIONS**

10 1.1 Definitions. As used in this Lease the following terms have the following
11 meanings, unless the context clearly requires otherwise:

ADDITIONAL RENT: Any amount due to Landlord from Tenant under this Lease that is not specifically identified as “Royalty”, “rent” or “periodic rent.”

BLOCK 11 MATERIAL: Any sand, gravel, rock, or other minerals or materials located on Landlord’s portion of Block 11, Breckenridge Airport Subdivision, Summit County, Colorado as of the date of the expiration of this Lease which, when processed, can be commercially sold by Tenant. As of the date of this Lease, the Block 11 Material is approximately 250,000 cubic yards.

DAY: Unless otherwise indicated, a calendar day (and not a business day).

EFFECTIVE DATE: The date of this Lease.

FINANCIAL SERVICES MANAGER: The Financial Services Manager of the Town of Breckenridge, or such person’s designee.

HAZARDOUS MATERIALS: Any chemical, material, substance, or waste:

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

(ii) that, even if not so regulated, may or could

pose a hazard to the health or safety of the occupants of the Leased Premises including, without limitation, any petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as “hazardous substances”, “hazardous materials”, “hazardous wastes” or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations, and precautions.

LEASE YEAR: Each consecutive twelve-month period of the Term as described in Section 2.4 or Section 2.5.

LEASED PREMISES: Landlord’s real property identified as Lease Parcel “A” and Lease Parcel “B” on the attached **Exhibit “A”**. Lease Parcel “A” consists of approximately 10.9638 acres, and Lease Parcel “B” consists of approximately 6.2519 acres. Lease Parcel “A” is referred to in this Lease as “Parcel A”, and Lease Parcel “B” is referred to as “Parcel B”

OPTION TERM: The additional five year period of time described in Section 2.5.

PROCESSED MATERIALS: Any material that is crushed, screened and/or washed by Tenant on the Leased Premises during the Term of this Lease.

RECLAMATION PLAN: The Reclamation Plan for the Leased Premises and the adjoining real property owned by Landlord approved by the State of Colorado or otherwise required by applicable law.

ROYALTY: The royalty due to Landlord from Tenant pursuant to this Lease.

LEASE

STOCKPILED MATERIAL: The approximately 100,000 tons of material, as of the Effective Date, located partly on the Leased Premises and partly on adjacent property owned by Landlord. The location of the Stockpiled Material shall be agreed upon by Landlord and Tenant, and memorialized in a writing prior to the Effective Date.

SUBSTANTIAL CHANGE: A change in the primary use of a lot, parcel or tract of land as defined by the Town of Breckenridge Development Code.

TAXES: All personal property and real property taxes levied, assessed, or imposed by any taxing authority arising out of Tenant’s occupancy and use of the Leased Premises pursuant to this Lease.

TERM: The term of this Lease as described in Section 2.3, and includes an Option Term pursuant to Section 2.5.

TOWN MANAGER: The Town Manager of the Town of Breckenridge, or such person’s designee.

SHALL/SHALL NOT: “Shall” or “shall not” indicate a mandatory obligation to act or to refrain from acting as specifically indicated in the context of the sentence in which such word is used.

ARTICLE 2 - BASIC LEASE PROVISIONS

1
2 2.1 Leased Premises. In consideration of Tenant’s payment of the Royalty, and the
3 keeping of the other promises, covenants, and conditions required of Tenant by this Lease, Landlord
4 leases the Leased Premises to Tenant, and Tenant leases the Leased Premises from Landlord, for the
5 Term and the conditions of this Lease.

6 2.2 Use of Leased Premises.

7 (a) Tenant shall use Parcel “A” only to operate and maintain one portable asphalt
8 plant and one concrete batch plant together with related uses. Such allowed uses include without
9 limitation, the following: office; shop; parking for trucks, machines and vehicles; wash ponds;
10 manufacturing and storage of “world block”, storage of materials including landscape materials and
11 finished product; washing and crushing operations; recycling, including temporary storage and use
12 of recycled asphalt pavement (RAP); weighing; material sales; grading; and maintenance activities.

1 Tenant shall not use Parcel "A" for any other purpose without Landlord's prior written consent, not
2 to be unreasonably withheld, conditioned or delayed.

3 (b) Tenant shall use Parcel "B" only for the storage of existing and future Block 11
4 Material. Once the existing or future Block 11 Material, as described in Sections 6.1 and 6.5 has
5 been processed or removed, this Lease shall terminate as to Parcel "B" (only), and Tenant shall no
6 longer have the right to use Parcel "B" pursuant to this Lease. When this Lease terminates, as to
7 Parcel "B", Tenant shall smooth and level Parcel "B" to substantially the same elevation as existed
8 on the Effective Date without any material being imported or exported. Tenant shall not use Parcel
9 "B" for any other purpose without Landlord's prior written consent, not to be unreasonably withheld,
10 conditioned or delayed.

11 (c) Tenant may not process any material on the Leased Premises that is not part of the
12 Stockpiled Material or the Block 11 Material, or add material to the Stockpiled Material, without:

13 (i) Landlord's prior written consent;

14 (ii) an agreement between Landlord and Tenant for the payment of a periodic rent
15 to Landlord; and

16 (iii) an executed amendment to this Lease describing the agreed periodic rent.

17 2.3 Term. The Term of this Lease begins at 12:01 A.M., local time, on
18 _____, 2013 and ends, unless sooner terminated as hereafter provided, at 11:59 P.M.,
19 local time, on _____, 2018.

20 2.4 Lease Years.

21 (a) The First Lease Year commences on the Effective Date and ends on
22 _____, 2014;

23 (b) The Second Lease Year commences on _____, 2014 and ends on
24 _____, 2015;

25 (c) The Third Lease Year commences on _____, 2015 and ends on
26 _____, 2016;

27 (d) The Fourth Lease Year commences on _____, 2016 and ends on
28 _____, 2017; and

29 (e) The Fifth Lease Year commences on _____, 2017 and ends on
30 _____, 2018.

31 2.5 Tenant's Option to Extend Term of Lease. Provided that Tenant is not in default
32 under this Lease, and further provided that there has not been a substantial change in the use of any
33 of the real property that adjoins the Leased Premises since the Effective Date, Tenant shall have and

1 may exercise one option to extend this Lease for an additional five years, subject to the same
2 provisions set forth herein. In order to exercise the Option provided in this Section 2.5, Tenant must
3 provide Landlord with written notice of its intent to exercise the Option no later than 120 days
4 before the end of the Fifth Lease Year. Prior to the end of the Third Lease Year Landlord and Tenant
5 shall meet to attempt to negotiate a mutually acceptable Royalty for the Option Term based upon
6 market rates. If Landlord and Tenant are unable to agree on the amount of the Royalty for the Option
7 Term by the end of the Third Lease Year the Tenant's option provided in this Section 2.5 shall be
8 null and void, and this Lease shall terminate at the end of the Fifth Lease Year.

9 2.6 Parties To Meet and Confer. Throughout the Term of this Lease the Parties agree
10 to informally meet and confer from time to time to discuss and attempt to resolve between
11 themselves any issues that may have arisen with respect to this Lease.

12 2.7 Surrender of Leased Premises. Upon the expiration or earlier termination of this
13 Lease, Tenant shall surrender the Leased Premises to Landlord. Within 180 days after the expiration
14 or termination of this Lease, Tenant shall remove its personal property and fixtures (including, but
15 not limited to, trade fixtures) from the Leased Premises. The cost of such removal shall be borne by
16 Tenant and any such items not removed by Tenant may be retained or disposed of by Landlord, and
17 Landlord shall not be accountable to Tenant for any damages for the loss or destruction thereof, or
18 for any part of the proceeds of sale, if any, realized by Landlord. Tenant waives all claims against
19 Landlord for any damages suffered by Tenant resulting from Landlord's lawful retention or
20 disposition of such personal property, fixtures (including, but not limited to, trade fixtures),
21 alterations or improvements. Tenant is liable to Landlord for Landlord's costs for storing, removing
22 and disposing of any such personal property, fixtures (including trade fixtures) or alterations.

23 **ARTICLE 3 – RENT; PAYMENT OF SUMS DUE TO LANDLORD**

24 3.1 Rent.

25 (a) So long as Tenant uses the Leased Premises only to process the Stockpiled
26 Material and Block 11 Material there shall be no periodic rent paid by Tenant.

27 (b) If Landlord and Tenant agree upon a periodic rent, Tenant can also produce
28 asphalt and/or concrete mixes using other material on the Leased Premises as provided in Section
29 2.2(c), in which case Tenant shall then pay the agreed upon periodic rent.

30 3.2 Interest on Past Due Amounts. Tenant shall pay interest to Landlord on any sum
31 due to Landlord under this Lease that is 30 days or more past due at the rate of 8% per annum from
32 the date due until the date such payment is fully paid.

33 3.3 Place and Manner of Payments. All sums payable to Landlord under this Lease
34 shall be made to:

35 Town of Breckenridge
36 Clerk & Finance Division

LEASE

1 Attn: Accounts Receivable
2 P. O. Box 168
3 Breckenridge, CO 80424
4

5 or at such other place as the Town Manager may designate by written notice provided to Tenant in
6 accordance with Section 18.2 of this Lease. All sums shall be made in legal tender of the United
7 States. Any check given to Landlord shall be received subject to collection, and Tenant agrees to pay
8 any charges, fees or costs incurred by Landlord for the collection, including reasonable attorney's
9 fees.

10
11 **ARTICLE 4 - ROYALTY**
12

13 4.1 Royalty.
14

15 (a) Tenant shall pay to Landlord a Royalty in the following amounts:

16 (i) During the First Lease Year and Second Lease Year, a Royalty of \$1.00 per
17 ton for all Processed Materials from Stockpiled Material processed and sold by Tenant on the
18 Leased Premises.

19 (ii) During the Third Lease Year, Fourth Lease Year, and the Fifth Lease Year, a
20 Royalty of \$2.00 per ton for all Processed Materials from Stockpiled Material processed and
21 sold by Tenant on the Leased Premises.

22 (b) For purposes of computing royalties under this Section, each cubic yard of ready
23 mix concrete shall be deemed to include 1½ tons of aggregate.

24 4.2 Due Date. Tenant shall pay the Royalty to Landlord in arrears and without
25 demand not later than the 20th day of each month during the Term.

26 4.3 Books Of Account And Auditing.

27 (a) Tenant shall keep true and complete records and accounts of all Processed
28 Materials sold on the Leased Premises at its main office located at 14802 West 44th Avenue, Golden,
29 Colorado 80403. Concurrently with the payment of each Royalty, Tenant shall furnish to Landlord a
30 true and accurate statement of the total amount of Processed Materials sold on the Leased Premises
31 during the period covered by the Royalty payment. Such statement shall be certified to be true and
32 correct by Tenant.

33 (b) The Financial Services Manager has access during normal business hours to
34 Tenant's books and records which relate to the amount of Royalty due to Landlord under this Lease,
35 and for no other purpose except as provided by law. Tenant shall keep and preserve such records for
36 three years.

1 (c) The Financial Services Manager has the right at any time to audit Tenant's books
2 and records which relate to the amount of Royalty due to Landlord under this Lease. Tenant, upon
3 written request, shall make all such documents available for examination at Tenant's main business
4 office located at 14802 West 44th Avenue, Golden Colorado, or at such other location as may be
5 mutually acceptable to Landlord and Tenant.

6 (d) If Landlord determines after an audit that the amount of the Royalty due to
7 Landlord under this Lease has, for any reason, been understated by Tenant by more than 5%, subject
8 to the provisions of subsection (e) below, Tenant shall pay to Landlord the cost of such audit (not to
9 exceed the amount of the deficiency) and the amount of any Royalty deficiency, plus interest on
10 such deficiency at 8% per annum from the date due. Landlord's right to perform such an audit shall
11 expire one year after a Royalty payment and accompanying statement have been delivered to
12 Landlord.

13 (e) If the audit conducted by the Financial Services Manager shows that the amount
14 of the Royalty due to Town under this Lease has been understated by Tenant more than 5%, Tenant
15 shall have the right to have an independent audit conducted at its expense. Such audit shall be
16 completed within 90 days from the date Tenant is notified of the results of the Financial Services
17 Manager's audit. The Financial Services Manager and the independent auditor shall attempt to
18 reconcile any discrepancies between the two audits.

19 (f) If the audit reflects that there has been an overpayment of Royalty from Tenant to
20 Landlord, such overpayment shall be refunded by Landlord to Tenant or credited against the next
21 Royalty payment due at the option of Tenant.

22 (g) Tenant expressly agrees that Financial Services Manager may inspect any sales
23 tax return or report and accompanying schedules and data that Tenant may file with any taxing entity
24 pursuant to the any applicable sales or use tax law, and Tenant waives any claim of confidentiality
25 that it may have in connection therewith.

26 4.4 Rent Provisions Applicable to Royalty. Any provision of this Lease pertaining to
27 non-payment of rent is also applicable to non-payment of Royalty.

28 **ARTICLE 5 – EARLY TERMINATION**

29 5.1 Early Termination. Landlord and Tenant may mutually agree, in writing, to
30 terminate this Lease prior to the expiration of the Term.

31 5.2 Article 6 Applies To Early Termination. Upon the early termination of this Lease
32 pursuant to this Article the provisions of Article 6 of this Lease concerning the remaining Stockpiled
33 Material and the Block 11 Material shall apply.

34 **ARTICLE 6 - STOCKPILED MATERIAL AND BLOCK 11 MATERIAL**

1 6.1 Stockpiled Material May Be Kept In Place. If any of the Stockpiled Material is
2 located outside of the Leased Premises, but on other property owned by Landlord as of the Effective
3 Date, the Stockpiled Material may be kept in such location until it is moved to the Leased Premises
4 for processing. Tenant will move any processed material outside of the Leased Premises onto the
5 lease premises if directed by the Landlord, upon 90 days notice, weather permitting.

6 6.2 Tenant May Not Add to Stockpiled Material. Tenant may not add material to the
7 Stockpiled Material without an agreement with Landlord for the payment of periodic rent as
8 described in Section 2.2(c).

9 6.3 Disposition of Stockpiled Material upon Expiration of Lease. Upon the expiration
10 of this Lease any remaining Stockpiled Material shall be the property of Tenant and shall be
11 removed from the Leased Premises (or other property owned by Landlord) within 180 days
12 following the expiration of this Lease. If Tenant does not want the remaining Stockpiled Material, it
13 may notify Landlord not later than 60 days after the expiration of this Lease, and Landlord shall then
14 have the option of retaining such remaining Stockpiled Material. If Landlord does not wish to retain
15 such Stockpiled Material, it must notify the Tenant within 30 days of receipt of Tenant's notice, or
16 the remaining Stockpiled Material shall become the property of the Landlord. If the Landlord gives
17 Tenant timely notice that it does not wish to retain such Stockpiled Material, Tenant shall then
18 remove the remaining Stockpiled Material from the Leased Premises (or other property owned by
19 Landlord) within the 180 day period described above.

20 6.4 Royalty upon Removal of Stockpiled Material. If Tenant elects to remove the
21 Stockpiled Material from the Leased Premises (or other property owned by Landlord) pursuant to
22 Section 6.3, Tenant shall pay Landlord a royalty on each ton of Stockpiled Material removed by
23 Tenant from the Leased Premises (or other property owned by Landlord) equal to the Royalty
24 provided in Section 4.1(a); provided, however, the Royalty due to Landlord under this Section 6.4
25 shall be calculated on the tonnage of Stockpiled Material removed by Tenant from the Leased
26 Premises (or other property owned by Landlord).

27 6.5 Block 11 Material.

28 (a) If the Tenant exercises the Option to extend this Lease as set forth in Section 2.5,
29 at any time during the Option Term the Block 11 Material, or a portion of the Block 11 Material,
30 may, at Tenant's option, become Tenant's property (the "Block 11 Material Option") subject to the
31 royalty negotiated prior to the Option Term. To exercise the Block 11 Material Option, Tenant must
32 give written notice to Landlord of its exercise of the option. If Tenant fails to give timely notice of
33 the exercise of the Block 11 Material Option granted in this Section 6.5 at least 30 days prior to the
34 end of the Option, the Block 11 Material shall remain the property of the Landlord.

35 (b) If Tenant elects to exercise the Block 11 Material Option, Tenant shall move such
36 material onto Parcel "B", or such other location near the Leased Premises that is mutually acceptable
37 to Landlord and Tenant, within a reasonable time period. The Block 11 Material must be removed
38 by Tenant such that the site of the removal is graded in accordance with the Landlord's "Block 11
39 Grading Plan" as it exists on the Effective Date. The Block 11 Grading Plan shall not be

1 substantially changed to impact the methods or cost of removal by Tenant without Tenant’s consent.
2 Landlord and Tenant shall meet and confer with each other on any proposed changes to the Block 11
3 Grading Plan. Landlord shall provide Tenant with a copy of such Block 11 Grading Plan at the
4 execution of this Lease. Adequate and appropriate land surveying shall be provided by the Landlord
5 to ensure that the intensions of the Grading Plan are met.

6 (c) The Block 11 Material shall be accepted by Tenant in “AS IS” condition.

7 6.6 Block 11 Material Prior to Option Term. If the Tenant wants to use the Block 11
8 Material prior to the Option Term, the Tenant can provide a proposal to the Landlord for the Block
9 11 Material. The Landlord agrees to respond to the Tenant within 10 working days and will make
10 best efforts to respond within 5 working days. If the Tenant and Landlord are unable to come to
11 agreement for the Block 11 Material then the material remains Landlord’s property but will be
12 subject to the provisions of Section 6.5.

13 6.7 Right of First Refusal. If, at any time during the Term, Landlord receives an offer
14 to purchase all or substantially all (75% or more) of the Block 11 Material, Landlord agrees not to
15 accept such offer or make any contract of sale with respect to said Block 11 Material without first
16 giving the Tenant the right to acquire such Block 11 Material upon the same terms and conditions
17 contained in such offer of purchase. The Landlord agrees to give to the Tenant written notice of the
18 terms and conditions of such offer in accordance with the provisions of Section 18.2 of this Lease
19 and, if the Tenant fails to enter into a bona fide contract upon the same terms and conditions as those
20 proposed to Tenant by the prospective purchaser within 20 days after the giving of such notice, then
21 the Landlord shall have the right, and shall be at liberty, to sell such Block 11 Material to the party
22 making the offer. If, for any reason, such Block 11 Material is not sold to the offering party, notice
23 of any subsequent bona fide offer, acceptable to Landlord, shall be given to Tenant upon the same
24 terms and conditions for acceptance or rejection as hereinabove provided. Any of the Block 11
25 Material that is not sold pursuant to this subsection 6.7 shall remain subject to the remainder of this
26 Lease.

27 6.8 Survival. The provisions of this Article 6 shall survive the expiration or
28 termination of this Lease.

29 **ARTICLE 7 – RECLAMATION PLAN**

30 7.1 Reclamation Plan. As of the Effective Date the Tenant possesses a mining
31 reclamation permit with the State of Colorado, Division of Reclamation, Mining and Safety
32 (“DRMS”) that affects the Landlord’s property and the Leased Premises. Because the Tenant and
33 Landlord do not expect any further mining on the Landlord’s property, Landlord and Tenant
34 understand that it is no longer necessary for the Tenant to possess a mining reclamation permit.

35 (a) Tenant and Landlord agree to work towards having the Tenant’s mining
36 reclamation permit released by the State of Colorado as soon as reasonable possible.

1 (b) The Landlord agrees to modify the reclamation plan associated with the mining
2 permit to approximately reflect the existing conditions.

3 (c) The Tenant agrees to assemble and file the appropriate documents with the state
4 to modify the reclamation plan and release the mining reclamation permit.

5 (d) Any land surveying required in order to release the mining reclamation plan shall
6 be provided by the Landlord.

7 **ARTICLE 8 - LANDLORD'S DISCLAIMERS AND EXCULPATORY PROVISIONS**

8 8.1 "As Is" Condition of Leased Premises. Tenant acknowledges that it is familiar with
9 the condition of the Leased Premises. The Leased Premises are leased by Landlord to Tenant, and
10 accepted by Tenant, in "AS IS" condition. Tenant's act of taking possession of the Leased Premises
11 pursuant to this Lease is conclusive evidence that Tenant accepted the Leased Premises in then "AS
12 IS" condition, and that the Leased Premises were in satisfactory condition and working order at the
13 time of commencement of Tenant's possession.

14 8.2 Delay In Delivery of Possession of Leased Premises. Landlord is not liable to
15 Tenant for any delay in delivery of possession of the Leased Premises to Tenant.

16 8.3 Landlord Not Liable For Costs to Prepare Leased Premises For Use By Tenant.
17 Landlord is not responsible for any work required to be done, or any costs or expenses associated
18 with, the preparation of the Leased Premises for Tenant's use. Without limiting the generality of the
19 preceding sentence, Landlord shall not pay for the construction or improvement of a road to and
20 from the Leased Premises, or for any site improvements to the Leased Premises.

21 8.4 Landlord's Non-liability. As a material part of the consideration to be received by
22 Landlord under this Lease, Tenant assumes all risk of damage to property or injury to persons in or
23 upon the Leased Premises from any cause other than Landlord's gross negligence or intentional act,
24 and Tenant hereby waives all claims in respect thereof against Landlord.

25 **ARTICLE 9 -TENANT'S AFFIRMATIVE OBLIGATIONS**

26 9.1 Tenant Liable For Costs to Prepare Leased Premises For Use By Tenant. Tenant is
27 responsible for all work required to be done, and costs incurred in connection with, the preparation
28 of the Leased Premises for Tenant's use.

29 9.2 Required Licenses. Throughout the Term, Tenant shall obtain and maintain in full
30 force and effect:

- 31 (a) a Town of Breckenridge Business and Occupational License Tax license; and
32 (b) a Town of Breckenridge Sales Tax License.

1 9.3 Utilities. Tenant shall continue to be responsible for all utility services required
2 for its permitted use on the Leased Premises and Tenant shall continue to pay all charges for such
3 services as they become due. Landlord is not liable for any personal injury or property damage
4 resulting from the negligent operation or faulty installation of utility services provided for use on the
5 Leased Premises, nor is Landlord liable for any injury or damage suffered by Tenant as a result of
6 the failure to make necessary repairs to the utility facilities. Tenant is liable for any injury or
7 damages to the equipment or service lines of the utility suppliers that are located on the Leased
8 Premises, resulting from the negligent or deliberate acts of Tenant, or its members, agents or visitors.
9 In particular, Tenant is liable for any loss or damage due to freezing, stoppage, or blockage of water
10 pipes or plumbing fixtures on the Leased Premises.

11 9.4 Taxes.

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

16 (b) Tenant To Pay Taxes. Tenant shall pay all Taxes lawfully assessed arising from
17 its occupancy and use of the Leased Premises pursuant to this Lease, and Tenant shall indemnify and
18 defend Landlord from any such Taxes. Tenant shall pay all Taxes in a timely manner. Upon
19 Landlord's written request Tenant shall provide to Landlord a photostatic copy of the receipt(s) or
20 cancelled check(s) showing payment of the Taxes. Tenant may pay any Taxes in installments if
21 permitted by law.

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

32 9.5 Maintenance And Snow Plowing. During the Term, Tenant shall, at its expense,
33 provide all required maintenance and snow plowing necessary to allow the Leased Premises to be
34 used by Tenant for the uses described in Section 2.2.

35 9.6 Signs. Other than Tenant's current signage, Tenant shall not post, place, affix,
36 erect, or display any additional signs, within or outside of the Leased Premises without Landlord's
37 prior approval. In considering Tenant's request to place a sign within or outside of the Leased
38 Premises, Landlord acts in its capacity as landlord of the Leased Premises, and not in its
39 governmental capacity. Landlord may remove any sign placed within or outside of the Leased

1 Premises in violation of the portions of this Section. In addition to obtaining Landlord's
2 discretionary permission as described above, Tenant must also obtain any required sign permit from
3 Landlord acting in its governmental capacity. Tenant shall maintain all of its signs located within or
4 outside of the Leased Premises in good, clean, and attractive condition. Tenant shall remove all signs
5 placed by it within or outside of the Leased Premises at the expiration or earlier termination of this
6 Lease, and repair any damage or injury caused thereby. If not so removed by Tenant, Landlord may
7 remove such sign(s) at Tenant's expense.

8 9.7 Inspection And Entry. Upon not less than 48 hours prior written notice, Landlord
9 and Landlord's authorized representatives may enter the Leased Premises, with a representative of
10 Tenant as required by Federal safety regulations, at all times during reasonable hours to inspect the
11 Leased Premises. Tenant further agrees that Landlord, upon providing five (5) days notice to Tenant,
12 may go upon the Leased Premises at all times and, provided Landlord complies with all safety
13 regulations imposed by Federal, State or Local governments and otherwise imposed by Tenant and
14 does not unreasonably interfere with Tenant's use or occupancy of the Leased Premises, to:

15 (a) make any necessary repairs to the Leased Premises and perform any work therein
16 that may be necessary to comply with any laws, ordinances, rules or regulations of any public
17 authority or that Landlord may deem necessary to prevent waste or deterioration of the Leased
18 Premises;

19 (b) post any notice provided for by law; or

20 (c) otherwise protect any and all rights of Landlord,

21 all without any liability to Tenant for damages or any abatement of rent or Royalty.

22 Nothing in this Section implies or creates any duty on the part of Landlord to do any work
23 that under any provision of this Lease Tenant is or may be required to do, nor shall it constitute a
24 waiver of Tenant's default in failing to do such work. No reasonable exercise by Landlord of any
25 rights herein reserved shall entitle Tenant to any damage or compensation of any kind from Landlord
26 for any injury, loss, damage, or inconvenience occasioned thereby, or to any abatement of rent or
27 Royalty.

28 9.8 Compliance With Laws. Tenant shall, at its expense, make reasonable efforts to
29 comply with all applicable laws, ordinances, orders, and regulations of all governmental authorities
30 with respect to the use of the Leased Premises.

31 9.9 Compliance With Air Quality Laws. Without limiting the generality of Section
32 9.8, Tenant shall make reasonable efforts to comply with all applicable federal, state, and local air
33 quality laws, rules and regulations in connection with its operations at the Leased Premises.

34 **ARTICLE 10 - TENANT'S NEGATIVE OBLIGATIONS**

1 10.1 Alterations. Tenant shall not make any material change, improvement, alteration,
2 or addition to the Leased Premises without the prior written consent of Landlord, which shall not be
3 unreasonably withheld, conditioned or delayed.

4 10.2 Assignment And Subletting. Except to an affiliate or subsidiary of Tenant for
5 which no approval is required, Tenant shall not assign, sublet, license, pledge, encumber, or allow
6 any other person or entity to occupy or use any or all of the Leased Premises without first obtaining
7 Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed. Any
8 assignment, sublease, license, pledge or encumbrance without Landlord's prior written consent is
9 voidable by Landlord and, at Landlord's election, shall constitute a default under this Lease. No
10 consent by Landlord to any of the above acts shall constitute a further waiver of the provisions of
11 this Section.

12 If Landlord consents to an assignment, sublease, or license Tenant may be required, as a
13 condition of granting consent, to pay Landlord's reasonable and costs actually incurred in
14 considering the proposed assignment, sublease, or license including, but not limited to, legal fees and
15 credit checks not to exceed \$500.00.

16
17 10.3 Assignment By Operation of Law. Neither this Lease nor any interest in this Lease
18 is assignable or transferable by operation of law. If:

19 (a) any proceeding under the Bankruptcy Code, or any amendment thereto, is
20 commenced by or against Tenant;

21 (b) Tenant is adjudged insolvent;

22 (c) Tenant makes any assignment for the benefit of creditors;

23 (d) a post-judgment writ of attachment or execution is levied on the leasehold estate
24 created by this Lease and not released or satisfied within 30 days thereafter; or

25 (e) a receiver is appointed for Tenant with authority to take possession or control of
26 the Leased Premises or the business conducted therein by Tenant,

27 then this Lease, at the option of Landlord, shall immediately terminate and shall not be treated as an
28 asset of Tenant.

29 10.4 Waste or Nuisance. Tenant shall not commit, or permit to be committed on the
30 Leased Premises, any waste, any public or private nuisance, or any other act or thing prohibited by
31 law, provided, however, that in no event shall Tenant's permitted use of the Leased Premises ever be
32 deemed to be a violation of this Section 10.4.

33 10.5 Liens. Tenant shall not permit any lien to be filed against the Leased Premises
34 including, but not limited to, a lien arising out of any work performed, materials furnished, or
35 obligations incurred by Tenant. Prior to commencing the construction of any improvements upon the

1 Leased Premises, Tenant shall post and keep posted notice of Landlord's non-liability of the Leased
2 Premises pursuant to Section 38-22-105, C.R.S.

3 **ARTICLE 11 - INSURANCE**
4

5 11.1 Tenant's Liability Insurance. Tenant shall, at its expense, maintain a policy of
6 commercial general liability insurance general covering Tenant's operations on the Leased Premises
7 with minimum combined single limits of not less than \$1,000,000. Tenant's liability insurance
8 policy shall be endorsed to include Landlord as an additional insured.
9

10 11.2 Worker's Compensation Insurance. Tenant shall maintain at all times throughout
11 the Term worker's compensation insurance as required by Colorado law insuring the payment of
12 compensation to all its employees engaged in the performance of work at the Leased Premises.

13 11.3 Additional Insurance Provisions. Every insurance policy required by this Article
14 shall be primary insurance, and any insurance carried by Landlord, its officers, or its employees, or
15 carried by or provided through any insurance pool of which Landlord is a member, shall be excess
16 and not contributory insurance to that provided by Tenant. Tenant is solely responsible for any
17 deductible losses under its required insurance policies.

18 11.4 Insurance Criteria. Insurance policies required by this Lease shall:

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

22 (b) provide that the insurance cannot be cancelled or materially changed in the scope
23 or amount of coverage unless 30 days' advance notice is given to Landlord.

24 (c) Evidence of Insurance. Prior to the commencement of this Lease, and on each
25 subsequent renewal or replacement of the required insurance policies, Tenant shall give to Landlord
26 a certificate of insurance evidencing compliance with the requirements of this Article. All required
27 insurance policies shall be renewed or replaced and maintained by Tenant throughout the Term to
28 assure continuous coverage. If Tenant fails to give the required insurance certificate within 10 days
29 after service of written notice or demand for it, such action shall constitute a default under this
30 Lease, and Landlord may then proceed as provided in Article 14 of this Lease, and/or Landlord may
31 obtain and pay for that insurance and receive reimbursement from Tenant, together with interest
32 thereon at the rate of 8% per annum.

33 **ARTICLE 12 - INDEMNIFICATION**

34 12.1 Indemnification By Tenant. Tenant shall indemnify and defend Landlord, its
35 officers, employees, insurers, and self-insurance pool, from all liability, claims, and demands, on
36 account of injury, loss, or damage, including, without limitation, claims arising from bodily injury,
37 personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind

LEASE

1 whatsoever, arising out of or in any manner connected with Tenant’s use or possession of the Leased
2 Premises pursuant to this Lease, except to the extent that such liability, claim, or demand arises
3 through the gross negligence or intentional wrongful act of Landlord, its officers, employees, or
4 agents, or Landlord’s breach of this Lease. If indemnification is required under this Section, Tenant
5 shall investigate, handle, respond to, and provide defense for and defend against, any such liability,
6 claims, or demands at its expense, and bear all other costs and expenses related thereto, including
7 court costs and attorney fees.

8 12.2 Indemnification By Landlord. To the extent permitted by law, Landlord shall
9 indemnify and defend Tenant, its officers, employees, and insurers , and self-insurance pool, from all
10 liability, claims, and demands, on account of injury, loss, or damage, including, without limitation,
11 claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage,
12 or any other loss of any kind whatsoever, arising out of or in any manner connected with Landlord’s
13 use or possession of the real property adjacent to the Leased Premises, or Landlord’s or its agents or
14 assigns entry onto the Leased Premises pursuant to this Lease, except to the extent that such liability,
15 claim, or demand arises through the gross negligence or intentional wrongful act of Tenant, its
16 officers, employees, or agents, or Tenant’s breach of this Lease. If indemnification is required under
17 this Section, Landlord shall investigate, handle, respond to, and provide defense for and defend
18 against, any such liability, claims, or demands at its expense, and bear all other costs and expenses
19 related thereto, including court costs and attorney fees.

20 12.3 Survival. The obligations of this Article PERTAINING TO LIABILITY OR
21 POTENTIAL LIABILITY ARISING UNDER, OUT OF OR DURING THE TERM OF THIS
22 LEASE shall survive the expiration or termination of this Lease.

23 **ARTICLE 13 - EMINENT DOMAIN**

24 13.1 Eminent Domain. [DELETED]
25

26 **ARTICLE 14 - DEFAULT**
27

28 14.1 Default By Tenant. The occurrence of any one or more of the following events
29 shall constitute a default and breach of the Lease by Tenant:
30

31 (a) The failure by Tenant to make any payment of Royalty, rent, or any other
32 payment required to be made by Tenant hereunder, as and when due, when such failure shall
33 continue for a period of 10 days after service of written notice thereof by Landlord to Tenant.

34 (b) The failure by Tenant to observe or perform any of the other covenants,
35 conditions, or provisions of this Lease to be observed or performed by Tenant within 30 days after
36 service of written notice thereof by Landlord to Tenant. In the event of a non-monetary default that
37 is not capable of being corrected within 30 days, Tenant shall not be in default if it commences
38 correcting the default within 30 days of service of a demand for compliance notice and thereafter
39 corrects the default with due diligence.

1 (c) The making by Tenant of any general assignment or general arrangement for the
2 benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt,
3 or a petition or reorganization or arrangement under any law relating to bankruptcy; the appointment
4 of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the
5 Leased Premises or of Tenant's interest in this Lease; or the attachment, execution or other judicial
6 seizure of substantially all of Tenant's interest in this Lease.

7 (d) Tenant's failure, for a period of twelve consecutive months, to conduct business
8 activities on the Leased Premises that give rise to an obligation to pay a Royalty to Landlord.

9 14.2 Landlord's Remedies Upon Default. If Tenant is in default under this Lease,
10 Landlord has all of the remedies provided for in such circumstances by Colorado law.

11 14.3 Default By Landlord. Landlord shall be in default under this Lease if Landlord
12 fails to comply with any of the terms, provisions, or covenants of this Lease within 10 days
13 following service of written notice thereof by Tenant. In the event of a non-monetary default that is
14 not capable of being corrected within 10 days, Landlord shall not be default if Landlord commences
15 correcting the default within 10 days of receipt of notification thereof and thereafter corrects the
16 default with due diligence.

17 14.4 Tenant's Remedies Upon Default. If Landlord is in default under this Lease,
18 Tenant has all of the remedies provided for in such circumstances by Colorado law.

19 **ARTICLE 15 - NONDISTURBANCE**

20 15.1 Quiet Enjoyment. Subject to the terms and conditions of this Lease, Landlord
21 covenants that so long as the Royalty and any rent for the Leased Premises is paid as and when due,
22 and there is no default in any of the other covenants, conditions, or provisions of this Lease to be
23 performed, observed or kept by Tenant, Tenant shall peaceably and quietly hold and enjoy the
24 Leased Premises for the entire Term.

25 **ARTICLE 16 - LANDLORD'S RULES**

26 16.1 Rules. [DELETED]

27 **ARTICLE 17 - HAZARDOUS MATERIALS**

28 17.1 Hazardous Materials - Prohibited. Tenant shall make all reasonable efforts to
29 comply with all statutes, laws, ordinances, rules, regulations which are enacted and apply to the
30 Leased Premises by any federal, state, local, or other governmental agency with respect to the use,
31 generation, storage, or disposal of Hazardous Materials. Other than for use in connection with
32 Tenant's business operations, Tenant shall not cause, or allow anyone else to cause, any Hazardous
33 Materials to be used, generated, stored, or disposed of on or about the Leased Premises without the
34 prior written consent of Landlord, which consent may be revoked at any time. Tenant's
35 indemnification of Landlord pursuant to this Lease extends to all liability, including all foreseeable

1 and unforeseeable consequential damages, directly or indirectly arising out of the use, generation,
2 storage, or disposal of Hazardous Materials at the Leased Premises by Tenant, or any person
3 claiming under Tenant, including, without limitation, the cost of any required or necessary repair,
4 cleanup, or detoxification and the preparation of any closure or other required plans, whether such
5 action is required or necessary prior to or following the termination of this Lease, to the full extent
6 that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of
7 Hazardous Materials by Tenant or any person claiming under Tenant; provided, however, the written
8 consent by Landlord to the use, generation, storage, or disposal of Hazardous Materials shall excuse
9 Tenant from Tenant's obligation of indemnification. In the event Tenant is in breach of the
10 covenants herein, after notice to Tenant and the expiration of the earlier of:

- 11 (a) the cure period provided in Section 14.1(b);
- 12 (b) the cure period permitted under applicable law, regulation, or order,

13 then Landlord may, in its sole discretion, declare a default under this Lease and/or cause the Leased
14 Premises to be freed from the Hazardous Material and the cost thereof shall be deemed additional
15 rent hereunder and shall immediately be due and payable from Tenant. The obligations of Tenant
16 under this Section shall survive the expiration or termination of this Lease.

17 **ARTICLE 18 - MISCELLANEOUS**

18 18.1 Attorneys Fees/Costs. If any action is brought in a court of law by either party to
19 this Lease concerning the enforcement, interpretation, or construction of this Lease, the prevailing
20 party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs,
21 including expert witness' fees, incurred in the prosecution or defense of such action.

22 18.2 Notices. All notices required or permitted under this Lease must be given by
23 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
24 carrier delivery, or by telecopies, directed as follows:

25 If intended for Town to:
26
27 Town of Breckenridge
28 P.O. Box 168
29 150 Ski Hill Road
30 Breckenridge, Colorado 80424
31 Attn: Town Manager
32 Telecopier number: (970)547-3104
33 Telephone number: (970)453-2251
34

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

36
37 Timothy H. Berry, Esq.
38 Timothy H. Berry, P.C.

1 131 West 5th Street
2 P. O. Box 2
3 Leadville, Colorado 80461
4 Telecopier number: (719)486-3039
5 Telephone number: (719)486-1889
6

7 If intended for Tenant to:

8
9 Alpine Rock Company
10 Attn: Jeff Keller, President
11 14802 West 44th Avenue
12 Golden, Colorado 80403
13

14 Telecopier number: (303)279-6216
15 Telephone number: (303)279-6611
16

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

18
19 Foster Graham Milstein & Calisher, LLP
20 Attn: Michael C. Bullock
21 360 S. Garfield Street, 6th Floor
22 Denver, Colorado 80209
23 Telecopier number: (303)333-9786
24 Telephone number: (303)333-9810
25

26 Any notice delivered by mail in accordance with this Section shall be effective on the third
27 business day after having been deposited in any post office or postal box regularly maintained by the
28 United States postal service. Any notice delivered by telecopier in accordance with this Section shall
29 be effective upon receipt if concurrently with sending by telecopier receipt is confirmed orally by
30 telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same
31 day to the intended recipient. Any notice delivered by hand or commercial carrier shall be effective
32 upon actual receipt. Either party, by notice given as provided above, may change the address to
33 which future notices may be sent. The provisions of this Section does not apply to any notice or
34 demand that is required to be served in a particular manner by applicable law; any such notice or
35 demand shall be served as required by law notwithstanding the provisions of this Section. E-mail is
36 not a valid way to give notice under this Lease.
37

38 18.3 Complete Agreement. It is understood and agreed that this Lease contains the
39 complete and final expression of the agreement between the parties, and there are no promises,
40 representations, or inducements except as are herein provided. All negotiations, considerations,
41 representations, and understandings between the parties related to this Lease are contained herein.

42 18.4 Amendment. This Lease may not be modified except by an amendment to this
43 lease signed by both Landlord and Tenant. Oral modifications of this Lease are not permitted.

LEASE

Page 18

1 18.5 Captions. The headings of the sections and paragraphs contained in this Lease are
2 for convenience only and do not define, limit, or construe the contents of the articles, sections and
3 paragraphs.

4 18.6 Waiver. The failure of either party to exercise any of such party's rights under this
5 Lease is not a waiver of those rights. A party waives only those rights specified in writing and
6 signed by the party waiving such rights.

7 18.7 Severability. If any provision of this Lease is held to be invalid, illegal, or
8 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
9 contained in this Lease and the application hereof shall not in any way be affected or impaired
10 thereby.

11 18.8 Force Majeure. Neither party shall be liable to the other for any failure, delay, or
12 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to
13 causes beyond the control of that party including, without limitation, strikes, boycotts, labor dispute,
14 embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior
15 governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage or any other
16 circumstance for which such party is not responsible or that is not in its power to control.

17 18.9 Advances By Landlord For Tenant. If Tenant fails to do anything required to be
18 done by it under the terms of this Lease (other than a failure to make the payments to Landlord
19 herein required) Landlord may, at its sole option, but without any obligation to do so, do or perform
20 such act or thing on behalf of Tenant, and in doing so Landlord shall not be deemed to be a
21 volunteer; provided, however, that before exercising its rights under this Section Landlord must give
22 notice to Tenant as provided in Section 18.2, and afford Tenant not less than five days from the
23 giving of such notice within which to do or perform the act required by Tenant. Upon notification to
24 Tenant of the costs incurred by Landlord Tenant shall promptly pay to Landlord the full amount of
25 costs and/or expenses incurred by Landlord pursuant to this Section, together with interest thereon at
26 the rate of 8% per annum.

27 18.10 Governmental Immunity. Landlord is relying on, and does not waive or intend to
28 waive by any provision of this Lease, the monetary limitations (presently \$150,000 per person and
29 \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Act, as
30 from time to time amended, or any other limitation, right, immunity or protection otherwise
31 available to Landlord, its officers, or its employees.

32 18.11 No Adverse Construction Based On Authorship. Each of the parties stipulate and
33 agree that it had the opportunity to participate in the drafting of this Lease. This Lease is not to be
34 construed against either party by virtue of such party having drafted this Lease.

35 18.12 Landlord's Consent. Except as otherwise expressly provided to the contrary in this
36 Lease, wherever in this Lease it is provided that some act requires Landlord's prior consent, such
37 consent may be granted, withheld, or conditionally approved in Landlord's discretion, not
38 unreasonably withheld, conditioned or delayed.

1 18.13 Authority. The individual executing this Lease on behalf of Tenant represents and
2 warrants to Landlord that he or she has all requisite power and authority to bind Tenant and to cause
3 Tenant to fully perform its obligations under this Lease.

4 18.14 Third Parties. There are no third party beneficiaries of this Lease.

5 18.15 Lease Not To Be Recorded. This Lease **MAY NOT BE RECORDED** with the
6 Clerk and Recorder of Summit County, Colorado, however, Tenant may record a standard and
7 commercially reasonable short-form memorandum of lease.

8 18.16 Time of Essence. Time is of the essence of this Lease.

9 18.17 Governing Laws; Venue; Waiver of Jury Trial. The laws of the State of Colorado
10 (without regard to its conflict of laws principles) shall govern the interpretation, validity,
11 performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this Lease
12 must be commenced in the state courts of Summit County, Colorado. **BOTH PARTIES WAIVE THE**
13 **RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.**

14 18.18 Non-Discrimination; Compliance With Applicable Laws. Tenant:

15 (a) shall not discriminate against any employee or applicant for employment to work
16 at the Leased Premises because of race, color, creed, sex, sexual orientation, religion, national origin,
17 or disability;

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

21 (c) shall in all solicitations or advertisements for employees to be engaged in the
22 performance of work at the Leased Premises state that all qualified applicants shall receive
23 consideration for employment without regard to race, color, creed, sex, sexual orientation, religion,
24 national original or disability; and

25 (d) shall make reasonable efforts to comply with all applicable federal, state, and
26 local laws, rules and regulations. Without limiting the generality of the foregoing, Tenant shall
27 comply with the applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et
28 seq. (Public Law 101-336), and all applicable regulations and rules promulgated thereunder by any
29 regulatory agency. The indemnification and termination provisions of this Lease apply to Tenant's
30 failure to comply with all applicable laws or regulations.

31 18.19 No Partnership. Landlord is not a partner, associate, or joint venturer of Tenant in
32 the conduct of Tenant's business at the Leased Premises. Tenant is an independent contractor
33 without the right or authority to impose tort or contractual liability upon Landlord.

1 18.20 Binding Effect. The covenants, conditions, and obligations herein contained extend
2 to, bind, and inure to the benefit of, not only the parties hereto, but their respective successors and
3 permitted assigns.

4 18.21 Annual Appropriation. Notwithstanding anything herein contained to the contrary,
5 Landlord’s financial obligations under this Lease are subject to an annual appropriation being made
6 by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow
7 Landlord to perform its obligations hereunder. If sufficient funds are not appropriated, this Lease
8 may be terminated by either party without penalty. Landlord’s obligations hereunder do not
9 constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial
10 obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

11 18.22 Incorporation of Exhibits. The attached **Exhibit “A”** is incorporated into this
12 Lease by reference.

13 **LANDLORD:**

14
15 TOWN OF BRECKENRIDGE, a Colorado
16 municipal corporation

17
18
19 By _____
20 Timothy J. Gagen, Town Manager

21
22 ATTEST:

23
24
25 _____
26 Town Clerk
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TENANT:

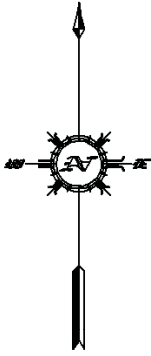
ALPINE ROCK COMPANY, a Colorado
corporation d/b/a APC CONCRETE

By: _____
Title: _____

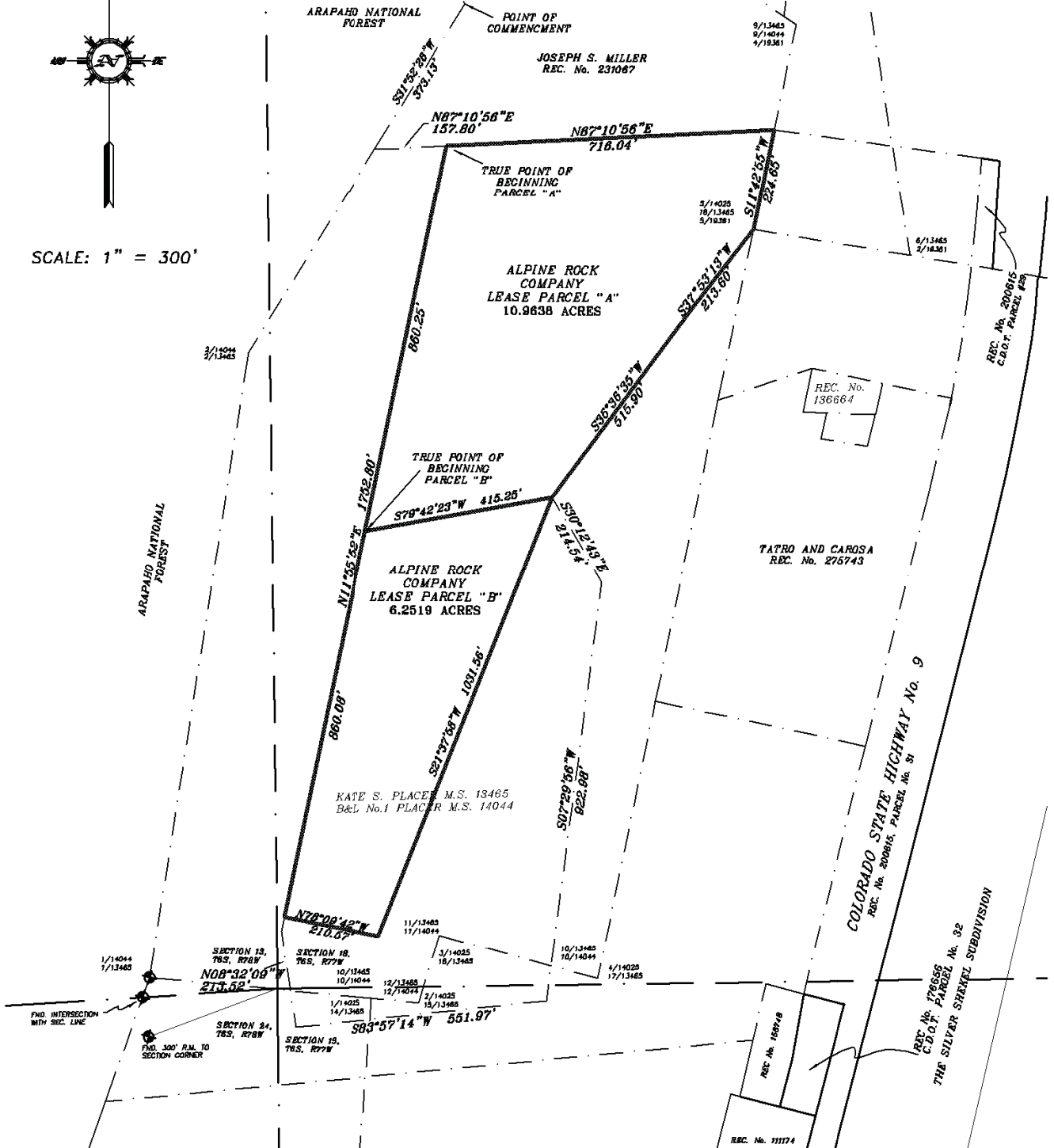
Exhibit "A"

Description and Depiction of Lease Parcel "A" and Lease Parcel "B"

"EXHIBIT A"
ALPINE ROCK COMPANY LEASE PARCEL
TOWN OF BRECKENRIDGE
SUMMIT COUNTY, COLORADO



SCALE: 1" = 300'



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

BASELINE SURVEYS, INC.
 P.O. BOX 7578 BRECKENRIDGE COLO. 80424

SCALE: 1" = 300'	DATE: 01/31/2013	JOB NO. 3914
DRAWN BY: D.E.O.	CHECKED BY: D.E.O.	DRAWING NO. 3914 EXHIBIT 2

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 10 (Approving Brown Hotel Development Agreement)

DATE: April 1, 2013 (for April 9th meeting)

The second reading of the ordinance approving the Brown Hotel Development Agreement is scheduled for your meeting on April 9th.

There are no changes proposed to ordinance from first reading. However, at staff's request additional language has been added to the Development Agreement clarifying the details of the parking easement that will be granted on Lot 7 for the use of the occupants of the second floor of the Hotel (located on Lot 6). The new language is shown on page 2/Section 1(c) of the Development Agreement.

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

1 ***FOR WORKSESSION/SECOND READING – APRIL 9***

2
3 ***NO CHANGE FROM FIRST READING***

4
5 COUNCIL BILL NO. 10

6
7 Series 2013

8
9 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
10 MICHAEL R. CAVANAUGH
11 (Brown Hotel – Lots 6 and 7, Abbett Addition)

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

15
16 Section 1. Findings. The Town Council of the Town of Breckenridge finds and
17 determines as follows:

18
19 A. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has
20 the authority to enter into a development agreement.

21
22 B. Michael R. Cavanaugh (“**Cavanaugh**”) has submitted to the Town a completed
23 application for a development agreement.

24
25 C. A proposed development agreement between the Town and Cavanaugh has been
26 prepared, a copy of which is marked Exhibit “A”, attached hereto, and incorporated herein by
27 reference (“**Development Agreement**”).

28
29 D. On March 26, 2013 the Town Council had a preliminary discussion of Cavanaugh’s
30 application and the proposed Development Agreement as required by Section 9-9-10(A) of the
31 Breckenridge Town Code.

32
33 E. The Town Council determined that Cavanaugh’s request for a development
34 agreement need not be referred to the Breckenridge Planning Commission for its review and
35 recommendation.

36
37 F. The Town Council has reviewed the Development Agreement.

38
39 G. The approval of the Development Agreement is warranted in light of all relevant
40 circumstances.

41
42 H. The procedures to be used to review and approve a development agreement are
43 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
44 Chapter have substantially been met or waived in connection with the approval of the
45 Development Agreement and the adoption of this ordinance.

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Section 2. Approval of Development Agreement. The Development Agreement between the Town and Michael R. Cavanaugh (Exhibit “A” hereto) is approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 3. Notice of Approval. The Development Agreement must contain a notice in the form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code must be published by the Town Clerk one time in a newspaper of general circulation in the Town within fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103, C.R.S.

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

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

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
STATUTES, AS AMENDED

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made as of the ___ day of _____, 2013 between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado (“Town”) and MICHAEL R. CAVANAUGH (“Cavanaugh”).

Recitals

A. Cavanaugh is the owner of the real property described as Lots 6 and 7, Abbett Addition to the Town of Breckenridge, Summit County, Colorado (individually “Lot 6” or “Lot 7” and collectively “Property”).

B. As owner of the Property, Cavanaugh has the right to propose a development plan for the Property and a subdivision plan for Lot 7, which plans are expected to be substantially similar to the Conceptual Plan attached hereto as Exhibit A, and to enter into agreements with the Town concerning such development and subdivision plans.

C. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code, the Town Council has the authority to enter into a development agreement.

D. Because of density limitations on Lot 6 where the historic Brown Hotel building and a deteriorating stable building are located, parking requirements that may apply to Lot 6 if parking on Lot 7 is eliminated, minimum lot size and density allocation requirements associated with a resubdivision of Lot 7, and a possible interpretation of the Town’s Subdivision Standards as requiring a cash contribution of 10% of the value of the land in connection with a resubdivision of Lot 7, the Town’s Development Code, Subdivision Standards and Off-Street Parking Ordinance do not provide feasible means for approval of the Conceptual Plan by the Town’s Planning Commission and, therefore, a development agreement provides the most viable means available for such an approval.

E. As the commitments encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Cavanaugh proposes: (i) the removal of the concrete block addition made to the historic Brown Hotel, which addition is located partially on Lot 6 and partially on Lot 7; (ii) the restoration of the north side of the historic Brown Hotel as close as reasonably possible to its original appearance and condition, after removal of the concrete block structure; (iii) restoration of the historic stable located on Lot 6 adjacent to French Street, provided that, while such restoration will preserve the exterior appearance, it will involve substantial improvements and upgrading of the interior of the stable structure and the connection of the stable structure to the historic Brown Hotel; and (iv) pursuit of a listing of the historic Brown Hotel on the National Register of Historic Places.

F. The Town Council has received a completed application and all required submittals for a development agreement, had a preliminary discussion of the application and this Agreement, determined that it should commence proceedings for the approval of this Agreement and, in accordance with the procedures set forth in Subsection 9-9-10:C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. The Town's Planning Commission is hereby authorized to review and approve, subject to compliance with all other applicable development policies of the Town, applications for a development plan for the Property and the subdivision of Lot 7 providing for:

(a) The permitted density for Lot 6 to include the square footage of the historic Brown Hotel building, the square footage of the portion of the concrete block addition located within Lot 6, and the square footage of the historic stable.

(b) Up to 360 square feet of density in excess of the density permitted in accordance with the preceding subparagraph 1(a) on Lot 6, in order to accommodate the connection of the historic Brown Hotel and the historic stable and to improve the functions thereof, without regard to whether the Section 9-1-19:3 (Absolute) limitation is violated and without the assignment of any negative points under Section 9-1-19:3 (Relative).

(c) The waiver of all parking requirements provided for in the Town's Off-Street Parking Ordinance; for the continued use of the ground floor of the historic Brown Hotel as a restaurant and bar, and the addition of the area of the historic stable and the area connecting the Brown Hotel and the stable to the bar and restaurant uses; and for the use of the second floor for residential purposes, provided, that 4 parking spaces are provided by easement (in a form reasonably acceptable to the Town Attorney) within Lot 7 as close as reasonably possible to Lot 6, such easement to be for the exclusive use of the occupants of the second floor of the Brown Hotel and, provided further, that if the Town Building Official requires that one or more handicap parking spaces be provided on Cavanaugh's property in connection with the restaurant and bar uses, then the number of parking spaces to be provided to accommodate the residential use will be reduced as required to provide such handicap spaces within the 36' width required and available for the 4 parking spaces to be provided to accommodate the residential use as shown on Exhibit A;

(d) The subdivision of Lot 7 into two lots without either lot meeting the 5,000 square foot minimum lot size provided for in the Town's Subdivision Standards;

(e) The total density permitted under the Development Code for Lot 7 may be allocated based on conceptual plans to be provided by Cavanaugh in connection with the subdivision of Lot 7 so that the anticipated larger Lot 7A adjacent to the Brown Hotel, which lot will be accommodating the parking spaces provided for in subparagraph 1.(c) above would have allocated to it a smaller portion of the total permitted Lot 7 density and

the smaller proposed Lot 7B to the north would have allocated to it a larger portion of the total permitted Lot 7 density; and

(f) No 10% open space dedication, in the form of land or cash, in connection with the subdivision of Lot 7.

2. As commitments to the Town to enter into this Agreement, Cavanaugh agrees that the following will be included as a part of the development plan for Lot 6:

(a) Demolition and removal of the concrete block structure attached to the Brown Hotel and located partly on Lot 6 and partly on Lot 7, on or before either the construction of residential improvements on what is shown as Lot 7A on the Conceptual Plan or any transfer of title to said Lot 7A separate from title to Lot 6, which commitment will be secured by such covenant or other instrument as is reasonably acceptable to the Town Attorney;

(b) The restoration of the north wall of the Brown Hotel to substantially the same appearance and condition it was in before the concrete block structure was added and repairs to and painting of the other 3 walls of the Brown Hotel generally to match the restored condition of the north wall, on or before either the construction of residential improvements on what is shown as Lot 7A on the Conceptual Plan or any transfer of title to said Lot 7A separate from title to Lot 6, which commitment will be secured by such covenant or other instrument as is reasonably acceptable to the Town Attorney;

(c) Restoration of the stable, to include substantial improvements and upgrading of the interior and exterior of the stable structure and connection of the stable to the historic Brown Hotel to make the stable habitable for commercial purposes, while preserving as much of the exterior material as is reasonably possible to preserve the historic exterior appearance, on or before either the construction of residential improvements on what is shown as Lot 7A on the Conceptual Plan or any transfer of title to said Lot 7A separate from title to Lot 6, which commitment will be secured by such covenant or other instrument as is reasonably acceptable to the Town Attorney;

(d) The net proceeds from the sale of Lot 7B after deducting all costs of sale and of improvements, if any, whether sold as an undeveloped lot or with an improved residence, will be set aside, pursuant to such covenant or other instrument as is reasonably acceptable to the Town Attorney, to insure that such proceeds are applied to the demolition and removal of the concrete block structure, restoration of the north wall and associated repair and painting of the other 3 walls, and restoration of the stable as provided for in subparagraphs 2(a), (b) and (c) above; and

(e) With such cooperation, support and assistance of the Town as may be necessary and appropriate, Cavanaugh will apply for and diligently pursue listing of the Brown Hotel on the National Register of Historic Places.

3. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future

application of municipal, state or federal ordinances, laws, rules or regulations to the Property (collectively, “laws”), including, but not limited to, building, fire, plumbing, engineering, electrical and mechanical codes, and the Town’s Development Code, Subdivision Standards and other land use laws, as the same may be in effect from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of the Property which is the subject of this Agreement and the master plan shall be done in compliance with the then-current laws of the Town.

4. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the Town to adopt or amend any Town law, including, but not limited to the Town’s: (i) Development Code, (ii) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

5. This Agreement shall run with title to the land and be binding upon and inure to the benefit of Cavanaugh, his successors and assigns.

6. Prior to any action against the Town for breach of this Agreement, Cavanaugh shall give the Town a sixty (60) day written notice of any claim by Cavanaugh of a breach or default by the Town, and the Town shall have the opportunity to cure such alleged default within such time period.

7. The Town shall not be responsible for and Cavanaugh shall have no remedy against the Town if development of the Property is prevented or delayed for reasons beyond the control of the Town.

8. Actual development of the Property shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

9. No official or employee of the Town shall be personally responsible for any actual or alleged breach of this Agreement by the Town.

10. Cavanaugh agrees to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Cavanaugh; any subcontractor of Cavanaugh, or any officer, employee, representative, or agent of Cavanaugh or of any subcontractor of Cavanaugh, or which arise out of any worker’s compensation claim of any employee of Cavanaugh, or of any employee of any subcontractor of Cavanaugh; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Cavanaugh agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands

at the sole expense of the Cavanaugh. Cavanaugh also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

11. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of the remaining provisions of the Agreement.

12. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24, Colorado Revised Statutes, as amended.

13. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Cavanaugh; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Cavanaugh or the acceptance of any improvements.

14. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

15. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

16. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. Cavanaugh expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

17. Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

If To The Town:

Timothy J. Gagen, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

With A Copy (which shall not constitute notice to the Town) to:

Timothy H. Berry, Esq.
Town Attorney
P.O. Box 2
Leadville, CO 80461

If To Cavanaugh:

Michael R. Cavanaugh
P.O. Box 878
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to:

Stephen C. West, Esq.
West, Brown, Huntley & Hunter, P.C.
P.O. Box 588
Breckenridge, CO 80424

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given upon delivery. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

18. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

19. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

TOWN OF BRECKENRIDGE

Attest:

Town Clerk

By: _____
Timothy J. Gagen, Town Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2013 by Timothy J. Gagen as Town Manager and _____ as the _____ Town Clerk of the Town of Breckenridge, a Colorado municipal corporation.

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

Notary Public

Michael R. Cavanaugh

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
2013 by Michael R. Cavanaugh.

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

Notary Public

6048.01development agmt 03-29-13

Exhibit A
CONCEPTUAL PLAN

[See the Conceptual Plan attached hereto]

MEMO

TO: Mayor & Town Council
FROM: Mark Johnston, Streets and Parks Manager
DATE: April 2, 2013
SUBJECT: Intergovernmental Agreement Regarding the Summit County Weed Advisory Board

The Colorado Noxious Weed Act requires Town Council to appoint a local advisory board. This action can be accomplished in cooperation with the county and other municipalities in the form of an intergovernmental agreement (IGA). Town staff has actively met and worked with the county and several municipalities regarding Noxious Weed Management for over ten (10) years. The attached IGA and resolution formalizes this relationship and the Town's commitment to noxious weed management.

1 **FOR WORKSESSION/ADOPTION – APRIL 9**

2
3 A RESOLUTION

4
5 SERIES 2013

6
7 A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT REGARDING
8 THE SUMMIT COUNTY WEED ADVISORY BOARD
9

10 WHEREAS, Section 35-5.5-107(1), C.R.S., which is part of the “Colorado Noxious
11 Weed Act”, requires the Town Council to appoint a local advisory board to advise it on matters
12 of noxious weed management; and
13

14 WHEREAS, Section 35-5.5-106(3), C.R.S., provides that the Town Council may
15 cooperate with counties and other municipalities for the exercise of any or all of the powers and
16 authorities grant by the Colorado Noxious Weed Act, and that such cooperation shall take the
17 form of an intergovernmental agreement; and
18

19 WHEREAS, Section 35-5.5-107(2), C.R.S., specifically contemplates that the Town may
20 elect to cooperate with other municipalities or a county with respect to the local weed advisory
21 board; and
22

23 WHEREAS, a proposed Intergovernmental Agreement between the Town and the Town
24 of Frisco, the Town of Dillon, the Town of Silverthorne, the Town of Blue River, the Town of
25 Montezuma, and the Board of County Commissioners of Summit County, regarding the Summit
26 County Weed Advisory Board has been prepared, a copy of which is marked **Exhibit “A”**,
27 attached hereto and incorporated herein by reference; and
28

29 WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement
30 and finds and determines that it would be in the best interest of the Town to enter into such
31 agreement.
32

33 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
34 BRECKENRIDGE, COLORADO, as follows:
35

36 Section 1. The proposed Intergovernmental Agreement between the Town and the Town
37 of Frisco, the Town of Dillon, the Town of Silverthorne, the Town of Blue River, the Town of
38 Montezuma, and the Board of County Commissioners of Summit County, regarding the Summit
39 County Weed Advisory Board (**Exhibit “A”** hereto) is approved; and the Town Manager is
40 hereby authorized, empowered and directed to execute such agreement for and on behalf of the
41 Town of Breckenridge.
42

43 Section 2. This resolution shall become effective upon its adoption.
44

45 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2013.
46

TOWN OF BRECKENRIDGE

By: _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich,
Town Clerk

APPROVED IN FORM

Town Attorney date

**Intergovernmental Agreement
Regarding the
Summit County Weed Advisory Board**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”), is made and entered into this ___ day of _____ 2013, by and among the Board of County Commissioners of Summit County (the “ County”), the Town Council of the Town of Frisco, Colorado (“Frisco”), the Board of Trustees of the Town of Dillon, Colorado (“Dillon”), the Town Council of the Town of Silverthorne, Colorado (“Silverthorne”), the Town Council of the Town of Breckenridge, Colorado (“Breckenridge”), the Town Council of the Town of Blue River, Colorado (“Blue River”), the Town Council of the Town of Montezuma, Colorado (“Montezuma”), all of which are either a County, or a statutory or home rule city, or a statutory town or home rule town, or a territorial charter municipality, or a city and county, and all such entities are collectively referred to herein as the “Parties”.

WITNESSETH

WHEREAS, the County is obligated pursuant to C.R.S. §35-5.5-105(1) to adopt a noxious weed management plan for all of the unincorporated lands within the county; and

WHEREAS, Frisco, Breckenridge, Silverthorne, Dillon, Blue River and Montezuma are obligated pursuant to C.R.S. §35-5.5-106(1) to adopt a noxious weed management plan for all lands within the territorial limits of the municipality; and

WHEREAS, pursuant to C.R.S. §29-1-201 *et seq.*, C.R.S. §35-5.5-105(3), and C.R.S. §35-5.5-106(3), the County, Breckenridge, Frisco, Dillon, Silverthorne, Blue River, Montezuma may cooperate with other counties and/or towns for the exercise or satisfaction of any or all of the powers, authorities and obligations granted or imposed by the Colorado Noxious Weed Act, C.R.S §35-5.5-101 *et seq.* (the “Act”); and

WHEREAS, pursuant to C.R.S. §35-5.5-111, the local governing bodies of all counties and municipalities of the State of Colorado are authorized to enter into cooperative agreements with federal and state agencies for the integrated management of noxious weeds within their respective territorial jurisdictions; and

WHEREAS, it is to the mutual advantage and benefit of the Parties hereto that the Parties agree to form an advisory board pursuant to the Act to facilitate cooperation among themselves for the integrated management of noxious weeds within their respective jurisdictions within Summit County, Colorado, as a geographic whole, and to exercise or satisfy any or all of the powers, authorities and obligations imposed by the Act.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and the reciprocal benefits to be derived therefrom, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Formation of the Summit County Weed Advisory Board. The Parties agree to form the Summit County Weed Advisory Board (the “Board”) to serve as an advisory board to each of the Parties’ governing bodies, and to facilitate, in whatever reasonable and prudent way possible, voluntary cooperative efforts by the Parties for the integrated management of noxious weeds within their respective jurisdictions within Summit County, Colorado, as a geographic whole, and further to exercise or satisfy any or all of the powers, authorities and obligations of the Act. The Parties agree and understand that, pursuant to C.R.S. §35-5.5-107(5), the local governing bodies of the Parties shall have the sole and final authority to approve, modify, or reject a management plan, management criteria, management practice, and any other decision or recommendation of the Board.
2. Responsibilities of the Parties. The Parties understand and agree that the only responsibilities, financial or otherwise, arising directly from this IGA are for each Party to:
 - a. Appoint the Board to act as the local advisory board for its respective jurisdiction pursuant to C.R.S. §35-5.5-107(1), if applicable, with all of the powers and duties specified in C.R.S. §35-5.5-107(4); and
 - b. Appoint one authorized representative to the Board.
3. Powers and Duties of the Board. The Board shall have the following powers and duties.
 - a. Pursuant to C.R.S. §35-5.5-107(4)(a), to develop, for the approval of the governing bodies’ of the County, Breckenridge, Frisco, Dillon, Silverthorne, Blue River and Montezuma, recommended management plans for the integrated management of designated noxious weeds and recommended management criteria for noxious weeds within Summit County.
 - b. To encourage voluntary cooperative efforts among all or any number of the Parties for the integrated management of noxious weeds within Summit County, Colorado. It is anticipated that such voluntary cooperative efforts may be governed by separate management plans entered between Parties actually participating therein, which management plans will each specifically address allocation of responsibilities, financial and otherwise.
 - c. Pursuant to C.R.S. §35-5.5-107(4)(b), to declare noxious weeds and any state noxious weed designated by rule to be subject to integrated management.
 - d. Pursuant to C.R.S. §35-5.5-107(4)(c), to recommend to the applicable Parties’ local governing body that identified landowners be required to submit an individual integrated management plan to manage noxious weeds on their property.
 - e. To exercise any other powers and/or duties as authorized by C.R.S. §35-5.5-101 *et seq.*

4. Meetings of the Board.

- a. Regular Meetings will be held as determined by the Board.
- b. All meetings shall be conducted in accordance with C.R.S. § 24-6-401, *et seq.*, (Open Meetings Act). Any interested parties may participate in meetings of the Board.

5. Membership of the Board.

- a. Composition: The Board may be composed of one voting member for each entity that is a party to the IGA, and one (1) ex-officio non-voting member. The Ex Officio, non-voting member of the Board shall be the Director of the Summit County Weed Control Department. The Parties shall each be responsible for designating their representative to serve as a board member. Additional entities that are not parties to the IGA may also designate a representative to serve as a board member. Initially, these entities may include:

- i. Denver Water Board
- ii. USDA National Resource Conservation Service
- iii. USFS White River National Forest
- iv. Summit School District
- v. Colorado Division of Parks and Wildlife
- vi. Colorado Department of Transportation

Subsequent to the first meeting of the Board, additional entities or individuals that wish to be a member shall, upon written request, be considered for membership by the Board. A request for membership shall be granted upon a majority of votes in favor by the current Board members.

- b. Officers: Officers of the Board shall include a Chairperson, a Vice-Chairperson, and a Secretary. These positions shall be elected at the first regular meeting of the Board and once every two years thereafter.

- 6. Immunity. No provision of the IGA is or shall be construed to be a waiver of sovereign immunity pursuant to C.R.S. §24-10-104 or any other provision of law. Each Party hereto shall be responsible to defend itself, at its sole cost, in any action or claim arising from or under any activity pursuant to this IGA.
- 7. Indemnification. Each Party, to the extent permitted by law, and without waiving any immunities, protections, or defenses available to it at common law or under statute, hereby agrees to indemnify and hold every other Party harmless from and against all claims, damages, losses and liabilities including reasonable attorneys' fees to the extent caused by the intentional or negligent acts of the indemnifying Party arising out of or related to said Party's participation in this Agreement.
- 8. Term. The term of this IGA shall be for three years from the date the IGA first becomes first effective as to any of the Parties, and will renew automatically for subsequent three year terms absent termination or other written agreement of the

Parties. Any Party may terminate its participation in this IGA upon ninety (90) days written notice, by certified mail, to each of the other participating Parties.

9. Counterparts. This IGA may be signed in multiple counterparts, all of which, when taken together, shall constitute a single agreement. This IGA shall become effective upon the execution of this IGA by two or more parties and shall be effective as to a particular Party upon its execution of this IGA.

ATTEST:

TOWN OF BRECKENRIDGE

By: _____

By: _____

Date: _____

ATTEST:

TOWN OF DILLON

By: _____

By: _____

Date: _____

ATTEST:

TOWN OF FRISCO

By: _____

By: _____

Date: _____

ATTEST:

TOWN OF SILVERTHORNE

By: _____

By: _____

Date: _____

ATTEST:

TOWN OF BLUE RIVER

By: _____

By: _____

Date: _____

ATTEST:

TOWN OF MONTEZUMA

By: _____

By: _____

Date: _____

ATTEST:

SUMMIT COUNTY

By: _____

By: _____

Date: _____

Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein, Assistant Town Engineer
DATE: April 3, 2013
RE: Public Projects Update

Main Street

Columbine Hills Concrete is under contract to begin work on the Main Street project beginning April 15th. The contractor may start mobilizing equipment and materials to a small area of the Tiger Dredge lot the week of April 8th. Detours are anticipated to begin April 15th, with northbound traffic detoured onto Ridge Street and Park Ave. Southbound vehicular traffic and all pedestrian traffic will be maintained throughout the duration project.

Andorra Alley

Staff has completed the design of the realignment of the alley behind the Andorra Condos. The proposed design aligns the existing alley with the recently constructed Columbia Lode access on French Street. The design includes approximately 200 feet of asphalt removal and replacement, new concrete valley pan, minor drainage improvements, a new dumpster building and planting of a few new aspen trees. A copy of the proposed design is attached. We anticipate the project will be bid in May and constructed during the summer of 2013.

2013 Asphalt Overlay

The 2013 Asphalt Overlay project is scheduled to bid on April 4th, 2013. Staff will update the Council at the work session on the results of the bid. The overlay project will begin as weather permits in late May or early June and includes an overlay of portions of White Cloud Drive, Morningstar Drive and Golf Flake Terrace, the final lift of asphalt in Gold Pan Alley, and various patching locations including isolated areas in the Highlands.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: April 4, 2013
SUBJECT: Committee Reports for 04-09-2013 Council Packet

The following committee reports were submitted by Town Employees and/or the Town Manager:

Summit County Wildfire Council	March 21, 2013	Matt Thompson
<ul style="list-style-type: none"> • Introduction of Xcel Energy Partnership. Xcel is interested in trying to partner with the SCWC. Similar to how they did in the Straight Creek area. They have possible matching grants. • Insect and Disease Update. Only 370 acres of mountain pine beetle infested forest remaining in Summit County. 20 acres of spruce beetle, mostly in wilderness areas. • Discussion of Focus Area Prescriptions. Two themes emerged from this field trip project: 1. Most of the County still needs more defensible space work; 2. Addressing and street signage needs to be improved. • Review and approve the 2013 Grant Application Packet. The application packet was reviewed by the group and approved. • Presentation on 2012 Building Code updates, including proposed revisions to fire hazard mitigation regulations. Scott Hoffman, Director of Summit County Building Department, gave a presentation on the building code revisions that they are currently working on. Summit County Building Department is getting assistance from the local fire districts and the Colorado State Forest Service in drafting these code changes. 		

Summit Stage Advisory Board Meeting	March 27, 2013	James Phelps
<p>The Summit Stage will be implementing the new summer schedule beginning April 14, 2013. The summer schedule does include minor changes that will result in an operational saving of approximately \$300, 000.00. The operational savings are a result of a reduction of approximately 1547 service hours. The service hour reductions are mainly on the early and late hours of the day. Ridership impacts are viewed as minimal.</p>		

An additional change will be the winter service schedule will begin on December 8th. This is a month later than past years. The Summit Stage has also identified some discretionary budget funds that will result in a Total savings (including operational) of approx. \$400,000.00 under the 2013 budget. The Advisory Board will be discussing the Strategic Planning Study recently completed, as part of the next meeting.

Ridership for February 2013 was slightly down under the past 2012 year for the categories of Total Ridership, Para-transit, and Contracted services. The very slight decrease was attributed to last year being a leap year. The Lake County Link continues to see significant increases in ridership. This year posted a 43.66% increase over 2012. Both Maintenance and Fuel Costs saw decreases under same February period last year. January Mass Transit Tax was up 16% over last year or \$862,291.00.

Committees	Representative	Report Status
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	No Meeting/Report
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	Mistaya Pierpont	No Meeting/Report
Wildfire Council	Matt Thompson	Included
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	Included
Police Advisory Committee	Chief Haynes	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report
CMC Advisory Committee	Tim Gagen	No Meeting/Report

Note: Reports provided by the Mayor and Council Members are listed in the council agenda.

** Minutes to some meetings are provided in the Manager's Newsletter.*



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Current Planning Manager

DATE: April 2, 2013 (For Meeting April 9, 2013)

SUBJECT: Moving Historic Structures

The Town's policy on Moving Historic Structures has been in discussion with Planning Commission since September 2, 2012. This issue was also discussed at the joint meeting with Town Council on November 13, 2012. At that time, the Town Council requested a more flexible policy, and supported reducing the negative points for moving historic secondary structures (sheds, barns, outhouses, etc.). The Council supported small moves to historic structures to encourage restorations, as long as the move did not threaten the state or federal designation for the property or the historic district. The Council also supported very small moves to secondary structures without negative points.

Staff presented this topic to the Planning Commission on September 2, 2012, October 16, 2012, January 2, 2013 and February 19, 2013. Based on feedback from the Planning Commission, staff developed the attached proposed policy for your review. The revised policy is intended to make it easier to make small moves to historic structures, but to discourage moving structures greater distances, and discourage changing the historic context of a structure.

The key changes to the policy include:

- No negative points for moving secondary structures less than five feet (5')
- Increased negative points for moving primary structures more than five feet (5')
- Negative points assigned separately under its own provision for moving structures, rather than reducing the positive points under the historic preservation provision. This should help applicants more clearly understand when negative points will be assigned.
- Prohibit moving historic structures to another lot, unless a variance is granted. (If there is a hardship, then the application should qualify for a variance.)
- Negative points for changing the orientation of a structure (rotating the structure)
- Consideration of public safety and improved "save ability" of the structure when assigning points
- New language to clarify that points will be made by the Planning Commission based on the significance of the structure, visibility and size, to provide additional flexibility.
- Above Ground Density policy is moved to Policy 24, to keep all Historic District policies together.

To aid in discussion, we have included two site plans from recent projects that received negative points for moving structures. The plans indicate the distance historic structures were moved and how many points were assigned for moving (negative points) and for the restoration (positive points). The result of the new policy could be that applicants would not move structures as much, and historic properties would maintain more of their historic character.

Judge Silverthorne House	Off Residence
As approved (Existing Policy)	As approved (Existing Policy)
-5 points for moving structures	-5 points for changing orientation of shed
+ 6 points for historic preservation	+6 points for historic preservation
NET = +1 point	NET = +1 point
Proposed Policy	Proposed policy
-15 points for moving primary structure	-2 points for changing orientation of shed
-3 points for moving shed	+3 points for restoration of shed
-2 points for changing orientation	
+6/+9 for historic preservation of primary structure	
+3 points for historic preservation of shed	
NET = -8 or -11 points	NET = +1 point

Staff will be available to answer questions and receive your feedback during the meeting on Tuesday.

Moving Historic Structures
(Last edited on 04-02-13 by Chris Neubecker)

(Proposed new or moved language in **bold**. Proposed language to be relocated or removed shown in ~~strikethrough~~.)

5. (ABSOLUTE) ARCHITECTURAL COMPATIBILITY (5/A):

~~B. Conservation District: Within the conservation district, which area contains the historic district (see special areas map¹) substantial compliance with both the design standards contained in the "Handbook Of Design Standards" and all specific individual standards for the transition or character area within which the project is located is required to promote the educational, cultural, economic and general welfare of the community through the protection, enhancement and use of the district structures, sites and objects significant to its history, architectural and cultural values. (Ord. 7, Series 1992) *(Moved to Policy 24/Absolute)*~~

~~(1) Within the conservation district, no historic structure shall be altered, moved or demolished without first obtaining a class A or class B development permit from the town. Accompanying such approval shall be an application for a class A or class B development permit as required by code to authorize any proposed new development which will take the place of a moved or demolished historic structure. The issuance of building permits for a moved or demolished historic structure and the construction of a replacement structure shall be issued concurrently and may not be issued separately. (Ord. 24, Series 2001) *(Moved to Policy 24/Absolute)*~~

~~(2) In addition to the procedural requirements of this code, an application for alteration, demolition, or moving of an historic structure shall be accompanied by a cultural survey prepared by a qualified person when required by the town. (Ord. 7, Series 1992) *(Moved to Policy 24/Absolute)*~~

5. (RELATIVE) ARCHITECTURAL COMPATIBILITY (5/R): The town hereby finds that excessive similarity, dissimilarity, or poor quality design of any building adversely affects the desirability of the immediate area and the community as a whole, and by so doing impairs the benefits of existing property owners, the stability and value of real property, produces degeneration of property with attendant deterioration of conditions affecting health, safety, and general welfare of the community, and destroys a proper relationship between the taxable value of real property and the cost of municipal services provided therefore. Features of design include, but are not limited to: size, shape, scale, proportions, solid to void ratios, texture, pattern and color of materials, and architectural elements and details. (Ord. 10, Series 1990)

3x(-2/+2) A. General Architectural And Aesthetic Compatibility: All proposed new

¹ See section 9-1-20 of this chapter.

developments, alterations, or additions are strongly encouraged to be architecturally compatible with the general design criteria specified in the land use guidelines. It is strongly encouraged that cut and fill slopes be kept to a minimum, and that the site, when viewed from adjacent properties, be integrated into its natural surroundings as much as possible. In addition, excessive similarity or dissimilarity to other structures existing, or for which a permit has been issued, or to any other structure included in the same permit application, facing upon the same or intersecting streets within the same or adjacent land use districts is discouraged. This section only applies to areas outside of the historic district. (Ord. 19, Series 1995)

Exterior building materials and colors should not unduly contrast with the site's background. The use of natural materials, such as logs, timbers, wood siding and stone, are strongly encouraged because they weather well and reflect the area's indigenous architecture. Brick is an acceptable building material on smaller building elements, provided an earth tone color is selected. Stucco is an acceptable building material so long as an earth tone color is selected, but its use is discouraged and negative points shall be assessed if the application exceeds twenty five percent (25%) on any elevation as measured from the bottom of the fascia board to finished grade. Such measurement shall include column elements, windows and chimneys, but shall not include decks and railing elements. Roof materials should be nonreflective and blend into the site's backdrop as much as possible. Inappropriate exterior building materials include, but are not limited to, untextured exposed concrete, untextured or unfinished unit masonry, highly reflective glass, reflective metal roof, and unpainted aluminum window frames. This section applies only to areas outside of the historic district, but does not apply to the Cucumber Gulch overlay protection district (see policy 5 (absolute), subsection D, of this section). (Ord. 30, Series 2003)

~~5 x (5/0) B. Conservation District: Within the conservation district, which area contains the historic district, compatibility of a proposed project with the surrounding area and the district as a whole is of the highest priority. Within this district, the preservation and rehabilitation of any historic structure or any town designated landmark or federally designated landmark on the site (as defined in chapter 11 of this title) is the primary goal. Any action which is in conflict with this primary goal or the "Handbook Of Design Standards" is strongly discouraged, while the preservation of the town's historic fiber and compliance with the historic district design standards is strongly encouraged. Applications concerning development adjacent to Main Street are the most critical under this policy. (Ord. 24, Series 2001)~~

Moved to Policy 24/Relative

B. Historic and Conservation Districts: For all projects within the Historic or Conservation Districts, please see “Policy 24 (Absolute) Social Community and Policy 24 (Relative) Social Community”.

C. Above Ground Density in Historic District: (*See Policy 24 Absolute) The Social Community, B. Historic District.*

- (1) ~~Within the Main Street Residential/Commercial, South End Residential, and South Main Street character areas, a maximum of nine (9) units per acre of aboveground density is recommended. In connection with projects that exceed the recommended nine (9) units per acre and meet all of the design criteria outlined in the character area design standards, points shall be assessed based on the following table:~~

<u>Aboveground Density (UPA)</u>	<u>Point Deductions</u>
9.01-9.50	3
9.51-10.00	6
10.01-10.50	9
10.51-11.00	12
11.01-11.50	15
11.51-12.00	18
12.01 or more	See policy 5 (absolute) of this section

(Ord. 4, Series 1997)

- (2) ~~In connection with permit applications for projects within those character areas of the historic district specified below which involve "preserving", "restoring", or "rehabilitating" a "landmark structure", "contributing building", or "contributing building with qualifications" (as those terms are defined in the "Handbook of Design Standards for the Historic and Conservation Districts"), or "historic structure" or "landmark" as defined in this code, and in connection with permit applications for projects within the North Main Residential, North End Residential, and the East Side Residential character areas that exceed the recommended nine (9) units per acre of aboveground density, points shall be assessed based on the following table:~~

<u>Aboveground Density (UPA)</u>	<u>Point Deductions</u>
9.01-9.50	3
9.51-10.00	6
10.01 or more	See Policy 5 (absolute) of this section

(Ord. 24, Series 2001) *Moved to Policy 24 (Absolute) The Social Community / Historic Preservation*

24. (ABSOLUTE) THE SOCIAL COMMUNITY (24/A):

Historic Preservation *(Cut and Paste from Policy 5/Absolute)*

- B. Historic and Conservation District:** Within the conservation district, which area contains the historic district (see special areas map²) substantial compliance with both the design standards contained in the "Handbook Of Design Standards" and all specific individual standards for the transition or character area within which the project is located is required to promote the educational, cultural, economic and

² See section 9-1-20 of this chapter.

general welfare of the community through the protection, enhancement and use of the district structures, sites and objects significant to its history, architectural and cultural values. (Ord. 7, Series 1992)

- (1) Within the **historic or** conservation district, no historic structure shall be altered, moved or demolished without first obtaining a class A or class B development permit from the town. Accompanying such approval **to alter, move or demolish any historic structure** shall be an application for a class A or class B development permit as required by code to authorize any proposed new development which will take the place of a moved or demolished historic structure. The issuance of building permits for ~~a moved~~ **altering, moving** or ~~demolished~~ **demolishing** a historic structure and the construction of a replacement structure shall be issued concurrently and ~~may~~ **shall** not be issued separately. (Ord. 24, Series 2001) **Moving a historic structure from its historic lot or parcel to another lot or parcel is prohibited.**
- (2) In addition to the procedural requirements of this code, an application for alteration, demolition, or moving of an historic structure shall be accompanied by a cultural survey prepared by a qualified person when required by the town. (Ord. 7, Series 1992)
- (+) (3) Within the Main Street Residential/Commercial, South End Residential, and South Main Street character areas, a maximum of nine (9) units per acre of aboveground density is recommended. In connection with projects that exceed the recommended nine (9) units per acre and meet all of the design criteria outlined in the character area design standards, points shall be assessed based on the following table:

Aboveground Density (UPA)	Point Deductions
9.01-9.50	-3
9.51-10.00	-6
10.01-10.50	-9
10.51-11.00	-12
11.01-11.50	-15
11.51-12.00	-18
12.01 or more	See policy 5 (absolute) of this section

(Ord. 4, Series 1997)

- (-) (4) In connection with permit applications for projects within those character areas of the historic district specified below which involve "preserving", "restoring", or "rehabilitating" a "landmark structure", "contributing building", or "contributing building with qualifications" (as those terms are defined in the "Handbook of Design Standards for the Historic and Conservation Districts"), or "historic structure" or "landmark" as defined in this code, and in connection with permit applications for projects within the North Main Residential, North End Residential, and the East Side Residential character areas that exceed the recommended nine (9) units per acre of

aboveground density, points shall be assessed based on the following table:

Aboveground Density (UPA)	Point Deductions
9.01-9.50	-3
9.51-10.00	-6
10.01 or more	See Policy 5 (absolute) of this section

(Ord. 24, Series 2001)

24. (RELATIVE) SOCIAL COMMUNITY (24/R):

~~3 x (0/+5)~~

~~E. Historic Preservation And Restoration:~~

~~5 3 x (-5/0+5) F.~~ **E. Conservation District: Within the conservation district, which contains the historic district, compatibility of a proposed project with the surrounding area and the district as a whole is of the highest priority. Within this district, the preservation and rehabilitation of any historic structure or any town designated landmark or federally designated landmark on the site (as defined in chapter 11 of this title) is the primary goal. Any action which is in conflict with this primary goal or the "Handbook Of Design Standards" is strongly discouraged, while the preservation of the town's historic fiber and compliance with the historic district design standards is strongly encouraged. Applications concerning development adjacent to Main Street are the most critical under this policy. (Ord. 24, Series 2001) *Moved from Policy 5/Relative***

The preservation and restoration of historic structures, town designated landmark, federally designated landmark, landmark sites, or cultural landscape districts within the town is a priority. Additional on site preservation and restoration efforts beyond the requirements of the historic district guidelines for historic structures and sites as defined in chapter 11 of this title are strongly encouraged.

Positive points will be awarded according to the following point schedule for on site historic preservation, or restoration efforts, in direct relation to the scope of the project, subject to approval by the planning commission. **Positive points below are applied to a development permit as a whole and shall not be awarded separately if multiple structures are proposed for preservation or restoration under the same development permit.**

A final point allocation will be made by the planning commission based on the historic significance of the structure, its visibility and size. The construction of a new structure or addition on the same lot, or the failure to remove noncontributing features of a historic structure, may **also** result in the allocation of fewer positive points:

Primary Structures:

~~+3~~ +1 On site historic preservation/restoration effort of minimal public benefit.

Examples³: Restoration of historic window and door openings, preservation of historic roof materials, siding, windows, doors and architectural details.

~~+6~~ +3 On site historic preservation/restoration effort of average public benefit.

Examples: ~~Preservation of, or the installation of a new foundation, structural stabilization, complete restoration of secondary structures.~~
Restoration of historic window and door openings, preservation of historic roof materials, siding, windows, doors and architectural details, plus structural stabilization and installation of a new foundation.

~~+9~~ +6 On site historic preservation/restoration effort of above average public benefit.

Examples: Restoration/preservation efforts for windows, doors, roofs, siding, foundation, architectural details, substantial permanent electrical, plumbing, and/or mechanical system upgrades, **plus** structural stabilization **and installation of a full foundation**, ~~or restoration of secondary structures~~, which fall short of bringing the historic structure or site back to its appearance at a particular moment in time within the town's period of significance by reproducing a pure style.

~~+12~~ +9 On site historic preservation/restoration effort with a significant public benefit.

Example: Restoration/preservation efforts which bring a historic structure or site back to its appearance at a particular moment in time within the town's period of significance by reproducing a pure style and respecting the historic context of the site that fall short of a pristine restoration.
Projects in this category will remove non-contributing features of the exterior of the structure, and will not include any above ground additions.

~~+15~~ +12 On site historic preservation/restoration effort with a very significant public benefit.

Example: Restoration/preservation efforts to a historic structure or site which bring the historic structure or site back to its appearance at a particular moment in time within the town's period of significance by

³ Examples set forth in this policy are for purpose of illustration only, and are not binding upon the planning commission. The ultimate allocation of points shall be made by the planning commission pursuant to section 9-1-17-3 of this title.

reproducing a pure style and respecting the historic context of the site with no new structures or additions and the removal of all noncontributing features of a historic structure or site. Such restoration/preservation efforts will be considered pristine. (Ord. 25, Series 2004)

Secondary Structures:

- +1 On-site historic preservation/restoration of minimal public benefit.**

Examples: Structural stabilization of walls, roof trusses and repairing damaged or missing roofing.

- +2 On-site historic preservation of average public benefit.**

Examples: Structural stabilization of walls, roof trusses and repairing roofs, plus full restoration of damaged or missing siding, doors, windows, and trim.

- +3 On-site historic preservation of above average public benefit.**

Examples: Complete restoration of the structure, including structural stabilization of walls, roof trusses and repairing roof, full restoration of damaged or missing siding, doors, windows and trim, plus installation of a full foundation. Secondary structures that encroach over a property line or easement shall be brought fully onto the applicant's property and outside of any easements or encroachments to qualify for this point allocation.

F. Moving Historic Structures:

A structure derives part of its historic significance from its setting, which includes the property itself, associated landscaping, view corridors and other buildings. The manner in which a building relates to its site, how it is oriented on the property and its view orientation are all aspects of the building context that enrich our ability to understand the life ways that the historic district conveys. Removing a building from its historic setting, relocating a building on its historic site or altering its orientation diminishes our ability to interpret the history of the district and its historic structures to the fullest extent possible and therefore should be avoided. Instead, the preferred method is to preserve historic buildings in their existing locations.

The degree to which historic structures are moved on their site, or moved to another site, will be considered in the allocation of negative points. Structures that are moved off the property to another site will receive the greatest number of negative points. These moves ~~change~~ alter the ability to interpret ~~interpretation~~ of the history of a site and the historic structure. Every effort shall be made to preserve historic structures in their

historic locations. When moving of structures is necessary, they shall be relocated in a manner which preserves the original context of the site and structure as much as possible. Structures shall not be moved any more than necessary to achieve reasonable use of the land.

Changes that improve the ability to preserve any historic structure or to improve public safety will be considered in the allocation of points under this section. The following is a guideline for the assignment of points for moving historic structures. The final allocation of points shall be made by the planning commission pursuant to Section 9-1-17-3 of this title. Negative points below shall be for the development permit application as a whole, and shall not be awarded separately if multiple structures are proposed for moving or relocating under the same development permit.

Notice: No structure shall be moved unless the structure is also fully restored in its new location with structural stabilization, a full foundation, repairs to siding, windows, doors and architectural details, and roof repairs to provide water protection.

Moving Primary Structures:

0 points: Relocating of historic primary structures in order to bring them into compliance with required codes and/or setbacks and for correcting property encroachments, but keeping the structure on its original lot, and maintaining the historic context of the structure and site.

-3 points: Relocating of historic primary structures less than five (5) feet from its current or original location, keeping the structure on its original site, and maintaining the historic orientation and context of the structure and lot.

-10 points: Relocating a historic primary structure more than five (5) feet from its current or original location, but keeping the structure on its original lot and maintaining the historic orientation and context.

-15 points: Relocating a historic primary structure more than ten (10) feet from its current or original location.

Secondary Structures:

0 points: Relocating of historic secondary structures in order to bring them into compliance with required codes and/or setbacks and for correcting property encroachments, but keeping the structure on its original lot, and maintaining the historic context of the structure and site.

-1 point: Relocating a historic secondary structures less than five (5) feet from its current or original location, keeping the structure on its original lot, and maintaining the historic orientation and context of the structure and site.

-2 points: Relocating a historic secondary structure more than five (5) feet but no more than ten (10) feet from its current or original location, but keeping the structure on its original lot and maintaining the historic orientation and context of the structure and site.

-3 points: Relocating a historic secondary structure more than ten (10) feet from its current or original location, but keeping the structure on its original lot.

-15 points: Relocating a historic secondary structure to a site off the original lot.

Other Negative Points:

Any proposal for changing the historic orientation of a historic structure will receive additional negative points based on the degree to which the change in orientation affects the ability to interpret the use and history of the site or structure. In general, the following points will be assigned, unless a different point allocation is determined by the Planning Commission:

-2 points: Changing the historic orientation of a secondary structure

-10 points: Changing the historic orientation of a primary structure

Structures Not in Historic Location:

On occasion, historic structures have been moved to new locations within the town. The moving of these structures (which were previously moved to new locations after the Town's historic Period of Significance, after 1942) are not subject to the allocation of negative points if the final location and configuration of the building is consistent with the policies and intent of the "Handbook of Design Standards for the Historic and Conservation Districts", and so long as the building is structurally stabilized and placed on a permanent foundation at the receiving site. Also, the receiving site shall be an appropriate context for the structure, as determined by the structure's original use and site.

Structures that were previously moved during the Town's Period of Significance (in 1942 or earlier) have achieved historical significance in their new or current location. In these cases, moving these structures again is discouraged and negative points shall be allocated by the Planning Commission in direct relation to the scope of the change in location and context, pursuant to the provisions of this chapter.

Returning Structures to their Historic Location:

It is the goal of the Town to encourage the return of historic structures back to their original, historic locations, in those cases where historic structures were previously moved off their historic location. Positive points will be assigned according to the following point schedule:

+2 points: Relocation of a historic structure back to its historic location.

+5 points: Relocation of a historic structure back to its historic location and returning the site to its appearance at a particular moment in time within the Town's Period of Significance.

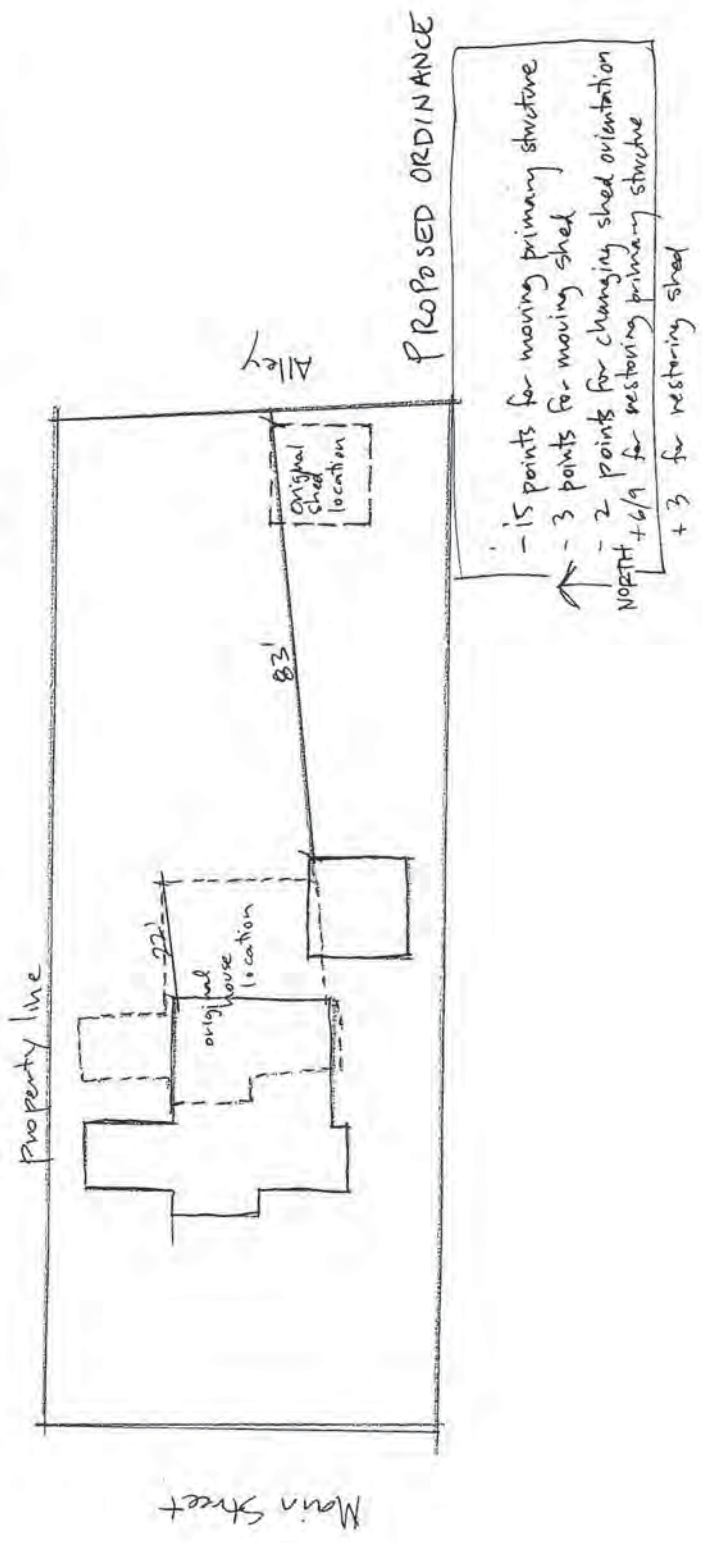
DEFINITIONS:

Primary Structures: The main buildings or structures on a lot which give the site its unique character, and were historically the most important buildings on the site. In most cases, the primary structures will be the largest structures on the property, and generally were located near the front portion of the lot, closer to the street. Primary structures are generally more ornate with more architectural detail. Examples of primary structures include the main residence, or main commercial building, as opposed to sheds, outhouses, and barns which are secondary structures in most instances.

Secondary Structure: Buildings whose uses were historically ancillary to the primary use of the site. These include storage buildings such as sheds, outhouses and barns, which were typically smaller than the primary structure and usually located at the rear of the lot. These buildings were usually simpler in design than primary structures, were often not painted and were clad in lower quality materials.

Judge Silverthorne House
 lot 23, Snider Addition
 300 N. Main Street

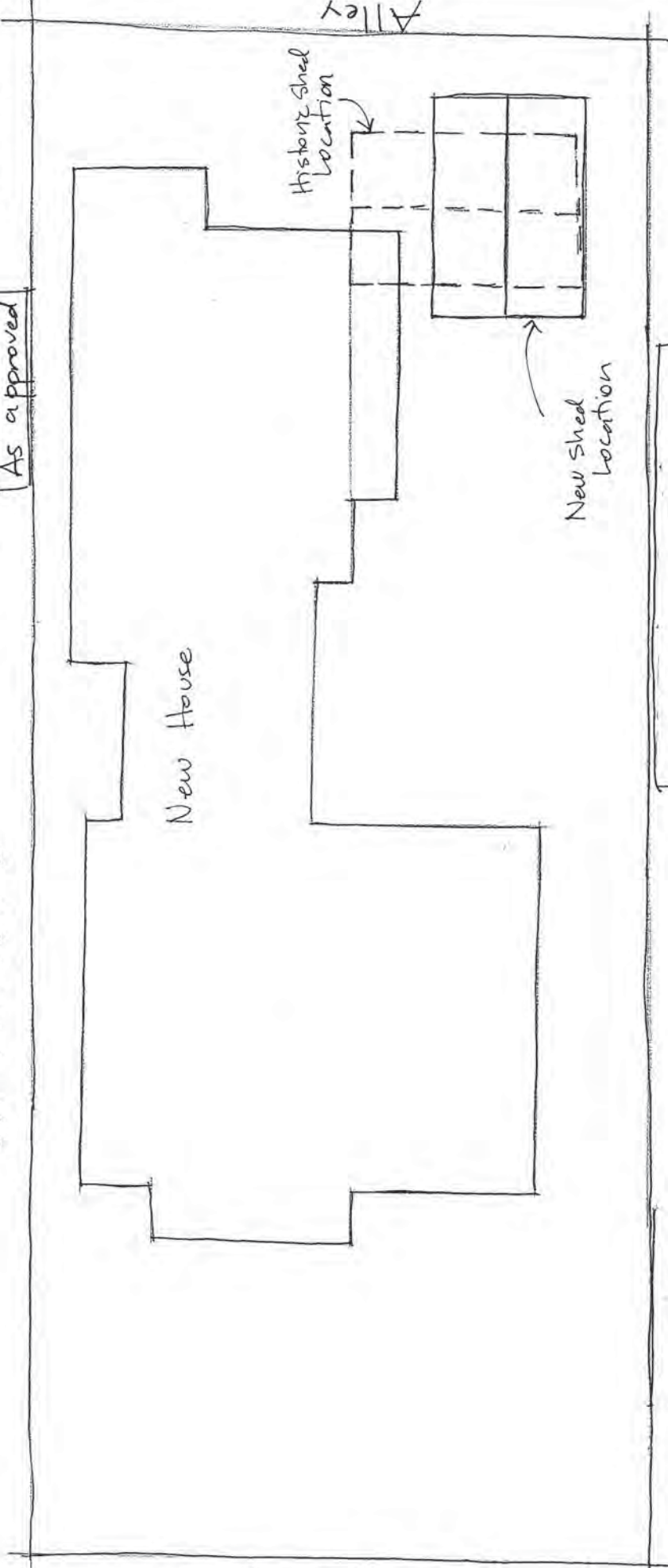
As approved
 - 5 points for moving structures
 + 6 points for Historic Preservation



Lot 3, Block 7, Yingling & Nickles
OFF RESIDENCE

- 5 points for changing shed orientation
+ 6 points for historic preservation

AS approved



- 2 points for changing shed orientation
+ 3 points for restoration of shed
PROPOSED ORDINANCE

S. Havens St.



MEMORANDUM

TO: Mayor and Town Council

FROM: Julia Puester, AICP

DATE: April 1st, 2013 for meeting of April 9th, 2013

SUBJECT: McCain Master Plan: Bubble Diagrams and Direction

At their October 23rd, 2012 meeting, the Town Council directed staff to develop a master plan for the McCain property in order to designate uses and density on the property. The Planning Commission held a public hearing on December 4th and recommended a continuance of the master plan application. At its December 11th work session, the Town Council requested that the McCain Master Plan application be withdrawn from the planning process to allow the Council to further discuss the master plan without it being an active application. The Town Council held a public comment session on the draft Plan at their February 26th meeting.

The Town Council most recently discussed the master plan uses on March 12th directing staff to return with bubble diagrams which display options of how the potential land uses discussed at that meeting might tie together.

Council Comments made March 12th

In brief summary, Council members wanted to see how the following uses would work on the McCain property for the purpose of having a more detailed conversation on land uses:

- Open space on the McCain property creating a gateway to the Town;
- Potential for service commercial uses on the property (allow the existing service commercial and retail leasees to remain for a longer time period);
- Solar garden; and
- Governmental uses including parking, snow storage, water storage, open space, recycling center, water treatment facility.

Future Direction-Land Uses

The bubble diagrams included with this memo are intended to provide examples of how land uses could tie together as governmental uses are further identified in the future. The land uses shown are future needs of the Town which are known to date. The land uses can be modified, combined or relocated to create the Master Plan per Council direction.

Staff has provided a list below of potential pros and cons on the two bubble diagrams to assist the Council with their discussion and consideration.

“South End Parking Plan”

The McCain “South End Parking Plan” designates most governmental uses to the north with the exception of parking and the recycling center. Parking has been located on the south end to facilitate line of sight visibility for visitors. This would make it easy for visitors to find overflow parking and prevent direct backup onto Highway 9 by providing ingress/egress from Coyne Valley Road.

This plan also preserves an area for future service commercial. The area shown as service commercial in this plan is currently home to the existing Alpine Rock batch plant operation. In accordance with the Town’s acquisition negotiations underway, Alpine Rock would remain in operation for another 10-15 years. Once the Alpine Rock operations cease, existing service commercial uses adjacent to Highway 9 on the McCain property could be relocated as well as some additional land designated for future need. Existing uses on site could be grandfathered in their current locations and considered legal nonconforming until the uses have been relocated to the Alpine Rock site.

PROS	CONS
Parking visible to visitors to turn into	Parking visible from roadway
Traffic departing from parking lot off of the highway-reduces highway backup	Special events visible
Special events (i.e. rodeo) visible to visitors	Snow storage located on the north end will increase costs for Public Works
Majority of governmental uses would be screened at the north end of the property	
Preserves the potential for existing and future service commercial in a disturbed area (currently Alpine Rock) which can be screened from the highway.	
Gateway park on highway edge to soften the entrance to the Town and provide limited parking, picnic area, and/or pocket park. This would also provide screening of the service commercial and governmental uses.	

“North End Uses Plan”

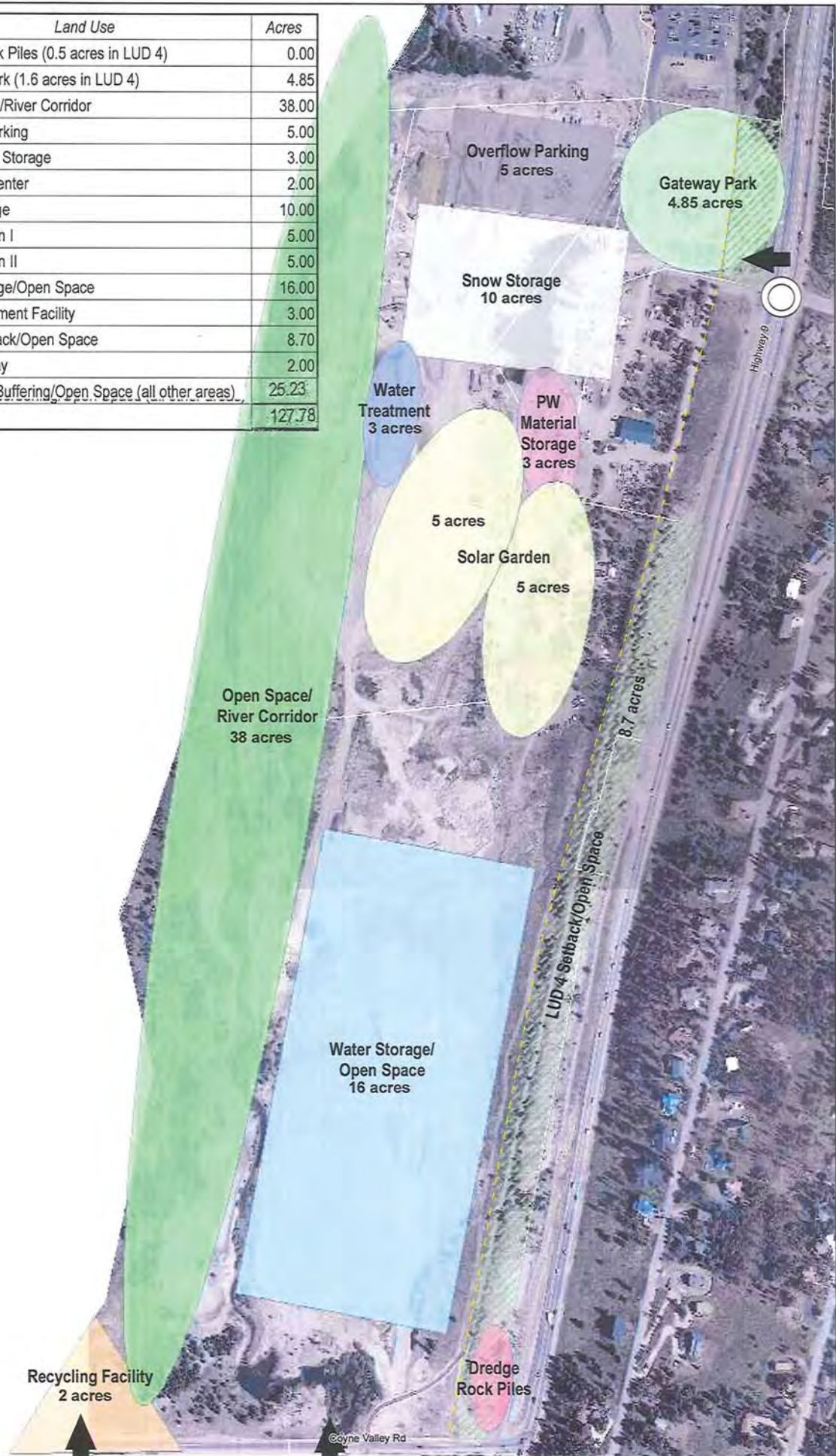
The McCain “North End Uses Plan” concentrates all governmental uses to the north with the exception of the recycling center and eliminates service commercial. Should service commercial be included in the north area of this plan, snow storage could be relocated south of the solar garden. This plan creates more contiguous open space area. However, with the location of parking on the north end of the property, the lot will not be readily visible and may cause issues such as backtracking to the parking lot.

PROS	CONS
Parking not visible from roadway	Parking not visible to visitors driving by which may cause confusion and “U-Turn” movements
Governmental uses confined to north end, high screening ability	Parking located on the north end will increase transit costs with additional distance for the Town and the ski resort to service as well as add to commute time
Additional open space area available	Loss of service commercial (if included into this plan and place snow storage south of solar garden)
Gateway park on highway edge to soften the entrance to the Town and provide limited parking, picnic area, and/or pocket park. This would also provide screening of the governmental uses.	Snow storage located on the north end will increase costs for Public Works

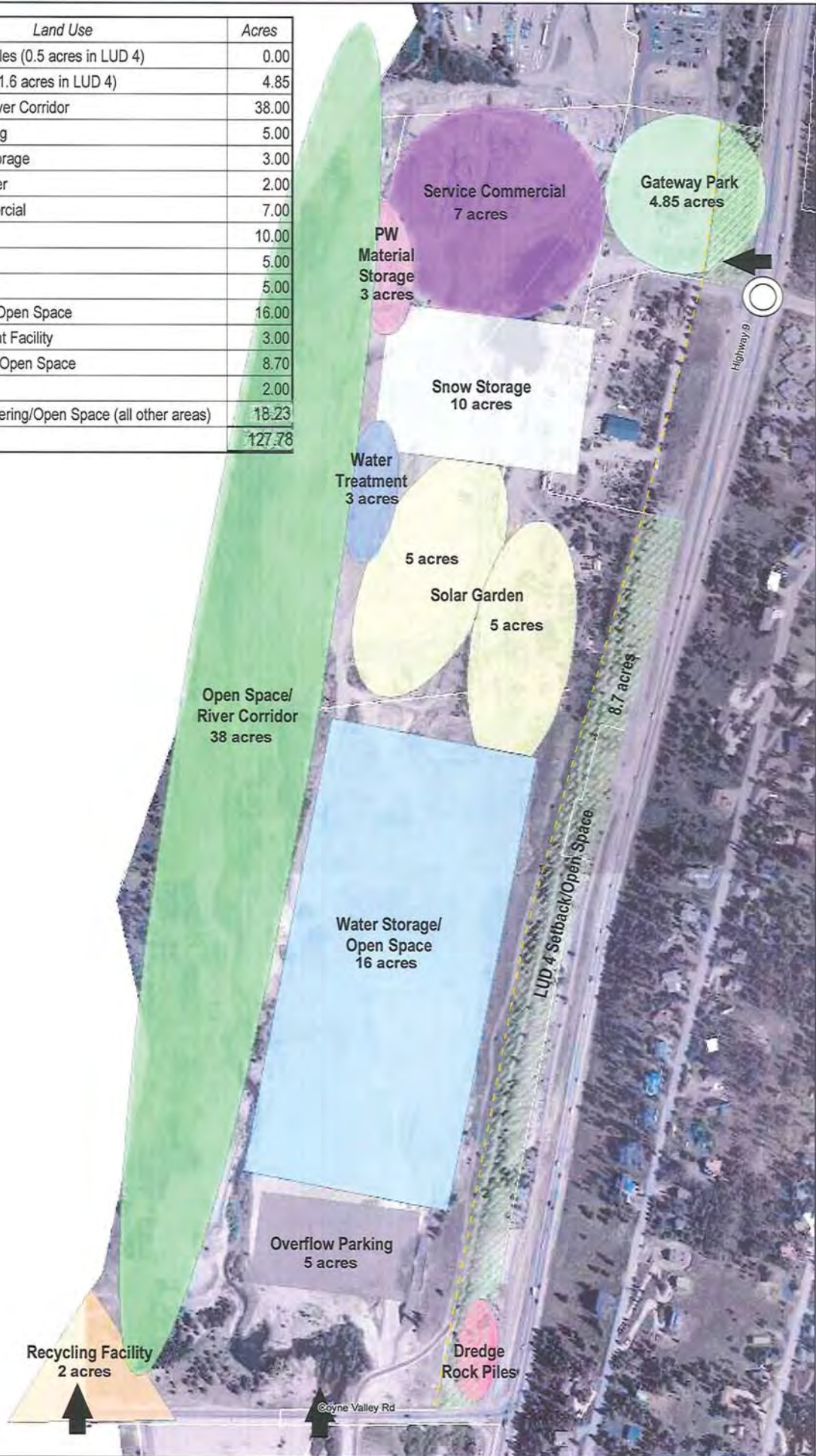
Summary

Staff requests Town Council direction on the land uses and their respective locations for the Master Plan. Staff is prepared to amend the Master Plan at the direction of the Town Council and take the McCain Master Plan through the planning process (including additional public hearings).

Land Use	Acres
Dredge Rock Piles (0.5 acres in LUD 4)	0.00
Gateway Park (1.6 acres in LUD 4)	4.85
Open Space/River Corridor	38.00
Overflow Parking	5.00
PW Material Storage	3.00
Recycling Center	2.00
Snow Storage	10.00
Solar Garden I	5.00
Solar Garden II	5.00
Water Storage/Open Space	16.00
Water Treatment Facility	3.00
LUD 4 Setback/Open Space	8.70
Rights-of-way	2.00
Landscape/Buffering/Open Space (all other areas)	25.23
TOTAL	127.78



Land Use	Acres
Dredge Rock Piles (0.5 acres in LUD 4)	0.00
Gateway Park (1.6 acres in LUD 4)	4.85
Open Space/River Corridor	38.00
Overflow Parking	5.00
PW Material Storage	3.00
Recycling Center	2.00
Service Commercial	7.00
Snow Storage	10.00
Solar Garden I	5.00
Solar Garden II	5.00
Water Storage/Open Space	16.00
Water Treatment Facility	3.00
LUD 4 Setback/Open Space	8.70
Rights-of-way	2.00
Landscape/Buffering/Open Space (all other areas)	18.23
TOTAL	127.78



Memorandum

To: Town Council
From: Peter Grosshuesch, Jennifer Cram
Subject:: Backstage Theatre
Date: April 2, 2013

On March 12th staff presented the highlights of the Backstage Theatre's vision and a wish list for organizational and venue improvements to help fulfill their vision. The priority list for venue improvements is noted below.

Venue Improvements

1. Addition of dressing room/shower (allows for equity actor status) and possible storage below this dressing room.
2. Relocation of lighting tails and dimmer racks to the back of existing theatre addition.
3. Removal of existing soffit (provides additional height to existing back of stage enabling more set movement flexibility)
4. Raise roof at last bay over stage area (Priority 4B Anderson Hallas)
5. HVAC Improvements to better balance with heating and cooling (this is currently the source of their most frequent patron complaints).
6. to 9.
Expand the stage area both to the south and with additional height
Move sprinkler valve room
Additional storage
Set construction/rehearsal space/ lobby improvements
- 10 Additional seating

Anderson Hallas considered a few scenarios to achieve the improvements in various phases of development. In summary, all of the improvements could be achieved with a small addition to the northwest and a larger addition to the south for the cost of approximately \$1.3 million.

On March 12th the Council asked staff to further look at what it would cost to demolish the existing structure and build a new one that provides all of the amenities for a successful theatre.

Staff worked with Anderson Hallas again to examine the probable cost of a new theatre in the existing location assuming a footprint of approximately 5,800 square feet. On March 26th staff brought back to the Council a budget analysis for a new theatre. Assuming a cost per square foot of \$350 on the low end and \$475 in the middle, the approximate cost for a new 5,800 square foot theatre is between \$2.283 and \$3.130 million.

Both of the staff memos from March 12th and March 26th are attached for further reference.

Now that the Council has had the opportunity to digest the options for improvement/redevelopment to the Breckenridge Theatre, staff would appreciate some feedback as to how the Council would like to proceed or do you require further information?

Memorandum

To: Town Council
From: Peter Grosshuesch, Jennifer Cram
Subject:: Backstage Theatre
Date: January 30, 2013

The Backstage Theatre has voiced their desire to be the anchor tenant in the growing Arts District, and has articulated their vision for the future growth of the organization. They are seeking support from the Town to expand and upgrade the Breckenridge Theatre building. They see this as “a vital and necessary step for the continued evolution of the Backstage Theatre from its beginnings as an enthusiastic but amateur theatre company into a professional theatrical organization capable of drawing both audience and casts from throughout the Rocky Mountain region”. Town staff has been working with representatives of the Backstage to understand how that vision translates into benefits for the community and to assess their stated facility needs to accommodate that vision.

At the core of their vision, the Backstage Theatre would like to position themselves to put on the type and quality of shows that will attract more patrons, and to better accommodate changing audience preferences. In their current business model, they are limited to non-professional actors, and single set productions. In a memo from the Backstage Theatre they state, “It has become apparent that the current conditions cannot sustain the Backstage Theatre to achieve its vision. The Theatre has reached a plateau and without much needed improvements, it cannot attract profitable programming, cannot increase attendance, cannot realize more funding and simply will not thrive”. Their plan to realize those expanded capabilities involves a number of organizational changes and a number of improvements to their current venue, at the Breckenridge Theatre.

Organizational Changes

1. Hire an Executive Director (ED), thereby allowing the Artistic Director to focus on the artistic quality of their programming. The ED would manage the day to day operations, market the productions, write grant applications and raise funds for the organization, etc.
2. Create a Leadership Council working alongside the ED, who will develop a long term strategic plan and increase fundraising.
3. Limit the current high turnover of board members.
4. Change the name of the organization to the “Breckenridge Backstage Theatre”.

We have discussed their vision and related organizational changes with Duncan Webb and others in the field, as well as with the Public Art Commission. The evolution of the organization along the lines of their vision generally seems to be logical, although there were some questions about market acceptance for a professional company, and whether the talent base would get them there. The Leadership Council was thought by Duncan Webb to be a particularly good idea.

Venue Improvements

We have asked the Backstage Theatre to prioritize their list of improvements to the Breckenridge Theatre noted below.

1. Addition of dressing room/shower (allows for equity actor status) and possible storage below this dressing room.
2. Relocation of lighting tails and dimmer racks to the back of existing theatre addition.
3. Removal of existing soffit (provides additional height to existing back of stage enabling more set movement flexibility)
4. Raise roof at last bay over stage area (Priority 4B Anderson Hallas)
5. HVAC Improvements to better balance with heating and cooling (this is currently the source of their most frequent patron complaints).
6. to 9.
 - Expand the stage area both to the south and with additional height
 - Move sprinkler valve room
 - Additional storage
 - Set construction/rehearsal space/ lobby improvements
- 10 Additional seating

In addition to these priority items, other improvements were identified by Backstage and the Architect as desirable, but not of the highest priority. This includes adding fire sprinkler system to the west, replacing electrical service with 600 amp, provide leak detection at the new sink, and replace backflow preventer at the new sink. The Backstage Theatre also currently has a grant from the Summit Foundation to raise and replace the stage floor, which is a priority and would logically happen with the other improvements.

Backstage Theatre representatives have provided the following discussion regarding the improvements and how they will enable the realization of their vision plan.

*Currently the Backstage Theatre is unable to regularly cast Equity actors because Equity regulations require a **shower** to be available for their members. In addition, the size of the current **dressing rooms** (8' x 5' each) severely limits cast sizes. These two restrictions limit the type of productions the Backstage is able to perform.*

*Audience studies, both national and regional, show that musical plays are the most popular performing art form (24.5 % of adults who attend performing arts events attend musicals vs 15.6% for classical music). Musicals demand not only the highest quality performers but also larger casts. The addition of the **dressing room/shower** to the Breckenridge Theatre Annex will enable the Backstage to regularly add musicals to its repertory, to add Equity actors to its casts, to increase both its audience numbers and its ticket sales, and to more fully utilize the potential of the Breckenridge Theatre.*

*There is no **support structure surrounding the stage**. The most serious limitation this imposes is that the Backstage is limited to producing plays that demand only one set, for without fly space above or wing space to the side, there is no place to store a second set. It also prevents the*

Backstage from presenting plays in repertory,(i.e. plays running concurrently). Adding wings and flyspace would also give the Theatre desperately needed room to construct future sets and props while a current production is occupying the stage. Doing either of these modifications would greatly enhance the technical capabilities of the Breckenridge Theatre, enabling the Backstage to increase the types of plays it is able to produce, to give its audiences a richer, more professional theatre experience, and to increase audience numbers and ticket revenue accordingly.

*The current layout of the Breckenridge Theatre dictates that not only performances, but rehearsals and set construction take place on stage. There is no other space. Adding **space for set construction and rehearsals** would reduce the time the Theatre is dark,(i.e. closed while a previous production's set is removed and the next production's set is constructed or installed) and allow the cast to rehearse with the actual set they will be performing on. The Theatre is currently dark often 10 days to 2 weeks between major productions. In the busy winter and summer seasons, that means a minimum of 3 lost performances or, at current ticket prices, a minimum of \$5000 in lost revenue every time a production is changed. Adding set construction/rehearsal space to the Breckenridge Theatre would reduce the Backstage's reliance on supplemental income as well as provide more performance nights for both locals and visitors to enjoy.*

*An **expanded lobby** space will allow for better audience flow at theatrical events and gallery receptions. It will provide increased flexibility for staging space for art work and silent auction items for fundraisers.*

According to Duncan Webb, the proposed improvements also seemed to be in line with the Backstage's vision and thought to be a logical progression.

Previous Improvements

Over the years, since the purchase and initial renovation of the venue in 2002, the Backstage organization has funded a number of improvements including: finishing the control booth and stage area, installation of lighting, sound, special effects equipment, and stage curtains at a cost of over \$30,000. In 2004, they self funded and built the theatre annex to house dressing rooms and storage at a cost of \$102,000. In 2007 they funded the replacement of the original seating at a cost of more than \$6,000.

Architect's Cost Opinion/Feasibility Analysis of the Breckenridge Theatre Improvements

Anderson Hallas, our architects for the Arts District, have reviewed the list of venue improvements so we might better understand the feasibility and magnitude of those upgrades. A complete list of cost estimates for both the highest priority improvements as well as additional desirable improvements is attached as an Exhibit to this memo. Please note that the priority ranking has changed since Anderson Hallas prepared their cost estimates, so please refer to the improvement description on the attached Exhibit as opposed to the ranking. The estimated total for all the requested improvements comes to \$1,301,902 (assuming Backstage's preferred 2014 construction start). It is important to note that these are in "order of magnitude cost estimates" and actual costs may vary when more specific design details are completed. There are a number of potential cost items that were not included in these estimates such as surveying, geotechnical, site work, special inspections, and asbestos abatement. These estimates are based on each of these improvements being stand alone tasks. Economies of scales could be realized if they were combined.

In addition to the cost estimates Anderson Hallas also evaluated the feasibility of the requested improvements with sketches to illustrate how the improvements could be accommodated. The majority of the improvements could be accommodated within the existing structure with an interior remodel. However, there are requested improvements that would require alteration to the exterior and/or additions to the building. These include 1) the addition of a dressing room/shower to the north 2) the request to raise the roof bay which would require a significant modification to the roof and 3) the expanded stage, additional storage, additional set construction/rehearsal space, lobby improvements, and increased seating which would require additional square footage that could be accommodated with an addition to the south. A copy of the program sketch for the south addition is included for reference. It should be noted that any addition to the south would require a connector that meets the Historic District Guidelines, as the existing structure exceeds the allowed module size in the South End Residential Character Area. The program sketch attached show a partial connector on the east side, some modifications would be needed to meet the Historic District Guidelines.

Financial Plan – 5 Year and 10 Year Projections (the following information was provided in unedited fashion from the Backstage Theatre)

Based on nearly 40 years of operating history, our financial plan reflects intimate knowledge of our market, long experience with the variety of costs involved with running a successful theatre, and realistic expectations of future revenues.

Important Assumptions:

- *For both the 5 year and the 10 year projections, we are assuming the completion of the 12 point priority list. We also assume that the Backstage will hire a full-time Executive Director, among whose responsibilities will be grant writing, fund raising and program ad sales.*
- *For the 5 and 10 year projections, we are assuming we will produce 7 plays, each with an average of 4 Equity cast members. In addition, we assume the ability to perform the summer season of 9 weeks with three plays in repertory, offering 6 performances/week. The winter season will consist of 4 plays, performed 3 times per week.*
- *For the 5 year projection, we are projecting our attendance will remain at our current level of 70% capacity, however, with the completion of the 12 point priority list*, our seating capacity will have grown to 150 seats. We project an average ticket price of \$29. This is a 30% increase from current ticket prices, which we feel is supported by the Webb 2012 Assessment's finding that performing arts audiences are increasingly willing to pay a premium for outstanding performances. (***The 10 point list noted in the memo above captures the 12 points noted above. It should be noted that additional seating has consistently been a low priority. Based on the architect's program sketches, 50 additional seats is not possible with the existing building, thus some revenue projections may change.**)*
- *For the 10 year projection, we assume an average ticket price of \$34. We also assume a modest growth in attendance to 75% capacity.*

- We assume that, in the short run, the past distribution of visitors between winter and summer seasons will continue, i.e. the largest number of visitors in the winter, with, however, a greater interest in performing arts attendance in the summer.
- We assume only a slow growth in both the national and the local economies, and therefore we are expecting very little inflation in operating costs.

	2011 - 2012	2016-2017	2021-2022
Income			
Production Income	\$ 143,754.00	\$ 302,000.00	\$ 377,000.00
Riverwalk	\$ 23,900.00	\$ 27,000.00	\$ 30,000.00
Children's Theatre/Kidsplay	\$ 9,077.00	\$ 10,000.00	\$ 12,000.00
Concessions	\$ 11,644.00	\$ 13,000.00	\$ 15,000.00
Donations, Grants, Sponsors, Ads	\$ 62,328.00	\$ 150,227.00	\$ 151,200.00
Total Income	\$ 250,703.00	\$ 502,227.00	\$ 585,200.00
Expenses			
Artistic Director	\$ 49,450.00	\$ 60,000.00	\$ 65,000.00
Executive Director		\$ 60,000.00	\$ 65,000.00
Other Staff	\$ 27,518.00	\$ 30,000.00	\$ 33,000.00
Payroll Taxes	\$ 5,181.00	\$ 11,475.00	\$ 12,500.00
Fund Raising	\$ 3,790.00	\$ 15,000.00	\$ 20,000.00
Concession Costs	\$ 4,514.00	\$ 5,040.00	\$ 5,700.00
Credit Card Costs	\$ 11,957.00	\$ 18,000.00	\$ 20,000.00
All Other General Expenses	\$ 33,439.00	\$ 36,000.00	\$ 43,000.00
Equity Actors		\$ 145,712.00	\$ 168,000.00
All Other Cast & Crew	\$ 53,885.00	\$ 40,000.00	\$ 60,000.00
Royalties	\$ 9,792.00	\$ 15,000.00	\$ 16,000.00
Sets, Costumes, Advertising, misc	\$ 54,412.00	\$ 60,000.00	\$ 70,000.00
Equipment Purchases	\$ 6,000.00	\$ 6,000.00	\$ 7,000.00
Total Expenses	\$ 259,938.00	\$ 502,227.00	\$ 585,200.00

Summary

Staff will be available at the March 12th worksession to answer questions. We look forward to your input on the Breckenridge Theatre's financial plan and on their vision as an anchor in the Arts District. We would also like your feedback regarding the venue improvements requested by the BackstageTheatre, specifically:

- Does the Council support making improvements to the Breckenridge Theatre in concept?
- Does the Council support these improvements with the idea that the Backstage Theatre would partner with the Town on a capital campaign to raise funds for the improvements?

- Does the Council believe that the improvements add value to the existing facility and therefore should be part of a future Town CIP project?

The Council's input on these venue improvements will also assist staff in moving forward with the Arts District Site Plan, because an addition (or lack of addition) to the Breckenridge Theatre has implications for the Arts District site plan.

EXHIBIT A- Magnitude of Cost

Breckenridge Arts District Theater Feasibility Priority Estimate (1)

Anderson Hallas Architects/ Spectrum General Contracting

2/25/2013

Priority Description	Construction Costs (2) Direct	Design Contingency (a.k.a Unknowns)		A/E Fees 12%	Subtotal	Owner Contingency 10%	2013		2014	
		20%					Subtotal	Inflation 4%	Subtotal	Inflation (4) 2%
#1 New Restrooms/Dressing Room	\$92,961	\$18,592		\$13,386	\$124,940	\$12,494	\$137,434	\$142,931	\$145,790	
#1A Add Alternate for Fire Sprinkler West Addition	\$8,231	\$1,646		\$1,185	\$11,062	\$1,106	\$12,169	\$12,655	\$12,909	
#2 Add Alternate Relocate Dimmer Racks	\$9,211	\$1,842		\$1,326	\$12,380	\$1,238	\$13,618	\$14,152	\$14,445	
#2A Replace Electrical Service	\$36,362	\$7,272		\$5,236	\$48,871	\$4,887	\$53,758	\$55,908	\$57,026	
#3A Replace Utility Sink and Hot Water Heater	\$7,942	\$1,588		\$1,144	\$10,674	\$1,067	\$11,741	\$12,211	\$12,455	
#3B Provide Leak Detection	\$3,362	\$672		\$484	\$4,519	\$452	\$4,970	\$5,189	\$5,273	
#3C Back flow Prevention Device	\$10,312	\$2,062		\$1,485	\$13,859	\$1,386	\$15,245	\$15,855	\$16,172	
#4A Remove Soffits, Move Pipes, Add Grid	\$48,008	\$9,602		\$6,913	\$64,523	\$6,452	\$70,975	\$73,814	\$75,290	
#4B Raise bay Add to 4A	\$89,700	\$17,940		\$12,917	\$120,557	\$12,056	\$132,612	\$137,917	\$140,675	
#5 HVAC Improvements	\$1,440	\$288		\$207	\$1,935	\$194	\$2,129	\$2,214	\$2,258	
#6 Replace and Raise Stage Floor	\$15,087	\$3,017		\$2,173	\$20,277	\$2,028	\$22,305	\$23,197	\$23,661	
#7-9 South Addition	\$405,040	\$81,008		\$58,326	\$544,374	\$54,437	\$598,811	\$622,764	\$635,219	
#10 Shed Roof Addition	\$102,487	\$20,497		\$14,758	\$137,743	\$13,774	\$151,517	\$157,577	\$160,729	
TOTALS	\$830,143	\$166,029		\$119,541	\$1,115,712	\$111,571	\$1,227,283	\$1,276,375	\$1,301,902 (3)	

Footnotes

General: These costs were developed using the draft version of the Theatre Feasibility Report dated 2/5/13 and the additional Priority #10 sketch dated 2/20/13.

1. This is an Order of Magnitude Cost Estimate only and actual costs may vary from this estimate.
2. Prior to commencing work, a thorough building investigation and documentation to verify existing conditions, a full code analysis and design work all are necessary.
3. Additional Project Costs needed should be determined with Town input.
4. Assumes an 8/2014 Construction start.
5. Items excluded from these costs are: Surveying, Geotechnical, Site work, Special Inspections, Dewatering, etc.
6. Abatement is excluded but from these costs. Additional survey work is needed for a cost of +/- \$5650 to sample suspect material to provide an abatement estimate.
7. Estimating is based on stand alone projects (unless noted as an alternate), economies of scale would occur if the priorities can be grouped together.

Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: April 3, 2013
RE: Breckenridge Theater

At the last Town Council meeting the Council was considering the request by the Back Stage Theater for some improvements to the Breckenridge Theater which totaled approximately \$1.3M. The Council wanted to know what a new building would cost before you made a decision.

Staff spoke to Anderson Hallas who is the Architect on the Arts District about what theaters costs. After they spoke to their colleagues in the industry they said that the cost per square foot would range between \$350/sf for a basic theater to as much as \$600/ sf for an elaborate theater. Staff will assume a range of \$350/sf to \$475/sf. The addition to the theater would have created a total of 5,800 sf of space. We have estimated the costs below if we build a new building at the same square footage:

	Range	
	\$350/sf	\$475/sf
Construction	\$ 2,030,000	\$ 2,755,000
Design	\$ 203,000	\$ 275,500
Demolition	\$ 50,000	\$ 100,000
Total	\$ 2,283,000	\$ 3,130,500

These estimates are very preliminary and are intended to give the Council a magnitude of costs.



TO: Town Council
FROM: Mike Barney, Director of Recreation
CC: Tim Gagen, Rick Holman
DATE: 3-26-13
SUBJECT: Status of Existing and Possible Recreation Sites in Breckenridge

Introduction

As part of our long-range planning, the Recreation Department has been conducting a children's playground assessment for the Town, which given the timing of the Council's desire to have an in-Town open space discussion seemed appropriate given any possible overlap. Staff feels that adult outdoor recreational needs are adequately addressed at this time through our expansive open space and trail system, public tennis courts, ball fields, recreation center programs, and ice rink. This report will focus on the Town's current inventory of children's recreation sites, both formal playgrounds and open play areas, assessing whether they are in the right location and of adequate size and quality. This report will also assess our future need for children's recreation sites based on *neighborhood demographics*, *activity corridors*, and *community master plans* and will identify possible sites where either additional playgrounds or open play areas may be developed. For the purposes of this report, we will be looking at the following two types of recreation spaces as defined below:

- Active - those spaces with some physical play structure type of equipment or playground
- Passive - those spaces with a lawn or open space suitable for a game of catch or just running around

Current Inventory

This section of the MEMO will identify the existing playgrounds (active recreation space) as well as open play areas (passive recreation space) located in Town. It will also provide an evaluation of these spaces and describe if the spaces are adequate in location, design, and function based on the characteristics of neighborhood demographics, activity corridors, and community master plans as described above. See attached map titled "Current Inventory" for locations that correspond with the number preceding each site included below.

1 - Upper Blue Elementary

This playground is located on the grounds of the school and is available to the public when school is not in session. It is a high quality modern playground with a variety of elements that appeal to children between the ages of 5-12. Serving primarily the students of the school, it is also used at times by families residing near the school as well as families utilizing the ball fields

at the school. It does not appear to be a destination that is frequently utilized by visitors / guests to Town. This site also includes significant passive recreation space. The site sits near the Blue River and recreation path, which is one of the primary pedestrian corridors through Town. The site, in combination with amenities at nearby Kingdom Park, provides an adequate level of both active and passive play opportunities for residents in the existing Valley Brook neighborhood as well as future neighborhood expansion, and other residences along Airport Road.

2 - Valley Brook

This playground is located within the Valley Brook neighborhood on a designated HOA park space and is maintained by the Town. It is a small tot lot type space with a small playground suitable for children between the ages of 2-5. There is no passive recreation space at this site though there is an abundance of passive recreation space in very close proximity both at Upper Blue Elementary and Kingdom Park. The playground meets the needs of Valley Brook residents with small children and provides a convenient semi-private active recreation space. Due to Valley Brook's proximity to Upper Blue Elementary, families with children between the ages of 6-12 have the option of utilizing that playground or the playground in Kingdom Park.

3 - Kingdom Park

This playground is located within Kingdom Park and is situated to the east of the south softball field. The playground is approximately 18 years old and is in fair condition for its age. It consists of a series of platforms connected by climbers and bridges and includes a slide, monkey bars, and sliding pole. Though positioned between the rec path and the recreation center parking lot, the playground is not visible from either location and receives little public use. It is substantially enclosed by surrounding trees and a retaining wall and offers little room for parents to socialize and monitor their child's play. Because of its hidden nature, parents are unable to do anything else within the park while still being able to see their child on the playground. The playground is used by the summer day camp program as an activity option for youth and occasionally during the adult softball season by children of participants in the league. It is a fairly simple playground that lacks appeal and as a result, the day camp program often takes campers to Rainbow Park in Silverthorne. The playground is severely insufficient in size and quality and is poorly located within a major destination for residents and visitors / guests. This site also includes significant passive recreation space (ball fields and multi-pitch) and other active recreation space (basketball court, tennis courts, skatepark) which serves residents living in the surrounding area.

4 - Carter Park / Breckenridge Elementary

This playground is located on the grounds of Breckenridge Elementary and is available to the public when school is not in session. It is a high quality modern playground with a variety of elements that appeal to children between the ages of 5-12. In addition to serving the students of the school, it is also used by families residing near the school as well as families utilizing the ball field at the school. In addition, the playground is heavily used by visitors to Carter Park and is recognized as a destination playground for residents and visitors / guests looking for a location

to take their children to play. The playground is well located and serves an important need for families residing in the surrounding neighborhoods including Weisshorn, Town Core, Lower Four Seasons, and Breck South. This site also includes significant passive recreation space (ball field and multi-pitch) and other active recreation space (sand volleyball courts, tennis courts), presenting a recreation site that adequately meets the needs of those surrounding residences.

5 - Rotary Snow Plow Park

This playground will be installed in the spring / early summer of 2013. It will be a high quality and unique custom designed and built train / mining themed playground featuring a train with climbers and other play components, tower structure with slide and climbing net, mining car spring rockers, and other elements and will be appropriate for children aged 2-12. This will be an attractive playground for residents as well as guests / visitors to Town and will very likely become a destination type attraction. The playground will provide residents of surrounding housing units an additional neighborhood playground and will also serve the Warrior's Mark neighborhood located west of the site. This site will not offer significant passive recreation space, though Carter Park, Town trails, and the pump track are in close proximity.

6 - Vista Point Park

This playground is located adjacent to Little Red Daycare Center and consists of swings, slides, climbers, and other features. It is a high quality playground that appeals to children between the ages of 2-12. The playground is maintained by the Town. The playground serves the students of Little Red as well as residents of Vista Point and the Wellington Neighborhoods, two of the largest neighborhoods in Breckenridge that have a high number of families with children. The site also includes a basketball court and passive recreation space. The playground does not appear to be a frequently used destination for guests / visitors to Town.

7 - Blue River Plaza /Riverwalk Center

The Blue River Plaza and the Riverwalk Center, situated along the heaviest used pedestrian corridor in Town, contain both active and passive recreation space. The active recreation space consists of a public art installation in the Blue River Plaza that doubles as a small playground and provides children limited play opportunities. The play structures are appropriate for children between the ages of 2-5. The passive recreation space consists of the Riverwalk lawn, just west of the Blue River Plaza. This lawn is a large open grassy area that is heavily used during the summer season for picnicking and events, and is complimented by its proximity to the Blue River which provides additional passive recreational opportunities. The lawn and playground are heavily used by guests / visitors and these two sites combined are the most popular summer gathering spot in Town. These sites also provide surrounding residences with needed recreational amenities.

Possible Future Recreation Spaces

This section of the MEMO will provide an analysis of the Town's future need for recreational spaces based on the perspectives of neighborhood demographics, activity corridors, and community master plans. It is intended to identify potential sites that may be appropriate for future improvements / enhancements as well as provide justification for not pursuing improvements / enhancements in areas of Town. See the attached map titled "Possible Future Recreation Spaces" for locations of these sites.

A) Riverwalk Center

As consultants are currently engaged in redesigning the Riverwalk Center and its surrounding spaces, there is a great opportunity to assess the benefits of including active recreation spaces to complement the existing passive recreation space. Knowing that the Riverwalk Center, its lawn, and the length of the Blue River it parallels is already the greatest natural gathering area for visitors to Town and the most significant activity corridor, adding active recreation elements could significantly enhance that visitor experience and present greater opportunities to keep guests / visitors within the core of town. The Town may want to consider enhancing the active recreation amenities at this site in the future.

B) Harris Street Building / Library Complex

As the Harris Street Building is renovated and begins to become a hub of community activity in the near future, we may want to consider adding active recreation elements near the building, though most of the adjacent area is public parking.

C) Breckenridge Nordic Center / Peak 8 Neighborhood

Though the evaluation criteria do not appear to warrant the development of active or passive recreation space in the Peak 8 Neighborhood, there is a possibility to add active recreation space at the site of the Breckenridge Nordic Center if the Town wanted to look at this in the future. Given the lack of demand in this area, we would recommend a very low priority here, if at all.

D) Wellington Neighborhood

The master plan for the Phase III development of the Wellington Neighborhood identifies several areas for the location of active and / or passive recreation spaces in the neighborhood and where the greatest concentration of families with small children are. Although the existing Vista Point Park, which contains both active and passive recreation space is nearby, staff believe that the number of families with small children residing in both Vista Point and the Wellington warrant their own respective parks and supports the master planned spaces.

E) Downtown Core Open Space

The Council's pending review of potential open space properties in the core of Town presents an opportunity for passive recreational space in this area. These would primarily benefit visitors in Town.

F) Block 11 Master Plan

The Block 11 and Blue River Corridor Master Plans contain a variety of identified park sites to be developed including River Eddy Park, Upper Blue Park, Overlook Park, Oxbow Park, and Tailings Sculpture Park. While not all of these sites will or should contain active recreation spaces, there will be many options to add amenities to meet identified needs. As this area develops into workforce housing we would anticipate demand similar to the Wellington and Vista Point neighborhoods.

G) Warrior's Mark Open Space Park

This site consists of an undeveloped open natural grassy area within the Warrior's Mark neighborhood. It is currently owned and maintained by the Warrior's Mark HOA and is commonly used as an informal off-leash dog park for local residents. It has the potential for development as a formal park site that could contain both active and passive recreation spaces. Due to the current demographics of the Warrior's Mark neighborhood however, staff do not feel that there is a sufficient need to develop a formal park at this site at this time. The neighborhood primarily consists of retirees, 2nd home owners, short term renters, and young professionals. The absence of a significant number of families with small children suggest that a playground at this location may not be needed at this time, though neighborhood demographics should be monitored for changes which may present a need for active and / or passive recreation space in the future. The upcoming installation of the playground at the Rotary Snow Plow Park is within close proximity to Warrior's Mark and will serve individuals residing in that community.

H) Highlands Neighborhood

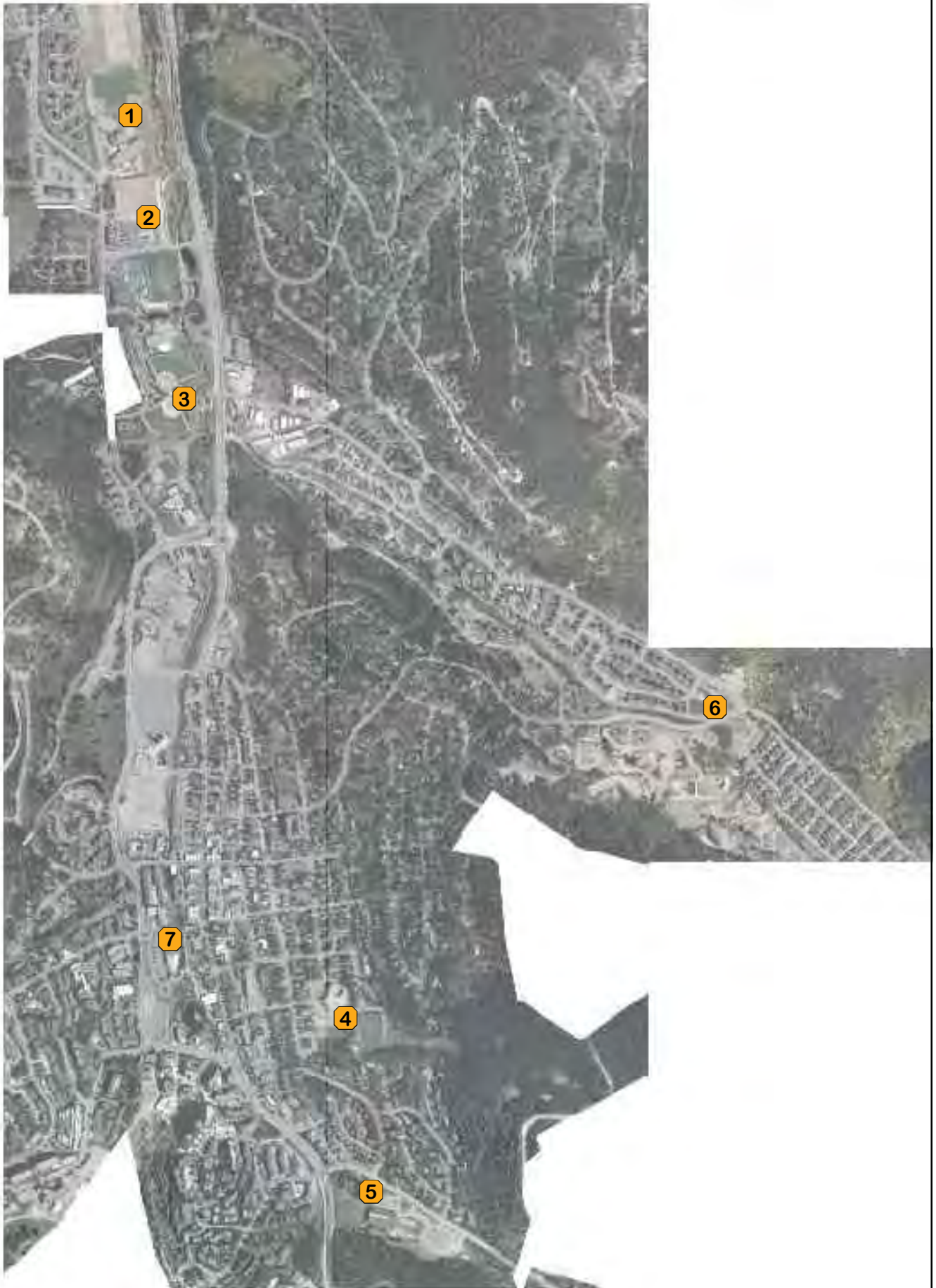
Due to the current neighborhood demographics in the Highlands, staff does not feel there is a need for active or passive recreation spaces to be explored at this time. This neighborhood does contain a large area of public and private open space along with great access to the Town trails.

I) Kingdom Park

The playground should be dismantled and either relocated to an area in the park that is clearly visible from many vantage points both within and from outside the park or done away with if the thought is other playgrounds like Upper Blue or the future Block 11 would better serve the community. Kingdom Park is not only situated along the recreation path, which is a major activity corridor, it is a destination for both residents and guests / visitors throughout the year, hosting a large variety of amenities, activities, and special events. As one of the major activity zones in Town, the replacement and relocation of the playground would be the main reason for relocating it in the park.

Summary and Conclusion

The Town of Breckenridge is well known for its expansive natural environment that attracts visitors from around the world to come and play in our mountains. For those looking to ski, bike, hike, climb, or engage in the many other outdoor offerings available, we seem to have it all. The Town should not however, become complacent in balancing our open space with the need for additional recreational amenities and spaces such as playgrounds and multi-use grass areas where a child can play a pick-up game of soccer with friends or play catch with mom. Fortunately, the Town does currently have a fair inventory of both active and passive recreation spaces for children, though there are opportunities to enhance the system in specific areas based on the neighborhood demographics, activity corridors, and community master plans. We see this specifically in the French Gulch and Block 11 areas of Town as well as the core downtown area, though there are other opportunities as well that may warrant action now or in the future. I will be available at the council meeting on April 9th to address any questions you may have regarding this MEMO and look forward to working with you to further enhance the quality of life that we establish for our residents and the quality of experience for our guests and visitors.



Current Inventory

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.





**Possible Future
Recreation Spaces**



MEMORANDUM

TO: Town Council
FROM: Scott Reid, Open Space & Trails Planner
DATE: April 9, 2013
SUBJECT: Breckenridge Open Space Advisory Commission (BOSAC) Vacancies

Attached, please find four application letters for BOSAC positions. There are three vacancies for terms from April 2013 through March 2015.

Current terms that are up include Jeff Carlson, Jeff Cospolich and Erin Hunter. Jeff Carlson and Jeff Cospolich have reapplied, and we also have received new applications from Jeff Westcott and Craig Campbell.

Suggested interview questions and a ballot have been included in a separate email to the Town Council.



April 2, 2013

Mr. Scott Reid
Town of Breckenridge Open Space
PO Box 168
Breckenridge, CO. 80424

Re: Bosac Letter of Interest

Scott,

I have an intrinsic desire to be involved in the preservation of our natural environment. I believe a healthy, viable and sustainable community begins with responsible stewardship of our natural resources. My favorite statement regarding sustainability and our natural environment is from the United Nations DESA resolution from 1987 that states: "meeting the needs of the present without compromising the ability of future generations to meet their own needs."

This statement embodies the sentiment that I hold true to my core values.

I have been a Summit County resident for 13 years. I now live in Breckenridge Town limits at 1104 Bright Hope. My wife, Emily and I are both business owners within town limits as well. We have two children, our daughter Victoria attends Breckenridge Montessori and our son Jackson attends Upper Blue Elementary.

I have been a builder for 12 years and for the last 4 years I have focused on Energy Star construction methods in order to improve energy efficiency in the projects I build. I am currently enrolled in the Professional Sustainability Certificate Program that is offered through the CU Boulder campus and I expect to complete the coursework over the next two months in order to achieve my certification.

I also currently serve as Vice Chair on the Countywide Planning Commission and previously served as a Board of Director for the Summit County Builders Association for over 5 years.

I attend various Town Council meetings and Planning Commission meetings as appropriate and I am familiar with proper protocols for these meetings.

I have been an environmentalist since I was a child and have been a Guardian Member of the Sierra Club for nearly two decades.

I am an outdoor enthusiast that enjoys mountain biking, hiking and camping with my family. I also have a passion for skiing.

I would like an opportunity to serve on the Breckenridge Open Space Advisory Commission both as an opportunity to give back to a community I care deeply about as well as an opportunity to be engaged and learn from those around me. I would serve on this committee with my full energy and commitment, as the tasks require. Please feel free to contact me with any questions via email craig@summitsustainablebuilding.com or by phone at 970-389-2848.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig H. Campbell".

Craig H. Campbell

To Whom It May Concern,

I am writing this letter to express my interest in continuing to serve on The Breckenridge Open Space Advisory Commission. I am currently finishing my first term and second year on the commission and it has been a learning experience every step of the way. It took a little time to get up to speed the first year, but I was fortunate enough to work along side and learn from long time members Dennis Kuhn and Scott Yule, not only of the inner workings, but the passion, and dedication it takes to serve your community. I have also enjoyed working with both of our assigned Town Council members while they sat with us for a year each. Mike and Ben's insight and points of view proved helpful throughout their time on the commission and I look forward to the opportunity to sit with the next BOSAC assigned council member.

The time I've already spent on this commission has been extremely rewarding and educational, but I know if I am given the chance to serve for another term and hopefully beyond, that I will continue to learn and be an even more involved and educated member of BOSAC. I believe that I am just starting to hit my stride and I ask that you give me the chance to continue to do so. Thank you for your time and consideration,

Sincerely,
Jeff Carlson

Jeff Cospolich
PO Box 6902
Breckenridge, CO 80424

March 29, 2013

RE: intention to re-apply for BOSAC seat

I am writing this letter to officially re-apply for a position on the Breckenridge Open Space Advisory Commission (BOSAC).

I have enjoyed living in Breckenridge now for 17 years, and my family and I feel very lucky to live in the Wellington Neighborhood. We enjoy the convenient proximity to town and the great trail system. The quality of life in our town is incredible, and for many, a large part of that revolves around our open spaces, trails and parks. I am the General Manager of Great Western Lodging, and am very active on the BRC Board of Directors. I am also serving my 3rd year on the Local Organizing Committee of the USA Pro Cycling Challenge. I have also volunteered with the Breckenridge Outdoor Education Center, Maverick Sports Promotions and the Breckenridge Nordic Center in the past.

Having served on BOSAC now for 6 years, as chairman for the last year, I fully understand Town Council's main priorities in regards to Open Space. I see the ironies and challenges associated with having our most precious open space parcel, Cucumber Gulch, virtually surrounded by existing and new property developments. Although the increased usage there is a very real issue, there is also an opportunity to raise awareness and stewardship of this town parcel with the visitors and new lodges in these areas. While I personally enjoy recreating in Cucumber Gulch, I also recognize that as part of BOSAC's mission statement, our top priority is not to ensure that the public has recreational opportunities there, but that we protect the natural resources there for future generations to enjoy. I am very proud of what the Town did last summer in upper Cucumber Gulch to begin to restore the hydrology of the area. If we are lucky, we may see a healthy beaver population there in the future.

In the past couple of years, I have been very intrigued by the notion of open spaces in the heart of town, parks (pocket parks), playgrounds and other simple green spaces that provide relief from development, preserve sight lines, and also might allow children a place to safely recreate (for free!). The idea of a playground, using man-made surfaces, is certainly different than the traditional notion of open spaces in town over the last 15 years or so. Although the Open Space program was initially created to protect Cucumber Gulch, it has evolved over time and is now serving a broader purpose. One day perhaps we will have an indoor playground that could be utilized year-round by both locals and visitors. This is perhaps not technically "open space," maybe maintained and installed by Street and Parks department, but the Open Space program might be able to assist with the land needed.

My continued experience in serving in a board-member capacity for both BOSAC and the BRC has shown that I prioritize the "we" above the "I." I contribute to BOSAC a very pragmatic opinion that carefully considers the appeal & potential economic benefits of desirable open space, balanced carefully with our top Open Space priority of land & natural resource preservation. I also recognize the importance of diversifying the primarily winter- and ski industry-driven economy of Breckenridge, while at the same time trying to protect the small-town feel that drives so many locals to enjoy Breckenridge.

Clearly, our open spaces and trails are important, both to me personally and to our visitors. Please consider my re-application for a position on the commission. I feel strongly that my professional and personal interests and experiences continue to qualify me to be an asset to BOSAC.

Jeff Cospolich
jeff.cospolich@gmail.com
970.389.4232

Scott Reid
Breckenridge Open Space and Trails
PO Box 168
Breckenridge, CO 80424

Dear Scott,

Please accept this letter of interest for a seat on the Breckenridge Open Space Advisory Council (BOSAC).

I have been a resident of Breckenridge since 1984 and know the trail system, both in and around Breckenridge, extremely well. My company, Maverick Sports Promotions, has been producing events in Summit County since 2001.

As an event promoter, I work with Town staff, Summit County Open Space and Trails Department, and the Dillon Ranger District of the U.S. Forest Service. I also have close ties with Friends of the Dillon Ranger District. These relationships have given me insight into the issues facing managers of public open space.

As a citizen, I love my “backyard”. I am an avid user of Breckenridge Trails. I feel grateful to live in a place where Open Space acquisition, travel management, and stewardship are given such high priority.

Since the creation of the Open Space Fund, I have enjoyed watching the evolution of Breckenridge Open Space and Trails. It is a great success story that contributes to the quality of life for both citizens and visitors to Breckenridge.

I see BOSAC as an opportunity to “give back” for the countless hours I’ve enjoyed the trails!

It would be an honor to serve on BOSAC.

Sincerely,

Jeff Westcott

Here are some other related items to note:

2001 to present-manager of MTB Junior League, a program introducing kids to mountain biking and environmental stewardship.

2006-Member Golden Horseshoe Citizens Advisory Group

2007-Vice-President, Summit Fat Tire Society

2003 to present-volunteered for many Trail Projects including Turk’s Trail, X10U8, Nightmare on Baldy, Peaks Trail, Jack’s Cruel Joke, Mt Pride Mine Trail, Bakers Tank Trail, V3 Trail, Wheeler Trail