



BRECKENRIDGE TOWN COUNCIL WORK SESSION

Tuesday, May 28, 2013; 3:00 PM

Town Hall Auditorium

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

3:00-3:10pm	I	<u>PLANNING COMMISSION DECISIONS</u>	2
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		Wakefield Sawmill Zoning (Phase I)	15
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Note: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held. Report of the Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.

MEMORANDUM

To: Town Council

From: 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:

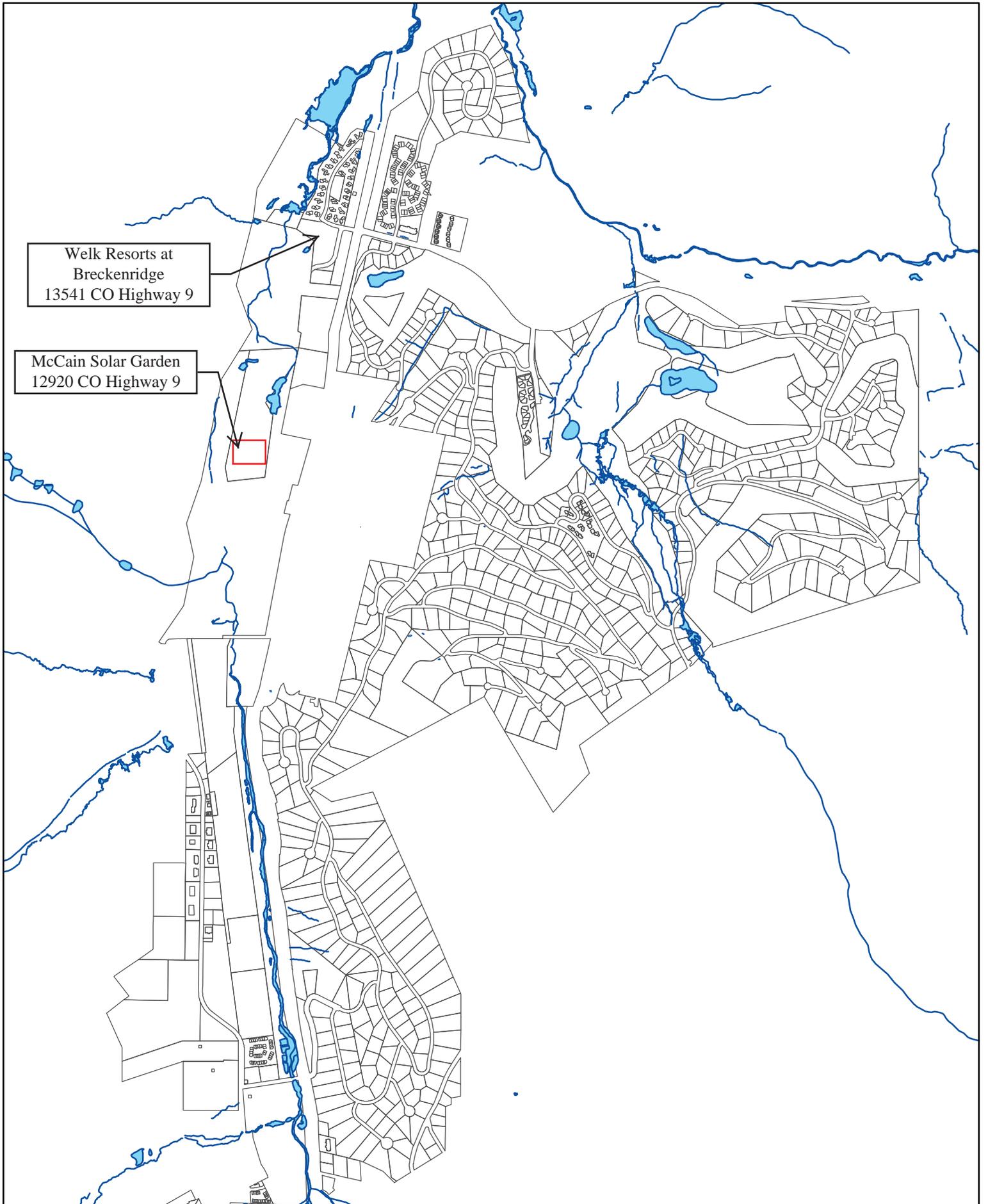
1) Gold Creek Condominiums Exterior Remodel (MM) PC#2013034; 326 North Main Street
Remodel of existing condominium project to consist of: roof screening / parapet features to add architecture and screen future roof-top equipment, extension of exterior walkways, added heavy timber accents, new exterior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

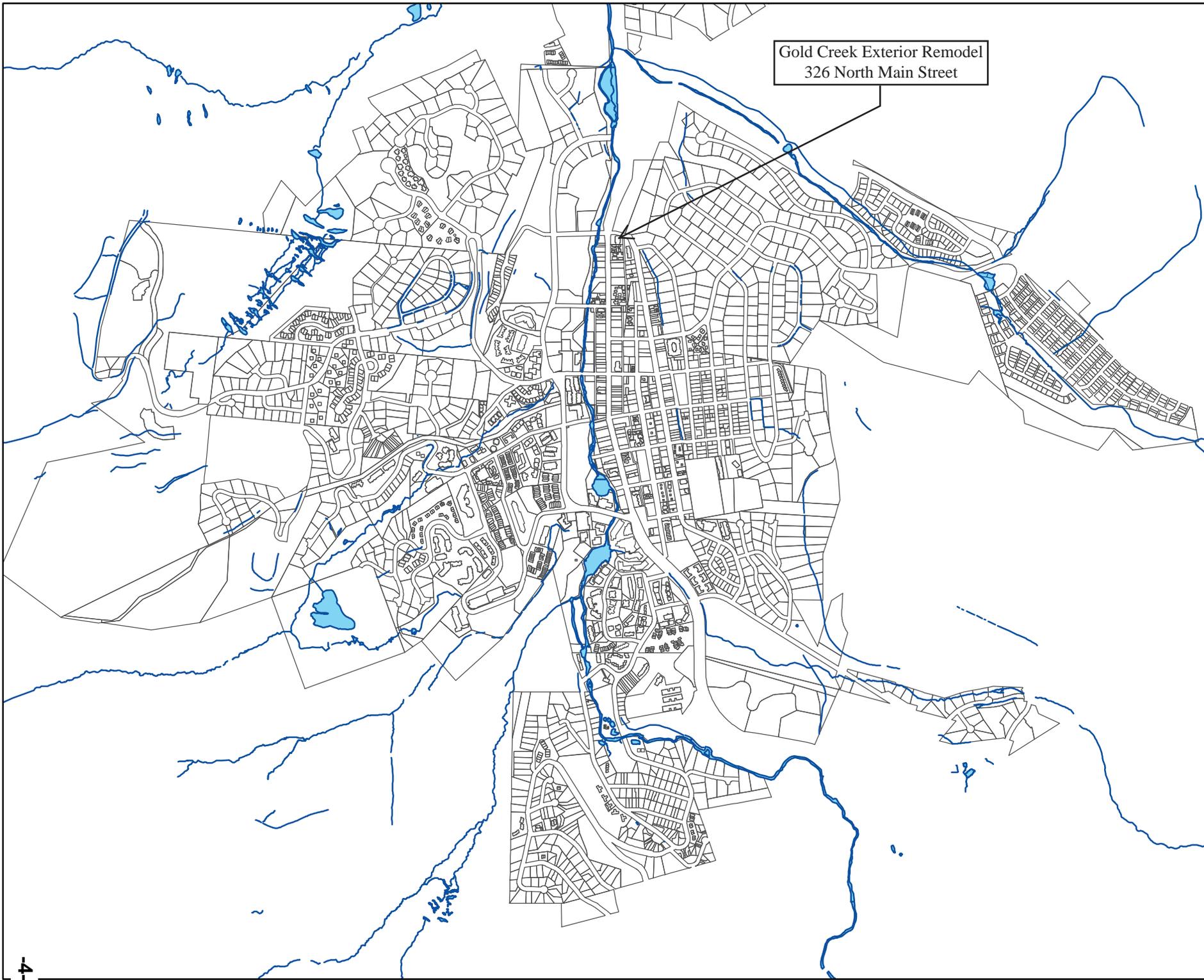
printed 4/12/2011



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.



NOT TO SCALE



printed 4/12/2011

Breckenridge South

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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

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.

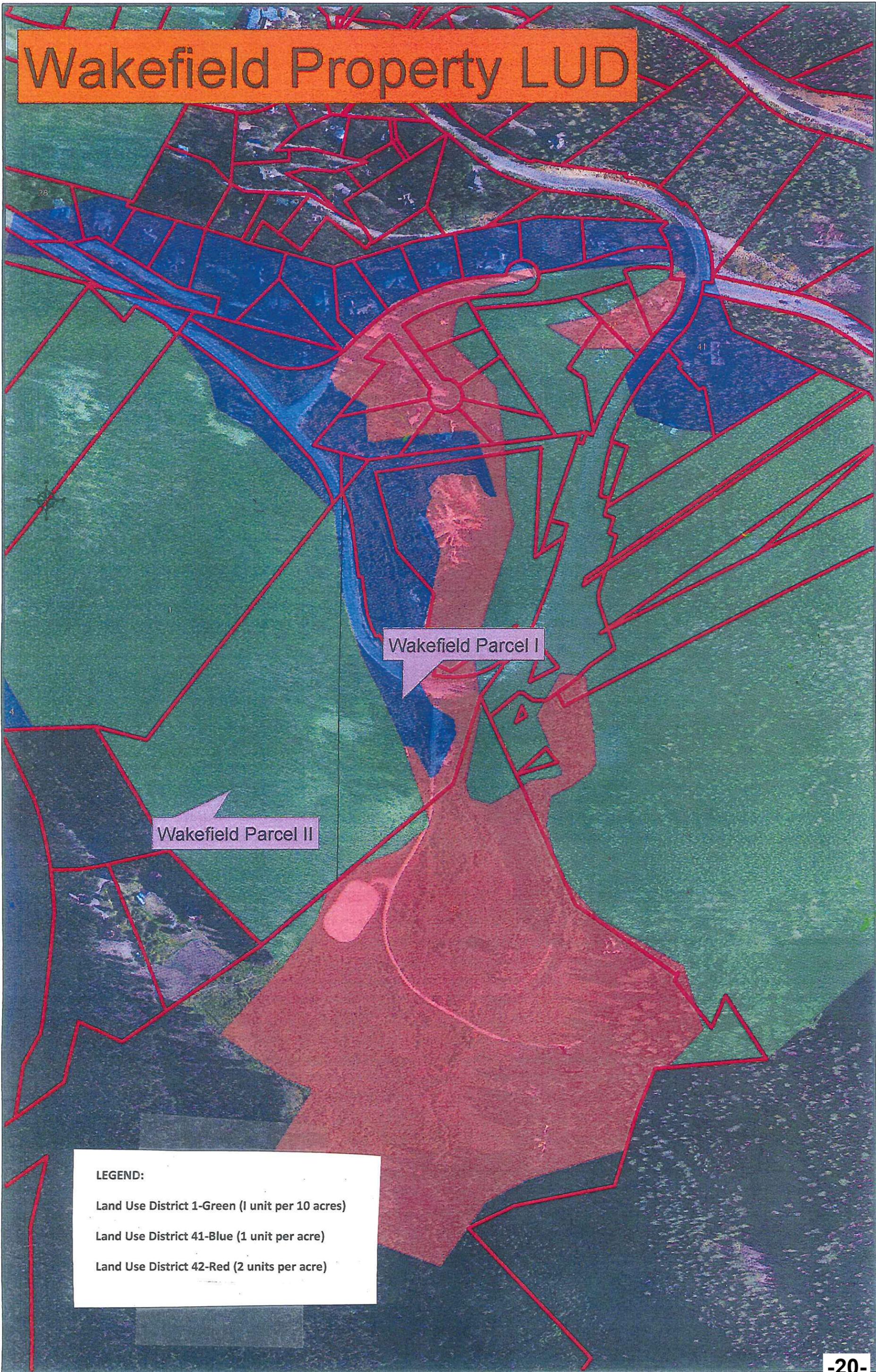
21
22 TOWN OF BRECKENRIDGE, a Colorado
23 municipal corporation
24

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
35
36 By _____
37 John G. Warner, Mayor
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39

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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.
45

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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42
43
44 By _____
45 John G. Warner, Mayor
46

1 ATTEST:

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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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40
41 By _____
42 John G. Warner, Mayor
43

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 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 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 (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 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 is 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**

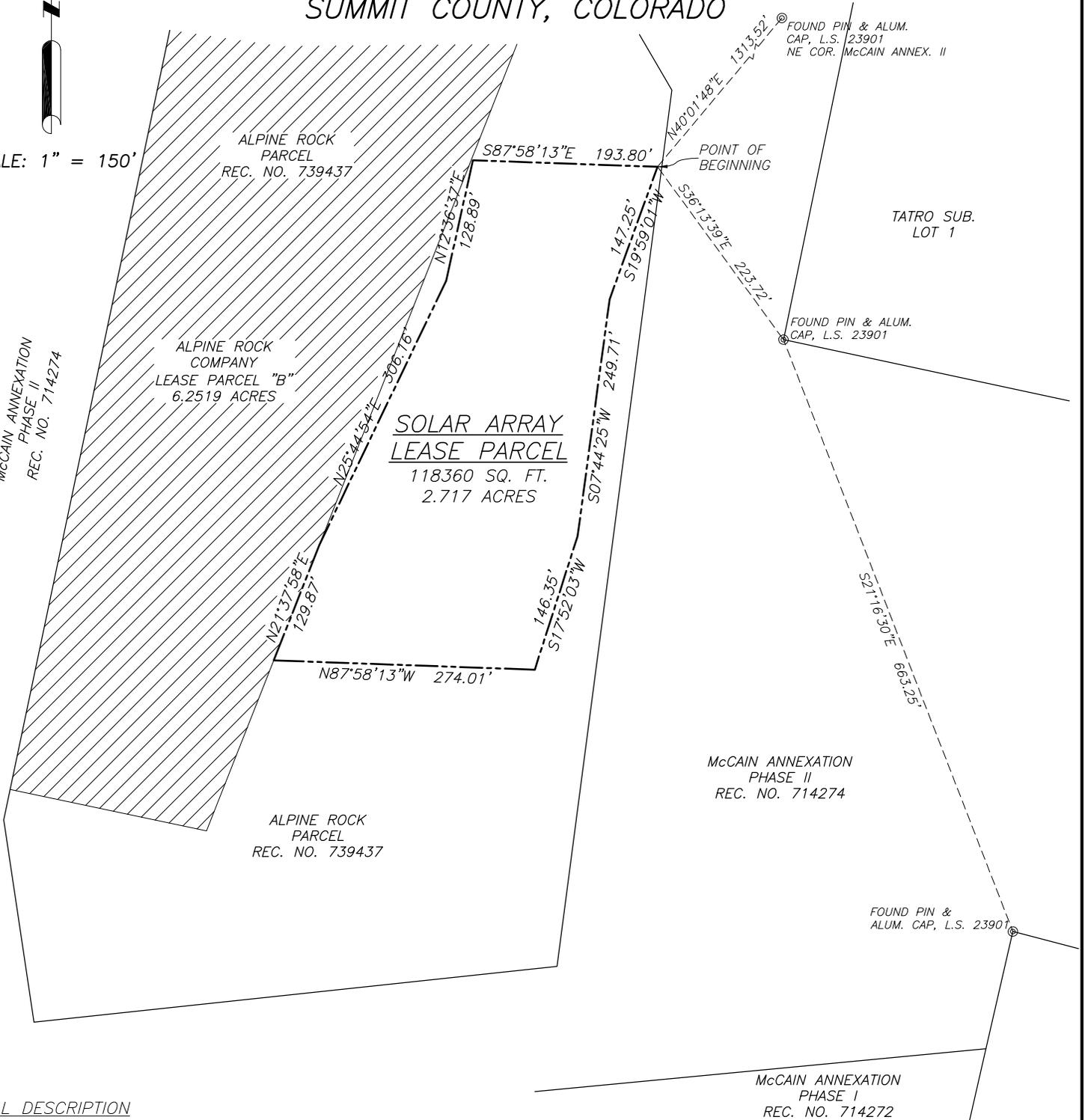
See the attached **Exhibit B-1**

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.

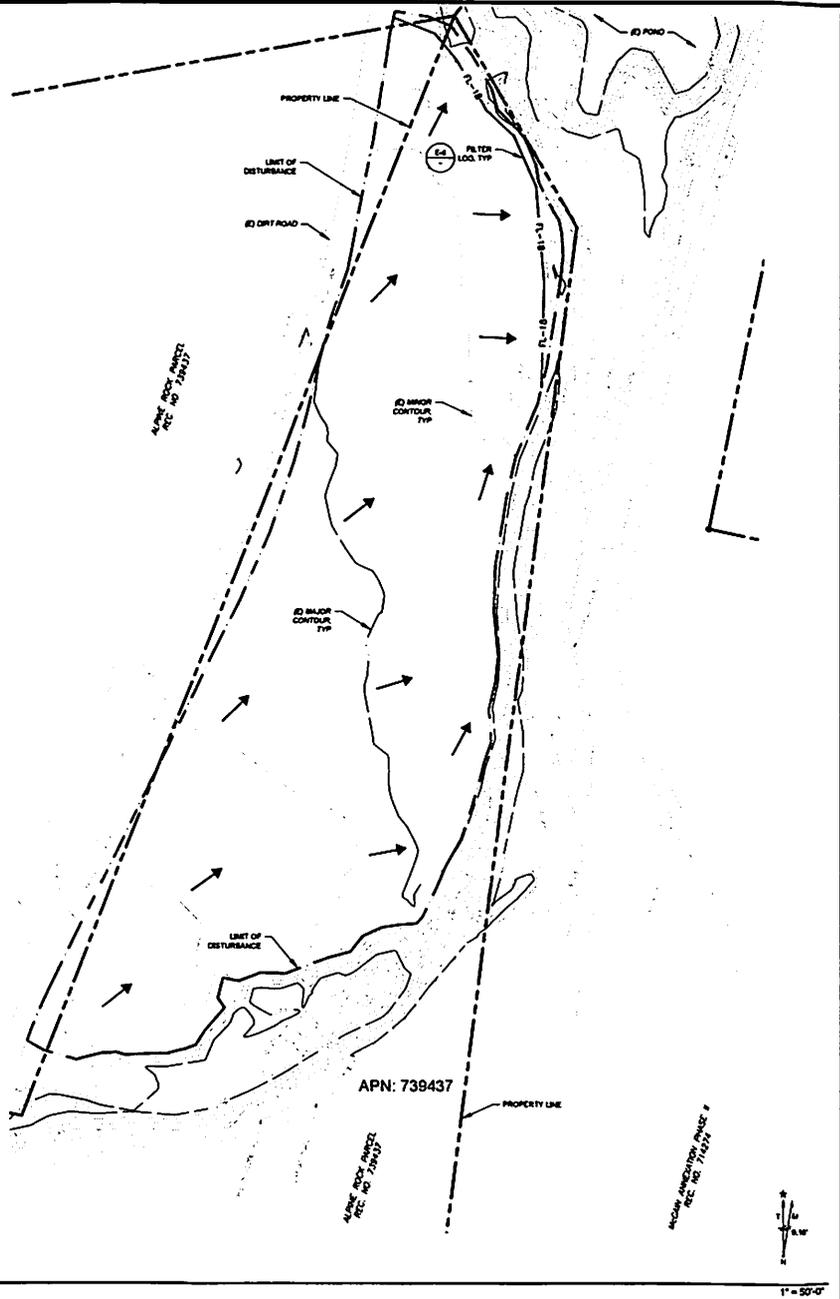
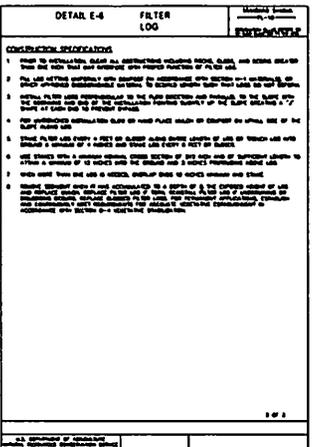
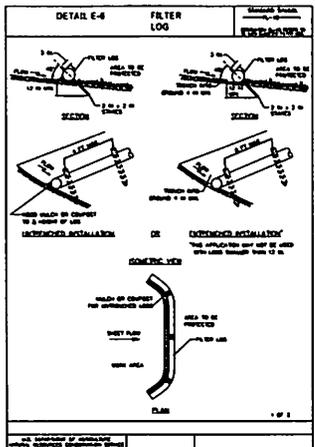
MATTHEW J. WENTZ, P.L.S. 37719

SUMMIT
LAND SURVEYING, INC.

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

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.

SCALE: 1" = 150'	DATE: 05/20/13	JOB NO. 131043
DRAWN BY: MJW	CHECKED BY: MJW	DRAWING NO. 131043EX -72-



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: _____

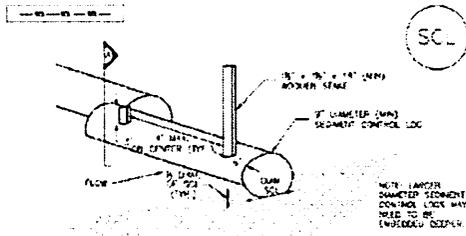
REVIEW SET

DRAWING TITLE: EROSION CONTROL PLAN

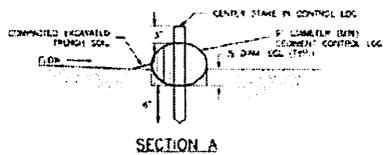
DRAWING NUMBER: G006

Sediment Control Log (SCL)

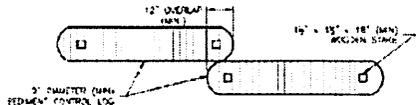
SC-2



SEDIMENT CONTROL LOG

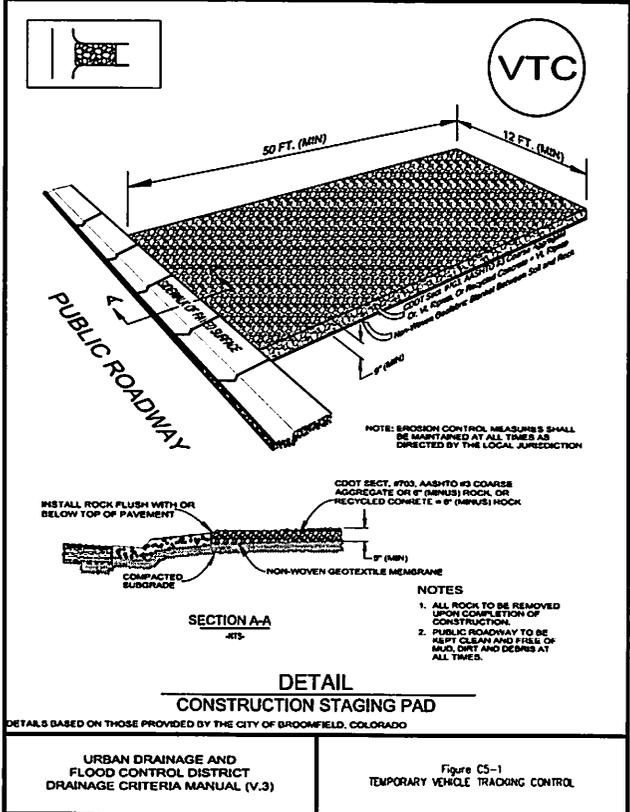


SECTION A



SEDIMENT CONTROL LOG JOINTS

SCL-1, SEDIMENT CONTROL LOG



**DETAIL
CONSTRUCTION STAGING PAD**

DETAILS BASED ON THOSE PROVIDED BY THE CITY OF BROOMFIELD, COLORADO

URBAN DRAINAGE AND FLOOD CONTROL DISTRICT DRAINAGE CRITERIA MANUAL (V.3)

Figure CS-1
TEMPORARY VEHICLE TRACING CONTROL

1437 LAUREL STREET DENVER, COLORADO 80202	
SUMMIT SOLAR 1 STILLSON PROPERTY BREMENHOL, 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

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 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.

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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”**

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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.

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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

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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**

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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

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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.

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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.

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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)

1 401 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.

SOLAR GARDEN LEASE (STILLSON PROPERTY)

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)

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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**

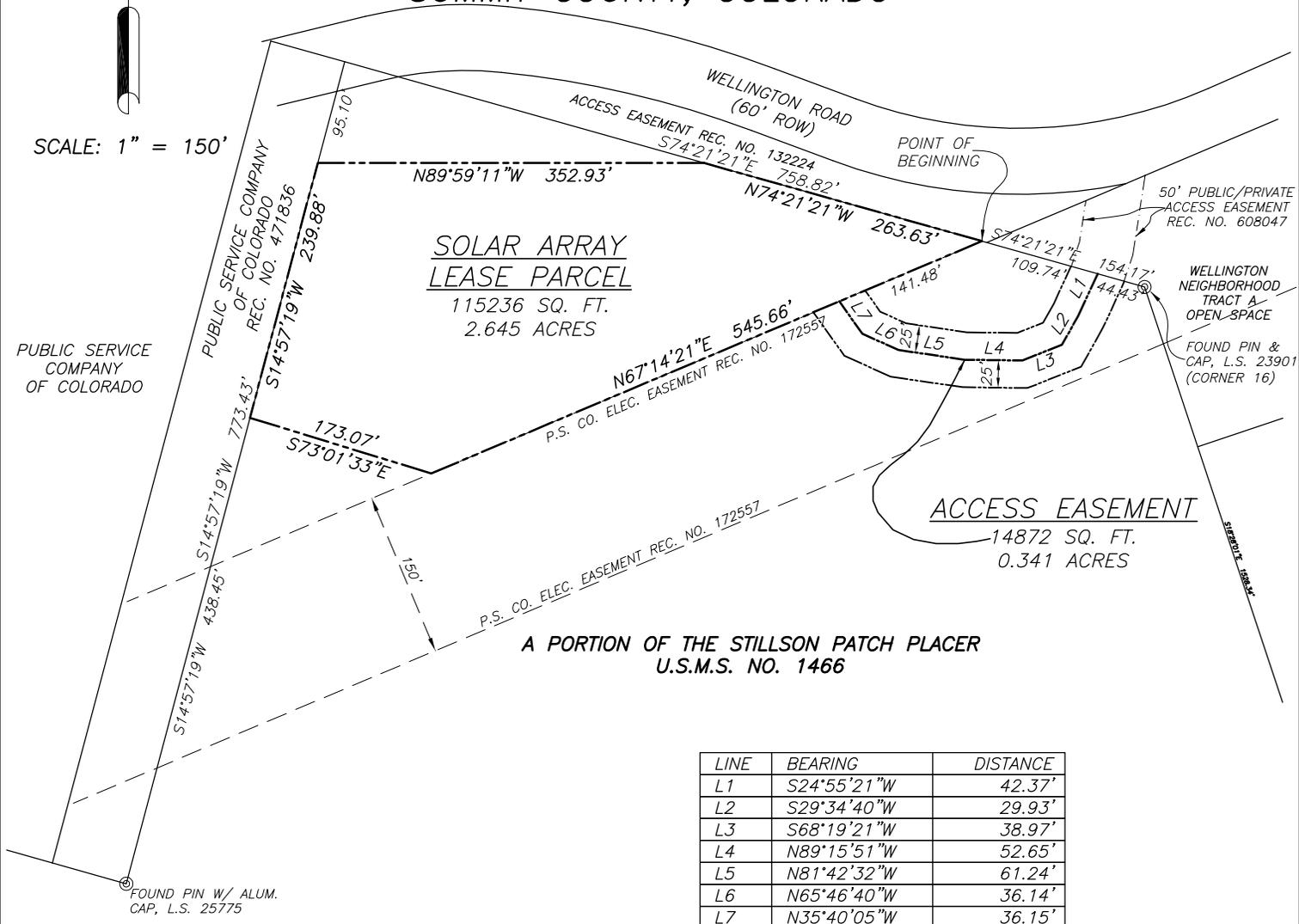
**Exhibit “B”
Site Conditions Map**

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

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. 131042, -106-

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.

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
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

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

Memorandum

TO: TOWN COUNCIL
FROM: Dale Stein, Assistant Town Engineer
DATE: May 22, 2013
RE: Public Projects Update

2013 Main Street Improvements

The Contractor for our 2013 Main Street project, Columbine Hills, is making reasonable progress on the construction work despite being hindered by the snowy 2013 spring season. With the recent wet weather the schedule for the contractor has fallen behind a few days. In an effort to make up for lost weather days, and to work towards a July 4th opening date, the contractor has been approved to work extended hours over the next few weeks. In addition Main Street south of Adams will be closed for two days on May 28th and 29th to allow for additional work crews. While we understand that this closure will be inconvenient for the businesses, it will allow the project team to work both sides of the road at one time facilitating the installation of the new underground storm system at the intersections. Work on Gold Pan Alley will also be placed on hold until the Main Street project is back on schedule.

2013 Asphalt Overlay & Concrete Replacement

The concrete replacement projects, at various locations throughout town, began this week on Ridge Street. The asphalt overlay project is scheduled to begin the week of June 3, 2013.

Turf Field

Under separate memo.

Blue River Restoration

Under separate memo.

Harris Street Community Building

The A/E Team, led by Anderson Hallas, continues to work on the completion of the construction drawing and documents for the rehabilitation of the Harris Street building. The final "Bid Documents" are scheduled to be completed in mid-June and made available at that time for bidding by potential subcontractors.

It is anticipated that subcontractor bids will be accepted by the general contract, Spectrum Contractors, through early July 2013. Spectrum will then prepare a final Guaranteed Maximum Price (GMP) in mid-July, which will be made available to the Town Council at the July 23rd Council work session.

It is anticipated that the actual start of the interior and exterior rehabilitation of the project will start near the 1st of August 2013. The initial phase of the project, which includes the Hazardous Material Abatement, however is expected to begin the week of July 2013 and extend through the month of July.

A separate memo addresses the update to the project relative to costs.

Arts District

The design team is currently working to finalize all design elements in the project and begin the final set of construction plans for competitive bidding. The open house held on May 16th was attended by about 25 people, all having strong support for the project. A discussion of the current budget estimate for the project is presented in a separate memo.

Memo

To: Town Council Members
From: Michael Barney, Director of Recreation
CC: Tim Gagen, Rick Holman
Date: 5/22/2013
Re: *Kingdom Park Multi-Pitch – Conversion to Artificial Turf*

This MEMO is intended to update you on the status of the Town's GOCO grant application that was submitted in early 2013 and to determine how you want to proceed with this project.

Unfortunately, we have learned that our project was again denied funding from GOCO for the Spring 2013 grant cycle. We were informed that GOCO received 81 grant applications this cycle and chose to fund 8 of those projects. We had reduced our request from \$350,000 in the fall 2012 grant cycle to \$167,000 in this most recent grant cycle. Upon learning that we were being denied funding, we contacted GOCO to discuss what kept our project from being selected, how we can improve future applications, and how our project was measuring up against other proposed projects. We learned that our application did score a few points higher than the last grant cycle, though were told that in comparison with projects that were selected to be funded, we failed to show that our project was a necessity rather than a luxury. Despite our efforts to make the case that the artificial turf field is needed to extend the play season, it was expressed that those who reviewed and scored our application felt that we failed to show that other athletic fields in the county are unable to meet the current demand for athletic fields. In clarifying that our challenge is not capacity, but rather extending the season of play, as expressed through the grant application, we were told that our project is going to be challenged in being viewed as a luxury rather than necessity. Other feedback included a need to show evidence that user groups are partnering with us or pursuing their own fund raising efforts to financially support the project and that we should show evidence of greater community support for the project. GOCO did express that we should continue to submit future applications and stated that 5 of the 8 projects being funded this cycle were re-submittals, as opposed to first time requests.

At this time, I am seeking direction from Council on how we should proceed with this project. The options include:

- 1) Re-apply for a GOCO grant in the fall 2013 cycle. Staff will follow-up on the feedback received from GOCO on how we can strengthen our application and re-submit. This will include the

facilitation of a more robust public process so as to be able to show full community support, more focused effort to show that lengthening the season of play is a true need and not a luxury, and partnering with user groups to facilitate fund raising efforts to support the project. This last component will be the most challenging. While user groups have expressed strong support for the project, the fact that these groups are small non-profits with minimal staffing and financial resources, Recreation Department staff would be heavily relied upon to guide and likely facilitate these fund raising efforts. Selecting this option will necessitate delaying the installation of the field until the fall of 2014, and of course, there is no guarantee that the project will be selected to be funded in the future. There will be two opportunities however in that timeframe for us to re-apply for GOCO funding.

2) The Town funds the project in its entirety. The projected cost of converting the multi-pitch to artificial turf and replacing the fencing (the existing fencing is in very poor shape and beyond its useful life) is between \$610,500 and \$660,000. The range is provided as design of the field has not been completed yet, and costs may vary some due to the depth and type of foundation material that is used. The current CIP budget identifies \$535,000 to be spent in 2013 for the project. The Recreation Department has submitted a grant application with the State of Colorado, requesting \$39,600 in funding, for the intended use of waste tires that will be used in the construction of the field. Waste tires are used for the rubber infill material on the field and this grant program is intended to incentivize the use of Colorado sourced waste tires. The awards will be announced by mid-June of this year and would need to be used by December 31, 2013. Grant funds can be rejected if we chose not to pursue the project this year, and the department can re-apply in the future if Council elects to not fund the project this year. If the tire grant is awarded, the remaining balance of the project will require Council to approve the expenditure of an additional \$35,900 to \$85,400 to complete the project as currently budgeted. If the grant is not awarded, Council will need to approve the expenditure of an additional \$75,500 to \$124,500 above what is identified in the CIP plan. Selecting this option will allow the field to be installed in the fall of 2013, though the Town will have to fund all or nearly all of the project cost.

3) The Town abandons the project at this time.

I look forward to discussing this project with you at the Council meeting on May 28, and determining how we will be proceeding. Please feel free to contact me before then if you have any questions. Thanks for your time and consideration.

Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: 5/22/2013
RE: Blue River Improvements at McCain

As you know the Town has been working with the Army Corps of Engineers (ACOE) since 2003 to improve the Blue River from the CMC on Block 11 through the McCain property. The project was to be funded through Section 206 of the Water Resource Development Act. The Federal funding is a maximum of five million dollars per project and 65% of construction costs with a local match of 35%. Since 2003, the project has been put on hold several times due to a lack of funding from the Federal Government.

Recently, the ACOE has had a policy change that requires the local agency's to share the cost of the feasibility study at 50% after the first \$100,000. The costs are shown below:

Total Feasibility Cost Estimate	\$950,000
First \$100,000 is Federally Funded	\$100,000
Remaining to be shared 50%	\$850,000
Town of Breckenridge Share of Feasibility	\$425,000

Based on a previous ACOE policy where the ACOE paid for the feasibility study, most of the feasibility has been completed and provides a significant amount of information and a concept design. In order to move forward with completing the study, the ACOE is requesting that the Town commit to funding the feasibility study as shown above.

The ACOE can only commit to fund the project as funds become available and they have not been able to provide any funding beyond the feasibility study for the last ten years. Very few projects in Section 206 have been funded for construction. I am not confident that funding for this project will occur in the next few years.

I have consulted local contractors familiar with river restoration to determine what a project like this would cost without ACOE participation. Their opinion of project costs is around \$4,500,000 to \$5,000,000. This estimate uses a concrete box culvert to cross Coyne Valley Road. Any additional bike path crossings or bridges would be in addition to the above estimated costs. The CIP has been assuming that the costs of the project would be \$5 million of ACOE funds and \$1.75 million Town Funds for total of \$6.75 million which is a worst case scenario.

Other funding sources like the funds from Denver Water and GOCO exist and may be more viable than the ACOE's section 206 funds.

The ACOE is requesting that the Town commit to funding the feasibility study in order for this project to remain an ACOE project. I have little confidence that this project will receive funding and \$425,000 could build a good portion of a real construction project. I recommend that the Town inform the ACOE that we will move forward on this project without them based on their conditions.

Memorandum

TO: Town Council
FROM: Dale Stein
DATE: 5/22/2013
RE: Harris Street Community Building Summary of Project Cost

Background:

The total project costs for the Harris Building Rehabilitation project were previously estimated to be at \$7,400,000. This estimated number was used in the 2013 Town budgeting process. As part of this total cost the A/E team provided at the Feasibility Phase (July 2012) an order of magnitude construction cost estimate which was assumed to be accurate to +/- \$500,000 (or approximately +/- 10% of the estimated construction costs). The remaining costs that made up the estimated \$7.4 million were items such as A/E design fees, contractor fees, bonding, insurance, general conditions, HAZMAT abatement, furniture, fixtures and equipment (FF&E).

During the year since the original budget numbers were prepared the A/E team has continued to refine the design of the project, adapting changes, enhancements and modifications to the project arriving at the current design configuration of the building.

Since the completion of the 100% Design Development drawings, completed in March 2013, the A/E team has also invested a large number of hours to a value engineering effort reviewing all aspects of the current design. This effort provided the A/E team valuable cost evaluation information that led to better efficiencies in the project design. Although the project has not gone out to competitive bids, the A/E team feels that the estimated "base" costs are still within the +/- 10% given in July 2012. Some items have been identified that could impact the cost of the project that include additional Hazmat mitigation \$50,000 and a general increase in the construction cost from a year ago. The link for the Speakeasy Theater to meet historic guidelines added square footage to the project that was not anticipated in the original estimate and will increase project costs at an estimated \$75,000.

During the evolution of the project design there were items added to the project that were not accounted for in the original Feasibility "base" Cost Estimate. These Items Include:

1. Tenant Improvements (unassigned spaces)	\$125,000 - \$175,000
2. Tenant Improvements for Coffee Shop (771 SF)	\$50,000 - \$70,000
3. Digital Audio Video for Speakeasy (2075 SF)	\$200,000 - \$250,000
4. Exterior Snow Melt (ADA locations)	\$35,000 - \$55,000
Total Add-Alternates Estimated Range of Costs	\$410,000 - \$550,000

Does the Council want to include the additional items in the final bidding? They can be priced as add-alternates for consideration with the final GMP.

Memorandum

TO: TOWN COUNCIL
FROM: Shannon Smith, Engineering Department
DATE: May 22, 2013
RE: Arts District- Budget Update

Staff has completed review of the Design Development (DD) budget established by our general contractor Base Building Solutions. The estimate was developed with the help of subcontractors of each trade and then extensively reviewed and value engineered by Staff and Base. A guaranteed maximum price for the project will not be established until August, after the final construction plans are issued for bid.

The proposed 2012-2014 CIP budget for the Arts District build out project was a combined estimate of \$2,660,000 for site work and buildings. The current DD estimate for the complete project is \$3,164,000. This is approximately \$500,000 greater than the early CIP estimates. The overrun is driven by extensive additions to the site plan as approved by Council, an increase in size of the ceramics studio to include a basement, as well as higher than estimated cost per square footage on the buildings particularly the renovation of Mikolitis and Robert Whyte.

Site Improvements: The original scope of the site improvements for the Arts District included an asphalt paved parking area, very limited landscaping, a small section of flagstone pavers, minor improvements to concrete walkways, and a wood fired kiln and pit for outdoor ceramics firing.

In the current site plan, the “Ridge Street Arts Square” replaces the asphalt parking area, and additional site enhancements such as a bulb out and relocated sidewalk on Washington Ave, a heated concrete plaza, an additional gas kiln in the firing area, asphalt for the parking on the alley, and an increase in walkways for pedestrian circulation within the campus are planned. The table below summarizes the major increases in the site work and the approximate impact to budget.

Ridge Street Arts Square -Amphitheater and lawn -Pavers in parking area & pedestrian curb	\$ 75,000
Additional Street Lights	\$ 25,000
Increased landscaping concepts & walkways	\$ 100,000
Donor Wall	\$ 10,000
Relocate Existing sculptures	\$ 10,000
Increased Washington Ave Improvements	\$ 75,000
Kiosk on Washington/Ridge	\$ 10,000
Sculpture on Washington/Ridge	\$ 15,000
Heated Concrete Plaza	\$ 70,000
Paving Alley Parking area (asphalt and curb & gutter)	\$ 9,000
Walkway Lighting	\$ 15,000
Gas Kiln in Pit Firing Area	\$ 15,000
Increase in storm drainage infrastructure required	\$ 20,000
Misc. (ramps, bike racks, retaining walls, etc)	\$ 30,000
Total:	\$ 479,000

Buildings: The estimate for the building construction has also increased from the early CIP budget estimate. The increase is driven by the difference in the estimated construction costs and scope change. The cost per square foot numbers used to estimate the CIP budget were lower than current DD estimate (see table below), with the notable differences on the historic rehabilitations. The prominent scope changes are the size increase for the ceramics building and the deletion of the dance studio/kitchen building.

At the time of the CIP estimate, the ceramics building was thought to be a one-level 1300 square foot space. The current design for the ceramics building is a two-level structure with finished studios on both levels. The increase in finished square footage was needed to accommodate both the CMC and Arts District classes. One building, the dance studio/kitchen, was deleted from the project based on the acquisition of Abby Hall.

	ESTIMATED IN CIP			CURRENT DD ESTIMATE			Difference
	SF	Price/SF	Construction Cost	SF	Price/SF	Construction Cost	
Little Red Shed			\$30,000	236	\$256	\$60,412	\$30,412
Mikolitis	700	\$429	\$270,000	688	\$512	\$352,158	\$82,158
Burro Barn Bathrooms	500	\$320	\$144,000	464	\$378	\$175,471	\$31,471
Robert Whyte House	1200	\$275	\$300,000	1207	\$352	\$424,516	\$124,516
Ceramics Building	1300	\$308	\$350,000	2630	\$253	\$665,495	\$315,495
Dance Studio	1000	\$440	\$400,000			\$0	-\$400,000
Metal Smithing (Flexible Use Studio)	1000	\$440	\$400,000	640	\$368	\$235,231	-\$164,769
						NET TOTAL:	\$19,283

Staff will be present at the work session to discuss the direction of this project and possible impacts to the construction schedule.

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen, Town Manager
DATE: May 23, 2013
SUBJECT: Committee Reports for 05-28-2013 Council Packet

The following committee reports were submitted by Town Employees and/or the Town Manager:

Summit County Wildfire Council	May 16, 2013	Matt Thompson
<p>➤ Legislative – Dan Gibbs was in D.C. last week with Michael Bennett. Dan stressed collaboration during his talks in D.C.</p> <ul style="list-style-type: none">• Local fire districts need more funding. Sixty percent of rural fire departments in Colorado are volunteer.• There is fear in D.C. that forest health projects end up in litigation. Dan held up Summit County as a model for how we bring all the different stakeholders to the table up front, hence we don't end up in litigation.• There is a bill proposed to extend Forest Service contracts from 10 years maximum to 20 years.• Another bill proposed to increase funding for heavy planes to fight wildfires. There are only 8 or 9 heavy planes now available to fight wildfires; in the past there were as many as 50 heavy planes, but they have been retired.		
<p>➤ Education – Dan Schroder provided an update.</p> <ul style="list-style-type: none">• Articles with Open Space and Trails, Weeds and Extension 9x• Summit Daily News Advertisements and Community Notes• Summit Daily News Guest Writers 11x• Forestry in the Field 10x Workshops• Wildfire Exercise – Ready, Set, Go• Ready, Set, Go 3,000 reusable bags purchased• NRC Broadcasting 19 weeks x 3 ads on 2 different radio stations.		
<p>➤ Grant Awards for 2013 (First Tier)– The Wildfire Council had seven grant applications. Six of the seven have been recommended for approval to the Board of County Commissioners. The six projects approved for a 50/50 match grant:</p> <ul style="list-style-type: none">• Gold King (11 acres)• Acorn Creek (6 acres)• Pebble Creek Ranch (23 acres)• 86 Gold Hill Road (11 acres)• Ptarmigan (20 acres)• Town of Blue River (6 acres)		

Liquor Licensing	May 21, 2013	Helen Cospolich
<ul style="list-style-type: none">• All items on the consent calendar were approved as submitted, including a new Manager Registration for Kenosha Steakhouse/Ritas, and a Temporary Modification of Premises for Blue at the Riverwalk for the USA Pro Cycling Challenge.		

Committees	Representative	Report Status
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	No Meeting/Report
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	Helen Cospolich	Included
Wildfire Council	Matt Thompson	Included
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	No Meeting/Report
Police Advisory Committee	Chief Haynes	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report

Note: Reports provided by the Mayor and Council Members are listed in the council agenda.

** Minutes to some meetings are provided in the Manager's Newsletter.*



April 30, 2013 Financial Report



Town Clean Up Day 2013

Finance & Municipal Services Division

Executive Summary

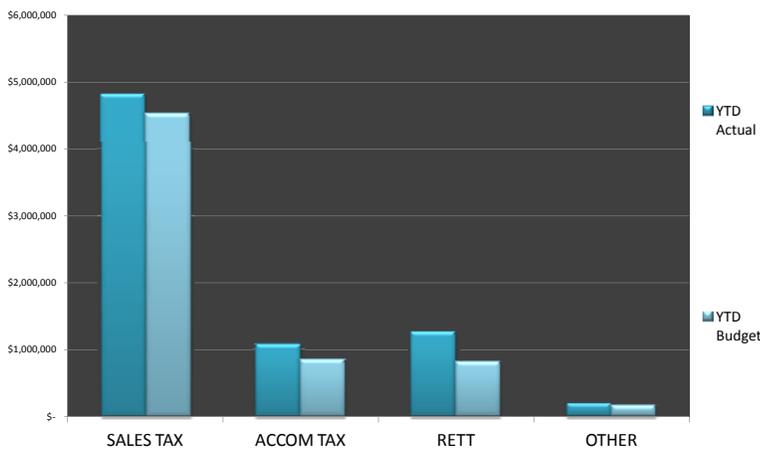
April 30, 2013

Our results thus far this year continue to be very strong. At the end of Q1, we were at 119% of budgeted revenue in the Excise fund. With April in the books, we have "slipped" to 116% (\$998G) over budget. We are now moving into our lower dollar volume months, so we probably won't see any major changes to our position vs. annual budget for a while.

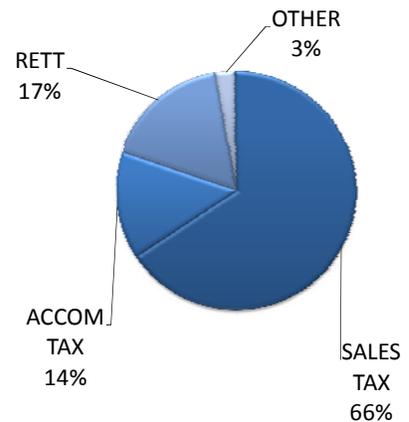
RETT continues to be strong, and the one of the more encouraging aspects of this result is the increase in the churn rate vs. prior year (see Tax Basics). This indicates that RETT is coming from not just new projects/construction, but also from the sale of existing homes.

The General Fund is in good shape, with revenues at 103% of budget and expenses slightly below budget at 96%. Other funds continue to perform according to budget as well.

Excise YTD Actual vs. Budget - by Source



YTD Actual Revenues - Excise



	YTD Actual	YTD Budget	% of Budget	Annual Budget	Prior YTD Actual	Prior Annual Actual
SALES TAX	\$ 4,815,254	\$ 4,524,151	106%	\$ 13,887,999	\$ 4,238,724	\$ 13,369,549
ACCOMMODATIONS TAX	1,071,929	841,465	127%	1,757,401	913,912	1,774,359
REAL ESTATE TRANSFER	1,254,911	810,178	155%	3,000,501	656,621	3,691,087
OTHER*	193,949	161,839	120%	648,101	222,327	841,322
TOTAL	\$ 7,336,043	\$ 6,337,633	116%	\$ 19,294,002	\$ 6,031,585	\$ 19,676,316

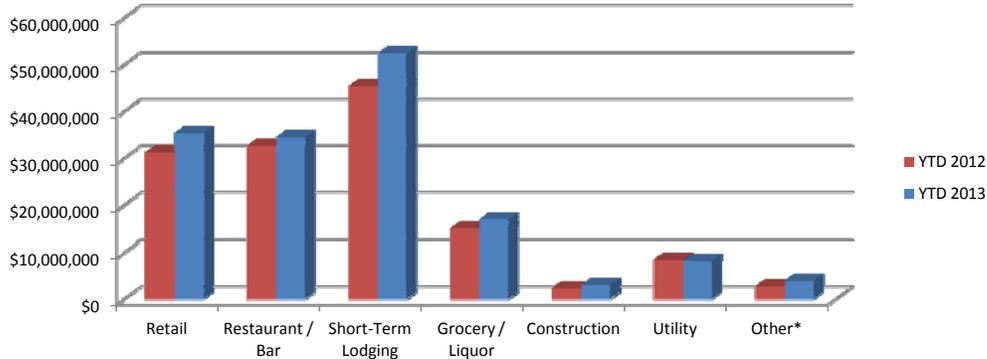
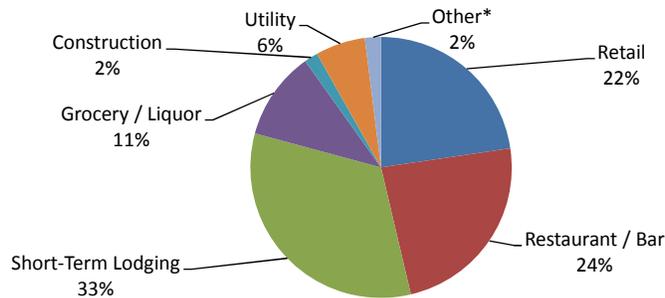
* Other includes Franchise Fees (Telephone, Public Service and Cable), Cigarette Tax, and Investment Income

The Tax Basics

Net Taxable Sales by Industry-YTD

Description	YTD 2012	YTD 2013	\$ Change	% Change	% of Total
Retail	\$31,249,320	\$35,342,284	\$4,092,964	13.10%	22.65%
Restaurant / Bar	\$32,665,717	\$34,449,454	\$1,783,736	5.46%	23.68%
Short-Term Lodging	\$45,364,753	\$52,384,270	\$7,019,517	15.47%	32.88%
Grocery / Liquor	\$15,039,668	\$16,935,940	\$1,896,272	12.61%	10.90%
Construction	\$2,364,685	\$3,036,950	\$672,264	28.43%	1.71%
Utility	\$8,516,282	\$8,286,773	(\$229,509)	-2.69%	6.17%
Other*	\$2,760,256	\$3,954,451	\$1,194,194	43.26%	2.00%
Total	\$137,960,682	\$154,390,121	\$16,429,439	11.91%	100.00%

* Other includes activities in Automobiles and Undefined Sales.



New Items of Note:

- March net taxable sales are currently ahead of 2012 by 10.08%. We are also ahead of 2007 for monthly sales by 2.38%.
- Every sector was up from the prior year. Retail and Lodging were up more than the average.
- Lodging & Construction are the only categories that fell behind 2007. All other categories had the best March on record (other than restaurants for the time being).
- Construction, while still only 32% of February 2007, continues an encouraging trend more than doubling over prior year.

Continuing Items of Note:

- Utility is down from prior year, due to a permanent change in a company's remittance.
- Taxes collected from the customer by the vendor are remitted to the Town on the 20th of the following month.
- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are include on the report for the period of March.
- Net Taxable Sales are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.

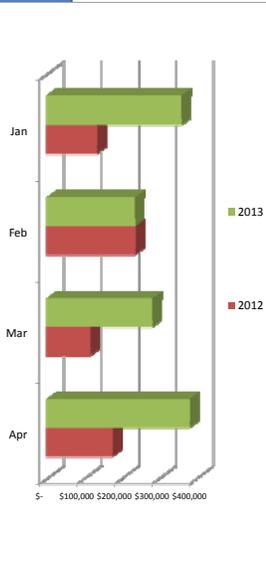
Real Estate Transfer Tax

New Items of Note:

- Revenue for the month of April surpassed prior year by 9.98%, and we surpassed the monthly budget by \$39,763.
- YTD Collections are up substantially - up 76.79% from prior year and ahead of budget by \$484,371 (through 4/30).
- We exceeded the prior year churn by an even greater amount - resulting in an increase of 115.29% in the churn year to date.
- Vacant Land continues to track quite well, up 222.78% from prior year.
- Single Family homes accounted for the majority of the sales (28.28%), with timeshares coming in second (27.24%).

Continuing Items of Note:

- 2013 Real Estate Transfer Tax budget is based upon the monthly distribution for 2007. The reasoning is that we should compare to a year with a "normal distribution."

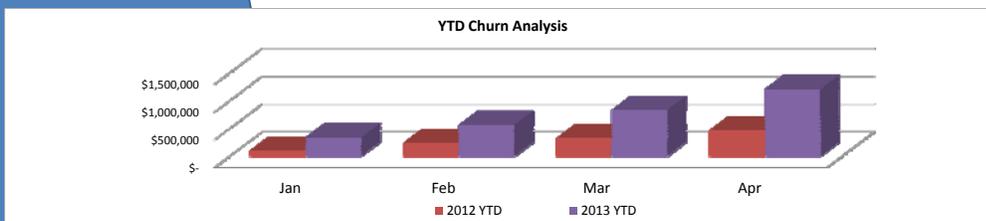


Total RETT								
	2010	2011	2012	2013	% change from PY	2013 Budget	+/- Budget	
Jan	\$588,874	\$436,605	\$132,557	\$358,948	170.79%	\$186,609	\$172,339	
Feb	\$149,303	\$350,866	\$234,630	\$234,357	-0.12%	\$181,342	\$53,015	
Mar	\$175,161	\$250,986	\$114,921	\$281,202	144.69%	\$143,710	\$137,492	
Apr	\$167,038	\$333,424	\$174,514	\$380,279	117.91%	\$298,517	\$81,761	
May	\$484,618	\$337,577	\$292,708	\$321,920	9.98%	\$282,157	\$39,763	
Jun	\$326,779	\$251,806	\$251,397	\$0	n/a	\$276,510	n/a	
Jul	\$186,067	\$83,522	\$252,104	\$0	n/a	\$181,667	n/a	
Aug	\$404,004	\$350,730	\$388,749	\$0	n/a	\$314,232	n/a	
Sep	\$227,440	\$276,774	\$311,285	\$0	n/a	\$376,433	n/a	
Oct	\$297,809	\$208,831	\$387,028	\$0	n/a	\$207,648	n/a	
Nov	\$249,583	\$223,271	\$389,275	\$0	n/a	\$242,751	n/a	
Dec	\$406,078	\$301,397	\$761,919	\$0	n/a	\$308,924	n/a	
Total	\$3,662,755	\$3,405,788	\$3,691,087	\$1,576,706		\$3,000,501	\$484,371	

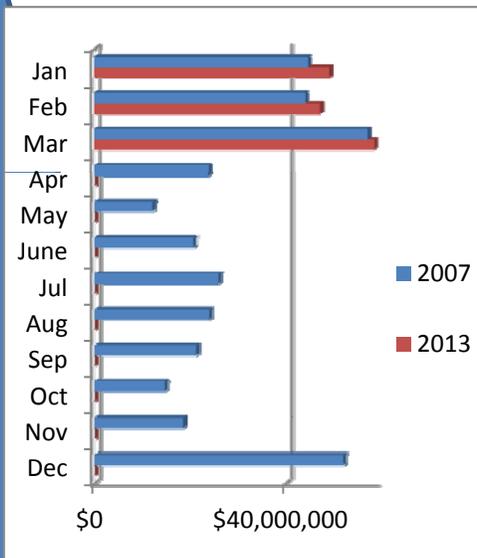
* April #s are as of 04/08/2013



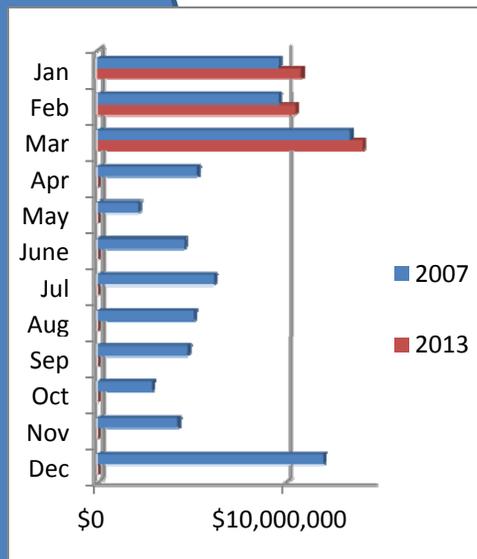
by Category						
Description	2012 YTD	2013 YTD	\$ Change	% change from PY	% of Total	
Commercial	\$ -	\$ 6,850	6,850	n/a	0.43%	
Condominium	203,433	354,190	150,756	74.11%	22.46%	
Timeshare	272,247	429,543	157,296	57.78%	27.24%	
Single Family	267,596	445,916	178,320	66.64%	28.28%	
Townhome	72,286	93,988	21,702	30.02%	5.96%	
Vacant Land	76,280	246,219	169,939	222.78%	15.62%	
Total	\$ 891,843	\$ 1,576,706	684,863	76.79%	100.00%	



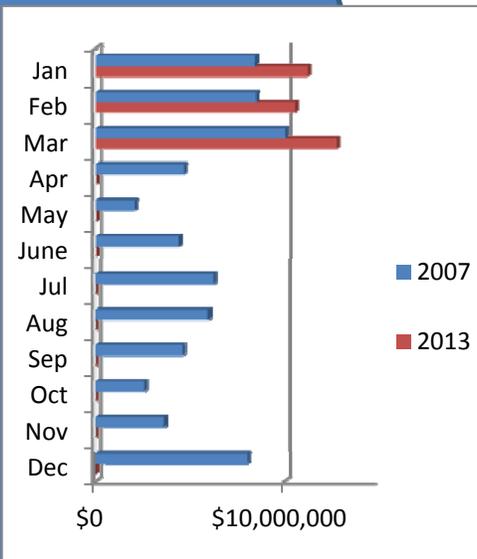
Net Taxable Sales by Sector - Town of Breckenridge Tax Base



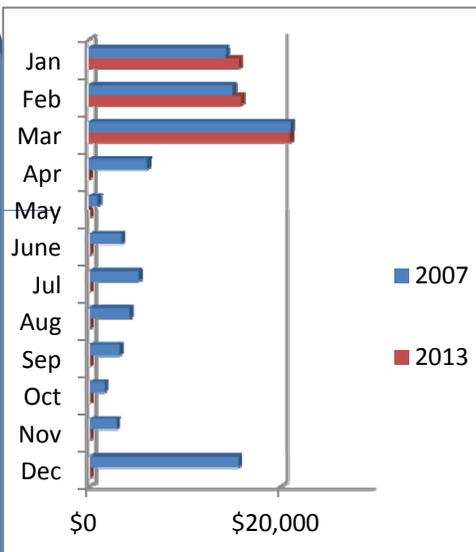
Total Net Taxable Sales					% change
	2010	2011	2012	2013	from PY
Jan	\$40,110,228	\$39,458,390	\$41,668,396	\$49,052,999	17.72%
Feb	\$39,472,293	\$39,800,228	\$43,254,486	\$46,951,185	8.55%
Mar	\$50,006,174	\$51,130,458	\$53,037,799	\$58,385,937	10.08%
Apr	\$19,917,465	\$19,743,401	\$20,544,458	\$0	n/a
May	\$11,425,462	\$9,611,782	\$11,551,736	\$0	n/a
Jun	\$16,219,027	\$17,062,992	\$20,121,659	\$0	n/a
Jul	\$23,624,523	\$27,602,363	\$30,285,574	\$0	n/a
Aug	\$20,834,028	\$24,678,734	\$26,374,318	\$0	n/a
Sep	\$17,062,327	\$20,248,599	\$23,480,474	\$0	n/a
Oct	\$11,637,368	\$13,185,469	\$14,050,663	\$0	n/a
Nov	\$14,957,071	\$17,669,724	\$17,496,438	\$0	n/a
Dec	\$46,198,390	\$51,587,451	\$50,140,830	\$0	n/a
Total	\$311,464,356	\$331,779,590	\$352,006,831	\$154,390,121	



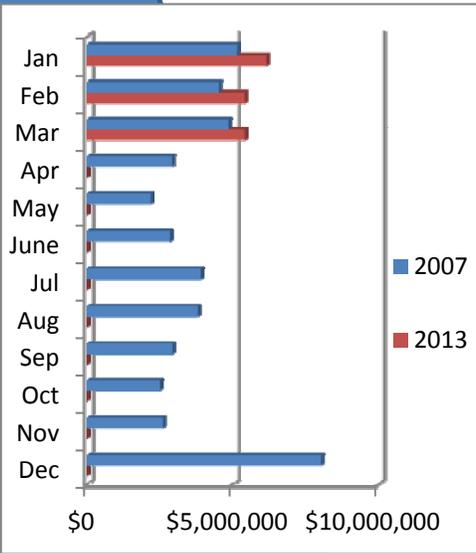
Retail					% change
	2010	2011	2012	2013	from PY
Jan	\$8,530,276	\$8,804,920	\$9,178,851	\$10,839,157	18.09%
Feb	\$8,378,341	\$8,972,613	\$9,459,511	\$10,467,936	10.66%
Mar	\$12,850,864	\$12,184,150	\$12,610,958	\$14,035,191	11.29%
Apr	\$4,031,843	\$4,299,060	\$4,564,346	\$0	n/a
May	\$3,251,038	\$1,876,216	\$2,444,796	\$0	n/a
Jun	\$3,895,330	\$3,973,630	\$4,842,769	\$0	n/a
Jul	\$5,582,057	\$6,407,381	\$7,266,795	\$0	n/a
Aug	\$4,301,609	\$5,207,972	\$6,113,573	\$0	n/a
Sep	\$3,847,858	\$4,344,035	\$5,483,056	\$0	n/a
Oct	\$2,452,634	\$2,946,071	\$3,274,787	\$0	n/a
Nov	\$3,763,526	\$4,370,374	\$4,709,433	\$0	n/a
Dec	\$10,823,585	\$12,275,994	\$12,711,964	\$0	n/a
Total	\$71,708,960	\$75,662,415	\$82,660,838	\$35,342,284	



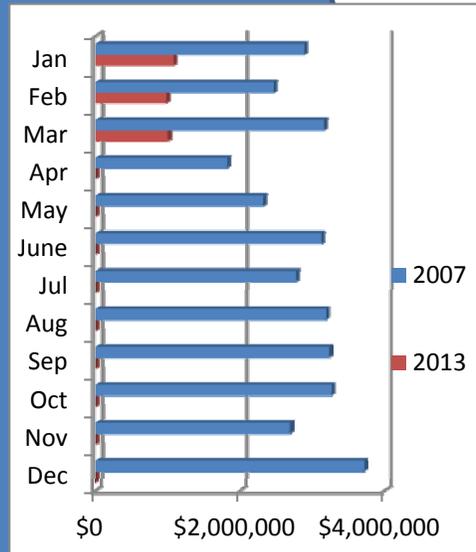
Restaurant / Bar					% change
	2010	2011	2012	2013	from PY
Jan	\$8,514,996	\$9,083,327	\$10,000,475	\$11,186,954	11.86%
Feb	\$8,342,961	\$8,660,328	\$10,578,852	\$10,506,234	-0.69%
Mar	\$9,185,595	\$10,169,762	\$12,086,391	\$12,756,265	5.54%
Apr	\$4,041,861	\$4,204,314	\$4,662,012	\$0	n/a
May	\$1,811,793	\$1,618,782	\$1,975,658	\$0	n/a
Jun	\$3,397,497	\$3,724,982	\$5,006,301	\$0	n/a
Jul	\$6,222,078	\$7,106,056	\$7,964,540	\$0	n/a
Aug	\$5,728,881	\$6,594,385	\$6,905,724	\$0	n/a
Sep	\$3,882,885	\$4,683,989	\$5,423,426	\$0	n/a
Oct	\$2,420,192	\$2,662,113	\$2,924,663	\$0	n/a
Nov	\$3,006,237	\$3,476,935	\$3,613,665	\$0	n/a
Dec	\$8,351,439	\$9,776,293	\$9,534,760	\$0	n/a
Total	\$64,906,415	\$71,761,267	\$80,676,467	\$34,449,454	



Short-Term Lodging					% change
	2010	2011	2012	2013	from PY
Jan	\$12,493,479	\$12,273,406	\$12,971,968	\$15,631,366	20.50%
Feb	\$12,368,672	\$12,861,701	\$14,079,347	\$15,820,030	12.36%
Mar	\$16,099,458	\$18,399,939	\$18,313,439	\$20,932,874	14.30%
Apr	\$4,079,901	\$4,053,070	\$4,472,112	\$0	n/a
May	\$773,209	\$832,715	\$1,087,494	\$0	n/a
Jun	\$2,010,085	\$2,532,271	\$3,483,556	\$0	n/a
Jul	\$4,188,735	\$5,513,083	\$6,615,081	\$0	n/a
Aug	\$3,229,826	\$4,612,218	\$5,169,056	\$0	n/a
Sep	\$2,162,726	\$3,118,560	\$3,489,345	\$0	n/a
Oct	\$1,270,196	\$1,351,146	\$1,493,411	\$0	n/a
Nov	\$2,298,412	\$2,981,024	\$2,760,235	\$0	n/a
Dec	\$14,187,765	\$16,009,018	\$15,230,531	\$0	n/a
Total	\$75,162,464	\$84,538,151	\$89,165,574	\$52,384,270	



Grocery / Liquor					% change
	2010	2011	2012	2013	from PY
Jan	\$4,472,454	\$4,853,813	\$4,857,276	\$6,142,115	26.45%
Feb	\$4,590,195	\$4,803,009	\$4,962,402	\$5,407,026	8.96%
Mar	\$4,877,466	\$5,179,766	\$5,219,990	\$5,386,799	3.20%
Apr	\$3,186,035	\$3,261,348	\$3,469,430	\$0	n/a
May	\$2,023,538	\$2,053,046	\$2,309,947	\$0	n/a
Jun	\$2,682,462	\$2,757,191	\$3,097,820	\$0	n/a
Jul	\$3,999,077	\$4,219,220	\$4,489,506	\$0	n/a
Aug	\$3,896,409	\$4,271,490	\$4,540,829	\$0	n/a
Sep	\$2,955,420	\$3,278,161	\$3,404,220	\$0	n/a
Oct	\$2,487,769	\$2,647,930	\$2,855,324	\$0	n/a
Nov	\$2,422,067	\$2,598,982	\$2,778,270	\$0	n/a
Dec	\$7,431,683	\$7,776,073	\$7,705,640	\$0	n/a
Total	\$45,024,575	\$47,700,028	\$49,690,652	\$16,935,940	



Construction					% change
	2010	2011	2012	2013	from PY
Jan	\$1,094,954	\$561,988	\$752,255	\$1,072,239	42.54%
Feb	\$1,111,091	\$619,675	\$703,811	\$964,673	37.06%
Mar	\$1,469,445	\$903,899	\$908,620	\$1,000,038	10.06%
Apr	\$1,005,902	\$721,817	\$779,206	\$0	n/a
May	\$1,138,209	\$752,424	\$1,761,256	\$0	n/a
Jun	\$1,569,090	\$1,552,324	\$1,562,363	\$0	n/a
Jul	\$1,351,864	\$1,500,224	\$1,366,520	\$0	n/a
Aug	\$1,444,489	\$1,450,106	\$1,670,785	\$0	n/a
Sep	\$1,468,840	\$1,697,142	\$2,343,106	\$0	n/a
Oct	\$1,594,643	\$1,486,042	\$1,521,388	\$0	n/a
Nov	\$1,495,098	\$1,339,040	\$1,482,393	\$0	n/a
Dec	\$1,211,382	\$1,435,591	\$1,290,457	\$0	n/a
Total	\$15,955,006	\$14,020,272	\$16,142,158	\$3,036,950	

General Fund Revenues Summary

April 30, 2013

General Fund Revenue: 103% of YTD budget (total of \$7.528M vs. \$7.286M budget). Results are very consistent with prior year and budget. The variances explained below are all fairly minor. One notable item is that the Nordic Center ended the season ahead of budget by 22% (\$26k over budget).

Variance Explanations:

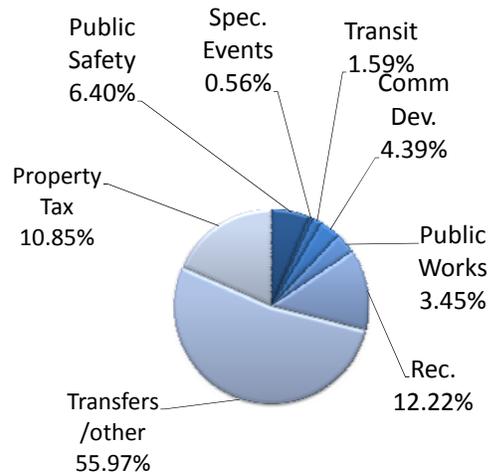
Public Safety over budget by \$82k due to Pay Parking revenue.

Comm. Dev. over budget due to all classes of Planning Fee (Class A, B, C, etc.).

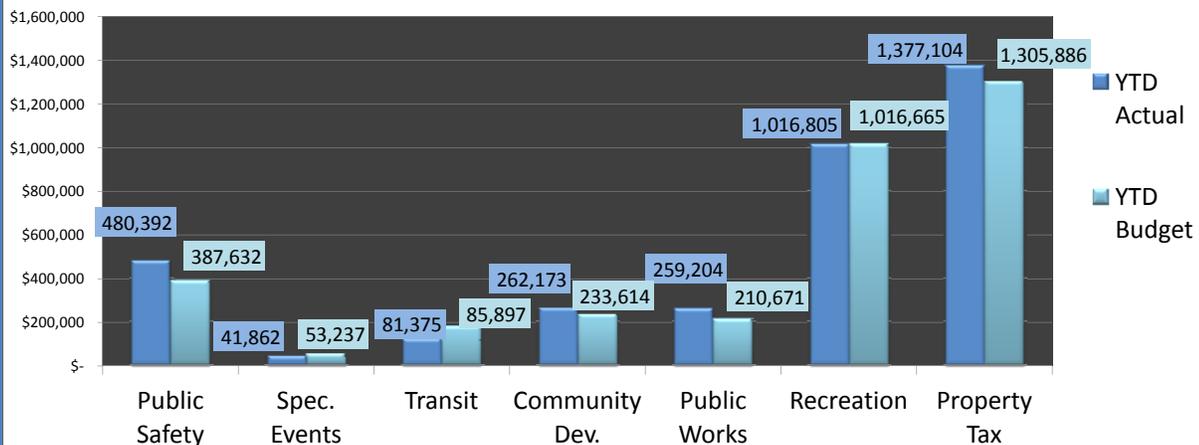
Public Works over budget due to insurance recoveries.

Property Tax receipts over budget due to timing.

GENERAL FUND YTD REVENUES



Gen. Fund YTD Revenue Act vs. Bud - by Program



General Fund Expenditures Summary

April 30, 2013

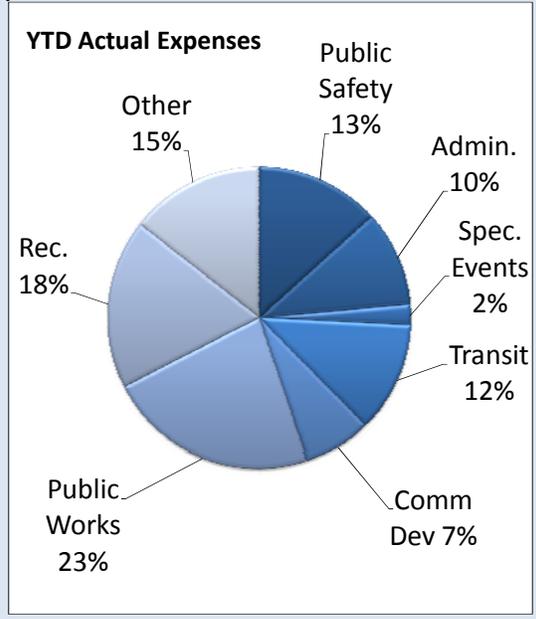
General Fund expenses are under budget for the month of April at 96% or \$7.7M vs. budgeted expenses of \$8.0M. There are some favorable expense variations in Special Events, Admin, Public Safety, and "Other."

Variance Explanations:

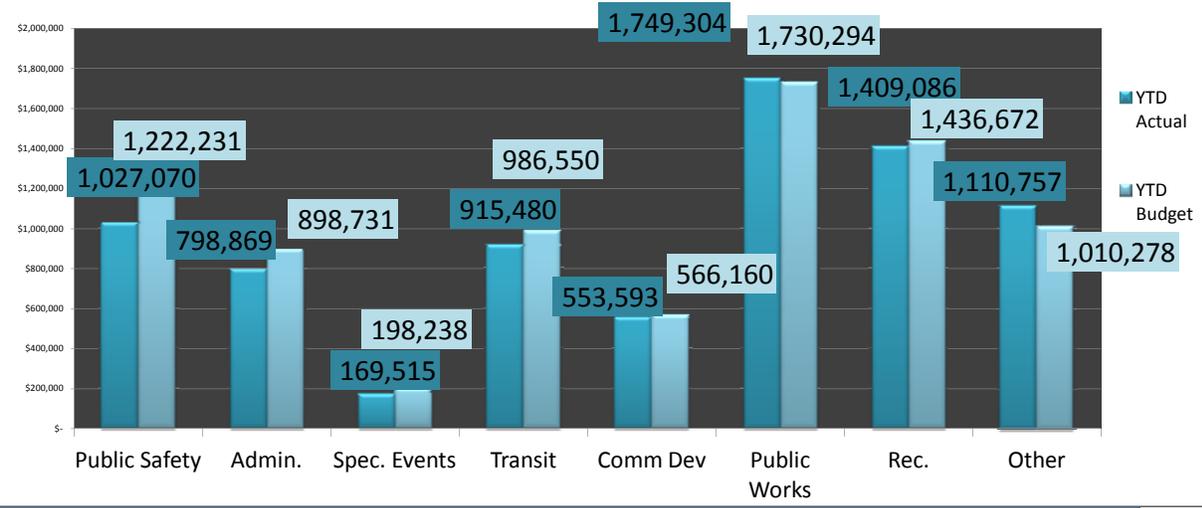
Public Safety under budget due to timing of receipt of Summit County Communications invoice (timing).

Administration under budget due to staff turnover.

There has been a lot of activity in "Other". The purchase of Abby Hall is recorded here, and so are the Nordic Center Financing draws.



Gen. Fund YTD Expenditures Act. vs. Bud. - by Program



ALL FUNDS REPORT

April 30, 2013

As stated in the Executive Summary section of this month's report, tax revenues are performing ahead of budget. Most other revenue variances are due to timing.

Expense variations are primarily from timing and will typically 'catch up' to budget over the course of the year.

Special Revenue Funds: expenditures look high due to the Corum loan. As noted in prior month, under fund accounting rules, the loan amount is be considered an expense. The Corum loan supplemental budget appropriation has been included in the financials so as not to skew the graphs (right).

Housing:

- \$727G under expense budget due to timing (housing capital expenditures, land acquisition, etc.).

Open Space:

- \$258G under expense budget due to timing (land acquisition).

Capital Fund:

- Revenue: under budget due to County contribution budgeted for Harris Street building (timing).
- Expense: under budget due to timing of capital expenditures.

Utility:

- Revenue: under budget due to PIF's.
- Expense: under budget due to timing of capital expenditures.

Golf: Expenditures over budget due to purchase of capital equipment-timing.

Fund Descriptions:

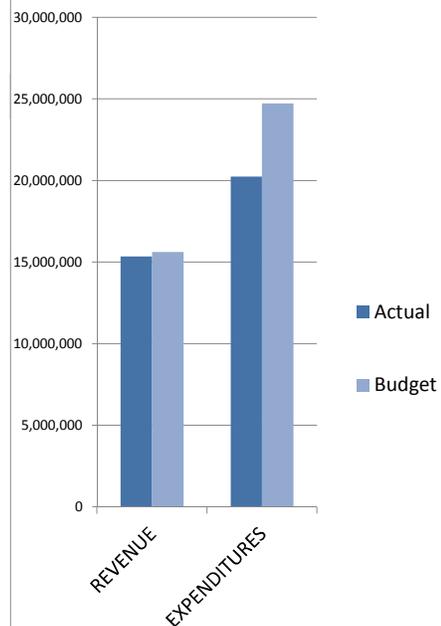
General Governmental - General, Excise and Special Projects

Special Revenue Funds - Marketing, Affordable Housing, Open Space, Conservation Trust, and Medical Marijuana

Enterprise Funds: Golf, Utility

Internal Service Funds - Garage, Information Technology (IT), and Facilities

YTD Actual Revenues and Expenditures vs. Budget



Combined Statement of Revenues and Expenditures

All Funds April 30, 2013

REVENUE	YTD Actual	YTD Budget	% of YTD Bud.	Annual Bud.
General Governmental				
1 General and Excise Fund	\$ 10,960,868	\$ 9,756,344	112%	\$ 28,669,357
2 Special Revenue	2,200,722	2,042,734	108%	5,141,167
3 Internal Service	1,137,530	1,117,132	102%	3,362,045
4 Subtotal General Governmental	\$ 14,299,120	\$ 12,916,210	111%	\$ 37,172,569
5 Capital Projects	39,009	1,572,668	2%	5,133,004
Enterprise Funds				
6 Utility Fund	980,111	1,077,912	91%	3,129,541
7 Golf	29,578	49,220	60%	2,097,780
8 Subtotal Enterprise Funds	\$ 1,009,689	\$ 1,127,132	90%	\$ 5,227,321
9 TOTAL REVENUE	15,347,817	15,616,010	98%	47,532,894
10 Internal Transfers	7,221,042	7,182,306	101%	21,337,966
11 TOTAL REVENUE incl. x-fers	\$ 22,568,860	\$ 22,798,316	99%	\$ 68,870,860
EXPENDITURES				
	YTD Actual	YTD Budget	% of Bud.	Annual Bud.
General Governmental				
1 General and Excise Fund	\$ 8,424,514	\$ 8,601,086	98%	\$ 23,761,770
2 Special Revenue	8,945,585	10,111,876	88%	15,215,588
3 Internal Service	912,847	934,548	98%	2,612,717
4 Subtotal General Governmental	\$ 18,282,946	\$ 19,647,510	93%	\$ 41,590,075
5 Capital Projects	647,421	3,495,000	19%	10,485,000
Enterprise Funds				
6 Utility Fund	647,259	1,005,589	64%	3,387,385
7 Golf	660,735	579,391	114%	2,296,912
8 Subtotal Enterprise Funds	\$ 1,307,994	\$ 1,584,980	83%	\$ 5,684,297
9 TOTAL EXPENDITURES	20,238,361	24,727,490	82%	57,759,373
10 Internal Transfers	7,221,042	7,182,306	101%	21,337,966
11 TOTAL EXPENDITURES incl. x-fers	\$ 27,459,404	\$ 31,909,796	86%	\$ 79,097,339
12 TOTAL REVENUE less EXPEND.	\$ (4,890,544)	\$ (9,111,480)	N/A	\$ (10,226,479)

General Governmental Funds - General, Excise and Special Projects
Special Revenue Funds - Marketing, Affordable Housing, Open Space, Conservation Trust, and Medical Marijuana
Internal Service Funds - Garage, Information Technology (IT), and Facilities

Combined Statement of Revenues and Expenditures

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General Governmental Funds - General, Excise and Special Projects

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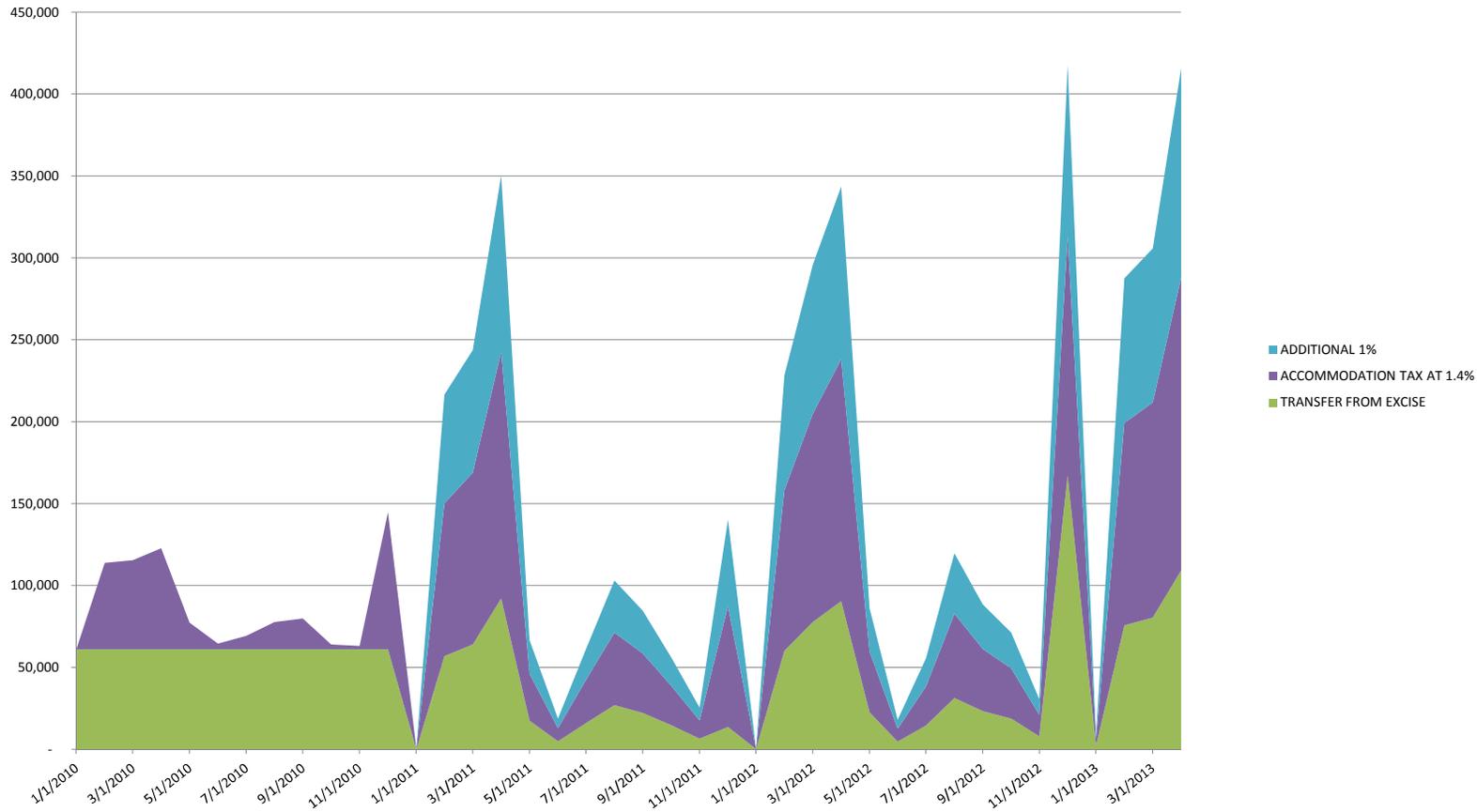
Marketing Fund and Accommodation Tax Revenue

The purpose of this month's "Other Information" section is to illustrate the effects of the increase in the Accommodations tax rate which went into effect in January 2011 as last well as the agreement to transfer an additional .5% of Accommodations Tax from the Excise to the Marketing Fund for a period of five years (2011-2015).

The Marketing Fund revenue has increased due to both the economic recovery and the increase in the Accommodations Tax rate. For comparative purposes, here is a recap of the primary sources of revenue to the Marketing Fund for the past three years:

	Accommodation Tax	Transfer from Excise	Business License	Sales Tax	Total Revenue*
2010:	\$321,426	\$733,296	\$633,615	\$192,381	\$1,812,861
2011:	\$1,031,542	\$336,762	\$662,749	\$234,856	\$2,345,640
2012:	\$1,242,051	\$519,340	\$693,471	\$248,653	\$2,748,393

Marketing Fund-Accommodation Taxes and Transfers from Excise



TO: Breckenridge Town Council
FROM: Laurie Best
RE: Naming Plan-103 South Harris Street/Library
DATE: May 13, 2013 (for worksession May 28th)

The purpose of this worksession is to review the naming plan for 103 South Harris Street with the Town Council. The ability to raise funds through the sale of naming rights is an important part of the fundraising strategy and is addressed in the Intergovernmental Agreement (IGA) between the Town and Summit County. In accordance with that IGA a joint fundraising effort (Harris Street Capital Campaign Steering Committee) has been launched and this Committee is headed by the Summit County Library Foundation on behalf of the County and by the Breckenridge Heritage Alliance on behalf of the Town. The Committee is in the process of engaging potential donors and is asking the Council to endorse a naming plan that can be presented to potential donors.

Pursuant to the IGA, the Library Foundation has already developed a naming plan for the Library, which includes naming policies as well as recommendations for the donations related to specific rooms, collections, etc. within the Library. That plan (Summit County Library Naming Policy/Addendum) has been reviewed and approved by the Committee, by the Library Board, and by Summit County. The Committee has been working to expand the naming opportunities beyond the Library, to include the building itself, the shared spaces, and other Town spaces. It is staff's recommendation, as well as the recommendation of the Committee, that the policies related to naming opportunities be as consistent as possible throughout the building. This is important to potential donors and to the Committee that is responsible for the fundraising. It is also important to staff, to the Committee, and to potential donors that the rights and obligations be clear.

A plan for the building, shared spaces, and other Town spaces is included in your packet. The plan is based on the Library's plan but does include a few clarifications that have been recommended by the Town Attorney and staff. These clarifications are **highlighted** in the attached plan for your review. We recommend that Council endorse the plan as presented. There are individuals, businesses, and foundations who have expressed interests in the naming opportunities and some are ready to commit once the policies are in place. Staff will be available to answer questions at your worksession.

In addition to the naming rights plan, the Town Attorney is preparing the actual Gift Agreement and the Donor Pledge forms that will be used for naming rights. These will also be provided to the Council for your review.

Proposed Town of Breckenridge Naming Plan for 103 South Harris Street-May 2013
(applies to shared spaces, Town spaces, and the Building as listed below)

*(Except where noted in **Blue Bold Italics**, the following polices match those polices already adopted by the Library Foundation and the Board of County Commissioners for the Library)*

While the **Town** is grateful for and encourages donations from all individuals, businesses and organizations, the **Town** has the right to decline any gift to **103 South Harris Street shared spaces or Town spaces** and/or reject naming proposals.

- A. Meeting rooms, reading lounges, study rooms, special use areas, equipment, furniture, bookcases, green spaces, walkways, other interior and exterior spaces, and facilities or portions of a facility may be named or renamed by the **Town** to recognize a donor. Appropriate contributions for such naming opportunities will be at the discretion of the **Town**.
- B. Naming a collection, facility or portion of a facility to honor individuals who have contributed to the social, academic, or political life of the community rather than a donor is permitted.
- C. Endowment proposals such as those for a collection may also include naming rights. Collections may be named or renamed by the **Town** to recognize a donor. Appropriate contributions for such naming opportunities will be at the discretion of the **Town** and will be determined by cost of materials, staff, on-going operating costs, etc. depending on the specific program or collection.
- D. **NA**
- E. **NA**
- F. *If during the useful life of the Building, the Building or spaces within the building are transferred or conveyed by the Town, closed, deconstructed, destroyed or severely damaged, significantly renovated, upgraded, or modified; relocated, or replaced, then the Naming will cease. In such event, however, the Donor, if available, and in consultation with and as mutually agreed by the Town, will have the right, for no additional payment, to have another available and equivalent Town building/space named after the Donor.*
- G. For any **shared space or Town space** and/ or collection requiring fundraising the **Town** shall set Guidelines for naming opportunities. When a gift or pledge is appropriately committed to the **Town** with a request for naming rights, the **Committee** shall notify the **Town** in writing of the terms of the commitment and request approval. Requests for naming rights shall be considered in the order that they are received. All contract documents must be finalized before the **Town** issues final approval for a naming opportunity. *Final approval of naming rights will be evidenced by execution of a Gift Agreement by the Town Manager. It is anticipated that all naming rights request of \$25,000 or more will be reviewed individually with the Town Council and that all request less than \$25,000 will be processed administratively.*
- H. It is generally the preference of the **Town** that “naming rights” shall entitle the donor to a plaque that would acknowledge the donor in a manner similar to the following: The XXX Room was made possible by the generous support of the XXX Company. In addition to naming rights, all donors who contribute (at a level to be determined by the **Town**) to the **103 South Harris**

Street capital campaign shall be recognized by having their name displayed, along with all other contributors, on a wall plaque or other appropriate space in the **building**.

- I. Naming **rights** do not extend beyond the useful life of the spaces or facilities within which they are located. **For fixtures, equipment, and furniture the naming rights do not extend beyond the useful life of the fixture, equipment, and furniture.**
- J. **In the unlikely event that the Town Council of the Town of Breckenridge determines, in its reasonable and good faith opinion, that circumstances changed after a naming rights agreement has been signed such that the continued association of the Town of Breckenridge (Town) with the donor and the continuation of the naming rights provided for in a naming rights agreement would adversely impact the reputation, image, mission, or integrity of the Town, the Town may terminate the agreement, and all rights and benefits of the donor under the agreement, including terminating the naming rights provided for in the agreement. Upon such termination of the agreement and the naming rights provided in the agreement, the Town shall have no further obligation or liability whatsoever to donor, or the donor's heirs, members, or successors, under any legal theory, and the Town shall not be required to return any portion of the gift described in the agreement that has already been paid.**

Addendum/**Guidelines for 103 South Harris**

1. All donors giving a minimum of \$1,000 shall have their name listed on a display at **103 South Harris**. Categories for giving levels shall be \$1,000-\$2,499, \$2,500-\$4,999, \$5,000-\$9,999, \$10,000-\$24,999, \$25,000-\$49,999, \$50,000-\$74,999, \$75,000-\$99,999, \$100,000 and over.
2. All donors for this capital project, including those giving less than \$1,000, shall have their name printed in a booklet available to the public at each of the three Summit County library branches. Their names shall also be published in the Summit Daily News at least once.
3. Donors may choose to sponsor a particular room, service area, furniture, or piece of equipment. Their gift will be acknowledged by a plaque prominently placed on or near the item or in the room. The plaque should read as follows: *The _____ was made possible by the generous support of _____.*
4. The granting of naming rights in the Breckenridge Library is subject to the approval of the Summit County Board of Commissioners. **The granting of naming rights for shared spaces and Town spaces are subject to approval of the Town of Breckenridge.** The granting of naming rights for the Harris Street building is subject to approval of the Town of Breckenridge in consultation with the Summit Board of Commissioners.
5. Suggested donations levels for naming rights/sponsorships are as follows:

Naming Rights Subject to Board of County Commissioners/Library Approval:

Adult reading area	\$75,000
Children's area	\$75,000
Mezzanine	\$50,000
Raised reading area	\$50,000
Teen area	\$50,000
Circulation and checkout desk	\$50,000

Outdoor patio	\$25,000
Fireplace Reading Nook	\$15,000
Study room 1	\$15,000
Study room 2	\$15,000
Individual equipment items	\$1,000+
Individual furniture items	\$1,000+
Bookshelves	\$1,000+
Collections	\$1,000+

Naming Rights Subject to Town of Breckenridge Approval:

(note: the Community Room/kitchen requires approval by both the Town and Summit County, and the Building requires Town approval after consultation with Summit County)

<i>Community Room w/kitchen</i>	<i>\$100,000 (this space also requires Summit County approval)</i>
<i>Digital Projection System</i>	<i>\$100,000</i>
<i>Theater Auditorium</i>	<i>\$50,000</i>
<i>Non-Profit Rooms/Coffee Shop</i>	<i>\$25,000 each</i>
<i>Entry Garden*</i>	<i>\$25,000</i>
<i>Theater Lobby and Gallery</i>	<i>\$25,000</i>
<i>Archival Storage</i>	<i>\$1,000 per case</i>
<i>Tables/Chairs</i>	<i>\$1,000</i>
<i>Outside Benches**</i>	<i>\$1,000 each</i>
<i>Bike Racks**</i>	<i>\$1,000 each</i>
<i>Theater Seats***</i>	<i>\$250 each</i>
<i>103 South Harris Building</i>	<i>\$1,000,000 (this naming right is subject to Town approval after consultation with Summit County)</i>

**Initial landscaping per Town approved plan. On-going maintenance will be by the Town of Breckenridge in accordance with the Town's standard grounds/ facilities program.*

***The suggested donation levels are based on regularly specified Town benches and racks. For customized benches or racks the expectation is that the donation would at least cover the additional costs incurred by the Town for customized benches or racks. The Town would also consider in-kind donation of benches and racks that meet the needs of the Town and are acceptable to the Town for use at 103 S. Harris Street.*

****Naming rights only-does not include season ticket/reserved seats*

1 ***DRAFT May 22, 2013 DRAFT***

2
3 **Harris Street Building Gift Agreement**

4
5 This Harris Street Building Gift Agreement (“**Agreement**”), effective as of
6 _____, 2013 (“**Effective Date**”), is made and entered into by and between
7 _____, whose address is
8 _____ (“**Donor**”)
9 and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”). The Town
10 and the Donor are sometimes referred to in this Agreement individually as a “**Party**”, and
11 together as the “**Parties.**”
12

13 Based upon the Recitals below, and in consideration of the mutual promises and benefits
14 provided in this Agreement, the Parties agree as follows:
15

16 **RECITALS**

17
18 Donor wishes to make a charitable gift to the Town for the use and benefit of the Town as
19 set forth in this Agreement.
20

21 The Town is authorized to accept the Donor’s gift pursuant to Section 15.6 of the
22 *Breckenridge Town Charter*, and the Town desires to accept such gift, subject to the terms and
23 conditions set forth in this Agreement.
24

25 **AGREEMENT**

26
27 1. **Gift.** Donor hereby pledges to the Town for the use and benefit of the Town the
28 following gift: \$ _____ (“**Gift**”).
29

30 2. **Payment of the Gift.** The Gift is an irrevocable pledge that will be paid to Town:
31

32 [] in full upon the signing of this Agreement.
33

34 [] over a period of _____ () years. Payments in support of this pledge will begin
35 immediately upon the execution of this Agreement with an initial payment of
36 \$ _____ and will continue annually thereafter on the anniversary of the Effective
37 Date according to the following schedule:
38

<u>Amount of payment by Donor</u>	<u>Due Date</u>
\$ _____	_____, 20__
\$ _____	_____, 20__
\$ _____	_____, 20__
\$ _____	_____, 20__
\$ _____	_____, 20__

1 Donor may accelerate the payment of any or all of this pledge at any time in the Donor’s
2 discretion so long as the cumulative total of all gift payments meets the foregoing
3 schedule.
4

5 Payments will be paid by the Donor to Town via check, electronic funds transfer, or other
6 methods acceptable to the Donor and the Town.
7

8 3. **Designation of Alternate Recipient of Gift.** If requested by the Donor prior to the
9 payment of the Gift, the Town will permit payment of the Gift to be made by the Donor
10 to a 501(c)(3) tax exempt entity who has agreed with the Town to use the Gift solely to
11 pay the cost of renovating the Town’s property at 103 South Harris Street in
12 Breckenridge, Colorado (“**Harris Street Building**”). If payment of the Gift by the Town
13 is approved for payment to another entity pursuant to this Section 3, the remainder of this
14 Agreement, including the termination provisions of Section 6, will remain in full force
15 and effect.
16

17 4. **Use of the Gift.** The Gift will be used by the Town to help pay its share of the cost of
18 renovating the Harris Street Building.
19

20 5. **Acknowledgment.** In consideration for the Gift, the Town will acknowledge the Gift by
21 naming the _____ at the Harris Street Building as
22 follows: _____ (“**Naming**”). After the
23 Naming is affixed, the Donor will continue any unpaid pledge payments in accordance
24 with the foregoing schedule. Subject to the terms of this Agreement, the Naming will last
25 until terminated as provided in Section 6 of this Agreement.
26

27 6. **Termination of Naming.** In addition to any rights and remedies available at law, the
28 Town may terminate this Agreement, and all rights and benefits of the Donor hereunder,
29 including terminating the Naming:
30

- 31 a. In the event of any default in payment of the Gift as provided in this Agreement;
- 32 b. At the end of the useful life of the _____; or
- 33 c. In the unlikely event that the Town Council of the Town of Breckenridge determines,
34 in its reasonable and good faith opinion, that circumstances have changed since the
35 signing of this Agreement such that the continued association of the Town with the
36 Donor and the continuation of the naming rights provided for in this Agreement
37 would adversely impact the reputation, image, mission, or integrity of the Town.
38

39 Upon any termination of this Agreement and/or the Naming pursuant to this Section 6,
40 the Town will have no further obligation or liability to Donor, or Donor’s heirs,
41 members, or successors, under any legal theory, and the Town will not be required to
42 return any portion of the Gift that has already been paid. The Town, however, may in its
43 sole and absolute discretion determine an alternative recognition for the portion of the
44 Gift already received.
45

- 1 7. **Modification of Naming.** If during the useful life of the _____, the
2 _____ is transferred or conveyed by the Town, closed,
3 deconstructed, destroyed or severely damaged, significantly renovated, upgraded, or
4 modified; relocated, or replaced, then the Naming will cease. In such event, however, the
5 Donor, if available, and in consultation with and as mutually agreed by the Town, will
6 have the right, for no additional payment, to have another available and equivalent
7 **[facility]** named after the Donor.
8
- 9 8. **Publicity.** For purposes of publicizing the Gift and the Naming, the Town has the right,
10 without charge, to photograph the Donor and to use the Donor’s name, likeness, and
11 image in photographic, audiovisual, digital, or any other form of medium (the “**Media**
12 **Materials**”) and to use, reproduce, distribute, exhibit, and publish the Media Materials in
13 any manner and in whole or in part, including in brochures, website postings,
14 informational and marketing materials, and reports and publications describing Town’s
15 activities.
16
- 17 9. **Assignment.** This Agreement and the rights and benefits provided for in this Agreement
18 may not be assigned by either Party without the prior written consent of the other Party,
19 which consent will be in the sole and absolute discretion of the non-assigning Party.
20
- 21 10. **Miscellaneous Provisions.** This Agreement constitutes the entire agreement of the
22 Parties with regard to the Gift and the Naming, and supersedes all prior oral and written
23 agreement, if any, of the Parties regarding such matters. When used in this Agreement,
24 This Agreement may not be modified or amended except by written agreement executed
25 by both Parties hereto; oral amendments to this Agreement are not permitted. The
26 captions and section headings inserted in this Agreement are for convenience only and in
27 no way define, limit, or otherwise describe the scope or intent of this Agreement, or any
28 provision of this Agreement, or in any way affect the interpretation of this Agreement.
29 Wherever applicable within this Agreement, the singular includes the plural, and the
30 plural includes the singular.
31
- 32 11. **Governing Law.** This Agreement is to be governed by and construed in accordance with
33 the laws of the State of Colorado without regard to any conflict of law rule or principle
34 that might refer the governance or construction of this Agreement to the laws of another
35 jurisdiction.
36
- 37 12. **Venue; Waiver of Right to Jury Trial.** Any legal proceeding brought in connection
38 with a dispute relating to or arising out of this Agreement will be filed and heard in
39 Summit County, Colorado, and each Party waives any objection that it might raise to
40 such venue and any right it may have to claim that such venue is inconvenient. ***IN***
41 ***ADDITION, EACH PARTY WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY***
42 ***LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.***
43
- 44 13. **Town Approval.** This Agreement and the recognition and naming provided for in this
45 Agreement are subject to the approval by the Town, and this Agreement is not to be
46 effective unless and until approved by the Town.

TO: BRECKENRIDGE TOWN COUNCIL
FROM: BRIAN WALDES, FINANCIAL SERVICES MANAGER
SUBJECT: BOLT ADMINISTRATIVE LICENSE
DATE: 5/15/13
CC: TIM GAGEN, RICK HOLMAN

Background

Sales tax is by far the Town's most important revenue stream. Staff is continuously looking to improve how we administer this asset. As part of this effort, we seek to encourage compliance with the Business and Occupational License Tax (BOLT) requirements outlined in our Town Code. The logic being if we properly license all vendors doing business in Town, it will go a long way to encouraging them to collect and remit sales tax when appropriate. We initiated an audit program to identify unlicensed vendors doing business in Breckenridge. The results of this program revealed a category of vendors doing business in Town that could potentially merit special consideration; those doing business solely with or on the behalf of the Town.

Issues

One part of our audit program involved ensuring that all vendors receiving payments from the Town were properly licensed. We found several vendors that were doing business with us that were not properly licensed. Examples include consultants, construction companies, and other 'one time' vendors. The question around this issue is should we require licenses of these vendors?

If we do require licenses of such vendors, i.e. those who do business only with the Town, one could argue we would only be charging ourselves. If such a vendor is required to acquire a license, they might just pass the fee on to their client, the Town. As such, collection efforts in these cases would be supererogatory.

On the other side of this issue is the 'level playing field' concept. The principle in this argument is that all vendors are required to license, so why would a vendor doing business with the Town not have to comply?

Another group of vendors that came up was those doing business solely on Town property. Examples here include visiting artists in the Arts District and Rec Center Contract Instructors/Staff. These vendors do not do business with the Town, but do conduct business solely on our property.

The argument against licensing vendors in this group is based on the fact that some of what they are doing is the "Town's business" on our property. It might seem ungainly to invite an artist to the Arts District and then require them to acquire a BOLT license. However, it bears stating that such vendors would be selling their product and keeping the revenue. So, in this sense, they function as any other business.

On the flip side, the "level playing field" concept could still apply in this case.

Staff is seeking Council's input on whether or not to require a BOLT license and fee from these vendor subsets.

Solutions

In researching this issue, Staff has come up with the idea of an Administrative BOLT License. This license would be granted by the Town free of charge. This solution provides for the licensing of all vendors, which greatly helps us administer sales tax, while not requiring a fee. So, if it is the will of the Council that one or both of the categories of vendors listed above not have to pay a BOLT fee, staff is prepared to put into place this new license category. If, on the other hand, Council determines that all vendors should be treated equally, the existing BOLT license structure will not need modification.

This matter does not cover a large number of vendors or BOLT fees. We would anticipate issuing a small number of Administrative BOLT Licenses in any case. But, it is a very important issue in terms of how the Town applies its licensing requirements.

Staff will be prepared to answer any questions Council has around this matter at Tuesday's work session.

MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Assistant Town Manager
Date: May 21, 2013
Subject: Proposed Town Hall Improvements

For several years we have been aware of needed improvements in the Town Hall building. Minor maintenance has continued to occur but we have avoided any large improvements pending a decision on where Town Hall would be located. Now that we know there are no future plans for relocating Town Hall and with the recent move of the Town Engineer staff, we are proposing some needed improvements and modifications to the current Town Hall building.

Over the past several months, an internal staff committee has been analyzing and proposing changes that would address needed improvements and also enhance customer flow and service. With the building of the new police department and public works administration building, a lack of space is no longer a challenge at Town Hall, the functionality of the space is one of the problems, along with needed improvements to an aging building.

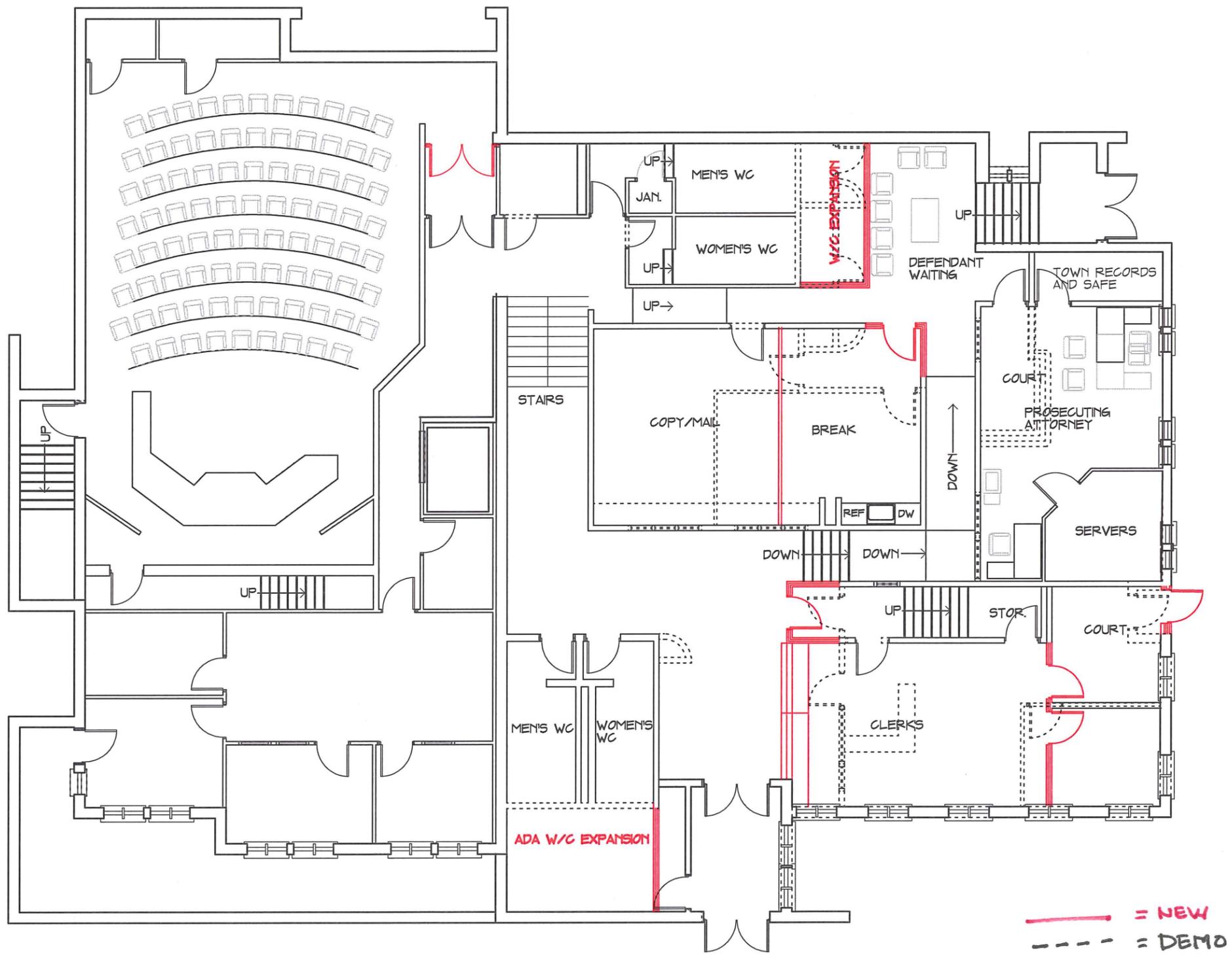
Attached to this memorandum is a copy of our building layout that depicts the primary levels, 1) entry and lower level, 2) mid-level-Community Development, finance accounting, and old engineering office, 3) upper level-administration, open space offices, and meeting room. The drawings show the proposed changes outlined in red and the old walls/doorways (demolition area) illustrated by dotted lines.

Our primary intent with these changes is to create a more open atmosphere for customers from the point of entry into the building and a more centralized location on the middle level for customer interactions. As opposed to trying to explain each of the proposed changes in the building in this memorandum, I will be taking the Council on a short building tour during your work session on May 28th.

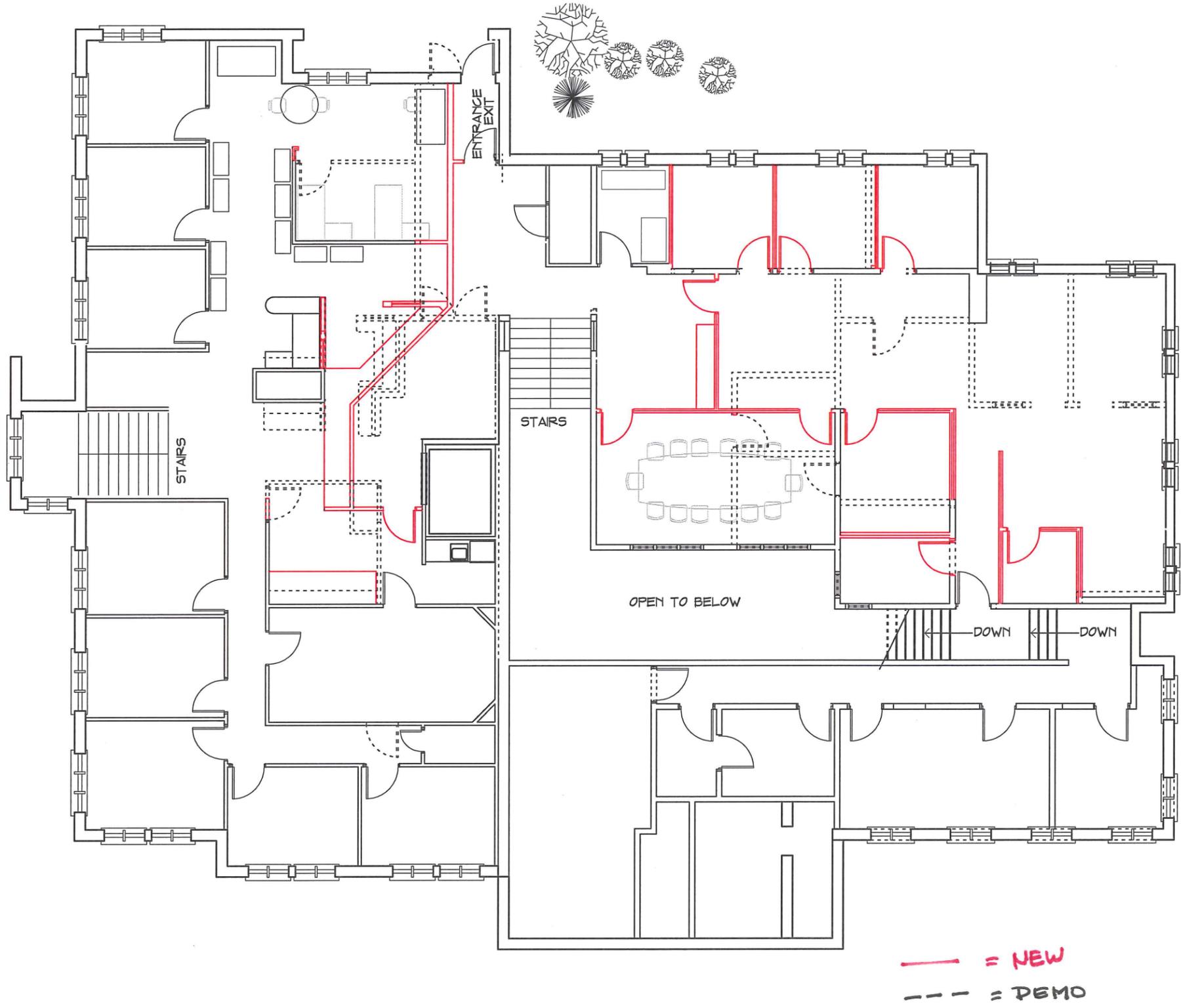
All of the drawings to date have been done by in-house staff and we have worked with a construction company to provide us with some preliminary estimates on cost. At this time we estimate the cost for this construction (including design) would be in the area of \$750,000 - \$800,000. About 25% of this estimated cost is attributable to a major overhaul on the buildings restrooms. The current restrooms are not ADA compliant and need to be enlarged and totally rebuilt. The construction would occur over a 4 month period and would involve developing zones of construction that we shuffled through so we could maintain government operations during this period. Staff is recommending we tackle this as a single construction period because there is a cost savings with a single mobilization and we limit the disruption to a single four-month period as opposed to doing a limited amount each year over the next 3-4 years.

If the Town Council is comfortable moving forward with this proposal, staff would initiate an RFP for a contractor and then develop a timeline for design and construction that would have the least impact on our government operations.

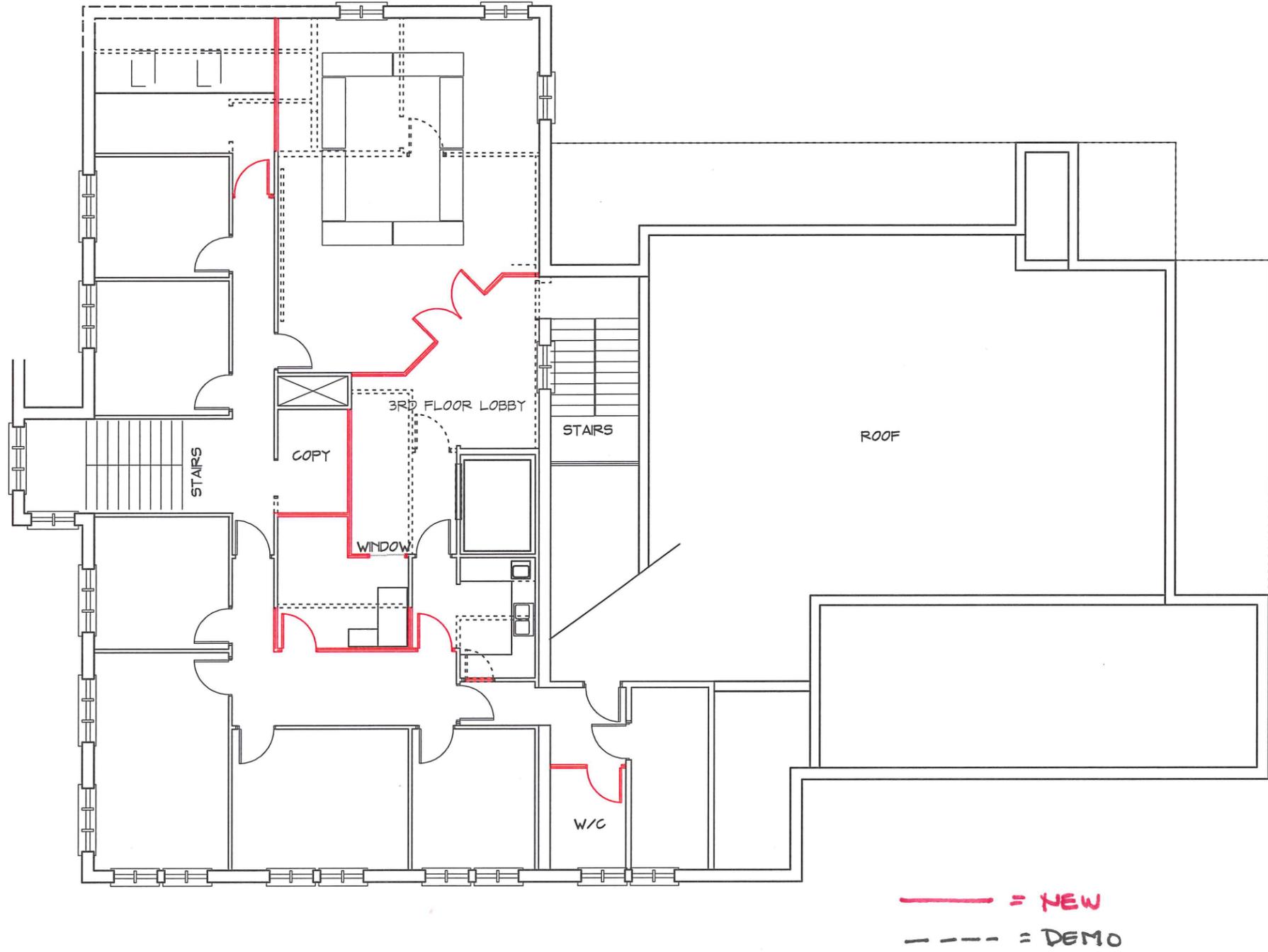
I will be leading your tour at the work session and I will address any questions you have at that time.



Town Hall Remodel - Lower Level 5/17/13



Town Hall Remodel - Main Level 5/17/13



Town Hall Remodel - Upper Level 5/17/13