



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, May 28, 2013; 7:30 PM

Town Hall Auditorium

I	CALL TO ORDER, ROLL CALL	
II	APPROVAL OF MINUTES - MAY 14, 2013	3
III	APPROVAL OF AGENDA	
IV	COMMUNICATIONS TO COUNCIL	
	A. CITIZEN'S COMMENT - (NON-AGENDA ITEMS ONLY: 3-MINUTE LIMIT PLEASE)	
	B. BRECKENRIDGE RESORT CHAMBER UPDATE	
V	CONTINUED BUSINESS	
	A. SECOND READING OF COUNCIL BILLS, SERIES 2013 - PUBLIC HEARINGS	
	1. COUNCIL BILL NO. 15, SERIES 2013 - AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1, LAND USE DISTRICT 41, AND LAND USE DISTRICT 42 (Wakefield Sawmill Property, Phase I - 5.179 Acres)	8
	2. COUNCIL BILL NO. 16, SERIES 2013- AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 41 (Wakefield Sawmill Property, Phase II - 12.307 Acres)	14
	3. COUNCIL BILL No. 17, SERIES 2013 - AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Lots 25 And 26, Block 9, Abbetts Addition)	20
	4. COUNCIL BILL NO. 18, SERIES 2013 - AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, COLORADO, AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON, LP, TO EXTEND THE TERM OF THE FRANCHISE	24
	5. COUNCIL BILL NO. 19, SERIES 2013 - AN ORDINANCE RATIFYING AND CONFIRMING THE SIGNING OF A DEED CONVEYING THE TOWN'S INTEREST IN CERTAIN REAL PROPERTY (Part Of The Morning Star Lode, M.S. 6811)	30
	6. COUNCIL BILL NO. 20, SERIES 2013 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, CONCERNING THE TOWN OF BRECKENRIDGE SALES TAX, BY AUTHORIZING THE TOWN MANAGER TO PROMULGATE ADMINISTRATIVE RULES AND REGULATIONS REQUIRED FOR THE PROPER ADMINISTRATION OF SUCH TAX	33
VI	NEW BUSINESS	
	A. FIRST READING OF COUNCIL BILLS, SERIES 2013	
	1. COUNCIL BILL NO. 21, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BRECK SOLAR1, LLC, A COLORADO LIMITED LIABILITY COMPANY (McCain Property Solar Garden)	36
	2. COUNCIL BILL NO. 22, SERIES 2013 - AN ORDINANCE APPROVING A LONG-TERM LEASE WITH SUMMIT SOLAR1, LLC, A COLORADO LIMITED LIABILITY COMPANY (Stillson Property Solar Garden)	69
	B. RESOLUTIONS, SERIES 2013	
	1. RESOLUTION NO. 6, SERIES 2013 - A RESOLUTION MAKING MISCELLANEOUS AMENDMENTS TO THE TOWN COUNCIL "PROCEDURES AND RULES OF ORDER"	103
	C. OTHER	

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

VII	PLANNING MATTERS	
	A. PLANNING COMMISSION DECISIONS	111
	B. PLANNING COMMISSION REPORT (MS. MCATAMNEY)	
VIII	REPORT OF TOWN MANAGER AND STAFF	
IX	REPORT OF MAYOR AND COUNCILMEMBERS	
	A. CAST/MMC (MAYOR WARNER)	
	B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)	
	C. BRC (MR. BURKE)	
	D. MARKETING COMMITTEE (MS. WOLFE)	
	E. SUMMIT COMBINED HOUSING AUTHORITY (MR. DUDICK)	
	F. BRECKENRIDGE HERITAGE ALLIANCE (MR. DUDICK)	
	G. WATER TASK FORCE (MR. GALLAGHER)	
	H. LANDFILL TASK FORCE (MS. WOLFE)	
	I. PUBLIC ART COMMISSION (MR. GALLAGHER)	
X	OTHER MATTERS	
XI	SCHEDULED MEETINGS	124
XII	ADJOURNMENT	

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

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, May 14, 2013
PAGE 1

1 of 5

CALL TO ORDER, ROLL CALL

Mayor Warner called the meeting of May 14, 2013 to order at 7:30pm. The following members answered roll call: Mr. Brewer, Mr. Dudick, Ms. McAtamney, Mayor Warner, Ms. Wolfe and Mr. Gallagher. Mr. Burke was absent.

APPROVAL OF MINUTES - APRIL 23, 2013

With no changes or corrections to the meeting minutes of April 23, 2013, Mayor Warner declared they would stand approved as submitted.

APPROVAL OF AGENDA

Mr. Gagen stated the only change to the agenda is the addition of a motion to ratify the acting Mayor Pro Tem.

COMMUNICATIONS TO COUNCIL

- A. Citizen's Comment - (Non-Agenda Items ONLY: 3-minute limit please)
Mayor Warner opened Citizen's Comments. The Peak School students and staff presented the Council with pictures of the Harris Street building and a thank you for the time they spent in the building. With no further comments, Citizen's Comment was closed.
- B. Red, White and Blue Fire District Update
Mr. Jay Nelson, Deputy Fire Chief for Red, White and Blue Fire District, presented Council with handouts related to the wildfire season. He spoke about the upcoming fire season. Mr. Nelson stated June 1st is the Ready Set Go event.

Mr. Jim Keating, Red, White and Blue Fire Chief, spoke about equipment improvements for the wildfire season. He then spoke about the EMS Study draft report.

CONTINUED BUSINESS

- A. Second Reading of Council Bills, Series 2013 - Public Hearings
1. COUNCIL BILL NO. 11, SERIES 2013 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (Wakefield Property, Phase 1 - 5.179 acres)
Mayor Warner read the title into the minutes. Mr. Berry stated he handed out a revised version of the ordinance after the work session. This ordinance refers to the "Wakefield Sawmill" property. Mr. Berry stated there are no other changes from the first reading. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Mr. Dudick moved to approve COUNCIL BILL NO. 11, SERIES 2013 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (Wakefield Property, Phase 1 - 5.179 acres). Ms. McAtamney seconded the motion. The motion passed 6 – 0. Mr. Burke was absent.
 2. COUNCIL BILL NO. 12, SERIES 2013 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (Wakefield Property, Phase II - 12.307 acres)
Mayor Warner read the title into the minutes. Mr. Berry stated there are no changes to this ordinance from the first reading with the exception of the name change to "Wakefield Sawmill". Mayor Warner opened the public hearing. There were no comments and the

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, May 14, 2013
PAGE 2

2 of 5

public hearing was closed.

Mr. Dudick moved to approve COUNCIL BILL NO. 12, SERIES 2013 - AN ORDINANCE ANNEXING TO THE TOWN OF BRECKENRIDGE CERTAIN REAL PROPERTY OWNED BY THE TOWN OF BRECKENRIDGE (Wakefield Property, Phase II - 12.307 acres). Ms. McAtamney seconded the motion. The motion passed 6 – 0. Mr. Burke was absent.

3. COUNCIL BILL NO. 13, SERIES 2013 - AN ORDINANCE APPROVING A LEASE WITH OPTION TO PURCHASE WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, A COLORADO NON-PROFIT CORPORATION (524 Wellington Road)

Mayor Warner read the title into the minutes. Mr. Gagen stated this ordinance would renew a long term lease with the BOEC, and incorporates an option to purchase the property in the future. The corrections from the first reading clarify what is included in the property, and the option for the Town to subdivide the property at a future date. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Ms. McAtamney moved to approve COUNCIL BILL NO. 13, SERIES 2013 - AN ORDINANCE APPROVING A LEASE WITH OPTION TO PURCHASE WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, A COLORADO NON-PROFIT CORPORATION (524 Wellington Road). Mr. Dudick seconded the motion. The motion passed 6 – 0. Mr. Burke was absent.

4. COUNCIL BILL NO. 14 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE" CONCERNING MOVING HISTORIC STRUCTURES
- Mayor Warner read the title into the minutes. Mr. Berry stated that as a result of the earlier work session discussion, two minor changes were made from the first reading of this ordinance. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Ms. McAtamney moved to approve COUNCIL BILL NO. 14 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE" CONCERNING MOVING HISTORIC STRUCTURES. Mr. Dudick seconded the motion. The motion passed 6 – 0. Mr. Burke was absent.

NEW BUSINESS

A. First Reading of Council Bills, Series 2013

1. COUNCIL BILL NO. 15, SERIES 2013: AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1, LAND USE DISTRICT 41, AND LAND USE DISTRICT 42 (Wakefield Property, Phase I- 5.179 acres)

Mayor Warner read the title into the minutes. Mr. Berry stated the municipal annexation laws require the newly annexed property be placed in the appropriate Land Use District within 90 days of annexation.

Mr. Brewer moved to approve COUNCIL BILL NO. 15, SERIES 2013: AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1, LAND USE DISTRICT 41, AND LAND USE DISTRICT 42 (Wakefield Property, Phase I- 5.179 acres). Mr. Dudick seconded the motion. The motion passed 6 – 0. Mr. Burke was absent.

2. COUNCIL BILL NO. 16, SERIES 2013: AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 41 (Wakefield Property, Phase II- 12.307 acres)

Mayor Warner read the title into the minutes. Mr. Berry stated this ordinance is part two of the Wakefield Sawmill annexed property, which would be placed in the appropriate Land Use District.

Mr. Gallagher moved to approve COUNCIL BILL NO. 16, SERIES 2013: AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 41 (Wakefield Property, Phase II- 12.307 acres). Ms. Wolfe seconded the motion.

The motion passed 6 – 0. Mr. Burke was absent.

3. COUNCIL BILL NO. 17, SERIES 2013 - AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Lots 25 and 26, Block 9, Abbetts Addition)

Mayor Warner read the title into the minutes. Mr. Berry stated the Council approved a development for this property last May and as part of that decision, there was a condition that the property be designated a landmark.

Mr. Dudick moved to approve COUNCIL BILL NO. 17, SERIES 2013 - AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Lots 25 and 26, Block 9, Abbetts Addition). Ms. McAtamney seconded the motion.

The motion passed 6 – 0. Mr. Burke was absent.

4. COUNCIL BILL NO. 18, SERIES 2013 - AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, COLORADO, AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON, LP, TO EXTEND THE TERM OF THE FRANCHISE

Mayor Warner read the title into the minutes. Mr. Gagen stated this ordinance would extend the current franchise agreement for one year.

Ms. McAtamney moved to approve COUNCIL BILL NO. 18, SERIES 2013 - AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, COLORADO, AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON, LP, TO EXTEND THE TERM OF THE FRANCHISE . Ms. Wolfe seconded the motion.

The motion passed 6 – 0. Mr. Burke was absent.

5. COUNCIL BILL NO. 19, SERIES 2013 - AN ORDINANCE RATIFYING MORNING STAR/ ROMANCE CLAIM PROPERTY DEDICATION

Mayor Warner read the title into the minutes. Mr. Berry stated the Town and the County recently completed an open space purchase that required the Town and the County to deed to a small portion of land to a private owner.

Mr. Gallagher moved to approve COUNCIL BILL NO. 19, SERIES 2013 - AN ORDINANCE RATIFYING MORNING STAR/ ROMANCE CLAIM PROPERTY DEDICATION. Ms. McAtamney seconded the motion.

The motion passed 6 – 0. Mr. Burke was absent.

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, May 14, 2013
PAGE 4

4 of 5

6. COUNCIL BILL NO. 20, SERIES 2013 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, CONCERNING THE TOWN OF BRECKENRIDGE SALES TAX, BY AUTHORIZING THE TOWN MANAGER TO PROMULGATE ADMINISTRATIVE RULES AND REGULATIONS REQUIRED FOR THE PROPER ADMINISTRATION OF SUCH TAX

Mayor Warner read the title into the minutes. Mr. Berry stated the Town has an ordinance already in place that establishes procedures for how Town staff can issue administrative rules. This ordinance authorizes the Town Manager to issue administrative rules under the Sales Tax ordinance.

Ms. Wolfe moved to approve COUNCIL BILL NO. 20, SERIES 2013 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE TOWN CODE, CONCERNING THE TOWN OF BRECKENRIDGE SALES TAX, BY AUTHORIZING THE TOWN MANAGER TO PROMULGATE ADMINISTRATIVE RULES AND REGULATIONS REQUIRED FOR THE PROPER ADMINISTRATION OF SUCH TAX.

Mr. Gallagher seconded the motion.

The motion passed 6 – 0. Mr. Burke was absent.

- B. Resolutions, Series 2013 - None
C. Public Works Week 2013 Proclamation

Mayor Warner read the Proclamation. Mayor Warner then stated Council had received many positive public comments about the department.

PLANNING MATTERS

- A. Planning Commission Decisions

With no request to call an item off the consent calendar, Mayor Warner declared the Planning Commission Decisions would stand approved as presented.

- B. Planning Commission Report (Ms. McAtamney)

Ms. McAtamney stated there was no report.

- C. Town Project: McCain Master Plan

Mr. Gagen stated the McCain Master Plan project needs a roll call or voice vote to be approved. Ms. Julia Puester stated the McCain Master Plan was reviewed at the planning commission. Now it is before council for approval. Per discussion at the worksession, changes have been made to the Master Plan guidelines reflecting density changes and land uses.

Mr. Dudick moved to approve Town Project: McCain Master Plan. Ms. McAtamney seconded the motion.

The motion passed 6 – 0. Mr. Burke was absent.

REPORT OF TOWN MANAGER AND STAFF

This report was included as part of the afternoon Work Session.

REPORT OF MAYOR AND COUNCILMEMBERS

This complete report was included as part of the afternoon Work Session.

- A. Cast/MMC (Mayor Warner)
B. Breckenridge Open Space Advisory Committee (Mr. Brewer)
C. BRC (Mr. Burke)

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
Tuesday, May 14, 2013
PAGE 5

5 of 5

- D. Marketing Committee (Ms. Wolfe)
- E. Summit Combined Housing Authority (Mr. Dudick)
- F. Breckenridge Heritage Alliance (Mr. Dudick)
- G. Water Task Force (Mr. Gallagher)
- H. Landfill Task Force (Ms. Wolfe)
- I. Public Art Commission (Mr. Gallagher)

OTHER MATTERS

Mayor Warner stated a motion is needed to ratify the nomination of Mayor Pro Tem. A motion was made by Mr. Dudick, seconded by Ms. Wolfe, to ratify the nomination of Mayor Pro Tem Ms. McAtamney. All members voted in favor of the nomination by voice vote.

SCHEDULED MEETINGS

Mayor Warner stated he hopes members can attend the Arts District Groundbreaking (date TBD). Mr. Gagen stated the solar garden groundbreaking will take place before the next meeting at 1pm on May 28. Mayor Warner stated he and Ms. McAtamney will be meeting with Pat Campbell to discuss the results of the transit survey.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:30pm. Submitted by Helen Cospolich, Town Clerk, Municipal Services.

ATTEST:

John Warner, Mayor

MEMO

To: Breckenridge Town Council

From: Laurie Best-Community Development Department

Date: May 21, 2013 (for May 28th meeting)

Re: AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1, LAND USE DISTRICT 41, AND LAND USE DISTRICT 42 (Wakefield Sawmill Property, Phase I - 5.179 acres)
and
AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 41 (Wakefield Sawmill Property, Phase II-12.307 acres)

On May 14, 2013 the Town approved the first reading of these two Ordinances to place recently annexed parcels in Land Use Districts 1, 41, and 42. These Ordinances are scheduled for second reading on May 28th. There are no changes to the Ordinances since first reading. Staff recommends approval of the Ordinances as presented and will be available on May 28th to answer any questions.

1 **FOR WORKSESSION/SECOND READING – MAY 28**

2
3 COUNCIL BILL NO. 15

4
5 Series 2013

6
7 AN ORDINANCE PLACING RECENTLY ANNEXED
8 PROPERTY IN LAND USE DISTRICT 1, LAND USE
9 DISTRICT 41, AND LAND USE DISTRICT 42
10 (Wakefield Sawmill Property, Phase I - 5.179 acres)

11
12 WHEREAS, the Town owns the real property described in Section 1 of this ordinance;
13 and

14
15 WHEREAS, by Ordinance No. 12, Series 2013, adopted May 14, 2013, the real property
16 described in Section 1 of this ordinance was annexed into and made a part of the Town in
17 accordance with the Municipal Annexation Act of 1965 (Part 1 of Article 12 of Title 31, C.R.S.);
18 and

19
20 WHEREAS, the Town is required by Section 31-12-115(2), C.R.S., to zone all newly
21 annexed areas within ninety (90) days after the effective date of the annexation ordinance; and

22
23 WHEREAS, the Town’s Planning Commission has recommended that the recently
24 annexed parcel be placed within Land Use District 1, Land Use District 41, and Land Use
25 District 42; and

26
27 WHEREAS, the Town’s Annexation Plan adopted pursuant to Section 31-12-105(1)(e),
28 C.R.S., indicates that the property should be placed in Land Use District 1, Land Use District 41,
29 and Land Use District 42; and

30
31 WHEREAS, to implement the Joint Upper Blue Master Plan the Town Council finds and
32 determines that it is necessary and appropriate to place special restrictions on the density located
33 on the real property described in Section 1 of this ordinance.

34
35 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
36 BRECKENRIDGE, COLORADO:

37
38 Section 1. The following described real property:

39
40 A PART OF GOVERNMENT LOT 68, LOCATED IN THE SOUTHWEST
41 QUARTER OF SECTION 5, TOWNSHIP 7 SOUTH RANGE 77 WEST OF
42 THE SIXTH PRINCIPAL MERIDIAN, SUMMIT COUNTY COLORADO,
43 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

44
45 COMMENCING AT CORNER 19 OF THE LIZZIE LODGE M.S. 6349,

1 COMMON WITH CORNER 54 OF THE T.H. FULLER PLACER M.S. 86,
2 BEING ALSO AN ANGLE POINT IN THE SOUTHERLY LINE OF LOT 6,
3 BROOKS HILL SUBDIVISION AS DEPICTED ON THE PLAT THEREOF
4 RECORDED SEPTEMBER 19, 1986 AT RECEPTION NUMBER 324524,
5 SUMMIT COUNTY , COLORADO;
6

7 THENCE S 38°43'00" W, 112.62 FEET ALONG THE 19-20 LINE OF SAID
8 LIZZIE LODGE M.S. 6349 TO THE WESTERNMOST POINT OF THAT
9 TRACT OF LAND, A PART OF GOVERNMENT LOT 68, DESCRIBED AS
10 PARCEL 6 ON THAT INTERCHANGE DEED RECORDED APRIL 25, 1986
11 AT RECEPTION NUMBER 316179 WHICH POINT IS THE POINT OF
12 BEGINNING;
13

14 THENCE ALONG THE SOUTHERLY BOUNDARY OF THAT SAID
15 PARCEL 6 FOR THE FOLLOWING ELEVEN COURSES:
16

- 17 1) 90.11 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING
18 A CENTRAL ANGLE OF 18°56'22", A RADIUS OF 272.59 FEET AND A
19 CHORD WHICH BEARS S 17°10'16" E, 89.70 FEET;
- 20 2) S 07°42'06" E, 172.81 FEET;
- 21 3) N 82°17'54" E, 10.00 FEET;
- 22 4) S 07°42'06" E, 85.41 FEET;
- 23 5) 99.31 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A
24 CENTRAL ANGLE OF 21°53'06", A RADIUS OF 260.00 FEET AND A
25 CHORD WHICH BEARS S 18°38'43" E, 98.71 FEET;
- 26 6) N 60°24'47" E, 10.00 FEET;
- 27 7) 83.33 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A
28 CENTRAL ANGLE OF 19°05'54", A RADIUS OF 250.00 FEET AND A
29 CHORD WHICH BEARS S 39°08'11" E, 82.95 FEET;
- 30 8) N 41°18'52" E, 20.00 FEET;
- 31 9) 115.00 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A
32 CENTRAL ANGLE OF 28°38'51", A RADIUS OF 230.00 FEET AND A
33 CHORD WHICH BEARS S 63°00'36" E, 113.81 FEET;
- 34 10) S 12°39'57" W, 20.00 FEET;
- 35 11) 249.93 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING
36 A CENTRAL ANGLE OF 57°16'43", A RADIUS OF 250.00 FEET AND A
37 CHORD WHICH BEARS N 74°01'35" E, 239.65 FEET TO A POINT ON THE
38 6-5 LINE OF THE LITTLE CALLY LODGE M.S. 5654;

39
40 THENCE S 17°48'36" W, 330.87 FEET ALONG THE 6-5 LINE OF SAID
41 LITTLE CALLY LODGE M.S. 5654 TO THE INTERSECTION WITH THE 12-
42 11 LINE OF THE HANNIBAL & ST. JOE LODGE M.S. 5654;
43

44 THENCE S 48°02'00" W, 527.33 FEET ALONG THE 12-11 LINE OF THE
45 HANNIBAL & ST. JOE LODGE M.S. 5654 TO THE INTERSECTION WITH

1 THE SECTION LINE BETWEEN SECTIONS 5 AND 6, TOWNSHIP 7
2 SOUTH, RANGE 77 WEST of the 6th PRINCIPAL MERIDIAN;

3
4 THENCE N 00°50'00" W, 1144.02 FEET ALONG SAID SECTION LINE
5 BETWEEN SECTIONS 5 AND 6, BEING ALSO THE WESTERN
6 BOUNDARY OF GOVERNMENT LOT 68, TO THE INTERSECTION WITH
7 THE 20-19 LINE OF SAID LIZZIE LODGE M.S. 6349;

8
9 THENCE N 38°43'00" E, 9.11 FEET ALONG THE 20-19 LINE OF THE
10 LIZZIE LODGE TO THE POINT OF BEGINNING.

11
12 CONTAINING 225,586 square feet or 5.179 acres more or less

13
14 is placed in Breckenridge Land Use District 1, Land Use District 41, and Land Use District 42.
15 The Town staff is directed to change the Town's Land Use District Map to indicate that the
16 abovedescribed property has been annexed and placed within Land Use District 1, Land Use
17 District 41, and Land Use District 42.

18
19 Section 2. The general boundaries of Land Use District 1, Land Use District 41, and
20 Land Use District 42 within the real property described in Section 1 of this ordinance are shown
21 on **Exhibit "A"**, which is attached to and incorporated into this ordinance. The exact boundaries
22 Land Use District 1, Land Use District 41, and Land Use District 42 within the real property
23 described in Section 1 of this ordinance shall be determined by the Town in connection with a
24 site specific development permit application to develop such real property, or in connection with
25 a public improvement project to be undertaken by the Town as described in Chapter 14 of Title 9
26 of this Code.

27 Section 3. Under the Town's Land Use Guidelines, the Town would normally be
28 required to place .20716 SFEs of density on that portion of the real property described in Section
29 1 that has been placed in Land Use District 1 [2.0716 acres of Land Use District 1 land at one
30 SFE per 10 acres = .20716 SFEs of Land Use District 1 density]; 1.81265 SFEs of density on
31 that portion of the real property described in Section 1 that has been placed in Land Use District
32 41 [1.81265 acres of Land Use District 41 land at one unit of density per acre = 1.81265 SFEs of
33 Land Use District 41 density]; and 2.5895 SFEs of density on that portion of the real property
34 described in Section 1 that has been placed in Land Use District 42 [1.29475 acres of Land Use
35 District 42 land at two units of density per acre = 2.5895 SFEs of Land Use District 42 density] .
36 However, there was no density on the real property described in Section 1 of this ordinance prior
37 to annexation, and the Town Council finds and determines that to comply with the Joint Upper
38 Blue Master Plan no density should be placed on such property after annexation. Accordingly, no
39 density is placed on the real property described in Section 1 of this ordinance.

40 Section 4. Unless a developer brings additional density to the property, the density on the
41 real property described in Section 1 of this ordinance may only be used for those uses
42 specifically described in Goal B – Policy/Action 1 of the Joint Upper Blue Master Plan as
43 adopted by the Town, which uses include as of the date of the adoption of this ordinance
44 community facilities, institutional uses, and affordable workforce housing. The Town Council

1 finds and determines that the density restrictions imposed by this Section 4 comply with and
2 implement the Joint Upper Blue Master Plan as adopted by the Town.

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

7 Section 6. The Town Council finds, determines, and declares that it has the power to
8 adopt this ordinance pursuant to: (i) Section 31-12-115(2), C.R.S.; (ii) the Local Government
9 Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (iii) Part 3 of Article 23 of Title
10 31, C.R.S. (concerning municipal zoning powers); (iv) Section 31-15-103, C.R.S. (concerning
11 municipal police powers); (v) Section 31-15-401, C.R.S.(concerning municipal police powers);
12 (vi) the authority granted to home rule municipalities by Article XX of the Colorado
13 Constitution; and (vii) the powers contained in the Breckenridge Town Charter.

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

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

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

25
26 By _____
27 John G. Warner, Mayor
28

29 ATTEST:

30
31
32 _____
33 Town Clerk
34

Wakefield Property LUD



LEGEND:
Land Use District 1-Green (1 unit per 10 acres)
Land Use District 41-Blue (1 unit per acre)
Land Use District 42-Red (2 units per acre)

MEMO

To: Breckenridge Town Council

From: Laurie Best-Community Development Department

Date: May 21, 2013 (for May 28th meeting)

Re: AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1, LAND USE DISTRICT 41, AND LAND USE DISTRICT 42 (Wakefield Sawmill Property, Phase I - 5.179 acres)
and
AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 1 AND LAND USE DISTRICT 41 (Wakefield Sawmill Property, Phase II-12.307 acres)

On May 14, 2013 the Town approved the first reading of these two Ordinances to place recently annexed parcels in Land Use Districts 1, 41, and 42. These Ordinances are scheduled for second reading on May 28th. There are no changes to the Ordinances since first reading. Staff recommends approval of the Ordinances as presented and will be available on May 28th to answer any questions.

1 *FOR WORKSESSION/SECOND READING – MAY 28*

2
3 COUNCIL BILL NO. 16

4
5 Series 2013

6
7 AN ORDINANCE PLACING RECENTLY ANNEXED
8 PROPERTY IN LAND USE DISTRICT 1 AND LAND USE
9 DISTRICT 41
10 (Wakefield Sawmill Property, Phase II - 12.307 acres)

11
12 WHEREAS, the Town owns the real property described in Section 1 of this ordinance;
13 and

14
15 WHEREAS, by Ordinance No. 13, Series 2013, adopted May 14, 2013, the real property
16 described in Section 1 of this ordinance was annexed into and made a part of the Town in
17 accordance with the Municipal Annexation Act of 1965 (Part 1 of Article 12 of Title 31, C.R.S.);
18 and

19
20 WHEREAS, the Town is required by Section 31-12-115(2), C.R.S., to zone all newly
21 annexed areas within ninety (90) days after the effective date of the annexation ordinance; and

22
23 WHEREAS, the Town’s Planning Commission has recommended that the recently
24 annexed parcel be placed within Land Use District 1 and Land Use District 41; and

25
26 WHEREAS, the Town’s Annexation Plan adopted pursuant to Section 31-12-105(1)(e),
27 C.R.S., indicates that the property should be placed in Land Use District 1 and Land Use District
28 41; and

29
30 WHEREAS, to implement the Joint Upper Blue Master Plan the Town Council finds and
31 determines that it is necessary and appropriate to place special restrictions on the density located
32 on the real property described in Section 1 of this ordinance.

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

36
37 Section 1. The following described real property:

38
39 GOVERNMENT LOT 32, LOCATED IN THE SOUTHEAST QUARTER OF
40 SECTION 6, TOWNSHIP 7 SOUTH RANGE 77 WEST OF THE SIXTH
41 PRINCIPAL MERIDIAN, SUMMIT COUNTY COLORADO, BEING MORE
42 PARTICULARLY DESCRIBED AS FOLLOWS:

43
44 BEGINNING AT THE INTERSECTION OF THE EAST SECTION LINE OF
45 SECTION 6, TOWNSHIP 7 SOUTH RANGE 77 WEST OF THE 6th P.M. AND

1 THE 20-19 LINE OF THE LIZZIE LODGE M.S. 6349 FROM WHICH POINT
2 CORNER 19 OF THE LIZZIE LODGE M.S. 6349, COMMON WITH CORNER
3 54 OF THE T.H. FULLER PLACER M.S. 86,
4 BEARS N 38°43'00" E, 121.73 FEET;

5
6 THENCE S 00°50'00" E, 1144.02 FEET ALONG THE EAST SECTION LINE
7 OF SECTION 6 TO THE INTERSECTION WITH THE 12-11 LINE OF THE
8 HANNIBAL & ST. JOE LODGE M.S. 5654;

9
10 THENCE S 48°02'00" W, 340.56 FEET ALONG THE 12-11 LINE OF THE
11 HANNIBAL & ST. JOE LODGE M.S. 5654 TO CORNER 11 OF THE
12 HANNIBAL & ST. JOE LODGE M.S. 5654, COMMON WITH CORNER 24 OF
13 THE NELLIE PLACER LOT 2 M.S. 7108;

14
15 THENCE N 44°25'12" W, 829.88 FEET ALONG THE 24-23 LINE OF THE
16 NELLIE PLACER LOT 2 M.S. 7108 TO CORNER 23 OF THE NELLIE
17 PLACER LOT 2 M.S. 7108, COMMON WITH CORNER 15 OF THE
18 GERMANIA LODGE M.S. 6349 AND ALSO COMMON WITH CORNER 17 OF
19 THE LIZZIE LODGE M.S. 6349;

20
21 THENCE S 75°48'00" E, 165.54 FEET ALONG THE 17-20 LINE OF THE
22 LIZZIE LODGE M.S. 6349 TO CORNER 20 OF THE LIZZIE LODGE M.S. 6349;

23
24 THENCE N 38°43'00" E, 1,050.32 FEET ALONG THE 20-19 LINE OF THE
25 LIZZIE LODGE M.S. 6349 TO THE POINT OF BEGINNING.

26
27 CONTAINING 536,090 square feet or 12.307 acres more or less

28
29 is placed in Breckenridge Land Use District 1 and Land Use District 41. The Town staff is
30 directed to change the Town's Land Use District Map to indicate that the abovedescribed
31 property has been annexed and placed within Land Use District 1 and Land Use District 41.

32
33 Section 2. The general boundaries of Land Use District 1 and Land Use District 41
34 within the real property described in Section 1 of this ordinance are shown on Exhibit "A",
35 which is attached to and incorporated into this ordinance. The exact boundaries Land Use
36 District 1 and Land Use District 41 within the real property described in Section 1 of this
37 ordinance shall be determined by the Town in connection with a site specific development permit
38 application to develop such real property, or in connection with a public improvement project to
39 be undertaken by the Town as described in Chapter 14 of Title 9 of this Code.

40
41 Section 3. Under the Town's Land Use Guidelines, the Town would normally be
42 required to place 1.2057 SFEs of density on that portion of the real property described in Section
43 1 that has been placed in Land Use District 1 [12.057 acres of Land Use District 1 land at SFE
44 per 10 acres = 1.2057 SFEs of Land Use District 1 density] and .25 SFEs of density on that
45 portion of the real property described in Section 1 that has been placed in Land Use District 41
[.25 acres of Land Use District 41 land at one unit of density per acre = .25 SFEs of Land Use

1 District 41 density]. However, there was no density on the real property described in Section 1 of
2 this ordinance prior to annexation, and the Town Council finds and determines that to comply
3 with the Joint Upper Blue Master Plan no density should be placed on such property after
4 annexation. Accordingly, no density is placed on the real property described in Section 1 of this
5 ordinance.

6 Section 4. Unless a developer brings additional density to the property, the density on the
7 real property described in Section 1 of this ordinance may only be used for those uses
8 specifically described in Goal B – Policy/Action 1 of the Joint Upper Blue Master Plan as
9 adopted by the Town, which uses include as of the date of the adoption of this ordinance
10 community facilities, institutional uses, and affordable workforce housing. The Town Council
11 finds and determines that the density restrictions imposed by this Section 4 comply with and
12 implement the Joint Upper Blue Master Plan as adopted by the Town.

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

17 Section 6. The Town Council finds, determines, and declares that it has the power to
18 adopt this ordinance pursuant to: (i) Section 31-12-115(2), C.R.S.; (ii) the Local Government
19 Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (iii) Part 3 of Article 23 of Title
20 31, C.R.S. (concerning municipal zoning powers); (iv) Section 31-15-103, C.R.S. (concerning
21 municipal police powers); (v) Section 31-15-401, C.R.S.(concerning municipal police powers);
22 (vi) the authority granted to home rule municipalities by Article XX of the Colorado
23 Constitution; and (vii) the powers contained in the Breckenridge Town Charter.

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

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
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36 By _____
37 John G. Warner, Mayor
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ATTEST:

Town Clerk

1300-62\Phase II New Zone Ordinance_3 (05-14-13)

Wakefield Property LUD



LEGEND:
Land Use District 1-Green (1 unit per 10 acres)
Land Use District 41-Blue (1 unit per acre)
Land Use District 42-Red (2 units per acre)

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 17 (Giller Property Landmarking Ordinance)

DATE: May 20, 2013 (for May 28th meeting)

The second reading of the ordinance designating the Giller property at 306 South Ridge Street as a landmark under the Town's Historic Preservation Ordinance is scheduled for your meeting on May 28th. 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 – MAY 28***

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

4
5 COUNCIL BILL NO. 17

6
7 Series 2013

8
9 AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK
10 UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE

11 (Lots 25 and 26, Block 9, Abbetts 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. Michael Giller and Jennifer Giller own the hereinafter described real
20 property. Such real property is located within the corporate limits of the Town of
21 Breckenridge, County of Summit and State of Colorado.

22
23 B. Michael Giller and Jennifer Giller filed an application with the Town
24 pursuant to Chapter 11 of Title 9 of the Breckenridge Town Code seeking to have the
25 Town designate the hereinafter described real property as a landmark (“**Application**”).

26
27 C. The Town followed all of procedural requirements of Chapter 11 of Title 9 of
28 the Breckenridge Town Code in connection with the processing of the Application.

29
30 D. The improvements located on hereinafter described real property are more
31 than fifty (50) years old.

32
33 E. The hereinafter described real property meets the “architectural” designation
34 criteria for a landmark as set forth in Section 9-11-4(A)(1)(a) of the Breckenridge Town
35 Code because the property:

- 36
37 (i) exemplifies specific elements of architectural style or period;
38 (ii) exemplifies style particularly associated with the Breckenridge area;
39 (iii) represents a built environment of a group of people in an era of history;
40 (iv) represents a built environment of a group of people in an era of history;
41 and
42 (v) is a significant historic remodel.

1 F. The hereinafter described real property meets the “social” designation criteria
2 for a landmark as set forth in Section 9-11-4(A)(1)(b) of the Breckenridge Town Code
3 because the property is associated with a notable person or the work of a notable person.
4

5 G. The hereinafter described real property meets the “physical integrity” criteria
6 for a landmark as set forth in Section 9-11-4(A)(3) of the Breckenridge Town Code
7 because:
8

- 9 (i) the property shows character, interest or value as part of the development,
10 heritage or cultural characteristics of the community, region, state or
11 nation and;
- 12 (ii) the property retains original design features, materials or character
13

14 H. In accordance with the requirements of Section 9-11-3(B)(3) of the
15 Breckenridge Town Code, on May 15, 2012 the Application was reviewed by the
16 Breckenridge Planning Commission. On such date the Planning Commission
17 recommended to the Town Council that the Application be granted.
18

19 I. The Application meets the applicable requirements of Chapter 11 of Title 9 of
20 the Breckenridge Town Code, and should be granted without conditions.
21

22 J. Section 9-11-3(B)(4) of the Breckenridge Town Code requires that final
23 approval of an application for landmark designation under Chapter 11 of Title 9 of the
24 Breckenridge Town Code be made by ordinance duly adopted by the Town Council.
25

26 Section 2. Designation of Property as Landmark. The following described real
27 property:
28

29 Lots 25 and 26, Block 9, Abbetts Addition to the Town of Breckenridge;
30 commonly known and described as 306 South Ridge Street, Breckenridge,
31 Colorado 80424
32

33 is designated as a landmark pursuant to Chapter 11 of Title 9 of the Breckenridge Town
34 Code.
35

36 Section 3. Police Power Finding. The Town Council finds, determines and declares that
37 this ordinance is necessary and proper to provide for the safety, preserve the health, promote the
38 prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and
39 the inhabitants thereof.
40

41 Section 4. Town Authority. The Town Council finds, determines and declares that it has
42 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities
43 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
44 Charter.
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Section 5. 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, a Colorado municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 18 (Extending Term of Comcast CATV Franchise)

DATE: May 21, 2013 (for May 28th meeting)

The second reading of the ordinance approving the agreement to extend the term of the current Comcast CATV Franchise Agreement to June 15, 2014 is scheduled for your meeting on May 28th. There are no changes proposed to either the ordinance or the agreement from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – MAY 28***

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

4
5 COUNCIL BILL NO. 18

6
7 Series 2013

8
9 AN ORDINANCE APPROVING THE SECOND AMENDMENT TO THE TOWN’S CABLE
10 TELEVISION FRANCHISE AGREEMENT WITH COMCAST OF
11 CALIFORNIA/COLORADO/WASHING, LP

12
13 WHEREAS, the Town entered into a cable franchise agreement with Universal Cable
14 Communications, Inc. d/b/a Classic Cable (“**Classic Cable**”) dated November 15, 1995
15 (“**Franchise Agreement**”); and

16
17 WHEREAS, by Resolution No. 45, Series 2001, adopted October 23, 2001, the Town
18 approved the assignment of the Franchise Agreement from Classic Cable to TCI Cable Partners
19 of St. Louis, L.P. (“**TCI**”); and

20
21 WHEREAS, Comcast of California/Colorado/Washington, LP (“**Comcast**”) is the
22 successor to TCI and currently holds a cable franchise with the Town pursuant to Resolution No.
23 30, Series 2002, adopted June 11, 2002; and

24
25 WHEREAS, Ordinance No. 27, Series 2005 extended the term of the Franchise
26 Agreement to June 15, 2008; and

27
28 WHEREAS, by Ordinance No. 26, Series 2007, the Town Council approved a “First
29 Amendment To Franchise Agreement” (“**First Amendment**”) that, among other things,
30 extended the term of the Franchise Agreement until June 15, 2013; and

31
32 WHEREAS, Comcast has preserved its rights by timely filing a request with the Town to
33 activate the formal process for renewing the Franchise Agreement pursuant to the Cable
34 Communications Policy Act of 1984 (“**Cable Act**”); and

35
36 WHEREAS, the parties have agreed to extend the Franchise Agreement for an additional
37 period of one (1) year (until June 15, 2014), as more fully set forth in the proposed “Second
38 Amendment to Franchise Agreement Between the Town of Breckenridge, Colorado and Comcast
39 of California/Colorado/Washington, LP” (“**Second Amendment**”), a copy of which is marked
40 **Exhibit “A”**, attached to this ordinance and incorporated into this ordinance by reference; and

41
42 WHEREAS, the Town Council has revised the proposed Second Amendment, and finds
43 and determines that its approval would be in the best interest of the Town and its citizens.

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

4 Section 1. The Second Amendment to Franchise Agreement Between the Town of
5 Breckenridge, Colorado and Comcast of California/Colorado/Washington, LP is approved, and
6 the Mayor is authorized, empowered, and directed to execute such document for and on behalf of
7 the Town of Breckenridge. The Franchise Agreement, as amended by the First Amendment and
8 the Second Amendment, shall remain in effect, pursuant to the terms and conditions contained
9 therein, until the new expiration date, until a new agreement is entered into between the parties,
10 or until the Franchise Agreement is terminated pursuant to its terms.
11

12 Section 2. Neither the Town nor Comcast waive any right they have under law as a result
13 of agreeing to extend the Franchise Agreement as provided in the Second Amendment, and
14 Comcast shall not be required to file any additional request or document in order to preserve its
15 rights under Section 626 of the Cable Act.
16

17 Section 3. If any portion of this ordinance is held to be unconstitutional or invalid for any
18 reason, such decision shall not affect the constitutionality or validity of the remaining portions of
19 this ordinance. The Town Council declares that it would have passed this ordinance and each
20 part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
21

22 Section 4. All other ordinances or portions thereof inconsistent or conflicting with this
23 ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or
24 conflict.
25

26 Section 5. The Town Council finds, determines, and declares that it has the power to
27 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
28 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
29

30 Section 6. This ordinance shall be published and become effective as provided by
31 Section 5.9 of the Breckenridge Town Charter.
32

33 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
34 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
35 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
36 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
37 Town.
38

39 TOWN OF BRECKENRIDGE, a Colorado
40 municipal corporation
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43
44 By _____
45 John G. Warner, Mayor
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ATTEST:

Helen Cospolich,
Town Clerk

**SECOND AMENDMENT TO THE CABLE TELEVISION FRANCHISE
BETWEEN THE TOWN OF BRECKENRIDGE, COLORADO
AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON, LP**

This Second Amendment to the Cable Television Franchise Agreement is made and entered into as of _____, 2013, such day being the effective date of Town of Breckenridge Ordinance No. _____, Series 2013, and amends the Cable Television Franchise Agreement (“Franchise Agreement”) by and between the Town of Breckenridge, Colorado, (“Town”) and Comcast of California/Colorado/Washington, LP (“Comcast”).

WHEREAS in 1995, the Town Council approved the grant of a nonexclusive Franchise Agreement to Universal Cable Communications, Inc., effective October 24, 1995, for its construction and operation of a cable television system within the Town; and,

WHEREAS, Comcast of California/Colorado/Washington, LP, is the successor in interest to Universal Cable Communications, Inc.; and,

WHEREAS, on November 13, 2007, the parties previously agreed to extend the Franchise Agreement to June 15, 2013; and,

WHEREAS, Comcast has preserved its rights by timely filing a request with the Town to activate the formal process for renewing the Franchise Agreement pursuant to the provisions of the Cable Communications Policy Act of 1984 (“Cable Act”); and,

WHEREAS, the Franchise Agreement was set to expire on June 15, 2013, and,

WHEREAS, Town staff and Comcast representatives have discussed the renewal of the Franchise Agreement and both parties have agreed that their respective interests will be served by a formal extension of the existing Franchise Agreement to a date certain; and,

WHEREAS, the Town Council is agreeable to extending the existing term of the Franchise Agreement until June 15, 2014.

NOW, THEREFORE, the present Franchise Agreement is hereby amended by the following:

1. Section V of the Franchise Agreement – Term is hereby deleted and replaced with the following:

V. Term

In accordance with Ordinance No. [REDACTED], Series 2013, the term of the Franchise shall be extended an additional one (1) year and shall terminate on June 15, 2014, unless terminated sooner as hereinafter provided.

2. Except as specifically modified hereby, the Franchise Agreement shall remain in full force and effect.

3. Neither party waives any right which it enjoys under law as a result of agreeing to this Franchise extension, and Comcast shall not be required to file any additional request or document in order to preserve its right of renewal under Section 626 of the Cable Act.

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

TOWN OF BRECKENRIDGE, COLORADO

By: _____
Mayor

Date: _____

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

**COMCAST OF CALIFORNIA/COLORADO/
WASHINGTON, LP**

By: _____
Richard C. Jennings

Title: Regional Senior Vice President
Cable Management

Date: _____

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 19 (Ordinance Ratifying Deed to Glenn Gallop)
DATE: May 20, 2013 (for May 28th meeting)

The second reading of the ordinance ratifying the Town Manager's signature on the deed from the Town and County to Glenn Gallop is scheduled for your meeting on May 28th. 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 – MAY 28**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 19

6
7 Series 2012

8
9 AN ORDINANCE RATIFYING AND CONFIRMING THE SIGNING OF A DEED
10 CONVEYING THE TOWN’S INTEREST IN CERTAIN REAL PROPERTY
11 (Part of the Morning Star Lode, M.S. 6811)
12

13 WHEREAS, Section 15.3 of the Breckenridge Town Charter requires that the conveyance
14 of Town-owned real property be authorized either by ordinance or by election; and
15

16 WHEREAS, the Town Manager has previously executed, acknowledged, and delivered a
17 deed conveying the Town’s interest in certain real property, and it necessary and appropriate for
18 the Town Council to ratify such acts.
19

20 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
21 BRECKENRIDGE, COLORADO:
22

23 Section 1. The Town Manager’s previous execution, acknowledgment, and delivery of
24 that Bargain and Sale Deed between the Board of County Commissioners of Summit County,
25 Colorado and the Town of Breckenridge, as grantors, and Glenn Gallop, as grantee, dated April
26 3, 2013 and recorded April 3, 2013 under Reception No. 1022780 is ratified, confirmed, and
27 approved.

28 Section 2. This ordinance shall be published and become effective as provided by
29 Section 5.9 of the Breckenridge Town Charter.

30 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
31 PUBLISHED IN FULL this ___ day of ____, 2013. A Public Hearing shall be held at the
32 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
33 ____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
34 Town.
35

36 TOWN OF BRECKENRIDGE, a Colorado
37 municipal corporation
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41 By _____
42 John G. Warner, Mayor
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1 ATTEST:

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Helen Cospolich
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 20 (Authorizing Issuance of Administrative Regulations Under Sales Tax Ordinance)

DATE: May 21, 2013 (for May 28th meeting)

The second reading of the ordinance authorizing the Town Manager to issue administrative regulations under the Sales Tax Ordinance is scheduled for your meeting on May 28th. 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 – MAY 28**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 20

9
10 Series 2013

11
12 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE BRECKENRIDGE
13 TOWN CODE, CONCERNING THE TOWN OF BRECKENRIDGE SALES TAX, BY
14 AUTHORIZING THE TOWN MANAGER TO PROMULGATE ADMINISTRATIVE RULES
15 AND REGULATIONS REQUIRED FOR THE PROPER ADMINISTRATION OF SUCH TAX

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

19
20 Section 1. Chapter 1 of Title 3 of the Breckenridge Town Code is amended by the
21 addition of a new Section 3-1-40, to be entitled “Rules and Regulations”, which shall read in its
22 entirety as follows:

23
24 **3-1-40: RULES AND REGULATIONS: The Town Manager may from time**
25 **to time adopt, amend, alter, and repeal administrative rules and regulations**
26 **as may be necessary for the proper administration of this Chapter. Such**
27 **regulations shall be adopted in accordance with the procedures established**
28 **by Chapter 18, Title 1 of this Code.**

29
30 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
31 various secondary codes adopted by reference therein, shall continue in full force and effect.

32
33 Section 3. The Town Council finds, determines, and declares that it has the power to
34 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
35 of the Colorado Constitution, and the powers contained in the Breckenridge Town Charter.

36
37 Section 4. This ordinance shall be published and become effective as provided by
38 Section 5.9 of the Breckenridge Town Charter.

39
40 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
41 PUBLISHED IN FULL this ____ day of _____, 2013. A Public Hearing shall be held at the
42 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
43 _____, 2013, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
44 Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich,
Town Clerk

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: MCCAIN SOLAR GARDEN LEASE
DATE: 5/22/13
CC: TIM GAGEN, RICK HOLMAN

Attached is the lease for the McCain solar garden lease with Clean Energy Collective (CEC). The agreement provides for the construction of a 500 kW Solar Garden, as well as landscaping and buffering requirements. The document was substantively drafted by the Town's Attorney, and CEC agreed to our form and content. As such, staff is very confident this document will facilitate the project as well as protect the Town's long term interests.

1 ***FOR WORKSESSION/FIRST READING – MAY 28***

2
3 COUNCIL BILL NO. _____

4
5 Series 2013

6
7 AN ORDINANCE APPROVING A LONG-TERM LEASE WITH BRECK SOLAR1, LLC, A
8 COLORADO LIMITED LIABILITY COMPANY
9 (McCain Property Solar Garden)

10
11 WHEREAS, the Town of Breckenridge owns the real property commonly known as “the
12 McCain Property”; and

13
14 WHEREAS, a portion of such real property is suitable for use by Breck Solar1, LLC, a
15 Colorado limited liability company (“**Breck Solar**”), as a community-owned, renewable solar
16 energy generating facility, also known as a “solar garden”; and

17
18 WHEREAS, the Town is willing to lease a portion of its McCain Property to Breck Solar;
19 and

20
21 WHEREAS, a proposed Lease with Breck Solar has been prepared by the Town Attorney
22 and reviewed by the Town Council; and

23
24 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

25
26 The council may lease, for such time as council shall determine, any real or
27 personal property to or from any person, firm, corporation, public and private,
28 governmental or otherwise.

29
30 and;

31
32 WHEREAS, the term of the proposed Lease with Breck Solar exceeds one year in length;
33 and

34
35 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
36 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

37
38 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
39 BRECKENRIDGE, COLORADO:

40
41 Section 1. The proposed Lease between the Town and Breck Solar1, LLC, a Colorado
42 limited liability company, a copy of which is marked Exhibit “A”, attached hereto, and
43 incorporated herein by reference, is approved, and the Town Manager is authorized to execute
44 such Lease for and on behalf of the Town of Breckenridge.

1 Section 2. Minor changes to or amendments of the approved Lease may be made by the
2 Town Manager if the Town Attorney certifies in writing that the proposed changes or
3 amendments do not substantially affect the consideration to be received or paid by the Town
4 pursuant to the approved Lease, or the essential elements of the approved Lease.
5

6 Section 3. The Town Council finds, determines, and declares that it has the power to
7 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
8 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
9

10 Section 4. This ordinance shall be published and become effective as provided by
11 Section 5.9 of the Breckenridge Town Charter.
12

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

19 TOWN OF BRECKENRIDGE, a Colorado
20 municipal corporation
21

22
23
24 By: _____
25 John G. Warner, Mayor
26

27 ATTEST:
28
29
30

31 _____
32 Town Clerk
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1 SOLAR GARDEN LEASE
2 (McCain Property)
3

4 THIS SOLAR GARDEN LEASE (“Lease”) is dated [REDACTED], 2013,
5 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation
6 (“Landlord”) and BRECK SOLAR1, LLC, a Colorado limited liability company (“Tenant”).
7 The Landlord and the Tenant are each a “Party”, and are collectively the “Parties.”
8

9 **ARTICLE 1 – BASIC LEASE PROVISIONS**

10 1.1 **Background and Purpose.** Landlord owns the land that is subject to this
11 Lease, and has agreed to lease it to Tenant for the construction and operation of a “solar garden”
12 as hereafter defined. Tenant has a contract to sell renewable energy produced at the solar garden
13 to Xcel Energy, and Tenant is willing to design, construct, and maintain the solar garden. The
14 purpose of this Lease is to provide land for the construction, operation, and maintenance of
15 Tenant’s solar garden as described and defined in this Lease, and to set forth the terms and
16 conditions under which Tenant will design, construct, and maintain the solar garden..

17 1.2 **Leased Premises.** In consideration of Tenant’s payment of rent and the
18 keeping of the promises, covenants, and conditions required of Tenant by this Lease, Landlord
19 leases to Tenant, and Tenant leases from Landlord, for the term and upon the conditions of this
20 Lease, the real property described and depicted on the attached **Exhibit “A”** (“**Leased**
21 **Premises**”). The Leased Premises are located at 12920 Colorado Highway 9, Breckenridge,
22 Colorado 80424. At the time of the commencement of this Lease the Leased Premises consist of
23 vacant, unimproved land.

24 1.3 **Use Of Leased Premises.**

25 (a) Tenant will construct, install, and operate on the Leased Premises a
26 community-owned, renewable solar energy generating facility under the terms of Xcel Energy’s
27 solar power purchase agreement, or its equivalent (“**Solar Garden**”), all in accordance with the
28 terms of this Lease. Tenant will not use the Leased Premises for any other purpose without
29 Landlord’s prior written consent.

30 (b) Tenant will initially investigate constructing and operating a 500kW Solar
31 Garden on the Leased Premises. If the construction and operation of a 500kW Solar Garden on
32 the Leased Premises is not technically feasible or commercially reasonable, in Tenant’s sole
33 discretion, Landlord and Tenant will use their best efforts to select an alternative site on other
34 land owned by Landlord upon which a 500kW Solar Garden can be constructed and operated. If
35 Landlord and Tenant cannot agree upon an acceptable alternative site, this Lease may be
36 terminated by either Landlord or Tenant by notice given in accordance with Section 16.2 of this
37 Lease.

38 1.4 **Term; Extension Term.**

SOLAR GARDEN LEASE (McCain Property)

1 (a) The initial term of this Lease (“**Initial Term**”) begins at 12:01 A.M., local
2 time, on the date the Solar Garden is first placed in service and ends, unless sooner terminated as
3 hereafter provided, at 11:59 P.M., twenty five (25) years thereafter. Once the Solar Garden is
4 placed in service the Parties will execute an amendment to this Lease confirming the date of the
5 commencement of the Initial Term. The “**Term**” of this Lease includes both the Initial Term, and
6 the Extension Term described in Subsection (b) of this Section, if the Extension Term is
7 applicable.

8 (b) Upon the expiration of the Initial Term this Lease will automatically be
9 extended for an additional twenty five (25) years (“**Extension Term**”) upon the same terms and
10 conditions set forth in this Lease, and without the necessity of executing any written extension of
11 this Lease, unless the Tenant, in its sole discretion, notifies Landlord in the manner provided in
12 Section 16.2, not less than six months prior to the end of the Initial Term, that the Lease will not
13 be extended.

14 1.5 **Possible Further Extension of Lease.** Prior to the expiration of the Term
15 the Parties will meet and discuss the possible extension of this Lease beyond the fifty (50) year
16 time period provided in this Lease; provided, nothing in this Lease obligates either the Landlord
17 or the Tenant to extend this Lease beyond the fifty (50) year time period provided in this Lease,
18 or to enter into a new Lease for the Leased Premises when the Term of this Lease expires.

19 1.6 **Holdover.** If Tenant continues to hold possession of the Leased Premises
20 after the natural expiration of the Term of this Lease, then such holding over is not a renewal of
21 the Lease for the whole term, but Tenant will be a tenant from month to month only under the
22 same terms and conditions as are provided in this Lease; EXCEPT Landlord may, at Landlord’s
23 option, establish a new monthly rent for any holdover period upon thirty (30) days’ prior written
24 notice to Tenant.

25 1.7 **Redelivery of Leased Premises.** Except as otherwise provided in this
26 Lease, upon the expiration or earlier termination of this Lease the Tenant will redeliver the
27 Leased Premises to Landlord in good condition, ordinary wear and tear excepted.

28 1.8 **Obligation To Meet and Confer.** Throughout the Term of this Lease the
29 Parties will meet and confer at least annually for the purpose of determining whether changed
30 circumstances require the amendment to this Lease. The Parties will act reasonably and in good
31 faith to determine if changed circumstances require the amendment to this Lease and, if so, will
32 execute appropriate documentation amending this Lease.

33 1.9 **Tenant’s Right to Mortgage or Collaterally Assign Lease.**
34 Notwithstanding anything contained in this Lease to the contrary, Tenant may mortgage, pledge,
35 or collaterally assign this Lease if required to obtain its financing and development of the Solar
36 Garden. Upon request, Landlord will execute any required consent to the mortgage, pledge, or
37 collateral assignment of this Lease; provided, however, the form of the mortgage, pledge, or
38 collateral assignment is subject to the review and approval of Landlord’s attorney.

1 1.10 **Additional Consideration For Lease.** As additional consideration for this
2 Lease, Tenant covenants and agrees with Landlord that throughout the Term Tenant will offer to
3 all subscribers located within the corporate limits of the Town of Breckenridge, Colorado a
4 pricing discount equal to \$.10 (ten cents) per watt sold. The discount shall be off the retail price
5 offered at the time of purchase and may be in the form of a reduced sales price or rebate.

6 **ARTICLE 2 – RENT AND SECURITY**

7 2.1 **Rent.** The total rent to be paid by the Tenant for the Term (including both
8 the Initial Term and, if applicable, the Extension Term) is \$10.00, the receipt and sufficiency of
9 which is acknowledged by the Landlord.

10 2.2 **“Additional Rent” Defined.** Any amount due to Landlord from Tenant
11 under this Lease that is not specifically identified as “rent” is additional rent.

12 2.3 **Interest On Past Due Amounts.** Tenant will pay interest to Landlord on
13 any sum due to Landlord under this Lease that is thirty (30) days or more past due at the rate of
14 eight percent (8%) per annum from the date due until the date such payment is fully paid.

15 2.4 **Place And Manner Of Payments.** All sums payable to Landlord under
16 this Lease will be made to:

17 Town of Breckenridge
18 Clerk & Finance Division
19 Attn: Accounts Receivable
20 P. O. Box 168
21 Breckenridge, CO 80424
22

23 or at such other place as the Town Manager of the Town of Breckenridge (“**Town Manager**”)
24 may hereafter designate by written notice provided to Tenant in accordance with Section 16.2 of
25 this Lease. All sums will be made in legal tender of the United States. Any check given to the
26 Landlord will be received subject to collection, and Tenant agrees to pay any charges, fees or
27 costs incurred by the Landlord for the collection, including reasonable attorney’s fees.
28

29 2.5 **Security Deposit.** Tenant has deposited with Landlord the sum of
30 \$10,000.00 as a security deposit (“**Security Deposit**”), the receipt of which is acknowledged by
31 Landlord. Landlord may (but is not be required to) use the Security Deposit for the payment or
32 reimbursement of any amount that Landlord may spend or become obligated to spend by reason
33 of Tenant’s default under this Lease; to compensate Landlord for any other loss, damage or
34 expense that Landlord may suffer by reason of Tenant’s default under this Lease; or to
35 compensate Landlord for damage to Town of Breckenridge streets or rights of way caused by
36 Tenant. If any portion of the Security Deposit is so used or applied, Tenant will within ten (10)
37 days after written demand deposit with Landlord cash in an amount sufficient to restore the
38 Security Deposit to its original amount, and Tenant’s failure to do so will be a breach of this
39 Lease. Landlord is not required to maintain the Security Deposit separately from Landlord’s

1 general funds, and Tenant is not entitled to interest on the Security Deposit. If Tenant fully and
2 faithfully performs all of its obligations under this Lease, the Security Deposit, or any balance
3 thereof, will be returned to Tenant within sixty (60) days of the expiration or earlier termination
4 of this Lease.

5 **ARTICLE 3 – LANDLORD’S DISCLAIMERS AND EXCULPATORY PROVISIONS**

6 3.1 **“As Is” Condition of Leased Premises.** Tenant acknowledges that it had
7 adequate and fair opportunity to inspect the Leased Premises prior to taking possession. The
8 Leased Premises are leased by Landlord to Tenant, and accepted by Tenant, in **“AS IS”**
9 condition. Tenant’s act of taking possession of the Leased Premises is conclusive evidence that
10 Tenant accepted the Leased Premises in then **“AS IS”** condition, and that the Leased Premises
11 (including all leased personal property) were in satisfactory condition at the time of
12 commencement of Tenant’s possession.

13 3.2 **Landlord’s Non-liability.** As a material part of the consideration to be
14 received by Landlord under this Lease, Tenant assumes all risk of damage to property or injury
15 to persons in or upon the Leased Premises from any cause other than Landlord’s gross
16 negligence or intentional act, and Tenant waives all claims in respect thereof against Landlord.

17 3.3 **Limitation of Remedies.** **LANDLORD IS NOT LIABLE FOR ANY INDIRECT,**
18 **SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF**
19 **ANTICIPATED PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, OR ANY SIMILAR**
20 **CLAIM ARISING FROM THE LANDLORD’S BREACH OF THIS LEASE, EVEN IF LANDLORD HAS**
21 **BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES**
22 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

23 **ARTICLE 4 – TENANT’S SITE IMPROVEMENTS**

24 4.1 **Tenant to Pay Landlord For Initial Site Improvements.** Not later than
25 June 30, 2013 Tenant will pay the Landlord the sum of \$20,000.00, which funds will be used by
26 Landlord to construct the initial site improvements upon the Leased Premise as defined in
27 Section 4.2, below.

28 4.2 **Landlord’s Site Improvements- Defined.** The initial site improvements to
29 be constructed by Landlord upon the Leased Premises, include the following (**“Landlord’s Site**
30 **Improvements”**):

- 31 (a) removal of spoils; and
- 32 (b) grading of land to meet Tenant’s requirements as depicted on the attached

33 **Exhibit “B”**

1 Landlord commenced construction and installation of Landlord’s Site Improvements on
2 approximately May 31, 2013 (prior to the execution of this Lease), and all of Landlord’s Site
3 Improvements shall be completed by Landlord not later than June 30, 2013.

4 4.3 **Tenant’s Site Improvements – Defined.** The initial Solar Garden
5 improvements to be constructed by Tenant upon the Leased Premises, include, without
6 limitation:

7 (a) racking and foundations;

8 (b) inverters and transformers;

9 (c) necessary electrical interconnections and all improvements and connections
10 required to transfer and deliver electrical generation offsite, including, without limitation, 3
11 three-phase extension and powers boxes, a 200-400 square structure to house electrical and
12 maintenance equipment;

13 (d) security fencing and gating, with cameras, enclosing the Leased Premises; a

14 (e) safety signage; and

15 (f) solar photo voltaic (“PV”) panels.

16 As used in this Article 4, “**Tenant’s Site Improvement**” means the initial improvements to the
17 Leased Premises to be constructed by Tenant as described above, together with in any other
18 physical improvement made, or proposed to be made, to the Leased Premises.

19
20 4.4 **Procedure For Review and Approval of Tenant’s Site Improvements.**
21 No Tenant Site Improvement may be made to the Leased Premises by the Tenant except under
22 the following conditions:

23 (a) No Tenant Site Improvement may be undertaken until the Tenant has obtained
24 approval of the plans and specifications for such Tenant Site Improvement from the Landlord,
25 acting in its capacity as owner of the Leased Premises (and not in its governmental capacity). In
26 connection therewith, the Landlord has the right to review and approve a proposed Tenant Site
27 Improvement in its sole and absolute discretion.

28 (b) The Tenant must also obtain a “Development Permit” from the Landlord,
29 acting in the Landlord’s governmental capacity.

30 4.5 **Construction of Tenant Site Improvements.** All work done in connection
31 with the construction of an Tenant Site Improvement must be done in a good and workmanlike
32 manner and in material conformity with the plans and specifications that are approved by the
33 Landlord. All Tenant Site Improvements must be constructed in accordance with any applicable
34 rule, regulation, code, ordinance, or administrative regulation of any governmental authority with
35 jurisdiction.

1 4.6 **Timeline for Construction of Tenant’s Site Improvements.** The
2 construction of an approved Tenant Site Improvement must be prosecuted with reasonable
3 dispatch, subject to delays caused by Force Majeure Events (See Section 16.10). The Solar
4 Garden shall be placed in service by Tenant not later than August 31, 2013. Once the Solar
5 Garden is placed in service, Tenant will operate the Solar Garden continuously and without
6 interruption throughout the Term, except when it is necessary to temporarily cease operations of
7 the Solar Garden to maintain, repair, or replace the Solar Garden equipment or the Access Road.

8 4.7 **Access to Leased Premises.**

9 (a) If the Access Road crosses other land owned by Landlord, Landlord will
10 provide Tenant with legal access to the Leased Premises over such land.

11 (b) Tenant, and its employees, guests, contractors, agents, representatives, and
12 invitees may access the Leased Premises only via the Access Road. No other access to the
13 Leased Premises is permitted without the prior, written consent of the Town Manager.

14 (c) At any time during the Term, Landlord, at its expense, may relocate the
15 Access Road so long as Tenant is provided commercially reasonable access to the Leased
16 Premises over the relocated Access Road.

17 (d) To the extent required, Landlord will assist Tenant in obtaining any required
18 permit or authorization to access the Leased Premises from Colorado Highway 9.

19 4.8 **Additional Land Required By Tenant During Construction of Tenant’s**
20 **Site Improvements.** Tenant is not permitted to use any land other than the Leased Premises for
21 the staging, storage, and construction of the Tenant Site Improvements; provided, however, that
22 if Tenant reasonably requires additional land for staging, storage, and related activities for its
23 construction of the Tenant Site Improvements Landlord will provide, on a temporary basis (until
24 the Tenant Site Improvements are completed, but not to exceed six (6) months) up to one acre of
25 Landlord-owned real property adjacent to the Leased Premises for Tenant’s use in connection
26 with the construction of the Tenant’s Site Improvements. Tenant’s interest in such one acre tract
27 is a license, and is not a leasehold. Upon the completion of the Tenant Site Improvements,
28 Tenant will return the one acre tract to its condition as existed when it began its use of the land,
29 normal wear and tear excepted.

30 4.9 **Title to the Tenant Site Improvements.** Except as otherwise provided in
31 this Lease, title to the **Tenant Site Improvements** belongs to the Tenant; however, Landlord
32 understands that the some of the **Tenant Site Improvements** will be subject to one or more
33 agreement between the Tenant and third parties. Upon the expiration or earlier termination of
34 this Lease, title to the **Tenant Site Improvements** will be subject to the provisions of Section 4.9
35 of this Lease.

36 4.10 **Disposition of Tenant Site Improvements Upon Termination or**
37 **Expiration of this Lease.**

1 (a) Not later than the last day of the Term Tenant will remove the **Tenant Site**
2 **Improvements** from the Leased Premises, and dispose of them in accordance with any
3 contractual relationship then existing between Tenant and any third party. The cost of such
4 removal will be borne by Tenant, and Tenant will repair all injury or damage done to the Leased
5 Premises in connection with the removal of the **Tenant Site Improvements**.

6 (b) Landlord may retain or dispose of any personal property, fixtures (including,
7 but not limited to, trade fixtures), alterations or improvements, including, without limitation, any
8 Tenant Site Improvement, left remaining by Tenant at or upon the Leased Premises following the
9 expiration or earlier termination of this Lease, and Landlord is not accountable to Tenant for any
10 damages for the loss or destruction thereof, or for any part of the proceeds of sale, if any,
11 realized by Landlord. Tenant waives all claims against Landlord for any damages suffered by
12 Tenant resulting from Landlord's retention or disposition of such personal property, fixtures
13 (including, but not limited to, trade fixtures), alterations or improvements, including, without
14 limitation, any Tenant Site Improvement. Tenant is liable to Landlord for Landlord's costs for
15 storing, removing and disposing of any such personal property, fixtures (including trade
16 fixtures), alterations, or any Tenant Site Improvement.

17 **ARTICLE 5 – TENANT'S AFFIRMATIVE OBLIGATIONS**

18 5.1 **Required License.** Throughout the Term Tenant will obtain and maintain
19 in full force and effect a Town of Breckenridge Business and Occupational License Tax license.

20 5.2 **Utilities.** Tenant will initiate, contract for, and obtain in its name, all utility
21 services required for the operation of the Solar Garden on the Leased Premises, including, but
22 not limited to, electricity and telephone, and Tenant will pay all charges for such services as they
23 become due. Any construction work done to extend or provide utility service to the Leased
24 Premises will be done in a good and workmanlike manner by Tenant, and Tenant will promptly
25 repair any damage caused by the construction and installation of utility service to the Leased
26 Premises. With respect to electrical service only, Landlord grants permission and a non-exclusive
27 right to Tenant to install any required electrical service for the Leased Premises.

28 5.3 **Taxes.**

29 (a) As used in this Lease, the term "**Taxes**" means all personal property and real
30 property taxes levied, assessed or imposed by any taxing authority arising out of Tenant's
31 occupancy and use of the Leased Premises pursuant to this Lease.

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

36 (c) Tenant will pay all Taxes lawfully assessed arising from its occupancy and
37 use of the Leased Premises pursuant to this Lease, and Tenant will indemnify and defend

1 Landlord from any such Taxes. Tenant will pay all Taxes in a timely manner. Upon Landlord's
2 written request Tenant will provide to Landlord a photostatic copy of the receipt(s) or cancelled
3 check(s) showing payment of the Taxes. Tenant may pay any Taxes in installments if permitted
4 by law.

5 (d) If Tenant is liable for the payment of any Taxes arising from Tenant's
6 occupancy and use of the Leased Premises pursuant to this Lease, Tenant may, at its sole
7 expense, contest such Taxes by the commencement and prosecution, in good faith and with due
8 diligence, of appropriate legal proceedings. Tenant will make timely payment of such Taxes if
9 Tenant loses the contest. Tenant will advise Landlord prior to instituting any such contest and
10 will as a condition of exercising such right provide Landlord such reasonable assurance as it may
11 request that such contest will be in compliance with the provisions of this Section. Landlord, at
12 Tenant's sole cost and expense, will reasonably cooperate with Tenant in any such contest; may
13 join in the contest; and will execute and deliver such documents and instruments as may be
14 necessary or appropriate for prosecuting an effective contest.

15 5.4 **Maintenance.** The Solar Gardens and the Leased Premises will be
16 maintained by Tenant at its sole expense. Tenant will maintain, protect, and preserve the Leased
17 Premises and the Solar Garden in a safe, neat, and attractive condition and in good and
18 serviceable condition at its sole cost. Tenant will repair all damage to the Leased Premises and
19 the Solar Garden caused by its activities, and those of its employees, guests, contractors, agents,
20 representatives, and invitees.

21 5.5 **Snow Plowing.** Tenant, at its sole expense, will provide all required snow
22 plowing and removal necessary to allow the Premises to be used by Tenant for the uses described
23 in Section 1.3. This obligation includes, without limitation, providing all required snow plowing
24 and removal with respect to the Access Road. Tenant's snow plowing and removal operations
25 will be done in a manner that minimizes damage to the existing surface of the Access Road, and
26 Tenant will promptly repair and damage to the surface of the Access Road caused by its snow
27 plowing and removal operations.

28 5.6 **Landscaping.** No landscaping may be installed by the Tenant at the
29 Leased Premises without the Landlord's prior, written consent. Once installed, all landscaping
30 will be maintained by the Tenant in accordance with the approved landscaping plan for the
31 Leased Premises. Tenant will provide weed management and protect against any noxious weed
32 on the Leased Premises.

33 5.7 **Damage to Leased Premises.** If any damage occurs to the Leased
34 Premises, or any other real or personal property-owner by Landlord and used by Tenant, Tenant,
35 at its sole cost, shall promptly repair or restore the damaged property to its previous condition at
36 Landlord's option.

37 5.8 **Trash and Rubbish.** Tenant's use of the Leased Premises pursuant to this
38 Lease may not create any industrial waste or hazardous material. Tenant, at its sole cost, shall
39 provide any required off-site disposal of any waste connected with its use of the Leased

1 Premises pursuant to this Lease, including, without limitation, the collection, storage, and
2 removal of paper and all other waste from the Leased Premises.

3 **5.9 Security of Leased Premises.** Security for the Leased Premises will be the
4 responsibility of and will be provided by the Tenant. Landlord has no obligation to provide
5 security for the Leased Premises, and Landlord is not liable for any loss or damage suffered to
6 the Solar Garden (including, without limitation, any solar panels located within the Solar
7 Garden) or the Leased Premises from any cause, except the gross negligence or intentional
8 wrongful act of the Landlord, its officers, employees, or agents, or Landlord's breach of this
9 Lease.

10 **5.10 Signs.** Tenant will not post, place, affix, erect, or display any sign within or
11 outside of the Leased Premises without Landlord's prior approval, which approval may be
12 granted, withheld, or conditionally approved in Landlord's sole and absolute discretion. In
13 considering Tenant's request to place a sign within or outside of the Leased Premises, Landlord
14 acts in its capacity as landlord of the Leased Premises, and not in its governmental capacity.
15 Landlord may remove any sign placed within or outside of the Leased Premises in violation of
16 the portions of this Section. In addition to obtaining Landlord's discretionary permission as
17 described above, Tenant must also obtain any required sign permit from Landlord acting in its
18 governmental capacity. Tenant will maintain all signs located within or outside of the Leased
19 Premises in good, clean, and attractive condition. Tenant will remove all signs placed by it
20 within or outside of the Leased Premises at the expiration or earlier termination of this Lease,
21 and repair any damage or injury caused thereby. If not so removed by Tenant, the Landlord may
22 remove such sign(s) at Tenant's expense.

23 **5.11 Inspection And Entry.** Landlord and Landlord's authorized
24 representatives may enter the Leased Premises at all times during reasonable hours to inspect the
25 Leased Premises. Tenant further agrees that the Landlord may go upon the Leased Premises at all
26 times and:

27 (i) make any necessary repairs to the Leased Premises and perform any work
28 therein that may be necessary to comply with any laws, ordinances, rules or regulations
29 of any public authority or that the Landlord may deem necessary to prevent waste or
30 deterioration of the Leased Premises;

31 (ii) post any notice provided for by law; or

32 (iii) otherwise protect any and all rights of Landlord,

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

34

35 Nothing in this Section implies or creates any duty on the part of the Landlord to do any work
36 that under any provision of this Lease the Tenant may be required to do, nor will it constitute a
37 waiver of Tenant's default in failing to do such work. No reasonable exercise by the Landlord of
38 any rights herein reserved will entitle the Tenant to any damage or compensation of any kind

1 from Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any
2 abatement of rent.

3
4 **5.12 Compliance With Laws.**

5 (a) Tenant, at its sole cost and expense, will comply with all laws, ordinances,
6 orders, and regulations of all governmental authorities with respect to the use of the Leased
7 Premises, as amended from time to time throughout the Term. A judgment of any court or the
8 admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party
9 thereto or not, that Tenant has violated any law, ordinance, requirement or order in the use of the
10 Leased Premises will be conclusive of the fact as between Landlord and Tenant.

11 (b) Without limiting the generality of subsection (a), Tenant will comply with all
12 applicable environmental laws that are applicable to Tenant's use of the Leased Premises,
13 including, but not limited to:

14 (i) the federal Comprehensive Environmental Response, Compensation and
15 Liability Act (42 U.S.C. §§9601, et seq.) ("CERCLA");

16 (ii) the federal Resource Conservation and Recovery Act (42 U.S.C. §§6901,
17 et seq.) ("RCRA");

18 (iii) the federal Clean Water Act ("CWA");

19 (iv) state and local environmental laws, rules, regulations;

20 (v) any state or local law, rule, regulation, or program implementing, similar
21 to, or equivalent to such federal statutes or programs;

22 (vi) all other local, state and federal environmental laws, rules and regulations.

23 Tenant's obligation under this Section 5.12 does not extend to any noncompliance arising from
24 conditions that existed with regard to the Leased Premises at the commencement of the Lease.

25
26 **ARTICLE 6 – TENANT'S NEGATIVE OBLIGATIONS**

27 6.1 **Assignment And Subletting.** Except as provided in Section 1.9 with
28 respect to Tenant's right to mortgage, pledge, or collaterally assign this Lease if required to
29 obtain its financing to construct the Solar Garden, Tenant will not assign, sublet, license, pledge,
30 encumber, or allow any other person or entity to occupy or use any or all of the Leased Premises
31 without first obtaining Landlord's prior written consent, which consent may be granted, withheld
32 or conditionally approved in Landlord's sole, absolute and subjective discretion. Any
33 assignment, sublease, license, pledge or encumbrance without Landlord's prior written consent is
34 voidable by Landlord and, at Landlord's election, will constitute a default under this Lease. No
35 consent by Landlord to any of the above acts will constitute a further waiver of the provisions of

1 this Section. If Landlord consents to an assignment, sublease, or license Tenant may be required,
2 as a condition of granting consent, to pay Landlord's reasonable costs incurred in considering the
3 proposed assignment, sublease, or license including, but not limited to, legal fees and credit
4 checks.

5 **6.2 Assignment By Operation of Law.** Neither this Lease nor any interest in
6 this Lease is assignable or transferable by operation of law. If:

7 (i) any proceeding under the Bankruptcy Code, or any amendment thereto, is
8 commenced by or against Tenant;

9 (ii) Tenant is adjudged insolvent;

10 (iii) Tenant makes any assignment for the benefit of creditors;

11 (iv) a post-judgment writ of attachment or execution is levied on the leasehold
12 estate created by this Lease and not released or satisfied within thirty (30) days thereafter;
13 or

14 (v) a receiver is appointed for Tenant with authority to take possession or
15 control of the Leased Premises or the business conducted therein by Tenant

16 then this Lease, at the option of Landlord, will immediately terminate and will not be treated as
17 an asset of Tenant.

18 **6.3 No Waste or Nuisance.** Tenant will not commit or permit to be committed
19 on the Leased Premises any waste, public or private nuisance, or any other act or thing prohibited
20 by law.
21

22 **6.4 Mechanic's Liens.**

23 (a) In connection with the construction of any Tenant Site Improvements, the
24 Tenant will cause the payment of all proper and valid invoices and charges of all contractors,
25 subcontractors, suppliers, materialmen and similar parties who furnish services or materials in
26 connection with the construction process.

27 (i) In the event any person ever records a mechanic's lien to enforce any
28 claim for services or materials alleged to have been provided in connection with the
29 Leased Premises, the Tenant will cause the same to be released of record within sixty
30 (60) days after the recordation thereof, and the Tenant will be liable to satisfy and cause a
31 discharge of any such mechanic's lien claim. Notwithstanding the foregoing, the Tenant
32 may contest any such mechanic's lien claim, provided that the Tenant conducts such
33 contest in a timely manner and with due diligence, and that the Tenant provides the
34 Landlord with such security in connection therewith as the Landlord may reasonably
35 require. In connection with any such contest, the Landlord may join and participate in any

1 such contest, at the Tenant's expense (with participation to include, without limitation,
2 the execution and filing of pleadings and the provision and gathering of testimony and
3 other evidence). In the event the Tenant loses any such contest, with all further rights of
4 appeal having expired, the Tenant must satisfy the mechanic's lien claim in full prior to
5 any foreclosure sale or other disposition of the Leased Premises which is made for the
6 purpose of satisfying the claim.

7 (ii) In the event of any such mechanic's lien claim, Tenant may at its
8 discretion determine to provide a bond or other undertaking pursuant to C.R.S. 38-22-131
9 so that Leased Premises is no longer subject to such mechanic's lien claim. If such
10 substitution is made, then the provisions of subsection (i) above shall not apply with
11 regard to that mechanic's lien claim.

12 (b) Prior to commencement of construction of any Tenant Site Improvements, the
13 Tenant will deliver notices to all contractors and subcontractors and post notices in accordance
14 with Section 38-22-105, C.R.S. (as it may be amended or in accordance with similar statutes that
15 may be substituted therefor in the future), in locations that will be visible by parties performing
16 any work, which notices will state that the Landlord is not responsible for the payment of such
17 work and setting forth such other information as may be reasonably required pursuant to such
18 statutory provisions.

19 ARTICLE 7 – INSURANCE

20 7.1 **Tenant's Required Insurance.** Tenant will procure and maintain the
21 minimum insurance coverages listed below. Such coverages will be procured and maintained
22 with forms and insurers acceptable to the Landlord. All coverages will be continuously
23 maintained to cover all liability, claims, demands, and other obligations assumed by Tenant
24 pursuant to this Lease. In the case of any claims-made policy, the necessary retroactive dates
25 and extended reporting periods will be procured to maintain such continuous coverage.

26 (a) worker's compensation insurance to cover liabilities imposed by applicable
27 laws for any employee of Tenant engaged in the performance of Work under this Lease.

28 (b) comprehensive automobile liability insurance with minimum combined single
29 limits for bodily injury and property damage of not less than ONE MILLION DOLLARS
30 (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate
31 with respect to each of Tenant's owned, hired or non-owned vehicles assigned to or used in
32 performance of this Lease.

33 (c) commercial general liability insurance with minimum combined single limits
34 of not less than TWO MILLION DOLLARS (\$2,000,000.00). The policy will be applicable to
35 all premises and operations. The policy will include coverage for bodily injury, broad form
36 property damage (including completed operations), personal injury (including coverage for
37 contractual and employee's acts), blanket contractual, products, and completed operations.

1 (d) builder's risk insurance with minimum limits of not less than the insurable
2 value of the Tenant Site Improvements for the Solar Garden to be installed at the Leased
3 Premises, less the value of the materials and equipment insured under installation floater
4 insurance. The policy must be written in completed value form and will protect the Tenant and
5 the Landlord against risks of damage to buildings, structures, and materials and equipment not
6 otherwise covered under Installation Floater insurance, from the perils of fire and lightning, the
7 perils included in the standard coverage endorsement, and the perils of vandalism and malicious
8 mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear,
9 transformers, panelboards, control equipment, and other similar equipment will be insured under
10 Installation Floater insurance when the aggregate value of the equipment exceeds \$10,000. The
11 policy will contain a provision that in the event of payment for any loss under the coverage
12 provided, the insurance company will have no rights of recovery against the Tenant or the
13 Landlord.

14 (e) installation floater with minimum limits of not less than the insurable value of
15 the solar garden improvements to be installed at the Leased Premises. The policy will protect the
16 Tenant and the Landlord from all insurable risks of physical loss or damage to materials and
17 equipment not otherwise covered under Builder's Risk insurance, while in warehouses or storage
18 areas, during installation, during testing, and after the work under this Lease is completed. The
19 policy will be of the "all risks" type, with coverages designed for the circumstances which may
20 occur in the particular work to be performed under this Lease. The policy will provide for losses
21 to be payable to the Tenant and the Landlord as their interests may appear. The policy will
22 contain a provision that in the event of payment for any loss under the coverage provided, the
23 insurance company will have no rights of recovery against the Tenant or the Landlord.

24 7.2 **Tenant's Insurance Is Primary; Deductibles.** Every policy required
25 above will be primary insurance, and any insurance carried by the Landlord, its officers, or its
26 employees, or provided through a self-insurance pool of which Landlord is a member, will be
27 excess and not contributory insurance to that provided by Tenant. Tenant will be solely
28 responsible for any deductible amount under any policy required above,.

29 7.3 **Landlord As Additional Insured.** Tenant's commercial general liability
30 insurance policy described above will be endorsed to include the Landlord as an additional
31 insured.

32 7.4 **Insurance Criteria.** Insurance policies required by this Lease will:

33
34 (i) be issued by insurance companies licensed to do business in the State of
35 Colorado with general policyholder's ratings of at least A and a financial rating of at least
36 XI in the most current Best's Insurance Reports available at the time such insurance is to
37 be procured; and

38 (ii) provide that the insurance cannot be cancelled or materially changed in the
39 scope or amount of coverage unless fifteen (15) days' advance notice is given to the
40 Landlord.

1 **7.5 Evidence of Insurance.** Prior to the commencement of this Lease, and on
2 each subsequent renewal or replacement of the required insurance policies, Tenant will give to
3 Landlord a certificate of insurance evidencing compliance with the requirements of this Section.
4 All required insurance policies will be renewed or replaced and maintained by the Tenant
5 throughout the Term to assure continuous coverage. If Tenant fails to give the required insurance
6 certificate within ten (10) days after notice or demand for it, such action will constitute a default
7 under this Lease, and the Landlord may then proceed as provided in Article 1 of this Lease,
8 and/or Landlord may obtain and pay for that insurance and receive reimbursement from the
9 Tenant, together with interest thereon at the rate of 8% per annum.

10 **7.6 Use Of Insurance Proceeds.** Tenant will apply any insurance proceeds
11 payable by reason of loss or damage to the Solar Farm to the restoration of the improvements on
12 the Leased Premises and to any damage to the Leased Premises themselves. In the event of
13 damage due an insurable cause, so long as Tenant complies with the requirements of this Section
14 this Lease will continue in full force and effect.

15 **7.7 Tenant’s Failure to Maintain Insurance.** Notwithstanding any other
16 portion of this Lease, failure on the part of Tenant to procure or maintain policies providing the
17 required coverages, conditions, and minimum limits will constitute a material breach of this
18 Lease for which the Landlord may immediately terminate this Lease, or, at its discretion, the
19 Landlord may procure or renew any such policy or any extended reporting period thereto and
20 may pay any and all premiums in connection therewith, and all monies so paid by Landlord will
21 be repaid by Tenant to the Landlord upon demand, together with interest thereon at the rate of
22 eight percent (8%) per annum, or the Landlord may offset the cost of the premiums against any
23 monies due to Tenant from the Landlord.”

24 **ARTICLE 8 – INDEMNIFICATION**

25 **8.1 Indemnification By Tenant.** Tenant will indemnify and defend the
26 Landlord, its officers, employees, insurers, and self-insurance pool, from all liability, claims, and
27 demands, on account of injury, loss, or damage, including, without limitation, claims arising
28 from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any
29 other loss of any kind whatsoever, arising out of or in any manner connected with this Lease or
30 Tenant’s use or possession of the Leased Premises pursuant to this Lease, except to the extent
31 that such liability, claim, or demand arises through the gross negligence, the intentional
32 wrongful act of the Landlord, its officers, employees, or agents, or Landlord’s breach of this
33 Lease. If indemnification is required under this Section, Tenant will investigate, handle, respond
34 to, and to provide defense for and defend against, any such liability, claims, or demands at its
35 expense, and bear all other costs and expenses related thereto, including court costs and attorney
36 fees.

37 **ARTICLE 9 – EMINENT DOMAIN**

38 **9.1 Eminent Domain.**

1 (a) The terms “**eminent domain**,” “**condemnation**”, and “**taken**” and related
2 terms as used in this Section include any taking for public or quasi-public use and private
3 purchases in place of condemnation by any authority authorized by applicable law to exercise the
4 power of eminent domain.

5 (b) If the entire Leased Premises are taken by eminent domain, this Lease will
6 automatically end on the earlier of:

7 (i) the date title vests; or

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

9 (c) If the taking of a part of the Leased Premises materially interferes with
10 Tenant’s ability to continue its business operations in substantially the same manner then Tenant
11 may terminate this Lease on the earlier of:

12 (i) the date when title vests;

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

14 (iii) sixty (60) days following notice to Tenant of the date when vesting or
15 dispossession is to occur.

16 Rent will be paid to the date of the termination. If the taking of a part of the Leased Premises
17 does not materially interfere with Tenant’s ability to continue its business operations in
18 substantially the same manner, then this Lease will terminate only as to part of the Leased
19 Premises taken, and the rent will abate in proportion to the part of the Leased Premises taken.
20

21 (d) Any compensation or damages paid by a condemning authority will be
22 divided between the Landlord and Tenant as follows:

23 (i) Tenant is entitled to that portion of the compensation or damages that
24 represents the amount of Tenant’s moving expenses, business dislocation damages,
25 Tenant’s personal property and fixtures, and the unamortized costs of leasehold
26 improvements paid for by Tenant; and

27 (ii) the balance of such compensation or damages belongs to the Landlord.

28 **ARTICLE 10 – COMPLAINT RESOLUTION**

29 10.1 **Informal Complaint Resolution.** Throughout the Term, Landlord’s
30 representative and Tenant’s representative will meet and confer informally and attempt to
31 satisfactorily resolve any informal complaint that may be made by any person with respect to any
32 aspect of Tenant’s operations at the Leased Premises. An “**informal complaint**” is any
33 complaint that is not a formal complaint as defined in Section 10.2. Both Landlord and Tenant
34 will act promptly and in good faith to attempt to resolve all informal complaints.

1 10.2 **Formal Complaint Resolution.**

2 (a) As used in this Section, a “**Formal Complaint**” is a written complaint filed by
3 any person concerning any aspect of Tenant’s operations at the Leased Premises, or a formal
4 written complaint made by the Landlord on its own initiative concerning any aspect of Tenant’s
5 operations at the Leased Premises.

6 (b) All Formal Complaints must be in writing.

7 (c) Any Formal Complaint by any person other than Landlord must be filed with
8 the Landlord.

9 (d) Tenant will be provided with a copy of the Formal Complaint within two (2)
10 business days of the Landlord’s receipt of the Formal Complaint if filed by any person other than
11 Landlord, or within two (2) business days of Landlord lodging of the Formal Complaint if the
12 Landlord files the Formal Complaint on its own initiative. No formal complaint will be
13 processed if the complaining party remains anonymous.

14 (e) Landlord and Tenant will attempt in good faith to resolve any Formal
15 Complaint promptly by negotiations between persons who have authority to settle the
16 controversy. Within ten (10) business days after the Formal Complaint has been delivered to
17 Tenant a representative of the Landlord and a representative of the Tenant will meet at a
18 mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to
19 exchange relevant information and to attempt to resolve the complaint in a mutually satisfactory
20 manner. Other interested parties, such as the person who filed the Formal Complaint, may be
21 invited to attend the meeting by either the Landlord or the Tenant. The ten (10) business day
22 deadline provided for in this Section may be extended by mutual agreement of the Landlord and
23 the Tenant.

24 (f) If the Formal Complaint has not been resolved by negotiation as provided
25 above within twenty (20) business days of the Landlord and Tenant’s meeting as described in
26 Subsection (e), the Formal Complaint will be brought to the attention of the Town Council of the
27 Town of Breckenridge (“**Town Council**”). Within thirty (30) business days of being advised of
28 the Formal Complaint, the Town Council will meet in a public meeting to review and help
29 resolve the Formal Complaint. The Town Council meeting may be continued if necessary to
30 properly consider the Formal Complaint; provided, however, that the Town Council will not
31 unduly delay its review or proposed resolution of the Formal Complaint.

32 (g) If the Tenant and the person who filed the Formal Complaint have not
33 resolved the Formal Complaint within twenty (20) days of the date the Town Council has
34 considered the Formal Complaint and proposed a resolution thereof, then the person filing the
35 Formal Complaint shall have the option to pursue such legal remedies as may be available to
36 such person in regard to the matter described by the Formal Complaint. The Town Council may
37 not alter the terms and conditions of this Lease when proposing a resolution of a Formal
38 Complaint, and no failure of the Tenant to agree in negotiation with the party filing the Formal

1 Complaint or to agree with the Town Council’s proposed resolution shall constitute a default
2 under this Lease, provided however, that in the event the Landlord is the person bringing the
3 formal complaint, nothing in this Section shall prevent the Landlord from then proceeding as
4 provided in Article 10 of this Lease.

5 **ARTICLE 11 – DEFAULT**

6 **11.1 Default By Tenant.** The occurrence of any one or more of the following
7 events will constitute a default and breach of the Lease by Tenant:

8 (a) Any termination for any reason of any solar power purchase agreement for
9 energy produced at the Leased Premises, with a continuous lapse of twelve (12) months or more
10 without Tenant entering into a subsequent solar power purchase agreement for the purchase of
11 such energy.

12 (b) The vacating or abandonment of the Leased Premises by Tenant.

13 (c) The failure by Tenant to make any payment of rent or any other payment
14 required to be made by Tenant hereunder, as and when due, when such failure will continue for a
15 period of ten (10) days after service of written notice thereof by Landlord to Tenant.

16 (d) The failure by Tenant to observe or perform any of the other covenants,
17 conditions, or provisions of this Lease to be observed or performed by the Tenant, or to obey
18 rules promulgated by Landlord, within ten (10) days after service of written notice thereof by the
19 Landlord to the Tenant. In the event of a non-monetary default that is not capable of being
20 corrected within ten (10) days, Tenant will not be default if it commences correcting the default
21 within ten (10) days of service of a demand for compliance notice and thereafter corrects the
22 default with due diligence.

23 (e) The making by Tenant of any general assignment or general arrangement for
24 the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged
25 bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy;
26 the appointment of a trustee or a receiver to take possession of substantially all of Tenant’s assets
27 located at the Leased Premises or of Tenant’s interest in this Lease; or the attachment, execution
28 or other judicial seizure of substantially all of Tenant’s interest in this Lease.

29 **11.2 Landlord’s Remedies Upon Default.** If the Tenant is in default under this
30 Lease, Landlord has all of the remedies provided for in such circumstances by Colorado law.

31 **11.3 Default By Landlord.** Landlord will be in default under this Lease if
32 Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within ten
33 (10) days following service of written notice thereof by Tenant. In the event of a non-monetary
34 default that is not capable of being corrected within ten (10) days, Landlord will not be default if
35 Landlord commences correcting the default within ten (10) days of receipt of notification thereof
36 and thereafter corrects the default with due diligence.

1 11.4 **Tenant’s Remedies Upon Default.** If the Landlord is in default under this
2 Lease, Tenant has all of the remedies provided for in such circumstances by Colorado law.

3 **ARTICLE 12 – NONDISTURBANCE**

4 12.1 **Quiet Enjoyment.** Subject to the terms and conditions of this Lease,
5 Landlord covenants that so long as the rent for the Leased Premises is paid as and when due, and
6 there is no default in any of the other covenants, conditions, or provisions of this Lease to be
7 performed, observed or kept by Tenant, the Tenant will peaceably and quietly hold and enjoy the
8 Leased Premises for the entire Term. Landlord further covenants that Landlord during the Term
9 Landlord will not take any action which negatively and materially affects the receipt of solar
10 radiation at the Solar Garden, or Tenant’s ability to access the Solar Garden.

11 **ARTICLE 13 – LANDLORD’S RULES**

12 13.1 **Rules.** Tenant will faithfully observe and comply with any rules and
13 regulations promulgated by Landlord with respect to the Leased Premises. Landlord’s rules and
14 regulations must be reasonable, and may not unilaterally change or significantly alter the
15 material terms and conditions of this Lease. The rules and regulations, and any amendments
16 thereto, will be binding upon the Tenant upon delivery to Tenant.

17 **ARTICLE 14 – HAZARDOUS MATERIALS**

18 14.1 **Hazardous Materials – Defined.** As used in this Section, the term
19 “**Hazardous Materials**” means any chemical, material, substance or waste:

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

22 (ii) that, even if not so regulated, may or could pose a hazard to the health or
23 safety of the occupants of the Leased Premises including, without limitation, any
24 petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those
25 substances defined as “hazardous substances”, “hazardous materials”, “hazardous
26 wastes” or other similar designations in the Comprehensive Environmental Response,
27 Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the
28 Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other
29 governmental statutes, laws, ordinances, rules, regulations, and precautions.

30 14.2 **Hazardous Materials – Prohibited.** Tenant will full comply with all
31 statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or
32 advised by any federal, state, local, or other governmental agency with respect to the use,
33 generation, storage, or disposal of Hazardous Materials. Tenant will not cause, or allow anyone
34 else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about
35 the Leased Premises without the prior written consent of Landlord, which consent may be
36 revoked at any time. Tenant’s indemnification of Landlord pursuant to this Lease extends to all

1 liability, including all foreseeable and unforeseeable consequential damages, directly or
2 indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the
3 Leased Premises by Tenant, or any person claiming under Tenant, including, without limitation,
4 the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any
5 closure or other required plans, whether such action is required or necessary prior to or following
6 the termination of this Lease, to the full extent that such action is attributable, directly or
7 indirectly, to the use, generation, storage, or disposal of Hazardous Materials by Tenant or any
8 person claiming under Tenant; provided, however, the written consent by Landlord to the use,
9 generation, storage, or disposal of Hazardous Materials will excuse Tenant from Tenant’s
10 obligation of indemnification, and, provided further, that Tenant’s indemnification obligation
11 under this Section 14.2 does not extend to any Hazardous Materials that were located on the
12 Leased Premises at the commencement of this Lease. In the event Tenant is in breach of the
13 covenants herein, after notice to Tenant and the expiration of the earlier of:

- 14 (i) the cure period provided in Section 11.1(c);
- 15 (ii) the cure period permitted under applicable law, regulation, or order,

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

20
21 **ARTICLE 15 – RIGHT TO RELOCATE LEASED PREMISES**

22
23 **15.1 Relocation Of Leased Premises.** At anytime throughout the Term of this
24 Lease the Landlord, in its sole and absolute discretion and at its sole cost, may relocate the
25 Leased Premises, so long as the relocated leased premises (“**Relocated Leased Premises**”) are
26 functionally comparable to the Leased Premises that existed immediately prior to the relocation.
27 If the Leased Premises are relocated by Landlord as provided in this Article 15, the Parties will
28 execute and record an appropriate amendment to this Lease describing and depicting the
29 Relocated Leased Premises in form and substance reasonably acceptable to each of the Parties.

30
31 **ARTICLE 16 – MISCELLANEOUS**

32 **16.1 Attorneys Fees/Costs.** If any action is brought in a court of law by either
33 Party to this Lease concerning the enforcement, interpretation, or construction of this Lease, the
34 prevailing Party, either at trial or upon appeal, is entitled to reasonable attorney’s fees, as well as
35 costs, including expert witness’ fees, incurred in the prosecution or defense of such action.

36 **16.2 Notices.** All notices required or permitted under this Lease must be given
37 by registered or certified mail, return receipt requested, postage prepaid, or by hand or
38 commercial carrier delivery, or by telecopies, directed as follows:

39 If intended for Town to:

1
2 Town of Breckenridge
3 P.O. Box 168
4 150 Ski Hill Road
5 Breckenridge, Colorado 80424
6 Attn: Financial Services Manager
7 Telecopier number: (970)547-4468
8 Telephone number: (970)453-3382
9

10 with a copy in each case (that will not constitute notice) to:

11
12 Timothy H. Berry, Esq.
13 Timothy H. Berry, P.C.
14 131 West 5th Street
15 P. O. Box 2
16 Leadville, Colorado 80461
17 Telecopier number: (719)486-3039
18 Telephone number: (719)486-1889
19

20 If intended for Tenant to:

21
22 Breck Solar1, LLC
23 Attn: Mark Boyer, Manager
24 401 Tree Farm Drive
25 Carbondale, Colorado 81623
26
27 Telecopier number: (800)646-0323
28 Telephone number: (970)692-2592
29

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

42
43 16.3 **“Day” Defined.** Unless otherwise indicated, the term “day” means a
44 calendar day (and not a business day).

1 16.4 **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory
2 obligation to act or to refrain from acting as specifically indicated in the context of the sentence
3 in which such word is used.

4 16.5 **Complete Agreement.** This Lease contains the complete and final
5 expression of the agreement between the Parties, and there are no promises, representations, or
6 inducements except as are herein provided. All negotiations, considerations, representations, and
7 understandings between the Parties related to this Lease are contained herein.

8 16.6 **Amendment.** This Lease may not be modified except by a written Lease
9 signed by both the Landlord and Tenant. Oral modifications of this Lease are not permitted.

10 16.7 **Captions.** The headings of the sections and paragraphs contained in this
11 Lease are for convenience only and do not define, limit, or construe the contents of the articles,
12 sections and subsections.

13 16.8 **Waiver.** The failure of either Party to exercise any of such Party’s rights
14 under this Lease is not a waiver of those rights. A Party waives only those rights specified in
15 writing and signed by the Party waiving such rights.

16 16.9 **Severability.** If any provision of this Lease is held to be invalid, illegal, or
17 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
18 contained in this Lease and the application hereof will not in any way be affected or impaired
19 thereby.

20 16.10 **Force Majeure.** Neither Party will be liable to the other for any failure,
21 delay, or interruption in the performance of any of the terms, covenants, or conditions of this
22 Lease due to causes beyond the control of that Party including, without limitation, strikes,
23 boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy,
24 acts of superior governmental authority, weather conditions, floods, riots, rebellion, terrorism,
25 sabotage or any other circumstance for which such Party is not responsible or that is not in its
26 power to control.

27 16.11 **Advances By Landlord For Tenant.** If Tenant fails to do anything
28 required to be done by it under the terms of this Lease (other than a failure to make the payments
29 to Landlord herein required) the Landlord may, at its sole option, but without any obligation to do
30 so, do or perform such act or thing on behalf of Tenant, and in doing so the Landlord will not be
31 deemed to be a volunteer; provided, however, that before exercising its rights under this Section
32 Landlord must give notice to Tenant as provided in Section 16.2, and afford the Tenant not less
33 than five (5) days from the giving of such notice within which to do or perform the act required
34 by Tenant. Upon notification to Tenant of the costs incurred by the Landlord Tenant will
35 promptly pay to Landlord the full amount of costs and/or expenses incurred by Landlord
36 pursuant to this Section, together with interest thereon at the rate of eight percent (8%) per
37 annum.

1 16.12 **Governmental Immunity.** In entering into this Lease the Landlord is
2 relying on, and does not waive or intend to waive by any provision of this Lease, the monetary
3 limitations or any other rights, immunities, and protections provided by the Act, as from time to
4 time amended, or any other limitation, right, immunity or protection otherwise available to
5 Landlord, its officers, or its employees.

6 16.13 **No Adverse Construction Based On Authorship.** Each of the Parties
7 stipulate and agree that it had the opportunity to participate in the drafting of this Lease. This
8 Lease is not to be construed against either Party by virtue of such Party having drafted this
9 Lease.

10 16.14 **Landlord's Consent.** Except as otherwise expressly provided to the
11 contrary in this Lease, wherever in this Lease it is provided that some act requires the Landlord's
12 prior consent, such consent will not be unreasonably withheld or delayed by Landlord.

13 16.15 **Authority.** The individual executing this Lease on behalf of the Tenant
14 represents and warrants to Landlord that he or she has all requisite power and authority to bind
15 the Tenant and to cause the Tenant to fully perform its obligations under this Lease.

16 16.16 **Third Parties.** There are no third party beneficiaries of this Lease.

17 16.17 **Recording of Lease.** This Lease, or a memorandum of lease acceptable to
18 both Landlord and Tenant may be recorded the Clerk and Recorder of Summit County,
19 Colorado.

20 16.18 **Time of Essence.** Time is of the essence of this Lease.

21 16.19 **Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of
22 Colorado, without regard to its conflict of laws rules, will govern the interpretation, validity,
23 performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this
24 Lease will be commenced in Summit County, Colorado. **BOTH PARTIES WAIVE THE RIGHT TO A**
25 **JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.**

26 16.20 **Non-Discrimination; Compliance With Applicable Laws.** Tenant:

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

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

33 (c) will in all solicitations or advertisements for employees to be engaged in the
34 performance of work at the Leased Premises state that all qualified applicants will receive

1 consideration for employment without regard to race, color, creed, sex, sexual orientation,
2 religion, national original or disability; and

3 (d) will comply with all applicable federal, state, and local laws, rules and
4 regulations. Without limiting the generality of the foregoing, Tenant will comply with the
5 applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
6 Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory
7 agency.

8 The indemnification and termination provisions of this Lease apply to Tenant’s failure to comply
9 with all applicable laws or regulations.

10
11 16.21 **No Partnership.** The Landlord is not a partner, associate, or joint venturer
12 of the Tenant in the conduct of Tenant’s business at the Leased Premises. Tenant is an
13 independent contractor without the right or authority to impose tort or contractual liability upon
14 the Landlord.

15 16.22 **Binding Effect.** The covenants, conditions, and obligations of this Lease
16 extend to, bind, and inure to the benefit of, not only the Parties, but their respective successors
17 and permitted assigns.

18 16.23 **Annual Appropriation.** Notwithstanding anything herein contained to the
19 contrary, the Landlord’s financial obligations under this Lease are subject to an annual
20 appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an
21 amount sufficient to allow Landlord to perform its obligations hereunder. If sufficient funds are
22 not appropriated, this Lease may be terminated by either Party without penalty. The Landlord’s
23 obligations hereunder do not constitute a general obligation indebtedness or multiple year direct
24 or indirect debt or other financial obligation whatsoever within the meaning of the Constitution
25 or laws of the State of Colorado.

26 16.24 **Survival.** All indemnity obligations provided for in this Lease will survive
27 the expiration or termination of this Lease, and will be fully enforceable thereafter.

28 16.25 **Incorporation of Exhibits.** The attached **Exhibit “A”** and Exhibit
29 **B”**, together with all referenced subexhibits, are incorporated into this Lease by reference.

30 LANDLORD:
31
32 TOWN OF BRECKENRIDGE, a Colorado
33 municipal corporation
34
35
36
37 By _____
38 Timothy J. Gagen, Town Manager

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ATTEST:

Helen Cospolich
Town Clerk

TENANT:

BRECK SOLAR1, LLC, a Colorado limited
liability company

By: _____

Title: Manager

Exhibit "A"
LEGAL DESCRIPTION/DEPICTION OF LEASED PREMISES

See the attached **Exhibit A-1**

**Exhibit “B”
Site Conditions Map**

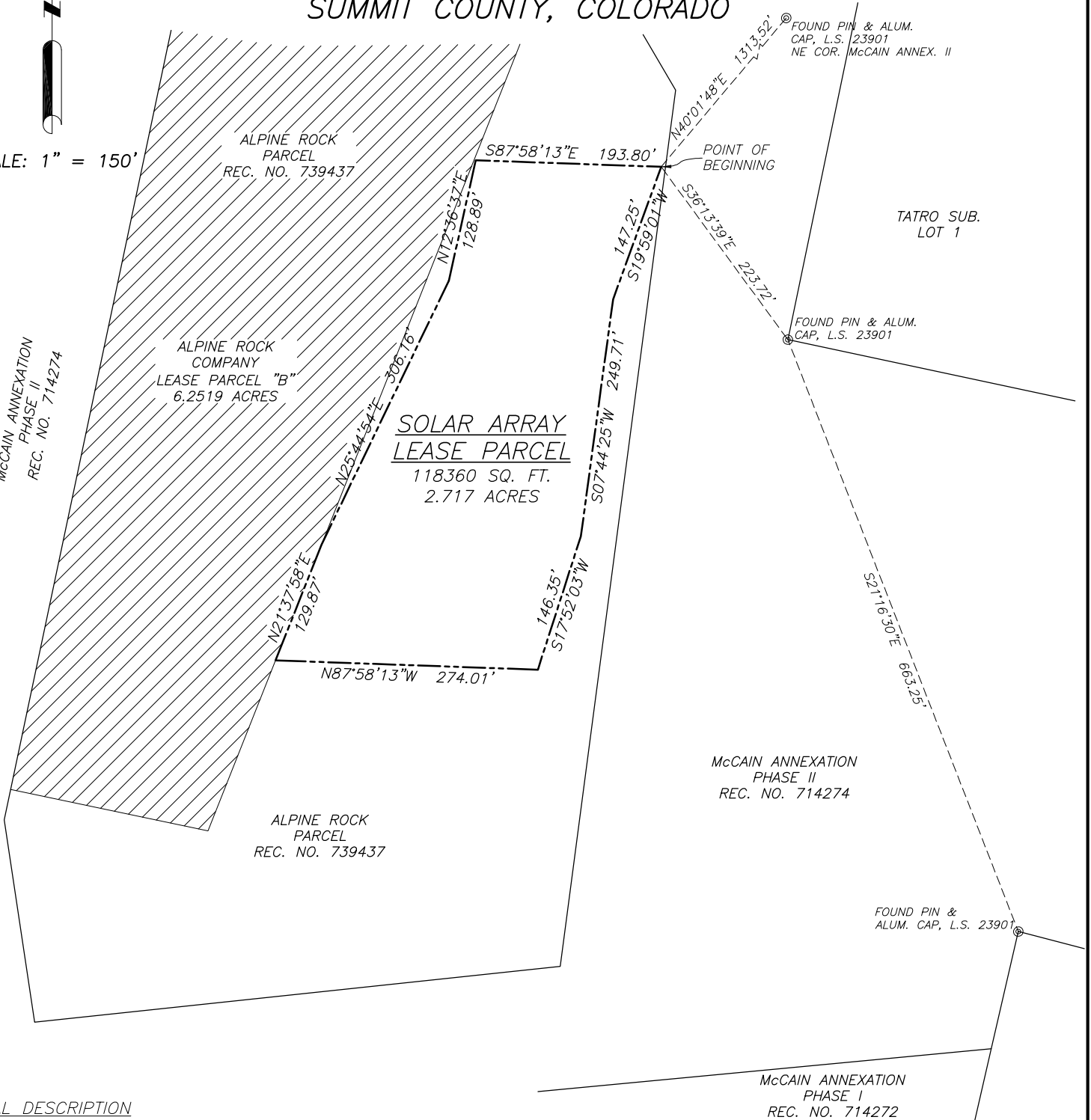
See the attached **Exhibit B-1**

LEGAL DESCRIPTION OF LEASE PARCEL
A PORTION OF THE ALPINE ROCK PARCEL,
TOWN OF BRECKENRIDGE
SUMMIT COUNTY, COLORADO



SCALE: 1" = 150'

McCain Annexation
Phase II
Rec. No. 714274



LEGAL DESCRIPTION

A Solar Array Lease Parcel on A PORTION OF THE ALPINE ROCK PARCEL, recorded at the Summit County Clerk and Recorders Office under Reception No. 739437, located in the Town of Breckenridge, County of Summit, State of Colorado, being more particularly described as follows:
 Beginning at a point whence the NE cor. of the McCain Annex. II, recorded at the Summit County Clerk and Recorders Office under Reception No. 714274, bears N40°01'48"E 1313.52' and the SW cor. of Lot 1, Tatro Sub., recorded at the Summit County Clerk and Recorders Office under Reception No. 669675, bears S36°13'39"E 223.72',
 thence S 19°59'01" W a distance of 147.25 feet; thence S 07°44'25" W a distance of 249.71 feet; thence S 17°52'03" W a distance of 146.35 feet; thence N 87°58'13" W a distance of 274.01 feet; thence N 21°37'58" E a distance of 129.87 feet; thence N 25°44'54" E a distance of 306.16 feet; thence N 12°36'37" E a distance of 128.89 feet; thence S 87°58'13" E a distance of 193.80 feet to the point of beginning. Described Lease Parcel contains 118360 square feet or 2.717 acres more or less.

I, MATTHEW J. WENTZ, A COLORADO REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND EXHIBIT DRAWING IS BASED ON A SURVEY MADE BY ME AND UNDER MY SUPERVISION, AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY.

—BOUNDARY DATA BASED ON "ANNEXATION MAP, McCain ANNEXATION PHASE II" RECORDED AT THE SUMMIT CO. CLERK AND RECORDERS OFFICE UNDER REC. NO. 714274 AND "ANNEXATION MAP, ALPINE ROCK PARCEL" RECORDED AT THE SUMMIT CO. CLERK AND RECORDERS OFFICE UNDER REC. NO. 739437.

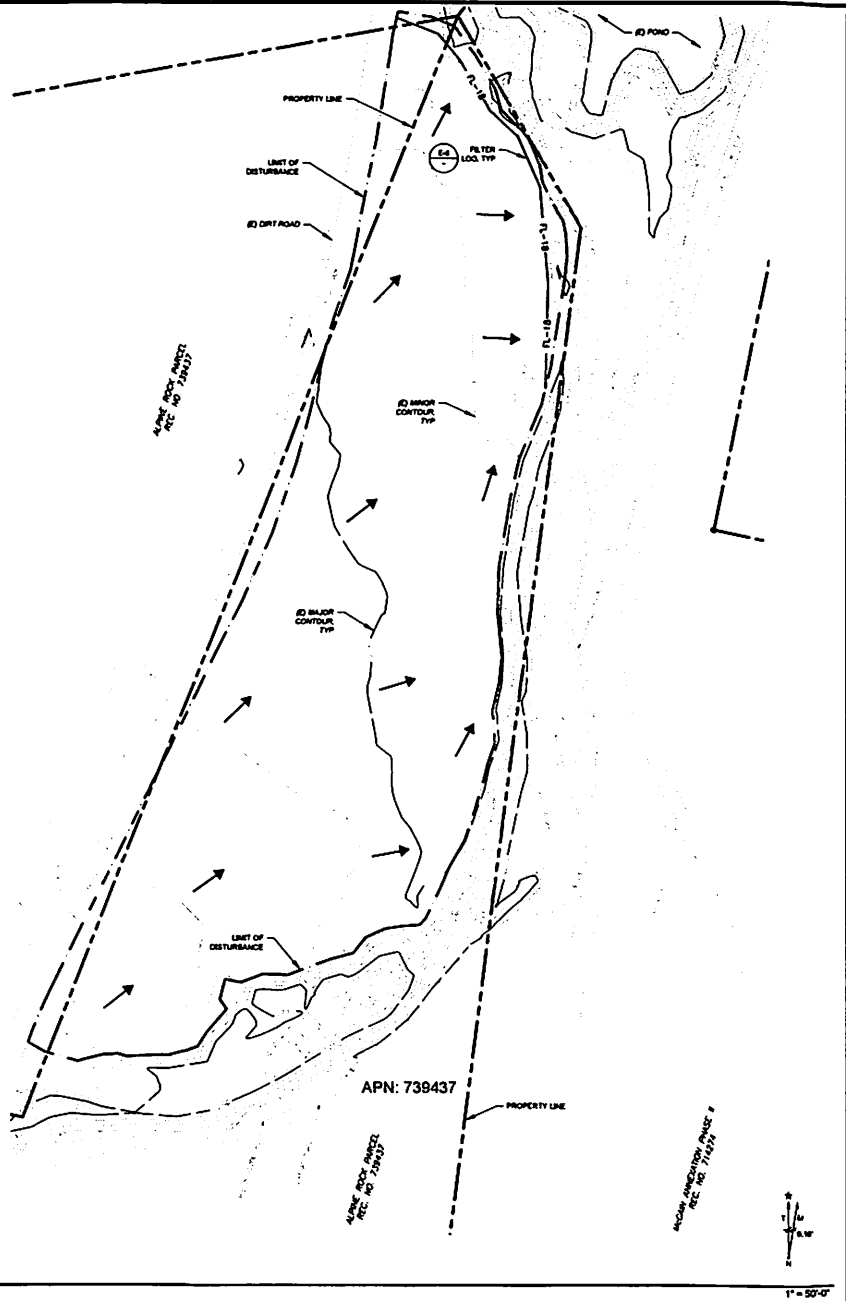
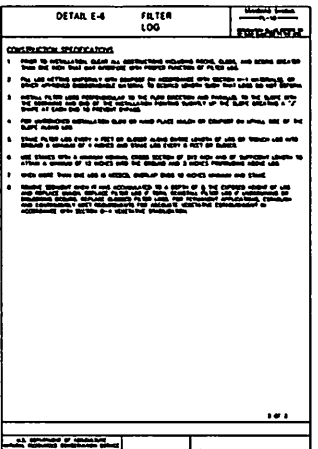
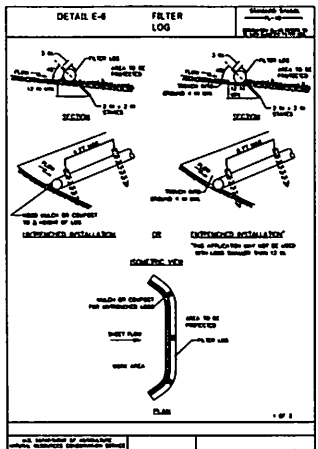
MATTHEW J. WENTZ, P.L.S. 37719

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.

SUMMIT
LAND SURVEYING, INC.

P.O. BOX 24212
 SILVERTHORNE, CO 80497
 970-513-0156

SCALE: 1" = 150'	DATE: 05/20/13	JOB NO. 131043
DRAWN BY: MJW	CHECKED BY: MJW	DRAWING NO. 131043EX -65-



REC SOLAR

CONTRACTOR

CO # EC-7000

REC SOLAR, INC.

775 FIERO LAKE, SUITE 200
 SAN LUIS OBISPO, CA 93401
 PH (805) 525-8705
 FX (805) 525-8701
 (888) OK SOLAR

NOT FOR CONSTRUCTION

BRECK SOLAR 1 LLC

401 TREE FARM DR
 CARBONDALE, CO 81623

McCAIN COMMUNITY SOLAR ARRAY

12920 COLORADO HIGHWAY 9
 BRECKENRIDGE, CO 80424

REV	DATE	DESCRIPTION
B	05/09/13	FOR CLIENT REVIEW
A	04/16/13	FOR CLIENT REVIEW

DATE: 05/08/2013

PROJECT NUMBER: 1990-050008R

PROJECT MANAGER: BILL EDWARDS

DESIGN ENGINEER: CHRIS MCSTI

PV SYSTEM DESIGNER: ANDY BOFRANKO

DRAWING TECHNICIAN: KELLY OSBORN

CHECKED BY:

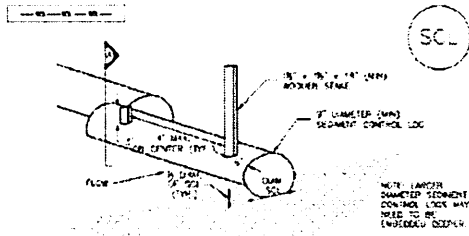
REVIEW SET

DRAWING TITLE: EROSION CONTROL PLAN

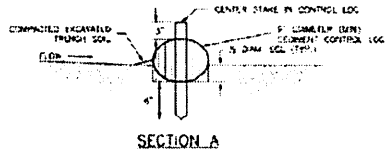
DRAWING NUMBER: G006

Sediment Control Log (SCL)

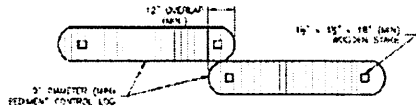
SC-2



SEDIMENT CONTROL LOG

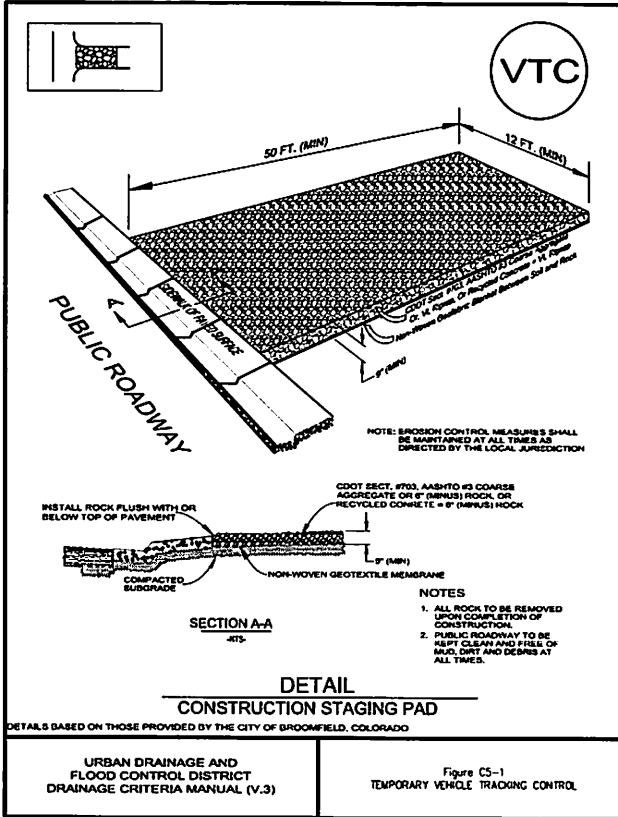


SECTION A



SEDIMENT CONTROL LOG JOINTS

SCL-1, SEDIMENT CONTROL LOG



<p>1437 LAUREL STREET DENVER, COLORADO 80202</p>	
<p>Clean Energy Construction Services, Inc.</p>	
<p>SUMMIT SOLAR 1 STILLSON PROPERTY BROOMFIELD, COLORADO</p> <p>EROSION AND SEDIMENT CONTROL DETAILS</p>	
<p>NOT FOR CONSTRUCTION</p> <p>VERIFY SCALE BAR IS ONE INCH ON ORIGINAL DRAWING</p>	
DATE:	APRIL 2013
FILE:	
DWG:	STILLSON ESCP
SHEET:	3 OF 3

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: STILLSON SOLAR GARDEN LEASE
DATE: 5/22/13
CC: TIM GAGEN, RICK HOLMAN

Attached is the lease for the Stillson solar garden lease with Clean Energy Collective (CEC). It is of the same form and content as the McCain lease, with the exception of site, tenant name, and location specific exhibits.

1 ***FOR WORKSESSION/FIRST READING – MAY 28***

2
3 COUNCIL BILL NO. _____

4
5 Series 2013

6
7 AN ORDINANCE APPROVING A LONG-TERM LEASE WITH SUMMIT SOLAR1, LLC, A
8 COLORADO LIMITED LIABILITY COMPANY
9 (Stillson Property Solar Garden)

10
11 WHEREAS, the Town of Breckenridge owns the real property commonly known as “the
12 Stillson Property”; and

13
14 WHEREAS, a portion of such real property is suitable for use by Summit Solar1, LLC, a
15 Colorado limited liability company (“**Summit Solar**”), as a community-owned, renewable solar
16 energy generating facility, also known as a “solar garden”; and

17
18 WHEREAS, the Town is willing to lease a portion of its Stillson Property to Summit
19 Solar; and

20
21 WHEREAS, a proposed Lease with Summit Solar has been prepared by the Town
22 Attorney and reviewed by the Town Council; and

23
24 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

25
26 The council may lease, for such time as council shall determine, any real or
27 personal property to or from any person, firm, corporation, public and private,
28 governmental or otherwise.

29
30 and;

31
32 WHEREAS, the term of the proposed Lease with Summit Solar exceeds one year in
33 length; and

34
35 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
36 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

37
38 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
39 BRECKENRIDGE, COLORADO:

40
41 Section 1. The proposed Lease between the Town and Summit Solar1, LLC, a Colorado
42 limited liability company, a copy of which is marked **Exhibit “A”**, attached hereto, and
43 incorporated herein by reference, is approved, and the Town Manager is authorized to execute
44 such Lease for and on behalf of the Town of Breckenridge.

1 Section 2. Minor changes to or amendments of the approved Lease may be made by the
2 Town Manager if the Town Attorney certifies in writing that the proposed changes or
3 amendments do not substantially affect the consideration to be received or paid by the Town
4 pursuant to the approved Lease, or the essential elements of the approved Lease.
5

6 Section 3. The Town Council finds, determines, and declares that it has the power to
7 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
8 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
9

10 Section 4. This ordinance shall be published and become effective as provided by
11 Section 5.9 of the Breckenridge Town Charter.
12

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

19 TOWN OF BRECKENRIDGE, a Colorado
20 municipal corporation
21

22
23
24 By: _____
25 John G. Warner, Mayor
26

27 ATTEST:
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31 _____
32 Town Clerk
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1 SOLAR GARDEN LEASE
2 (Stillson Property)
3

4 THIS SOLAR GARDEN LEASE (“Lease”) is dated [REDACTED], 2013,
5 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation
6 (“Landlord”) and SUMMIT SOLAR1, LLC, a Colorado limited liability company (“Tenant”).
7 The Landlord and the Tenant are each a “Party”, and are collectively the “Parties.”
8

9 **ARTICLE 1 – BASIC LEASE PROVISIONS**

10 1.1 **Background and Purpose.** Landlord owns the land that is subject to this
11 Lease, and has agreed to lease it to Tenant for the construction and operation of a “solar garden”
12 as hereafter defined. Tenant has a contract to sell renewable energy produced at the solar garden
13 to Xcel Energy, and Tenant is willing to design, construct, and maintain the solar garden. The
14 purpose of this Lease is to provide land for the construction, operation, and maintenance of
15 Tenant’s solar garden as described and defined in this Lease, and to set forth the terms and
16 conditions under which Tenant will design, construct, and maintain the solar garden..

17 1.2 **Leased Premises.** In consideration of Tenant’s payment of rent and the
18 keeping of the promises, covenants, and conditions required of Tenant by this Lease, Landlord
19 leases to Tenant, and Tenant leases from Landlord, for the term and upon the conditions of this
20 Lease, the real property described and depicted on the attached **Exhibit “A”** (“**Leased**
21 **Premises**”). The Leased Premises are located at 710 Wellington Road, Breckenridge, Colorado
22 80424. At the time of the commencement of this Lease the Leased Premises consist of vacant,
23 unimproved land.

24 1.3 **Use Of Leased Premises.**

25 (a) Tenant will construct, install, and operate on the Leased Premises a
26 community-owned, renewable solar energy generating facility under the terms of Xcel Energy’s
27 solar power purchase agreement, or its equivalent (“**Solar Garden**”), all in accordance with the
28 terms of this Lease. Tenant will not use the Leased Premises for any other purpose without
29 Landlord’s prior written consent.

30 (b) Tenant will initially investigate constructing and operating a 500kW Solar
31 Garden on the Leased Premises. If the construction and operation of a 500kW Solar Garden on
32 the Leased Premises is not technically feasible or commercially reasonable, in Tenant’s sole
33 discretion, Landlord and Tenant will use their best efforts to select an alternative site on other
34 land owned by Landlord upon which a 500kW Solar Garden can be constructed and operated. If
35 Landlord and Tenant cannot agree upon an acceptable alternative site, this Lease may be
36 terminated by either Landlord or Tenant by notice given in accordance with Section 16.2 of this
37 Lease.

38 1.4 **Term; Extension Term.**

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 (a) The initial term of this Lease (“**Initial Term**”) begins at 12:01 A.M., local
2 time, on the date the Solar Garden is first placed in service and ends, unless sooner terminated as
3 hereafter provided, at 11:59 P.M., twenty five (25) years thereafter. Once the Solar Garden is
4 placed in service the Parties will execute an amendment to this Lease confirming the date of the
5 commencement of the Initial Term. The “**Term**” of this Lease includes both the Initial Term, and
6 the Extension Term described in Subsection (b) of this Section, if the Extension Term is
7 applicable.

8 (b) Upon the expiration of the Initial Term this Lease will automatically be
9 extended for an additional twenty five (25) years (“**Extension Term**”) upon the same terms and
10 conditions set forth in this Lease, and without the necessity of executing any written extension of
11 this Lease, unless the Tenant, in its sole discretion, notifies Landlord in the manner provided in
12 Section 16.2, not less than six months prior to the end of the Initial Term, that the Lease will not
13 be extended.

14 1.5 **Possible Further Extension of Lease.** Prior to the expiration of the Term
15 the Parties will meet and discuss the possible extension of this Lease beyond the fifty (50) year
16 time period provided in this Lease; provided, nothing in this Lease obligates either the Landlord
17 or the Tenant to extend this Lease beyond the fifty (50) year time period provided in this Lease,
18 or to enter into a new Lease for the Leased Premises when the Term of this Lease expires.

19 1.6 **Holdover.** If Tenant continues to hold possession of the Leased Premises
20 after the natural expiration of the Term of this Lease, then such holding over is not a renewal of
21 the Lease for the whole term, but Tenant will be a tenant from month to month only under the
22 same terms and conditions as are provided in this Lease; EXCEPT Landlord may, at Landlord’s
23 option, establish a new monthly rent for any holdover period upon thirty (30) days’ prior written
24 notice to Tenant.

25 1.7 **Redelivery of Leased Premises.** Except as otherwise provided in this
26 Lease, upon the expiration or earlier termination of this Lease the Tenant will redeliver the
27 Leased Premises to Landlord in good condition, ordinary wear and tear excepted.

28 1.8 **Obligation To Meet and Confer.** Throughout the Term of this Lease the
29 Parties will meet and confer at least annually for the purpose of determining whether changed
30 circumstances require the amendment to this Lease. The Parties will act reasonably and in good
31 faith to determine if changed circumstances require the amendment to this Lease and, if so, will
32 execute appropriate documentation amending this Lease.

33 1.9 **Tenant’s Right to Mortgage or Collaterally Assign Lease.**
34 Notwithstanding anything contained in this Lease to the contrary, Tenant may mortgage, pledge,
35 or collaterally assign this Lease if required to obtain its financing and development of the Solar
36 Garden. Upon request, Landlord will execute any required consent to the mortgage, pledge, or
37 collateral assignment of this Lease; provided, however, the form of the mortgage, pledge, or
38 collateral assignment is subject to the review and approval of Landlord’s attorney.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 1.10 **Additional Consideration For Lease.** As additional consideration for this
2 Lease, Tenant covenants and agrees with Landlord that throughout the Term Tenant will offer to
3 all subscribers located within the corporate limits of the Town of Breckenridge, Colorado a
4 pricing discount equal to \$.10 (ten cents) per watt sold. The discount shall be off the retail price
5 offered at the time of purchase and may be in the form of a reduced sales price or rebate.

6
7 **ARTICLE 2 – RENT AND SECURITY**

8 2.1 **Rent.** The total rent to be paid by the Tenant for the Term (including both
9 the Initial Term and, if applicable, the Extension Term) is \$10.00, the receipt and sufficiency of
10 which is acknowledged by the Landlord.

11 2.2 **“Additional Rent” Defined.** Any amount due to Landlord from Tenant
12 under this Lease that is not specifically identified as “rent” is additional rent.

13 2.3 **Interest On Past Due Amounts.** Tenant will pay interest to Landlord on
14 any sum due to Landlord under this Lease that is thirty (30) days or more past due at the rate of
15 eight percent (8%) per annum from the date due until the date such payment is fully paid.

16 2.4 **Place And Manner Of Payments.** All sums payable to Landlord under
17 this Lease will be made to:

18 Town of Breckenridge
19 Clerk & Finance Division
20 Attn: Accounts Receivable
21 P. O. Box 168
22 Breckenridge, CO 80424
23

24 or at such other place as the Town Manager of the Town of Breckenridge (“**Town Manager**”)
25 may hereafter designate by written notice provided to Tenant in accordance with Section 16.2 of
26 this Lease. All sums will be made in legal tender of the United States. Any check given to the
27 Landlord will be received subject to collection, and Tenant agrees to pay any charges, fees or
28 costs incurred by the Landlord for the collection, including reasonable attorney’s fees.
29

30 2.5 **Security Deposit.** Tenant has deposited with Landlord the sum of
31 \$10,000.00 as a security deposit (“**Security Deposit**”), the receipt of which is acknowledged by
32 Landlord. Landlord may (but is not be required to) use the Security Deposit for the payment or
33 reimbursement of any amount that Landlord may spend or become obligated to spend by reason
34 of Tenant’s default under this Lease; to compensate Landlord for any other loss, damage or
35 expense that Landlord may suffer by reason of Tenant’s default under this Lease; or to
36 compensate Landlord for damage to Town of Breckenridge streets or rights of way caused by
37 Tenant. If any portion of the Security Deposit is so used or applied, Tenant will within ten (10)
38 days after written demand deposit with Landlord cash in an amount sufficient to restore the

1 Security Deposit to its original amount, and Tenant’s failure to do so will be a breach of this
2 Lease. Landlord is not required to maintain the Security Deposit separately from Landlord’s
3 general funds, and Tenant is not entitled to interest on the Security Deposit. If Tenant fully and
4 faithfully performs all of its obligations under this Lease, the Security Deposit, or any balance
5 thereof, will be returned to Tenant within sixty (60) days of the expiration or earlier termination
6 of this Lease.

7 **ARTICLE 3 – LANDLORD’S DISCLAIMERS AND EXCULPATORY PROVISIONS**

8 3.1 **“As Is” Condition of Leased Premises.** Tenant acknowledges that it had
9 adequate and fair opportunity to inspect the Leased Premises prior to taking possession. The
10 Leased Premises are leased by Landlord to Tenant, and accepted by Tenant, in **“AS IS”**
11 condition. Tenant’s act of taking possession of the Leased Premises is conclusive evidence that
12 Tenant accepted the Leased Premises in then **“AS IS”** condition, and that the Leased Premises
13 (including all leased personal property) were in satisfactory condition at the time of
14 commencement of Tenant’s possession.

15 3.2 **Landlord’s Non-liability.** As a material part of the consideration to be
16 received by Landlord under this Lease, Tenant assumes all risk of damage to property or injury
17 to persons in or upon the Leased Premises from any cause other than Landlord’s gross
18 negligence or intentional act, and Tenant waives all claims in respect thereof against Landlord.

19 3.3 **Limitation of Remedies.** **LANDLORD IS NOT LIABLE FOR ANY INDIRECT,**
20 **SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF**
21 **ANTICIPATED PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, OR ANY SIMILAR**
22 **CLAIM ARISING FROM THE LANDLORD’S BREACH OF THIS LEASE, EVEN IF LANDLORD HAS**
23 **BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES**
24 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

25 **ARTICLE 4 – TENANT’S SITE IMPROVEMENTS**

26 4.1 **Tenant to Pay Landlord For Initial Site Improvements.** Not later than
27 June 30, 2013 Tenant will pay the Landlord the sum of \$20,000.00, which funds will be used by
28 Landlord to construct the initial site improvements upon the Leased Premise as defined in
29 Section 4.2, below.

30 4.2 **Landlord’s Site Improvements- Defined.** The initial site improvements to
31 be constructed by Landlord upon the Leased Premises, include the following (**“Landlord’s Site**
32 **Improvements”**):

- 33 (a) removal of spoils; and
- 34 (b) grading of land to meet Tenant’s requirements as depicted on the attached
35 **Exhibit “B”**

1 Landlord commenced construction and installation of Landlord’s Site Improvements on
2 approximately May 31, 2013 (prior to the execution of this Lease), and all of Landlord’s Site
3 Improvements shall be completed by Landlord not later than June 30, 2013.

4 4.3 **Tenant’s Site Improvements – Defined.** The initial Solar Garden
5 improvements to be constructed by Tenant upon the Leased Premises, include, without
6 limitation:

7 (a) racking and foundations;

8 (b) inverters and transformers;

9 (c) necessary electrical interconnections and all improvements and connections
10 required to transfer and deliver electrical generation offsite, including, without limitation, 3
11 three-phase extension and powers boxes, a 200-400 square structure to house electrical and
12 maintenance equipment;

13 (d) security fencing and gating, with cameras, enclosing the Leased Premises; a

14 (e) safety signage; and

15 (f) solar photo voltaic (“PV”) panels.

16 As used in this Article 4, “**Tenant’s Site Improvement**” means the initial improvements to the
17 Leased Premises to be constructed by Tenant as described above, together with in any other
18 physical improvement made, or proposed to be made, to the Leased Premises.

19
20 4.4 **Procedure For Review and Approval of Tenant’s Site Improvements.**
21 No Tenant Site Improvement may be made to the Leased Premises by the Tenant except under
22 the following conditions:

23 (a) No Tenant Site Improvement may be undertaken until the Tenant has obtained
24 approval of the plans and specifications for such Tenant Site Improvement from the Landlord,
25 acting in its capacity as owner of the Leased Premises (and not in its governmental capacity). In
26 connection therewith, the Landlord has the right to review and approve a proposed Tenant Site
27 Improvement in its sole and absolute discretion.

28 (b) The Tenant must also obtain a “Development Permit” from the Landlord,
29 acting in the Landlord’s governmental capacity.

30 4.5 **Construction of Tenant Site Improvements.** All work done in connection
31 with the construction of an Tenant Site Improvement must be done in a good and workmanlike
32 manner and in material conformity with the plans and specifications that are approved by the
33 Landlord. All Tenant Site Improvements must be constructed in accordance with any applicable

1 rule, regulation, code, ordinance, or administrative regulation of any governmental authority with
2 jurisdiction.

3 4.6 **Timeline for Construction of Tenant’s Site Improvements.** The
4 construction of an approved Tenant Site Improvement must be prosecuted with reasonable
5 dispatch, subject to delays caused by Force Majeure Events (See Section 16.10). The Solar
6 Garden shall be placed in service by Tenant not later than August 31, 2013. Once the Solar
7 Garden is placed in service, Tenant will operate the Solar Garden continuously and without
8 interruption throughout the Term, except when it is necessary to temporarily cease operations of
9 the Solar Garden to maintain, repair, or replace the Solar Garden equipment or the Access Road.

10 4.7 **Access to Leased Premises.**

11 (a) If the Access Road crosses other land owned by Landlord, Landlord will
12 provide Tenant with legal access to the Leased Premises over such land.

13 (b) Tenant, and its employees, guests, contractors, agents, representatives, and
14 invitees may access the Leased Premises only via the Access Road. No other access to the
15 Leased Premises is permitted without the prior, written consent of the Town Manager.

16 (c) At any time during the Term, Landlord, at its expense, may relocate the
17 Access Road so long as Tenant is provided commercially reasonable access to the Leased
18 Premises over the relocated Access Road.

19 (d) To the extent required, Landlord will assist Tenant in obtaining any required
20 permit or authorization to access the Leased Premises from Colorado Highway 9.

21 4.8 **Additional Land Required By Tenant During Construction of Tenant’s**
22 **Site Improvements.** Tenant is not permitted to use any land other than the Leased Premises for
23 the staging, storage, and construction of the Tenant Site Improvements; provided, however, that
24 if Tenant reasonably requires additional land for staging, storage, and related activities for its
25 construction of the Tenant Site Improvements Landlord will provide, on a temporary basis (until
26 the Tenant Site Improvements are completed, but not to exceed six (6) months) up to one acre of
27 Landlord-owned real property adjacent to the Leased Premises for Tenant’s use in connection
28 with the construction of the Tenant’s Site Improvements. Tenant’s interest in such one acre tract
29 is a license, and is not a leasehold. Upon the completion of the Tenant Site Improvements,
30 Tenant will return the one acre tract to its condition as existed when it began its use of the land,
31 normal wear and tear excepted.

32 4.9 **Title to the Tenant Site Improvements.** Except as otherwise provided in
33 this Lease, title to the **Tenant Site Improvements** belongs to the Tenant; however, Landlord
34 understands that the some of the **Tenant Site Improvements** will be subject to one or more
35 agreement between the Tenant and third parties. Upon the expiration or earlier termination of

1 this Lease, title to the **Tenant Site Improvements** will be subject to the provisions of Section 4.9
2 of this Lease.

3 4.10 **Disposition of Tenant Site Improvements Upon Termination or**
4 **Expiration of this Lease.**

5 (a) Not later than the last day of the Term Tenant will remove the **Tenant Site**
6 **Improvements** from the Leased Premises, and dispose of them in accordance with any
7 contractual relationship then existing between Tenant and any third party. The cost of such
8 removal will be borne by Tenant, and Tenant will repair all injury or damage done to the Leased
9 Premises in connection with the removal of the **Tenant Site Improvements**.

10 (b) Landlord may retain or dispose of any personal property, fixtures (including,
11 but not limited to, trade fixtures), alterations or improvements, including, without limitation, any
12 Tenant Site Improvement, left remaining by Tenant at or upon the Leased Premises following the
13 expiration or earlier termination of this Lease, and Landlord is not accountable to Tenant for any
14 damages for the loss or destruction thereof, or for any part of the proceeds of sale, if any,
15 realized by Landlord. Tenant waives all claims against Landlord for any damages suffered by
16 Tenant resulting from Landlord's retention or disposition of such personal property, fixtures
17 (including, but not limited to, trade fixtures), alterations or improvements, including, without
18 limitation, any Tenant Site Improvement. Tenant is liable to Landlord for Landlord's costs for
19 storing, removing and disposing of any such personal property, fixtures (including trade
20 fixtures), alterations, or any Tenant Site Improvement.

21 **ARTICLE 5 – TENANT’S AFFIRMATIVE OBLIGATIONS**

22 5.1 **Required License.** Throughout the Term Tenant will obtain and maintain
23 in full force and effect a Town of Breckenridge Business and Occupational License Tax license.

24 5.2 **Utilities.** Tenant will initiate, contract for, and obtain in its name, all utility
25 services required for the operation of the Solar Garden on the Leased Premises, including, but
26 not limited to, electricity and telephone, and Tenant will pay all charges for such services as they
27 become due. Any construction work done to extend or provide utility service to the Leased
28 Premises will be done in a good and workmanlike manner by Tenant, and Tenant will promptly
29 repair any damage caused by the construction and installation of utility service to the Leased
30 Premises. With respect to electrical service only, Landlord grants permission and a non-exclusive
31 right to Tenant to install any required electrical service for the Leased Premises.

32 5.3 **Taxes.**

33 (a) As used in this Lease, the term “**Taxes**” means all personal property and real
34 property taxes levied, assessed or imposed by any taxing authority arising out of Tenant’s
35 occupancy and use of the Leased Premises pursuant to this Lease.

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

5 (c) Tenant will pay all Taxes lawfully assessed arising from its occupancy and
6 use of the Leased Premises pursuant to this Lease, and Tenant will indemnify and defend
7 Landlord from any such Taxes. Tenant will pay all Taxes in a timely manner. Upon Landlord's
8 written request Tenant will provide to Landlord a photostatic copy of the receipt(s) or cancelled
9 check(s) showing payment of the Taxes. Tenant may pay any Taxes in installments if permitted
10 by law.

11 (d) If Tenant is liable for the payment of any Taxes arising from Tenant's
12 occupancy and use of the Leased Premises pursuant to this Lease, Tenant may, at its sole
13 expense, contest such Taxes by the commencement and prosecution, in good faith and with due
14 diligence, of appropriate legal proceedings. Tenant will make timely payment of such Taxes if
15 Tenant loses the contest. Tenant will advise Landlord prior to instituting any such contest and
16 will as a condition of exercising such right provide Landlord such reasonable assurance as it may
17 request that such contest will be in compliance with the provisions of this Section. Landlord, at
18 Tenant's sole cost and expense, will reasonably cooperate with Tenant in any such contest; may
19 join in the contest; and will execute and deliver such documents and instruments as may be
20 necessary or appropriate for prosecuting an effective contest.

21 5.4 **Maintenance.** The Solar Gardens and the Leased Premises will be
22 maintained by Tenant at its sole expense. Tenant will maintain, protect, and preserve the Leased
23 Premises and the Solar Garden in a safe, neat, and attractive condition and in good and
24 serviceable condition at its sole cost. Tenant will repair all damage to the Leased Premises and
25 the Solar Garden caused by its activities, and those of its employees, guests, contractors, agents,
26 representatives, and invitees.

27 5.5 **Snow Plowing.** Tenant, at its sole expense, will provide all required snow
28 plowing and removal necessary to allow the Premises to be used by Tenant for the uses described
29 in Section 1.3. This obligation includes, without limitation, providing all required snow plowing
30 and removal with respect to the Access Road. Tenant's snow plowing and removal operations
31 will be done in a manner that minimizes damage to the existing surface of the Access Road, and
32 Tenant will promptly repair and damage to the surface of the Access Road caused by its snow
33 plowing and removal operations.

34 5.6 **Landscaping.** No landscaping may be installed by the Tenant at the
35 Leased Premises without the Landlord's prior, written consent. Once installed, all landscaping
36 will be maintained by the Tenant in accordance with the approved landscaping plan for the
37 Leased Premises. Tenant will provide weed management and protect against any noxious weed
38 on the Leased Premises.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 5.7 **Damage to Leased Premises.** If any damage occurs to the Leased
2 Premises, or any other real or personal property-owner by Landlord and used by Tenant, Tenant,
3 at its sole cost, shall promptly repair or restore the damaged property to its previous condition at
4 Landlord's option.

5 5.8 **Trash and Rubbish.** Tenant's use of the Leased Premises pursuant to this
6 Lease may not create any industrial waste or hazardous material. Tenant, at is sole cost, shall
7 provide any required off-site disposal of any waste connected with its used of the Leased
8 Premises pursuant to this Lease, including, without limitation, the collection, storage, and
9 removal of paper and all other waste from the Leased Premises.

10 5.9 **Security of Leased Premises.** Security for the Leased Premises will be the
11 responsibility of and will be provided by the Tenant. Landlord has no obligation to provide
12 security for the Leased Premises, and Landlord is not liable for any loss or damage suffered to
13 the Solar Garden (including, without limitation, any solar panels located within the Solar
14 Garden) or the Leased Premises from any cause, except the gross negligence or intentional
15 wrongful act of the Landlord, its officers, employees, or agents, or Landlord's breach of this
16 Lease.

17 5.10 **Signs.** Tenant will not post, place, affix, erect, or display any sign within or
18 outside of the Leased Premises without Landlord's prior approval, which approval may be
19 granted, withheld, or conditionally approved in Landlord's sole and absolute discretion. In
20 considering Tenant's request to place a sign within or outside of the Leased Premises, Landlord
21 acts in its capacity as landlord of the Leased Premises, and not in its governmental capacity.
22 Landlord may remove any sign placed within or outside of the Leased Premises in violation of
23 the portions of this Section. In addition to obtaining Landlord's discretionary permission as
24 described above, Tenant must also obtain any required sign permit from Landlord acting in its
25 governmental capacity. Tenant will maintain all signs located within or outside of the Leased
26 Premises in good, clean, and attractive condition. Tenant will remove all signs placed by it
27 within or outside of the Leased Premises at the expiration or earlier termination of this Lease,
28 and repair any damage or injury caused thereby. If not so removed by Tenant, the Landlord may
29 remove such sign(s) at Tenant's expense.

30 5.11 **Inspection And Entry.** Landlord and Landlord's authorized
31 representatives may enter the Leased Premises at all times during reasonable hours to inspect the
32 Leased Premises. Tenant further agrees that the Landlord may go upon the Leased Premises at all
33 times and:

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

38 (ii) post any notice provided for by law; or

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 (iii) otherwise protect any and all rights of Landlord,
2 all without any liability to Tenant for damages or any abatement of rent.

3
4 Nothing in this Section implies or creates any duty on the part of the Landlord to do any work
5 that under any provision of this Lease the Tenant may be required to do, nor will it constitute a
6 waiver of Tenant's default in failing to do such work. No reasonable exercise by the Landlord of
7 any rights herein reserved will entitle the Tenant to any damage or compensation of any kind
8 from Landlord for any injury, loss, damage, or inconvenience occasioned thereby, or to any
9 abatement of rent.

10
11 **5.12 Compliance With Laws.**

12 (a) Tenant, at its sole cost and expense, will comply with all laws, ordinances,
13 orders, and regulations of all governmental authorities with respect to the use of the Leased
14 Premises, as amended from time to time throughout the Term. A judgment of any court or the
15 admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party
16 thereto or not, that Tenant has violated any law, ordinance, requirement or order in the use of the
17 Leased Premises will be conclusive of the fact as between Landlord and Tenant.

18 (b) Without limiting the generality of subsection (a), Tenant will comply with all
19 applicable environmental laws that are applicable to Tenant's use of the Leased Premises,
20 including, but not limited to:

21 (i) the federal Comprehensive Environmental Response, Compensation and
22 Liability Act (42 U.S.C. §§9601, et seq.) ("CERCLA");

23 (ii) the federal Resource Conservation and Recovery Act (42 U.S.C. §§6901,
24 et seq.) ("RCRA");

25 (iii) the federal Clean Water Act ("CWA");

26 (iv) state and local environmental laws, rules, regulations;

27 (v) any state or local law, rule, regulation, or program implementing, similar
28 to, or equivalent to such federal statutes or programs;

29 (vi) all other local, state and federal environmental laws, rules and regulations.

30 Tenant's obligation under this Section 5.12 does not extend to any noncompliance arising from
31 conditions that existed with regard to the Leased Premises at the commencement of the Lease.

32
33 **ARTICLE 6 – TENANT'S NEGATIVE OBLIGATIONS**

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 6.1 **Assignment And Subletting.** Except as provided in Section 1.9 with
2 respect to Tenant’s right to mortgage, pledge, or collaterally assign this Lease if required to
3 obtain its financing to construct the Solar Garden, Tenant will not assign, sublet, license, pledge,
4 encumber, or allow any other person or entity to occupy or use any or all of the Leased Premises
5 without first obtaining Landlord’s prior written consent, which consent may be granted, withheld
6 or conditionally approved in Landlord’s sole, absolute and subjective discretion. Any
7 assignment, sublease, license, pledge or encumbrance without Landlord’s prior written consent is
8 voidable by Landlord and, at Landlord’s election, will constitute a default under this Lease. No
9 consent by Landlord to any of the above acts will constitute a further waiver of the provisions of
10 this Section. If Landlord consents to an assignment, sublease, or license Tenant may be required,
11 as a condition of granting consent, to pay Landlord’s reasonable costs incurred in considering the
12 proposed assignment, sublease, or license including, but not limited to, legal fees and credit
13 checks.

14 6.2 **Assignment By Operation of Law.** Neither this Lease nor any interest in
15 this Lease is assignable or transferable by operation of law. If:

- 16 (i) any proceeding under the Bankruptcy Code, or any amendment thereto, is
17 commenced by or against Tenant;
- 18 (ii) Tenant is adjudged insolvent;
- 19 (iii) Tenant makes any assignment for the benefit of creditors;
- 20 (iv) a post-judgment writ of attachment or execution is levied on the leasehold
21 estate created by this Lease and not released or satisfied within thirty (30) days thereafter;
22 or
- 23 (v) a receiver is appointed for Tenant with authority to take possession or
24 control of the Leased Premises or the business conducted therein by Tenant

25 then this Lease, at the option of Landlord, will immediately terminate and will not be treated as
26 an asset of Tenant.

27
28 6.3 **No Waste or Nuisance.** Tenant will not commit or permit to be committed
29 on the Leased Premises any waste, public or private nuisance, or any other act or thing prohibited
30 by law.

31 6.4 **Mechanic’s Liens.**

32 (a) In connection with the construction of any Tenant Site Improvements, the
33 Tenant will cause the payment of all proper and valid invoices and charges of all contractors,
34 subcontractors, suppliers, materialmen and similar parties who furnish services or materials in
35 connection with the construction process.

1 (i) In the event any person ever records a mechanic's lien to enforce any
2 claim for services or materials alleged to have been provided in connection with the
3 Leased Premises, the Tenant will cause the same to be released of record within sixty
4 (60) days after the recordation thereof, and the Tenant will be liable to satisfy and cause a
5 discharge of any such mechanic's lien claim. Notwithstanding the foregoing, the Tenant
6 may contest any such mechanic's lien claim, provided that the Tenant conducts such
7 contest in a timely manner and with due diligence, and that the Tenant provides the
8 Landlord with such security in connection therewith as the Landlord may reasonably
9 require. In connection with any such contest, the Landlord may join and participate in any
10 such contest, at the Tenant's expense (with participation to include, without limitation,
11 the execution and filing of pleadings and the provision and gathering of testimony and
12 other evidence). In the event the Tenant loses any such contest, with all further rights of
13 appeal having expired, the Tenant must satisfy the mechanic's lien claim in full prior to
14 any foreclosure sale or other disposition of the Leased Premises which is made for the
15 purpose of satisfying the claim.

16 (ii) In the event of any such mechanic's lien claim, Tenant may at its
17 discretion determine to provide a bond or other undertaking pursuant to C.R.S. 38-22-131
18 so that Leased Premises is no longer subject to such mechanic's lien claim. If such
19 substitution is made, then the provisions of subsection (i) above shall not apply with
20 regard to that mechanic's lien claim.

21 (b) Prior to commencement of construction of any Tenant Site Improvements, the
22 Tenant will deliver notices to all contractors and subcontractors and post notices in accordance
23 with Section 38-22-105, C.R.S. (as it may be amended or in accordance with similar statutes that
24 may be substituted therefor in the future), in locations that will be visible by parties performing
25 any work, which notices will state that the Landlord is not responsible for the payment of such
26 work and setting forth such other information as may be reasonably required pursuant to such
27 statutory provisions.

28 ARTICLE 7 – INSURANCE

29 7.1 **Tenant's Required Insurance.** Tenant will procure and maintain the
30 minimum insurance coverages listed below. Such coverages will be procured and maintained
31 with forms and insurers acceptable to the Landlord. All coverages will be continuously
32 maintained to cover all liability, claims, demands, and other obligations assumed by Tenant
33 pursuant to this Lease. In the case of any claims-made policy, the necessary retroactive dates
34 and extended reporting periods will be procured to maintain such continuous coverage.

35 (a) worker's compensation insurance to cover liabilities imposed by applicable
36 laws for any employee of Tenant engaged in the performance of Work under this Lease.

37 (b) comprehensive automobile liability insurance with minimum combined single
38 limits for bodily injury and property damage of not less than ONE MILLION DOLLARS

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) aggregate
2 with respect to each of Tenant’s owned, hired or non-owned vehicles assigned to or used in
3 performance of this Lease.

4 (c) commercial general liability insurance with minimum combined single limits
5 of not less than TWO MILLION DOLLARS (\$2,000,000.00). The policy will be applicable to
6 all premises and operations. The policy will include coverage for bodily injury, broad form
7 property damage (including completed operations), personal injury (including coverage for
8 contractual and employee’s acts), blanket contractual, products, and completed operations.

9 (d) builder’s risk insurance with minimum limits of not less than the insurable
10 value of the Tenant Site Improvements for the Solar Garden to be installed at the Leased
11 Premises, less the value of the materials and equipment insured under installation floater
12 insurance. The policy must be written in completed value form and will protect the Tenant and
13 the Landlord against risks of damage to buildings, structures, and materials and equipment not
14 otherwise covered under Installation Floater insurance, from the perils of fire and lightning, the
15 perils included in the standard coverage endorsement, and the perils of vandalism and malicious
16 mischief. Equipment such as pumps, engine-generators, compressors, motors, switch-gear,
17 transformers, panelboards, control equipment, and other similar equipment will be insured under
18 Installation Floater insurance when the aggregate value of the equipment exceeds \$10,000. The
19 policy will contain a provision that in the event of payment for any loss under the coverage
20 provided, the insurance company will have no rights of recovery against the Tenant or the
21 Landlord.

22 (e) installation floater with minimum limits of not less than the insurable value of
23 the solar garden improvements to be installed at the Leased Premises. The policy will protect the
24 Tenant and the Landlord from all insurable risks of physical loss or damage to materials and
25 equipment not otherwise covered under Builder’s Risk insurance, while in warehouses or storage
26 areas, during installation, during testing, and after the work under this Lease is completed. The
27 policy will be of the “all risks” type, with coverages designed for the circumstances which may
28 occur in the particular work to be performed under this Lease. The policy will provide for losses
29 to be payable to the Tenant and the Landlord as their interests may appear. The policy will
30 contain a provision that in the event of payment for any loss under the coverage provided, the
31 insurance company will have no rights of recovery against the Tenant or the Landlord.

32 **7.2 Tenant’s Insurance Is Primary; Deductibles.** Every policy required
33 above will be primary insurance, and any insurance carried by the Landlord, its officers, or its
34 employees, or provided through a self-insurance pool of which Landlord is a member, will be
35 excess and not contributory insurance to that provided by Tenant. Tenant will be solely
36 responsible for any deductible amount under any policy required above,.

37 **7.3 Landlord As Additional Insured.** Tenant’s commercial general liability
38 insurance policy described above will be endorsed to include the Landlord as an additional
39 insured.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

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

8 **ARTICLE 9 – EMINENT DOMAIN**

9 **9.1 Eminent Domain.**

10 (a) The terms "**eminent domain**," "**condemnation**", and "**taken**" and related
11 terms as used in this Section include any taking for public or quasi-public use and private
12 purchases in place of condemnation by any authority authorized by applicable law to exercise the
13 power of eminent domain.

14 (b) If the entire Leased Premises are taken by eminent domain, this Lease will
15 automatically end on the earlier of:

16 (i) the date title vests; or

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

18 (c) If the taking of a part of the Leased Premises materially interferes with
19 Tenant's ability to continue its business operations in substantially the same manner then Tenant
20 may terminate this Lease on the earlier of:

21 (i) the date when title vests;

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

23 (iii) sixty (60) days following notice to Tenant of the date when vesting or
24 dispossession is to occur.

25 Rent will be paid to the date of the termination. If the taking of a part of the Leased Premises
26 does not materially interfere with Tenant's ability to continue its business operations in
27 substantially the same manner, then this Lease will terminate only as to part of the Leased
28 Premises taken, and the rent will abate in proportion to the part of the Leased Premises taken.
29

30 (d) Any compensation or damages paid by a condemning authority will be
31 divided between the Landlord and Tenant as follows:

32 (i) Tenant is entitled to that portion of the compensation or damages that
33 represents the amount of Tenant's moving expenses, business dislocation damages,

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 Tenant's personal property and fixtures, and the unamortized costs of leasehold
2 improvements paid for by Tenant; and

3 (ii) the balance of such compensation or damages belongs to the Landlord.

4 **ARTICLE 10 – COMPLAINT RESOLUTION**

5 **10.1 Informal Complaint Resolution.** Throughout the Term, Landlord's
6 representative and Tenant's representative will meet and confer informally and attempt to
7 satisfactorily resolve any informal complaint that may be made by any person with respect to any
8 aspect of Tenant's operations at the Leased Premises. An "**informal complaint**" is any
9 complaint that is not a formal complaint as defined in Section 10.2. Both Landlord and Tenant
10 will act promptly and in good faith to attempt to resolve all informal complaints.

11 **10.2 Formal Complaint Resolution.**

12 (a) As used in this Section, a "**Formal Complaint**" is a written complaint filed by
13 any person concerning any aspect of Tenant's operations at the Leased Premises, or a formal
14 written complaint made by the Landlord on its own initiative concerning any aspect of Tenant's
15 operations at the Leased Premises.

16 (b) All Formal Complaints must be in writing.

17 (c) Any Formal Complaint by any person other than Landlord must be filed with
18 the Landlord.

19 (d) Tenant will be provided with a copy of the Formal Complaint within two (2)
20 business days of the Landlord's receipt of the Formal Complaint if filed by any person other than
21 Landlord, or within two (2) business days of Landlord lodging of the Formal Complaint if the
22 Landlord files the Formal Complaint on its own initiative. No formal complaint will be
23 processed if the complaining party remains anonymous.

24 (e) Landlord and Tenant will attempt in good faith to resolve any Formal
25 Complaint promptly by negotiations between persons who have authority to settle the
26 controversy. Within ten (10) business days after the Formal Complaint has been delivered to
27 Tenant a representative of the Landlord and a representative of the Tenant will meet at a
28 mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to
29 exchange relevant information and to attempt to resolve the complaint in a mutually satisfactory
30 manner. Other interested parties, such as the person who filed the Formal Complaint, may be
31 invited to attend the meeting by either the Landlord or the Tenant. The ten (10) business day
32 deadline provided for in this Section may be extended by mutual agreement of the Landlord and
33 the Tenant.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 (f) If the Formal Complaint has not been resolved by negotiation as provided
2 above within twenty (20) business days of the Landlord and Tenant’s meeting as described in
3 Subsection (e), the Formal Complaint will be brought to the attention of the Town Council of the
4 Town of Breckenridge (“**Town Council**”). Within thirty (30) business days of being advised of
5 the Formal Complaint, the Town Council will meet in a public meeting to review and help
6 resolve the Formal Complaint. The Town Council meeting may be continued if necessary to
7 properly consider the Formal Complaint; provided, however, that the Town Council will not
8 unduly delay its review or proposed resolution of the Formal Complaint.

9 (g) If the Tenant and the person who filed the Formal Complaint have not
10 resolved the Formal Complaint within twenty (20) days of the date the Town Council has
11 considered the Formal Complaint and proposed a resolution thereof, then the person filing the
12 Formal Complaint shall have the option to pursue such legal remedies as may be available to
13 such person in regard to the matter described by the Formal Complaint. The Town Council may
14 not alter the terms and conditions of this Lease when proposing a resolution of a Formal
15 Complaint, and no failure of the Tenant to agree in negotiation with the party filing the Formal
16 Complaint or to agree with the Town Council’s proposed resolution shall constitute a default
17 under this Lease, provided however, that in the event the Landlord is the person bringing the
18 formal complaint, nothing in this Section shall prevent the Landlord from then proceeding as
19 provided in Article 10 of this Lease.

20 **ARTICLE 11 – DEFAULT**

21 11.1 **Default By Tenant.** The occurrence of any one or more of the following
22 events will constitute a default and breach of the Lease by Tenant:

23 (a) Any termination for any reason of any solar power purchase agreement for
24 energy produced at the Leased Premises, with a continuous lapse of twelve (12) months or more
25 without Tenant entering into a subsequent solar power purchase agreement for the purchase of
26 such energy.

27 (b) The vacating or abandonment of the Leased Premises by Tenant.

28 (c) The failure by Tenant to make any payment of rent or any other payment
29 required to be made by Tenant hereunder, as and when due, when such failure will continue for a
30 period of ten (10) days after service of written notice thereof by Landlord to Tenant.

31 (d) The failure by Tenant to observe or perform any of the other covenants,
32 conditions, or provisions of this Lease to be observed or performed by the Tenant, or to obey
33 rules promulgated by Landlord, within ten (10) days after service of written notice thereof by the
34 Landlord to the Tenant. In the event of a non-monetary default that is not capable of being
35 corrected within ten (10) days, Tenant will not be default if it commences correcting the default
36 within ten (10) days of service of a demand for compliance notice and thereafter corrects the
37 default with due diligence.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

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

7 11.2 **Landlord's Remedies Upon Default.** If the Tenant is in default under this
8 Lease, Landlord has all of the remedies provided for in such circumstances by Colorado law.

9 11.3 **Default By Landlord.** Landlord will be in default under this Lease if
10 Landlord fails to comply with any of the terms, provisions, or covenants of this Lease within ten
11 (10) days following service of written notice thereof by Tenant. In the event of a non-monetary
12 default that is not capable of being corrected within ten (10) days, Landlord will not be default if
13 Landlord commences correcting the default within ten (10) days of receipt of notification thereof
14 and thereafter corrects the default with due diligence.

15 11.4 **Tenant's Remedies Upon Default.** If the Landlord is in default under this
16 Lease, Tenant has all of the remedies provided for in such circumstances by Colorado law.

17 **ARTICLE 12 – NONDISTURBANCE**

18 12.1 **Quiet Enjoyment.** Subject to the terms and conditions of this Lease,
19 Landlord covenants that so long as the rent for the Leased Premises is paid as and when due, and
20 there is no default in any of the other covenants, conditions, or provisions of this Lease to be
21 performed, observed or kept by Tenant, the Tenant will peaceably and quietly hold and enjoy the
22 Leased Premises for the entire Term. Landlord further covenants that Landlord during the Term
23 Landlord will not take any action which negatively and materially affects the receipt of solar
24 radiation at the Solar Garden, or Tenant's ability to access the Solar Garden.

25 **ARTICLE 13 – LANDLORD'S RULES**

26 13.1 **Rules.** Tenant will faithfully observe and comply with any rules and
27 regulations promulgated by Landlord with respect to the Leased Premises. Landlord's rules and
28 regulations must be reasonable, and may not unilaterally change or significantly alter the
29 material terms and conditions of this Lease. The rules and regulations, and any amendments
30 thereto, will be binding upon the Tenant upon delivery to Tenant.

31 **ARTICLE 14 – HAZARDOUS MATERIALS**

32 14.1 **Hazardous Materials – Defined.** As used in this Section, the term
33 "Hazardous Materials" means any chemical, material, substance or waste:

SOLAR GARDEN LEASE (STILLSON PROPERTY)

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

3 (ii) that, even if not so regulated, may or could pose a hazard to the health or
4 safety of the occupants of the Leased Premises including, without limitation, any
5 petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those
6 substances defined as “hazardous substances”, “hazardous materials”, “hazardous
7 wastes” or other similar designations in the Comprehensive Environmental Response,
8 Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the
9 Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and any other
10 governmental statutes, laws, ordinances, rules, regulations, and precautions.

11 14.2 **Hazardous Materials – Prohibited.** Tenant will full comply with all
12 statutes, laws, ordinances, rules, regulations, and precautions now or hereafter mandated or
13 advised by any federal, state, local, or other governmental agency with respect to the use,
14 generation, storage, or disposal of Hazardous Materials. Tenant will not cause, or allow anyone
15 else to cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about
16 the Leased Premises without the prior written consent of Landlord, which consent may be
17 revoked at any time. Tenant’s indemnification of Landlord pursuant to this Lease extends to all
18 liability, including all foreseeable and unforeseeable consequential damages, directly or
19 indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the
20 Leased Premises by Tenant, or any person claiming under Tenant, including, without limitation,
21 the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any
22 closure or other required plans, whether such action is required or necessary prior to or following
23 the termination of this Lease, to the full extent that such action is attributable, directly or
24 indirectly, to the use, generation, storage, or disposal of Hazardous Materials by Tenant or any
25 person claiming under Tenant; provided, however, the written consent by Landlord to the use,
26 generation, storage, or disposal of Hazardous Materials will excuse Tenant from Tenant’s
27 obligation of indemnification, and, provided further, that Tenant’s indemnification obligation
28 under this Section 14.2 does not extend to any Hazardous Materials that were located on the
29 Leased Premises at the commencement of this Lease. In the event Tenant is in breach of the
30 covenants herein, after notice to Tenant and the expiration of the earlier of:

31 (i) the cure period provided in Section 11.1(c);

32 (ii) the cure period permitted under applicable law, regulation, or order,

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

37
38 **ARTICLE 15 – RIGHT TO RELOCATE LEASED PREMISES**
39

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 15.1 **Relocation Of Leased Premises.** At anytime throughout the Term of this
2 Lease the Landlord, in its sole and absolute discretion and at its sole cost, may relocate the
3 Leased Premises, so long as the relocated leased premises (“**Relocated Leased Premises**”) are
4 functionally comparable to the Leased Premises that existed immediately prior to the relocation.
5 If the Leased Premises are relocated by Landlord as provided in this Article 15, the Parties will
6 execute and record an appropriate amendment to this Lease describing and depicting the
7 Relocated Leased Premises in form and substance reasonably acceptable to each of the Parties.
8

9 **ARTICLE 16 – MISCELLANEOUS**

10 16.1 **Attorneys Fees/Costs.** If any action is brought in a court of law by either
11 Party to this Lease concerning the enforcement, interpretation, or construction of this Lease, the
12 prevailing Party, either at trial or upon appeal, is entitled to reasonable attorney’s fees, as well as
13 costs, including expert witness’ fees, incurred in the prosecution or defense of such action.

14 16.2 **Notices.** All notices required or permitted under this Lease must be given
15 by registered or certified mail, return receipt requested, postage prepaid, or by hand or
16 commercial carrier delivery, or by telecopies, directed as follows:

17 If intended for Town to:

18
19 Town of Breckenridge
20 P.O. Box 168
21 150 Ski Hill Road
22 Breckenridge, Colorado 80424
23 Attn: Financial Services Manager
24 Telecopier number: (970)547-4468
25 Telephone number: (970)453-3382
26

27 with a copy in each case (that will not constitute notice) to:

28
29 Timothy H. Berry, Esq.
30 Timothy H. Berry, P.C.
31 131 West 5th Street
32 P. O. Box 2
33 Leadville, Colorado 80461
34 Telecopier number: (719)486-3039
35 Telephone number: (719)486-1889
36

37 If intended for Tenant to:

38
39 Summit Solar1, LLC
40 Attn: Mark Boyer, Manager

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 401 Tree Farm Drive
2 Carbondale, Colorado 81623

3
4 Telecopier number: (800)646-0323
5 Telephone number: (970)692-2592
6

7 Any notice delivered by mail in accordance with this Section will be effective on the third
8 business day after the same is deposited in any post office or postal box regularly maintained by
9 the United States postal service. Any notice delivered by telecopier in accordance with this
10 Section will be effective upon receipt if concurrently with sending by telecopier receipt is
11 confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt
12 requested, on the same day to the intended recipient. Any notice delivered by hand or
13 commercial carrier will be effective upon actual receipt. Either Party, by notice given as
14 provided above, may change the address to which future notices may be sent. The provisions of
15 this Section will not apply to any notice or demand that is required to be served in a particular
16 manner by applicable law; and any such notice or demand will be served as required by law
17 notwithstanding the provisions of this Section. E-mail is not a valid way to give notice under this
18 Lease.
19

20 16.3 **“Day” Defined.** Unless otherwise indicated, the term “day” means a
21 calendar day (and not a business day).

22 16.4 **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory
23 obligation to act or to refrain from acting as specifically indicated in the context of the sentence
24 in which such word is used.

25 16.5 **Complete Agreement.** This Lease contains the complete and final
26 expression of the agreement between the Parties, and there are no promises, representations, or
27 inducements except as are herein provided. All negotiations, considerations, representations, and
28 understandings between the Parties related to this Lease are contained herein.

29 16.6 **Amendment.** This Lease may not be modified except by a written Lease
30 signed by both the Landlord and Tenant. Oral modifications of this Lease are not permitted.

31 16.7 **Captions.** The headings of the sections and paragraphs contained in this
32 Lease are for convenience only and do not define, limit, or construe the contents of the articles,
33 sections and subsections.

34 16.8 **Waiver.** The failure of either Party to exercise any of such Party’s rights
35 under this Lease is not a waiver of those rights. A Party waives only those rights specified in
36 writing and signed by the Party waiving such rights.

37 16.9 **Severability.** If any provision of this Lease is held to be invalid, illegal, or
38 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1 contained in this Lease and the application hereof will not in any way be affected or impaired
2 thereby.

3 **16.10 Force Majeure.** Neither Party will be liable to the other for any failure,
4 delay, or interruption in the performance of any of the terms, covenants, or conditions of this
5 Lease due to causes beyond the control of that Party including, without limitation, strikes,
6 boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy,
7 acts of superior governmental authority, weather conditions, floods, riots, rebellion, terrorism,
8 sabotage or any other circumstance for which such Party is not responsible or that is not in its
9 power to control.

10 **16.11 Advances By Landlord For Tenant.** If Tenant fails to do anything
11 required to be done by it under the terms of this Lease (other than a failure to make the payments
12 to Landlord herein required) the Landlord may, at its sole option, but without any obligation to do
13 so, do or perform such act or thing on behalf of Tenant, and in doing so the Landlord will not be
14 deemed to be a volunteer; provided, however, that before exercising its rights under this Section
15 Landlord must give notice to Tenant as provided in Section 16.2, and afford the Tenant not less
16 than five (5) days from the giving of such notice within which to do or perform the act required
17 by Tenant. Upon notification to Tenant of the costs incurred by the Landlord Tenant will
18 promptly pay to Landlord the full amount of costs and/or expenses incurred by Landlord
19 pursuant to this Section, together with interest thereon at the rate of eight percent (8%) per
20 annum.

21 **16.12 Governmental Immunity.** In entering into this Lease the Landlord is
22 relying on, and does not waive or intend to waive by any provision of this Lease, the monetary
23 limitations or any other rights, immunities, and protections provided by the Act, as from time to
24 time amended, or any other limitation, right, immunity or protection otherwise available to
25 Landlord, its officers, or its employees.

26 **16.13 No Adverse Construction Based On Authorship.** Each of the Parties
27 stipulate and agree that it had the opportunity to participate in the drafting of this Lease. This
28 Lease is not to be construed against either Party by virtue of such Party having drafted this
29 Lease.

30 **16.14 Landlord's Consent.** Except as otherwise expressly provided to the
31 contrary in this Lease, wherever in this Lease it is provided that some act requires the Landlord's
32 prior consent, such consent will not be unreasonably withheld or delayed by Landlord.

33 **16.15 Authority.** The individual executing this Lease on behalf of the Tenant
34 represents and warrants to Landlord that he or she has all requisite power and authority to bind
35 the Tenant and to cause the Tenant to fully perform its obligations under this Lease.

36 **16.16 Third Parties.** There are no third party beneficiaries of this Lease.

1 16.17 **Recording of Lease.** This Lease, or a memorandum of lease acceptable to
2 both Landlord and Tenant may be recorded the Clerk and Recorder of Summit County,
3 Colorado.

4 16.18 **Time of Essence.** Time is of the essence of this Lease.

5 16.19 **Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of
6 Colorado, without regard to its conflict of laws rules, will govern the interpretation, validity,
7 performance, and enforcement of this Lease. Any litigation brought to interpret or enforce this
8 Lease will be commenced in Summit County, Colorado. **BOTH PARTIES WAIVE THE RIGHT TO A
9 JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS AGREEMENT.**

10 16.20 **Non-Discrimination; Compliance With Applicable Laws.** Tenant:

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

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

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

21 (d) will comply with all applicable federal, state, and local laws, rules and
22 regulations. Without limiting the generality of the foregoing, Tenant will comply with the
23 applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
24 Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory
25 agency.

26 The indemnification and termination provisions of this Lease apply to Tenant's failure to comply
27 with all applicable laws or regulations.
28

29 16.21 **No Partnership.** The Landlord is not a partner, associate, or joint venturer
30 of the Tenant in the conduct of Tenant's business at the Leased Premises. Tenant is an
31 independent contractor without the right or authority to impose tort or contractual liability upon
32 the Landlord.

33 16.22 **Binding Effect.** The covenants, conditions, and obligations of this Lease
34 extend to, bind, and inure to the benefit of, not only the Parties, but their respective successors
35 and permitted assigns.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

1
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7

1500-77 Solar Gardens Lease_2 (05-22-13)

SOLAR GARDEN LEASE (STILLSON PROPERTY)

Exhibit "A"
LEGAL DESCRIPTION/DEPICTION OF LEASED PREMISES

See the attached **Exhibit A-1**

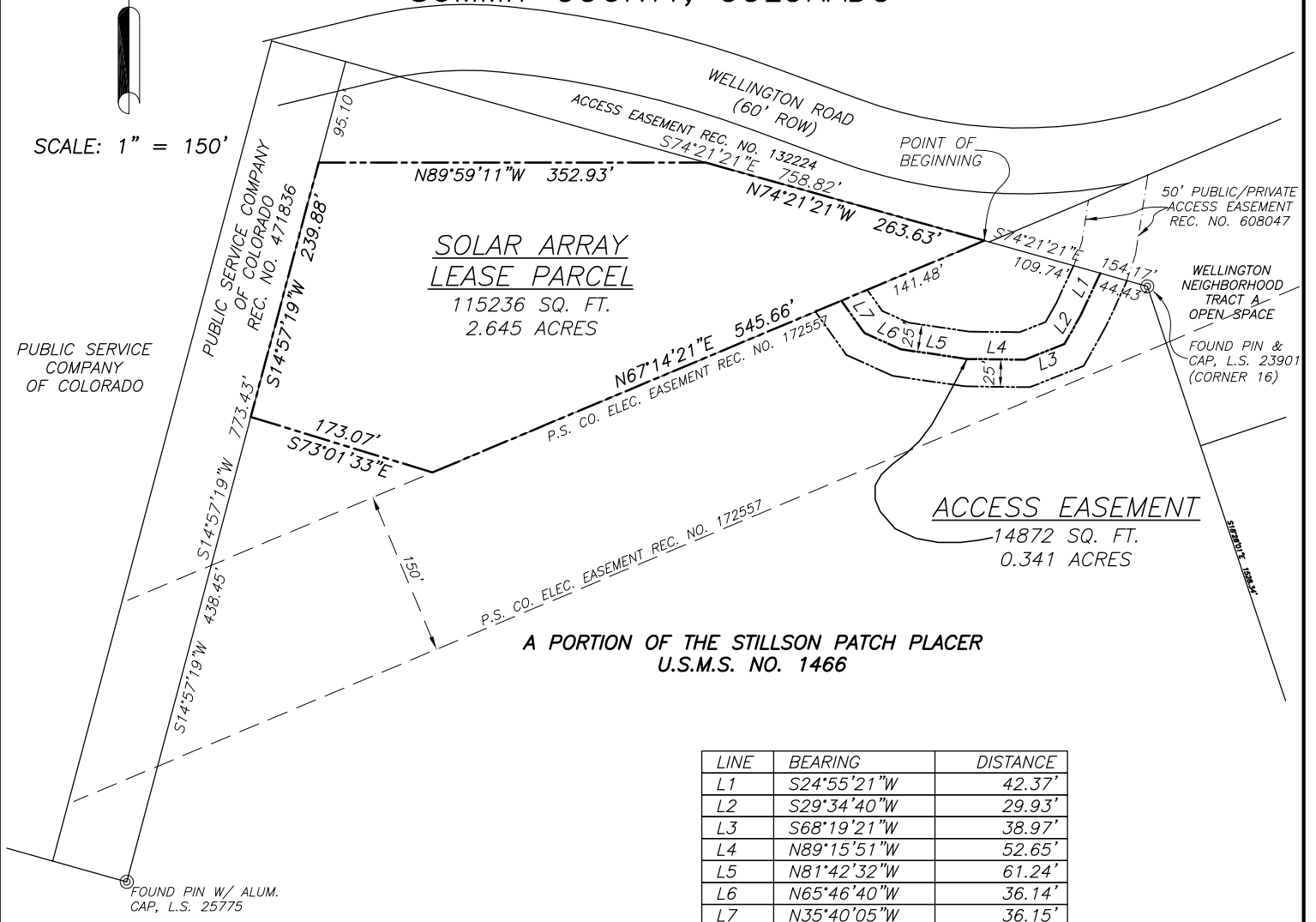
**Exhibit “B”
Site Conditions Map**

See the attached **Exhibit B-1**

**LEGAL DESCRIPTION OF LEASE
PARCEL AND ACCESS EASEMENT
A PORTION OF THE STILLSON PATCH PLACER
U.S.M.S. NO. 1466, TOWN OF BRECKENRIDGE
SUMMIT COUNTY, COLORADO**



SCALE: 1" = 150'



LINE	BEARING	DISTANCE
L1	S24°55'21"W	42.37'
L2	S29°34'40"W	29.93'
L3	S68°19'21"W	38.97'
L4	N89°15'51"W	52.65'
L5	N81°42'32"W	61.24'
L6	N65°46'40"W	36.14'
L7	N35°40'05"W	36.15'

LEGAL DESCRIPTION

A Solar Array Lease Parcel on A PORTION OF THE STILLSON PATCH PLACER U.S.M.S. NO. 1466, recorded at the Summit County Clerk and Recorders Office under Reception No. 544205, located in the Town of Breckenridge, County of Summit, State of Colorado, being more particularly described as follows:
Beginning at a point on the north line of said Stillson Patch Placer, whence corner 16 of said Stillson Patch Placer bears S74°21'21"E 154.17' thence along the said north line of said Stillson Patch Placer, N 74°21'21" W a distance of 263.63 feet; thence N 89°59'11" W a distance of 352.93 feet to a point on the west line of said Stillson Patch Placer; thence along the west line of said Stillson Patch Placer, S 14°57'19" W a distance of 239.88 feet, whence the west angle point of said Stillson Patch Placer bears S14°57'19"W 438.45'; thence S 73°01'33" E a distance of 173.07 feet to a point on the north line of P.S. CO. Elec. Easement Rec. No. 172557; thence along the north line of said P.S. CO. Elec. Easement, N 67°14'21" E a distance of 545.66 feet to the point of beginning. Described Lease Parcel contains 115236 square feet or 2.645 acres more or less.

A 50' Access Easement across A PORTION OF THE STILLSON PATCH PLACER U.S.M.S. NO. 1466, recorded at the Summit County Clerk and Recorders Office under Reception No. 544205, located in the Town of Breckenridge, County of Summit, State of Colorado, being more particularly described as follows:
Beginning at a point on the north line of said Stillson Patch Placer, whence corner 16 of said Stillson Patch Placer bears S74°21'21"E 44.43'; thence along the centerline of the 50' Access Easement S 24°55'21" W a distance of 42.37 feet; thence S 29°34'40" W a distance of 29.93 feet; thence S 68°19'21" W a distance of 38.97 feet; thence N 89°15'51" W a distance of 52.65 feet; thence N 81°42'32" W a distance of 61.24 feet; thence N 65°46'40" W a distance of 36.14 feet; thence N 35°40'05" W a distance of 36.15 feet to a point on the south line of the Solar Array Lease Parcel, being the point of termination. The sidelines of said easement are to be shortened or lengthened to terminate on the boundaries of said Solar Array Lease Parcel and the north line of Stillson Patch Placer. Described Access Easement contains 14872 square feet or 0.341 acres more or less.

I, MATTHEW J. WENTZ, A COLORADO REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND EXHIBIT DRAWING IS BASED ON A SURVEY MADE BY ME AND UNDER MY SUPERVISION, AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY. BOUNDARY DATA BASED ON "ANNEXATION MAP OF A PORTION OF THE STILLSON PATCH PLACER" RECORDED AT THE SUMMIT CO. CLERK AND RECORDERS OFFICE UNDER REC. NO. 544205.

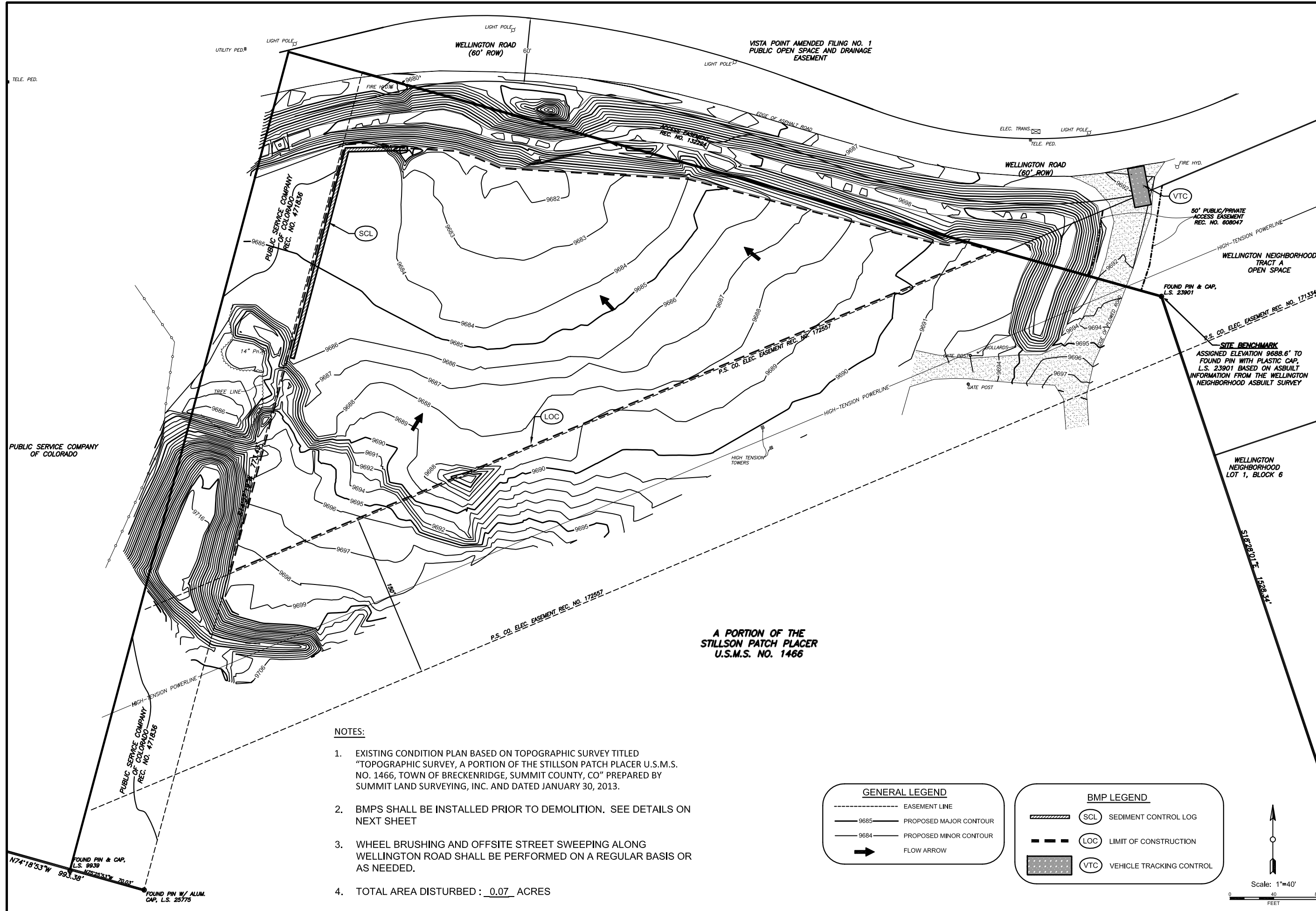
MATTHEW J. WENTZ, P.L.S. 37719

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.

**SUMMIT
LAND SURVEYING, INC.**

P.O. BOX 24212
SILVERTHORNE, CO 80497
970-513-0156

SCALE: 1" = 150'	DATE: 05/22/13	JOB NO. 131042
DRAWN BY: MJW	CHECKED BY: MJW	DRAWING NO. 131042EX-99-



A PORTION OF THE
STILLSON PATCH PLACER
U.S.M.S. NO. 1466

NOTES:

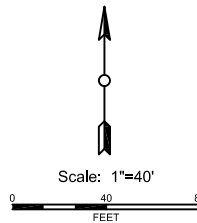
1. EXISTING CONDITION PLAN BASED ON TOPOGRAPHIC SURVEY TITLED "TOPOGRAPHIC SURVEY, A PORTION OF THE STILLSON PATCH PLACER U.S.M.S. NO. 1466, TOWN OF BRECKENRIDGE, SUMMIT COUNTY, CO" PREPARED BY SUMMIT LAND SURVEYING, INC. AND DATED JANUARY 30, 2013.
2. BMPS SHALL BE INSTALLED PRIOR TO DEMOLITION. SEE DETAILS ON NEXT SHEET
3. WHEEL BRUSHING AND OFFSITE STREET SWEEPING ALONG WELLINGTON ROAD SHALL BE PERFORMED ON A REGULAR BASIS OR AS NEEDED.
4. TOTAL AREA DISTURBED : 0.07 ACRES

GENERAL LEGEND

- EASEMENT LINE
- 9685 PROPOSED MAJOR CONTOUR
- 9684 PROPOSED MINOR CONTOUR
- ➔ FLOW ARROW

BMP LEGEND

- SCL SEDIMENT CONTROL LOG
- LOC LIMIT OF CONSTRUCTION
- VTC VEHICLE TRACKING CONTROL



NO.	DATE	CHK	JEL	APVD	JSO

ENERTIA CONSULTING GROUP
1437 LARIMER STREET
DENVER, COLORADO 80202

Clean Energy COLLECTIVE
Community-owned Solar

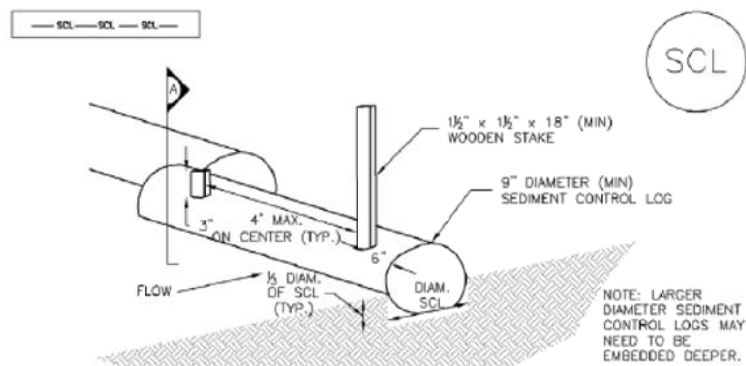
SUMMIT SOLAR 1
STILLSON PROPERTY
BRECKENRIDGE, COLORADO
PROPOSED CONDITIONS
EROSION AND SEDIMENT CONTROL PLAN

NOT FOR CONSTRUCTION	
DATE	APRIL 2013
FILE	
DWG	STILLSON ESCP
SHEET	2 OF 3

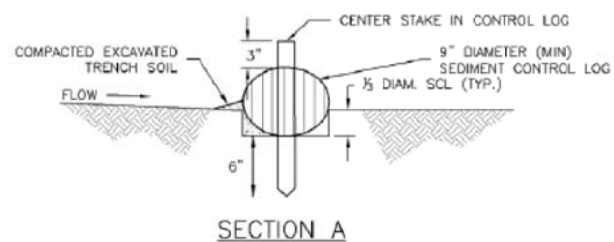
REUSE OF DOCUMENTS: THIS DOCUMENT AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF ENERTIA CONSULTING GROUP AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF ENERTIA CONSULTING GROUP.

Sediment Control Log (SCL)

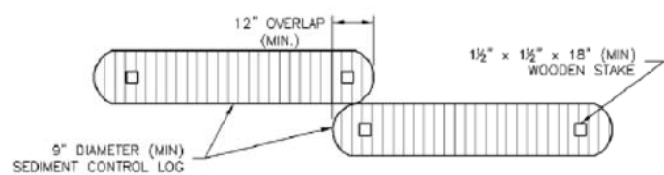
SC-2



SEDIMENT CONTROL LOG

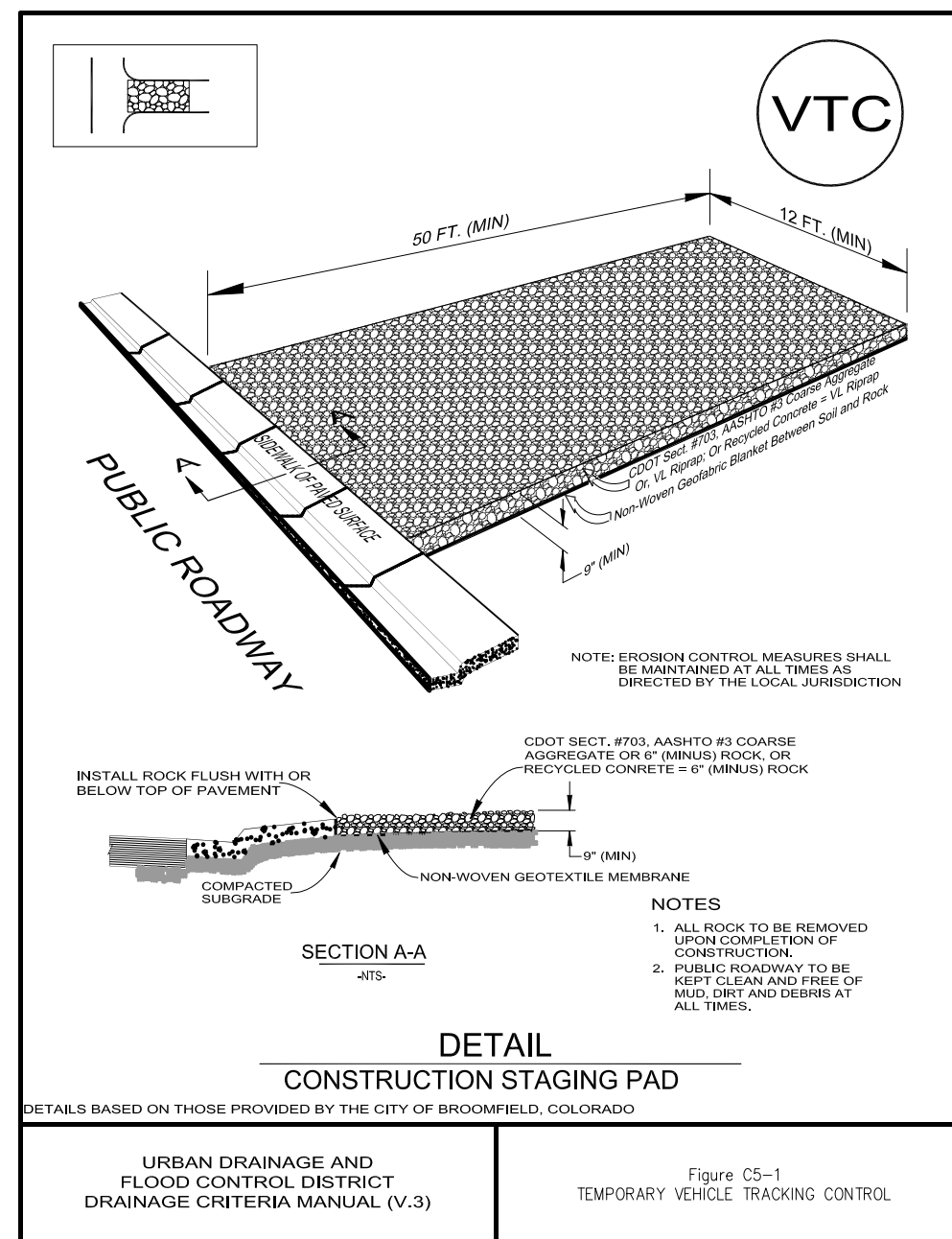


SECTION A



SEDIMENT CONTROL LOG JOINTS

SCL-1. SEDIMENT CONTROL LOG



NO.	DATE	CHK	JEL	APVD	JSO

ENERTIA CONSULTING GROUP
 1437 LARIMER STREET
 DENVER, COLORADO 80202

Clean Energy COLLECTIVE
 Community-owned Solar

SUMMIT SOLAR 1
 STILLSON PROPERTY
 BRECKENRIDGE, COLORADO

EROSION AND SEDIMENT CONTROL
 DETAILS

NOT FOR CONSTRUCTION

VERIFY SCALE BAR IS ONE INCH ON ORIGINAL DRAWING.

DATE	APRIL 2013
FILE	
DWG	STILLSON ESCP
SHEET	3 OF 3

MEMO

TO: Town Council

FROM: Town Attorney

RE: Proposed Amendments to Town Council Procedures and Rules of Order

DATE: May 20, 2013 (for May 28th meeting)

Here is the resolution making miscellaneous amendments to the Town Council's Procedures and Rules of Order. This document is the same as the one the Council reviewed at its May 14th meeting.

As I mentioned when this resolution was discussed before, the new state law outlawing "secret ballots" for Council appointments allows for the use of a secret ballot to elect Council "leadership." I interpret this exception as allowing the Council to use a secret ballot to conduct the required election for Mayor Pro Tem. I have provided in the resolution for the use of a secret ballot when electing the Mayor Pro Tem (see Rule 9.3(a) in Section 10 of the resolution). If the Council does not want to use a secret ballot when electing the Mayor Pro Tem, the exception in the revised Rules Resolution can easily be taken out.

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

1 ***FOR WORKSESSION/ADOPTION – MAY 28***

2
3 Additions To The Current Town Council Procedures and Rules of Order Are
4 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

5
6 A RESOLUTION

7
8 SERIES 2013

9
10 A RESOLUTION MAKING MISCELLANEOUS AMENDMENTS TO THE TOWN
11 COUNCIL “PROCEDURES AND RULES OF ORDER”

12
13 WHEREAS, Section 5.1 of the *Breckenridge Town Charter* provides that the Town
14 Council shall determine the rules of procedures governing its meetings; and

15
16 WHEREAS, the Town Council has previously adopted the “Council Procedures and
17 Rules of Order” (“**Rules**”) to establish written procedures for conducting Town Council
18 meetings; and

19
20 WHEREAS, Section 12.1 of the Rules provides that the Rules may be amended by the
21 vote of two thirds of the Town Council; and

22
23 WHEREAS, the Town Council finds and determines that the Rules should be amended as
24 hereafter provided; and

25
26 WHEREAS, Section 12.1 of the Rules further provides that all amendments to the Rules
27 shall be made by resolution; and

28
29 WHEREAS, this resolution was submitted to each member of the Council at least two
30 weeks in advance of the Council meeting at which the adoption of this resolution was to be
31 considered.

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

35
36 Section 1. Rule 3.5 of the Council Procedures and Rules of Order is amended so as to
37 read in its entirety as follows:

38
39 3.5 Town Clerk

40
41 Any act required to be performed by the Town Clerk under these Procedures and
42 Rules Of Order may also be performed by ~~the Clerk’s designee, or such other~~ any
43 ~~person as may be approved by the Council~~ authorized to act by the Town
44 Manager.

1
2 Section 2. Rule 4.9 of the Council Procedures and Rules of Order is amended so as to
3 read in its entirety as follows:

4
5 4.9 Minutes And Recording Of Meetings (Including Keeping of Record of Executive
6 Session)

7
8 a. A person designated by the Town Manager (the “Recorder”) shall attend and
9 shall keep the minutes of each regular, or special or emergency meeting of the
10 Council, except those portions of a regular, special or emergency meeting during
11 which an executive session is held.

12
13 b. An electronic ~~tape~~ recording of all portions of all regular, special or
14 emergency meetings of the Council (except executive sessions, which are
15 governed by subsection (i) of this Rule) shall be made by the Recorder. Such
16 ~~tapes~~ electronic recordings shall be retained for one (1) year, and shall be open
17 to public inspection and copying.

18
19 c. The minutes of a meeting during which an executive session is held shall
20 reflect the general topic of discussion at the executive session.

21
22 d. The minutes of each such meeting shall record in full all motions, resolutions
23 and ordinances. Otherwise and with the exception of public hearings, the minutes
24 of meetings shall record what was done rather than what was said.

25
26 e. A Councilmember shall have the privilege of having his or her statement on
27 any subject then under consideration by the Council entered into the minutes.
28 Such request must be made before the Presiding Officer puts the question to a
29 vote, or before the final approval of the minutes by the Council.

30
31 f. A copy of the minutes of the preceding regular, special, or emergency
32 meeting(s) shall be included in each Councilmember’s agenda for the subsequent
33 regular meeting.

34
35 g. Minutes will not be read provided each member of the Council has been
36 provided with a copy of the minutes of the previous meeting in advance of the
37 meeting at which they are to be approved. Approval of minutes will not be
38 necessary. Accordingly, the minutes will then be approved “as previously
39 submitted by the Recorder,” or approved “as corrected.”

40
41 h. Minutes shall be signed by the Presiding Officer and by the Recorder.

42
43 i. An electronic ~~tape~~ recording of the actual contents of the discussion during an
44 executive sessions shall be made by the Presiding Officer of the meeting at which

1 the executive session is held as required by Section 24-6-402 (2)(d.5)(II)(A),
2 C.R.S. The ~~tape~~ **electronic** recording of an executive session shall not be subject
3 to public disclosure or to discovery in any administrative or judicial proceeding,
4 except in an action brought pursuant to Section 24-72-204(5.5)(a), C.R.S. Such
5 ~~tape~~ **electronic** recording shall be retained by the Town Clerk for only ninety-one
6 (91) days after the date of the executive session. If, on such date, the Town has
7 not been served with a summons in an action to review such ~~tape~~ **electronic**
8 recording pursuant to Section 24-72-204(5.5)(a), C.R.S., the Town Clerk shall
9 forthwith cause the ~~tape~~ **electronic** recording of the executive session to be
10 destroyed. The mandatory destruction of an executive session ~~tape~~ **electronic**
11 **recording** as provided in this Subsection shall be deemed to be part of the Town's
12 record retention and destruction policy.

13
14 Section 3. Rule 4.11(d) of Council Procedures and Rules of Order is repealed.

15 Section 4. Rule 4.11(e) of the Council Procedures and Rules of Order is amended so as
16 to read in its entirety as follows:

17 e. ~~On~~ **Not later than** the Friday preceding each regular meeting of the Council, the
18 Town Manager shall cause to be prepared ~~an~~ **written** Agenda showing the order of
19 business for the upcoming **worksession and** regular meeting, and shall cause such
20 ~~written~~ Agenda to be made available to the Mayor and to each member of the
21 Council. **E-mail delivery of a link to the meeting's digital agenda(s) satisfies the**
22 **requirements of this subsection.**

23
24 Section 5. Rule 4.14 of the Council Procedures and Rules of Order is amended so as to
25 read in its entirety as follows:

26 4.14 Mailing List For Meetings

27
28 The Town Clerk shall maintain a list of persons who, within the previous two years,
29 have requested notification of all meetings of the Council, or of meetings of the
30 Council when certain specified policies will be discussed. The Town Clerk shall
31 ~~mail~~ **provide reasonable** advance written notification of such meetings to such
32 persons at the same time that the Council agenda ~~packets~~ **information** for such
33 meetings ~~are mailed~~ **is provided** to Councilmembers; provided, however, that
34 unintentional failure on the part of the Clerk to provide such notice shall not nullify
35 or affect actions taken at an otherwise properly noticed Council meeting. **E-mail**
36 **delivery of a link to the meeting's digital agenda(s) satisfies the requirements of**
37 **this subsection.**

38
39 Section 6. Rule 5.5(a) of the Council Procedures and Rules of Order is amended so as to
40 read in its entirety as follows:

1 a. Motions are used to give direction to the operation of the Town Council
2 government.

3
4 Section 7. The title of Rule 8.1 of the Council Procedures and Rules of Order is amended
5 to read “Recognition Required.”

6
7 Section 8. Rule 8.7(a) of the Council Procedures and Rules of Order is amended so as to
8 read in its entirety as follows:

9 a. Each person addressing the Council shall give his or her name and address for
10 the record, ~~shall state the subject he or she wishes to address,~~ and shall limit the
11 address to a reasonable time.

12
13 Section 9. Rule 9.2 of the Council Procedures and Rules of Order is amended so as to
14 read in its entirety as follows:

15
16 9.2 Election To Fill Vacancy On Council

17
18 Elections to fill a vacancy on the Council will be held by ballot. **“Ballot” means a**
19 **vote cast in such a way that the identity of the person voting and the position**
20 **taken in such vote is disclosed to the public.** After the votes are cast, the Town
21 Manager will collect and count the votes. The Town Manager will then announce
22 the results. If any of the nominees receives a vote of the majority of the remaining
23 Councilmembers in office on the first ballot, he or she shall be declared elected
24 without further Council action. If none of the nominees receives such a majority
25 vote at the end of the first balloting, the candidate receiving the fewest number of
26 votes will be dropped as a candidate unless the elimination of such name (or names
27 in cases of a tie vote) would leave only one candidate for the office. This process
28 will continue until one candidate receives the majority vote of the remaining
29 Councilmembers in office.

30
31 Section 10. Rule 9.3 of the Council Procedures and Rules of Order is amended so as to
32 read in its entirety as follows:

33 9.3 Election For Mayor Pro Tem And For Board And Commission Members

34
35 **A.** Elections to fill the position of Mayor Pro Tem ~~and to fill positions on boards~~
36 ~~and commissions~~ will be held by **secret** ballot. After the votes are cast, the Town
37 Manager will collect and count the votes. The Town Manager will then announce
38 the results. The affirmative vote of a majority of the entire Councilmembers in office
39 shall be required to elect the Mayor Pro Tem, ~~and to fill all positions on Town~~
40 ~~boards and commissions.~~ If any of the nominees receives the vote of the majority of
41 the entire Councilmembers in office on the first ballot, he or she shall be declared
42 elected without further Council action. If none of the nominees receives such a
43 majority vote at the end of the first balloting, the candidate receiving the fewest

1 number of votes will be dropped as a candidate unless the elimination of such name
2 (or names in cases of a tie vote) would leave only one candidate for the office. This
3 process will continue until one candidate receives the majority vote of the entire
4 Councilmembers in office. **“Secret ballot” means a vote cast in such a way that**
5 **the identity of the person voting or the position taken in such vote is withheld**
6 **from the public.**
7

8 **B. Elections to fill positions on Town boards and commissions will be held by**
9 **ballot. “Ballot” means a vote cast in such a way that the identity of the person**
10 **voting and the position taken in such vote is disclosed to the public. After the**
11 **votes are cast, the Town Manager will collect and count the votes. The Town**
12 **Manager will then announce the results. The affirmative vote of a majority of**
13 **the entire Councilmembers in office shall be required to fill all positions on**
14 **Town boards and commissions. If any of the nominees receives the vote of the**
15 **majority of the entire Councilmembers in office on the first ballot, he or she**
16 **shall be declared elected without further Council action. If none of the**
17 **nominees receives such a majority vote at the end of the first balloting, the**
18 **candidate receiving the fewest number of votes will be dropped as a candidate**
19 **unless the elimination of such name (or names in cases of a tie vote) would leave**
20 **only one candidate for the office. This process will continue until one candidate**
21 **receives the majority vote of the entire Councilmembers in office.**
22

23 Section 11. Rule 10.1 of the Council Procedures and Rules of Order is amended so as to
24 read in its entirety as follows:

25
26 10.1 Mayoral Proclamations
27

28 The Mayor, or in his or her absence, the Mayor Pro Tem, shall have the unilateral
29 authority to issue Mayor Proclamations. Such proclamations shall **not** require the
30 consent or approval of the Council. Mayor proclamations shall not have the effect
31 of law within the Town.
32

33 Section 12. The date of the adoption of the original Town Council Procedures and Rules
34 of Order, together with the signature block of the then-current Mayor, is deleted. In place of such
35 information shall be the date of the last amendment to the Town Council Procedures and Rules
36 of Order
37

38 Section 13. This resolution is effective upon adoption.
39

40 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2013.
41
42

TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

ATTEST:

Helen Cospolich
Town Clerk

APPROVED IN FORM

Town Attorney Date

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$\frac{1}{2}$ 500-14 Town Council Rules Resolution re miscellaneous amendments (04-30-13)(Distribution Only)

MEMORANDUM

To: Town Council

From: Mark Truckey, Assistant Director of Community Development

Date: May 22, 2013

Re: Planning Commission Decisions of the May 21, 2013, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF May 21, 2013:

CLASS C APPLICATIONS:

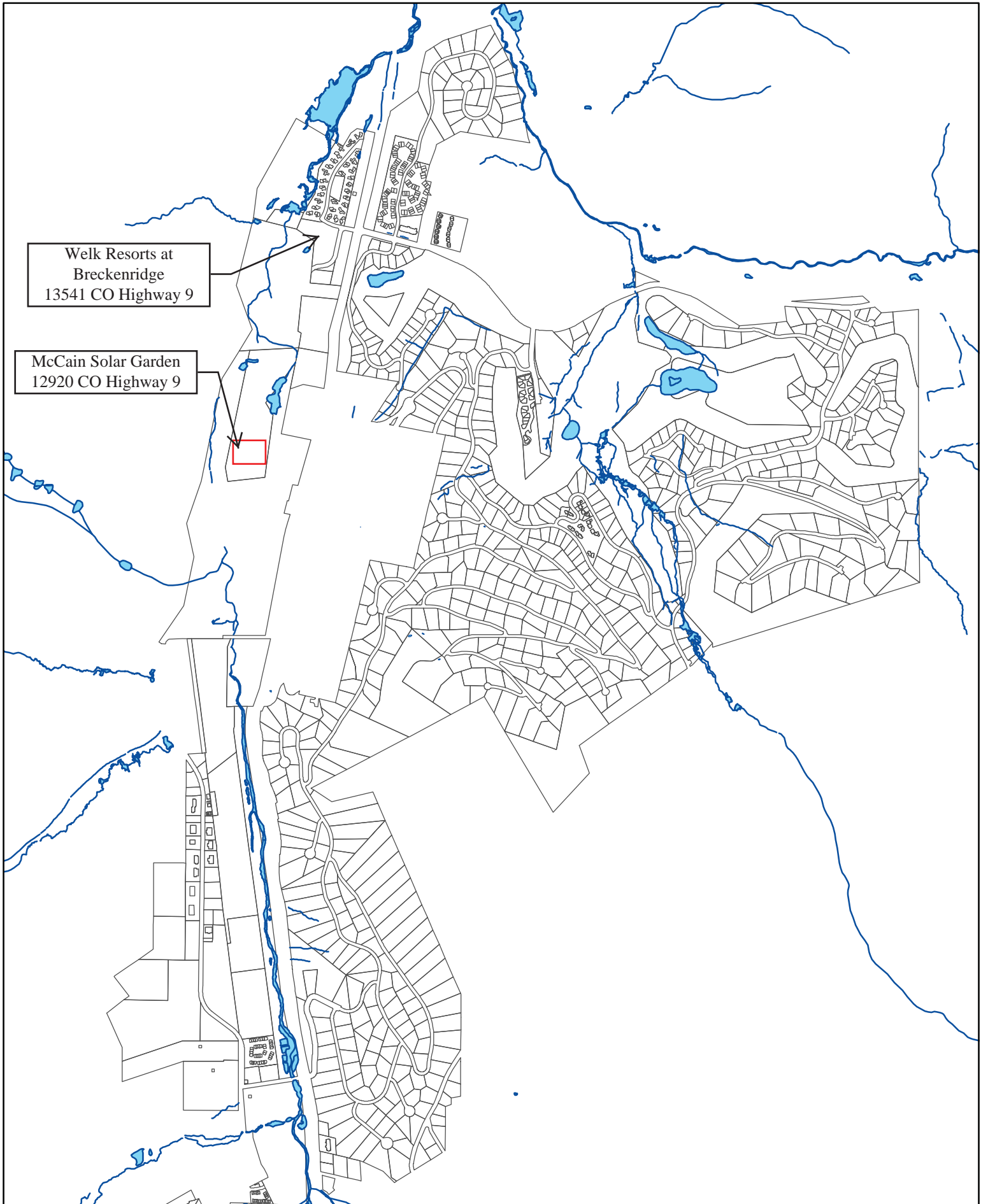
1) Gold Creek Condominiums Exterior Remodel (MM) PC#2013034; 326 North Main Street
Remodel of existing condominium project to consist of: roof screening / parapet features to add architecture and screen future roof-top equipment, extension of exterior walkways, added heavy timber accents, new exterior stairs, new railing and balusters, and new paint and stain. Approved.

CLASS B APPLICATIONS:

None.

CLASS A APPLICATIONS:

1) Welk Riverfront Resort, Breckenridge Condo-Hotel (MM) PC#2012044; 13541 Colorado Highway 9
Construct a 123-unit time-share / condo-hotel with a detached housekeeping / maintenance building and a detached meeting / facility building at Tracts W and D-3 of the Shores at the Highlands Subdivision. Approved.



Welk Resorts at
Breckenridge
13541 CO Highway 9

McCain Solar Garden
12920 CO Highway 9

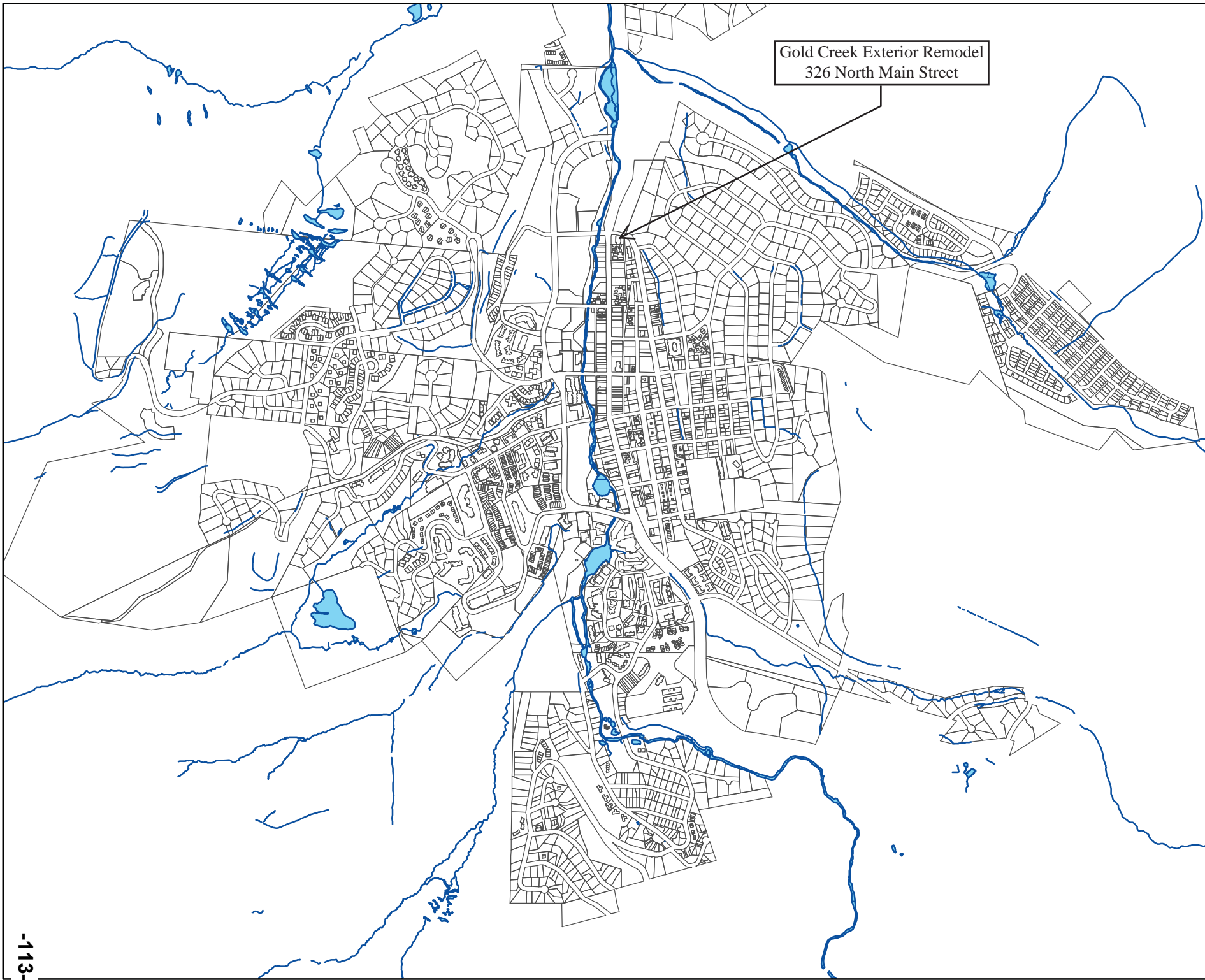
Breckenridge North

printed 4/12/2011



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.





Gold Creek Exterior Remodel
326 North Main Street



NOT TO SCALE

Breckenridge South

printed 4/12/2011

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



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm

ROLL CALL

Kate Christopher Trip Butler Jim Lamb (Vice Chair)
Dan Schroder Dave Pringle
Mayor John Warner for Jennifer McAtamney, Town Council Liaison

Gretchen Dudney and Eric Mamula were absent

APPROVAL OF AGENDA

With no changes, the May 21, 2013 Planning Commission meeting agenda was approved unanimously (5-0).

APPROVAL OF MINUTES

With no changes, the May 7, 2013 Planning Commission meeting minutes were approved unanimously (5-0).

CONSENT CALENDAR:

1. Gold Creek Condominiums Exterior Remodel (MM) PC#2013034; 326 North Main Street
Mr. Schroder said that he loved what he sees. Mr. Mosher presented the color board for the Commission to review.

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

TOWN COUNCIL REPORT:

Mayor Warner: We did approve the McCain Master Plan. Tract 1 is 89 acres of governmental use and the rest is open space; 38% of the property was dedicated to open space. There was a headline a few days ago that was misleading; we are contemplating abandoning our relationship with the Corp of engineers who have made no progress in their plans with the river. They were going to do a \$5 million project, and without them it could be significantly less money. We shall see what happens with the restoration of the Blue River.

Mr. Pringle: Is it on a time table?

Mayor Warner: For me yes, I would like it to happen in the next few years. Kermit did ½ mile in 30 days so if you do the math maybe we could get it done in a year or two. So I'm excited about it; we are waiting to see what Mr. Daugherty (Town Engineering) says that Kermit indicates pricing will be. We would like to explore doing it on our own. Also, with the acceptance of the McCain Master Plan we did eliminate service and service commercial uses; like you, Mr. Pringle, I was the only one on Council who didn't like that. I still believe that we need service commercial in Town but that was the ruling of the Council. I know that people are upset about the gas station, but to me, we have some companies out there like the landscaping company, the Furniture Company, etc, and they aren't going to have anywhere to go. I think that this is short sighted. The thinking is that they will find other service commercial but anyhow, it was a 6 to 1 vote and we will not see service commercial down the road there in 5 years. We appreciate that you guys took a look at it as well. We passed the final reading on the moving historic structures ordinance that you guys helped with; it seems to be going in the right direction. We also approved the Keller Residence Landmarking and that's it. Thinking globally, we are still dealing with Amendment 64; we are also contemplating some kind of revenue stream for the childcare scholarship program; it will be on the ballot sometime in July. We haven't decided whether or not it will be a property tax or sales tax revenue. Business in town is really pushing it to be a sales tax;

about a ¼% increase in sales tax would get us what we need. The commercial community really appreciates the prospect of the childcare scholarship program.

Mr. Lamb: Anything new on plastic bags?

Mayor Warner: They are being designed and it is coming down to bags from the US or bags from someplace else which is much more colorful and attractive. The US are not as attractive but are canvas and washable. They may end up with two bags, and it is going to happen. We are planning to stock the retail community with many thousands of bags. The retail community is up to this point fairly accepting of it. We've had a lot of kudos from people like High Country Conservation; there has been more positive than negative feedback and this is likely to go into place around October 1 so that it hits prior to tourist season. I personally have had several conversations with the City Market Communications Director and she has indicated that they are happy about this. I got her name from Randy Griffin, and she was very helpful. They are not going to oppose this action. I think that the bags are kind of iconic. People are going to take them back to Dallas and remember Breckenridge. It's been a great process and Mr. Truckey and Ms. Puester have done a great job and I really appreciate their help.

Mr. Schroder: Does Town anticipate a good taxable revenue stream from marijuana?

Mayor Warner: It's pretty remarkable, I've done the math and their average sale is \$65/sale and so a person walks in, they spend on average that much. So if you assume a 5% increase in participation and tourist base, say, 2 million people per year, that's \$6.5 billion of revenue of sales with a 5% tax on that it is around \$3 million for the Town. It can be a significant revenue stream so we shall see.

FINAL HEARINGS:

1. Welk Resorts at Breckenridge (MM) PC#2012044; 13541 Colorado Highway 9

Mr. Mosher presented a proposal to construct a 123-unit time-share/condo-hotel with a detached housekeeping / maintenance building and a detached meeting / facility building at Tracts W and D-3 of the Shores at the Highlands Subdivision.

The Planning Commission last reviewed this proposal on February 5, 2013. At this meeting, concerns were expressed about the:

- The design of the glazed guard panels
- Articulation of the roof form on the main entry of the Accommodations Building and the Meeting/Facilities building
- Location and buffering of the Meeting/Facilities building
- Vehicular circulation of the Trash removal area
- Detail on the landscaping plan
- Overall building height

The applicants have obtained a Town Council approved Development Agreement, which allows a mass increase for amenities from the Development Code standard of 200% to 700%. The approval of a Class C re-subdivision combining Tract D-3 with Tract W (drawings were included in the Commissioner's packets) has been added as a Condition of Approval. With the completion of this last subdivision, all of the development will be placed on one parcel. Additionally, a modification to the 2012 West Braddock Delaware Flats 4th Amended Master Plan to include the four multifamily SFEs from Tract D-3 into Tract W-1 has been added as a Condition of Approval.

Revisions since the last meeting included the following: change to aluminum and glass structural railing system; further refinement of massing, colors, materials and detailing; increase in distance from northern property line; modification of building design; refined landscaping; building rotation to create a wedge at property line; enhancement of clear separation of traffic flows; reduction in building height; reduction in

snowmelt areas; maximum of 25% non-natural materials on each elevation; building mass stepping from middle high point to lower shapes east and west; amenities building changes (removal of skylight, introduction of dormers, better integration into accommodations building); dormers added to 3 sides of roof drop-off canopy; cupola changes (reduction in scale, roof overhang unification and reduction, cupola roof slope to match main building roofs, 4 sided sheds at accommodation building): removal of curb cut and street entry at northeast; logical distribution of snow storage area.

The applicants and agents have been working with Town Staff and the neighbors to reach this point in the design of this application. The list of changes attached is a good example of the response to the many concerns. Staff had one question for the Commission: Did the Commission have any concerns with the proposed glazed guard panels? Staff welcomed any additional comments or questions.

Staff recommended the Planning Commission approve the final Point Analysis for the Welk Riverfront Resort, Breckenridge Condo-Hotel, PC#2012044.

Staff also recommended the Planning Commission approve the Welk Riverfront Resort, Breckenridge Condo-Hotel, PC#2012044, along with the presented Findings and Conditions.

Mr. Jeffrey Edwards, VP of Development for Welk Resorts, introduced the development team: Mr. Richard Hulbert, Mr. Aleksandr Sheykhet, Mr. George Pierce and Mr. Tom Morrison are all present. Thank you for taking the time to listen to our presentation.

Mr. Richard Hulbert, Project Architect: I'm highlighting the major changes:

The site is L shaped; we have developed a narrative to give us some help for the design team. The notion is that we found the foundation of the chimney of the rancher. The horse barn has been refurbished; the corral is now used to park vehicles and the bunkhouse has been renovated to accommodate housekeeping and maintenance with work housing above.

- The roofs that were too 'plain' on the main entry element have been revised by adding functional gable dormers and eliminating the skylights. These still allow light into the space.
- The elevations have been revised and overall height has been lowered by reducing the floor plate of the principal floor much closer to grade; we looked at structural components with thinner floor and ceiling assemblies and reduced the ridge heights. All of the buildings step down at the edges.
- Even though the comment was made that the glazing was inappropriate, we've taken the glazed panels and framed them with dark finished aluminum surrounds.
 - In terms of durability and maintenance, these have been used by Welk in hurricane areas. They will be maintained 24-hours a day by Welk staff.
 - The glazing was raised up 4 inches so that we have the ability for drainage and snow removal. The benefit of the acoustical aspect of glass is that on the first floor the berms serve to bounce the sound back, and on the upper floors, the glass serves this purpose.
 - The idea is to see through it in terms of light; and for the resort guests are able to look out at their surroundings unencumbered.
- Also notice here the dormers are all around so the buildings are designed to be 'all fronts'. Remember that the skylight was eliminated.
- There are very few changes to the workhouse housing except to meet the requirement of the non-natural materials.
- The developer of the Shores and his architect met with us and we agreed to figure out how to change the Meetings Facility building to address some of their concerns.
 - We moved the building further away from the Shores property, re-angled it and moved the entrance to the East side.
 - The roofline has been articulated far more so that the stepping forms have increased and now we have

- the front effectively as a one story element that is part lobby and part porch on grade.
- The back side of this building looks like another front side to our neighbors.
 - Regarding the landscaping, Mr. Pierce is going to talk to you about that buffer.
 - We met this afternoon with the Developer of the Shores and his two architects and while they appreciated our moving the building away from the Shores, and I learned that the principle issue is the value of the property that they are going to be putting on their side.
 - The southwest view is precious and very valuable to them and so we agreed to some points that I'm articulating out loud. We agreed to make some additional modifications that do not affect this application:
 1. We are pulling the meetings facility eastward as far as possible and to do that and respect the Code;
 2. We will cantilever the end of the deck and the roof on the west side and reduce the number of columns;
 3. We will assist in a joint effort to construct fencing between us and share the cost of the pathway in the Shores; and
 4. We will investigate the potential of someday use of the amenities by Shores homeowners, but we can't be 100% sure because it has to go to the Board of Directors.
- In return, Mr. Lorin Gerch will support the project as submitted today.

Mr. George Pierce, Principal with Landscape Architecture:

The site is now totally devoid of any landscaping; we will revegetate the entire site with plants that are suitable to Breckenridge; in addition to that, there will also be a large number of site amenities on the grounds. The rear will have an indoor/outdoor pool, 3 Jacuzzis, one gas fire pit, seating areas and barbeques for guests to use. The landscape vision will have a predominately evergreen plant palate along Highway 9 and bring in spruce and white fir and pine to replace some of the pine beetle devastation. As we transition back to the activity area, we will bring more aspen and perennials and wildflower areas and lastly, as we approach the Blue River, we will bring some willows and dogwoods and plants more native to the river environment. We're going to be using 3-inch aspen interspersed with evergreens and spruce ranging from 10 foot to 14 foot heights and the occasional white fur 10 to 12 feet in height. Three inch aspen are usually in the 30 to 40-foot tall range and we are also going to have some cottonwoods in the same range.

Mr. Hulbert: In terms of the landscaping, it's a great opportunity to take this site and create a positive precedent. The setback from the eastern boundary is three times what the minimum required setback is. Working with staff, we learned that we needed a lot more detail on the drawing set to convey the details. Mr. Aleksandr Sheykhet is the president of the firm, and he is here to talk about the material boards.

Mr. Aleksandr Sheykhet, Colorado Architect with Studio Obermeier Sheykhet Architecture:

I have been here for about 20 years, and for the final application the team is required to produce large number of details. What I would like to say, is that we are proud of the Welk group and that the project once completed will be a richness that is beyond what you will see on a small scale. They were most helpful in colors and details. The color scheme is inspired by natural beauty and a story line that Mr. Hulbert put together. There are a number of colors and in material boards (presented to the Commission) we tried to give you color texture and scale. We've provided the structural glass panels, and the finish that will be applied and that we've done on many mountain projects here in Colorado.

Commissioner Questions / Comments:

Mr. Pringle: Are you happy with the new Accommodations Building without the glass skylight? (Mr. Hulbert: There is always more than one right answer to every problem; I value your opinion, I'm not from Breckenridge and you guys make it better by making it fit in with your suggestions. If it helps, I'm comfortable. Those are real dormers, by the way, so we get

natural light inside, and I think it's more appealing.) I appreciate your attempt to get light in, but I always thought that the skylight design was out of character and you now have a much better project today.

Mr. Lamb: I agree with that.

Mr. Schroder: Having read through it, with the presentation tonight, I am very pleased with where this is going.

Ms. Christopher: The color for the metal on the windows, is it nickel? Is it going to match the bronze for the railing? (Mr. Sheykhet: There will be no metallic color on the project. All surfaces are factory finished with the colors presented.)

Mr. Pringle: We can believe that any changes on the Meetings Building will be positive changes that will give relief to the Shores and that they won't require coming back in front of us? (Mr. Mosher: Yes that's true. Staff reviewed the concept of the proposed changes and these can all be handled with the Building Set submittal and the Statement of Compliance from the architect.)

Mr. Lamb: That's something that you're going to be monitoring? (If it is a substantial enough change then we tell them that they need to go back in front of Planning Commission.)

Mr. Butler: Mr. Sheykhet, how do you feel about that cantilever? (Mr. Hulbert: We are keeping the same materials; we are going to need a structural engineer because we don't want to change the look but it's facing the water which is arguably is unique on the site. The way that I can sell it to my client is that it will feel like we are perched out there. We agreed to maximize the overhang and their view by removing the end columns.)

Mr. Lamb: You are not going to be able to cantilever the whole thing though, right? (Mr. Hulbert: No, but that would be really cool.)

Mr. Lamb opened the hearing to public comment. There was no public comment and the hearing was closed.

Commissioner Questions / Comments:

Mr. Schroder: I'm in support of the point analysis tonight; I don't have an issue with the glazed balcony guards.

Mr. Pringle: I concur with the point analysis and applaud you for working on all of our concerns and your neighbors concerns. I'm hoping as this project builds out and starts to integrate into the community that it will be one of the town's end capstones. The landscaping; you really benefit from the setback from Highway 9; it's very well buffered there. I think that where you really enhance it is what you do to the site itself. I applaud your efforts.

Mr. Lamb: I agree. I think that you've really worked with the Staff on this and that your project will be better because of it; I did have an issue with the glass balcony guards but because there is a precedent I am okay with that. You clearly passed the point analysis and I hope that you enjoyed dealing with us and our Planning Department, because we are a little more complicated than other areas.

Ms Christopher: I support the point analysis, but I still do not fully support the glazed balcony guards because they don't seem to fit the character of Breckenridge; but I really appreciate the work that you've done and how you've worked with your neighbors and it's a strong project.

Mr. Butler: I think that it is a great project, and I had to go back to that site to view it because there aren't a lot of redeeming qualities about the site right now. I think that you've been a far better neighbor than you've needed to be; that's just my observation. It's the best thing on that end of town; that whole block down there. This is a good looking project. I like it. I am a big fan of the glazed balcony guards.

Mr. Pringle made a motion to approve the point analysis for the Welk Riverfront Resort, Breckenridge Condo-Hotel, PC#2012044, 13541, Colorado Highway 9. Ms. Christopher seconded, and the motion was carried unanimously (5-0).

Mr. Pringle made a motion to approve the Welk Riverfront Resort, Breckenridge Condo-Hotel, PC#2012044, 13541 Colorado Highway 9, with the presented findings and conditions. Ms. Christopher seconded, and the motion was carried unanimously (5-0).

PRELIMINARY HEARINGS:

1. McCain Solar Garden (JP) PC#2013036; 12920, 13250 Colorado Highway 9

Ms. Puester presented a proposal to install a 500kW photovoltaic (PV) solar garden on a 3 acre portion of the McCain property. The proposed solar panels would consist of approximately 2,106 panels in 16 rows, access by the existing dirt road utilized by Alpine Rock. The proposed solar panels would be managed by Clean Energy Collective (CEC). CEC would sell panels to residents and businesses within the entire Summit County area. The residents and businesses would pay the upfront cost of the panels purchased. In return, Xcel Energy would credit the purchaser's Xcel bill monthly for their share of the value of the energy produced.

With the Town's annexation of this parcel, the property was incorporated into Land Use District 43 in 2003. The Town is currently in the process of purchasing the Alpine Rock property (which the proposed solar garden is located on a portion of). The Town Council approved the McCain Master Plan on May 14, 2013, that allows for open space and governmental uses including solar gardens. The Planning Commission denied the McCain solar garden on October 18, 2011 due to a nonpassing point analysis.

Changes from Planning Commission meeting October 18, 2011:

Primary concerns from the Planning Commission were lack of buffering to the site as well as the lack of landscaping proposed. Primary changes made since the October 18 review include:

- Reduction in scope of project from a 2 megawatt system consisting of 8,333 panels over 27 rows to a 500 kW system with 2,106 panels over 16 rows;
- Site was relocated to the north onto the Alpine Rock property which the Town is in the process of purchasing (June closing date);
- Reduction in lease area size from 10 acres to 3 acres;
- Some landscape and natural screening provided by the existing berm and existing trees;
- Detail on inverter and switch gear equipment size and shed structure;
- Fence detail;
- New site visibility photos; and
- Grading information.

Staff has been working with the applicants to address issues raised by the Planning Commission previously. This has been significant with the relocation of the site north behind an existing berm and tree buffer. It is now on Alpine rock property, sits low on the site and is not readily visible from rights of way as you saw from the site visit today. As with other applications of this nature, there is limited ability to add screening from Silver Shekel to the site while providing solar exposure; however, staff believes that further efforts could be made with strategic landscape plantings to screen from the rights of way which would be best addressed after the installation and decision for any potential expansion of the project has been determined by Council. Staff had the following questions for the Commission:

- Did the Commission believe that the new site location achieves the intent of Policy 7/R, Site and Environmental Design?
- Did the Commission agree that additional landscaping is needed on the site to provide buffering? Would the Commission support no negative or positive points under this policy with the financial commitment from

CEC to provide additional plantings in strategic locations until the first phase has been installed and any potential expansion location determined?

- Did the Commission agree that positive two (+2) points are warranted under Policy 33/R-Energy Conservation?

Commissioner Questions / Comments:

Mr. Pringle: When we talk about the berms south and east of the site, isn't that just an area where people dump their excavations? When I look at the berm, it just looked like fill dirt. (Ms. Puester: I don't know the history of it, but it has been there quite awhile. Alpine Rock is a heavy type of land use there and guessing they have built that up to screen their own uses there. Applicant has stated that they would like to clean up the berm, make it more presentable.) Also, we stopped at what used to be the old north fire station site, is it possible for us to encourage some more landscaping to be put in there? Basically you won't be able to see that site except from maybe there. (Ms. Puester: We will encourage them to landscape in those locations.) Could we negotiate that maybe now? That looks like a good spot for some permanent landscaping. (Ms. Puester: We will have that planted.)

Mr. Butler: So they've reduced it to 500 kW, so 300 homes to 75 homes and is that enough? (Ms. Puester: This is the same size as the Stillson Solar Garden; we are recommending the positive 2 points which is consistent with past precedent.) Seems like reducing it to 25% of what was originally intended out there in 2011. (Ms. Puester: There are some reasons why that happened, but I'll let the Applicant address that.)

Mr. Pringle: Where is that second phase possibly? (Ms. Puester: We don't know if a second phase will happen or not and have not located it. We bubbled out some potential areas during the master plan process, but they haven't been determined.) What makes this work is that the berms and trees that are there so we can't go south unless we relocate the berms.

Mr. Lamb: When will we know about the Second Phase? (Mr. Brian Waldes, Financial Services Manager for the Town of Breckenridge: That isn't even a discussion with the Council right now and it is based on how quickly inventory sells out and the demand for more.)

Mr. Butler: Did you have a sense that energy for 300 homes was too large? (Mr. Waldes: It was initially slated to be 1mW, twice the size, but the process with Xcel precluded us from putting in two applications for the same parcel so, we just took what we were allotted.)

Mr. Richard Miller, Clean Energy Collective (Applicant): I appreciate your time tonight. I'm joined tonight by Mr. Chad Roach, Project Manager and we will answer your questions together. We have Ms. Michelle Zimmerman and Mr. Eric Westerhoff with Innovative Energy as well. Ms. Puester did a good job explaining our project. One thing, on the aerial that you just saw, Mr. Chad Roach of CEC and I met Xcel out on site and we won't have to take any trees out to put that line in. This is a partnership between the Town of Breckenridge for the citizens of Breckenridge and CEC; it is truly a 'community owned' facility. The Town will own panels as well as citizens. We do have a remote meter program so that we can see what the panels are actually producing in real time. Our firm builds these, manages them and maintains them. Our plan is for it to be here 50 years. We are taking about a 500 kW facility which will provide for 70-75 homes for one year. Over a 20 year period, this will reduce carbon emissions by 26 million pounds. We heard that the view was important to the Town so we think primarily from the Coyne Valley area and from Highway 9 you are going to only see a slight glimpse of the site. We are prepared to address the concerns of the Planning Staff, enhance the berms and help screen as much as possible. We will install landscaping and berms, listen to citizen comments, work with Staff and install visual buffering. We will finalize the landscape plan before we come back for final review. If you are open to having the final installation of landscaping after we put the panels in, we are willing to escrow the funds for that scenario.

Commissioner Questions/Comments:

- Mr. Pringle: The panels are about 12 feet in the air? (Mr. Westerhoff: Range from 10 to 12 feet off existing grade.) How far will they be raised up into the air? (Mr. Westerhoff: About 3 feet above grade.)
- Mr. Lamb: Do we know really how long solar panels last? (Mr. Miller: We plan 20-25 years but as you know the panels are getting more efficient. We try and get a warranty for 30 years.) At altitude, these actually produce more because we are in thinner air, is that correct? (Mr. Roach: It's a combination of being closer to the sun, cooler temperatures and also reflection of snow. We've seen up to 15% of an increase over what the manufacturers say about the panels' production.)
- Mr. Pringle: \$3,000/panel? I think you are selling panels. (Mr. Miller: They are about \$850 per panel.) So if I wanted to buy into this am I buying a kW or am I buying a panel? (Mr. Miller: You're buying a panel.) (Mr. Roach: You want to contact us, and get a release of your utility bill and we would go ahead and design a system based on that.) (Ms. Puester: We need to get back to the code issues.)

Mr. Lamb opened the hearing to public comment.

Mr. John Jumonville, 411 Long Ridge Drive, Highlands

I feel like I'm jumping in front of a train here but I am not either for or against solar panels. I'm pretty reasonable, coming from a reasonable place trying to understand how we got to solar panels in the Town of Breckenridge. I was glad that I was here tonight to hear the Welk. What was the largest focus on that structure-appearance? How did we get to black glass as fitting in community character and fitting with the historical nature? In terms of aesthetics standpoint, I have a problem with black glass fitting into our character. #2, the solar panel ordinance talks about the stand alone, certainly about putting panels next to existing structures, there is lots of language about panels not being visible. How are we going to hide a phase 2? What happens to the value of the properties around it? Does the cooperative own this land? No, so they don't pay taxes. Bottom line is aesthetic; how we got to a large set of black glass and fitting with the historical nature of Breckenridge. Also, when I looked at SustainableBreck, the ability to use and enjoy resources without comprising the beauty of our town. When I think about natural resources, I think of ridgelines, mountains, views. I spent money on a lot up on a ridge, on trees to block my view of the valley, but no matter what size berm nothing will protect our view from this. I can't imagine what Silver Shekel thinks, I imagine that they wouldn't want to look at 3 acres of black glass. Financial standpoint: purely speculative. \$3,700 out of pocket and 8-12 years to get back, speculative. Do these things pay for themselves? Could payback, could not. In the meantime, we have 20 years, potentially 50 years of black glass; with respect to technological improvements; are we not going to have more efficiency in the future? We have to wait 50 years until we can use it? Breck is here because of its natural beauty, and that's what been driving all of this. This is not a slam dunk great financial deal, it's speculative. Finally, reducing the carbon footprint; I understand that the Town is here. Actually having a town state that they want to reduce their carbon footprint is dubious however it is fantastic. But do we have to do it through structures that are out there that are contrary to exactly what a lot of our historic character? Is the website that tracks the production that's on there now, is it accurate? It's showing 600 tons. So for about 1 ½ years, it's been about 450kW. How do we get past the aesthetic part? The financial aspect is speculative and then CO2; we say 500-600 tons in about a year and one half so on average we are saving 300-400 tons per year. I don't get 26 million pounds per 20 years. I guess in terms of CO2, this is one coal plant in the US produces about 3.5 million tons of CO2. Probably the same plant in China is multiplied of that, so we are going to go against that, how we want the character of Breck to be, putting somewhat speculative financial benefit in, and we are going to save 300 to 400 tons per year which compared to one coal plant in the time we've been here for about an hour, they've produced more CO2 in one hour than we will by having 3 acres of black glass. Is it worth it? Why don't we go buy land out in Park County; you can expand as much as you want there, and then no one will care. How many ski resorts have 25 acres at their front door to do with what they want? Amazing opportunity. Are we really going to put black glass there? I

have trouble seeing black glass in the confines of a building then detached stand alone monolithic views and it's high. If it's anything like the one at the golf course, it's up. It makes a difference. I've said my peace. It's just trying to be reasonable. I want you guys to do it; can't we do it somewhere else?

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

Commissioner Questions / Comments:

Mr. Lamb: This particular site in my opinion is really quite well buffered with no more additional landscaping; I even drove through Silver Shekel today so I think that what really kind of made me feel better was the site visit today. Something this size fits into that particular property. The 10 acre one that was turned down would have been more visible than this. Maybe another site visit and invite the community, John? I think if we did that, people would agree. (Mr. Jumonville: I don't think that it should be in Town. My issue is that it doesn't make sense to have it in Town. Can put it somewhere else.)

Ms. Christopher: I was pleasantly surprised during the site visit; the only place that it would be visible is from Silver Shekel; anyone driving by though would hardly see the site.

Mr. Pringle: I would concur that where it is sited right now, from anywhere ground level it will be highly screened. Up in Silver Shekel, I don't think that you can hide it at all; they have to balance what they are looking at now, which is a gravel pit. In direct response to your comment, yes I think you are jumping out in front of a train. I think that the Town Council is in the lead on this and they want to see a solar garden out there, whether we buy into the concept or not, it's been approved by the Master Plan and is going forward.

Ms. Christopher: The panels are facing directly south; so coming in on Highway 9 from Frisco you won't see anything. Silver Shekel will see them from the side view. Northbound they will only be visible for about 50 feet.

Mr. Lamb: It's impossible to make them invisible from above.

Mr. Pringle: I withhold any judgment about a second phase; any second phase would have to be as buffered as this one.

Mr. Lamb: Let's answer staff's questions. First one on Policy 7/R: is buffer appropriate?

Mr. Schroder: Yes, it is compatible with the site it does achieve an offset at that location. This is the right site.

Mr. Pringle: Only after taking the site visit would I agree with this one. It is pretty well invisible from grade level.

Ms. Christopher: I feel like that's the perfect site; any second phase would have to be looked at.

Mr. Butler: Yes.

Mr. Lamb: Yes, it is compatible. I thought today that it was hard for anyone to even see it from the highway. Let's move onto question 2 on landscaping.

Mr. Schroder: So the points are a neutral on landscaping. Holding money in escrow is a good idea so that we can screen at a later date. I don't think that trees on the berm are as necessary as out towards the highway.

Mr. Pringle: I don't think it needs any additional landscaping, I'm neutral on the points; as long as we have the money I would like to see some strategic landscaping between the bike path and the highway to provide more buffering, near the old firehouse site. Calling that a berm is being very kind to it; all it is is fill dirt. Would like to see that look better.

Mr. Lamb: I am neutral on the points as well; it makes sense to put this in and then see where we need a buffer. I think the highway is priority to landscape than the berm. It's hard for me to visualize where any additional buffer should go; if we put it in, then we'll have a better idea. It will be interesting to see what it actually looks like when it's in.

Mr. Butler: I would rather see them spend the money on cleaning that area up. I think the highway is priority.

Ms. Christopher: I would suggest doing landscaping near the right of way first and then maybe wait on the berm to the south of the solar array. A year or two years. But if there is no additional phase coming forward then put the trees in. Priority one is landscape between the highway and the project.

Mr. Lamb: Question 3, +2 points under 33/R for Energy Conservation?

Mr. Pringle: I would agree to the two points; but I also felt that applying the stand alone solar array that we use within the developed portion of the Town really doesn't match up well with a solar garden. The mass and scale requires a completely different thought process. I'd like to see a different interpretation of solar garden in our code. (Ms. Puester: Yes, we didn't consider something of this scale in the code. You can get more points as a house with a decent HERS index than a large solar garden.)

Mr. Schroder: I agree to the two points; we have an entire policy dedicated to energy conservation in Breckenridge; it's worth it.

Mr. Lamb: I believe two points are warranted. Agree, you power 75 points and you get two points; it's interesting.

Mr. Butler: I agree with the two points.

Ms. Christopher: The Town Council wants the energy conservation to move forward and I believe the two points are warranted. The solar garden is a great way to keep it out of the historic district, put it somewhere on the outskirts but still in Town.

OTHER MATTERS:

None.

ADJOURNMENT:

The meeting was adjourned at 9:25 pm.

Jim Lamb, Vice Chair



Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

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

MAY 2013

Tuesday, May 28, 2013; 1:00 pm Stillson Solar Panel Groundbreaking Ceremony

Tuesday, May 28, 2013; 3:00/7:30 pm Second Meeting of the Month

JUNE 2013

Tuesday, June 11, 2013; 3:00/7:30 pm First Meeting of the Month

Friday, June 14, 2013; 8:00-9:00 am; TBD Coffee Talk

Tuesday, June 25, 2013; 3:00/7:30 pm Second Meeting of the Month

JULY 2013

Tuesday, July 4, 2013; 9:00 am Fourth of July Parade/Firecracker 50 Bike Race

Thursday, July 6, 2013; 10:00 am Harris Street Building Groundbreaking Ceremony

Tuesday, July 9, 2013; 3:00/7:30 pm First Meeting of the Month

Friday, July 19, 2013; 8:00-9:00 am; TBD Coffee Talk

Tuesday, July 23, 2013; 3:00/7:30 pm Second Meeting of the Month

Wednesday, July 24, 2013; 7:30 pm; Riverwalk Center Town Board/Commission Recognition NRO Concert

OTHER MEETINGS

1st & 3rd Tuesday of the Month; 7:00 p.m.

1st Wednesday of the Month; 4:00 p.m.

2nd & 4th Tuesday of the Month; 1:30 p.m.

2nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon

2nd & 4th Tuesday of the month; 2:00 p.m.

2nd Thursday of the Month; 5:30 p.m.

3rd Monday of the Month; 5:30 p.m.

3rd Tuesday of the Month; 9:00 a.m.

4th Wednesday of the Month; 9:00 a.m.

4th Wednesday of the Month; 8:30 a.m.

4th Thursday of the Month; 7:00 a.m.

3rd Monday of the Month; 1:00 p.m.

Planning Commission; Council Chambers

Public Art Commission; 3rd floor Conf Room

Board of County Commissioners; County

Breckenridge Heritage Alliance

Housing/Childcare Committee

Sanitation District

BOSAC; 3rd floor Conf Room

Liquor Licensing Authority; Council Chambers

Summit Combined Housing Authority

Breckenridge Resort Chamber; BRC Offices

Red White and Blue; Main Fire Station

Breckenridge Marketing Advisory Committee; Breck PD Training Room

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

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: SOLAR GARDENS MARKETING UPDATE
DATE: 5/20/13
CC: TIM GAGEN, RICK HOLMAN

Clean Energy Collective (CEC) has supplied staff with an update on their marketing and subscription status (attached). We have requested updates be given to the Town regularly. These updates will help us figure out what the Town's purchase amount will be. We are currently still slated for the 400 kW anchor tenant purchase, but this amount will decline as additional subscriptions are received by CEC. As the attached update from CEC shows, the gardens (both Stillson and McCain) are substantively sold out with our purchase level at 400 kW. So, going forward, any sales will cut into our purchase amount. In conversations since the update was received, CEC has stated that there is substantial commercial interest beginning to form in the program.

CEC is currently performing a billing analysis for the Town. Once we receive that information, we can inform Council as to what our projected rate of return would be. We have several meters that are linked to water pumps, pool heaters, and giant compressors (the Ice Arena) that could generate returns substantially above the rates we used in our initial analysis. We anticipate using this analysis, combined with the future CEC updates, to determine a 'floor' amount for the Town's purchase.

Staff will keep Council apprised. Please feel free to contact me with any questions.

Marketing Update for Breckenridge Solar Gardens

CEC is preparing to launch its marketing of the two solar gardens located in the Town of Breckenridge. To date the company has not conducted any direct or indirect marketing activities, although it has been covered numerous times in the Summit Daily and through newsletters published by High Country Conservation. The following is the status of reservations, proposals and leads outstanding for the two arrays:

Firm Reservations:	307kW (includes Silverthorne and Summit County) 400kW Town of Breckridge
Verbal Commitments:	22kW (2 Breckenridge residents)
Proposals Outstanding:	274kW (37 residential customers, proposals sent in the past 2 weeks)
Leads in Process:	82 Residences, 10 Commercial

Marketing Kick-Off Activities

The company will launch its direct marketing and indirect marketing activities the week of May 6, and will be using the following activities to build awareness and educate the public on the benefits and availability of the community solar arrays. During the marketing the company will advise all Town residents that they are eligible for the Town Resident \$.10/watt discount

- Press Releases:
 - Program Announcement
 - Committed commercial/municipal program participants
- Announcement email *through* Chamber
 - Participation in the May 29th Chamber social event
- Weekly Advertising in the Summit Daily
 - Announcing program and availability
 - Zero Down Loans and up to 20 year financing for consumers
 - 25% Down Loans and up to 10 year financing for commercial customers
- Media Alert: Groundbreaking (date to be determined, likely late May, early June)
- Groundbreaking event
- Press Release Groundbreaking
- Media Alert: Grand Opening (date to be determined, likely late July, early August)
- Grand Opening event
- Press Release: Grand Opening

Local Event Participation

The company is currently reviewing the events schedule for the Town and surrounding areas to determine which events, public or private, the company should participate in. Typically the company will have its 10x10 booth at an event and have it staffed by its sales professionals and

at least one manager. Any suggestions as to which events CEC should participate in are always welcome.

Marketing Partners and Commercial Sales

The company will be seeking marketing partners, such as High Country Conservation or local businesses, to promote the availability of the solar gardens to Town and County residents. The company will begin its direct marketing efforts to local businesses at the May 29th Chamber event and will continue those efforts through direct sales to all local businesses.

The Town's Purchase of 400kW

While the Town has committed to purchasing 400kW of the capacity from the two arrays, CEC is operating under the assumption that as resident's purchases eclipse the available capacity, CEC will begin to reduce the amount of capacity the Town purchases. CEC will establish a monthly reporting process so the Town can monitor total capacity sold and if Town capacity needs to be reallocated to residents or local businesses.



MEMORANDUM

To: Mayor & Town Council
From: Finance and Municipal Services
Date: May 21, 2013
Subject: Tax Rates on Liquor, Gasoline, Cigarettes and Tobacco

The purpose of this memo is to outline the state tax rates on Liquor, Gasoline, Cigarettes and Tobacco as well as the recently passed state tax rate on marijuana.

While Amendment 64 established a tax of 15% on the wholesale sale of marijuana to be credited to the Public School Construction Assistance Fund, in order for this tax to comply with TABOR it must be a separately stated ballot issue. Therefore, on May 8, 2013, the Colorado State Senate voted 25-10 to put on the ballot a 15 percent excise tax, to be used for school construction same as mentioned in Amendment 64), and a 10 percent special state sales tax, to pay for regulation and enforcement, to recreational marijuana sales beginning in January 2014. That is in addition to the 2.9 percent state sales tax and any local taxes added by the county/city where the marijuana is sold (8.275% sales tax for Breckenridge/Summit County).

Alcohol: all alcoholic beverages sold by a retailer are subject to Colorado's 2.9% state sales tax as well as any applicable special district or local sales tax (2.5% Breckenridge sales tax). The federal tax rate on alcohol products varies by product and packaging (barrel vs. can, alcohol content, etc.). For the given example, the tax rate is \$0.05 per can.

Gasoline and Special Fuel Distributors: Colorado excise tax is collected on motor fuels including gasoline, diesel, aviation fuels and special fuel. The tax rate for gasoline and gasohol is 0.22 a gallon. The special fuel (diesel and kerosene) tax rate is 0.205 per gallon. Aviation fuel taxes are collected on aviation gasoline (0.06 per gallon) and aviation jet fuel (0.04 per gallon). The tax is due and collected at the wholesale level when fuel is acquired at the terminal or imported into Colorado for gasoline. The Town of Breckenridge does not have a sales tax applicable to gasoline. The United States federal excise tax on gasoline is 18.4 cents per gallon (cpg) and 24.4 cents per gallon (cpg) for diesel fuel.

Cigarettes and Tobacco: the state cigarette tax rate is 4.2 cents per cigarette plus 2.9 percent on all retail sales of cigarettes. There is also a tax on other tobacco products of 40% of the manufacturer's list price. Cigarette and tobacco product taxes are paid by the distributor and are included as part of the retail price paid by the consumer. Tobacco products are subject to sales tax at the point of sale to the consumer. Federal cigarette tax is \$1.01 per pack but there are a variety of federal tax rates on cigarettes based on product (large vs. small cigarettes, cigars) and packaging (each cigar vs. 1000 units of cigarettes vs. pack of 20). Cigarettes are exempt from city, county, and special district sales tax. The federal tax rate on tobacco products varies based on product (pipe, chewing, snuff, etc.) and packaging (1 lb. vs 1 oz.).

	Federal	State	Local	Proposed	Total
Gasoline*	4.91%	5.87%	0.00%	0.00%	10.77%
Alcohol**	3.48%	2.90%	5.375%	0.00%	8.88%
Cigarettes***	25.25%	0.00%	0.00%	0.00%	25.25%
Tobacco****	0.63%	0.00%	0.00%	0.00%	0.63%
Marijuana*****	0.00%	27.90%	5.375%	5.00%	38.28%

*Price of gasoline used was \$3.75/gallon

**For purposes of this analysis, the alcohol product used for this example is a 12 pack of Newcastle bottles which costs \$17.25 before taxes.

***The example used in this analysis is a pack of Marlboros which cost \$4.00 before taxes.

****A tin of chewing tobacco costing \$5.00 before taxes is used for purposes of this example.

***** 25% of the 27.9% State tax is proposed will be on the November 2013 ballot

Town of Breckenridge Executive Summary

Economic Indicators

(Published May 22, 2013)

Indicator Monitoring System

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



Unemployment: Local (March 2013)

Summit County's March unemployment rate of 5% is lower than the March 2012 rate of 5.8% and March 2011 rate of 6.7%. This is the lowest unemployment rate that we have seen since 2008! Summit's March rate is higher than Pitkin County (4.8%) and the same as Eagle County (5.8%). *(Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing up meaning that the unemployment rate has dropped and is 'getting better' and yellow indicates the condition as "fair".)* (Source: BLS)



Unemployment: State (April 2013)

The Colorado State unemployment rate dropped by two tenths of a percent in April to 6.9% continuing a general incremental trend which started at the beginning of 2012. This April is also lower than the April 2012 rate of 8% (Source: State of Colorado)



Unemployment: National (March-April 2013)

National unemployment rate decreased one tenth of a percent at 7.5%. Since 2011, we have seen the national rate continue a slow creep downward. April 2013 has seen a notable drop from last April's rate of 8.1% and April's 2011 rate of 9%. (Source: BLS)



Destination Lodging Reservations Activity (April 2013)

Occupancy rates saw a decrease of 14.3% for the month of April over April 2012 mirrored by a decrease of 14.6% in the Average Daily Rate (ADR) for the month and decrease of 26.8% Revenue per Available Room (RevPAR). This may be partially explained by an early Easter in March. (Source: MTrip)



6 Month Projected YTD Occupancy (May-October 2013)

Future bookings for the upcoming May–October 2013 period shows a slight increase at 1.8% in projected occupancy rate over the corresponding period last year. The Average Daily Rate shows a minor bump of 0.9%. (Source: MTrip)



Traffic Counts and Sales Trend (April 2013)

April average daily traffic count in town on Highway 9 at Tiger Road was 15,304 total vehicles. With the traffic count below 20,000, we expect to see lower than average sales tax revenues. (Note: There is a strong correlation between high net taxable sales and traffic once a 20,000 vehicle count has been reached.) (Source: CDOT and Town of Breckenridge Community Development and Finance Dept)



Traffic Count at Eisenhower Tunnel and Highway 9 (April 2013)

During the month of April, the traffic count at the Eisenhower tunnel (westbound) saw gains over April 2012 of 4.4%. Further, data showed April traffic coming into town on Highway 9 increased by 2.1% from April 2012. Traffic flows indicate that the Town saw a slight downturn in the relative capture rate coming from the tunnel. (Source: CDOT)



Consumer Confidence Index-CCI (April 2013)

The Consumer Confidence Index (CCI) showed a significant increase of 10% over last month coming in at 68.1 (baseline year 1985=100). This significant jump comes after consumers' concern over the increase in payroll tax and fiscal cliff talks fade and their economic situation improves. Based on the index level continuing to be in a state of flux, we expect that real estate transfer tax revenues will also lag over the same period until the index sees consistent improvement. (Source: CCB)



Mountain Communities Sales Tax Comparisons (March 2013)

The amount of taxable sales in Town for March 2013 was up 9.9% from March 2012 levels. All mountain town communities monitored posted significant sales tax increases for the month ranging from 3.41% to 14.93% (with the exception of Glenwood Springs which showed a decrease). Breckenridge, year to date in comparison has logged the second highest increase (out of 9) of the mountain communities for sales tax collected. (Source: Steamboat Springs Finance Dept.)



Standard & Poor's 500 Index and Town Real Estate Transfer Tax (April 2013)

The S&P 500 average monthly adjusted closing price saw another increase for the sixth consecutive month. We saw our RETT receipts increase by 117% compared to Town collections in April 2012. We believe that in general the RETT will continue to lag the growth rates that the S&P 500 achieves for the near future. A stable positive trend in RETT will likely require a long sustained recovery in the S&P 500 index, with an increase in the wealth effect. See website for detailed chart and additional information. (Source: S&P 500 and Town Finance)



Town of Breckenridge RETT Collection (April 2013)

April RETT collection (\$380,278) is 117% higher than April 2012 (\$174,514) collections and 14% above to April 2011 (\$333,424). (Source: Town Finance)



Real Estate Sales for Summit County/Breckenridge (April 2013)

April Summit County real estate continued to climb with a 22% increase in \$ volume and 19% increase in the number of transactions compared to April 2012. Of that, Breckenridge took in 41% of the \$ volume and 30% of the transactions countywide for this month. (Source: Land Title)



Foreclosure Stressed Properties (April 2013)

Fifteen properties in Breckenridge (excluding timeshares) are in the foreclosure process this April. Properties in the foreclosure process are considered distressed properties which may or may not actually foreclose. Should these properties actually undergo foreclosure, these properties may sell at an accelerated rate and lower price per square foot in the short term. (Thirty four timeshares are in the foreclosure process as of April). (Source: Land Title)



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